

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.07.2019

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.508 of 2013

N. Radhabai

...Defendant/Appellant/Appellant

Vs.

V.Ellappan

...Plaintiff/Respondent/Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree in A.S.No.6 of 2011 dated 31.08.2012 on the file of the learned Subordinate Judge, Madurantakam, confirming the Judgment and Decree in O.S.No.291 of 2006 dated 22.12.2010 on the file of the learned District Munsif, Madurantakam.

For Appellant : Mr.M.V. Seshachari

For Respondent : Mr.K. Goviganesan

JUDGMENT

The unsuccessful defendant in both the Courts below is the appellant before this Court.

2.The suit is filed by the plaintiff for a declaration that he has right of access through "B" schedule property to reach his land from the "A" schedule property and for permanent injunction restraining the defendant, his men, servants and agents from in any way interfering with his peaceful possession and enjoyment of the suit property. The "B" schedule property is a 23 ft mud road comprised in Survey No.119/1 measuring East - West 23 ft and North - South 441 ft. The "B" schedule property abuts the Vandawasi - Cheyyur Road and has as its northern boundary the Vandawasi - Cheyyur Road and is landed on the South and East by the remaining portions belonging to the defendant in Survey No.191/1 and on the West also by the lands belonging to the defendant.

Plaintiff's case:

3.The case of the plaintiff is that the "A" schedule property was purchased by him under a registered Sale Deed dated 05.09.2005 from the defendant for a valid consideration. The defendant had sold two plots, namely, Plot Nos.13 and 14 measuring an extent of 2640 sq.mts out of the extent of 3.30 cents in Survey No.119/1 by dividing the property into Several plots. The plaintiff, after purchasing the property, had started remitting the revenue charges and also got the revenue records in respect of the property mutated in his name. The document, under which the property was purchased clearly describes the access to the property only through the 23 ft mud road which is the "B" schedule property. While so, it now transpires that the defendant is attempting to alienate the "B" schedule property as well as to third parties. The plaintiff would contend that the defendant had no right to obstruct the pathway and particularly, when the same has been conveyed to him and therefore, the plaintiff has filed the suit for the relief mentioned supra.

Defendant's case:

4.The defendant had filed a Written Statement inter alia contending that in the "B" schedule property, is a private road and was formed by the defendant only to reach her land and the defendant had no right or title or interest to the same.

Trial Court:

5.The learned District Munsif, Madurantakam, had framed the following issues:

"1.Whether the plaintiff has right of access of the 'B' schedule property from 'A' schedule property?

2.Is the plaintiff entitled for the relief of declaration and consequential relief of permanent injunction?

3.What are all the other reliefs and cost plaintiff is entitled for?"

6.During the trial, the plaintiff had examined himself as P.W.1, besides examining one Mr.Venkatesan as P.W.2 and Mr.Jagadeesan as P.W.3 and marked Ex.A.1 to Ex.A.3. On the side of the defendant, the defendant had examined herself as D.W.1 and marked Ex.B.1 to Ex.B.3. The Advocate Commissioner, who had inspected the property and noted down the physical features, had been examined as Court Witness and the Report and Plan of the Advocate Commissioner had been marked as Ex.C.1 to Ex.C.2.

7.The learned District Munsif, Madurantakam, after hearing the parties, proceeded to decree the suit by declaring that the plaintiff had a right of access through the "B" schedule property to reach the "A" schedule property and for granting consequential relief of permanent injunction.

Appellate Court:

8.Aggrrieved by the Judgment and Decree, the defendant had filed A.S.No.6 of 2011 on the file of the learned Subordinate Judge, Madurantakam. The learned Subordinate Judge had also proceeded to confirm the Judgment and Decree of the trial Court. It is challenging this concurrent Judgment and Decree, the appellatant is before this Court.

9.While admitting the above Second Appeal on 01.04.2019, the following Substantial Questions of Law were framed:

" 1) Whether the Judgment and Decree of the courts below passed without any enquiry as to the extent of suit B schedule property needed by the respondent/plaintiff's to reach the suit A schedule property is sustainable in law?.

2) Whether the courts below erred in decreeing the suit as prayed for by the respondent/plaintiff by granting right of access to the respondent/plaintiff for the entire stretch of the suit B schedule property measuring about 441 feet, even beyond the point of the suit A schedule property?

3) Whether the courts below are justified in granting right of access in the suit B schedule property to reach the suit A schedule property, when the suit B schedule property has not been conveyed by the Appellant/Defendant either to the respondent/plaintiff or the local body? "

Discussion:

10.Heard Mr.M.V. Seshachari, learned counsel for the appellatant and Mr.K. Goviganesan, learned counsel for the respondent and perused the material on record.

11.A perusal of Ex.A.1 which is the Sale Deed under which the suit property had been conveyed to the plaintiff by the defendant, it is very clearly stated that the eastern boundary is the 23 ft pathway which is the "B" schedule in the suit. Similarly, the Report and Plan of the Advocate Commissioner Ex.C.1 and Ex.C.2 would reiterate the same and it is evident that the "B" schedule property is the only access to the suit

"A" schedule property.

12.In the light of Ex.A.1 - Sale Deed which was the document under which the property has been conveyed by the defendant to the plaintiff showing the 23 ft pathway as the eastern boundary and the access, the defendant cannot claim any exclusive right over the said property. Both the Courts below have rightly decreed the suit. The Courts below have come to the conclusion that the 23ft mud road has been made available to the plaintiff to reach the "A" schedule property as evidenced by both Ex.A.1 and also Ex.C.1 and Ex.C.2. The Substantial Question of Law No.1 is therefore answered in favour of the plaintiff. Considering the fact that the "B" schedule property is also the subject matter of Ex.A.1 - Sale Deed, the Substantial Questions of Law No.2 and 3 are also answered in favour of the plaintiff.

In the result, this Second Appeal stands dismissed. The Judgment and Decree of the Courts below is confirmed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mps

To

1.The Subordinate Judge,
Madurantakam.

2.The District Munsif,
Madurantakam.

+1cc to Mr.K. Goviganesan, Advocate SR.63547

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