

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2019

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Second Appeal No.250 of 2016

and

C.M.P. 4815 of 2016

1. Mrs.Malliga

2. Mr.K.R.Tamilvendhan,

3. Mrs.Abirami

4. Mrs.Sivakami

5.Mrs.Thamayanthi

.... Appellants/ Appellants/ Defendants

Vs.

Mrs.Kannika

... Respondent/ Respondent / Plaintiff

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 09.12.2015 made in A.S.No.17 of 2014 on the file of Hon'ble I Addl. District Judge, Tindivanam by confirming the Judgment and decree in O.S.No.367 of 2008 dated 19.02.2013 on the file of Hon'ble District Munsif Court, Tindivanam.

For Appellants : Mr.N.Kumar for
M/s.Kumar and Baskar
For Respondent : M/s.S.Vijayanand

JUDGEMENT

The defendant, who has aggrieved with the judgment and decree passed by both the courts below, has filed the present Second Appeal.

2. The respondent/plaintiff has filed a suit for declaration and also for permanent injunction. According to the plaintiff, she has purchased a house site in plot No.1 and the appellants/defendants, are the owners in respect of house site in Plot No.2. Originally, the entire property owned by one Vaithialingam and the said Vaithialingam sold the property in plot No.1 in favour of the respondent/plaintiff's vendor Unnamalai Ammal. Thereafter, the legal heirs of Unnamalai Ammal have sold the property in favour of respondent/plaintiff under Ex.A3, sale deed dated 21.07.2000. Subsequently, the property in plot No.2 was sold by Vaithialingam in favour of one Kasilingam. From the said Kasilingam, the respondent has purchased the

property under Ex.B1, Sale deed dated 21.02.2005. At the time of executing the sale deed under Ex.A3, the pathway available in the suit property to the plaintiff was omitted to mention in the sale deed. Subsequently, all the vendors have executed a rectification deed under Ex.A4, dated 06.06.2008 conveying the suit property including the pathway in favour of the plaintiff. Thereafter, according to the plaintiff, they have been using the pathway. Now, all of a sudden, the appellants are taking steps to put up a compound wall in the pathway. Hence, he has filed the Suit.

3. The appellants/defendants, have disputed the claim of the plaintiff, stating that they have purchased an extent of 00185 sq.mtr., of the land and they are the owners of an extent of 00185 sq.mtr., and they are only enjoying that property without any hindrance. Now, the plaintiff based on a rectification deed, taking steps to disturb the appellants possession when the plaintiff do not have right over the suit property. They have also filed additional written statement, stating that, the suit is barred for non-joinder of parties.

4. The Trial Court decreed the suit holding that, while executing sale deed in favour of the plaintiff, the pathway was omitted to mention in the sale deed. Subsequently, it has been rectified. Apart from that, the defendants are only entitled for an extent of 24 $\frac{3}{4}$ ft. on the north to south and 27 ft. on the east to west and remaining area has been left as the pathway, and they cannot ask anything more than that. Aggrieved with the same, the defendants have filed an appeal in A.S.No. 17 of 2014 on the file of I Addl. District Judge, Tindivanam, and the lower Appellate Court also confirmed the judgment and decree passed by the Trial Court. Feeling aggrieved with the same, the present Second Appeal has been filed.

5. At the time of admission, this Court has framed the following question of law :-

"1. Whether the courts below are correct and justify in decreeing the suit on the basis of the Rectification deed dated 06.06.2008 vide document No.1129 of 2008 registered before the Joint Sub-Registrar-II, Tindivanam after the property was purchased by the appellants/defendants by Sale deed dated 14.02.2005 vide document No.117 of 2005 registered before the Joint Sub-Registrar-II, Tindivanam as the appellants/defendants are the absolute owners of the property?

2. Whether the Courts below are correct in decreeing the suit in respect of pathway even though it was observed clearly by the Courts below regarding non-joinder of parties as the other owners of the properties were not made to the proceedings?"

6. The learned counsel appearing for the appellants would submit that, the respondent based on the rectification

deed, which was executed long after the execution of Ex.A3 sale deed, cannot claim right over the suit property. On perusal of the records, it could be seen that when the plaintiff's vendor Unnamalai Ammal purchased the property from the original vendor Vaithialingam under Ex.A1, the aforesaid pathway was given to her. In Ex.A1 Sale deed, the right in pathway has been clearly mentioned. Subsequently, in the year 2000, the property has been purchased by the plaintiff, but, inadvertently, the right of pathway was not mentioned in that sale deed. Subsequently, it was sought to be rectified, and by a Rectification deed, it has been corrected. Apart from that, P.W.1 and 2 have clearly stated that Unnamalai Ammal was enjoying the pathway, and after the purchase, the plaintiff is using the pathway. So far as the appellants rights are concerned as per the Sale deed, they are only entitled to the extent as mentioned in Ex.B1, and there is no evidence to show that the pathway is encroaching the defendants property.

7. Considering the entire evidences both oral and documentary, the Trial Court has rightly held that the plaintiff is entitled for the pathway. The first Appellate Court has also concurred with the findings of the Trial Court and dismissed the appeal. So far as the non-joinder of parties, the second question of law is concerned, even though, it was observed by the courts below, that some third parties lands are also situated in between their property. Now, the Courts below decreed the suit only in respect of 27 ft. which was in occupation of the appellants, and no third party interest being affected, hence, the suit is not barred for non-joinder of parties. In the above circumstances, both question of laws are held against the appellants.

8. In the result, the present Second Appeal stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is also closed.

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Sd/-

Assistant Registrar(imp cell)

//True Copy//

Sub Assistant Registrar

To

1 Addl. District Judge, Tindivanam.

2. The District Munsif, Thindivanam

Copy to

The Section Officer, VR Section, High Court, Madras

+2ccs to M/s.S.Vijayanand , Advocate SR.No.12084

+1cc to M/s.Kumar and Baskar , Advocate SR.No. 11976

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