



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2019

PRONOUNCED ON : 09.07.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.721 of 2019

A.Meenakshi ..Appellant/Appellant/ Defendant

Vs.

1.K.Karthick

2.R.Hemamalini ..Respondents/ Respondents/ Plaintiffs

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 26.10.2018 passed in A.S.No.281 of 2015 on the file of the VI Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 10.06.2015 passed in O.S.No.6622 of 2012 on the file of the I Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.Kanchan Kar

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 26.10.2018 passed in A.S.No.281 of 2015 on the file of the VI Additional Judge, City Civil Court, Chennai, confirming the Judgment and Decree dated 10.06.2015 passed in O.S.No.6622 of 2012 on the file of the I Assistant Judge, City Civil Court, Chennai.

2.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3.The suit has come to be laid by the plaintiffs against the defendant for the relief of declaration that the plaintiffs are entitled to the common user of the passage measuring 2' 9" x 37' i.e. 101.75 sq.ft. lying on the Northern side of the plaintiffs' house bearing No.207/1, 14<sup>th</sup> Street (Anna Street), G.K.M. Colony, Chennai - 82, as set out in the schedule for enjoying their common amenities such as service lane, Metro water, sewerage and Electricity service connections and for the relief of mandatory injunction directing the defendant and her assigns to remove the gate put up on the western entrance of the suit common passage and for the relief of permanent injunction.



4. The passage running on the northern side of the plaintiffs' house is the property in issue between the parties concerned and according to the plaintiffs, the abovesaid passage is a common passage and on the other hand, the defendant claims it to be his exclusive passage. It is found that the plaintiffs and the defendant had acquired their respective properties from a common ancestor and from the materials placed on record, one Anjalidevi is found to have purchased land on the southern side to an extent of 1180 sq.ft out of 2204 sq.ft and thereafter, she had alienated the eastern portion measuring an extent of 440 sq.ft of land to one Jayaraman and while selling the same to Jayaraman, it is found that the abovesaid passage was set apart on the northern side to reach the land that was sold to Jayaraman and furthermore, it is also seen from the materials available on record, both Jayaraman and Anjalidevi had agreed to drain water through the abovesaid lane as common passage and furthermore, as could be seen from the agreement entered into between them that the windows, ceiling and drainage connections situated in the passage should not be demolished or disturbed by Jayaraman at any point of time and furthermore, it is found that Anjali Devi had also retained her right to take water and sewerage connection through the abovesaid passage and that Jayaraman has no right to interfere with the same. The abovesaid agreement has also been projected in the matter and the same had been entered into on the date of the sale transaction abovesaid. Accordingly, it is evident that Anjalidevi had retained her right to take water and sewerage connection, which had already existed in the passage, while selling her property to Jayaraman and in such view of the matter, it is found that both the purchasers from Anjalidevi and Jayaraman and their successors in interest are also entitled to do so. Such being the position, the claim of the defendant that he has exclusive title to the passage and therefore, the plaintiffs have no right to the same, as such, cannot be accepted and when it is found that the plaintiffs' predecessor in title had been permitted to take new sewerage connection through the passage and the predecessor in interest of the defendant had agreed to the same, it is seen that as determined by the Courts below, the abovesaid arrangement is equally binding upon the plaintiffs as well as the defendant and in such view of the matter, the defendant, as rightly determined by the Courts below, is not entitled to disturb the usage of the plaintiffs qua the suit passage by putting up the gate so as to hinder the plaintiffs' usage of the same and the abovesaid aspects of the issue involved between the parties, centring on factual matrix, had been rightly taken into consideration by the Courts below on the appreciation of the materials placed on record and accordingly, it is found that the Courts below had granted the reliefs in favour of the plaintiffs as prayed for and when the abovesaid reliefs granted by the Courts below in favour of the plaintiffs are found to be founded on a proper appreciation of the materials placed on record and the reasonings and



conclusions of the Courts below not suffering from any perversity or irrationality in any manner, in such view of the matter, I do not find the involvement of any substantial question of law in this second appeal. Accordingly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-  
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

sms  
To

- 1.The VI Additional Judge, City Civil Court, Chennai.
- 2.The I Assistant Judge, City Civil Court, Chennai.

+2ccs to Mr.Kanchankar, Advocate SR.No. 57226  
in S.A.No.721 of 2019  
A.SK(13/11/2019)