

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.11.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.946 of 2019

V.K.Ashokan

..Appellant

Vs.

Pappathi @ Karuppayee (died)
S.Thangamani

..Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 31.01.2019 made in A.S.No.69 of 2014 on the file of the Principal Subordinate Judge, Erode confirming the Judgment and Decree dated 25.06.2014 made in O.S.No.108 of 2004 on the file of II Additional District Munsif Court, Erode.

For Appellant : Mr. M.Guruprasad

For Respondent : Mr. P.K.Shivakumar

J U D G M E N T

The defendant in OS No.108 of 2004 having suffered a decree for permanent injunction restraining from interfering with the plaintiffs peaceful possession and enjoyment of the suit property has come up by way of Appeal.

2. According to the plaintiff in the said suit, the suit properties belonged to one Marappa Gounder. By a registered Will dated 05.12.1969 he bequeathed the same in favour of his son Thiagarajan with a life estate to his wife Thangammal. On the death of Thangammal, Thiagarajan succeeded to the suit properties. Thiagarajan died leaving behind the first plaintiff as his only legal heir. Since the defendant attempted to interfere with the plaintiff possession of the suit property and also filed a suit in OS No.474 of 2003 claiming certain right of way over his suit properties, the first plaintiff had filed the above suit seeking permanent injunction.

3. Pending suit, the first plaintiff died and the second plaintiff being her only daughter was brought on record as her legal representative.

4. Suit was resisted by the defendant. The defendant while admitting the title of the plaintiff to a portion of the property claimed right of way over the alleged 12 feet path way, situate on the eastern side in Survey No.1507/2 Part and also claimed a right to enter upon the plaintiff's property to repair his eastern wall. In fact the defendant had filed the suit in OS No.474 of 2003 seeking a permanent injunction restraining the defendant, viz., the plaintiff in OS No.108 of 2004 from preventing him from carrying out repairs on the eastern boundary wall by going over the property of the defendants. Both the suits were tried together.

5. Advocate Commissioners were appointed in both the suits and their Reports were also taken on file.

6. The Courts below, upon a consideration of the evidence on record concluded that the plaintiff's house is bounded on the west by Kaveri Road and it has access from the Kaveri Road and therefore, the claim of the plaintiff over the 12 feet passage leading to the defendants property in Survey No.1507/2 cannot be sustained. The Trial Court upon the said findings, decreed the suit in OS No.108 of 2004 and dismissed the suit in OS. No.474 of 2003.

7. Aggrieved the appellant herein filed two Appeals in As No.69 of 2014 and AS No.75 of 2014, while AS No.69 of 2014 was filed challenging the judgment and decree in OS No.108 of 2004 and AS No.75 of 2014 was filed challenging the dismissal of the suit in OS No.474 of 2003.

8. The Lower Appellate Court on reconsideration of the evidence concluded that the plaintiff in OS No.474 of 2003 would have a right to enter upon the defendant's land to effect repairs of the eastern wall. On the said finding the Appeal in AS No.75 of 2014 was allowed. Insofar as AS No.69 of 2014 is concerned the Lower Appellate Court concurred with the findings of the Trial Court and found that since the defendant therein has got a right a way to his property from the Kaveri Road running on the west, he would not be entitled to a right of way over the 12 feet path way in Survey No.1507/2. On the said conclusion, the Lower Appellate Court dismissed the Appeal in AS No.69 of 2014. Aggrieved the defendant in OS No.108 of 2004 has come up with this Second Appeal.

9. I have heard Mr.Guru Prasad, learned counsel appearing for the appellant. Since Mr.Guru Prasad contended that a clarification regarding the right to repair the eastern wall would suffice, notice was ordered to the respondent and upon such service Mr.P.K.Sivakumar, learned counsel has entered appearance for the respondents.

9. It is now brought to my notice that the appellant had during the pendency of the Appeal demolished the old structure and has put up a new structure which has set backs on all four sides and he need not go over the respondents land even to effect repairs of the eastern wall. Be that as it may, we are concerned only with the right of the appellant to use the 12 feet path way in Survey No.1507/2, which is situate on the north of the appellant's property and on the west of the respondent's property. No doubt the said 12 feet path way serves as a passage to the plaintiffs in OS No.108 of 2004, to reach the Kaveri Road on the west. But, that by itself will not give a right to the appellant to claim a right over the same, to reach his property which admittedly abuts Kaveri Road.

10. The earliest document filed in this case is the Will executed by Marappa Gounder. Of course Mr.Guru Prasad would contend that the Will being a self serving document the recitals therein cannot be taken into account to deny the right of pathway to the appellant. He may be a right to a certain extent, but in the case on hand admittedly the Will has emanated in the year 1969 when there was no dispute between the parties. The Will very clearly depicts that the 12 feet pathway in Survey No.1507/2 part, absolutely belongs to Marappa Gounder and the same was bequeathed by him to his son Thiagarajan and on the death of Thiagarajan and the same was inherited by the first plaintiff being his mother. The appellant has not produced any document that would confer a right of passage over the said property. The appellant has produced a settlement deed of the year 2003 as Ex.B1, the said document is dated 03.11.2003 and has come into existence after the filing of the suit in OS No.474 of 2003, therefore, the recitals in the said document cannot be considered to confer a right on the appellant to a right of passage over the land in Survey No.1507/2.

11. The Commissioner's Reports filed also would demonstrate that the appellant house has got entrance only from Kaveri Road and therefore, there is no requirement for the appellant to use this 12 feet pathway which is situate on the north of his property to reach his house.

12. I therefore find no question of law much less substantial question of law enabling me to entertain the Second Appeal. Hence the Second Appeal is dismissed without being admitted.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

jv

To

1.The Principal Subordinate Judge,
Erode

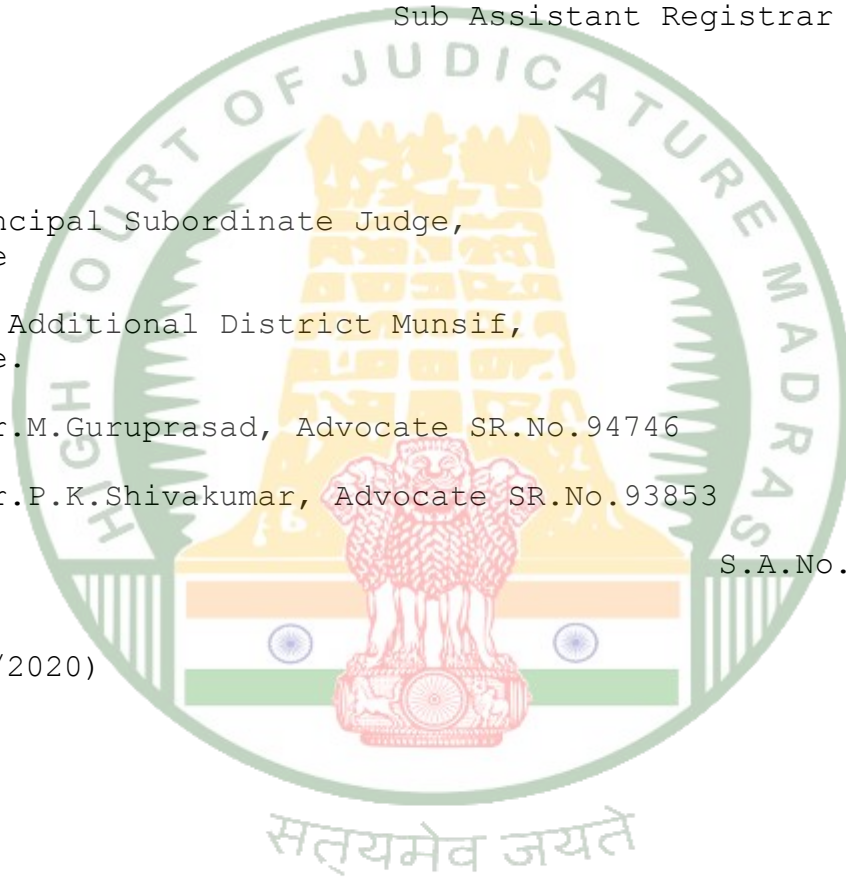
2.The II Additional District Munsif,
Erode.

+1cc to Mr.M.Guruprasad, Advocate SR.No.94746

+1cc to Mr.P.K.Shivakumar, Advocate SR.No.93853

S.A.No.946 of 2019

VBA (CO)
GMY (13/02/2020)



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