

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 197 of 2014

1. D.Manoharan

2. K.Lourdu Mary ...Appellants/Appellants/Defendants

Vs.

M.Krishnan ...Respondent/Respondent/Plaintiff

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree of XVII Additional City Civil Court, Chennai dated 27.03.2013 made in A.S.No. 322/2010 confirming the judgment and decree of VII Assistant City Civil Court, Chennai dated 29.06.2009 made in O.S.No. 635/2008.

For Appellants : Mr. S.Sounthar

For Respondent : Mr. Francis De Cruz for
Mr.P.B.Ramanujam

J U D G M E N T

The defendant in O.S.No. 635 of 2008 are the appellants. The plaintiff's sued for declaration that he is exclusively entitled to use the suit pathway and for an injunction restraining the defendants from interfering with the said user.

2. According to the plaintiff, the suit pathway along with larger extent of properties belonged to one Madurai, who died leaving behind four children namely, the plaintiff / M.Krishnan, his brother Janakiraman and Sisters, Ramani Bai and Gowri.

3. A suit for partition in O.S.No. 8817 of 1994 was filed by one of the sisters, Ramani Bai claiming 1/4th share in the properties, after the death of Madurai. A final decree came to be passed in the said suit in O.S.No. 8817 of 1994 on 25.06.2004 in and by which specific portions were allotted to the various

sharers. The property in the present suit namely, the pathway measuring about 3 X 57 ft have left in common to be used by all the shares.

4. According to three of legal heirs viz: the plaintiff, his brother Janakiraman, his sister Gowri the other sister Ramanibai was not given any right over the said pathway. According to them, she had included the said property in sale deed executed by her in favour of the defendants on 25.07.2005 without any right. Armed with such sale deed, the defendants attempted to interfere with the plaintiff's enjoyment of the passage. Hence, the plaintiffs have come forward with the above suit. It is also contended that Janakiraman had settled his share on the plaintiff on 16.03.2006.

5. The defendants resisted the suit contending that their vendor had also right over the passage and she had rightly conveyed it to them. It was also contended that the suit is barred for non-joinder of necessary parties namely, the other co-owners Janakiraman and Gowri.

6. The Courts below rejected the prayer for declaration sought for on the ground that the other co-owners have not been impleaded. The Courts below however, granted a relief of injunction restraining the defendants from interfering with the plaintiff's enjoyment on the ground that their vendor was not given any right over the passage under the final decree passed in the suit. Aggrieved, the plaintiffs have come forward with this second appeal.

7. I have heard Mr.S.Sounthar, learned counsel appearing for the appellants and Mr.Francis De cruz, learned counsel appearing for the respondent.

8. Mr. S.Sounthar, learned counsel for the appellants would contend that the Courts below were not right in granting a decree for injunction while negating the main relief of declaration. Of course, there is some substance in the contention of the learned counsel but considering the nature of the suit, I am unable to accept his submission that the decree for injunction cannot be granted without the main relief for declaration being granted. Of course, it is the claim of the plaintiff that he is exclusively entitled to the pathway, but the same was found against and it was held the other brother and sister namely, Janakiraman and Gowri are also entitled to use the same.

9. The Courts below have come to a categorical conclusion that the vendor of the defendants Ramanibai was not conferred any right over the pathway under the final decree proceedings.

Therefore, the inclusion of such property in the sale deed in favour of the defendants was found to be improper and illegal. Therefore, the Courts below have come to the conclusion that the defendants have no right to interfere with the enjoyment of the suit pathway by the plaintiff in as much as, they do not have a right over the said pathway. In such circumstances, the Courts below had granted a decree for injunction. I do not think such a decree can be said to be invalid. Hence, I do not find any question of law much less substantial question of law in this appeal. This second appeal is dismissed without being admitted. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1.The XVII Additional Judge,
City Civil Court, Chennai.

2.The VII Assistant Judge,
City Civil Court, Chennai.

+1cc to M/s.S.Sounthar, Advocate Sr.78006

+1cc to M/s.P.B.Ramanujam, Advocate Sr.77695

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srg 06/01/2020

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