

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2019

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.1020 of 2019

and

CMP.No.21938 of 2019

1.Sugumaran

2.Micalbabu

..Appellants

Vs.

1.Pachaiappan

2.Settu

..Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree in A.S.No.40 of 2018 on the file of Sub-Court, Omallur, dated 29.04.2019 in reversing the judgment and decree in O.S.No.4 of 2011 on the file of DMC, Omallur dated 26.07.2017.

For Appellants : Mr.G.Suryanarayanan

J U D G M E N T

The plaintiffs in O.S.No.4 of 2011 who were able to succeed in the trial court in obtaining limited injunction in respect of the pathway which was not subject matter of the suit, upon reversal of the decree by the lower appellate court has come forward with this Second Appeal.

2. The suit was laid by the plaintiffs seeking permanent injunction restraining the defendants from interfering with their possession of their patta land and preventing the plaintiffs from putting up the compound wall.

3. The suit property was described as land measuring 6 ares along with RCC Roof structure. The Southern boundary of the property was shown as a passage measuring 4 ft x 100 ft. Pending suit, the plaintiffs seem to have filed an application for permission to put up compound wall and upon 'no objection' being endorsed by the defendants, the plaintiffs have put up compound wall on the Southern boundary leaving the passage intact.

4. When the suit was taken up for trial, the learned counsel for the defendants had submitted that since the very object of the suit is achieved and the plaintiffs have put up the compound wall, nothing survives for adjudication. However, the learned counsel for the plaintiffs had sought for a right to repair the compound wall by entering upon the 4 ft passage. This was vehemently opposed by the defendants contending that the said lane did not form part of the suit property and the plaintiffs have not sought for any relief regarding the said lane.

5. The trial court however granted a limited injunction restraining the defendants from interfering with the plaintiffs right to repair and maintain the compound wall put up by them. Aggrieved the defendants filed an appeal in A.S.No.40 of 2018.

6. The lower appellate court upon consideration of the evidence on record and the interlocutory orders passed in I.A.No.10 of 2011 concluded that the compound wall having been put up pending suit, the suit itself has become infructuous. The trial court was not thus right in granting the relief which was not sought for in respect of the property that was not subject matter of the suit. On the above findings, the lower appellate court reversed the judgment of the lower appellate court and dismissed the suit in its entirety. Aggrieved the plaintiffs are on appeal.

7. I have heard Mr.G.Suryanarayanan, learned counsel appearing for the appellants.

8. Mr.G.Suryanarayanan, learned counsel appearing for the appellants would submit that in view of the dismissal of the suit, the defendants are now preventing the plaintiffs to use the pathway and maintain the compound wall.

9. As rightly pointed out by the lower appellate court the pathway on the Southern side was not the subject matter of the suit. No relief was sought for relating to the said pathway. Even in the plaint, the plaintiffs did not show that he is entitled to use the said pathway to reach his property. The original suit as filed was one for permanent injunction in respect of his patta land and not in respect of the said pathway. Therefore, I think that the appellate court was in order in concluding that the trial court had gone beyond the pleadings of the parties and granted the relief that was not even sought for.

10. I do not find any question of law much less a substantial question of law in order to enable me to entertain this Second Appeal. Hence, the Second Appeal is dismissed

without being admitted. However, it will be open to the plaintiffs to take appropriate proceedings to establish their right over the pathway if he chooses to do so. No cost. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dsa

To

1. The learned Sub-Judge, Omallur.
2. The learned District Munsif, Omallur.

S.A.No.1020 of 2019

A.SK(27/02/2020)



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