



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 14.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
S.A(MD)No.143 of 2013

WEB COPY

1.Choodamani
2.Venilla
3.Venkatesan
4.Thendral

... Appellants/Appellants/Plaintiffs
2 to 5

vs.

R.Narayanan

... Respondent/Respondent/Defendant

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, against the Judgment and Decree of the II Additional Subordinate Judge, Trichy made in A.S.No.113 of 2009 dated 15.03.2011 in confirming the Judgment and Decree of the Principal District Munsif, Trichy made in O.S.No.1774 of 1997 dated 23.04.2009.

For Appellants : Mr.K.K.Senthil

For Respondent : No appearance

* * * * *

JUDGMENT

The plaintiffs are the appellants. This second appeal has been preferred against the concurrent findings of the Court below.

2.According to the appellants, the suit property is the common lane belonging to the plaintiffs and the defendant. The said common lane having 6 feet width throughout the land is described as ABCD in the plaint plan. According to the appellants, in the earlier round of litigation in O.S.No.1138 of 1983 and in the appeal in A.S.No.385 of 1990, the suit property has been declared as common lane. Despite the same, the respondents had attempted to close the common passage and committing the acts of infringing the right of the plaintiffs to own, use and enjoy the suit property as the common property.

3.The defendants filed a detailed written statement denying and disputing the claim of the plaintiffs. Though the suit was filed in the year 1997, an application for amendment was filed in the year 2005 seeking the relief of mandatory injunction. The application was resisted by the defendants stating that even before institution of the suit, construction was completed and hence, the prayer of mandatory injunction is barred by limitation.



4.Both the parties have adduced evidence. An Advocate Commissioner was appointed and his report has been marked by consent of the parties.

5.Both the trial Court as well as the appellate Court dismissed the suit on the ground of limitation by observing that there is lack of pleading with regard to completion of construction.

6.This Court admitted the second appeal on the following substantial questions of law:-

(a) Whether the Courts below are right in dismissing the suit of the appellant on the ground of limitation, when the offending constructions were put by the defendant pending the suit?

(b) When the encroachment of the respondent over the suit property is perennial one attracting section 22 of the Limitation Act, whether the courts below are right in dismissing the suit of the appellant?

(c) Is not the burden of proof as enumerated under section 106 of the Evidence Act lies on the respondent when especially the exact date of construction as claimed by him over the suit property is within his knowledge only.

7.Mr.K.K.Senthil, learned counsel for the appellants would contend that the plaintiffs has specifically stated that during the pendency of the suit, the defendants have put up construction, but the Courts below have not properly appreciated the case of the appellants.

8.I do not find force with the submission of the learned counsel for the appellants for the reason that the findings have been rendered based on evidence. It is settled that the burden is on the plaintiff to prove his case. Further, no materials have been placed to show that the concurrent findings are perverse warranting interference of this Court. Therefore, the second appeal fails and the same is dismissed. The questions of law are answered against the appellants. However, with liberty to the appellants to file a fresh suit if any obstruction is made by the defendants in using the common lane in future. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)



To

1.The II Additional Subordinate Judge, Trichy.

2.The Principal District Munsif, Trichy.

+1cc to Mr.K.K.SENTHIL, Advocate, SR.No. 54558

+1cc to Mr.M.ASHOK KUMAR, Advocate, SR.No. 54771

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14.03.2019