

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 26.11.2019

Pronounced on : 19.05.2020

Coram:

THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

S.A.No.1013 of 2006

1. T.P. Sivamayam Chettiar
2. Sakkubai Ammal ...Plaintiffs/Respondent/ Appellants

Vs.

1. S. Amutha
2. A. Sivagnanam ...Defendants/Appellants/ Respondents

PRAYER: Second Appeal has been filed under Section 100 of Code of Civil Procedure to set aside the judgment and decree of the District Judge, Tiruvannamalai in AS.No.3 of 2002 dated 27.11.2003, partly allowing the judgment and decree of the Additional Subordinate Judge, Tiruvannamalai in OS.No.82 of 1997 dated 06.11.2001.

For Appellants : M/s. T.R.Rajaraman

For Respondents : Mr.S.Vediappan &
Mr.R.Karthikeyan

JUDGMENT

This Second Appeal has been filed by the plaintiffs against the judgment and decree passed by the learned District Judge, Tiruvannamalai, in A.S.No.3 of 2002 dated 27.11.2003 partly allowing the judgment and decree passed by the learned Additional Sub-Judge, Tiruvannamalai in O.S.No.82 of 1997 dated 06.11.2001.

2. The appellants herein had filed a suit in O.S.No.82 of 1997 on the file of the Additional Sub-Judge, Tiruvannamalai for declaration of the absolute joint right, title and interest of the plaintiffs to the suit lane marked as 'ABFG' in the plaint plan; granting a consequential permanent injunction restraining the defendants, their men, etc, from putting up any construction over the suit property; granting a mandatory

injunction directing the defendants to restore the Iron Door and plastic pipes belonging to the plaintiffs put up in front of the entrance of the suit lane which were removed by the defendants; granting a mandatory injunction directing the defendants to remove the meter box, door and door-way newly put up and the Ariel encroachment in the western and southern walls of the suit property; directing the defendants to pay to the plaintiffs, the compensation of Rs.25,000/- being the approximate cost of the pipes belonging to the plaintiffs embedded in the suit lane but removed and destroyed by the defendants and directing the defendants to pay a sum of Rs.25,000/- towards damages for loss and reputation and mental agony suffered by the plaintiffs.

3. The learned Sub-Judge, by the judgment and decree dated 06.11.2001 had partly decreed the suit declaring the plaintiffs' joint right over the suit lane; granting a permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment of the suit lane and also putting up any construction over the suit lane and granting a mandatory injunction directing the defendants to remove the meter box and Iron door which were put up on their house wall within three months. However, the learned Sub-Judge, had dismissed the suit in respect of the relief asked for mandatory injunction directing the defendants to restore Iron Door which was said to have been put up by the plaintiffs at the entrance of the suit lane and also the plastic pipes laid underneath the ground and also in respect of the reliefs for compensation and damages.

4. Aggrieved by the aforesaid judgment and decree passed by the trial court, the defendants had preferred an appeal in A.S.No.3 of 2002 on the file of the District Judge, Thiruvannamalai. The learned District Judge by the judgment and decree dated 27.11.2003, had partly allowed the said appeal and set aside the judgment and decree of the trial court in respect of granting reliefs for permanent injunction and mandatory injunction. However, the learned District Judge modified the relief granted by the trial court in respect of declaration of the plaintiffs' right over the suit lane as they are jointly entitled to the suit lane, along with the defendants.

5. Feeling aggrieved by the aforesaid judgment and decree of the first Appellate Court, the plaintiffs have filed the present second appeal.

6. For the sake of convenience, the parties are referred to as described before the trial court.

7. The averments made in the plaint are in brief as follows:-

a) The plaintiffs are husband and wife and they are residing at D.No.6, Rettai Pillaiyar Koil Street, Tiruvannamalai Town. The suit property is a lane measuring East-West 91 feet and North-South 4½ feet and marked as 'ABFG' in the plaint plan. Originally the houses which are marked as H1 to H4, Rice Mill, Kalam, Latrine portion which are marked as 'BCDEF' and the suit lane belonged to one P.A.Ayyakannu Mudaliar and his four sons viz., P.A.Sambandam; P.A.Lakshmanasami; P.A.Balasubramaniam and P.A.Shanmugam. The suit lane was used as a common way to the latrines and also to drain the sewage water.

b) Under a registered sale deed dated 29.09.1961, one of the sons of P.A.Ayyakannu Mudaliar namely P.A.Sambandam had sold the Rice Mill, Kalam; adjacent properties and his ¼th share of the suit lane to one Natarajan and that the said Natarajan in turn sold the aforesaid properties to the first plaintiff and his two brothers under a registered sale deed dated 07.9.1962. Subsequently the said P.A.Sambandam had sold his ¼th share in the latrine portions to the first plaintiff's brother Sriramajayam under a sale deed dated 10.02.1966. Thereafter, another son of P.A.Ayyakannu Mudaliar namely P.A.Lakshmanasami had sold his ¼th share in the suit lane and latrine portion to the first plaintiff's brother Sriramajayam under a registered sale deed dated 10.02.1966. Thereafter, as per the partition took place, dated 24.8.1970 between the first plaintiff and his brothers, the properties which were purchased through the sale deeds dated 07.09.1962, 10.02.1966 and 12.02.1996 were allotted to the share of the first plaintiff. Thus the first plaintiff is entitled to a half share in the suit lane. The remaining half share of the suit lane was purchased by the 2nd plaintiff along with the half share in latrine portions from the legal heirs of other two sons of Ayyakannu Mudaliar under two registered sale deeds dated 07.06.1960 and 08.06.1976. Thus, both the plaintiffs have become the owners of the entire suit lane.

c) After conveying all his rights over the suit lane on 29.09.1961, the said P.A.Sambandam never used the suit lane and in fact, there was no necessity whatsoever for him to use the suit lane. Hence, from September 1961, the first plaintiff and his predecessors-in-title alone have been in exclusive use and occupation of the portions belonging to P.A.Sambandam over the suit lane and thereby perfected title by adverse possession also. Further, after purchase of the entire portions of the Latrine, the plaintiffs have converted them into a godown and they are in exclusive possession of the suit lane.

d) The house which is marked as H1 in the plaint plan originally fell to the share of P.A. Sambandam. It appears that the said P.A.Sambandam and his sons have sold the said house along with ¼th share in the suit lane to one Balakrishnan and

Ganesan under a registered sale deed dated 10.12.1974. Since already the said P.A.Sambandam had sold his share over the suit lane under a sale deed dated 29.09.1961 to one Natarajan, he had no subsisting right to convey suit lane once again to Balakrishnan and Ganesan. In turn, the said Balakrishnan and Ganesan appears to have sold the same to the first defendant under a registered sale deed dated 17.03.1987. The said sale deed will not create any right to the first defendant in respect of the suit lane.

e) Since the entire suit lane belongs to the plaintiffs, they put up an Iron Door at the entrance of the lane, and also laid a pipe line underneath the ground for the purpose of drainage. But, in or about January 1997, the defendants forcibly removed the said Iron Door and also pipe lines and put up an entrance and a meter board in their northern wall facing the suit lane. They also put up 11 window shades causing ariel encroachment over the suit lane. They are also preventing the plaintiffs from using the suit lane. They also threatened the plaintiffs with dire consequences resulting in mental agony. Hence, the suit.

8. The averments made in the written statement filed by the first defendant and adopted by the second defendant are in brief as follows:

a) The plaintiffs had not purchased the entire suit lane as alleged by them. It is false to allege that prior to 1960 the latrines were closed and that thereafter, the sons of Ayyakannu Mudaliar did not use the suit lane to reach the latrines. The suit lane being a common lane, have been used by all four sons of Ayyakannu Mudaliar for all practical purposes for which it was intended to and not only for reaching the latrines. There is no restricted use of the suit lane by the sons of Ayyakannu Mudaliar. All the four sons of Ayyakannu Mudaliar are the common owners of the suit lane as well as latrine portions. It is false to state that the said Sambandam had sold his $\frac{1}{4}$ th share in the suit lane to one Natarajan in turn sold the same to the first plaintiff and his brothers. The said Sambandam had sold his house along with his $\frac{1}{4}$ th share in the suit lane to one Balakrishnan and Ganesan under a registered sale deed dated 10.12.1974 and they in turn sold the same to the first defendant under a registered sale deed dated 17.03.1987. The plaintiffs are fully aware of the said sales and they have not so far objected the defendants' enjoyment of suit lane. The first defendant is a co-owner of the suit lane and as such the claim of the plaintiffs for declaration and injunction is not maintainable.

b) It is false to state that the plaintiffs have been enjoying the suit lane for more than statutory period excluding

the first defendant and his predecessor-in-title and thereby they perfected title by adverse possession also. There cannot be any adverse possession against the co-owner. It is false to state that the plaintiffs had put up an Iron Door at the entrance of the lane and also laid pipelines to drain the sewage and they have been removed and damaged by the defendants. The first defendant had put up a Door and Meter box in their wall immediately on her purchase and at that time, the plaintiffs did not raise any objection. It is false to allege that the defendants had put up window shades causing ariel encroachment. It is also false to allege that the defendants caused nuisance and preventing the plaintiffs from using the suit lane. It is also false to allege that the defendants threatened the plaintiffs with dire consequences and caused damage to the reputation of the plaintiffs. There is no cause of caution for filing the suit. The suit is filed out of enmity and greediness as they failed in their attempts to purchase the property which was purchased by the first defendant. Therefore, the defendants prayed to dismiss the suit.

9. Based on the aforesaid pleadings, the learned Sub-Judge, had framed necessary issues and tried the suit. During trial, on the side of the plaintiffs, the first plaintiff was examined as PW1 and one more witness was examined as PW2 and 9 documents were marked as Exs.A1 to A9. On the side of the defendants, the second defendant was examined as DW1 and 3 documents were marked as Exs.B1 to B3. Advocate Commissioner's Report and Plan were marked as Exs.C1 and C2 respectively.

10. The learned Sub-Judge, after considering the materials placed before him found that the plaintiffs are absolute owners of the suit lane. Accordingly, he decreed the suit for declaration, permanent injunctions and mandatory injunction to remove the Door, meter box and sun shades put up by the defendants, however dismissed the suit in respect of the reliefs for mandatory injunction to restore the Iron Door at the entrance of the suit lane and pipelines in the suit lane and also in respect of compensation and damages. Aggrieved by the same, the defendants had filed an appeal before the District Judge, Tiruvannamalai. The learned District Judge, had partly allowed the said appeal and set aside the judgment and decree of the trial court in respect of granting reliefs for permanent injunctions and mandatory injunction. However, he modified the relief granted by the trial court in respect of declaration of the plaintiffs' right over the suit lane to the effect as they are jointly entitled to the suit lane along with the defendants. Feeling aggrieved, the plaintiffs have filed the present second appeal.

11. This court at the time of admitting the second appeal has formulated the following substantial question of law:-

"When the disputed property was sold by the original owner Sambandam under Ex.A2 to one Natarajan and did not retain any right over the suit property under the document still is the learned District Judge right in holding that the defendants being subsequent purchasers under Exs.B2 and B1 respectively are co-owners and the plaintiffs are not entitled to the relief of permanent and mandatory injunctions respectively?"

11.2. On 08.11.2019, after hearing both sides, the following additional substantial question of law was formulated?

" Admittedly, when the right to use the lane get extinguished the sale in favour of the defendants whether could give them title to undivided $\frac{1}{4}$ share and claim a right as a co-sharer?"

12. Heard Mr.T.R.Rajaraman, the learned counsel for the appellants/plaintiffs and Mr.S.Vediappan for Mr.R.Karthikeyan, the learned counsel for the respondents/defendants.

13. The substantial question of law and additional substantial question of law:-

It is an admitted fact that the suit lane and other properties originally belonged to one Ayyakannu Mudaliar's four sons viz., P.A.Sambandam; P.A.Lakshmanasami; P.A.Balasubramaniam and P.A.Shanmugam. According to the plaintiffs, one of the sons of Ayyakannu Mudaliar namely P.A.Sambandam had sold some of his properties including his $\frac{1}{4}$ th share in the suit lane to one Natarajan under Ex.A2 sale deed dated 29.09.1961 and subsequently the said Natarajan had sold the said properties to the first plaintiff and his brothers vide Ex.A3 sale deed dated 07.09.1962. Subsequently, the said P.A.Sambandam had sold his $\frac{1}{4}$ th share in the latrine portions to the first plaintiff and his brother under Ex.A4 sale deed dated 10.02.1966 and thereafter another son of Ayyakannu Mudaliar namely P.A.Lakshmanasamy had sold his $\frac{1}{4}$ th share in the suit lane and latrine portions to the first plaintiff's brother under Ex.A5 sale deed dated 12.02.1966. Thereafter, as per the partition deed dated 24.08.1970 (Ex.A6), the properties purchased under Exs.A2 to A5 were allotted to the share of the first plaintiff. Thus the first plaintiff is entitled to a half share in the suit lane.

14. It is the further case of the plaintiffs that the other two sons of Ayyakannu Mudaliar namely P.A.Balasubramaniam and P.A.Shanmugam had sold their shares including their half share in the suit lane to the second plaintiff under Ex.A7 and Ex.A8

dated 07.06.1970 and 08.06.1976 respectively and thus she is entitled to a half share in the suit lane. Their further case is that by virtue of the aforesaid sale deeds and partition deed, they have become absolute owners of the entire suit lane.

15. The case of the defendants is that the contention of the plaintiffs that the said P.A.Sambandam had sold his $\frac{1}{4}$ th share of the suit lane also to one Natarajan under Ex.A2 sale deed is false, and on the contrary, the said P.A.Sambandam had sold his house which has been marked as H1 in the plaint plan along with his $\frac{1}{4}$ th share in the suit lane to one Balakrishnan and Ganesan under Ex.B2 sale deed dated 10.12.1974 and the said Balakrishnan and Ganesan in turn sold the said house including $\frac{1}{4}$ th share in the suit lane to the first defendant under Ex.B1 sale deed dated 17.03.1987 and hence, the first defendant is a co-owner of the suit lane.

16. So, the point to be decided is whether under Ex.A2 sale deed, the first plaintiff's vendor namely Natarajan had purchased including $\frac{1}{4}$ th share of the suit lane from P.A.Sambandam. A perusal of Ex.A2 clearly shows that the original vendor P.A.Sambandam did not sell his $\frac{1}{4}$ th share in the suit lane to the said Natarajan. From the said Natarajan, the first plaintiff and his brothers had purchased the properties under Ex.A3 sale deed. In the said sale deed also, nothing has been stated about the suit lane. Therefore, the contention of the plaintiffs that the original vendor namely P.A.Sambandam had sold his properties including $\frac{1}{4}$ th share in the suit lane to the said Natarajan under Ex.A2 and the said Natarajan in turn sold the said properties including the $\frac{1}{4}$ th share in the suit lane to the first plaintiff and his brother vide Ex.A3 sale deed is not correct.

17. Since the said P.A.Sambandam had not sold his $\frac{1}{4}$ th share in the suit lane either under Ex.A2 or any other document, he is entitled to sell the same to any person. Accordingly, when he was selling his house which has been marked as 'H1' in the plaint plan, he had sold his share also in the suit lane ($\frac{1}{4}$ th share) to one Balakrishnan and Ganesan under Ex.B2 sale deed dated 10.02.1974. The said Balakrishnan and Ganesan in turn sold the said house along with $\frac{1}{4}$ th share in the suit lane to the first defendant through Ex.B1 sale deed dated 17.03.1987. So, it is clear that the first defendant is entitled to $\frac{1}{4}$ th share in the suit lane and as such she is a co-owner along with the plaintiffs.

18. The learned counsel for the appellants/plaintiffs contended that the four sons of Ayyakannu Mudaliar got houses on the eastern side as shown in the plaint plan (H1 to H4), but they got latrines on the back side and the same are shown as

'BCDEF' and hence, the suit lane was formed to go to latrines. He further submitted that the right to use the said lane is only an easementary right. He further contended that even prior to 1960, the said latrines were closed and they were converted into a godown and they were sold to the plaintiffs and hence, there was no necessity for either P.A.Sambandam or the defendants to use the suit lane. He further contended that the DW1 also admitted in his evidence that the portion which has been marked as 'BCDEF' now converted as godown and the said place for the past 25, 30 years there was no latrine and the said admission shows that the said P.A.Sambandam had lost the right what soever he had over the suit lane.

19. In support of his contentions, the learned counsel for the appellants relied upon the following decisions:-

1. Palaniswami Naicker v. Chinnaswami Naicker (1968) 1 MLJ 581.
2. Ramachandra v. Laxmana Rao, 2000 SCC OnLine Kar 325.
3. M.Ratanchand Crodia and Ors v. Kasim Khaleeli, 1963 SCC OnLine Mad 144.
4. Sree Swayam Prakash Ashramam v. G.Anandavally Amman and Ors, (2010) 2 SCC 689.

20. In the plaint, the plaintiffs have claimed that by virtue of sale deeds and partition deed (Exs.A2 to A7) they are absolute owners of the suit lane. They never pleaded that the right to use the suit lane was only an easementary right. Further even during trial also they have not taken a stand that the said right was only an easementary right. On the contrary, in the plaint, they have taken in consistent pleas. One stand was that they purchased the entire suit lane. Another plea was that they perfected title by adverse possession. If they decided to take a plea of adverse possession, they have to admit the title of the first defendant and her predecessors in title. The plaintiffs miserably failed to prove that they purchased $\frac{1}{4}$ th share of P.A.Sambandam. On the contrary, the defendants have positively proved that the first defendant's vendors had purchased $\frac{1}{4}$ th share in the suit lane from the original owner namely P.A.Sambandam. Therefore, it is not open to the plaintiffs for the first time before the second Appellate Court to take a new plea of easementary right. The decisions relied upon by the learned counsel for the appellants are relating to easementary rights. Hence, those decisions are not applicable to the facts of this case.

21. Every co-owner has the right to make full use of the common passage without affecting the right of another co-owner. When a common passage belongs to both the plaintiffs and the defendants, there is no question of anyone party having an easement right over the same. It is a joint property. Any co-

owner has to use such property reasonably in the sense that his user does not amount ouster of other co-owners. No co-owner can complain that the use of the common passage by the other causes an unnecessary or additional burden upon the common passage.

22. Admittedly, in this case, the house of the defendants 1 and 2 situated just abutting the suit lane on the southern side and as such, they can use the suit lane as passage by putting a door in their wall and enter into the suit lane directly. Further, they can use the said lane for repairing and white washing their house and also use the same by laying underground pipes. So, merely because, the latrines which were marked as 'BCDEF' in the plaint plan closed, it cannot be said that the defendants have lost their right over the suit lane. Therefore, the contention of the learned counsel for the appellants that the right to use the suit lane was only an easementary right and the same was extinguished for non-using the same by passage of time cannot be accepted.

23. The First Appellate Court after considering the evidence in a proper perspective had rightly set aside the judgment and decree of the trial court in respect of the reliefs for permanent and mandatory injunctions and modified the relief of declaration to the effect that the plaintiffs are co-owners along with the defendants in the suit lane. In the said factual findings, this court cannot interfere. Accordingly, the substantial question of law and additional substantial question of law are answered against the appellants.

24. In the result, this second appeal is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The District Judge,
Thiruvannamalai.

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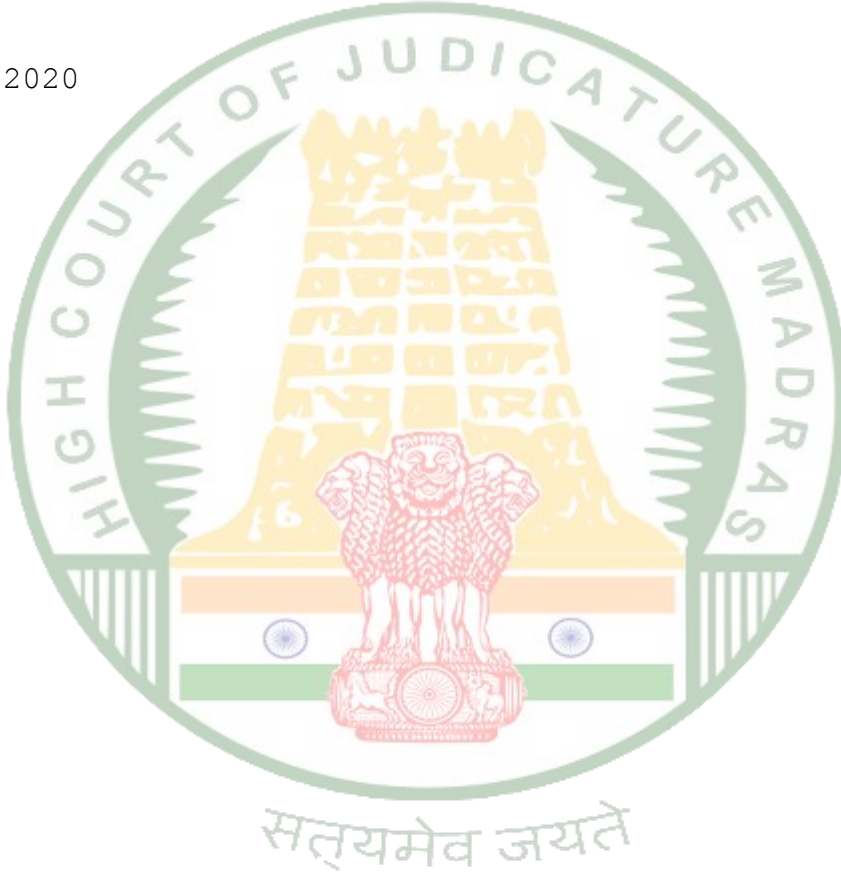
2. The Additional Sub Judge,
Thiruvannamalai.

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