

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 29.01.2020

Date of Verdict : 19.02.2020

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

S.A.No. 1227 of 2005

1. Rajammal
2. Parthiban
3. Mohanasundaram
4. Anuradha

...Appellants/LRS of the Plaintiff

Vs.

P.Paramasiva Mudaliar

...Respondent/Defendant

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.02.2005, in A.S.No.47 of 2003, on the file of the Subordinate Judge, Tirupattur, confirming the decree and judgment dated 17.03.2003 in O.S.No.29 of 1999 on the file of the District Munsif Cum Judicial Magistrate Court, Vaniambadi.

For Appellants : Mr.D.Chitramaragathan
For Mr.T.R.Rajaraman

For Respondent : Ms. V.Srimathi

JUDGMENT

This second appeal has been preferred by the plaintiff as against the judgment and decree dated 28.02.2005, passed in A.S.No.47 of 2003, on the file of the Subordinate Judge, Tirupattur, confirming the judgment and decree dated 17.03.2003 in O.S.No.29 of 1999, on the file of the District Munsif Cum Judicial Magistrate Court, Vaniambadi.

2. For the sake of convenience, the parties are referred to as per their ranking in the Trial Court.

3. The case of the plaintiff in brief is as follows :-

3.1. The suit is filed for Declaration and Permanent Injunction.

3.2. The suit property originally belonged to one D.M.Chinnava Mudaliar. He settled the property by way of gift deed dated 02.01.1943, in favour of the plaintiff. The suit

property is a lane passage, which across to the plaintiff's house. After execution of the gift deed, it was acted upon, and the plaintiff is in exclusive possession of the suit property and he is the absolute owner thereon. The passage runs East to West from the Bajanai Koil Street and its breadth's 7 ½ feet and the length is about 26 feet. The defendant is also owning the house property in the Northern side of the suit property and having separate entrance facing Eastern side of the Bajanai Koil Street. While being so, the defendant demolished the portion of house in the Northern side of the suit schedule property and attempted to take forcible possession of the suit property. In fact, the defendant does not have any title, right or interest over the suit property. Hence, the suit.

4. The defendants resisted the plaintiffs' case and filed a written statement stating that the suit lane does not belong to the plaintiff and he has no absolute right over the suit lane. It is a common lane for general public and as such, the entire claim of the petitioner is false. Its shape is like "Y" and it belongs to Vaniyampadi Municipality and is also owned and maintained by Vaniyampadi Municipality. Therefore, the plaintiff cannot prevent the others from using the suit lane, since, it is a public lane. The present suit has been filed only to prevent the defendant from constructing new house and also to grab the defendant's property. Since suit property belongs to Vaniyampadi Municipality, the plaintiff ought to have impleaded the Vaniyampadi Municipality as a necessary party.

4.1. Therefore, the suit itself is not maintainable for non-joinder of necessary party. Further, the defendant also filed a suit in O.S.No.31 of 1999 for injunction, in which an Advocate Commissioner was appointed and his report is also filed before the Trial Court and therefore, the defendant prayed for dismissal of the suit.

5. In support of the plaintiffs' case, P.W.1 was examined and five documents were marked as Ex.A.1 to Ex.A.5. On the side of the defendants D.W.1 and D.W.2 were examined and four documents were marked as Ex.D1 to Ex.D4. The Advocate Commissioner's Report and Plan were marked as Ex.C.1 and Ex.C.2 and Town survey register was marked as Ex.C3. On considering the oral and documentary evidences adduced by the respective parties and the submission made by the learned counsel, the trial Court dismissed the suit insofar as the prayer for declaration, and decreed the suit insofar as prayer for injunction. Aggrieved over the judgment and decree of the trial Court, the defendants preferred an appeal suit in A.S.No.47 of 2003, before the Subordinate Judge, Tirupattur and the defendant also filed Cross Objection No. 8/2004. The First Appellate Court, on appreciating the materials placed on records, allowed the appeal by

confirming the judgement and decree passed by the trial Court insofar as the prayer for declaration and dismissed the appeal insofar as the prayer for injunction is concerned and modified the judgment and decree passed by the trial court and thereby, allowed the plaintiff as well as the defendants to use the suit lane as common pathway. Insofar as Cross Objection No.8/2004 is concerned, the judgment and decree of the trial Court is modified accordingly. Challenging the same, the plaintiff has come forward with the present second appeal.

6. At the time of admission of the second appeal on 04.10.2019, the following substantial questions of law were framed :-

a) Is the learned Subordinate Judge correct in dismissing the suit for declaration of title when as per Ex.A1, plaintiffs are entitled to the suit lane absolutely? The learned Subordinate Judge erred in not considering Ex.A1 in its proper perspective?

b) The learned Subordinate Judge having held that the defendant is entitled to use the suit lane only to maintain the southern wall ought to have decreed the suit for declaration of tile?

c) Is the learned Subordinate Judge correct in not moulding the relief and grant mandatory injunction to remove the door on the southern wall of the defendant, the same having been constructed only after suit?

7. The learned counsel appearing for the appellants submitted that the plaintiff has become absolute owner of the suit property by way of gift deed dated 02.01.1923, executed by one T.M.Chinnava Mudaliyar, along with the suit lane. Though D.W.2 had deposed that the suit lane belonged to Vaniyampadi Municipality, they did not mark any document to show that the suit lane is a common pathway for general public. Therefore, the Courts below erred in holding that the suit lane is not absolutely belonging to the plaintiff and it is a common lane and the plaintiff is entitled to use the suit property as common path way along with defendant.

8. Heard Mr.D.Chitramaragathan, for Mr.T.R.Rajaraman, learned counsel appearing for the appellants/legal heirs of plaintiff and Ms. V.Srimathi, learned counsel appearing for the respondent/defendant.

10. This Court has considered the rival submissions made by the learned counsel on either side.

11. The suit is filed for Declaration and Injunction. The gift deed executed in favour of the plaintiff was marked as Ex.A1, in respect of the house property. On perusal of Ex.A1, the recital categorically shows that the gift deed was executed in favour of the plaintiff, with the easement right of pathway (j1 ghj;jpak;). Therefore, there is no settlement in respect of the suit property in favour of the plaintiff and as such, the plaintiff cannot claim exclusive right over the suit property. On perusal of the Plan, annexed along with the plaint shows that the lane is meant for plaintiff as well as the defendant. Though the defendant has access to the Bajanai Koil Street, the suit lane is used as a common pathway to general public. Further, on perusal of the Advocate Commissioner's Report and Plan it proves that the suit lane is a common pathway for plaintiff as well as the defendant. The sale deed executed in favour of the defendant was marked as Ex.D1. The recital of the sale deed categorically shows that the suit property which was purchased by the defendant bounded on the Southern side of the suit lane. It is also seen from Ex.C.3 town survey register that it is a common pathway, which was marked by P.W.2, the Official Municipality Surveyor.

12. Therefore, the Courts below have rightly held that the plaintiff is not entitled for the declaration of the suit property in his favour, since, it is a common pathway for general public and it can be used by all. Insofar as the injunction prayer is concerned, both the plaintiff as well as the defendant can very well use the suit lane as a common pathway and both of them are restrained against each other from interfering with their usage of the suit lane.

13. Therefore, this Court does not find any valid reason to interfere with the reasons and findings rendered by the Courts below. As such, this Court is of the considered opinion that no substantial questions of law are involved in this appeal. Be that as it may, all the substantial question of law are accordingly answered against the plaintiff and in favour of the defendant.

14. Accordingly, this Second Appeal stands dismissed and the judgment and decree of the First Appellate Court are confirmed. There is no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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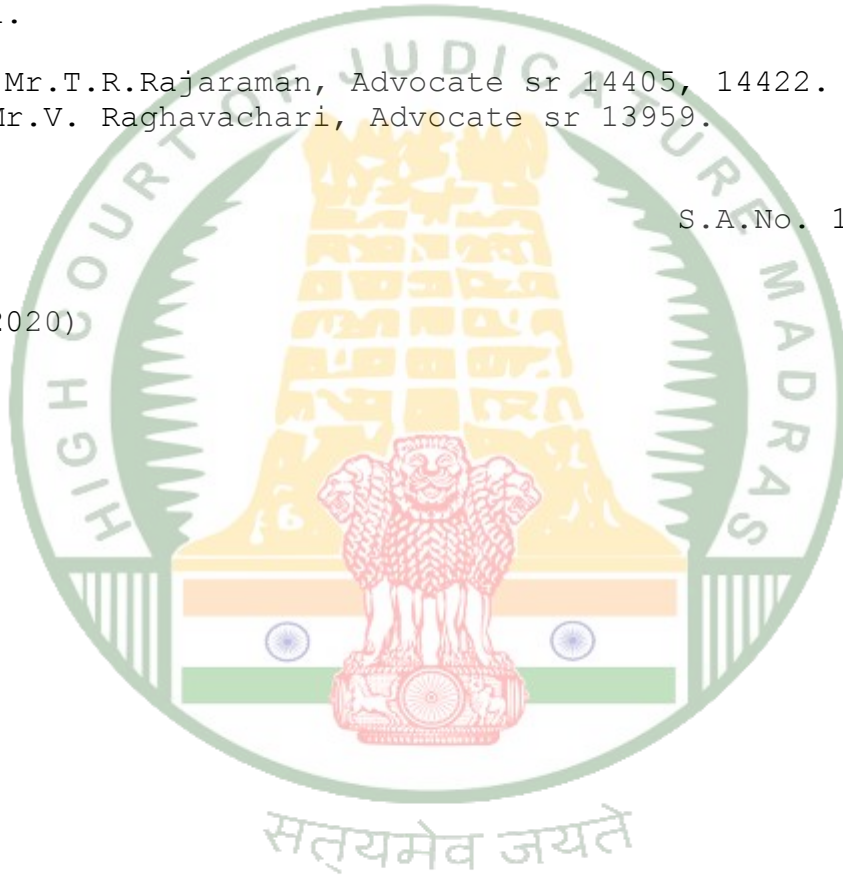
1. The Subordinate Judge, Tirupattur.
2. The District Munsif Cum Judicial Magistrate Court,
Vaniambadi.
3. The Section Officer, V.R. Section, Madras High Court,
Chennai.

+2 Ccs to Mr.T.R.Rajaraman, Advocate sr 14405, 14422.

+1 CC to Mr.V. Raghavachari, Advocate sr 13959.

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