

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

SA. Nos.499 & 523 of 2020
and
CMP No.10870 of2020

Palaniammal .. Appellant in both the Second Appeals
Defendant in OS.No. 141 of 2011
Plaintiff in OS.No.49/2008

Vs.

1. Nallusamy

2. Raju

..Respondents 1 & 2 in SA No.499/2020/
Plaintiffs in OS.No. 141 of 2011

1. Ettaiyee

2. Nallusamy

3. Raju

4. Shanthi

.. Respondents 1 to 4 in SA
No.523/2020/Defendants in OS.No. 49 of 2008

PRAYER: Second Appeals filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 08.01.2020 made in (i)A.S.No.41 of 2018 (ii) A.S.No.42 of 2018 respectively on the file of Subordinate Court at Paramathy confirming the Judgment and decree dated 11.12.2017 made in (i) O.S.No.141 of 2011 and (ii) O.S.No.49 of 2008 respectively on the file of District Munsif Court, Paramathy.

For Appellant : Mr. S.Mukunth
(in both the Appeals) for M/s.Sarvabhauman Associates

J U D G M E N T

This matter is taken up for hearing through Video-Conferencing.

These two Second Appeals arise out of two cross suits. The plaintiff in OS No.49 of 2008 and the defendant in OS No.141 of 2011 is the appellant in both the Appeals.

2. The suit in OS No.49 of 2008 was filed by the plaintiff seeking a permanent injunction restraining the defendants from interfering with her peaceful possession of the suit properties. It was claimed in the plaint that the defendants in the said suit are attempting to claim a novel right of pathway and interfere with her possession of the suit property. The plaintiff claims by way of a purchase in the

year 2006 from one Velusamy son of Kali Gounder.

3. The defendants in OS No.49 of 2008, resisted the said suit contending that they have a right of pathway over the lands of Velusamy son of Kali Gounder, and that the sale by him to the plaintiff in the said suit is subject to their right of pathway. They also filed a suit in OS No.141 of 2011 for a declaration that they are entitled to a right of way over the pathway which according to their plan was shown to exist along Y1, Y2, X1, X2 and X3. The portion X1 and X2 runs over the property of the plaintiff in OS No.49 of 2008. The plaintiff in OS No.49 of 2008/ the defendant in OS No.141 of 2011, denied the right of pathway claimed by the plaintiffs in O.S.141 of 2011.

4. At trial, the first plaintiff in OS No.141 of 2011 was examined as P.W.1 and one Nallusamy was examined as P.W.2. The plaintiff in OS No.49 of 2008 was examined as D.W.1 and one Ramasamy, was examined as D.W.2. While Exs. A1 to A10 were marked on the side of the plaintiffs, Ex.B1 to B3 were marked on the side of the defendant. In both the suits Commissioners were appointed and their Report and Plan were marked as Exs.C1 to C4.

5. Upon a consideration of the evidence on record the Trial Court came to the conclusion that there existed a pathway as claimed in the plaint in OS No.141 of 2011 and the defendant in OS No.141 of 2011 viz., the appellant herein had in fact obliterated a portion of it which was running east to west and shown as X1 and X2 in the plaint Plan in OS No.141 of 2011. Upon such finding, the Trial Court granted a decree for declaration, permanent injunction and mandatory injunction as prayed for. Aggrieved the plaintiff in OS No.49 of 2008 and the defendant in OS No.141 of 2011, filed two Appeals in AS No.41 and 42 of 2018 on the file of Sub Court, Paramathy.

6. The learned Appellate Judge agreed with the conclusions of the Trial Court and affirmed the judgment and decree. Questioning the said judgments and decrees of the Appellate Court, the plaintiff in OS No.49 of 2008 has come up with these two Second Appeals.

7. I have heard Mr.S.Mukunth, learned counsel appearing for M/s.Sarvabhauman Associates for the appellant.

8. Mr.S.Mukunth, learned counsel appearing for the appellant would vehemently contend that the Appellate Court was not right in confirming the decree of the Trial Court on a totally different ground i.e. easement of necessity. I have gone to the judgment of the Appellate Court. The Appellate Court had almost concurred with all the findings of the Trial Court on the existence of the pathway. The existence of the pathway is proved by various title documents which emanated between the parties prior to the purchase by the present appellant.

above documents only speak about the existence of a cart track and the actual location of the cart track is not depicted in those documents. The depiction of exact location of a cart track in a document of title is very rare. In the case on hand, we have two Commissioners Report which show that there is a north south pathway on the north as well as the south and the connecting link is the X1 and X2 portion which is missing. Both the Trial Court as well as the Appellate Court have considered the evidence on record and have come to the conclusion that the appellant had obliterated the pathway which was running east west between X1 and X2 portions in Commissioner's Plan in OS No.141 of 2011. This factual finding is based on available evidence and the learned counsel is not able to show that the said finding could be characterized as a perverse finding in order to enable me to interfere with the same in a Second Appeals.

10. The claim that the Appellate Court has granted the right to the respondent on the ground of the easement of necessity appears to be very attractive at the first blush. But the reading of the judgment of the Appellate Court shows that the learned Appellate Judge has not based her findings only on the ground of necessity. The Appellate Judge has concluded that the respondents herein have established that the pathway was in existence for a long time and it was used by the parties as a pathway throughout and a reference to that pathway is also made in the title documents. On the basis of the other evidence that is available, the Appellate Court had come to the conclusion that the pathway referred to in the title document can only be the suit pathway as claimed by the plaintiffs in OS No.141 of 2011. I do not think I can interfere with such a conclusion unless it is shown to be based on no evidence.

11. I do not find see any question of law much less substantial question of law in order to enable me to entertain the Second Appeals. The Second Appeals therefore fail and are accordingly dismissed without being admitted. Consequently, the connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Subordinate Judge,

Paramathy.

<https://hcservices.ecourts.gov.in/hcservices/>

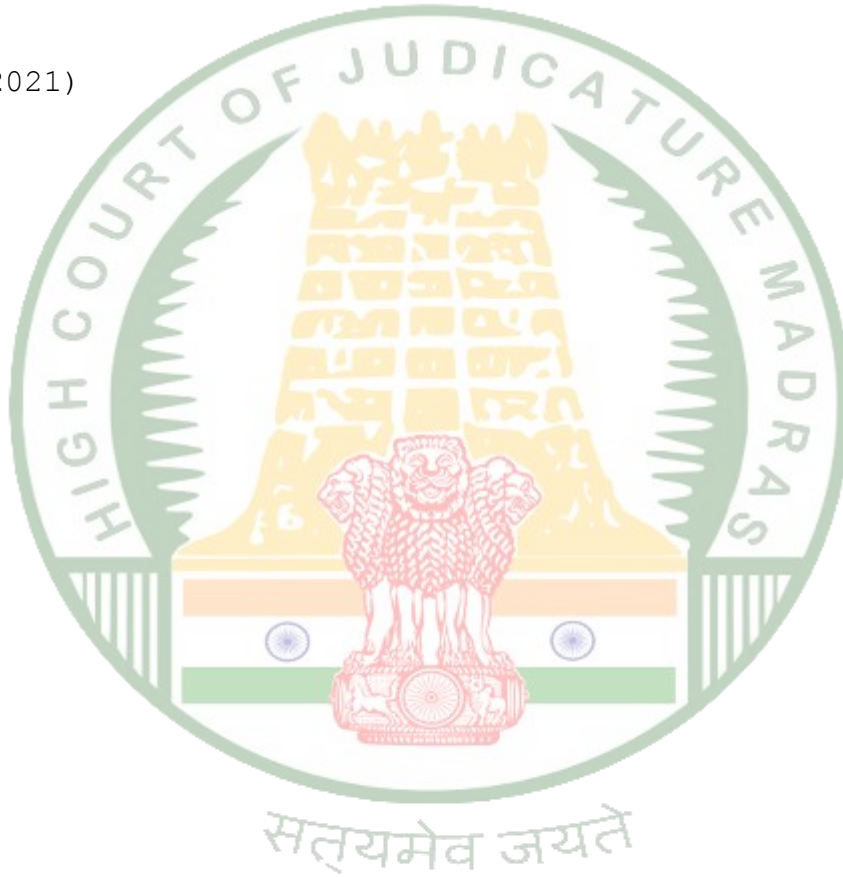
2. The District Munsif,
Paramathy.

3. The Section Officer,
V.R. Section, High Court of Madras.

+1cc to Mr. Sarvabhauman Associates, Advocate, S.R.No.33453

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RSI (CO)
GN(16/06/2021)



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