



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 31.07.2020

CORAM

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THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

S.A(MD)No.293 of 2020

and C.M.P (MD)No.3521 of 2020

Bhagavathi Thevar : Appellant/1st Defendant/1st Defendant

Vs.

1.Sakkana Thevar : 1st Respondent/Appellant/Plaintiff

2.Karuppayee Ammal

3.Periyasamy

4.Mariappan

5.Raman : Respondents 2 to 5/Respondents
2 to 5/Defendants 2 to 5

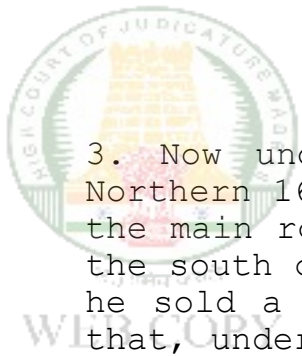
PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the Judgment and Decree dated 11.03.2020 made in A.S.No.1 of 2019 on the file of the Subordinate Court, Thirumangalam, by reversing the judgment and decree dated 05.10.2018 made in O.S.No.309 of 2013 on the file of the District Munsif Court, Thirumangalam.

For Appellant : Mr.K.Hemakarthiskeyan

J U D G M E N T

The first defendant in O.S.No.309 of 2013 on the file of the District Munsif Court, Tirumangalam is the appellant. The suit was laid for declaring the suit property measuring 120 feet X 80 feet as a common pathway. The suit was decreed successively both by the trial court as well as by the First Appellate Court.

2.To state the facts briefly, the property measuring 33 cents in Survey No.4/37 originally belonged to a family of Sonamuthu Thevar. Under separate sale deeds, he sold the property to the parties herein. The entire property may be considered approximately as rectangular property. On the North and on the East, there are roads.



3. Now under Ex.A.1, dated 09.05.1973 Sonamuthu Thevar sold the Northern 16 cents to the plaintiff. This block of land has access to the main road on the North. The dispute does not relate to this. To the south of the property covered under Ex.A.1 on the Western corner he sold a piece of land under Ex.A.2 to one Pandi in 1997. Before that, under Ex.A.4 = Ex.B.1 dated 15/05/1973 he sold a piece of land along with Southern boundary to the entire property to the first defendant. The property sold to the first defendant abets the road on the east. However, the vendor retained the plot of land at the Western extremity of the entire property. That property which the vendor retained was to the South of the property covered under Ex.A.1 and to the West of the property covered under Ex.A.4. This piece of land which the vendor retained is literally land locked and possibly to provide an access to the main road and in the East common pathway 8 feet was provided. There is indeed a reference of the same in Ex.A.4 = Ex.B.1. This property, which the vendor retained, was sold by the vendor to one Pandi under Ex.A.2 in 1977 and the plaintiff purchased it under Ex.A.3. When the plaintiff asserted a right of common pathway for this plot of property under Ex.A.2 by the vendor of the entire property, Pandi, the defendants objected that the plaintiff would not have right over the same.

4.The plea of the defendant was rejected.

5. Heard the learned counsel for the appellant.

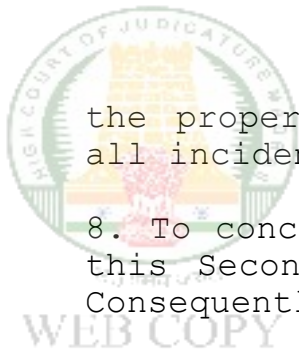
6. The learned counsel's contention is that there is no reference to the common pathway in the title document of the plaintiff. The argument of the learned counsel is fallacious for more than one reason;

- a) When the vendor of the property retained the property covered under Ex.A.2, he would not have any access to the main road on the East but for the common pathway. Indeed, to this plot of property pathway should have been provided for, so far as the property covered under Ex.A.4 = Ex.B.1 there is an access to the road on the East.
- b) When the original vendor sold the property to Pandi under Ex.A.2 in 1977 the right of pathway necessarily go with the title to the property. There is no objection to this.
- c) When Pandi sold the property to the plaintiff under Ex.A.3 in 1980 necessarily the property vested in the plaintiff with all ancillary and incidental rights.

7. It is a classic case where Section 13 of the Indian Easements Act applies. When unity of title is disintegrated, then, for the convenient enjoyment of each of the property so integrated, necessary right of access should be provided. Here, the contention of the appellant that no right of which specially indicated in the sale deed in favour of the plaintiff has little consequences. His further argument is that the plaintiff has a property on North

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Ex.A.1 is not impressive. When the plaintiff purchased



the property covered under Ex.A.2 he purchased that property with all incidental rights that goes with that plot of land.

8. To conclude, there is no substantial question of law involved in this Second Appeal. Accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

To

1. The Subordinate Judge,
Thirumangalam

2. The District Munsif Court,
Thirumangalam.

Copy to:

The Section Officer, (2 - Copies)
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

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