



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 23.09.2020

CORAM

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

S.A(MD)Nos.33 & 41 of 2016

and

C.M.P. (MD)No.1080 of 2016

in SA(MD) .No.41 of 2016

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S.A(MD) .No.33 of 2016

1.Muthupandi Thalaivar
2.Vembu Ammal

:Appellants/Appellants/Plaintiffs

Vs

Chidambarathevar

:Respondent/Respondent/Defendant

S.A(MD) .No.41 of 2016

1.Muthupandi Thalaivar
2.Vembu Ammal

:Appellants/Respondents/Defendants

Vs.

Chidambarathevar

:Respondent/Appellant/Plaintiff

PRAYER in SA(MD) .No.33/2016: Second Appeal is filed under Section 100 of C.P.C, against the Judgment and Decree dated 08.12.2015 passed in A.S.No.53 of 2011 on the file of Subordinate Judge, Valliyoor confirming the Judgment and Decree dated 26.07.2010 passed in O.S.No.118 of 2007 on the file of Additional District Munsif Court, Valliyoor.

PRAYER in SA(MD) .No.41/2016: Second Appeal is filed under Section 100 of C.P.C, against the Judgment and Decree dated 08.12.2015 passed in A.S.No.64 of 2015 on the file of Subordinate Judge, Valliyoor reversing the Judgment and Decree dated 26.07.2010 passed in O.S.No.62 of 2006 on the file of Additional District Munsif Court, Valliyoor.

For Appellants : Mr.M.P.Senthil
For Respondent : Mr.H.Arumugam

COMMON JUDGMENT

The appellants herein, who are the plaintiffs in O.S.No.118 of 2007 and defendants in O.S.No.62 of 2006, have approached this Court having lost the case before the first Appellate Court. The parties would be referred to by their rank before the trial Court.



2.The facts that require consideration of this Court in these Second Appeals fall within a very narrow compass;

- The suit property and others originally belong to certain Nanu Iyer and Vaidhyalinga Iyer. They utilised the income from the properties for certain religious charity. Nanu Iyer and Vaidhyalinga Iyer died leaving behind their sons Sankararama Iyer and Seshachalam and the properties came under the administration of Sankara Iyer.
- Both Sankararama Iyer and Seshachalam have plotted their respective properties and sold them. Sankararama Iyer sold plot no.11 to certain Subramaniam Vide Ext.A.1 sale deed dated 03.07.1981. Subramaniam, sold the said plot to one Murugan under Ext.A.2 sale deed dated 31.10.1997, and he in turn sold it to the respondent herein.
- The other property is plot no.12, which belong to the appellants. This plot was sold to one Sundaram Ammal by the aforesaid Sankararama Iyer and Seshachalam Vide Ext.B.7 dated 03.08.1981. She later sold it to one Sankari Ammal under Ext.B.1 sale deed dated 21.08.1991. Sankari Ammal thereafter sold this plot to the appellants herein under sale deed dated 26.09.1994, which is available on record as Ext.B.2.
- The dispute pertains to a 2 feet wide lane that lies between plot no.11 and plot no.12. The respondent herein has laid O.S.No.62 of 2006 claiming that the said pathway is a common pathway. The appellants herein for their part laid a suit in O.S.No.118 of 2007 seeking a declaration that the said lane is their exclusive pathway.

3.1 Both the suits were tried together and O.S.No.62 of 2016 was treated as the main suit and evidence was recorded in that suit. The trial Court has appointed a Commissioner, who has filed his report indicating that the 2 feet wide lane falls within the property of the appellants. The issue however is not so much about the title to the property, but the character, nature and the extent of its user. The trial Court examined the evidence of both the parties and arrived at a breathtakingly strange conclusion that neither side had proved their respective cases and dismissed both the suits.

3.2 Both the sides preferred separate appeals in A.S.No.53 of 2011 and A.S.No.64 of 2015. Both were disposed of by a common judgement of the first Appellate Court, wherein, it held that the lane in dispute is a common pathway. Challenging the same, the appellants have approached this Court.



4. Heard the learned counsel for the appellants. The learned counsel for the appellants was essentially emphasising on the Commissioner's report and tried to project a case of title. As already indicated, this is not so much about nature of the property but about the character of user of the property.

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5. On the side of the respondents, a certain Murugan was examined as P.W.2. He Murugan is the purchaser of the suit property under Ext.A.2, from whom the respondent had later purchased the plot No:11. He had adduced that he and his sister Sundaram Ammal, who had purchased plot no.12 under Ext.B.7 had put up the disputed lane as a common pathway. This view is fortified by Exts.B.1, B.2 (a sale deed in favour of the appellant) and B.4, all of which are the title deeds supporting the appellants title to plot No:12, where the disputed lane is described as a common lane.

6. It is hence this Court had earlier outlined that the dispute is not on the title to the soil on which the disputed lane runs, but about nature of the user, and how the predecessors in title to plots No:11 and 12 have conceived the nature of user. Hence Ext.B.2 sale deed and the description given in it to the disputed lane as a common pathway how become critical. And, it binds the appellants, unless they are able to establish that it is a patent defect. Here there is no contra evidence available to override the description of the disputed lane as a common pathway to comfort a preponderating improbable view that it is the exclusive pathway of the appellants.

7. This Court does not find any perversity in the findings of the first Appellate Court as to warrant any inference, nor it finds existence of any other substantial question of law as involved to admit these appeals. The Second Appeals are dismissed and accordingly, the Judgment and Decree dated 08.12.2015 passed in A.S.No.53 of 2011 and A.S.No.64 of 2015 by the Subordinate Judge, Valliyoor is hereby confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (co)

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Sub Assistant Registrar(CS)

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To

1.The Subordinate Court,
Valliyoor.

2.The Additional District Munsif Court,
Valliyoor.

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

+2 CC to Mr.M.P. SENTHIL, Advocate (SR-18045,18046[F] dated
25/09/2020)

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VB (04.11.2020) 4P 7C