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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2021

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.802 of 2009

1. Chandrasekar

2. Sankar

3. Chandiran

4. Sathyaraj

... Appellants / Defendants

Vs

1. Elumalai

2. Devanathan

... Respondents / Plaintiffs

Prayer : Appeal filed under Section 100 of the Code of Civil Procedure to set aside the judgment and decree in A.S.No.72 of 2007 dated 23.12.2008 on the file of the Principal Subordinate Judge, Villupuram, confirming the decree and judgement in O.S.No.441 of 2003 dated 26.04.2007 on the file of Principal District Munsif, Villupuram, by allowing this second appeal.

For appellants : Mr. S. Krishnasamy

For Respondents : Mr. Rajarajan

for Mr.R. Balakrishnan for R1 and R2

J U D G M E N T

The defendants are the appellants before this Court.

2. The appeal arises against the concurrent judgment and decree of the Courts below, passed against the defendants in a suit for bare injunction.



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3. The respondents/plaintiffs had filed a suit for bare injunction in respect of 34 cents, out of a total extent of 69 cents in Survey No.383/2, Arappasampalayam Village, Kandamangalam Panchayat Union, Villupuram District.

4. The facts in brief are as follows:

4.1. The parties are referred to in the same array as in the suit. The case of the plaintiffs is that the property belong to three brothers namely, Varadharaja Kounder, Kesava Kounder and Govindaraj Kounder. Arjuna Kounder is the son of Varadharaja Kounder. The plaintiffs are the sons of Arjuna Kounder. It is their case that three brothers had partitioned the entire extent of 69 cents under a Partition Deed dated 20.10.1964. Kesava Kounder got the Northern 23 cents, Varadharaja Kounder got the Southern 23 cents and the middle portion of 23 cents was allotted to the three sons of Govindaraj Kounder. The sons of Govindaraj Kounder sold 11 1/2 cents to Kesava Kounder and 11 1/2 cents to Arjuna Kounder contiguous to their respective lands. As a result of this purchase, Kesava Kounder and Arjuna Kounder each owned a total extent of 34 1/2 cents.

4.2. It is the case of the plaintiffs that by Settlement Deed dated 10.10.2003, Arjuna Kounder had settled the suit property in favour of the plaintiffs. The defendants had attempted to cut the trees in the property and since they continue to do so, the plaintiffs have come forward with the suit for bare injunction.

5. The defendants would inter alia contend that under the partition deed dated 20.10.1964, which is marked as Ex.A1, the right of way has been given to all the parties in the entire extent of 69 cents. In the year 2000, since the defendants wanted to construct upon their lands they required a passage, for which they had asked Arjuna Kounder to give them a right of way. Though initially Arjuna Kounder refused to give the said right thereafter a panchayat was held and Arjuna Kounder ultimately agreed to give the pathway east to west measuring a breadth of 10 feet exactly in the middle of the property and thereafter North to South to a breadth of 18 1/2 feet connecting the street.

6. The defendants would contend that later an Agreement of Partition was entered between the father of the plaintiffs and first defendant on 22.02.2003. The defendants would contend that



they had acted upon the said agreement and had also gifted the pathway to the panchayat. The defendants would further contend that they had no other pathway to reach the property. Both the Courts below concurrently held that the parties had an access to their respective share from the common pathway from the street on the East and the North. The case of the defendants in so far as Ex.B5 is concerned, was disbelieved. The said document was also an unregistered document which could not be looked into. Challenging the said Judgement and Decree, the defendants are before this Court.

7. Mr. S.Krishnaswamy, learned counsel appearing on behalf of the appellants would contend that in Ex.A1 Partition Deed as early as in the year 1964, the parties had agreed that each of the sharers would continue to have the right to take the cattles and vehicles as already enjoyed through the properties without disturbance to the other sharer; this according to him would clearly show that there was a pathway and the right to each of the sharers in the said pathway under Ex.A1.

8. He would further submit that Ex.B5 is nothing but a follow up of Ex.A1 whereunder the right given in Ex.A1 was clearly set out and demarcated in Ex.B5.

9. Per contra, Mr. Rajarajan, learned counsel appearing on behalf of the respondents would submit that as per the recital in the partition deed Ex.A1, parties had the right to enjoy the property by continuing to take their cattle as well as vehicles, was only on account of the fact that then the property were agricultural lands and therefore there was a necessity to take the cattle through the entire property. However, over the passage of time, agricultural activities have come to a stand still in the respective properties. All the three portions had access to common pathway which was the pathway demarcated as the access. This pathway runs right through the entire extent of 69 cents. Therefore, the contention of the defendants that they had no other pathway is totally a false statement and therefore the Judgment and decree of the Courts below cannot be set aside.

10. A perusal of the judgements of the Trial Court as well as Appellate Court would clearly indicate that the entire extent of 69 cents, which had been already partitioned had access to the pathway and there was no necessity for an additional



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pathway running through the entire extent.

11. The learned Appellate Court had observed as follows:

69 சென்ட் உள்ள நிலமாகும் கீழ்ப்புறம் வடபுறம் வீதியுள்ளது. பிரதிவாதியின் வீட்டிற்கு வருவதாக இருந்தால் பொது வீதியின் வழியாகத்தான் வர வேண்டும். அந்த பொது வழியாகத்தான் அவரவர்களுடைய வயலுக்கும் வீட்டுக்கும் சென்று வருகிறார்கள்.

12. Therefore this clearly demonstrates that the contention of the defendants that they do not have an alternative pathway is an absolute false statement. Further, a perusal of Ex.B5 Agreement does not show clearly whether there exists a pathway, as the pathway is not described with any specific boundaries. Therefore, the recital in Ex.B5 does not advance the case of the defendants. That apart, the recital in Ex.A1 would also not come to the rescue of the defendants.

13. In the above circumstances, I do not find any cause to interfere in the Judgement and Decree of the Trial Court as confirmed by the Appellate Court. No substantial question of law arises for consideration in the above Second Appeal and accordingly the Second Appeal stands dismissed.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

mrn

To

1.The Principal Subordinate Judge,
Villupuram,

2.The Principal District Munsif,
Villupuram

+1cc to Mr.D.Rajasekar, Advocate, Sr.No.22717

S.A.No.802 of 2009

SV(C0)
SB(22/09/2021)