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IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 20.09.2021
CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

SA NO.193 OF 2014
AND
MP NO.1 OF 2014

A.Palanivel ... Appellant

VS.

1.S.Thangaraj
2.A.Ponnuvel ... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 21.10.2013 passed in A.S.No.123 of 2012 on the file of the Principal Sub Judge, Salem confirming the decree and judgment dated 27.04.2009 passed in O.S.No.398 of 2007 by the I Additional District Munsif, Salem.

For Appellant : Mr.R.Nalliyappan
For Respondent-1 : Mr.D.Shivakumaran
for Mr.V.Sekar
Respondent-2 : No Appearance

J U D G M E N T

The unsuccessful first defendant is the appellant before this Court.

2.The first respondent / plaintiff filed a Suit for injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the pathway measuring 0.05 cents in S.No.125/8.

3.According to the first defendant, the property belonged to his joint family and it was partitioned among themselves vide Ex.A2 - partition deed dated 02.04.1996. As per the partition deed, the plaintiff is entitled to the pathway measuring 0.04 cents and he cannot claim more than that. According to the first defendant, the plaintiff claims that their patta lands also situates in S.No.125/8.

4.The Trial Court framed appropriate issues and decreed the Suit in favour of the plaintiff in respect of 0.05 cents in S.No.124/8. In respect of his right to use the



pathway in S.No.125/8 measuring 0.04 cents, the Lower Appellate Court has also confirmed the same. Against which, the first defendant has preferred this Second Appeal.

5.The grievance of the first defendant is that during the pendency of the Suit, an Advocate Commissioner was appointed exparte and he made wrong measurements, which includes his patta lands also. On perusal of Ex.A2 - partition deed dated 02.04.1996, it is categorically mentioned that pathway running towards north-south measuring an extent of 0.04 cents is in S.No.124/8 is a common pathway and each party is entitled to have 1/3rd right in the usage of common pathway.

6.The plaint filed by the first respondent also mentions 0.04 cents in S.No.125/8 with boundaries given in the partition deed as a schedule of the property. The plaintiff is not claiming anything other than 0.04 cents in S.No.124/8. His grievance is that the defendants are reducing the width of the road making it un-useful, from using it as a Cart Track. The Trial Court after finding the evidence of the first defendant that they are entitled to plant trees only after 10 feet from the pathway has found that the plaintiff is entitled to use the pathway without any reduction in the width. From the admission made by D.W.1, the appellant herein, and from the perusal of the Ex.A2, it is very clear that the pathway measuring 0.04 cents in S.No.124/8 is a common pathway and all the co-sharers are entitled to use the same. Therefore, the concurrent findings of the Courts below is correct and in fact, the appellant herein has also accepted the same. But the case projected before this court is that the first respondent / plaintiff is seeking something more than 0.04 cents, which is not sustainable, as it is a new case projected before this Court. The Courts cannot go beyond the scope of the plaint.

7.The first respondent / plaintiff claims only 0.04 cents in S.No.124/8 as pathway leading to his lands. Therefore, the Courts cannot expand the scope or declare the right more than 0.04 cents and it is not done also. Therefore, the plea of the first defendant that the Courts have conferred title more than 0.04 cents over his patta lands is not sustainable and the question raised by the appellant is only a question of fact and it is not a question of law and therefore, the Second Appeal deserves no consideration for admission. Since the Courts below have categorically decreed that the first respondent / plaintiff is entitled to use the pathway measuring 0.04 cents in S.No.124/8, the judgment and decree passed by the Courts below does not require any interference, as claimed by the appellant / first defendant.

8.Accordingly, the judgment and decree dated 21.10.2013 passed in A.S.No.123 of 2012 by the learned Principal Sub Judge, Salem confirming the decree and judgment



dated 27.04.2009 passed in O.S.No.398 of 2007 by the I Additional District Munsif, Salem are confirmed.

9.In fine, the Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

TK
To

1.The Principal Sub Judge
Principal Sub Court
Salem.

2.The I Additional District Munsif
Salem.

+1 cc to Mr.S.Mayilnathan, Advocate Sr.NO. 48017

SA NO.193 OF 2014

RGN(CO)
A.SK(28/06/2022)