

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.03.2021

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

S.A.No.159 of 2017
and CMP No.3239 of 2017

P.Saminathan

.... Appellant

Vs

P.Anjalai

... Respondent

Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 28.10.2015 in A.S.No.35 of 2014 on the file of Additional District Sessions Court and Chief Judicial Magistrate Court at Ariyalur, confirming the judgment and decree dated 25.04.2013 in O.S.No.153 of 2007 before District Munsif Court, Jayankondam.

For Appellant : Mr.S.Kannan

For Respondent : Mr.C.Prabakaran for
Mr.V.Kasinatha Bharthi

JUDGMENT

Challenging the judgment and decree passed by Additional District Sessions Court and Chief Judicial Magistrate Court at Ariyalur in A.S.No.35 of 2014 dated 28.10.2015 confirming the judgment and decree passed by District Munsif Court, Jayankondam dated 25.04.2013 in O.S.No.153 of 2007, the first defendant has filed the present Second Appeal.

2. When the matter was taken up for hearing on 08.02.2021, learned counsel for the appellant has made a suggestion that as per the decree, the respondent is entitled for the pathway in the middle of the suit property, however, he suggested that he will provide a pathway on the northern side of the suit property and he will file an affidavit to that effect.

3. When the matter is taken up for hearing on 23.02.2021, learned counsel for the appellant has filed an affidavit dated 15.02.2021, which is extracted hereunder:-

" 2. I submit that the suit schedule property belongs to my mother Thailammai. My mother executed a Settlement Deed in favour of me out of love and affection, which was registered

as Doc No.1030/1987 dated 14.09.1987 before the Sub Registrar, Udayarpalayam. Since then, I am enjoying the same peacefully without any hindrance.

3. I submit that the respondent is my elder sister. I sold my property only an extent of 3 cents out of 56 cents in favour of the respondent herein on 12.12.2005, which was registered as Doc No.1744/2005 with the Sub-Registration Office, Udayarpalayam (Ex.P.2). At the time of execution of Sale Deed, the respondent has not insisted separate pathway through my remaining property from Servaikara Street to reach the respondent house, because of there is a common pathway running behind the respondent house, namely Ranga Samuthiram Salai, it is leading to statutory market and used by the entire village people even now.

4.I submit that due to family feud, the

respondent created problem and her intention to get another 3 cents from me in the name of pathway by way of filing the suit. Without appreciating the Commissioner report and evidence of DW4, allowed the suit by the trial Court and the same was confirmed by the first appellate Court. Aggrieved by the judgment and decree of the lower appellate Court, I have filed the present second appeal.

5. I submit that because of the respondent is my elder sister and maintaining a cordial relationship and my intention to lead a rest of my life peacefully. Therefore, I make a submission before this Hon'ble High Court to bring the conclusion of this case as follows:-

" In view of the Lower Court judgment and decree, the pathway is running in the middle of my remaining property from Servaikara Street to the respondent house, measuring an extent

of 179 feet length and 3 feet width. So that, there is some difficult to divide my property between my legal heirs and to avoid dispute in future, to provide a pathway to the respondent. Hence, in order to provide a pathway to the respondent, I am willing to give a pathway in the Northern side of my property from Servaikara Street to the respondent's house instead of the pathway running middle of my property from Servaikara Street to the respondent's house shown in the map, which was filed before the trial Court along with Commissioner Report and marked as Exh.C2.

6.I further submit that I undertake that I will not disturb the peaceful enjoyment of the pathway given by me on the northern side of my property as suggested by me in this affidavit, provided that the respondent should not make any construction like putting a fence on the northern side of pathway from Servaikara Street to till the

respondent's house.

Therefore, I humbly prayed that this Hon'ble Court may be pleased to accept this affidavit and pass an appropriate order considering my proposal / suggestion in this affidavit and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances and facts of the case and thus render justice."

4.Learned counsel for the respondent received the said affidavit and submitted that he will get instructions from the respondent and if the respondent agrees, he will file a reply affidavit.

5.Accordingly, the respondent filed an affidavit dated 25.02.2021 stating that the respondent is agreeable for the proposal submitted by the appellant through his affidavit dated 15.02.2021. The affidavit filed by the respondent dated 25.02.2021 is extracted hereunder:-

"2.I submit that I have filed the suit in

O.S.No.153 of 2007 on the file of District Munsif Court, Jayankondan seeking for the relief of declaration of easement right of pathway in the suit property and not to construct the compound wall thereby disturbing my peaceful right of enjoyment of pathway by way of permanent injunction. The said suit was decreed in my favour on 25.04.2013, aggrieved the appellant herein had filed an appeal in A.S.No.35 of 2014 before the Additional District and Sessions Court, Ariyalur and the same was also dismissed on 28.10.2015, aggrieved by which the appellant herein has filed this appeal before this Hon'ble Court.

3. I submit that the above Second Appeal was listed for hearing and the appellant herein agreed to abide the decree of the Courts below. However, as the subject matter of the suit pathway is lying in the middle of the property which is not conducive for any of the parties in a better manner, the appellant herein agreed to allot the pathway to the same extent from

Servaikaran Street to my house without any hindrance on the northern side of his property. The same does not affect in any manner for the right of use and enjoyment by me for the free ingress and egress to my house which is lying thereon. To that effect the respondent herein had filed the affidavit before this Hon'ble Court on 23.02.2021. On perusal of the said affidavit, I am also agreeing for the said proposal and the appellant may be directed to measure and demarcate the pathway by metes and bounds to the same extent as decreed by the Courts below enabling me to use the pathway in terms of the decree rendered by the Courts below.

I therefore pray that this Hon'ble Court may be pleased to accept this affidavit and pass an appropriate order in view of the agreement made between both the parties in the above Second Appeal and to pass such further or other orders as may deem fit and proper and thus render justice.

6.Learned counsel for the respondent submits that there is a

typographical error in the fourth line of page No.2 of the affidavit dated 25.02.2021, wherein, it is stated that *"To that effect the respondent herein had filed the affidavit before this Hon'ble Court on 23-02-2021"* instead of *"appellant herein had filed the affidavit"*. Therefore, the word *"respondent"* shown in the fourth line of page No.2 of the affidavit dated 25.02.2021 shall be read as *"appellant"*.

7.In view of the agreement arrived at between the parties, the appellant shall provide a pathway, as agreed in the affidavit dated 15.02.2021, on the northern side of the suit property. Such exercise shall be done by the appellant within a period of four weeks from the date of receipt of a copy of this order. It is made clear that as agreed by the appellant in paragraph No.5 of the affidavit dated 15.02.2021, he has to provide a pathway to the respondent with 179 feet length and 3 feet width on the northern side of the suit property.

8.Since this Court is of the opinion that the present enjoyment of the pathway by the respondent shall not be disturbed, there shall be an order of status quo as on date to be maintained by the parties till the provision of pathway is made by the appellant, as agreed in the affidavit.

The affidavit filed by the appellant dated 15.02.2021 and the affidavit filed by the respondent dated 25.02.2021 shall form part and parcel of this judgment.

9.The Second Appeal is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

16.03.2021

Index: Yes/No
Internet:Yes/No
Speaking order/Non-speaking order

To

1. The Additional District Sessions Court and Chief Judicial Magistrate Court at Ariyalur
2. The District Munsif Court, Jayankondam

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KRISHNAN RAMASAMY,J.

sr



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