



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)No.221 of 2008

WEB COPY

Samidurai

... Plaintiff/Appellant /Appellant

Vs.

Venkadachalam

... Defendant/Respondent/
Respondent

Prayer: Second appeal filed under Section 100 of C.P.C., to set aside the decree and judgment passed in A.S. No.12 of 2007 on the file of the Sub Court, Pattukottai dated 11.07.2007 confirming the decree and judgment passed in O.S.No.59 of 2004 on the file of the District Munsif, Pattukottai dated 18.04.2006.

For Appellant : Mr.M.R.S.Prabhu

For Respondent : Mr.D.R.Murugesan

J U D G M E N T

The plaintiff in O.S.No.59 of 2004 on the file of the District Munsif, Pattukottai, is the appellant in this second appeal.

2. The appellant and the respondent are brothers. The appellant filed the said suit seeking partition of $\frac{1}{2}$ share in the first item of the suit property. There is no dispute that partition took place among the members of the family comprising the appellant, respondent and their father in the year 1982 and it was reduced into writing on 05.04.1989. The said partition deed was marked as Ex.A.1. In Ex.A.1, there are three schedules, namely, 'A' schedule, 'B' schedule and 'C' schedule. 'A' schedule was allotted to the respondent herein. 'B' schedule was allotted to the appellant herein. On this, there is no dispute. The dispute is only regarding 'C' schedule property allotted to the father Murugaiya Velalar. 'C' schedule property comprising two items is the subject matter of suit. The stand of the defendant/respondent herein is that the suit property was to be enjoyed in common as it is a pathway. The said stand projected by the defendants was accepted by the learned trial Judge and the suit was dismissed by judgment and decree dated 18.04.2006. Questioning the same, the appellant filed A.S.No.12 of 2007 before the Sub Court, Pattukottai. The first appellate Court dismissed the appeal vide judgment and decree dated 11.07.2007. Aggrieved by the same, this second appeal came to be filed.



3. This second appeal was admitted on the following substantial question of law:-

"Whether the judgment and decree of the Courts below are erroneous on account of its failure to consider the pleadings as well as the evidence adduced on the side of both the parties in their proper perspective?"

4. Though the learned counsel appearing for the appellant reiterated all the contentions set out in the memorandum of grounds, as rightly pointed out by the learned counsel appearing for the respondent, no substantial question of law arises for consideration in this second appeal.

5. When the second appeal was admitted, the substantial question of law framed was whether the Courts below failed to consider the pleadings as well as the evidence adduced in a proper perspective. It cannot constitute a substantial question of law at all. It has not been indicated as to what was not considered. The substantial question of law has been framed in general terms. Even according to the defendants, the suit property is a pathway and that it cannot be alienated and that it has been enjoyed in common. If according to the plaintiff, the defendant had caused any obstruction, the only course open to the plaintiff was to file a suit in the nature of injunction. Filing a suit for partition was clearly misconceived. I do not find any ground to interfere with the impugned judgment and decree.

6. Even though the prayer sought for in the suit is misconceived, taking note of the admitted case of both the parties, it is declared that the suit property is a common pathway and that both the parties shall not cause any obstruction thereon.

7. The second appeal is disposed of on these terms. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://hcservices.ecourts.gov.in/hcservices/>



To:

1. Sub Judge,
Pattukottai.

2. The District Munsif,
Pattukottai.

Copy to

The Record Keeper,
V.R.Section
Madurai General District.

+1 CC to M/s.V.K.VIJAYARAGHAVAN, Advocate (SR-21402[F] dated
06/07/2021)

S.A. (MD) No.221 of 2008
05.07.2021

RK (28.09.2021) 3P 6C