



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A. (MD)Nos.910 & 911 of 2007 and

M.P. (MD)No.1 of 2007

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S.A. (MD)No.910 of 2007

1. K.Meenathal

2. Kandasamy

... Appellants/Appellants/Defendants

Vs.

M.Chinnasamy

... Respondent/Respondent/Plaintiff

Prayer: Second appeal filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.29 of 2006 on the file of the learned Subordinate Judge, Palani, dated 12.01.2007 confirming the judgment and decree passed in O.S.No.542 of 2001 on the file of the learned District Munsif, Palani, dated 31.01.2006.

S.A. (MD)No.911 of 2007

K.Meenathal

... Appellant/Appellant/Plaintiff

Vs.

M.Chinnasamy

... Respondent/Respondent/Defendant

Prayer: Second appeal filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.34 of 2006 on the file of the learned Subordinate Judge, Palani, dated 12.01.2007 confirming the judgment and decree passed in O.S.No.237 of 2000 on the file of the learned District Munsif, Palani, dated 31.01.2006.

(in both S.As.)

For Appellants : Mr.M.P.Senthil

For Respondent : Mr.Meenakshi Sundaram,
Senior Counsel,
for Mr.D.Venkatesh.

* * *

C O M M O N J U D G M E N T

Tmt.Meenathal, appellant in these second appeals filed O.S.No.237 of 2000 on the file of the District Munsif, Palani, seeking the relief of declaration and consequential permanent injunction against the defendant Chinnasamy in respect of the suit property. Thiru Chinnasamy subsequently filed O.S.No.542 of 2001



against Meenathal and her husband seeking the relief of declaration, mandatory injunction, permanent injunction and recovery of possession in respect of the very same property.

2. The suit property measures 297 sq.ft (east-west 27 feet x north-south 11 feet) and is comprised in T.S.No.1009/1A1A1A1A2 in Ward No.3, Andavar Poonga in Palani. The case of the appellants is that the suit property as well as the adjacent lands originally belonged to one Alliammal @ Rajalakshmi. She conveyed 1012 ½ sq.ft. of land in favour of one Muthammal vide Ex.A.2 dated 08.06.1983. Muthammal passed away and her legal heirs sold what was purchased under Ex.A.2 vide Ex.A.4 dated 25.06.1999 in favour of Meenathal. The suit property lies in the middle of the portions conveyed under Ex.A.2 as well as Ex.A.4.

3. The case of Meenathal is that the suit property is actually a lane and that it is appurtenant to what was purchased by her under Ex.A.4 and that it absolutely belongs to her for her exclusive use and enjoyment and that it cannot be alienated. On the other hand, the stand of Chinnaasamy is that the suit property is not a lane, but is an independent piece of land by itself and that the title holder, namely, Alliammal @ Rajalakshmi sold the same in his favour vide sale deed dated 27.01.2000 (Ex.B.3). Since the suit property was purchased by Chinnaasamy under Ex.B.3 and since Meenathal asserted claim over the same, the institution of these suits became necessary. While Chinnaasamy filed written statement controverting the claim of Meenathal, Meenathal and Kandasamy filed written statement controverting the claim of Chinnaasamy. Since both the suits pertained to one and the same property, they were tried together. Kandasamy was examined as P.W.1 on behalf of Meenathal and Ex.A.1 to Ex.A.6 were marked. Chinnaasamy examined himself as D.W.1 and Ex.B.1 to Ex.B.5 were marked. An Advocate Commissioner was appointed and his report and plan were marked as Court Ex.C.1 and Ex.C.2. The learned trial Judge after a consideration of the evidence on record, vide judgment and decree dated 31.02.2006 decreed the suit filed by Chinnaasamy and dismissed the suit filed by Meenathal. Aggrieved by the same, A.S.No.29 of 2006 was filed by Meenathal and her husband Kandasamy. Meenathal also independently filed A.S.No.34 of 2006. Both the appeals were heard together and by judgment and decree dated 12.01.2007, the first appellate Court dismissed the same. Challenging the dismissal of the first appeals, these second appeals came to be filed.

4. The second appeals were admitted on the following substantial questions of law:-

"1. Whether the Courts below are right in relying upon Ex.B.3 sale deed in respect of the suit property, which came into existence over a period of 17 years from the date of sale under Ex.A.2?



2. Whether the Courts below are right in not considering the document that vendor of the respondent under Ex.B.3 has no right to alienate the suit property after the sale deed in favour of the appellant's vendor under Ex.A.2? "

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5. Heard the learned counsel appearing for the appellants and the learned Senior counsel appearing for the respondent.

6. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants. He wanted the suit filed by Meenathal to be decreed and the suit filed by Chinnasamy to be dismissed. He took me through the description of the property set out in Ex.A.2 which is the parent document filed by the appellants. In Ex.A.2, Alliammal @ Rajalakshmi while conveying the properties no doubt had mentioned the suit property as one of the boundaries. But then, it has been described as a lane. From this, one can easily come to the conclusion that the vendor had virtually passed on its usage for the exclusive benefit of the purchaser. The learned counsel would highlight the fact that this is amplified by the execution of Ex.B.4 license deed dated 20.11.1986 executed by Alliammal @ Rajalakshmi in favour of Muthammal. He called upon this Court to take note of the conduct of the respondent herein. The respondent herein had earlier purchased the very same property from a person who had no title. In fact Meenathal had filed O.S.No.487 of 1999 on the file of the District Munsif, Palani, seeking the relief of injunction against another person and the same was also duly decreed as evident by Ex.A.5 dated 30.07.2004. He would harp on the fact that the constructions put up by the appellants are very old and accordingly an Advocate Commissioner submitted his report and plan and that there are windows and doors opening towards the suit property. The learned counsel invoked Section 8 of the Transfer of Property Act, 1882. According to him, when Alliammal @ Rajalakshmi executed Ex.A.2 sale deed dated 08.06.1983 in favour of Muthammal, she also transferred all the interests in the suit property.

7. Per contra the learned Senior counsel appearing for the respondent submitted that the Courts below have concurrently found against the appellants and that no substantial question of law arises for consideration. He called for dismissal of the second appeal.

8. I carefully considered the rival contentions and went through the evidence on record.

9. The invocation of Section 8 of the Transfer of Property Act appears to be clearly misplaced. Section 8 of the Transfer of Property Act, 1882 reads as follows:-

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



"8. Operation of transfer.—Unless a different intention is expressed or necessarily implied, a transfer of property passes forthwith to the transferee all the interest which the transferor is then capable of passing in the property, and in the legal incidents thereof.

Such incidents include, where the property is land, the easements annexed thereto, the rents and profits thereof accruing after the transfer, and all things attached to the earth;

and, where the property is machinery attached to the earth, the moveable parts thereof;

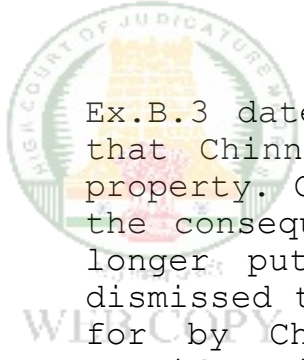
and, where the property is a house, the easements annexed thereto, the rent thereof accruing after the transfer, and the locks, keys, bars, doors, windows and all other things provided for permanent use therewith;

and, where the property is a debt or other actionable claim, the securities therefor (except where they are also for other debts or claims not transferred to the transferee), but not arrears of interest accrued before the transfer;

and, where the property is money or other property yielding income, the interest or income thereof accruing after the transfer takes effect."

10. As per the said provision, when a property is transferred, all the legal incidents attached to the property will also be passed in favour of the purchaser. The moot question is whether the suit property can be considered as an indefeasible part of what was sold under Ex.A.2/Ex.A.4. The case of the appellants is completely undermined by the license deed dated 20.11.1986(Ex.B.4) executed in favour of Meenathal's vendor, namely, Muthammal by Alliammal @ Rajalakshmi. More than anything else, the learned Senior counsel appearing for the respondent would draw my attention to Ex.B.5 dated 17.09.1999. It is a rental agreement entered into between the appellant Meenathal and the original owner Alliammal @ Rajalakshmi. Under Ex.B.5, Meenathal had been inducted as a lessee in respect of the suit property. If according to Meenathal, the suit property is an indefeasible part of what was purchased by her under Ex.A.4 dated 25.06.1999, there was no need for her to enter into a lease agreement in respect of the suit property. The execution of the license deed in favour of Muthammal and the execution of the rental agreement in favour of the appellant Meenathal would clearly show that the suit property is an independent piece of land by itself.

11. A reading of Ex.A.2 as well as Ex.A.4 would clearly show that the suit item was not purchased by the appellant Meenathal. What was purchased was only the adjacent land lying to the north of the suit property. Under Ex.A.4, the appellant Meenathal did not get any title over the suit property. It was Chinnaasamy who had purchased it from the original owner Alliammal @ Rajalakshmi under



Ex.B.3 dated 27.01.2000. Therefore, the Courts below rightly found that Chinnasamy is entitled to be declared as owner of the suit property. Once the suit property is found to belonged to Chinnasamy, the consequences will have to necessarily follow. Meenathal can no longer put up any encroachment. The Court below has correctly dismissed the suit filed by Meenathal and granted the reliefs sought for by Chinnasamy. No substantial question of law arises for consideration in this appeal.

12. It is seen from the Advocate Commissioner's report and plan that there are two commercial shops being run on the two portions purchased under Ex.A.4 are having doors opening on the western side. The shops run by the appellants are situated on the western side by what is known as "Poonga Theru". Of course the appellants cannot be restrained from having windows on the structures put by her on her land. Chinnasamy of course has to use the suit property in conformity with the local body regulations. The substantial questions of law are answered against the appellants. The impugned judgment and decree is confirmed.

13. These second appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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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.

To:

1. The Subordinate Judge,
Palani.
2. The District Munsif,
Palani.



3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.D.VENKATESH, Advocate (SR-28890[F] dated 13/09/2021)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-28736[F] dated 09/09/2021)
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TP (CO)

GC(14.02.2022) 6P 7C