



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.12.2021

CORAM

WEB COPY

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.151 of 2011

and

M.P(MD)No.1 of 2011

1.Esakkidass
2.Radhakrishnan
3.Bahadhoor Ramiah
4.Irulapparaja
5.Kalyani

... Appellants/Appellants/Defendants

Vs.

Paranjothi

... Respondent/Respondent/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 06.08.2010, passed in A.S.No.15 of 2010 on the file of the Principal Sub Court, Tirunelveli, confirming the judgment and decree, dated 15.10.2009, passed in O.S.No.210 of 2005 on the file of the First Additional District Munsif Court, Tirunelveli.

For Appellants : Mr.R.T.Arivukumar
for Mr.R.Manimaran

For Respondent : Mr.S.Balasubramanian

JUDGMENT

The concurrent Judgments and decrees passed in O.S.No.210 of 2005 by the First Additional District Munsif Court, Tirunelveli and in A.S.No.15 of 2010 by the Principal Sub Court, Tirunelveli, are being challenged in the present Second Appeal.

2. The respondent / plaintiff has instituted a suit in O.S.No.210 of 2005, on the file of the trial Court seeking for the relief of permanent injunction regarding the second schedule property, wherein, the present appellants have been shown as defendants

3. The respondent / plaintiff instituted the suit seeking for permanent injunction regarding the court-yard and the disputed property is described as a common court-yard and claimed to have exclusive title by virtue of Ex.A.2 and Ex.A.3. The specific case of

the respondent/plaintiff is that he is having only right of easement alone. The trial Court decreed the suit. Against which, the appellants / defendants filed an appeal suit in A.S.No.15 of 2019 before the first appellate Court. The first appellate Court dismissed the appeal suit confirming the Judgment and decree passed by the trial Court. Against the Judgment and decree passed by the first appellate Court, the appellants / defendants have filed this second appeal.

4. It is the submission of the learned counsel appearing for the appellants/defendants that both the Courts below have failed to note the correct measurements of their property described in Ex.B.3-registered Will in and by which, they are entitled to the property including Southern portion of disputed court-yard area.

5. As per the suggestion of this Court, the parties have entered into a common understanding and the appellants have filed an affidavit and the same reads as follows:-

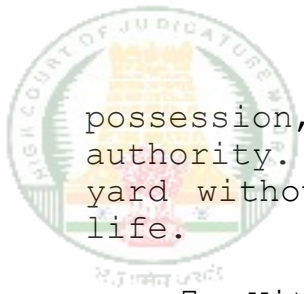
"1.I humbly submit that I am the third appellant in this Second Appeal. I am well conversant with the facts of the case.

2.I humbly submit that the common court-yard is my front portion. As per Ex.B.1 (Will) I also have the undivided half right over the suit schedule property. I humbly submit that as per the Will and also Municipal Survey report and map and as my properties North-South measurement 14.5 feet (5-1/4 தச்சு முளம்) .

3.I further submit that since the suit schedule property common court yard belongs both to the appellants and the defendant and the respondent having undivided half share, in the common court yard. I submit that the plaintiff/respondent should not claim any right measuring 3 feet lying adjacent to my house. Moreover, the respondent/plaintiff should not claim exclusive right over the suit schedule property (common court yard) and do not disturb my right and enjoyment.

4.I humbly undertake that the suit schedule property will be used as common court yard without interference of any right of enjoyment over the respondent/plaintiff and the same should be the undertaking to be given by the respondent/plaintiff."

6. In view of the above, both the parties are directed to use the said common court-yard jointly and not to disturb the easementary right of each other and the parties can park their two-wheelers in the said area and nobody can claim absolute right over the said property. If anybody is trying to disturb the said



possession, the parties are at liberty to approach the competent authority. The tenants, if any, are also to enjoy the said courtyard without any hindrance. Both parties to maintain a harmonious life.

7. With these observations, the Second Appeal is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ps

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.

ENCL: copy of affidavit

To

- 1.The Principal Sub Judge,
Tirunelveli.
- 2.The First Additional District Munsif Court,
Tirunelveli.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.MANIMARAN, Advocate (SR-40266[F] dated 23/12/2021)

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SR(CO)
KB(16.02.2022) 3P 6C