



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2021

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.978 of 2011 and

M.P.(MD)No.2 of 2011

WEB COPY

1. M.A.Ravi
2. Uma Maheswari

... Appellants/Respondents 1 & 2/
Defendants 1 & 2

Vs.

1. R.Saratha
2. M.P.Mohana Sundar
3. Valli Selvi

... Respondent/Appellant/Plaintiff
... Respondents/Respondents 3&4/
Defendants 3 & 4

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 27.01.2009 made in A.S.No.3 of 2006 on the file of the Principal Sub Court, Dindigul preferred against the Judgment and Decree dated 09.07.2002 made in O.S.No.179 of 1997 on the file of the District Munsif cum Judicial Magistrate, Veda sandur.

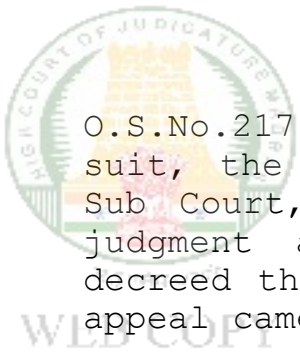
For Appellants : Mr.R.Ramadurai
For R-1 : Mr.K.S.Durai Pandian
For R-2 & R-3 : No appearance.

J U D G M E N T

Defendants 1 and 2 in O.S.No.179 of 1997 on the file of the District Munsif Court, Veda sandur, are the appellants in the second appeal.

2. The first respondent, namely, Ms.Saratha filed the said suit seeking the relief of declaration that the property in question belongs to her in common and she also prayed for the relief of permanent injunction for restraining the defendants from interfering with her enjoyment of the suit property. The suit property is a lane comprised in Survey Nos.2412/9 and 2411/23 measuring 3.6 feet on the east-west side and 148 feet on the northern side.

3. The plaintiff also filed yet another suit in O.S. No.217 of 1998 before the very same Court. Defendants filed written statement denying the plaint averments and the suit claim. Both the suits were taken up together and by common judgment and decree dated 09.07.2002, O.S.No.179 of 1997 was dismissed, while



O.S.No.217 of 1998 was decreed. Aggrieved by the dismissal of her suit, the plaintiff filed A.S.No.3 of 2006 before the Principal Sub Court, Dindigul. The first appellate Court by the impugned judgment and decree dated 27.01.2009 allowed the appeal and decreed the suit as prayed for. Questioning the same, this second appeal came to be filed.

4. The second appeal was admitted on the following substantial questions of law:-

"a) Whether the non-filing of appeal as against the decree passed in O.S.No.217 of 1998 on the file of the District Munsif cum Judicial Magistrate Court, Veda sandhur will operate as res judicata as against the respondents since the trial Court by a common judgment dated 09.07.2002, decreed the said suit and dismissed the suit in O.S.No.179 of 1997? and

b) Whether the judgment of the lower appellate Court is sustainable, when the plaintiff's vendor has self created right by virtue of Ex.A.3 without any pre-existing right in the suit property?"

5. Heard the learned counsel on either side.

6. The learned counsel appearing for the appellants submitted that the plaintiff claimed her right through Ex.A.1 to Ex.A.7. Admittedly Ex.A.1 is the oldest document from which the title can be traced. As per the description given in the said document, the property is bounded on the south by the property belonging to Meenakshi Iyer. Only for the first time, through Ex.A.3 dated 29.03.1960, there is a reference to the common lane situated on the southern side. The pointed contention urged by the learned counsel appearing for the appellants is that a non-existent right cannot be created for the first time by giving misleading boundary description. The learned counsel also would point out that as per the parent deeds of the plaintiff, the property measures 39 feet on the western side. The plaintiff is presently having a house bearing door No.31/20, Swarnam Tower, Vadamadurai, Dindigul District, situated north of the suit lane. Even according to the plaintiff, they have left 3 feet lane on the western side. If the impugned decree is sustained, the plaintiff will have 3 feet extra on the western side. He submitted that the Courts below have failed to take note of these aspects. He prayed for answering the substantial questions of law in favour of the appellants and for setting aside the impugned judgment and decree passed by the first appellate Court.

7. Per contra the learned counsel appearing for the plaintiff would submit that the impugned judgment passed by the first appellate Court does not call for any interference.



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

9. The plaintiff examined herself as P.W.1 and a resident of the locality, namely, Dhandapani as P.W.2. Ex.A.1 to Ex.A.18 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B.1 to Ex.B.13 were marked. An Advocate Commissioner was appointed and his sketch and plan were marked as Ex.C.1 and Ex.C.2. The revenue records were also marked.

10. The property originally belonged to one Muthan Servai and he sold the same in favour of Varadharaju Iyer vide Ex.A.1 dated 10.08.1926. The said Varadharaju Iyer in turn sold the same to Nagalinga Nadar vide Ex.A.2 dated 20.04.1932. Nagalinga Nadar passed away and the property devolved on his wife Sornathammal. Sornathammal executed a sale deed vide Ex.A.3 dated 29.03.1960 conveying a portion of the northern side of the property in favour of Damayandhi Ammal. But in the boundary description, there is a reference to the suit lane. The plaintiff Saradha is none other than the daughter of Damayandhi Ammal. The plaintiff claims right over the property in question by virtue of Ex.A.3 dated 29.03.1960 and the Will executed by Sornathammal vide Ex.A.6 dated 06.12.1991.

11. The only question that arises for my consideration is to whether the lane on the southern side of the property is the exclusive property of the defendants or it is a common lane.

12. As already mentioned above in the title deeds of the defendants, the northern boundary has been described as the house of Sornathammal. However, it is beyond dispute that during UDR a sub division took place and the suit property was described as a lane and it is comprised in survey Nos.2412/9 and 2411/23. That the suit property bore the character of a lane even in the year 1960 is evident from Ex.A.3. Of course, as rightly contended by the learned counsel appearing for the appellants, if the property did not belong to Sornathammal, Sornathammal could not have described it as a common lane. There is considerable merit in the contention of the appellants' counsel that by an unilateral description of the southern boundary, the property cannot be converted as a common property. Even though I have to answer the first substantial question of law in favour of the appellants, the appellants have one formidable difficulty. P.W.2 who was an attester of Ex.A.3 had also mentioned that the suit property was always used as a common lane. Atleast for more than forty years prior to the institution of the suit, the suit property bore the character of a lane. That is why in the UDR, it was described and described as a lane. If the defendants felt



aggrieved by the same and if according to them, it is their exclusive property, the defendants ought to have instituted a civil suit for declaration that it is their exclusive property. They have not done so. That apart, as noted by the first appellate Court, the defendants have not established their case with reference to their title documents that the suit property also falls within their boundary.

13. For these two reasons, I have to necessarily hold that the suit property will have to be maintained as a common lane only. This is all the more so because, the house of the plaintiff has a door on the southern side facing the suit lane. Therefore, the character of the property will have to be maintained as a lane.

14. In this view of the matter, the judgment and decree passed by the first appellate Court are confirmed. The second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// 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.

To:

1. The Principal Sub Judge, Dindigul.
2. The District Munsif cum Judicial Magistrate, Vendasandur.

Copy to

The Record Keeper, V.R. Section,

Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.RAMADURAI, Advocate (SR-20943[F] dated 02/07/2021)

S.A. (MD) No. 978 of 2011

01.07.2021

NA (CO)

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