



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2021

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THE HONOURABLE MR.JUSTICE **R. SUBRAMANIAN**

S.A. (MD)No.725 of 2020

and

C.M.P. (MD)No.7458 of 2020

1.K.Chinnarasu

2.Kalavathi : Appellants/Appellants/Plaintiffs

Vs.

A.Samikannu (Died)

1.S.Dhanuskodi

2.S.Rathinam

3.S.Mani

4.S.Saraswathi

5.S.Pushpam

6.S.Sagunthala : Respondents/Respondents/Defendants

PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree, dated 01.02.2020 made in A.S.No.08 of 2017 on the file of the Subordinate Court, Uthamapalayam by confirming the judgment and decree, dated 30.11.2016 passed in O.S.No.302 of 2010 on the file of the District Munsif Court, Uthamapalayam.

For Appellants

:Mr.P.Santhoshkumar

JUDGMENT

The plaintiffs in O.S.No.302 of 2010, whose suit for declaration and mandatory injunction was dismissed by the trial Court upon affirmation by the appellate Court, have come with this second appeal.

2.The suit was laid by the plaintiffs against the deceased first defendant alone claiming the aforesaid reliefs contending that the suit second schedule property, which is situated on the West of the suit first schedule property, is a pathway meant for



the plaintiffs to reach the suit first schedule property from the North-South road situated on the West. The plaintiffs relied upon the sale deed of the year 1981, under which the first plaintiff had purchased the house situated in S.Nos.646/5 and 6. The boundary description in the said instrument shows that the property sold under the document is bounded on the North by a passage leading to the property of the husband of the purchaser. The settlement deed executed by the first plaintiff in favour of the second plaintiff in respect of the property situated in S.Nos.646/5 and 6 was produced as Ex-A2 to buttress their contention.

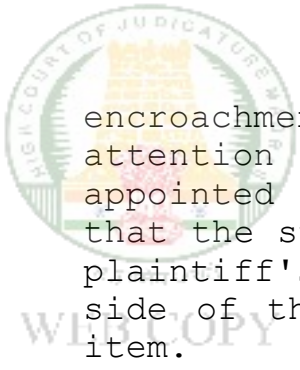
3.The suit was resisted by the defendants contending that the suit second item forms part of the defendants' house situated in S.Nos.646/5 and 6 and the plaintiffs have no right over the same.

4.At trial, the first plaintiff was examined as PW-1, one Krishna Samy was examined as PW-2 and Ex-A1 to Ex-A11 were marked. The second defendant was examined as DW-1, one Sheik Alavudeen was examined as DW-2 and Ex-B1 to Ex-B4 were marked. A Commissioner was appointed by the trial Court. He inspected the property along with the Surveyor and filed his report and plan along with the Surveyor's plan also. Those documents were marked as Ex-C1 to Ex-C5.

5.Upon a consideration of the evidence on record, the learned Trial Judge concluded that the description in Ex-A1 and Ex-A2 alone cannot confer a right on the plaintiffs. He also took note of the recitals in Ex-B1, sale deed, dated 09.07.1973, in and by which, the vendor of the plaintiffs had purchased the property situated on the South of the suit second item in S.Nos.646/5 and 6, which shown that the said property is bounded on the North by the property of Swami Khannu, deceased defendant. The recitals in Ex-A2 were also taken note of by the trial Court to disbelieve the claim of the plaintiffs. On the said findings, the learned Trial Judge dismissed the suit. Aggrieved, the plaintiffs preferred an appeal in A.S.No.8 of 2017. The appellate Court, upon a reconsideration of the evidence on record, concurred with the findings of the trial Court and dismissed the appeal. Hence, the second appeal.

6.I have heard Mr.P.Santhosh Kumar, learned Counsel for the appellants.

7.Mr.P.Santhosh Kumar, learned Counsel for the appellants would vehemently contend that the Courts below were not right in relying upon the recitals in Ex-B1 to negative the claim of the plaintiffs. He would also contend that "PQRS" Wall shown by the Commissioner to be existing in the suit second item is an



encroachment made by the deceased first defendant. Drawing my attention to the physical features noticed by the Commissioner appointed by the Trial Court, the learned Counsel would submit that the suit second item served as a pathway to enable the second plaintiff's husband to reach his property situated on the Eastern side of the suit second item, which was shown as the suit first item.

8.I have considered the submissions of the learned Counsel appearing for the appellants.

9.The plaintiffs have sought for the relief of declaration of title, permanent and mandatory injunctions on the ground that the suit second item served as a pathway to the suit first item. It is for them to establish the said fact. The entire case of the plaintiffs rested on the recitals in Ex-A1 and Ex-A2. Ex-A1 is the sale deed, under which the second plaintiff had purchased the property situated on the South of the suit second item, which is shown as the plaintiff's house in the Commissioner's plan. The boundary description in the said document reads as follows:

“ஹை தங்கள் கணவர் சின்னராஜ் அவர்கள் தோட்டத்திற்கு சேல்லும்
கிழமேல் வண்டியாதை”

10.Ex-A2 is a settlement deed executed by the first plaintiff in favour of the second plaintiff on 03.11.1994. The boundary recitals in Ex-A2 depicts the North boundary as land belonging to the first plaintiff. Noticing this varying description in the document filed by the plaintiffs themselves and the description in Ex-B1, the antecedent document, the Courts below have concluded that the plaintiffs have not made out the case pleaded by them.

11.Apart from the above, the Courts below have also taken note of the physical features, as demonstrated by the Commissioner's report and plan. The suit second schedule property measures about 30 feet width and about 36 feet in length. At no stretch of imagination can such a property be said to be a pathway leading to the land, which is situated on the Eastern side. The Commissioner has also found that there is a shed constructed by the first defendant shown as “PQRS” in his plan. There is also a Neem tree in the middle of the said so called passage. These findings of the Commissioner have not been objected to by the plaintiffs.

12.In view of the above, I am unable to conclude that the factual findings of the Courts below based on documentary evidence, that is made available to them, can be said to be perverse. Despite his best efforts, the learned Counsel for the appellants is unable to make out a question of law, much less a substantial question of law to enable me to entertain the appeal.



The appeal, therefore, fails and it is accordingly dismissed without being admitted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

Cmr

To

1.The Subordinate Judge, Uthamapalayam.

2.The District Munsif, Uthamapalayam.

3.The Section Officer-2 copies

V.R.Section,

Madurai Bench of Madras High Court,

Madurai.

Judgment made in
S.A.(MD)No.725 of 2020
02.02.2021

KM (25.02.2021) 4P 5C