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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	04/02/22
PRONOUNCED ON	:	29.03.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

SECOND APPEAL No.827 OF 2007
AND M.P.No1 of 2007

M.Thangavel ... Appellant/ Respondent/
Defendant

vs.

1) R. Manickam

2) M.Dhanalakshmi ... Respondents/ Appellants/
Plaintiffs

PRAYER: Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 31.10.2006 passed in A.S.No.107 of 2006 by the Learned Principal Subordinate Judge of Salem, partly allowing the Judgment and Decree dated 04.04.2006 passed in O.S.No.677 of 2003 by the Learned Principal District Munsiff, Salem.

For Appellant : Mr.C.A.Diwakar

For Respondents : Mr.P.Jagadeesan

J U D G M E N T

This Second Appeal is preferred by the defendant in O.S.No.677 of 2003 as against the Judgment and Decree, dated 31.10.2006 passed in A.S.No.107 of 2006 by the learned Principal Subordinate Judge, Salem, wherein the first Appellate Court modified the Judgment passed by the trial Court and partly allowed the first appeal filed by the plaintiffs holding that the plaintiffs are entitled to get temporary injunction only, their enjoyment cannot be disturbed in the common lanes 1 and 2 by the defendant. As against the above Judgment of the first Appellate Court, this Second Appeal is filed by the defendant/appellant.

2. The respondents herein are the plaintiffs in O.S.No.677



of 2003. The plaintiffs filed the suit for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property.

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(a) As per the plaint averments, suit properties belonged to the plaintiffs by virtue of sale deeds, dated 23.08.1995, 24.05.2002 and 24.05.2002 respectively. The properties are the house properties and the actual suit properties are two common lanes. Since the purchase of the properties, the plaintiffs are in possession and enjoyment of the suit properties.

(b) The two lanes i.e., subject matter of suit viz., the first one is on the eastern side of the house of the defendant upto the house of the 1st plaintiff and 2nd plaintiff towards south and the 2nd lane is on the western side of the house of the defendant upto the house of the 1st plaintiff towards south. On the 2nd lane and on the southern side of the house of the defendant, the house of the plaintiffs are situated. The lanes are used both by the plaintiffs and the defendant and also by the other house owners and tenants on both sides of both lanes.

(c) Since the defendant is having the right of drainage from backside of his house, he is using the common lane upto the ditch of Sathiyamoorthy Street. Since dried clothes sometimes fall inside the ditch, the defendant is attempting to erect doors at the centre of both the lanes between Sathiyamoorthy street and the Raja Vaikkal odai. According to the plaintiffs, the defendant and his family members along with rowdy elements threatened the plaintiffs and tried to erect doors at the centre of both the common lanes.

(d) The plaintiffs therefore, filed the above suit stating the defendant should be restrained from interfering with the peaceful possession and enjoyment of the properties of the plaintiffs by means of permanent injunction.

3. The appellant herein/defendant filed written statement before the trial Court admitting that the suit properties are the house property and two common lanes and the plaintiffs purchased the house property on 24.05.2002. The defendant submitted that the common lane is useful to both plaintiffs, defendants and one Gnanaprakasam. But the plaintiffs encroached the lane to the measurement of 5 x 41 feet. Even according to the plaintiffs' sale deed, lane is common to the plaintiffs and



defendant and one Gnanaprakasam and his brothers. Since the lane is a common property the plaintiffs cannot purchase that common easementary right. Drainage water is going through the lane. The defendant denied the the plaintiffs' allegation that the defendant threatened the plaintiffs.

3.1. According to the defendant, he is entitled to have any number of doors on his east and west sides of the walls and it will never create any problem. There are 12 windows on both the walls of the defendant's property facing towards both the common lanes.

4. The trial Court framed the following issues for consideration:-

- (i) Whether the plaintiff is entitled to the relief of permanent injunction?
- (ii) Whether the description of property is correct?
- (iii) To what relief the plaintiff is entitled to?

5. After detailed analysis of oral and documentary evidence let in by both sides, the trial Court answered the issues framed and held that permanent injunction cannot be granted to the plaintiffs against the co-owner. It is held that the plaintiffs failed to establish that the defendant attempted to give disturbance over the suit lane. The description of property is correct. The plaintiffs had no locus standi to agitate the suit 1 and 2 lane as they purchased the property along with common right over the suit lane 1 and 2.

6. Aggrieved by the said Judgment, the plaintiffs filed an Appeal before the 1st Appellate Court raising the ground that the drainage water the defendant directly goes to Sathiyamoorthy street from his house and the defendant is not having any right over the two lanes.

7. The first Appellate Court, after going through the entire evidence and the Judgment of the trial court, found that the right of the lanes 1 and 2 are common to all and nobody have any right to prevent or obstruct others. But since the enjoyment of the plaintiffs of the common lane is disputed, the plaintiffs are entitled to temporary injunction until the plaintiffs or the defendant proved their absolute title to the disputed common lanes 1 and 2. The First Appellate Court further pointed out that since the tenants of the plaintiffs are residing in the suit property, their rights in usage of common lanes 1 and 2 must be protected, but permanent injunction cannot be granted against the co-owners viz., the defendants herein. But the plaintiffs are entitled to get temporary injunction, their



enjoyment cannot be disturbed.

8. The First Appellate Court, therefore, modified the judgment of the trial Court to the effect that the plaintiffs are not entitled for permanent injunction but entitled to get temporary injunction only, their enjoyment cannot be disturbed in the common lanes 1 and 2 by the defendant.

9. Aggrieved over the Judgment of the First Appellate Court, the defendant has come up with the present Second Appeal.

10. In the grounds of Second Appeal, the defendant/appellant raised the points that the lower Appellate Court failed to appreciate that the respondent having admitted in the plaint that the suit properties are common lanes in which both the appellant and the respondents have an equal right of enjoyment, a suit for permanent injunction will not lie against the appellant. The lower Appellate Court failed to appreciate that the appellant had purchased his property under Ex.B.1 along with right of enjoyment of suit property even before the respondents and the respondents cannot claim any exclusive right of possession and enjoyment of the same. The learned First Appellate Court failed to appreciate that P.W.3 who is the vendor of the appellant, in his evidence, deposed that the two lanes are of a width of 5 feet and a length of 105 feet on the Eastern and Western side of the appellant's property and that these lanes are common passage which the appellant is entitled to enjoy in common with the other owners.

10.1 The lower Appellate Court failed to appreciate that no evidence has been brought on record by the respondents to substantiate the allegation that the appellant had sought to put up any obstruction in the common lanes. The lower Appellate Court failed to appreciate that the appellant and the respondents are co-owners of the common lanes along with the other owners and therefore, there cannot be an injunction either permanent or temporary against a co-owner. The lower Appellate Court failed to appreciate that none of the allegations in the plaint has been substantiated by either documentary or oral evidence by the respondents and that the suit had therefore, been rightly dismissed by the trial court. The lower Appellate Court erred in granting the relief of temporary injunction based on findings, which are not supported by pleadings, oral evidence or documents. The lower Appellate Court erred in deviating from the issue before it and granting temporary injunction based on its own presumptions that the parties may approach a competent court for a declaratory prayer with respect to the title over the common lanes. The lower Appellate Court failed to appreciate the finding of fact recorded by the Advocate Commissioner. The reasons assigned by the lower Appellate Court are erroneous and



therefore, it is liable to be set aside.

11. Heard the learned counsel appearing on both sides and perused the records carefully.

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12. The plaintiffs have filed the suit for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the lane situated in the suit property. The allegation of the plaintiffs is that the defendant wanted to install doors at the centre of the first and second lanes. Thus, the defendant wanted to prevent the enjoyment of the suit property by the plaintiffs. The plaintiffs claim title to the property by virtue of the sale deeds, dated 23.08.1995 and 24.05.2002. The plan attached to the plaint shows that there are lanes, one on the eastern side and another on the western side of the defendants' property. This lane is to the western side of the property of the plaintiffs and to the northern side of another property of the plaintiffs.

12.1. The case of the plaintiffs is that the defendant is not the owner of the lane and therefore, the defendants have no right over the lanes. The defendant has disputed the correctness of the plaintiffs' plan. The defendant claims that the two common lanes are on both sides, that is, to the east and west sides of the house of the defendant and it is extended from Sathiamoorthy Street towards south upto Rajavaikal Odai.

12.2. It is stated that on the eastern side of the common lane, an iron gate had been erected by the defendant in the year 1995. The case of the defendant is that it is the plaintiff who is locking that gate and preventing the entry of the defendant into the common lane. The cause of action for the suit itself is disputed. The necessity of filing the suit itself is doubted. The defendant has pleaded for dismissal of the suit.

13. Before the trial Court, each of the plaintiffs have been examined as P.W1 and P.W 2 witness by name Maruthapillai as P.W3. Eight documents have been exhibited. On the side of the defendant, two witnesses have been examined and four documents have been filed. An Advocate Commissioner has been appointed and he has also filed his report along with rough plan and report. The trial Court framed three issues:-

(i) whether the plaintiffs are entitled to permanent injunction?

(ii) whether the description of the suit property is correct?

(iii) to what relief are the plaintiffs entitled to?

14. The trial Court has given a finding that the suit lanes on both sides of of the house are common and that the plaintiffs



did not prove alleged obstruction by the defendant. There is also a finding that no attempt was made by the defendant to disturb the enjoyment of the suit lane by the plaintiffs. On this ground, the relief of permanent injunction has been refused. Challenging the findings, an appeal was filed by the plaintiffs in A.S.No.107 of 2006 and the First Appellate Court has modified the Judgement and Decree of the trial Court to the effect that the plaintiffs are not entitled for permanent injunction but to get temporary injunction only; the enjoyment in the suit lane one and two cannot be disturbed. Challenging this finding, the defendant has filed the Second Appeal raising the following substantial question of law:-

"Whether the Appellate Court is entitled to grant a temporary injunction, after having found that the relief of permanent injunction cannot be granted?

15. The main contention raised by the defendant is that the First Appellate Court is not right in granting temporary injunction when the same Court has stated that the plaintiffs are not entitled to permanent injunction. The second contention is that the First Appellate Court ought not have granted injunction when there is no proof to show that the defendant objected to the enjoyment of the property by the plaintiffs.

16. The perusal of the judgement of the First Appellate Court would go to show that the language employed by the First Appellate Court in describing the relief is not appropriate. What the Appellate Court intended to say is that the relief of injunction granted is limited to the establishment of plaintiffs' right to use the common lane and the relief of injunction is not granted to the extent of preventing the defendant from enjoying the right. The relief granted has to be understood by the holistic reading of the judgement and not by reading the paragraph pertaining to ultimate relief alone.

17. Perusal of the trial Court Judgement itself would show the scope and the nature of the problem between the plaintiffs and the defendant that has not been properly explained with a legal flavour. The trial Court in the judgement has pointed out the admission made by P.W.1 in the proof affidavit and it reads as under:

"P.W.1 had also admitted in the proof affidavit in the chief examination that the two lanes are common to all".

18. The trial Court has also relied upon the recitals with regard to boundary under Ex.K8, where the description is that the lane on the east and west sides of the defendant's property is a common lane. Technically speaking, the contention raised by the



defendant is correct. When one person is not entitled to permanent injunction, he is not entitled to temporary injunction also. But, as explained earlier, the language employed is incorrect but the nature of relief granted is correct.

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19. Having regard to the discussions made in the judgement and the conclusions arrived at, perusal of the discussions by the trial Court as well as by the First Appellate Court would go to show that the distinction between ownership rights and easementary rights has been missed out. The relief of injunction as against the co-owner intersee and as against the owner viz-a viz the easement holder has not been properly pleaded and it has not been properly brought out in evidence. However, the report of the Commissioner clearly proves that the lanes are in common enjoyment. When the right to enjoyment is in common neither, the plaintiffs nor the defendant has any right to interfere with the right of enjoyment by each other. Though the defendant has pleaded that he did not interfere with such there is no necessity for the plaintiffs to approach the Court, if there is no cause of action. Therefore, it is made clear that the right to enjoyment of the common lane is for both the plaintiffs and the defendant and that both of them would not interfere with the rights of each other.

20. This Court expresses the hope that for trivial matter for which negotiations is sufficient both parties would not knock at the doors of this court. With these findings and observations, the Second Appeal stands disposed of. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CCC)

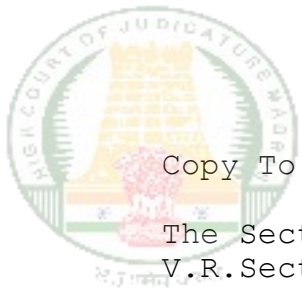
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Sub Assistant Registrar

RR/sts

To:

1. The Principal Sub-ordinate Judge,
Salem
2. The Principal District Munsif,
Salem.



Copy To:

The Section Officer,
V.R.Section, High Court, Madras.

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+2cc to Mr.P.Jagadeesan, Advocate, S.R.No.7145, 21231

+2cc to Mr.C.A.Diwakar, Advocate, S.R.No.208071

Second Appeal No.827 of 2007

SV(CO)
SB(28/06/2022)