



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.08.2022

Pronounced on : 01.09.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.1798 & 1799 of 2004

And

C.M.P.Nos. 14164 & 14165 of 2004

And

C.M.P.Nos. 10576 & 10577 of 2006

And

C.M.P.No. 2475 of 2007

S.A.No. 1798 of 2004:

1. M.K.Shanmugam (deceased)

2. P.Vijaya Kumar ... Defendant/Appellant/Appellant

Vs.

1. K.A.Muthusamy

2. K.A.Perumal

3. Karunakaran

4. Sellam

5. Pappa ... Plaintiffs/Respondents/Respondents

6. Pappa

7. Thailammal



8. Nallathambi

9. Ayyakannu

10. Pachamuthu

... Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 25.02.2004 in A.S.No. 5 of 2003 confirming the Judgment and Decree dated 20.11.1998 in O.S.No. 573 of 1988 on the file of the District Munsif Court, Sankari

S.A.No. 1799 of 2004:

1. M.K.Shanmugam (deceased)

2. P.Vijaya Kumar

... Plaintiff/Appellant/Appellant

Vs.

1. K.A.Muthusamy

2. K.A.Perumal

3. Pappammal @ Pappathi

4. Sellammal

5. Karunakaran

... Defendants 2 to 6/Respondents 2 to 6/Respondents 2 to 6

6. Pappa

7. Thailammal

8. Nallathambi

9. Ayyakannu



10. Pachamuthu

... Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 25.02.2004 in A.S.No. 38 of 2000 confirming the Judgment and Decree dated 20.11.1998 in O.S.No. 568 of 1988 on the file of the District Munsif Court, Sankari

For Appellant
in both Second Appeals : Mr. D.Shiva Kumaran

For 1st Respondent
in both Second Appeals : died

For RR 2 to 10
in both Second Appeals : Mr. P.Valliappan

COMMON JUDGMENT

The plaintiff, M.K.Shanmugam in O.S.No. 568 of 1988 on the file of the District Munsif Court at Sankari is the appellant in S.A.No. 1799 of 2004.

2. The said suit in O.S.No. 568 of 1988 had been filed by the



plaintiff M.K.Shanmugam against the defendant K.A.Muthusamy seeking permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property including letting out sewerage water in the suit property and for costs.

3. The suit property was described as a lane measured 1 ½ feet width and about 60 feet length to the North of the properties of the plaintiff and to the South of the properties of the first defendant.

4. The son M.K.Shanmugam was the defendant in O.S.No. 573 of 1988 again on the file of the District Munsif Court at Sankari and he is the appellant in S.A.No. 1798 of 2004.

5. The said suit in O.S.No. 573 of 1988 had been filed by the plaintiffs K.A.Muthusamy, K.A.Perumal and K.A.Kandasamy against the defendant M.K.Shanmugam seeking a declaration that the plaintiffs are the absolute owners of the suit property and for consequential injunction restraining the defendant from interfering with peaceful possession.

6. The suit property was against the same lane, but described as



measuring 3 feet width and 60 feet length with 1 feet depth ditch in the middle and to the south of the properties of the plaintiffs and north of the properties of the defendant.

7. By common Judgment in both the suits dated 20.11.1998, the District Munsif, Sankari, decreed O.S.No. 573 of 1988 and dismissed O.S.No. 568 of 1988.

8. Questioning the dismissal of O.S.No. 568 of 1988, the plaintiff M.K.Shanmugam filed A.S.No. 38 of 2000 and aggrieved by the decree granted in O.S.No. 573 of 1988, he filed A.S.No. 5 of 2003. Both the Appeal suits were filed in the Sub Court, Sankari. Both the Appeal suits were dismissed by common Judgment dated 25.02.2004.

9. Challenging the dismissal of the two appeal suits, the present second appeals have been filed. S.A.No. 1798 of 2004 had been filed against the Judgment in A.S.No. 5 of 2003 and S.A.No. 1799 of 2004 had been filed against the Judgment in A.S.No. 38 of 2000.

10. Both the Second Appeals had been admitted on the following



two substantial questions of law:-

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“1. When Ex.A-2, the sale deed clearly shows that the property covered by Ex.A-2 is subject to a lease in favour of one Mr.Venkataramana Naidu and that the plaintiffs in O.S.No. 573 of 1988 have to take possession after the expiry of lease and when P.W.1 clearly admits that he has not taken any possession from Venkataramana Naidu, are the Courts below correct in law in granting a decree for declaration and consequential injunction in favour of the plaintiff in the absence of any title or possession in respect of the property covered under Ex.A-2.?”

2. Are not the judgment and decree of the Courts below liable to be set aside for non consideration of Exs.B-1 to B-5 in their correct perspective?.”

11. Pending the appeal, the appellant died and his legal

representative was brought on record as the second appellant. The first



respondent K.A. Muthusamy also died and his legal representatives had been brought on record as 2nd to 8th respondents.

12. The appellant herein had filed O.S.No. 568 of 1988 seeking permanent injunction against the respondents herein from interfering with his peaceful enjoyment of the lane which was further north after his compound wall and which lane measured 1 ½ feet by 60 feet. The respondents herein had filed O.S.No. 573 of 1988 with respect to the very same lane but which was to the south of their properties, and which they had described as having a width of 3 feet. It is stated that the respondents were using the said lane as a drainage channel from the refresh room which they had constructed and which was used by them at the end of the lane.

13. Joint trial was conducted in both the suits and O.S.No. 573 of 1988 in which the relief sought was declaration of title and for permanent injunction was taken as the lead suit.

14. The appellant herein claimed right to use the lane consequent to purchase, according to him, of his properties, which also included the



lane by a sale deed dated 22.01.1986. He claimed that his vendor had been allotted the lane by a partition deed dated 17.10.1984. Claiming interference from the defendants, he had filed O.S.No. 568 of 1983. The defendants on the other hand claimed usage of the lane for their exclusive purpose from the date of their purchase of their properties. They purchased vacant land. They claimed that they had purchased their properties by three sale deeds dated 09.06.1960, 12.09.1963 and 26.06.1964. They denied the right of the appellant to use the lane.

15. Claiming that since the appellant had asserted a right to use the lane in O.S.No. 568 of 1988, the respondents filed O.S.No. 573 of 1988 seeking declaration of title and consequential injunction.

16. Written statement was filed by the appellant herein disputing the right of the respondents herein from using the lane.

17. As aforesaid, joint trial was conducted in both the suits. Necessary issues were framed. The plaintiff examined two witnesses and



the defendant examined one witness. The plaintiff marked Exs. A-1 to A-5. Ex.A-1 to A-3 were the three sale deeds, Ex.A-4 was copy of a partition deed and Ex.A-5 was the rough sketch. The defendants marked Exs. B-1 to B-11. Exs. B-1 to B-3 were three photographs, Ex.B11 was the partition deed dated 17.10.1984, where there is mention about the lane.

18. On consideration of the oral and documentary evidence, the District Munsif, Sankari, found as a fact that the suit property described as a lane was beyond the northern wall of the plaintiff in O.S.No. 568 of 1988 and also found that the respondents had constructed refresh rooms towards the end of the lane and that the lane was specifically used as a drainage channel from the refresh rooms. The sketch in the sale deed produced by the respondents was also examined and it was found that the lane belonged to the respondents and therefore, the District Munsif dismissed O.S.No. 568 of 1988 and decreed O.S.No. 573 of 1988.

19. This common Judgment led to the filing of two separate Appeal Suits in A.S.No. 38 of 2000 and A.S.No. 5 of 2003.



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20. The Sub Judge, Sankari, also decided to pronounce a common Judgment in both the appeal suits. This common Judgment was delivered on 12.02.2004. In the reasonings given in the Judgment, the Sub Judge found that at the time when Exs. A-1 to A-3 had been executed, the land purchased by the respondents herein was vacant land and therefore, there was no mention about the lane. Thereafter, the respondents had constructed their house on the northern side and had also put up a refreshment room and the drainage cum sewage water flowed through the lane. It was therefore observed that the respondents in Appeal suits were using the said lane and also having control over such usage.

21. It was also found that the appellant herein had produced Ex.B-4 sale deed and his property had been shown on the southern side of the lane, and there was compound wall as boundary and the lane was beyond the wall. It was therefore stated that the property of the appellant was to the south of the lane and therefore, the Sub Judge proceeded to dismiss both the appeal suits.



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22. This necessitated filing of the present two Second Appeals.

The Second Appeals had been admitted on the following two substantial questions of law:-

“1. When Ex.A-2, the sale deed clearly shows that the property covered by Ex.A-2 is subject to a lease in favour of one Mr.Venkataramana Naidu and that the plaintiffs in O.S.No. 573 of 1988 have to take possession after the expiry of lease and when P.W.1 clearly admits that he has not taken any possession from Venkataramana Naidu, are the Courts below correct in law in granting a decree for declaration and consequential injunction in favour of the plaintiff in the absence of any title or possession in respect of the property covered under Ex.A-2.?”;

2. Are not the judgment and decree of the Courts below liable to be set aside for non consideration of Exs.B-1 to B-5 in their



correct perspective?."

23. The appellant herein had suffered adverse orders before both the trial Court and the First Appellate Court on concurrent findings on fact. He had filed O.S.No. 568 of 1988 seeking permanent injunction restraining the respondents herein from interfering with peaceful possession and enjoyment of a lane which according to him measured 1 ½ feet in width and 60 feet in length. But this lane was beyond his northern compound wall. It was to the south of the properties of the respondents.

24. When the respondents purchased their properties under Exs. A-1, A-2 and A-3, the entire area was vacant land and therefore the lane was not specifically mentioned. But subsequently, the findings of the Court show that the respondents had put up their houses and had also put up refresh rooms in the corner of the lane and the drainage therefrom flowed on the ditch which according to the respondents was in the middle of the lane. The total width of the lane according to the respondents was 3 feet. The length was 60 feet.



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25. Both the Courts below had returned a concurrent finding of fact that the lane was exclusively used only by the respondents that the lane was used as a sewage canal by the respondents that the lane was to the north of the compound wall of the property of the appellants.

26. The first substantial question of law actually surrounds a fact which had not been pleaded. It is extracted from Ex.A-2 sale deed and it is claimed that in the sale deed it has been mentioned that the property was leased out. But it must be mentioned that the lane has been used only by the respondents. It could be used for any purpose.

27. In the instant case, it has been used as a sewage channel taking out water from the refresh rooms in one corner to the other end. It had never been used by the appellant. It is situated beyond the northern wall of the appellants' building. I would state that both the Courts below had correctly analysed the facts as given in the pleadings.

28. Exs. A-1, A-2 and A-3 had been produced to show that the respondents herein had exercised usage of the lane right from the



purchase. They may be called the prior users of the lane. The First Appellate Court had relied on Exs. B-1, B-2 and B-3 photographs and a perusal of the same shows that the lane is distinct from the property of the appellants and is to the north to the property of the appellants. It is not merged with the property of the appellants. The respondents having using the said lane primarily to let out sewage water generated from their refresh rooms. The concurrent findings of fact, in the absence of allegations of perversity can hardly be interfered with at this stage.

29. The second substantial questions of law surrounds alleged non consideration of Exs. B-1 to B-5. There is specific mention of Exs. B-1 to B-3 in the Judgment of the First Appellate Court. Exs.B-4 and B-5 are sale deeds of the years 1996 and 1994 but even in the plaint, the appellants claims title. The existence of the lane is Shown in Ex.B-11 partition deed dated 17.10.1984 but the respondents had purchased the property much earlier by Exs. A-1 to A-3, which are dated 08.06.1960, 12.09.1963 and 26.06.1964 respectively. The documents produced had been analysed by both the Courts below.

30. In view of the above discussion, I would answer the first substantial question of law holding that Ex.A-2 had been properly



considered by the Courts below and is a document of title recognising the title of the respondents herein and answer the second substantial question of law holding that the Courts below had actually considered the documents filed on behalf of the appellants herein.

31. In *Karnataka Board of Wakf v. Anjuman-E-Ismail Madris-Un-Niswan*, (1999) 6 SCC 343, it was held as follows by the Hon'ble Supreme Court :

“12. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 CPC is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material on record.

*“13. In *Ramanuja Naidu v. V. Kanniah Naidu* [(1996) 3 SCC 392] this Court held:*

“It is now well settled that concurrent



findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its jurisdiction under Section 100 of Civil Procedure Code. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did.”

“14. In *Navaneethammal v. Arjuna Chetty* [(1996) 6 SCC 166] this Court held:

“Interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappreciate the evidence just to replace the findings of the lower courts. ... Even assuming that another view is possible on a reappreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material.”

“15. And again in *Secy., Taliparamba Education*



Society v. Moothedath Mallisseri Illath M.N.
[(1997) 4 SCC 484] this Court held:

“The High Court was grossly in error in trenching upon the appreciation of evidence under Section 100 CPC and recording reverse finding of fact which is impermissible.”

32. In view of the above reasoning, it would be unwise to interfere with the concurrent findings on facts.

33. Both the Second Appeals stand dismissed with costs.

34. In the result,

i) The Second Appeals are dismissed with costs;

ii) The common Judgment and Decree dated 25.02.2004 in A.S.No. 5 of 2003 and A.S.No. 38 of 2000 on the file of Sub Judge, Sankari, is confirmed;

C.V.KARTHIKEYAN, J.

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iii) The common Judgment and Decree dated 20.11.1998 in O.S.No. 568 of 1988 and O.S.No. 573 of 1988 on the file of District Munsif Court, Sankari, is confirmed; and

(iv) Consequently, connected Civil Miscellaneous Petitions are closed.

01.09.2022

Index :Yes/No
Internet:Yes/No
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To

1. District Munsif Court, Sankari.
2. Sub Court, Sankari.

Pre-Delivery Judgment made in**S.A.No.1798 & 1799 of 2004****And****C.M.P.Nos. 14164 & 14165 of 2004****And****C.M.P.Nos. 10576 & 10577 of 2006****And****C.M.P.No. 2475 of 2007**