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S.A.No.987 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.09.2022

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

S.A.No.987 of 2005
and
C.M.P.No.13602 of 2005

1.M.Venkataraman
2.M.S.R.Anjaneyalu
3.M.B.Dattatreya

...Appellants

Versus

Kasturi Bai

...Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree in A.S.No.181 of 1996 on the file of the Fast Track cum Additional District Court, Madras and dated 29.08.2003, in confirming the judgment and decree in O.S.No.2640 of 1992 on the file of the VII Assistant City Civil Court, Madras and dated 26.03.1996.

For Appellants : Mr.V.Raghavachari
For Respondent : Mr.M.K.Kabir, Senior Counsel
For M/s.M.K.Padma



S.A.No.987 of 2005

JUDGMENT

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This Second Appeal has been filed against the judgment and decree dated 29.08.2003 made in A.S.No.181 of 1996 on the file of the Fast Track cum Additional District Court, Madras, confirming the judgment and decree dated 26.03.1996 made in O.S.No.2640 of 1992 on the file of the VII Assistant City Civil Court, Madras.

2. Aggrieved over the above said judgment, the appellants, who are the plaintiffs in the original suit in O.S.No.2640 of 1992, have come forward with the present Second Appeal. The respondent was the defendant in the said suit.

3. The original suit has been filed by the appellants herein seeking the following relief:-

a) for mandatory injunction directing the defendant/respondent to remove the door and window newly put up by her on the southern side of the wall on 21.08.1990; and

b) for permanent injunction restraining the defendant/respondent from



interfering with the plaintiffs peaceful possession and enjoyment of the suit passage except for repairing and white washing.

4. The dispute is with respect to the common passage that leads to the house site of the plaintiffs and the defendant from Bangaru Reddy Street. The defendant purchased the property in Plot No.1 from one Tara Ramamoorthy, vide sale deed dated 06.04.1981. In the sale deed, it has been stated that the said Tara Ramamoorthy retained the right over the suit schedule property, which is admittedly, a common passage, for the purpose of going to and coming from the street to the back side portion, for carrying out repairs and white washing.

5. The plaintiffs/appellants purchased the properties bearing Plot Nos.2, 3 and 4, vide separate sale deeds dated 19.02.1982 adjacent to that of the defendant's plot bearing Plot No.1. According to the plaintiffs, by virtue of the sale deed dated 06.04.1981, the common passage as retained and enjoyed by the vendor was transferred to the plaintiffs. The area of the common passage is described as below:-



S.A.No.987 of 2005

The passage measuring north to south on the eastern side 9' and western side 5'. East to west on the northern side 40', forming part of S.No.28/2, Block No. 10, T.S.No.81 forming part of D.No.63 A, B & C, Bangaru Reddy Street, Madras - 600 023.

- *On the North by respondent's property*
- *On the South by Sayani Talkies*
- *On the East by Vacant Land and*
- *On the West by Bangaru Reddy Street*

Situated within the Sub Registration District of Sembiam and in the Registration District of North Madras.

6. It is stated that the appellants/plaintiffs are in the southern side and the respondent/defendant intended to demolish a portion of the existing wall in the southern side and put up a door and window. Since the respondent/defendant has a door on the road, she has no right over the pathway. The said suit was dismissed by the trial court and on appeal, the appellate court confirmed the judgment and decree of the trial court.

7. The learned counsel for the appellants/plaintiffs would submit that the schedule mentioned property is a common passage and they have no



intention to interfere with the use of the said common passage by the respondent/defendant. Further, the southern side wall does not belong to the respondent/defendant and she is only entitled to white wash and carry out the repairs from time to time, but, she also put up the door and window.

8. The learned senior counsel for the respondent submitted that the appellants cannot claim right over the southern wall, however, he fairly submitted that the respondent has no objection for the appellants to use the common passage as stated in the schedule mentioned property. Therefore, he submitted that the suit was rightly dismissed and the first appellate Court also dismissed the appeal. He fairly submitted that recording the submission that the passage is a common passage, the present second appeal may be disposed of.

9. The learned counsel appearing for the appellants submitted that they have filed the suit for permanent injunction restraining the respondent not to interfere with the peaceful possession and enjoyment of the common passage by the respondent/defendant. As the suit schedule property is a common passage they are also entitled for using the property like the



respondent, but, the respondent/defendant made an attempt to demolish the southern side wall and put up the constructions. However, the learned senior counsel submitted that the wall exclusively belongs to respondent. Both the Courts below concurrently found that the wall belongs to the respondent and she is entitled to use that wall for repairing and white washing if they want to use it. But, however he fairly submitted that the respondent has no objection for the appellants to use the said common passage. The appellants also fairly submitted that in the event of the usage of the common passage is not restrained by the respondent/defendant, they have no issue and the same may be recorded.

10. This Court, while admitting the appeal, has framed the following substantial questions of law:

- a) Whether the findings of the Courts below are not against the sale deeds of the respective parties?
- b) Whether the Courts below are right in holding that the suit passage does not belong to these appellants when the common vendor of the appellants have given the title in their favour?



- c) Whether the Courts below are right in coming to a conclusion contrary to the pleadings and documents before it?
- d) Whether the Courts below are right in coming to a conclusion that the suit passage is the only way for the respondent when she has exit to the street right from her house?
- e) Whether the Courts below are right in presuming grant in the absence of indication of any recitals in the sale deed?

11. Though the above substantial questions of law were framed, however, in view of the submissions now made by the learned senior counsel for the respondent, who fairly accepted that the wall is exclusively belonging to the respondent and the respondent has no objection for the appellants to use the suit common passage, this Court holds that both the appellants and the respondent are entitled to use the common passage in the suit schedule mentioned property, nothing has been left in the Second Appeal to adjudicate and answer the substantial questions of law raised in this appeal.



S.A.No.987 of 2005

12. In view of the submissions of both the learned counsel, it is clear that if the suit schedule common passage is permitted to be used by both the parties with similar rights that would meet out the needs of both the parties.

13. Accordingly, this Court holds that both the appellants as well as the respondent are entitled to use the common passage in suit schedule mentioned property. Both the parties shall not interfere with the enjoyment of the common passage of the schedule mentioned property by each other. While using the common passage the enjoyment of the southern part of the wall by the respondent at any point of time shall not be disturbed by the appellants.

14. Accordingly, this Second Appeal stands disposed of. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

14.09.2022

Index : Yes/No
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S.A.No.987 of 2005

To

1. The Judge,
Fast Track cum Additional District Court,
Madras.
2. The Judge,
VII Assistant City Civil Court,
Madras.



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S.A.No.987 of 2005

KRISHNAN RAMASAMY, J.,

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S.A.No.987 of 2005

14.09.2022