



S.A.Nos.705 of 2011 & 1061 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.Nos.705 of 2011 & 1061 of 2012

and

M.P.Nos.1 of 2011 & 1 of 2012

S.A.No.705 of 2011

Palanisamy

...Appellant

Vs.

1.Ponnusamy Gounder

2.Palanisamy

3.Sokkeswari

4.Rajammal

5.Thangamani

...Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 30.09.2010 made in A.S.No.23 of 2004 on the file of the Sub-ordinate Court, Namakkal confirming the judgment and decree dated 29.04.2004 made in O.S.No.676 of 1997 on the file of the Principal District Munsif Court, Namakkal.



S.A.Nos.705 of 2011 & 1061 of 2012

S.A.No.1061 of 2012

Pulli Kounder(died)

1.Kandasamy

2.Palanisamy

3.Kaliammal

4.Thangammal

...Appellants

Vs.

Periasamy (died)

Muthayee (died)

1.Sokkeswari

2.Rajammal

3.Thangamani

4.Palanisamy

5.Minor Gokul

...Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 03.12.2011 made in A.S.No.3 of 2011 on the file of the Additional District Court, Namakkal, Fast Track Court, Namakkal confirming the judgment and decree dated 29.04.2004 made in O.S.No.43 of 1999 on the file of the Principal District Munsif Court, Namakkal.

For Appellants in both SA : Mr.K.Kalyanasundaram

Senior Counsel for

Mr.R.Vasudevan

For Respondents in both SA : Mr.S.Balasubramanian

for R2, R3 & R5

R1 & R4 – No Appearance



S.A.Nos.705 of 2011 & 1061 of 2012

COMMON JUDGMENT

The plaintiff in O.S.No.676 of 1997 on the file of the Principal

District Munsif Court, Namakkal who had suffered a decree dated 29.04.2004 and also an adverse judgment in A.S.No.23 of 2004 before the Sub-Court at Namakkal dated 30.09.2010 is the appellant in S.A.No.705 of 2011.

2.The 2nd and 3rd defendants in O.S.No.43 of 1999 again before the Principal District Munsif Court at Namakkal, who had again suffered a decree dated 29.04.2004 and also an adverse finding in A.S.No.3 of 2011 dated 03.12.2011 are the appellants in S.A.No.1061 of 2012.

3.O.S.No.676 of 1987 had been filed by the plaintiff / appellant herein, Palanisamy seeking declaration and permanent injunction with respect to the suit schedule property. The suit in O.S.No.43 of 1999 had been filed by the respondents seeking mandatory injunction that the defendants therein should close the pit put up in the pathway and also permanent injunction restraining the defendants from interfering with enjoyment of such pathway and for consequential reliefs.



S.A.Nos.705 of 2011 & 1061 of 2012

4. Simultaneous trials were conducted in both the suits. O.S.No.43 of 1999 was decreed by judgment dated 29.04.2004 and the said judgment was confirmed in the First Appeal by judgment dated 03.12.2011. O.S.No.676 of 1987 was dismissed by judgment dated 29.04.2004 and it was confirmed in A.S.No.23 of 2004 by judgment dated 19.04.2010.

5. Both the Second Appeals have not yet been admitted and only notices were directed to the respondents.

6. Heard Mr.K.Kalyanasundaram, learned Senior Counsel appearing for the appellants and Mr.S.Balasubramanian, learned counsel appearing on behalf of the respondents.

7. Even at the outset, the learned Senior Counsel stated that he is not pressing any further relief in S.A.No.705 of 2011 which had been filed consequent to dismissal of O.S.No.676 of 1997 by the District Munsif Court at Namakkal and as a matter of fact, the entire issue surrounds issues on facts and therefore, I would straight away dismiss S.A.No.705 of 2011 as no



S.A.Nos.705 of 2011 & 1061 of 2012

substantial questions of law arise.

WEB COPY

8.With respect to S.A.No.1061 of 2012 wherein, the appellants were the 2nd and 3rd defendants in the suit in O.S.No.43 of 1999, it is pointed out that a rough sketch had been given as a appendage to the plaint and the lay of land on the ground had also been explained in the Commissioner's report and sketch which had been marked as Ex.C1.

9.It is pointed by the learned Senior Counsel appearing on behalf of the appellants that along with the plaint, a rough sketch had been filed wherein, it had been stated that the pathway, XX1 was to a width of 12 feet. It had been however stated that the Commissioner, in his report and in the sketch did not find that the pathway was 12 feet but rather had given the measurements in links and an approximate conversion would indicate that the width is only about 7-8 feet.

10.That is an issue of fact and I would not interfere with the same



S.A.Nos.705 of 2011 & 1061 of 2012

or express any opinion on the same.

WEB COPY

11.However, only the relief of mandatory injunction alone has been granted to the plaintiff mainly to remove or close the pit which has been alleged to have been put up in that particular pathway given as XX1 in the rough sketch of the plaint.

12.Mr.K.Kalyanasundaram, learned Senior Counsel took umbrage of the decree stating that in the decree it had been given that the pathway was to a width of 12 feet overlooking the Commissioner's report. Learned Senior Counsel stated that the said finding alone should be interfered with by this Court.

13.It is pointed out that the said measurement of 12 feet width had not been mentioned in the Commissioner's report which had also filed as a document and any evidence adduced during the course of trial should have been appreciated and the learned District Munsif and also the first Appellate Court should have appreciated the evidence on record particularly, the rough



S.A.Nos.705 of 2011 & 1061 of 2012

sketch and report filed by the Commissioner.

WEB COPY

14.A Commissioner is appointed under Order 26 Rule 9 of C.P.C., to conduct physical verification and file a report of the lay of land. The Commissioner is an extended arm of the Court. I hold that if a report had been filed and if no objections had been filed to such a report and if such report and sketch had also been produced by the Commissioner as documents and had been admitted and proved in manner known to law then, the decree should follow such evidence and not a rough sketch appended to the plaint.

15.This is the only issue taken up by the learned Senior counsel appearing on behalf of the appellant.

16.It must be noticed that the first Appellate Court in A.S.No.3 of 2011 had not given the measurements but still, the learned Senior Counsel pointed out that the first Appellate Court had, in the course of its judgment stated that the decree of the Trial Court had been confirmed which could be



S.A.Nos.705 of 2011 & 1061 of 2012

interpreted that the pathway is of the width of 12 feet.

WEB COPY

17.I would interfere with the decree and direct the Trial Court to pass a decree in accordance with the measurements given in Ex.C1 and remove the width of the pathway XX1 given as 12 feet and rather give the width in actual terms as found in Ex.C1.

18.To that extent alone, the decree of the Trial Court is modified since there are no substantial questions of law arising in the appeal, the appeal stands dismissed except for that particular clarification..

19.The Trial Court may issue a fresh decree copy in accordance with the observations made by this Court.

20.Both the Second Appeals are dismissed. No costs.
Consequently, connected miscellaneous petitions are closed.

15.06.2022

kkn

Index:Yes/No

Internet:Yes/No

Speaking / Non-speaking order

To:-

8/10



S.A.Nos.705 of 2011 & 1061 of 2012

WEB COPY

- 1.The Sub-Court,
Namakkal.
- 2.The Principal District Munsif Court,
Namakkal.
- 3.The Additional District Court,
Namakkal.



WEB COPY



S.A.Nos.705 of 2011 & 1061 of 2012

C.V.KARTHIKEYAN, J.

KKN

S.A.Nos.705 of 2011 & 1061 of 2012
and M.P.Nos.1 of 2011 & 1 of 2012

15.06.2022