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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.03.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.Nos.1105 & 1106 of 2013

and

MP.No.1 of 2013, MP.Nos.2, 3 of 2014

S.A.No.1105/2013

1.Eswaramoorthy
Pappa Naicker(Died)

2.Kanja Naicker

3.Kannammal

4.Chinnasamy (Deceased)

5.Thangamani
W/o.Chinnasamy

6.Karthikeyan
S/o.P.Chinnasamy

7.Pavithra
D/o.P.Chinnasamy

8.Manoharan
S/o.P.Chinnasamy

.. Appellants/Appellants 1,3,4,6/
Defendants 1,3 & LRs of 2nd defendant

(Appellants 5 to 8 brought on record as
Lrs of the deceased 4th appellants vide
order of Court dt.28.07.2015 made in
MP.1 to 3 of 2014 in SA.1105 & 1106/2013)

-Vs-

1.Thangamani

2.P.Gurusamy



3.P.Palanisamy

4.S.M.Ponnusamy

5.M.Appusamy

..Respondents 1 to 5/Respondents
..Plaintiffs

6.6.Thangamani

..6th Respondent/5th Appellant/
..LR of 2nd defendant

PRAYER in S.A.No.1105 of 2013: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 18.11.2011 made in A.S.No.2 of 2009 on the file of the Principal Sub Court, Tiruppur confirming the judgment and decree dated 13.06.2007 made in O.S.No.76 of 2003 on the file of the District Minsif Court, Tiruppur.

S.A.No.1106/2013

1.Eswaramoorthy

Pappa Naicker (Died)

2.Kanja Naicker

3.Kannammal

4.Chinnasamy (Deceased)

5.Thangamani

W/o.Chinnasamy

6.Karthikeyan

S/o.P.Chinnasamy

7.Pavithra

D/o.P.Chinnasamy

8.Manoharan

S/o.P.Chinnasamy

.. Appellants/Appellants 1,3,4&6/
Plaintiffs 1,3 & LRs of 2nd defendant

(Appellants 5 to 8 brought on record as
Lrs of the deceased 4th appellants vide
order of Court dt.28.07.2015 made in
MP.1 to 3 of 2014 in SA.1105 & 1106/2013)

-Vs-



1.Thangamani

2.P.Gurusamy

3.P.Palanisamy

4.S.M.Ponnusamy

5.M.Appusamy

..Respondents 1 to 5/Respondents

..Defendants

6.Thangamani

..6th Respondent/5th Appellant/

..LR of 2nd Plaintiff

PRAYER in S.A.No.1106 of 2013: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 18.11.2011 made in A.S.No.3 of 2009 on the file of the Principal Sub Court, Tiruppur confirming the judgment and decree dated 13.06.2007 made in O.S.No.68 of 2003 on the file of the District Minsif Court, Tiruppur.

For Appellants : Mr.N.Manokaran
(In Both Appeals)

For Respondents : Ms.P.Vidhyashree
(In Both Appeals) for Mrs.P.T.Ramadevi
for R1 to R3

COMMON JUDGMENT

The defendants 1, 3 and legal representatives of the 2nd defendant in O.S.No.76 of 2003 are the appellants in S.A.No.1105 of 2013. The plaintiffs 1, 3 and legal representatives of the 2nd plaintiff in O.S.No.68 of 2003 are the appellants in S.A.No.1106 of 2013.

2.For the sake of convenience, the rank of the parties will be relatable to the rank assigned in O.S.No.68 of 2003.

3.The case of the plaintiffs is that they are the owners of the suit properties through registered sale deeds dated 28.04.1959, 11.06.1969 and 09.04.1975. The further case of the plaintiffs is that the suit property has been subdivided and their names have also been mutated in the revenue records. The plaintiffs also filed kist receipts, house tax receipts and electricity receipts to establish their possession and enjoyment in the property.



4.The grievance of the plaintiffs is that the defendants along with their men attempted to put up a pathway and water tap connection in the suit property. Hence, the suit was filed seeking for the relief of permanent injunction.

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5.The defendants took a stand that the plaintiffs and their father and their vendors have used the same cart track to approach their properties and the suit itself was filed by concealing the said fact. They took a further stand that the defendants cannot be prevented from using the cart track. That apart, all preparations were made to lay a pipeline through the cart track and the plaintiffs by concealing the existence of the cart track also prevented the defendants from laying the pipeline. Hence, defendants also claimed for the relief of permanent injunction against the plaintiffs in the suit filed by them in OS.No.76 of 2003.

6.The trial Court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, decreed the suit filed in O.S.No.76 of 2003 and dismissed the suit filed in O.S.No.68 of 2003. Aggrieved by the same, the defendants filed two appeals in AS.No.2 of 2009 and A.S.No.3 of 2009 and both the appeals were dismissed through judgment and decree dated 18.11.2011 and thereby, the judgment and decree of the trial Court was confirmed. Aggrieved by the same, these second appeals have been filed before this Court.

7.Heard Mr.N.Manokaran, learned counsel for the appellants and Ms.P.Vidhyashree, learned counsel for the respondents. This Court carefully considered the materials available on record and the findings of both the Courts below.

8.In the considered view of this Court, both the Courts considered the report submitted by the learned Advocate Commissioner, which was marked as Exhibits C1 to C3 and found that there was an existence of cart track and the same was concealed by the appellants. It was also found that the appellants were using the said cart track and the existence of the cart track was admitted during the course of cross examination. Hence, it was found that the appellants had approached the Court by concealing material facts. The findings rendered by both the Courts below are factual in nature and it is based on oral and documentary evidence. This Court does not find any perversity in the findings of both the Courts below and it does not warrant the interference of this Court. No substantial question of law is involved in these second appeals.



9. In the result, both the Second Appeals are dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

KP

To

1. The Principal Sub Court, Tiruppur.
2. The District Munsif Court, Tiruppur.
3. The Section Officer
V.R. Section, High Court, Madras.

+1 CC to M/s.P.T. Ramadevi, Advocate sr 20915
+2 Ccs to Mr.N.Manokaran, Advocate sr 21181, 21182.

S.A.Nos.1105 & 1106 of 2013

PMK(CO)
SP(26/04/2022)