



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Civil Appellate Jurisdiction)

Tuesday, the Twenty Sixth day of April Two Thousand Twenty Two

PRESENT

THE HON`BLE MR.JUSTICE N.ANAND VENKATESH

C.M.P.No.7386 of 2022

in S.A.No.364 of 2015

1 M/S.KARPAGAM PACKAGING INDUSTRIES, [PETITIONERS]
BY ITS PROPRIETOR J.AMAL RAJ (*)
S/O.D.JAYARAJ NO.3/418, KUPPAM ROAD,
NEELANGARAI, CHENNAI-600041

**(*) IMPEADED & BROUGHT ON RECORD
AS PER THE ORDERS OF THE COURT DATED
12.03.2020 MADE IN CMP.No:20322 of 2018**

2 (**)M/S.UNIVERSAL PRINT SYSTEMS(P) LTD.,
REP. BY ITS COMPANY SECRETARY
MR.SUNDAR, S/O.R.SRINIVASAN
NO.3/415, SINGARAVELAN SALAI,
NEELANGARAI, CHENNAI-600041

() SUBSTITUTED AS PER THE ORDERS OF
THE COURT DATED 28.02.2020 MADE IN
CMP.NO: 4456 OF 2020**

Vs

P.RAMAMOORTHY

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to pass an order to receive the additional document morefully set out in the schedule to this petition as "Additional Evidence" and to be marked the same as "Exhibits-A22" in the above Second Appeal No.364/2015 [IN C.M.P.No.7386 of 2022]

SCHEDULE OF (*)ADDITIONAL DOCUMENT, XEROX COPY ATTACHED

Order : This Miscellaneous petition coming on this day for hearing upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.G.MASILAMANI, SENIOR COUNSEL for M/S.M.S.MANI, Advocate for the petitioner and of MR.C.S.K.SATHISH, Advocate for M/S.A.SIVAJI, Advocate for the Respondent, the court made the following order:-



This Petition has been filed under Order XLI Rule 27 to receive additional document which is the certified copy of the Sale Deed dated 13.3.1985.

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2.The defendant is the appellant in the Second Appeal. The respondents/plaintiffs filed a suit seeking for the relief of permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the "C" schedule property. This "C" schedule property is an access way measuring 18 feet East-West and 330 feet North-South.

3.The 1st and 2nd plaintiffs claimed to be the joint owners of the "C" schedule property. According to them, it was a private road which serves as an access lane to the Singaravelar Salai on the northern end of the lane. The suit was filed with a grievance that the defendant illegally tried to encroach upon the private lane by removing the fence and opening a passage in his rear western compound wall. This was the cause of action for filing the suit against the defendant seeking for the relief of permanent injunction.

4.Both the Courts below concurrently held in favour of the plaintiffs and granted the decree of permanent injunction. Aggrieved by the same, the defendant has filed the Second Appeal.

5.When the Second Appeal came up for final hearing, the learned counsel for the appellant submitted that both the Courts below misdirected themselves and assumed that the Sale Deed dated 13.3.1985 was filed by the plaintiffs and it was also marked as a document. It is on this assumption, the other materials available on record was taken into consideration and the suit was decreed in favour of the plaintiffs.

6.This Court immediately verified the said fact and it was found that the Sale Deed dated 13.3.1985 was not filed and it was not marked during trial. This Court therefore sought for a clarification from the learned Senior Counsel appearing on behalf of the respondents. Pursuant to the same, this petition has been filed to receive the Sale Deed dated 13.3.1985 as additional document.

7.The learned Senior Counsel appearing on behalf of the petitioners in this petition, submitted that Ex.A1 and Ex.A2 Sale Deeds clearly pointed out to the existence of the right of the plaintiffs over the private lane and hence, the additional document sought to be brought in this petition only substantiates the existing right which has already been established by the plaintiffs and recognised by both the Courts below. The learned Senior Counsel further submitted that Exs.A18 and A19 Sale Deeds which were the title documents of the defendant does not even whisper about their right to have access in the private lane belonging to the plaintiffs. It was further submitted that the defendant has an



alternative access through Singaravelar 1st Cross Street to the main road and it was not correct on the part of the defendant to have taken a stand that they do not have any other alternative access to Singaravelar Salai (Kuppam road). The learned Senior Counsel therefore submitted that the additional document can be taken on file and since it is a registered document, there is no need to examine any witness and that the document will speak for itself.

8. Per contra, the learned counsel for the respondent/appellant submitted that both the Courts below have proceeded further as if the document dated 13.3.1985 was available and have decided the rights of the parties over the private lane. The appreciation of the documents marked as Exs.A1 and A2 will depend upon the basic document dated 13.3.1985 which was not even filed by the plaintiffs. The learned counsel submitted that an opportunity must be given to the respondent/appellant to controvert this document which is sought to be brought in as an additional evidence. The learned counsel therefore submitted that the matter requires a remand to the Court below to record evidence and to render a finding on this additional document.

9. In the considered view of this Court, it is quite surprising that everyone proceeded to assume as if the Sale Deed dated 13.3.1985 was available on record and it was misconstrued to have been marked as Ex.A1. What was marked as Ex.A1 was the Sale Deed 16.5.1985 executed by the 1st plaintiff in favour of Harts Coco Products Private Limited and one V G M Narasimhulu. Ex. A2 document was executed by the said Harts Coco Products Private Limited in favour of the 2nd plaintiff. The right over the private lane which was shown as the "C" schedule property originated only through the Sale Deed dated 13.3.1985 executed in favour of the 1st plaintiff. Therefore, the appreciation of this document plays a very crucial factor while deciding the *inter se* rights of the parties. This document has to be marked through a witness representing the 1st plaintiff and an opportunity must be given to the defendant to cross-examine the witness and to controvert the terms of the document. This additional document along with Exhibits A1 and A2 will form the fulcrum of the right claimed by the plaintiffs over the private lane described as "C" schedule property. Since both the Courts did not even have an opportunity to appreciate this document dated 13.3.1985 and render a factual finding, this Court is inclined to frame additional issues and remand the matter to the Lower Appellate Court to record the evidence of the witness while marking the additional document dated 13.3.1985 and to give an opportunity to the defendant to cross-examine the witness. Thereafter, a finding will be rendered by the Lower Appellate Court on the additional issues framed by this Court on appreciation of the additional evidence recorded after remand. While rendering the findings, the Lower Appellate Court can also take into consideration the documents already marked as Exhibits A1 and A2, since the basis for these documents will be the additional document that will be taken in as an additional evidence.



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10. In view of the above discussion, this Court is inclined to exercise its jurisdiction under Order XLII(1) read with Order XLI Rule 25 of CPC. This Court frames the following additional issues:

a) Did the 1st plaintiff get an exclusive right over the private lane described as "C" schedule property under the Sale Deed dated 13.3.1985 ?

b) Whether the exclusive right over the private lane described as "C" schedule property was derived from the Sale Deed dated 13.3.1985 and it was passed on under the documents already marked as Ex.A1 and Ex.A2 ?

The Lower Appellate Court is directed to permit the plaintiffs to mark the additional document viz., the Sale Deed dated 13.3.1985 as additional evidence and the defendant shall be given an opportunity to cross-examine the witness through whom this document is marked. The Lower Appellate Court shall ensure that both the parties will confine the examination of witness only to the Sale Deed dated 13.3.1985 and under no circumstances, the scope of examination of witness can be enlarged on issues which have already been decided and findings have already been rendered by both the Courts below. The Lower Appellate Court shall render its findings on the additional issues framed by this Court based on the additional evidence recorded after remand. The Lower Appellate Court shall return the evidence together with its findings on the additional issues to this Court on or before 01.07.2022.

11. This Civil Miscellaneous Petition is disposed of with the above directions.

-sd/-
26/04/2022

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**[(*) CORRECTED ORDER TO BE SUBSTITUTED
FOR THE ORDER ALREADY DESPATCHED ON 04/05/2022]**

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE SUBORDINATE JUDGE,
TAMBARAM



2 THE DISTRICT MUNSIF,
TAMBARAM

3 THE DISTRICT MUNSIF,
ALANDUR

COPY TO

1 THE SECTION OFFICER,
VR SECTION, HIGH COURT,
MADRAS 104.

2 THE SECTION OFFICER,
JUDICIAL SECTION,
HIGH COURT, MADRAS 104.

C.C. to M/S.M.S.MANI, Advocate, SR.No.3345/2022.

Order
in
C.M.P.No.7386 of 2022
in S.A.No.364 of 2015
Date :26/04/2022

From 26.2.2001 the Registry is issuing certified
copies of the Interim Orders in this format
RA 29/04/2022
RA 23/05/2022