



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.03.2022

Coram:

THE HONOURABLE Mr.JUSTICE N.ANAND VEKATESH

Second Appeal No.680 of 2014

Munirathinam

..Plaintiff/Appellant/Appellant

.Vs.

1.P.Kesavan

2.Nagarajan

..Defendants/Respondents/Respondents

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree made in A.S.No.117/2012 dt.09.04.2014 on the file of Subordinate Court, Vellore confirming the decree and judgment passed in O.S.No.1889/2004 dated 05.11.2012 on the file of Principal District Munsif Court, Vellore.

For Appellant : Mr.M.P.Jayaprakash

For Respondents : Mr. M.S.Murali
for R&P Partners
for R1 and R2

JUDGMENT

The plaintiff is the appellant in this Second Appeal.

2.The case of the plaintiff is that he is the owner of the property described in "A" schedule to the plaint and he purchased the same through a registered Sale Deed dated 17.05.1990 from one Rajammal. The further case of the plaintiff is that the property described in the "B" schedule to the plaint is the pial portion which forms part of the "A" schedule property and it is through this portion, the plaintiff is having access to his property described in the "A" schedule.

3.The grievance of the plaintiff is that the defendants attempted to put up a bunk in the "B" schedule property inspite



of the protest made by the plaintiff and hence, left with no other option, the suit was filed against the defendants seeking for the relief of permanent injunction and mandatory injunction

4. The defendants filed a written statement. They took a specific defense to the effect that the plaintiff purchased the "A" schedule property and 1/3rd share in the pial portion from the said Rajammal. The defendants have specifically denied that the entire pial portion forms part of the "A" schedule property. Thus, the defendants took a stand that they have 2/3rd share in the said pial portion. The defendants further stated that the pial portion has been jointly enjoyed by the plaintiff and the defendants and the defendants are running tiffen stall and a petty shop in the portions marked as 'CDEF' and 'ABCD' described in the sketch filed along with the written statement and according to them, these portions fall within their 2/3rd share in the pial portion. The defendants have therefore sought for the dismissal of the suit on the ground that the plaintiff has no right to claim for the exclusive right in the entire pial portion which was shown as the "B" schedule property.

5. Both the Courts below after analysing the facts and circumstances of the case and after having taking into consideration the facts and circumstances of the case concurrently came to a conclusion that the plaintiff is not entitled for the relief sought for in the suit. Aggrieved by the same, the plaintiff has filed the present Second Appeal before this Court.

6. The learned counsel for the appellant submitted that even though the "B" schedule property is enjoyed in common, at no point of time, there was any partition and allotment of the 1/3rd share to each of the sharer. The learned counsel further submitted that the defendants attempted to put up the bunk Shop and thereby prevented the plaintiff from ingress and egress to his property in the "A" schedule. It was further submitted that the defendants right from the beginning have been preventing the plaintiff from enjoying the property and even the earlier suit filed by them was dismissed and confirmed till this Court in S.A.No.77 of 2005. Having failed in their attempts, the defendants are once again preventing the access of the plaintiff to the "A" schedule property. The learned counsel therefore submitted that the findings of both the Courts below requires the interference of this Court.

7. This Court carefully considered the submissions made on either side and the materials available on record. This Court



also carefully considered the findings of both the Courts below.

8.It is an admitted case that the appellant had purchased the property with a right of passage over a common lane lying on the eastern side of the "A" schedule property and 1/3rd in the pial lying in between the tiled house purchased by the plaintiff ("A" schedule property) and the street known as Beri Babu Rao Street, through a registered Sale Deed dated 07.05.1990 [Ex.A-1] from one Rajammal. This position has been specifically admitted even by the defendants in their written statement. Thus, the property described in the "B" schedule belongs jointly to the plaintiff and the defendants and each has 1/3rd share in the same.

9.The grievance of the plaintiff seems to be that his access through the "B" schedule property to reach the "A" schedule property is blocked by the defendants by putting up a bunk Shop. While considering this issue, both the Courts found that the bunk Shop was already put up by the defendants in the portions which were described as 'CDEF' and 'ABCD' in the sketch filed along with the written statement. In the very same sketch, the 1/3rd share of the plaintiff in the pial portion was described as 'GHIJ'. The defendants had specifically admitted that the portion earmarked as 'GHIJ' in the sketch filed along with the written statement belongs to the plaintiff and this allocation was made between the parties in a panchayat that was held on 07.08.2004.

10.Both the Courts took into consideration the fact that even in the deposition, the plaintiff had stated that he is having an access to the property in the "A" schedule from Beri Babu Rao Street only through the portion shown as 'GHIJ' in the sketch.

11.The Courts below took into consideration the fact that the defendants have been running the bunk Shop after getting proper permission from the authorities and Ex.B-2 and Ex.B-4 were taken into consideration to substantiate the fact that there was even an electricity connection provided to these bunk Shops. When Ex.B-8 to Ex.B-10 photographs were shown to the plaintiff during the course of cross examination, he admitted that the defendants were running the bunk Shop in their respective shares as could be seen from the photographs.

12.It is quite curious that initially the plaintiff had only sought for the relief of permanent injunction. This was inspite of the fact that he knew that the defendants were already running a bunk Shop in the pial portion. Thereafter, he sought



for an amendment and added the relief of mandatory injunction. This conduct of the plaintiff was taken into consideration by the lower Appellant Court. That apart, the plaintiff did not come up with specific particulars as to which portion of the 'B' schedule property was encroached by the defendants.

13. In the considered view of this Court, the findings rendered by both the Courts below was based on the oral and documentary evidence and this Court does not find any perversity in any of the findings. In any event, no substantial questions of law are involved in the present Second Appeal.

14. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

KP
To

1. Subordinate Judge, Vellore,
Vellore District.

2. Principal District Munsif, Vellore.

Copy to:
The Section Officer
V.R. Section, High Court, Madras.

+1cc to M/s.R&P Partners, Advocate SR.No.13605

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SR-II(CO)
CB(01/04/2022)