



WEB COPY

S.A.No.294 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.294 of 2022

and

C.M.P.No.6251 of 2022

1.Manavalan
2.Nagammal
3.Sowndar
4.Anthony
5.Sam
6.Rajeshwari
7.Sarali

... Appellants

Vs.

Parthiban

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 24.04.2017 made in A.S.No.28 of 2010 on the file of the Subordinate Judge, Ponneri confirming the Judgement and decree dated 19.02.2020 made in O.S.No.111 of 1996 by the District Munsif Judge, Ponneri.

For Appellants : M/s.M.Udaya Bhanu

For Respondent : Mr.R.Krishnaswamy



JUDGMENT

The plaintiffs are the appellant before this Court challenging the concurrent judgement and decree passed against them. The brief facts which are necessary for disposing of the above Second Appeal are as follows and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff's have filed the suit OS.No.111 of 1996 on the file of the District Munsif, Ponneri seeking a permanent injunction restraining the defendants, their men and agents from interfering with their peaceful possession and enjoyment of the suit schedule property. The suit schedule property is an extent of 3 cents in Survey No.3A/7C/1 and 2 cents in Survey No.3A/7D/1 of Chengalpatty M.G.R.District,Gummudipoondi Taluk, Nemalur (Roshanagaram) Village.

3. It is the case of the plaintiff that the schedule mentioned property was purchased by one Chengammal, who is the mother of the 1st plaintiff and the grand mother of the 2nd plaintiff, under a registered sale deed dated 27.09.1961. The said Chengammal had 2 sons. The 2nd plaintiff's father, Kuzhandai Muthu is another son of Chengalmmal. The said Kuzhandai Muthu is no more and therefore, on the death of Chengammal, the plaintiffs



as her legal heirs have become entitled to the property. They would submit that except for them none else had a right to the suit property. The plaintiffs were enjoying the suit property along with other properties. The defendant who is in no manner related to the plaintiffs and who is a stranger to the properties having recently purchased the adjacent land had started claiming a right into portions of the plaintiffs' land by stating that the plaintiffs have removed the ridge. On 10.02.1996, the defendant attempted to remove the ridge on the plaintiffs' land and to lay a new ridge inside the plaintiffs' land whereby encroaching into the plaintiffs' land. This attempt was successfully prevented by the plaintiffs but however the threat of trespass is looming large. Therefore, the suit.

4. The defendant had filed a written statement inter alia denying the contentions of the plaintiff and contending that the plaintiff's have come to Court suppressing the true facts. The land measuring an extent of 15 cents in Survey No.3A/5 and 14 cents in Survey No.3A/6 where among other properties which belonged to one Thanappa Chettiar @ Manikam Chettiar. After the death of the said Manikam Chettiar his wife Ravai Ammal and his two sons Subramani Chettiar and Panchatcharam Chettiar succeeded to the lands. Just prior to the death of Panchatcharam Chettiar the above said lands



namely Survey No.3A/5 and 3A/6 along with other lands were sold by all the legal heirs of Manickam Chettiar in favour of the prospective bride of Panchatcharam Chettiar, namely, Valliammal by a registered sale deed dated 07.03.1982. After the purchase, she has been in possession and enjoyment of the property. The defendant would submit that he had purchased the lands along with other lands from Valliammal under a registered sale deed dated 16.07.1990. To reach these properties the access was from the public road on the south, namely, the Matharpakkan to Sathyavedu Road through the suit properties in Survey No.3A/7C1 and 3A/7D1. The defendant and his predecessors in title have been in possession of the said land in S.No.3A/5 and 3A/6 and using the pathway in the suit property for nearly 5 decades.

5. The defendant would submit that the said Chengammal is not the mother of the 1st plaintiff or the grandmother of the 2nd plaintiff. On the other hand, she was only the 2nd wife of the 1st plaintiff's father, Arulanandam. Through Chengammal, Arulandam did not have any issue. The suit properties are the self-acquired properties of Chengammal who died intestate and as per Section 15 of the Hindu Succession Act, the plaintiff's



did not succeed to the property. On the contrary, it was the legal heirs born through Chengammal's parents who were entitled to the suit property.

Therefore, the contention of the plaintiffs that they had succeeded to the property on the death of Chengammal is far from the truth. It is also the contention of the defendant that after the purchase of the lands in Survey No.3A/5 and 3A/6, the defendant had put up a house construction upon the suit land and is in enjoyment of the same using the property in Survey No.3A/7D1 as the access. The defendant would submit that they are not claiming any absolute right over the suit property but only a right of way. The defendant cannot be prevented from using the suit pathway which is the only access to his lands in Survey Nos.3A/5 and 3A/6.

6. The learned District Munsif, Ponneri had framed the following issues which is translated from the vernacular reads as follows:-

1. Does the defendant have an easementary right over the portion marked as X, Y & Z in the rough sketch in Survey No.3A/7D?

2. Whether the plaintiff is entitled to the decree for permanent injunction?



7. The 2nd plaintiff had examined himself as P.W.1 and marked Ex.A.1 to Ex.A.3. On the side of the defendant, the defendant had examined himself as D.W.1 and marked Ex.B.1 to Ex.B.4.

8. The learned District Munsif on considering the evidence on record dismissed the suit. Aggrieved by the same the plaintiffs had filed A.S.No.28 of 2010 on the file of the Sub Judge, Ponneri. The learned Sub Judge on considering the evidence on record held that the defendant and his predecessors in title have been using the suit property as a pathway to access his land and dismissed the appeal. Challenging the same the plaintiffs are before this Court.

9. The Appellate Court had extracted the admissions of the plaintiff as P.W.1 in his judgment. The plaintiff as P.W.1 had admitted that the portion shown as X, Y, Z in the rough sketch attached to the written statement was being enjoyed as a pathway by the defendant and his predecessors in title for over 20 years. He would further state that the defendant had constructed a house to the north of the suit property and to the south of the suit property the high way road was situate and it was the suit property that was the access from the main road. He would admit that he is not the direct



descendant of Chengammal and that she is not the biological mother of Venu and Kulandaimuthu as they are the sons born to Arulanandam through his 1st wife. The plaintiffs have suppressed this fact and both the Courts below absurd about this suppression.

10. Considering the admission of the plaintiffs about the existence of the pathway and its use by the defendant and his predecessors in title for over several years, no exception can be taken to the Judgment and Decree of the Courts below. The plaintiff has not sought for any declaration of title but has filed a bare injunction suit despite the fact that the defendant has asserted his right to the property. Therefore no substantial question of law has been made out and consequently, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

30.11.2022

Index : Yes/No
Internet : Yes/No
shr



To

1. The Subordinate Judge, Ponneri.

2. The District Munsif Judge, Ponneri.

S.A.No.294 of 20



WEB COPY

P.T. ASHA, J,



WEB COPY

S.A.No.294 of 20



Sim

S.A.No.294 of 2022
and
C.M.P.No.6251 of 2022

30.11.2022