



S.A.No.1017 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.12.2022

CORAM

THE HONOURABLE MR. **JUSTICE G.K.ILANTHIRAIYAN**

S.A.No.1017 of 2022
and C.M.P.No.21731 of 2022

Lakshmi

...Appellant

Vs.

1.Semalayappa Gounder
2.Vijaya

...Respondents

Prayer :- This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 18.04.2017 made in AS.No.17 of 2016 on the file of the Subordinate Judge, Dharapuram, Tiruppur District and the judgment and decree dated 02.04.2016 made in OS.No.28 of 2012 on the file of the District Munsif Court, Kangayam.

For Appellant : Mr.N.Damodaran

JUDGMENT

This second appeal is directed as against the judgment and decree dated 18.04.2017 made in AS.No.17 of 2016 on the file of the Subordinate Judge, Dharapuram, Tiruppur District and the judgment and decree dated 02.04.2016 made in OS.No.28 of 2012 on the file of the District Munsif Court, Kangayam, thereby dismissed the suit.

2. The appellant filed suit for declaration and injunction in respect



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of the suit property. The case of the appellant is that his father and other two brothers partitioned the property owned by their father one, Muthusamy Gounder by the partition deed dated 12.04.1966, which was marked as Ex.A1. As per the partition deed, appellant's father was exclusively allotted the suit schedule property as pathway. However, the respondents are disturbing the possession and enjoyment of the suit property. The first defendant resisted the suit by way of filing written statement. On perusal of written statement, revealed that as per the partition deed, 'A' schedule property was allotted in favour of one, Senniappa Gounder, 'B' schedule property was allotted in favour of one, Perianna Gounder and 'C' schedule property was allotted in favour of one, Sadiappa Gounder. However the suit property was not exclusively allotted in favour of the appellant's father i.e. the said Perianna Gounder. As per the partition deed, the respondents have no other way to reach their respective land.

3. The appellant had examined PW1 and PW2 and marked Ex.P1 to Ex.P9. On the side of the respondents, they examined DW1 and DW2 and marked Ex.B1 to Ex.B18. Advocate Commissioner's report and rough sketch were marked as Ex.C1 and Ex.C2. On considering the oral and documentary evidences adduced by the respective parties and the



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submission made by the learned counsel, the trial Court found that the appellant is not entitled for relief as prayed for and dismissed the suit.

Aggrieved over the judgment and decree of the trial Court, the appellant preferred an appeal suit in AS.No.17 of 2016 on the file of the Subordinate Judge, Dharapuram, Tiruppur District. The first appellate Court on appreciating the materials placed on records, dismissed the appeal by confirming the judgment and decree passed by the trial Court. Challenging the same, the plaintiff has come forward with the present second appeal.

4. The learned counsel for the appellant raised the following substantial questions of law:

a) Is not the findings of the courts below that the appellant herein is not entitled to the exclusive user of suit schedule second item of the pathway on mere presumptions and assumptions and without properly adverting to and by misconstruing various exhibits especially Ex.B5, B10, B12 and B3, B9 and B11 and non-est in law?

b) Whether the courts below erred in law and misdirected themselves in non-suiting the appellant/plaintiff when she proves her exclusive right of user of suit schedule second item of



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pathway to reach her lands situated on the Northern side that has been running from the Tirupur to Kangeyam Road to the exclusion of the respondents herein by adducing Ex.A1, A2 documents of title besides Ex.A6 and A7 documents which documents would prove the exclusive user of the suit pathway by the appellant?

c) Is not the appellant/plaintiff, entitled for permanent injunction for the exclusive user of the suit schedule second item of pathway that has been running from Tirupur to Kangeyam Road so as to reach first item of the suit schedule land by virtue of the right conferred upon her as against the respondents herein?

5. Heard, Mr.N.Damodaran, the learned counsel appearing for the appellant.

6. This Court considered the rival submission made by the learned counsel for the appellant.

7. On perusal of Ex.A1 and Ex.B1 to Ex.B6, revealed that the suit property was not exclusively allotted in favour of the appellant' father. It is a common pathway. Therefore, both the courts below rightly held that the



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appellant has no exclusive right over the suit schedule property and dismissed the suit. As such, this Court does not find any valid reason to interfere with the findings rendered by the Courts below as such the Courts below have analyzed the evidences both the documentary and oral in detail, adduced by the parties and by giving cogent reasons, concluded rightly and dismissed the suit filed by the plaintiff. Accordingly, this Court is of the considered opinion that no substantial questions of law involved in this appeal.

8. In the result, this Second Appeal is dismissed and the judgment and decree dated 18.04.2017 made in AS.No.17 of 2016 on the file of the Subordinate Judge, Dharapuram, Tiruppur District and the judgment and decree dated 02.04.2016 made in OS.No.28 of 2012 on the file of the District Munsif Court, Kangayam are confirmed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

23.12.2022

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order

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G.K.ILANTHIRAIYAN, J.



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- To
- 1.The Subordinate Judge,
Dharapuram, Tiruppur District
 - 2.The District Munsif Court,
Kangeyam
 3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

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