



S.A(MD).No.182 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 27.06.2022

CORAM: JUSTICE N.SESHASAYEE

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Nayanar

.... Appellant/Appellant/ Plaintiff

Vs.

1. Pandi @ Pandiyan
2. Paulraj (Died)
3. Veerakumar
4. P.Maruthu Pandi
5. P.Marimuthu
6. P.Selvamani
7. K.Meena

... Respondents/Respondents/Defendants

(R4 to R7 were brought on record as the lrs of the deceased R2 Vide Court order dated 13.09.2013 made in M.P.Nos.1 to 3 of 2013)

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 19.08.2009 in A.S.No.16 of 2009 on the file of the Subordinate Court, Aruppukottai, confirming the judgment and decree dated 17.04.2009 in O.S.No.256 of 2002 on the file of the District Munsif Court, Aruppukottai.

For Appellant : Mr.D.Nallathambi

For R1 & R3 : Mr.S.Parthasarathy



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JUDGMENT

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The plaintiff, who was unsuccessful both before the trial court as well as before the first appellate court in his suit for declaration that the suit property is a common pathway of both the parties, for mandatory injunction for removing certain structure put up by the defendants on the said pathway and also for prohibitory injunction, is the appellant herein.

2. The suit property is described as a pathway measuring 3' east-west x 40' north-south. The facts are:

- The ancestors of the defendants owned a block of property which they sold periodically to third parties. The father of the plaintiff and the grand-father of the plaintiff were such purchasers of property from the family of the defendants;
- On 26-04-1953, certain Ramasamy Thevar, under Ext.A.2 had purchased a strip of land measuring 3 feet from one Pandiya Thevar. Some 2.75 feet to the west of the western boundary of the property covered under Ext.A2 lies the residential building of the defendants.
- While so, the plaintiff's father had purchased the property to the south of the defendants' property under Ext.A.3 and Ext.A.4 both dated



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20-12-1953 and 06-07-1955 respectively. After the demise of his father, there was an oral partition in his family, evidenced by Ext.A5 dated 05-11-1980 in which the property covered under Ext.A.3 and Ext.A.4 came to be allotted to the share of the plaintiff.

- The plaintiff and his predecessors-in-title have been in continuous enjoyment of his property since 1953, and the defendants have been in enjoyment of their portion on the north of the plaintiff's property in continuation of the title of their ancestors.
- The 3 feet wide strip of property purchased under Ext.A.2 originally belonged to the family of the defendants, and they sold to it strangers Vide Ext.X1 and Ext.X.2.

3. The defendants 1 to 3 are the cousins or co-sharers as between them, and for their convenient enjoyment, they divided their residential property into three portions, with each one occupying a portion of their property. Accordingly, the first defendant begun to enjoy the northern portion abutting the North Car Street. The second defendant is in enjoyment of the portion to the immediate south of the first defendant's portion and so is the third defendant whose portion is sandwiched between the second defendant's property on the north and the plaintiff's property on the south.



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Both the second defendant and the third defendant have their doors on their eastern wall, and have also provided a short flight of steps to get out of their houses to the suit property. It is this small construction put up by the defendants 2 and 3 in their eastern wall on their portion of the property appears to have become an irritant, and this has resulted the plaintiff filing the suit.

4. The core contention of the defendants is that the suit property was never part of the property of the plaintiff, and that it belonged to and is part of their own property. It is in this portion, they used to discharge eaves water of their roof, and also have the drainage for their property. None of the sale deeds in favour of the plaintiff describe anything about the existence of the pathway.

5.1 The dispute went to trial, and before the trial court, the plaintiff examined himself as P.W.1 and also examined two of the witnesses as P.W. 2 and P.W.3 . For the defendants, the defendants 2 and 3 examined themselves as D.W.2 and D.W.1. The owner of the property on the east was examined as D.W.3. The plaintiff has produced as many as 9 documents as Ext.A.1 to Ext.A.9 most of which are already introduced. The defendants



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have produced Ext.B.1 to Ext.B.14 most of which are essentially the property tax receipts of the defendants and they have also produced Ext.X.1 to Ext.X.4, which came to be marked through D.W.3. This apart, the trial court also appointed an Advocate Commissioner for local inspection and his reports were taken on record as Ext. C.1 and Ext. C.2.

5.2 On appreciating the evidence before it, both the courts below came to the conclusion that the suit property which is claimed by the plaintiff as a common pathway actually forms part of the defendants' property. The decree of the First Appellate Court is now under challenge. This Second Appeal is admitted on the following substantial questions of law:

i) Whether the finding of the Lower Appellate Court is perverse, as the Lower Appellate Court observed that no Advocate Commissioner was appointed to note the physical features of the property when Commissioner was appointed and the report was also available on record?

ii) Whether the Courts below have erred in not appreciating the evidence of D.W.2 wherein he has admitted that there is a pathway for the plaintiff/appellant to reach the north car street?



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WEB CONTENT

6.1 Heard the learned counsel for the appellant and the learned counsel for the respondents. To understand the dispute, an element of visualization is required. As already indicated, there is a street on the north of the property. To the immediate north is the property of the defendants and to its south is the property of the plaintiff. The property of the plaintiff is beyond the eastern boundary of the defendant's property, and is in a straight line. Whereas, the properties purchased by the plaintiff's father under Ext.A3 and Ext.A4, do not fall within this straight line alignment, and it could be seen from the Commissioner's plan that the plaintiff's property on the far south protrudes beyond this straight line alignment and towards the east.

6.2 Now, between the eastern wall of the defendants' property and the eastern property of the third defendant (both of which are in the same alignment) lies a vacant space of about 5.5 feet. Now this strip of 5.5 feet is made up of two components. The eastern component has a width of 3 feet, and this 3' x 40' strip was purchased by the plaintiff's grand-father Ramasamy Thevar under Ext.A2 from the family of the defendants. Indeed, this strip was what Ramasamy Thevar had first purchased. The other sales under which the plaintiff's father has purchased the property on far south



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under Ext.A3 and Ext.A4 were purchased thereafter.

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7. Now, it may be of relevance to refer to the property, which the plaintiff's grandfather Ramasamy Thevar had purchased under Ext.A2 dated 26-04-1953. In describing the property sold, it says that there is a private lane measuring 3 ft belonging to the vendor (family of the defendants). To the immediate east of this property there is another extent of 5.75 ft to further east and that out of this 5.75 ft, eastern most 3 ft was sold to Ramasamy thevar. In other words, the property will look something like this: There is a western most 3 ft private lane belonging to the defendants. There is a middle 2.75 ft property not sold to the plaintiff's family, and further eastern 3 ft sold to the plaintiff's property under Ext.A-2. They all lie together to give an appearance of a single lane. Now the defendants 2 and 3 have taken separate occupation and enjoyment of the middle portion and southern portion of the property of the defendants. They opened a door on the east and put up steps to a small verandah in the western 3 ft referred to above leaving the balance of 5.75 ft intact. The plaintiffs seem to take objection to this.



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8. The learned counsel for the appellant made a valiant effort to convince this Court that the entire width of 8.75 ft constituted a common pathway and that the defendants have no right to obstruct the pathway. He also submitted that the Commissioner's report was not adequately appreciated by the First Appellate Court.

9. This Court finds the argument fallacious. Indeed, the plaintiff's grandfather Ramasamy Thevar had the sagacity to purchase a pathway under Ext.A.2, and let the father of the plaintiff to purchase the property under Ext.A.3 and Ext.A.4 for which the pathway was purchased. Ext.A.2 was intended to serve as a pathway for the property purchased under under Ext.A-3 and A-4. In none of the title documents, is there a reference to any common pathway to the west of the property covered under Ext. A2. This is one part. Turning to the other part, admittedly the defendants' property comprises of an old house, and it belonged to at least three families of co-sharers. Now each of the defendants represent each of these three families and each one is entitled to enjoy it, and later they chose to enjoy specific portion in the manner already indicated. They opened their door in the western extreme 3ft wide land out of the 8.75' strip referred to earlier. If the doors were not so opened then the portion occupied by defendants 2 and 3



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would be landlocked. Here the plaintiff does not dispute that the defendants did not have right of pathway over the lane. But the contention is that the defendants 2 and 3 should not put up couple of steps to access their house. The commissioner's report indicates that the defendants have put up a small flight of steps only abutting their property within 3 ft wide pathway which they have left for their personal purpose, and leaving the balance 5.75 ft wide strip untouched.

10. As already indicated, there is no line of demarcation dividing the 3 ft wide pathway property which the plaintiff's ancestors had purchased under Ext.A2 and the remaining 2-2.75 ft to the immediate west. This implies both the plaintiff and the defendants have jointly allowed their respective properties to merge to form one single lane measuring about 5-5.75 ft only to the east of the defendants' property over which the plaintiff cannot take any exception. The plaintiff appears to be over ambitious in claiming right of way over the entire 8.75' and it is impermissible.

11. In fine, this Court finds that the line of reasoning and approach of the courts below are most reasonable and the findings they have entered read just and appropriate. This Court does not consider it appropriate to exercise



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its power under Section 100 C.P.C to interfere with the same. Accordingly

this Second Appeal is dismissed. No costs.

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Index : Yes/No

Internet: Yes/No

CM

To,

- 1.The Subordinate Court, Aruppukottai.
- 2.The District Munsif Court, Aruppukottai.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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