



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A. (MD)No.565 of 2010 and

M.P. (MD)No.3 of 2010

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1. Veerappan Chettiar (Died) ... Appellant / Appellant /
1st Defendant
2. Maruthappa Chettiar (Died)
3. M.Maragatham
4. M.Karuppu Chettiar
5. Meenakshi Chettiar
6. M.Vadivelu Chettiar
7. M.Veerappan Chettiar (Died)
8. Dhanalakshmi ... Proposed Appellants 3 to 8
and LR.s of the 2nd appellant
/2nd defendant
9. V.Thangammal
- 10.V.Arjunan
11. V.Raman
12. V.Kulanthaivelu
(Appellants 9 to 12 were suo motu impleaded as LR.s. of the
deceased 1st appellant vide Order dated 04.03.2022)
13. V.Rukmani
(13th appellant was suo motu impleaded as LR.s. Of the deceased
7th appellant vide Order dated 04.03.2022)
Vs.

1. Sankaran Chettiar
2. Meenakshi Ammal
3. Velayee Ammal
4. Kaveri
5. Murugesan



6. Maruthai

7. Krishnan

... Respondents / Respondents /
Plaintiffs 1, 2, 4 to 8

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Prayer: Second appeal filed under Section 100 of C.P.C., against the Decree and Judgment dated 27.11.2008 made in A.S.No.143 of 2004 on the file of the I Additional Subordinate Judge, Thiruchirappalli, confirming the Decree and Judgment dated 10.03.2004 made in O.S.No.298 of 1996 on the file of the District Munsif, Musiri.

For Appellants : Mr.P.Thiagarajan

For R-1 to R-7 : Mr.K.Govindarajan

J U D G M E N T

The defendants in O.S.No.298 of 1996 on the file of the District Munsif Court, Musiri, filed this second appeal.

2. During the pendency of the second appeal, they passed away and their legal heirs were brought on record.

3. The suit was filed by the respondents herein for declaration that they are entitled to use the suit pathway measuring 6 feet wide east-west and 100 feet long north-south and for permanent injunction restraining the defendants from interfering with the said right. The defendants filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial Court framed the necessary issues. On the side of the plaintiffs, the first plaintiff examined himself as P.W.1 and the husband of the second plaintiff was examined as P.W.2. Ex.A.1 to Ex.A.32 were marked. The first defendant examined himself as D.W.1 and the second defendant's son was examined as D.W.2. Ex.B.1 to Ex.B.9 were marked. An Advocate Commissioner was appointed and his report and plan were marked as Ex.C.1 and Ex.C.2. After consideration of the evidence on record, the trial Court by judgment and decree dated 10.03.2004 decreed the suit as prayed for. Aggrieved by the same, the defendants filed A.S.No.143 of 2004 before the I Additional Sub Judge, Thiruchirappalli. The first Appellate Court by the impugned judgment and decree dated 27.11.2008, confirmed the decision of the trial Court and dismissed the appeal. Challenging the same, this second appeal came to be filed.

4. Though the second appeal was filed way back in the year 2009, only notice was ordered and it has not been admitted till date.

<https://hcservices.ecourts.gov.in/hcservices/>



5. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to frame substantial questions of law and admit the second appeal and take up the matter for disposal later.

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6. Per contra, the learned counsel appearing for the respondents submitted that no substantial question of law arises for consideration and pressed for dismissal of the second appeal.

7. I carefully considered the rival contentions and went through the evidence on record.

8. There is no dispute that the properties belonging to the plaintiffs and defendants, originally belonged to Suppan Moopan. The suit pathway lies in between the properties purchased by the plaintiffs and the defendants. According to the plaintiffs, they are entitled to use the suit pathway for ingress and egress. The stand of the defendants is that the suit pathway was purchased by them and that it is meant only for their exclusive use. The plaintiffs had purchased the property lying to the east of the suit pathway under Ex.A.1 and Ex.A.2 dated 20.08.1955 and 25.11.1955. The defendants had purchased the property to the west of the suit pathway under Ex.B.1 dated 17.08.1955. Ex.B.2 does not relate to the issue on hand. A reading of Ex.A.1 would show that the eastern portion has been mentioned as a pathway. Of course, it is mentioned as a road. Both the Courts below have given a finding that the expression ' Raja Veethi ' was mentioned by mistake and that it should be understood as ' Veethi ' (pathway). In the Advocate Commissioner's report, one can note that the electricity connection for the plaintiffs' use have been laid across the suit pathway. As already pointed out, the plaintiffs purchased the suit property way back in the year 1955. They have also dealt with the properties purchased by them under Ex.A.3 dated 03.04.1965 and Ex.A.5 dated 16.09.1972. In those documents, the suit pathway has been specifically referred to. That is why, the Courts below have concurrently found that the suit pathway has been enjoyed by the plaintiffs for more than thirty years. The suit was filed only in the year 1996. The Courts below have also given a finding that only through the suit pathway, the plaintiffs can reach their respective houses and that they did not have any pathway on the eastern side. Therefore, the existence of the suit pathway and the right of the plaintiffs to use the same have been concurrently found in favour of the respondents herein by the Courts below while exercising jurisdiction under Section 100 CPC, I do not want to interfere. No substantial question of law arises for determination.



9. This second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS II)

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/ /2022

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The I Additional Subordinate Judge,
Thiruchirappalli.
2. The District Munsif,
Musiri.

Copy to:

The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.GOVINDARAJAN, Advocate (SR-15479[F] dated
30/03/2022)

S.A.(MD)No.565 of 2010
29.03.2022

MGJ(11.04.2022) 4P 6C