



S.A.(MD)No.170 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.08.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.(MD) No.170 of 2011

1.Subbulakshmi

2.P.Selvaganesh

... Appellants/Respondents/Defendants 1 & 2

Vs

1.Muthulakshmi

2.Sundar @ Sundararaj

3.S.Somasundaram

..1st Respondent/1st Respondent/Plaintiff

...Respondents 2 & 3/Respondents 2 & 3/
Defendants 3 & 4

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 19.11.2010 in A.S.No.90 of 2010 on the file of the Additional Subordinate Judge, Tirunelveli confirming the judgment and decree dated 03.11.20909 in O.S.No.443 of 2007 on the file of the Principal District Munsif Court, Tirunelveli.

For Appellants : Mr.K.Sathya Singh



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For R1 : Mr.R.T.Arivukumar

For R2 & R3 : No appearance

JUDGMENT

The defendants 1 and 2 in O.S.No.443 of 2007 on the file of the Principal District Munsif Court, Tirunelveli, are the appellants herein. For narrative convenience, the parties are referred to here as per their rank before the trial court.

2. The suit was laid for declaration of the II schedule property in the plaint as a common courtyard or common passage, and for mandatory injunction for removing certain construction put up by the defendants in the item No.2 and for other ancillary reliefs. The suit was decreed and this decree came to be confirmed by the first appellate Court in A.S.No.90 of 2010. Hence, this Second Appeal. For narrative convenience, the parties would be referred as per their rank before the trial court.

3. This Second Appeal is not yet admitted and only notice has been ordered and



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the first respondent/plaintiff has entered appearance.

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4. The case of the plaintiff, as could be gathered from the pleadings and evidence made available, is that certain Anandharam Prasad and Hariram Prasad were involved in a litigation in O.S.No.14 of 1962 and they resolved their dispute based on a compromise decree dated 29.09.1969, and both the parties were allotted various items of properties under this compromise. While so, the plaintiff had purchased plaintiff item No.1 properties under Ext.A.1 dated 22.01.2007 and under Ext.A.6 dated 05.09.1985 from Hariram Prasath's branch. The defendants had purchased a portion on the south Vide Ext.B.1 and Ext.B.2 from Anandharam Prasath's branch. Between the properties covered under Ext.A.1 and Ext.A.6, and Ext.B.1 and Ext.B.2 lies the 2nd Schedule property. In Ext.A.7 compromise decree, this is left as a common courtyard/passage for both Anandharam Prasath and Hariram Prasath. In the subsequent sale deeds also, this common courtyard/passage finds a mention. Indeed, in Ext.A.1 and Ext.A.6 the southern boundary is shown as the common passage, which is the 2nd schedule property herein. And, in Ext.B.1 and Ext.B.2 this common passage is described as the northern boundary. A Commissioner appointed by the Court had visited the



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property and he had also noted this common passage.

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5. The suit came to be instituted when the defendants had put up a wall along the northern boundary of 2nd schedule property. Indeed, by this arrangement, they had literally annexed the 2nd schedule property to his property covered by Exts B-1 and B2. Besides, they have also alleged to have put up a septic tank there.

6. In the written statement that runs several paragraphs, the core contention of the defendants is that the item 2 property is not a common courtyard.

7. The dispute went to trial and the both the courts categorically found that item 2 property is a common passage by relying on Ext.A.7 compromise decree passed in O.S.No.14 of 1962 followed by the boundary description in Ext.A.1, Ext.A.6 Ext.B.1 and Ext.B.2 to which reference has already been made. When the dispute reached the first appellate Court, it also took into account the testimony of D.W.1 while concurring with the decree passed by the trial court.

8. In their decree, the courts below, while granting a declaration that the 2nd item



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of property as a common passage, limited the decree for mandatory injunction only to the extent of removing the wall shown in the Commissioner's report along HL line on the northern boundary of item 2, but, did not direct the defendants to remove the septic tank put up by them.

9. Heard the learned counsel for the appellants and perused the papers. This Court is satisfied with the approach of the courts below and their judgments are absolutely in order and hence, it does not find any merit to entertain this appeal.

In fine, this Second Appeal is dismissed. No costs.

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Index : Yes/No
Internet: Yes/No
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To,

1. The Additional Subordinate Judge, Tirunelveli
2. The Principal District Munsif Court, Tirunelveli.



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N.SESHASAYEE, J.

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