



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.732 of 2010

WEB COPY

1.K.Ariyasamy (died)

2.K.Alagarsamy

3.K.Perumal

4.K.Velayutham ... Appellants / Respondents 1 to 4 /
Plaintiffs

5.Vijayalakshmi

6.Sukumari

7.Pandiammal

8.Parameshwari ... Appellants/...../
LRs of the deceased 1st appellant
(Appellants 5 to 8 are *suo motu* impleaded as Lrs of the
deceased 1st appellant vide order dated 04.03.2022)

-Vs-

1.M.Lakshmi ...1st Respondent / Appellant / 1st Defendant

2.M.Mohankumar ...2nd Respondent / 5th Respondent /2nd Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the District Court, Sivagangai in A.S.No.1 of 2009, dated 30.10.2009 reversing the judgment and decree of the Principal District Munsif Court, Sivagnagi in O.S.No.60 of 2001 dated 20.03.2002.

For Appellants : Mr.S.Natarajan
For R1 & R2 : Mr.V.Janakiramulu

JUDGMENT

The plaintiffs in O.S.No.60 of 2001 on the file of the Principal District Munsif Court, Sivagangai are the appellants in this second appeal.

2. The suit was for the relief of declaration that the suit property described as A B C D in the rough plan belongs in common to the plaintiffs and the defendants and for permanent injunction



restraining the defendants from putting up any construction thereon. The first defendant is the mother of the second defendant. The defendants filed written statement controverting the plaint averments. Based on the rival pleadings, the trial court framed two issues. The first plaintiff examined himself as P.W.1. One Murugesan was examined as P.W.2. Ex.A1 to Ex.A5 were marked. The first defendant Lakshmi examined herself as D.W.1. Two other witnesses were examined on her side. The municipal surveyor was examined as D.W.3. Ex.B1 to Ex.B12 were marked. An Advocate Commissioner was appointed and his report and plan were marked as Ex.C1 & C2. The photographs in respect of the suit property were marked as Ex.C3 to Ex.C6. After considering the evidence on record, by judgment and decree dated 20.03.2002, the trial court decreed the suit as prayed for. Aggrieved by the same, the first defendant filed A.S.No.1 of 2009 before the District Court, Sivagangai. The first appellate court by the impugned judgment and decree dated 30.10.2009 reversed the decision of the trial court and allowed the appeal and dismissed the suit. Challenging the same, this second appeal came to be filed. The second appeal was admitted on 24.08.2010 on the following substantial questions of law:-

"1. Whether the lower appellate court's judgment is erroneous as it did not frame the points for determination as contemplated under Order 41 Rule 31 of C.P.C., when the appellate court thought it fit to reverse the trial court judgment? And

2. Whether the judgment of the lower appellate court reversing the judgment and decree of the trial court suffers from error and misconception of the reliefs sought for in the plaint?"

3. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and decree and restore the decision of the trial court.

4. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decree do not call for any interference.

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

6. The dispute regarding the suit property is whether it is a lane common to the plaintiffs and the defendants or whether it is the exclusive property of the defendants. In support of their contention that the suit property is a common lane, the plaintiffs relied on Ex.A2 dated 21.08.1953. Ex.A2 is the sale deed executed by one Visalakshi in favour of Krishnan Chettiar. Krishnan Chettiar is none other than the father of the plaintiffs. In the



said document, the property sold under Ex.A2 has been described as lying to the west of Ramasamy's property and lane. The very same description is found in the other documents such as Ex.A3 dated 24.08.1943, Ex.A4 dated 24.08.1943 & Ex.A5 dated 09.10.1968.

7. The learned counsel appearing for the appellants laid considerable stress on this description found in the parent document. He also pointed out that the courts below have concurrently rendered a finding that the use of the eastern boundary of the plaintiff's property is as a lane. It is fortified by the fact that the plaintiffs have opened as many as three windows on the eastern wall which are projecting towards the suit property. There is also a drainage pipe opening into the suit property. The trial court was swayed by this considerations and decreed the suit.

8. Now the question is whether reversal of the trial court's decision by the first appellate court is justified. The first appellate court though had not framed the precise points for determination, still it did come to grips with the evidence on record and chose to render the impugned judgment. Therefore, on the technical ground that Order 41 Rule 31 of C.P.C., has not been complied with, I am not inclined to interfere with the impugned judgment of the first appellate court. The first substantial question of law is answered against the appellant.

9. Now let me go into the merits of the matter. It is true that the eastern boundary of the plaintiff's property has been consistently described as a lane. But neither the defendants nor their predecessor-in-title are parties to the said documents. Therefore, the description found in plaintiff's title documents cannot by itself bind the defendants. It cannot be conclusive of the character of the suit property.

10. Coming to the evidence adduced by the defendants, it is seen that the defendants claim title under Ex.B7 dated 18.08.1938 sale deed executed by Shanmugam in favour of Silambayee, wife of Ramasamy Servai. She is the mother-in-law of the first defendant and grandmother of the second defendant.

11. I went through the description of the property given in Ex.B7. The property purchased under Ex.B7 lies to the south of the street and to the north of the vacant site of Subbiah Kothanar and to the east of Velu Servai's house and to the west of the thatched house belonging to the Silambayee herself. Therefore, Ex.B7 cannot be a title document in respect of the suit property. However, Ex.B7 can be relied upon for the purpose of coming to the conclusion that even though the property that lay to the west of the property purchased under Ex.B7 also belonged to Silambayee, the property purchased under Ex.B7 measures 40 feet east-west on the northern side.



12. I went through the plan submitted by the Advocate Commissioner. The suit property is 'A B C D'. A to K measures only 38.3 feet. Therefore, the property presently under the enjoyment of the defendants appears to be a little less than what was purchased by them under Ex.B7.

13. The learned counsel appearing for the respondents laid considerable emphasis on Ex.B10 and Ex.B12. Ex.B10 is the surveyor's sketch. Ex.B12 is the adangal. Both were marked through D.W.1. The municipal surveyor was examined as D.W.3. D.W.3 spoke about the contents of Ex.B10 as well as Ex.B12. There is no dispute that the suit property is comprised only in Survey No.19/1. As per the revenue records, survey No.19/1 is standing only in the name of Silambayee. That is why, the first appellate court rendered a finding that though the plaintiffs have also been using the suit property as a lane, they still cannot be granted the relief of declaration because there is nothing on record to show that they were using it as a matter of right. At the same time, it is evident that the windows installed on the eastern wall of the plaintiff's property has been opening only towards the suit property. The courts below have also set out few other features indicating the use of the property as a lane. It is undertaken by the respondents that these features shall not be disturbed. Likewise, the plaintiffs can use the suit property for the purpose of carrying out the repair works on their eastern wall. The second substantial question of law is also answered against the appellant.

14. Recording the undertaking given by the defendants before this Court, the impugned judgment and decree is sustained. The second appeal is dismissed. No cost.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

rmi

To

1.The District Court, Sivagangai.

2.The Principal District Munsif Court, Sivagnagi.



Copy To

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1 CC to M/s.S.NATARAJAN, Advocate (SR-15806[F] dated 31/03/2022)

+1 CC to M/s.V.JANAKIRAMULU, Advocate (SR-16184[F] dated 01/04/2022)

Judgment made in
S.A.(MD)No.732 of 2010
31.03.2022

svs(CO)

TR(27.04.2022) 5P 7C