



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

S.A.(MD)No.888 of 2010

Mani

... Appellant / Appellant /
Defendant

Vs.

Ponnusami Pillai

... Respondent / Respondent /
Plaintiff

Prayer: Second appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 15.07.2009 in A.S.No.208 of 2008 on the file of the learned II Additional Subordinate Judge, Trichy, confirming the Judgment and Decree dated 30.11.2007 in O.S.No.208 of 1999 on the file of the learned District Munsif, Thuraiyur.

For Appellant : Mr.M.Siddharthan
For Respondent : Mr.R.Sundar

J U D G M E N T

The defendant in O.S.No.208 of 1999 on the file of the District Munsif, Thuraiyur, is the appellant in this second appeal.

2. The respondent herein, namely, Ponusami Pillai filed the said suit seeking the relief of mandatory injunction in respect of four items. The appellant herein filed written statement controverting the plaint averments. Based on the divergent pleadings, issues were framed. The plaintiff examined himself as P.W.1. Periyasamy Pillai who is the elder brother was examined as P.W.2. One Srinivasan was examined as P.W.3. Ex.A.1 to Ex.A.12 were marked. The appellant herein / Mani examined himself as D.W.1. Two other witnesses were examined on his side. 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 a consideration of the evidence on record, the trial Court partly decreed the suit and granted the relief of mandatory injunction in respect of the suit wall put up on the common pathway. The other reliefs sought for by the plaintiff were denied. Questioning the said judgment and decree dated 30.11.2007, the defendant alone filed A.S.No.208 of 2008 before the II Additional Sub Court, Thiruchirappalli. The plaintiff did not file any cross appeal. The first appellate Court by the impugned judgment and decree dated 15.07.2009 confirmed the decision of the trial Court and dismissed the appeal. Challenging the same, this second appeal came to be filed.

3. Though the second appeal was filed way back in the year 2010, only notice was ordered and it has not been admitted till
<https://hcservices.ecourts.gov.in/hcservices/>



date.

4. The learned counsel appearing for the appellant 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 it up for disposal later.

5. Per contra, the learned counsel appearing for the respondent / plaintiff submitted that no substantial question of law arises for consideration.

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

7. The appellant Mani and the respondent Ponusami Pillai are brothers. They had an elder brother by name Periyasami Pillai and a younger brother, by name, Sundaram Pillai. Periyasami Pillai was the eldest son in the family. He executed as many as three gift deeds in favour of his brothers under Ex.A.1, Ex.A.9 and Ex.A.10 dated 22.05.1979.

8. I carefully went through the schedule set out in all the three documents. The appellant Mani was given a plot to the south of Sundaram Pillai's property. The plaintiff was given a site to south of the appellant. The appellant was also given an extent of land on the western side. All the three documents (i.e.) Ex.A.1, Ex.A.9 and Ex.A.10 talk about a common path way running north-south. Length has been set out as 61 ½ feet. The breadth is 2 feet on the southern side and 5 feet on the northern side. The appellant who derives title under Ex.A.10 never questioned the existence of the common path way. It has also been found in evidence that the offending wall was put up on the common path way within three years before the filing of the present suit. Since on the common path way none of the parties can put up or cause any obstruction, the Courts below rightly granted the relief sought for. No case has been made out for interference. No substantial question of law arises for consideration.

9. The decision of the Court below is confirmed. This second appeal is dismissed. No costs.

Sd/-

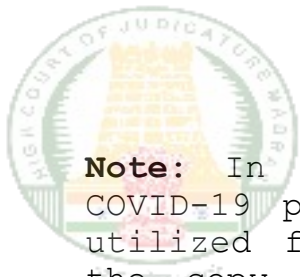
Assistant Registrar (CS-II)

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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 II Additional Subordinate Judge,
Trichy.
2. The District Munsif,
Thuraiyur.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.SUNDAR, Advocate (SR-12638[F] dated 17/03/2022)

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SVS (CO)
KB (30.03.2022) 3P 6C