



S.A(MD).No.67 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 14.06.2022

CORAM: JUSTICE N.SESHASAYEE

S.A(MD).No.67 of 2011
and M.P(MD)No.1 of 2011

1.Sakunthala
2.Saraswathi

.... Appellants/Appellants/Defendants

Vs.

Sugumar

... Respondent/Respondent/Plaintiff

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 26.08.2009 in A.S.No.155 of 2008 on the file of the II Additional Sub Judge, Trichirappalli, confirming the judgement and decree dated 29.08.2007 in O.S.No.179 of 1997 on the file of the District Munsiff, Musiri.

For Appellants : Mr.K.Govindarajan
For Respondent : Mr.S.Ramesh

JUDGMENT

The defendants, who have lost successively in a suit for declaration of title and also for mandatory injunction to remove certain obstructions in 'C' schedule-property in O.S.No.179 of 1997, and also in A.S.No.155 of 2008 before the first appellate Court are the appellants herein. For narrative convenience, the parties are referred to as per their rank before the trial court.



S.A(MD).No.67 of 2011

2. The dispute is over a narrow strip of land with a width of about 3' feet.

This lane lies next adjacent to the western half of the plaintiff's property, further west lies the property of the defendants. The case of the plaintiff is that he had obtained title to his property Vide Ext.A-1 partition deed, that the western boundary of his property lies about 1 ½ feet beyond the western wall his residential building. He has also opened a door into this lane. The grievance of the plaintiff is that the defendants are putting up what he terms as a common lane, and seeks declaration that the said lane is a common lane, and also seeks mandatory injunction for removal of certain structures such as drainage, washing stone etc which the defendants have put up there. The defendants in their written statement disputed the same.

3.1 The dispute went to trial, during which both sides adduced oral and documentary evidence. Besides, the trial Court has also appointed a Commissioner whose report and plans have been marked as Ext. C.1 and Ext.C.2.

3.2 Of the documents produced, Ext.A.1 is a partition deed within the family of the plaintiff under which he was allotted a portion about the south of the property dealt with under the said document. The property to its



S.A(MD).No.67 of 2011

immediate north was allotted to one of the brothers of the plaintiff. In the context of the disputed lane is concerned, the plaintiff has opened a door in his western wall to have access to the C-Schedule property and through it to the main road on the north. This is denoted in Ext.C.2, the Commissioner's plan and backed by Ext.C.1, the Commissioners report. The defendants did not offer any objection to the Commissioner's report.

3.3 This apart, the plaintiff also relies on Ext. A.3 and Ext. A.4. Of the two Ext. A.3 is stated to be an agreement dated 30.12.1975. It is executed by one Karuppannan Chettiar. The defendants are the heirs of this Karuppannan Chettiar. In Ext.A.3, Karuppannan Chettiar makes a categorical statement that there is an extent of about 1 ½ feet left vacant next adjacent to the western wall of the plaintiff for discharging eves water of the plaintiff's western roof, and that he (Karuppan Chettiar) had also set apart 1 ½ feet abutting his eastern wall, and this 3' feet lane is left for common usage. After the demise of Karuppannan Chettiar, a fresh agreement came to be executed by the defendants, the heirs of Karuppannan Chettiar Vide Ext.A. 4 dated 18.11.1989.

4. Acting on the aforesaid documents, the trial Court decreed the suit. In an



S.A(MD).No.67 of 2011

appeal preferred by the defendants in A.S.No.155 of 2008 before the learned II Additional Sub Court, Trichy, the First Appellate Court chose to concur with the finding and the verdict of the trial court, and dismissed the appeal. Hence, this Second Appeal at the instance of the defendants.

5. This Second Appeal is admitted for considering the following substantial questions of law:

i) Whether the Courts below have rendered a perverse finding that the suit lane is a common lane relying on the recitals found in Ext. A.3 and Ext. A.4, while holding that the said documents have not been proved?

ii) Whether the courts below have committed an error in casting the burden on the defendants to prove the lane to be their separate lane, when the plaintiff has not adduced sufficient evidence to prove that the suit lane is a common lane in which he also has got a right?

6.1 Heard Mr.K.Govindarajan, learned counsel appearing for the appellants/ defendants and Mr.S.Ramesh, learned counsel appearing for the respondent/ plaintiff. The learned counsel for the appellants would submit that the defendants disputed Ext.A.3 and Ext.A.4 and continues to believe that in



S.A(MD).No.67 of 2011

law they have not been proved. He submitted that to bring an end to this agonizing litigation, the defendants agrees to the genuineness of these documents, and added that the defendants would not object to the plaintiff claiming his half of the vacant site abutting his western wall, and the defendants would enjoy the remaining half to its further west, which abuts the eastern wall of the defendants' property. He also submitted that the defendants have put up their drainage in the portion belonging to the plaintiff and also have put their washing stone and certain other constructions and undertook that the defendants would remove them within a stipulated period. To a specific question from the Court, the learned counsel submitted that this could be done within a period of six weeks.

6.2 The learned counsel for the plaintiff would agree to the proposal on the instructions, and submitted that the plaintiff would confine his claim to the eastern half of the disputed 'C' schedule property. Both the statements are recorded.

7. Even though this Court has taken a view that the Court may not act on the basis of the undertaking or memo of the Advocates when deciding the substantial rights of the parties in *Abdul Rashid Sahib Vs Ramachandran*



S.A(MD).No.67 of 2011

& another [2022 SCC online Mad 2623 : (2022) 3 CTC 667], yet this Court

now acts not exclusively on the statement made at the Bar, but, acts on Ext.A.3 and Ext.A.4 which the courts below had relied on. The dispute is over a common lane to the creation of which both the sides have contributed equally as could be seen from Exts.A-3 and Ext.A-4. The dispute is in its silver jubilee year. The parties have found that the lasting solution to end their feud is to revert to a position that was prior to Ext.A-3, by each side taking their respective half of 'C' schedule property.

8. Given the change of circumstances, this Court necessarily has to mould the relief and holds that the plaintiff is entitled to the eastern half of the 'C' Schedule property which lies to the immediate west of the plaintiff's house, and consequently the defendants are directed to remove the structures that have been put up by them in the said property.

9. This Second Appeal is partially allowed and the decree of the First Appellate Court in in A.S.No.155 of 2008 on the file of the II Additional Sub Judge, Trichirappalli, is modified to the extent herein above indicated. The defendants are directed to remove all the constructions that they have made in the eastern half of 'C' schedule property within a period of six



S.A(MD).No.67 of 2011

weeks. No costs. Consequently, connected miscellaneous petition is closed.

WEB COPY

10. Execution of a decree is an option open to the decree-holder, when the decree is not satisfied by the judgment-debtor. But, Court passes decrees with a view to bind those against whom they are passed, no matter the decree holder exercise their option of executing it. The one whom a decree binds is required to submit to the decree and this Court has the authority in law to ensure that the decree is obeyed. Therefore, rather than driving the plaintiff to a cumbersome process of execution proceedings, this Court takes an initiative to ensure that the decree it has now passed is obeyed.

11. This Second Appeal is therefore, directed to be listed on **02.08.2022** under the caption 'For Reporting Compliance'.

14.06.2022

Index : Yes/No

Internet: Yes/No

cm



S.A(MD).No.67 of 2011

To

WEB COPY

1.The II Additional Sub Judge, Trichirappalli.

2.The District Munsif, Musiri.

3.The Section Officer,

VR Section, Madurai Bench of Madras High Court, Madurai.



WEB COPY



S.A(MD).No.67 of 2011

N. SESHASAYEE, J.,

CM

S.A(MD).No.67 of 2011
and M.P(MD)No.1 of 2011

14.06.2022