



S.A.(MD) Nos.244 and 245 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.07.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) Nos.244 and 245 of 2013

S.A.(MD) No.244 of 2013:

Chinnammal

... Appellant/Appellant/Plaintiff

Vs

1.Jeyaraman
2.Chinnadurai
3.Vaithiyalingam (Died)
4.Thangaraju (Died)
5.Sulochana
6.Nagaraj
7.Nanthini

... Respondents/Respondents/
Defendants 1, 3 to 8

*[R5 to R7 – Recorded as LRs of the deceased R3
and R4 vide Memo USR No.364/13, dated
11.02.2013 made in M.P.(MD) No.1 of 2013 in
S.A.SR (MD) No.16433 of 2010]*

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 16.07.2009 made in A.S.No.46 of 2006 on the file of the 1st Additional Sub Court, Trichy, in confirming the judgment and decree dated 24.10.2005 made in O.S.No.818 of 1988 on the file of the 1st Additional District Munsif Court, Trichy.



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For Appellant : Mr.G.Ethirajulu
For Respondents : Mr.P.Sivachandran – for R5 to R7
: No appearance – for R1 & R2

S.A.(MD) No.245 of 2013:

Chinnammal ... Appellant/Appellant/Defendant

Vs

1.Sulochana
2.Nagaraj
3.Nanthini

... Respondents/Respondents/
Plaintiffs 4 to 6

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 16.07.2009 made in A.S.No.47 of 2006 on the file of the 1st Additional Sub Court, Trichy, in confirming the judgment and decree dated 24.10.2005 made in O.S.No.3042 of 1989 on the file of the 1st Additional District Munsif Court, Trichy.

For Appellant : Mr.G.Ethirajulu
For Respondents : Mr.P.Sivachandran



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COMMON JUDGMENT

1.1. There are two suits in which the subject matter is a lane like structure that exists between the properties of both the parties. The issue was whether there is a lane, and if it is so, is it a common lane. Firstly, a suit in O.S.No.818 of 1988 was laid by the appellant herein for declaration and also for injunction claiming exclusive right over the suit property. Defendants 2, 4 and 5 in the said suit laid O.S.No.3042 of 1989 for declaration that it is a lane common to both the parties, and also for mandatory injunction to remove certain obstruction put up by the plaintiff in O.S.No.818 of 1988.

1.2. Both the suits were tried together and evidence was recorded in O.S.No.3042 of 1989, and the trial Court held that the lane in question was a common lane and decreed O.S.No.3042 of 1989 and dismissed O.S.No.818 of 1988. This gave rise to two separate first appeals in A.S.No.46 of 2006 and A.S.No.47 of 2006 and they came to be dismissed by the first appellate Court. Aggrieved by the same, the appellant is before this Court.



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1.3. For narrative convenience, the parties are referred to as per their rank before the trial Court in O.S.No.3042 of 1989.

2. There admittedly exists a lane matching the description of the suit property in O.S.No.3042 of 1989. The issue is whether it is part of the appellant/defendant's property or is it a common pathway. The plaintiffs' property is to the east of this lane and the defendant's property is to the west of the lane. The material facts for the current purpose are:

- The plaintiffs trace their title to Ext.A.2, Ext.A.3 and Ext.A.4. In none of these documents, any pathway to the west of the property of the plaintiffs is indicated.
- The defendant claims title to her property to the west of the lane Vide Ext.A.10-surrender deed feeding title to Ext.A.9 which in turn feeds title to Ext.A.8. In all these documents, existence of a common pathway is shown as the eastern boundary.

The defendant had put up some obstruction towards the southern portion of this lane and when it was opposed, she laid O.S.No.818 of 1988, and since



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obstruction had been made already, the plaintiffs had laid O.S.No.3042 of 1989.

3. The trial Court relied on the eastern boundary description in all the title deeds of the defendant viz., Ext.A-10, Ext.A-9 and Ext.A-8 in all of which, it was described as a common lane. The first appellate Court also concurred with the findings of the trial Court. Hence, these second appeals. The appeals were admitted for considering the following substantial questions of law:

(a) Whether the report of an advocate commissioner prove the existence of a common lane in between the respondents house and appellants house in absence of any revenue records establishing the existence of a common lane?

(b) Is not the lower appellate Court bring an appellate authority bound to decide the dispute between the parties independently without referring to the findings of the trial Court?



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(c) Whether the suit filed by the respondents to declare the suit property as a common lane is maintainable in absence of arraying the public authorities as parties to the suit who are proper and necessary parties to revolve the dispute?

4. The learned counsel for the defendant/appellant herein forcefully argued that the first appellate Court had oversimplified its efforts in following the findings of the trial Court. Indeed it has not even framed any specific point for consideration within the meaning of Order 41 Rule 31 CPC. He submitted that while the dispute is over the title to the lane, the first appellate Court has merely framed two points which raises a general issue as to the correctness of the judgment of the trial Court. He added that if the disputed lane stated to lie to the east of the defendant's property is actually available for common use, then it would have reflected in the title deeds of the plaintiffs. However, none of the title deeds of the plaintiffs in Ext.A-2, Ext.A-3 and Ext.A-4 speak about the existence of any common pathway. Hence, the Courts below went wrong in merely relying on the eastern



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boundary description in Ext.A-10, Ext.A-9 and Ext.A-8 as s decisive factor in holding against the defendant.

5. Per contra, the learned counsel for the respondents argued that D.W.1 in his cross-examination had admitted that the windows were opened on the western wall of the plaintiffs' house overlooking the common lane. This itself would indicate about the existence of the lane, and if only it was not there, there would not have been any windows on the western wall of the plaintiffs' house.

6. The point narrows down to a very short question and it is already answered by the Courts below. The earliest document on the side of the defendant is a surrender deed executed by certain Sornammal, vide Ext.A-10, dated 16.02.1953 in favour of her grandson. This document while describing the property which the defendant would ultimately purchase describes the eastern boundary as a common lane. Subsequently, the transferees of Ext.A-10 entered into a partition deed in Ext.A-9, dated 13.12.1968, which repeats it and the defendant purchased the property under



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Ext.A-8, dated 06.12.1979 from the allottee of the property under Ext.A-9 partition deed. This also refers to a common lane as the eastern boundary of the property.

7. The point here is that the defendant is bound by her document. There could have been a case for the defendant, if it is only referred to as 'lane' and not as 'common lane'. There is no case for the defendant that the right of common usage over the lane is intended for some strangers and not for the plaintiffs. Her specific case is that the common lane is part of her property, which implies that she does not even admit the character of the property which she had purchased, but the boundary description of her property pins her down. She is bound by her title deeds and she cannot object to the existence of a common lane to the east of her property.

8. Turning to the findings of the Courts below, this Court finds that they are just and appropriate given the evidence placed before them. Ultimately it is an issue on fact, and the findings of the Courts below appear to be the most probable view which the Courts have taken on it.



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9. In conclusion, this Court does not find any perversity in the findings of the Courts below as to warrant an interference under Section 100 of the Code of Civil Procedure. Hence, these Second Appeals are dismissed. No costs.

15.07.2022

Internet: Yes
Index: Yes/No

abr

To

1. The 1st Additional Sub Court,
Trichy.
2. The 1st Additional District Munsif Court,
Trichy.



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N.SESHASAYEE, J.

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