



S.A.(MD) No.75 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.11.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.75 of 2011

and

M.P.(MD) Nos.1 of 2011 and 1 of 2012

A.Sivasubramanian (Died)	... Appellant/Appellant/ Defendant
2.S.Uma (Died)	
3.S.Ravishankar	
4.S.Raja	... Appellants 2 to 4

*[Appellants 2 to 4 were brought on record as
LRs of the deceased sole appellant vide order
dated 09.12.2016 made in C.M.P.(MD) No.
8750 of 2016 in S.A.(MD) No.75 of 2011]
[2nd appellant died and appellants 3 and 4
are recorded as LRs of the deceased 2nd
appellant in this judgment dated 29.11.2022]*

Vs

V.Seenivasan	... Respondent/Respondent/ Plaintiff
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Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 15.04.2010 made in A.S.No.120 of 2007 on the file of the 1st Additional Sub Court, Madurai, by reversing the judgment and decree dated 05.04.2007 made in O.S.No.335 of 2003 on the file of the Principal District Munsif's Court, Madurai Town.



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For Appellants : Mr.K.Janakiramulu

For Respondent : Mr.R.Suriyanarayanan

J U D G M E N T

This appeal is listed today under the caption 'for reporting compromise'.

2. The defendant in a suit for prohibitory injunction and mandatory injunction to remove certain obstruction on the right of pathway alleged to have been created by him is the appellant herein. The defendant was unsuccessful successively both before the trial Court in O.S.No.335 of 2003 on the file of the Principal District Munsif's Court, Madurai Town, and also in A.S.No.120 of 2007 before the 1st Additional Sub Court, Madurai. Hence, the second appeal.

3. The dispute is between Ext.A.1, dated 04.05.1953 and Ext.B.1, dated 07.06.1947.

4. The property of the plaintiff lies to the east of the property of the defendant. While the plaintiff traces his title to the property under Ext.A.1-



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sale deed dated 04.05.1953, the defendant claims title to his property vide Ext.B.1, dated 07.06.1947. While the plaintiff's property abuts Dhanappa Muthali Street on the east, the defendant's property abuts Gopal Kothan Street on the west. In other words, both the properties have got independent access to the street respectively on the east and the west of their respective properties.

5. The dispute is that the plaintiff claims right of pathway along the northern boundary of the defendant's property to have access to Gopal Kothan Street on the west. Indeed both Ext.A.1 and Ext.B.1 refers to the same.

6. The defendant however, contended that the right of way indicated in Ext.A.1 and Ext.B.1 has been extinguished, as a wall was put up closing the pathway in question for more than 40 years. The Courts below however, have decreed the suit based on Ext.A.1 and also Ext.B.1, which as already indicated, referred to the right of way granted to the plaintiff's property through the defendant's property.



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7. When the matter came up for hearing before this Court, this Court sensed a possibility for an amicable settlement between the parties and both sides showed their enthusiasm to resolve the same among themselves. Hence, this appeal was directed to be posted under the caption 'for reporting compromise'.

8.1 Today, when the matter is taken up, this Court is informed by the learned counsel for the appellants that the 2nd appellant has passed away on 01.06.2017, and her heirs are appellants 3 and 4. A copy of the death certificate is also circulated before the Court. The same is hereby recorded.

8.2 This Court is presented with a Memo signed by the respondent/plaintiff and his counsel. The Memo reads that the plaintiff admits the case of the defendant that the right of way granted to the plaintiff's property vide Ext.A.1 and also Ext.B.1 had indeed ceased to exist some 40 years ago, and hence he is giving up his right over the same. It also provides for removal of the drainage facility provided to the plaintiff's property through the disputed pathway.



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9. In view of the above, this Court allows this Second Appeal in terms of the Memo filed by the plaintiff/respondent herein. A decree be drafted in terms of the Memo presented by the respondent. The Memo is directed to be appended to the decree. No costs. Consequently, connected miscellaneous petitions are closed.

29.11.2022

Internet: Yes

Index: Yes/No

Note: Registry is required to make necessary amendment in the cause title.

abr

To

1. The 1st Additional Sub Judge,
Madurai.
2. The Principal District Munsif,
Madurai Town.
3. The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.

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