



S.A(MD).No.833 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2022

CORAM: **JUSTICE N.SESHASAYEE**

S.A(MD).No.833 of 2013

Rukmani

.... Appellant/Respondent/Defendant

Vs

Arumugam

... Respondent/Appellant/Plaintiff

Prayer : Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 24.07.2013 in A.S.No.15 of 2013 on the file of the Principal Subordinate Judge, Dindigul reversing the judgement and decree dated 29.11.2012 in O.S.No.541 of 2008 on the file of the Principal District Munsif Court, Dindigul.

For Appellants : Mr.R.Subramanian

For Respondent : Mr.H.Lakshmi Shankar

JUDGMENT

The defendant in O.S.No.541 of 2008, which is laid seeking both mandatory and prohibitory injunction, is the appellant herein. The suit was dismissed



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by the trial court but this verdict was reversed by the first appellate court in A.S.No.15 of 2003.

2. The dispute is over a lane measuring 21 feet x 5 feet, and the same is described as II schedule property in the plaint. For a descriptive understanding of the property, a rough sketch is also produced by the plaintiff and is available on record as Ext. A.1. The case of the plaintiff is that:

- A certain Karuppana Pandithar was entitled to a block of land in Survey No.1416/A1A. On his demise, it devolved on his wife Pitchammal, who on 28-12-1954 had sold it to one Chinnasamy Servai under ExtA-2 sale deed. This property sold under Ext.A-2 has a dimension of 64' East-West x 45' North-South, and is bounded on the north by a 20 ft. long pathway and on the west by a public road. Later Chinnasamy Servai settled the western half of the property covered under Ext. A-2 to one Innasiammal Vide Ext. A.3 settlement deed dated 10.10.1979. She in turn sold it to the plaintiff under Ext.A-4 sale deed dated 11.03.1994. The plaintiff is none other than the son of the above referred to Chinnasamy Servai.



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- In the meantime, Chinnasamy Servai had also sold the eastern half covered under Ext. A.2 to one Lourdhumary.
- While so, the defendant's mother Pitchammal had purchased a piece of property to the south of the property purchased by Chinnasamy Servai under Ext. B4 and Ext. B5. A well is situated on the far east of the defendant's property. Chinnasamy Servai had a specific right to procure water from the aforesaid well.
- To state the physical feature of the property, the plaintiff's portion is on the north, the defendant's portion is to its south, and in between the two runs the disputed lane, and to the east of the defendant's property and the south-east of plaintiff's property is the well, and the main road is on the west. The disputed lane leads to the main road on the West and well on the east.

When the defendant attempted to put up a wall in this land, the plaintiff objected to it and filed the suit seeking both prohibitory injunction as well as mandatory injunction.



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3. Refuting the allegations on which the plaintiff rested the cause of action for the suit, the defendant principally contends that the predecessor in title of the property had granted Chinnasamy Servai only the right to draw water from the common well, and that he was not given any right over the Item No.2 pathway. Even that well ceased to exist for well over 25 years prior to the filing of the written statement, and hence, the plaintiff's right over the common lane is extinguished.

4.1. The matter went to trial. Before the trial court, both sides adduced both oral and documentary evidence. For the plaintiff, he examined himself as P.W.1, and had also examined one Sebastin as P.W.2 and he produced Ext. A.1 to Ext. A.12. For the defendant she examined herself as D.W.1 and she also examined one Lakshmanan as D.W.2. She produced Ext. B1 to Ext. B5.

4.2. On appreciating the evidence, the trial court dismissed the suit, essentially on the ground that the plaintiff's father Chinnasamy Servai was granted only the right to draw water from the common well, and inasmuch as the well ceased to exist, there is no more need for the plaintiff to use Item No.2 lane.



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5. Aggrieved by the line of reason of the trial court, the plaintiff preferred A.S.No.15 of 2013 before the Principal Sub Court, Dindigul. The Sub-Court re-appraised the evidence before it and found reasons to decree the suit. For appreciating the line of reasons of the first appellate Court it may be necessary to introduce two relevant facts:

- The defendant traced her title to the sale obtained by her mother Palaniammal Vide Ext. B4 and Ext. B5 and to Ext. B6 and Ext. B7 settlement deeds under which Palaniammal had settled the property in favour of the defendant. The defendant's mother, while describing the property dealt with thereunder, has indicated that the northern boundary of the said property is a common pathway.
- About 5 years, prior to the institution of the present suit, the defendant had laid O.S.No.585 of 2003 against some neighbors, wherein she had made a categorical assertion about the existence of a 5 feet wide common pathway in Survey No.1416/A1A, matching the description of item No.2 of the property. That suit filed by the defendant came to be decreed on 28.04.2005. The copy of the said judgment is Ext. A11 and the said decree is Ext. A12.



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The first appellate court relied on admission as to the existence of a common pathway either in the title document of the defendant, or in her plaint in O.S.585 of 2003, and used the same against the defendant in the present suit.

6. This second appeal is admitted for considering the following 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 Exs.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 land 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?*

7. The learned counsel for the appellant made a valiant effort to convince this Court that the plaintiff, who is claiming under Chinnasamy Servai cannot seek any right in excess of that which Chinnasamy Servai had obtained under Ext. A.2, and inasmuch as well, to procure water from which the disputed pathway might be necessary, had fell into disuse few decades



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prior to filing of the suit, the need to use the pathway also ceases. This apart, he submitted that even the plaintiff has conceded that the defendant had put up a toilet in the lane sometime in 1988, which implies the suit for mandatory injunction cannot be sustained. He has also argued that the first appellate Court has not raised any points, issues as under Order 41 Rule 31 C.P.C.

8. The learned counsel for the respondent would submit that the trial court had dismissed the suit essentially because it centered its line of reasoning on the right over the well, and ignored the admission of the defendant regarding the character of the disputed lane as a common pathway as seen in Ext. A.11, Ext. A.12 and Ext. B.7. He also added that in between, there was yet another document executed by the defendant's mother, a deed of mortgage dated 23.03.2003 in which she again denotes the common pathway on north in describing the property mortgaged. This document is now produced Vide C.M.P.(MD)No.1279 2020.

9. After weighing the rival submissions, this Court finds that there is a very limited merit in the submission of the learned counsel for the appellant that Chinnasamy Servai had obtained only right to draw water from the common



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10. In conclusion, this Court finds that the approach of the first appellate court cannot be faulted on any scores as to warrant an interference. All the questions of law are against the appellant and consequently, dismissed the Second Appeal as devoid of merits. No costs.

14.06.2022

Index : Yes/No

Internet: Yes/No

CM

To

- 1.The Principal Subordinate Judge, Dindigul
- 2.The Principal District Munsif Court, Dindigul.
- 3.The Section Officer,

VR Section,

Madurai Bench of Madras High Court,

Madurai.



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N.SESHASAYEE, J.

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