



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 26.11.2021

JUDGMENT PRONOUNDED ON : 06.01.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A. (MD) .No.52 of 2005

A.K.C.Murugan ...Appellant/Appellant/Defendant

Vs

1.Arumugam@Ravi

2.Shanmugam

...Respondents/Respondents/Plaintiffs

PRAYER : Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree passed in A.S.No.5 of 2004 dated 13.08.2004 on the file of Sub Court, Kovilpatti confirming the judgment and decree passed in O.S.No.143 of 2002 on the file of the District Munsif Court, Kovilpatti, dated 01.12.2003.

For Appellant : Mr.G.Venugopal
Advocate
For Mr.G.Prabhu Rajadurai
For Respondents : Mr.V.Meenakshisundaram
Senior Counsel
For Mr.D.Nallathambi

JUDGMENT

The defendant is the appellant herein.

2.The plaintiffs filed O.S.No.143 of 2002 before the District Munsif Court, Kovilpatti for the relief of declaration that the 2nd schedule property absolutely belongs to them and for consequential permanent injunction restraining the defendant from creating any doorway in the suit lane. The suit was decreed as prayed for by the trial Court. The defendant filed A.S.No.5 of 2004 before the Subordinate Court, Kovilpatti. The First Appellate Court though confirmed the judgment and decree of the trial Court, granted permission to the defendant to enter into the 2nd schedule property in order to maintain the western wall of the defendant. As against the said judgment and decree, the present second appeal has been filed by the defendant.

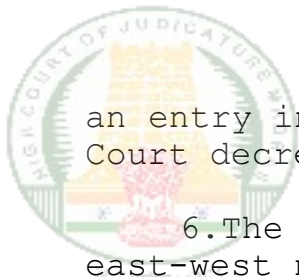


3.The plaintiffs had contended that the suit schedule properties are originally owned by the plaintiffs' grandfather namely one Velu Chettiar and there was a registered partition in their family on 28.05.1964. The 3rd schedule property in the said partition deed was allotted to Velu Chettiar which is the present suit schedule property. According to the plaintiffs, east-west measurement is 16 ½ feet which includes the suit lane on the east. The plaintiffs further contended that 2nd schedule property absolutely belongs to the plaintiffs and the plaintiffs are having a doorway on the eastern wall so as to enter into the 2nd schedule lane. The 2nd schedule lane is being used as a bathroom and the plaintiffs have also constructed a water tank. The plaintiffs further contended that the defendant who owned property on the east of the suit lane has attempted to open a doorway on his western wall so as to enter into the suit lane. Hence, the present suit.

4.The defendant filed a written statement admitting the partition deed dated 28.05.1964 but contended that the east-west measurement of 16 ½ feet does not include the suit lane. The defendant further contended that his father purchased the suit schedule property on 30.07.1960 from one A.S.K.Vallinayagam Chettiar. As per the said sale deed, east-west measurement of the property is 19 ½ feet. After the death of his father Chelliah Thevar, it devolved upon the defendant based upon a Will. The defendant further contended that the suit lane is belongs to him. Based on the said averments, the defendant sought for dismissal of the suit.

5.The trial Court after considering Exhibits A1, B1 and B2 and also the evidence of DW1, arrived at a finding that east-west measurement of the defendant namely 19 ¼ feet does not include the 2nd schedule suit lane. The trial Court also arrived at a finding that the written statement of the defendant will disclose that the exclusive right is not claimed by the defendant over the suit 2nd schedule lane. The trial Court also arrived at a finding that there is a doorway on the eastern wall of the plaintiffs facing the suit schedule lane, but on the other hand, there is no doorway on the western wall of the defendant so as to enter into the suit lane. This physical feature, noted down by the Advocate Commissioner will clearly establish the fact that the defendant has no manner of right over the 2nd schedule property. The trial Court further found that the suit lane has been closed on either side namely on the northern and southern side. Hence, there is no possibility for the defendant to enter into the suit lane except by entering into the house of the plaintiffs. The trial Court also found that the Kitchen of the plaintiffs is protruding into the suit lane and a water tank has been constructed in the suit lane. However, the defendant has not come forward to make a counter claim for removal of the suit protrusion. The trial Court has also found that the defendant in the

<https://hccerectortranscripts.hccerectortranscripts.com> created a hole in his western wall so as to create



an entry into the suit lane. Based upon the said findings, the trial Court decreed the suit as prayed for.

6.The First Appellate Court has come to the conclusion that east-west measurement in Exhibit B1 is 31 ½ feet east-west. But, at the time of partition made under Exhibit A1, one Karuppayee ammal has been allotted western most portion that east-west measurement of 16 ½ feet and eastern portion was allotted to the share of Velu Chettiar again with 16 ½ feet east-west measurement. When both these measurements are added together, it makes the east-west measurement as 33 feet under Exhibit A1. Hence, the trial Court arrived at a finding that 1 ½ feet in excess has been incorporated in Exhibit A1 partition deed. The First Appellate Court also found that the total east-west measurement of the defendant as per Exhibit B3 is 19 ½ feet and as per commissioner's report, it is 19 ½ feet and there is no possibility for the defendant to make a claim over the suit lane.

7.The First Appellate Court also found that the houses of both the plaintiffs and the defendant are more than 60 years old and the suit lane has been blocked both on the northern side as well as on the southern side. The First Appellate Court also found that the plaintiffs alone are having access to the suit lane through a doorway on his eastern wall, but the defendant is not having any access to enter into the suit lane. The Appellate Court came to the conclusion that though 1 ½ feet is excess of measurement in the east-west measurement of the plaintiffs, relied upon a judgment of our High Court reported in **2000(3) MLJ Page 327** to arrive at a finding that the boundaries will prevail over the extent. The First Appellate Court also found that the eastern boundary under Exhibits B1 and A1 are house properties of the defendant, hence, the plaintiffs's property will extend up to the western wall of the defendant. The First Appellate Court also considered Exhibits B1 to B3 to arrive at a finding that no lane has been mentioned as the western boundary of the defendant's property. But the First Appellate Court considered the fact that the windows are located on the western wall of the defendant. The First Appellate Court also noted that the eaves are protruding into the 2nd schedule pathway. The rain water from the defendant's house is also drained into the 2nd schedule pathway. In view of the above said physical feature as noted down by the Advocate Commissioner, the First Appellate Court granted a decree in favour of the defendant to enter into the 2nd schedule property after getting permission from the plaintiffs in order to maintain and white washing the western wall and also for draining rain water into the 2nd schedule property. As against the said judgment and decree, the present second appeal has been filed.

8.The second appeal has been admitted on the following substantial question of law:



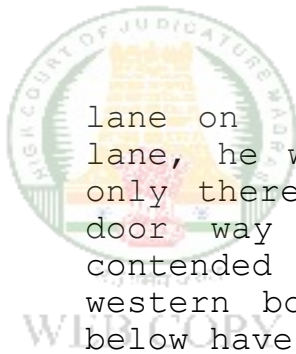
(a) whether the findings of the Courts below are vitiated by its failure to consider the specific boundary recitals under Ex.B2 and B3 and the admission of PW1 and PW2, especially when the Courts below has specifically found that the extent claimed under Exhibit A1 cannot be accepted?

(b) whether the Courts below is right in deciding the extent of the property as claimed by the respondents on the basis of Ex.A1 after having found that the extent referred therein is not correct?

9.The learned counsel for the appellant contended that under Exhibit B1 dated 22.07.1918, one Velu Chettiar has purchased the suit schedule properties with east-west measurement of 31 ½ feet. Thereafter, a partition has taken place in the family of the said Velu Chettiar under Exhibit A1, in which, the western portion was allotted to one Karuppayee Ammal with east-west measurement of 16 ½ feet and the eastern portion was allotted to Velu Chettiar with east-west measurement of another 16 ½ feet. Hence, according to the learned counsel for the appellant, the total east-west measurement shown in Exhibit A1 is exceeded by 1 ½ feet than that is found under Exhibit B1. Hence, the plaintiffs are not entitled to the relief as prayed for.

10.The learned counsel for the appellants further contended that east-west measurement of the plaintiffs's property alone was measured by the Advocate Commissioner. The western portion which was allotted to Karuppayee Ammal has not been measured so as to find out the correct east-west measurement of both the allottees under Exhibit A1 partition deed. The learned counsel further contended that this specific boundary recital under Exhibits B2 and B3 have not been properly appreciated by the Courts below. He further contended that the Courts below ought not to have granted a decree for declaration of title and permanent injunction, when the plaintiffs have not established their right, title or possession over the suit 2nd schedule lane. The learned counsel further contended that the Courts below have erroneously placed the burden of proof upon the defendant and granted a decree in favour of the plaintiffs.

11.Per contra, the learned counsel for the respondents contended that the Courts below have carefully considered Exhibits A1 and B1 to arrive at a finding that east-west measurement of the plaintiffs though it is 31 ½ feet as per the document, the boundary recitals in Exhibits B1 and A1 will indicate that the suit lane belongs to the plaintiffs. The learned counsel further contended that north-south suit lane is blocked on the northern side as well as on the southern side by the walls which are very old. He further pointed out that the plaintiffs alone are having access into the suit lane through a door way in their eastern wall. On the other hand, the defendant is not having any doorway to enter into the suit



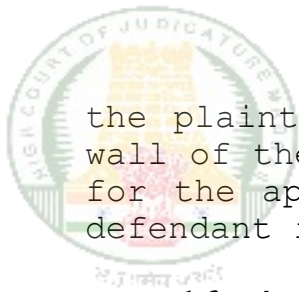
lane on his western wall. If the defendant has to use the suit lane, he will have to enter into the house of the plaintiffs and only thereafter, enter into the suit lane through the plaintiffs' door way on their eastern wall. The learned counsel further contended that there is no reference about the suit lane as the western boundary under Exhibits B2 and B3 and hence, the Courts below have arrived at a correct finding.

12.I have considered the submissions on either side.

13.The plaintiffs have claimed as their absolute property a lane that is located on the eastern side of the plaintiffs' house. According to the plaintiffs, east-west measurement of the property allotted to him in a partition deed under Exhibit A1 is 16 ½ feet. The suit lane falls within the said 16 ½ feet. In paragraph No.4 of the written statement, the defendant has admitted that east-west measurement of the plaintiffs' property as per Exhibit A1 partition deed is 16 ½ cents including the suit lane. Hence, the defendant has categorically admitted in his written statement that east-west measurement of the plaintiffs' property namely 16 ½ cents includes the suit lane of 2 feet also. The eastern boundary recital in Exhibits B1 and A1 indicate as the house property of the defendant's vendor. The western boundary recitals in Exhibits B2 and B3 does not disclose about the existence of the suit lane for the defendant.

14.The Commissioner in his report has found that the plaintiffs have an access to the 2nd schedule suit lane through a door way located on his eastern wall, but the defendant had made some recent attempt to make a hole on their western wall to enter into the 2nd schedule lane. Neither Exhibit B2 nor Exhibit B3 indicate about the existence of any doorway on the western wall of the defendant. Hence, the pleadings of the parties, the boundary recital in the document and the physical feature noted by the Advocate Commissioner will clearly indicate that the suit lane belongs to the plaintiffs and the defendant is not entitled to the said suit lane.

15.The learned counsel for the appellant had contended that the total east-west measurement of the plaintiffs is just 31 ½ feet, but in Exhibit A1 partition deed, one co-owner Karuppayee Ammal has been granted east-west 16 ½ feet and another co-owner Velu Chettiar has been granted another 16 ½ feet, totally 33 feet. According to the appellant, when the plaintiffs are entitled to just 31 ½ feet east-west, now the plaintiffs are making a larger claim of 33 feet. This submission has been rejected by the First Appellate Court referring to the Judgment of our High Court reported in **2000(3) MLJ Page 327**, wherein, it has been held that when there is a conflict between the description by the boundaries and area, the description by the boundaries has to be preferred. The boundaries given in the deed will prevail over measurement given in the deed. In the present case, Exhibits B1 and A1 indicate that the eastern boundary of the plaintiffs is that of the house property of the defendant. Hence,



the plaintiffs are entitled to east-west measurement up to western wall of the defendant. Hence, the contentions of the learned counsel for the appellant that an excess 1 ½ feet has been claimed by the defendant is not legally sustainable.

16.The First Appellate Court has also considered the physical feature namely opening of window on the western wall of the defendant, drainage of rain water into 2nd schedule property by the defendant and right to maintain the western wall of the defendant. Based upon the said finding, the First Appellate Court has rightly granted a right in favour of the defendant to enter into the suit 2nd schedule lane in order to maintain their western wall or to drain rain water into the 2nd schedule property. Hence, the First Appellate Court has rightly granted the said permission to the defendant.

17.In view of the above said findings, I do not find any illegality or irregularity in the judgment and decree of the First Appellate Court. All the substantial questions of law are answered as against the appellant. The second appeal stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

msa

To

1.The Subordinate Judge, Kovilpatti

2.The District Munsif, Kovilpatti.

3.The Section Officer

V.R.Section

Madurai Bench of Madras High Court, Madurai (2C)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-613[F] dated 06/01/2022)

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-731[F] dated 07/01/2022)

Judgment made in

S.A(MD)No.52 of 2005

06.01.2022

SS (CO)

GC(16.02.2022) 6P 7C

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