



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 04.03.2022

JUDGMENT PRONOUNDED ON : 09.03.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A. (MD) .No.438 of 2019

Gomuluammal (died)

R.Ethirajulu ...Appellant/Appellant /Defendant

Vs

G.Balasubramanian ...Respondent/Respondent/Plaintiff

PRAYER : Second Appeal is filed under Section 100 of C.P.C, to set aside the judgment and decree order dated 25.02.2019 in A.S.No.106 of 2017 passed by the I Additional Subordinate Judge, Tiruchirappalli confirming the judgment and decree dated 06.07.2017 in O.S.No.2384 of 2004 on the file of the III Additional District Munsif Court, Tiruchirappalli by allowing the second appeal.

For Appellant : Mr.K.Baalasundharam

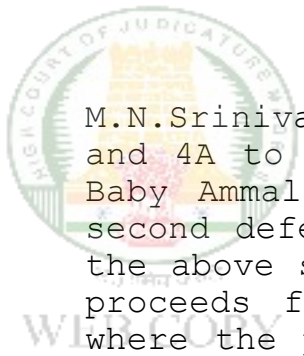
For Respondent : Mr.P.Thiyagarajan

JUDGMENT

The defendant is the appellant.

2.The plaintiff filed O.S.No.2384 of 2004 before the III Additional District Munsif Court, Tiruchirappalli for permanent injunction restraining the defendant from in any way interfering with the peaceful enjoyment of the plaintiff in respect of the suit property which is a common lane. The suit was decreed by the trial Court. The defendant filed A.S.No.106 of 2017 before the I Additional Subordinate Court, Tiruchirappalli. The learned Subordinate Judge was pleased to dismiss the appeal. As against the concurrent finding, the present second appeal has been filed by the defendant.

3.The plaintiff has contended that Door Nos.4, 4A and 4A-1 in North Andar Street, Trichy were originally owned by one



M.N.Srinivasan, Trichy. The said M.N.Srinivasan has sold Door No.4 and 4A to the plaintiff's father. He had sold Door No.4A-1 to one Baby Ammal which was later purchased by the first defendant. The second defendant is the son of the first defendant. On the east of the above said property, there is a north-south lane. The said lane proceeds from North Andar Street towards north and at the place where the property belonging to the first defendant is situated it turns towards west. Thus, according to the plaintiff, east-west pathway is located on the northern side of both the plaintiff and the first defendant's property. The plaintiff's property is located on the western side of the defendant's property. The plaintiff has marked the suit lane as A, B, C and D portions in the plaint rough plan. According to the plaintiff, the plaintiff's property is having a doorway facing the suit lane on the northern side. According to the plaintiff, the suit lane is located in old survey No.2257 Part which is correlatable to T.S.No.93/4. According to the plaintiff, new T.S.No.93/4 shows the suit lane is a common pathway to the plaintiff and the first defendant and also one Thillaiammal whose property is located to the north of the suit lane.

4.According to the plaintiff, the suit lane is commonly owned by the plaintiff, first defendant and one Thillaiammal. However, the defendants are preventing him from using of the said common lane. The plaintiff has further contended that the first defendant has high-handedly constructed a underground water tank in the suit common lane causing hindrance to the passage. Hence, he had prayed for permanent injunction not to disturb the usage of the suit common lane by the defendants.

5.The defendants filed a written statement contending that they have purchased the suit property under two documents from the said M.N.Srinivasan. In both the documents, it has been referred to be the exclusive lane for the defendants and their family members. The defendants had further contended that there is no doorway or any opening in the northern wall of the plaintiff's property enabling the plaintiff to have access to the suit lane. The defendants further contended that the plaintiff is running a restaurant and lodge in his property and they have permitted the occupants of the lodge to park the vehicle in the suit lane, thereby, obstructing the movement of the defendants. It is the specific case of the defendants that the suit lane is common only to the defendants and the said Thillaiammal and the plaintiff does not have any right upon the title to use the suit common lane and hence, he prayed for dismissal of the suit.

6.The trial Court after careful consideration of the oral and documentary evidence arrived at a conclusion that the vendor of the plaintiff, the defendant and Thillaiammal are one and the same namely M.N.Srinivasan. The plaintiff has purchased suit schedule property from M.N.Srinivasan under Exhibit A2 on 08.07.1969. The



M.N.Srinivasan to one Baby Ammal on 27.11.1965 under Exhibit A3. Thereafter, in Exhibit A4, the defendants have purchased the suit schedule property from the said Baby Ammal on 27.12.1995 under Exhibit B2.

7.The trial Court found that between the plaintiff and the defendants, the sale deed in favour of the defendant's vendor Baby Ammal is in earlier point of time namely 27.11.1965. In the said sale deed, the vendor namely M.N.Srinivasan has clearly mentioned that he has retained the east-west common lane which is located on the north of the property conveyed to Baby Ammal. Only from the said Baby Ammal, the defendants have purchased the suit schedule property.

8.The document in favour of the plaintiff namely Exhibit A2 dated 08.07.1967, does not contain any reference about east-west common pathway. The trial Court arrived at a finding that the vendor M.N.Srinivasan has retained the pathway, when he sold the property under Exhibit A3 in favour of Baby Ammal. It is presumed to have been conveyed in favour of the plaintiff under Exhibit A2 and hence, the plaintiff is also entitled to use the common pathway. Based upon the said finding, the trial Court decreed the suit.

9.The First Appellate Court analysed the document filed on either side and arrived at a finding that the defendant's vendor has purchased the suit schedule property under Exhibit A3 in which there is a specific reference about the suit lane to be retained as a common pathway. Thereafter, the same vendor has sold the property retained by him to the plaintiff under Exhibit A2. Hence, invoking the provision under Section 8 of the Transfer of Property Act, whatever appurtenant that was available to the vendor namely M.N.Srinivasan has been passed on along with Exhibit A2 sale deed in favour of the plaintiff. Hence, the contention of the defendants that there is no reference about the pathway under Exhibit A2 sale deed is not legally sustainable. Especially, when the document under which the defendant's vendor purchased the property refers to a common lane. Based upon the said findings, the First Appellate Court dismissed the appeal. As against the concurrent findings, the present second appeal has been filed by the defendant.

10.The second appeal has been admitted on the following substantial questions of law:

(a)When the parental document Exhibit A1 does not include the suit property, whether the plaintiff is entitled to any relief on the basis of Exhibit A1?

(b)Whether the plaintiff is entitled to relief of injunction when the mode of enjoyment is not at all mentioned in the plaint?

(c)Whether the subsequent documents Exhibit A5 and Exhibit A6 can be taken into consideration to decide the dispute in the



suit?

(d) Whether the suit for injunction is maintainable without declaration?

11.The learned counsel for the appellant contended that the plaintiff is said to have purchased the suit property from one M.N.Srinivasan under Exhibit A2 sale deed dated 08.07.1969. A careful perusal of the said document would show that the plaintiff was not granted any right of common passage in the suit lane which is located on the northern side of the plaintiff's property. When the document under which the plaintiff has purchased the suit schedule property does not reflect the suit lane, the plaintiff will not be entitled to claim that the suit lane is a common pathway and prayed for a decree for permanent injunction. He further contended that any reference about the common pathway under Exhibits A2 and A3 under which the defendants purchased the suit schedule property will not enure to the benefit of the plaintiff. The recital in Exhibits A2 and A3 cannot be taken advantage of by the plaintiff when their own document does not reflect a common pathway. The learned counsel for the appellant further contended the Courts below have relied upon the boundary recitals in the defendants' document to confer right upon the plaintiff. The plaintiff will not be entitled to any permanent injunction when their own document does not reveal any right to use the common pathway on the northern side. That apart, the plaintiff is having an access to the main road on the southern side namely North Andar Street, there is no purpose for the plaintiff to use the alleged common passage on the northern side. Hence, he contended that the Courts below have erroneously granted a decree for permanent injunction in favour of the plaintiff.

12.The learned counsel for the appellant further contended that the plaintiff is using the suit schedule property for running a restaurant and a lodge. The plaintiff is seeking a decree for permanent injunction only to use the said area as a parking place for the vehicle and to create nuisance to the house of the defendant and Thillaiammal. Hence, he prayed for reversal of the judgment and decree of the Courts below.

13.Per contra, the learned counsel for the respondent contended that the first defendant's vendor Baby Ammal had purchased the suit schedule property from one M.N.Srinivasan. In the said document, the original owner M.N.Srinivasan has retained his right of common pathway which is located on the northern side of the defendant's property. Thereafter, the purchaser under Exhibit A3 namely Baby Ammal has sold the property in favour of the present defendant under Exhibit A4. Whatever title that was available with Baby Ammal alone will be conveyed in favour of the present defendant. Hence, the defendant cannot make a claim for exclusive right of pathway over the suit lane. He further contended that the trial Court as well as the Appellate Court have rightly come to the conclusion that the suit lane is a common lane for the plaintiff, defendant and one



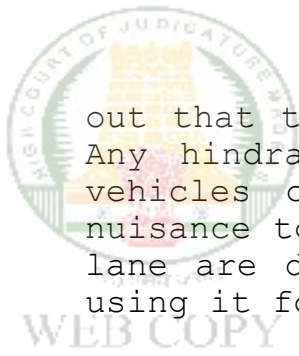
Thillaiammal. Though the suit lane is not referred to in Exhibit A2 sale deed, whatever that was retained by the said M.N.Srinivasan has been conveyed under Exhibit A2 in favour of the plaintiff. He further contended that the First Appellate Court has rightly invoked Section 8 of the Transfer of Property Act and arrived at a conclusion that the suit lane is being appurtenant to the property purchased under Exhibit A2, it naturally passes on to the plaintiff even without any reference in the said document. Hence, he prayed for dismissal of the second appeal.

14.I have carefully considered the submissions made on either side.

15.There is no dispute that the original owner of the suit schedule property and other properties was one M.N.Srinivasan. First he has sold the property in favour of one Thillaiammal under Exhibit B8 on 01.04.1965. Thereafter, the said M.N.Srinivasan has sold a portion of a property in favour of one Baby Ammal under Exhibit A3 on 27.11.1965. Lastly, the balance portion has been sold in favour of the plaintiff under Exhibit A2 on 08.07.1969. Based upon Exhibit B3, the defendants have purchased the suit schedule property on 27.12.1995 under Exhibit A4.

16.A perusal of the above said document will indicate that at the time of execution of Exhibit A3 in favour of Baby Ammal, the original vendor namely M.N.Srinivasan has retained the suit lane as a common pathway for his usage. Thereafter, he had sold away his last portion of the property to the plaintiff under Exhibit A2 on 08.07.1969. As rightly contended by the learned counsel for the appellant that there is no reference about the suit lane in Exhibit A2 which is executed in favour of the plaintiff, but as rightly found by the First Appellate Court, the suit lane is an appurtenant to the property purchased by the plaintiff under Exhibit A2. Though there is no reference about the suit lane in Exhibit A2, in view of Section 8 of the Transfer of Property Act, the appurtenance get automatically conveyed when the main property is conveyed by the vendor. There is no specific exclusion of the suit lane under Exhibit A2 document. Hence, the Courts below have arrived at a correct finding that the suit lane is a common lane for both the plaintiff and the defendant. When the suit lane is a common lane, both the parties will have a right to access to the said lane and use the said lane.

17.The learned counsel for the appellant contended that in Paragraph No.5 of the written statement, it has been specifically pointed out that the suit lane is being used by the employees of the hotel and occupants of the lodge, causing hindrance to other co-owners namely the defendant and the said Thillaiammal. When a pathway is created for common usage of the plaintiff and the defendant, it should be used only as a common pathway for the



out that the said suit lane cannot be used for any other purposes. Any hindrance that is created in the pathway by parking of the vehicles or crowding of the occupants of the lodge will create nuisance to other co-owners. Hence, all the co-owners of the common lane are directed to maintain it only as a common passage without using it for any other purpose.

18.All the substantial questions of law are answered as against the appellant. The second appeal is dismissed with the above observations. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

msa

To

1.The I Additional Subordinate Judge
Tiruchirappalli

2.The III Additional District Munsif
Tiruchirappalli

Copy to:

The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai. (2 COPIES)

+1 CC to M/s.K.BAALASUNDHARAM, Advocate (SR-11292[F] dated 10/03/2022)

+1 CC to M/s.P.THIYAGARAJAN, Advocate (SR-11440[F] dated 11/03/2022)

S.A. (MD) .No.438 of 2019

09.03.2022

_RD(29.03.2022) 6P 7C