



S.A.(MD) No.221 of 2014

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.09.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.221 of 2014

and

M.P.(MD) No.1 of 2014

Murugan

... Appellant/Appellant/
1st Defendant

Vs

Natarajan

... Respondent/Respondent/
Plaintiff

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 10.01.2013 made in A.S.No.52 of 2011 on the file of the Sub Court, Ambasamudram confirming the judgment and decree dated 30.06.2011 made in O.S.No.163 of 2008 on the file of the Principal District Munsif Court, Ambasamudram.

For Appellant : Mr.T.Selvan

For Respondent : Mr.S.Deenadhayalan



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JUDGMENT

The first defendant, in O.S.No.163 of 2008 on the file of the Principal District Munsif Court, Ambasamudram, which the plaintiff/respondent herein had laid for mandatory injunction and also for prohibitory injunction, is the appellant herein. The dispute is over right of pathway over a lane. For narrative convenience, parties are referred to by their rank before the trial Court.

2.1. The case of the plaintiff is that:

- There are three items of properties scheduled to in the plaint. The 1st Item of property is on the east. The 2nd Item of property is to its adjacent west, which lies contiguously with Item-1. These properties originally belonged to a certain Kasi Nadar. While so, on 29.11.1989, Kasi Nadar had sold the property to one Subbiah Karaiyalar vide Ext.A.1-sale deed, who in turn had sold the properties under Ext.A.2-sale deed dated 24.06.1997 to Kannimariyal. Kannimariyal had ultimately sold the properties to the plaintiff vide Ext.A.3-sale deed dated 25.10.2005.



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- The first defendant's property lies to the south of Item-2 property. In the south-west corner of Item-2, there was an opening to the south for a width of about 2.75 feet. This according to the plaintiff opens into a lane for a distance of 28 feet.
- The 3rd Item of property is this lane measuring 2.75 feet x 28 feet. The first defendant has properties to the west of this lane as well. In other words, the disputed lane bisects the properties of the first defendant.

While so, the first defendant closed this pathway at the very point from where it commences from the plaintiff's property, and hence the suit is laid.

2.2. The defendants have taken two fundamental defences: (a) that the plaintiff had not sought for declaration of right of pathway over Item-3; and (b) that he is not certain about the extent over which he wants to exercise his right.

3. The dispute went to trial and before the trial Court, both sides adduced their oral and documentary evidences. On appreciating the evidence before



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it, the trial Court decreed the suit. The trial Court in its judgment has essentially relied on the southern boundary description in Ext.A.2 and Ext.A.3, wherein it clearly mentioned right of way over an extent of 2.75 feet, and it also has relied on the testimony of the second defendant, who was examined as D.W.2, wherein he says that the first defendant had closed the pathway by putting up a wall. The judgment of the trial Court was followed by the first appellate Court in A.S.No.52 of 2011, which the first defendant had preferred. Hence, this second appeal at his instance.

4. This appeal was admitted for considering the following substantial questions of law:

“i) Whether the Courts below are right in decreeing the suit when the respondent is not seeking the relief of declaration and recovery of possession and the title of the respondent/plaintiff is questioned by this appellant/1st defendant?

ii) Whether both the Courts below are right in decreeing the suit without properly appreciate the oral and documentary evidences let in by the parties to the suit?



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iii) Whether the Courts below are right in decreeing the suit without appreciate the admission given by the respondent/plaintiff?

iv) Whether the Courts below are right in decreeing the suit when the factum of possession was not proved by the respondent/plaintiff through cogent oral and documentary evidences?

v) Whether the Courts below are right in decreeing the suit without consider the principle that the plaintiff has to prove his case on his own leg not on the weakness of the defendant? and

vi) Whether the Courts below are right in decreeing the suit without considering the principle that the plaintiff has to prove his case on his own leg not on the weakness of the defendant?"

5. Heard both sides.

6. The learned counsel for the appellant would submit that the suit is bad since the plaintiff had not sought declaration of his right of way over the



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suit property; secondly, the dimension of Item-3 pathway is far too ambiguous to plot it on the site.

7. Per contra, the learned counsel for the respondent submitted that while the plaintiff has traced his title to Kasi Nadar, the first defendant traces his title under Ext.B.4 and Ext.B.5 executed by Kasi Nadar's son. This would mean that there was a unity of title under which both the properties of the plaintiff and the first defendant were held. When the properties held under a single ownership disintegrate, then under Section 13 of the Easement Act, 1882, there ought to be a right of way, and this precisely has been granted in Ext.B.2 and Ext.B.3.

8. If technicalities are kept aside, then it is a case where the first defendant has overstepped and closed 2.75 feet wide passage with a wall between points KH in the Commissioner's report. This is a finding of fact which this Court does not want to dislodge. Turning to the aspect of dimension of Item-3, this Court finds little ambiguity in describing Item-3. What is significant is the width of the passage at KH points. To its south, the first



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defendant had not put up any wall till date and the plaintiff had merely indicated that his right of way extends up to 28 feet.

9. In ultimate analysis, this Court does not find any merit in this appeal. Accordingly, this Second Appeal is dismissed without costs. Consequently, connected miscellaneous petition is dismissed.

22.09.2022

Internet: Yes

Index: Yes/No

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To

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



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N.SESHASAYEE, J.

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