



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.02.2022

Delivered on : 04.03.2022
CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

S.A. (MD)No.619 of 2015

and

M.P. (MD)No.2 of 2015 & CMP. (MD).No.9304 of 2016

and

Cross Objection (MD).No.6 of 2016

S.A. (MD)No.619 of 2015

S.Mariamammal .. Appellant / 3rd Respondent /
3rd Defendant

Vs.

1.S.Periasamy .. 1st respondent / Appellant /
Plaintiff

2.P.Prabavathi

3.R.Paneerselvam .. Respondents 2 & 3/Respondents 2 & 3/
Defendants 1 & 2

(As no relief is claimed against respondents 2 and 3 and as the said respondents are impleaded only as formal parties, notice to respondents 2 and 3 is given up.)

Prayer : This Second Appeal has been filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 26.11.2014 made in A.S.No.51 of 2011 on the file of the learned Principal Subordinate Judge, Tiruchirappalli, reversing the Judgment and Decree dated 29.11.2010 made in O.S.No.308 of 1999 on the file of the I Additional District Munsif Court, Tiruchirappalli.

For Appellant : Ms.J.Maria Roseline

For Respondents : Mr.A.Arumugam-R1
for M/s.Ajmal Associates

: Given up-RR2 & 3



Cross Objection (MD).No.6 of 2016

S.Periyasamy

.. Cross Appellant / 1st Respondent

Vs.

1.S.Mariamammal

..1st Respondent / Appellant

2.P.Prabavathi

3.R.Paneerselvam

.. Respondents 2 & 3 / Respondents 2 & 3

Prayer : This Cross Objection has been filed under Section 100 of Civil Procedure Code r/W Order 41 Rule 22 C.P.C., to allow the Cross Appeal and set aside the Judgment and Decree dated 26.11.2014 made in A.S.No.51 of 2011 on the file of the learned Principal Subordinate Judge, Tiruchirappalli, reversing the Judgment and Decree dated 29.11.2010 made in O.S.No.308 of 1999 on the file of the I Additional District Munsif Court, Tiruchirappalli insofar as it is against the cross appellant is concerned and to decree the said suit with costs.

For Cross Appellant : Mr.A.Arumugam
for M/s.Ajmal Associates

For Respondents : Ms.J.Maria Roseline-R1

: Given up-RR2 & 3

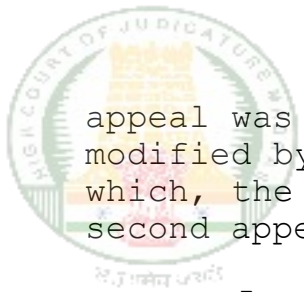
COMMON JUDGMENT

Heard the learned counsel appearing on both sides and perused the materials available on record.

2. This second appeal has been filed against the Judgment and Decree, dated 26.11.2014 made in A.S.No.51 of 2011, on the file of the learned Principal Subordinate Judge, Tiruchirappalli, reversing the Judgment and Decree, dated 29.11.2010 made in O.S.No.308 of 1999, on the file of the I Additional District Munsif Court, Tiruchirappalli.

3. For the sake of convenience, the parties are referred to herein, as per their own ranking before the Trial Court.

4. The appellant herein is the third defendant in the suit. The first respondent is the plaintiff and the second and third respondents are the first and second defendants in the suit. The first respondent / plaintiff herein has filed a suit in O.S.No.308 of 1999, on the file of the I Additional District Munsif Court, Tiruchirappalli, seeking permanent injunction, which was decreed as prayed for. Aggrieved over the same, the first respondent / plaintiff herein has filed an appeal in A.S.No.51 of 2011, on the file of the Principal Subordinate Court, Tiruchirappalli. The



appeal was allowed and the Judgment and Decree of the trial Court is modified by the learned Principal Sub-Judge, Trichirappalli. Against which, the third defendant / appellant herein has filed the present second appeal.

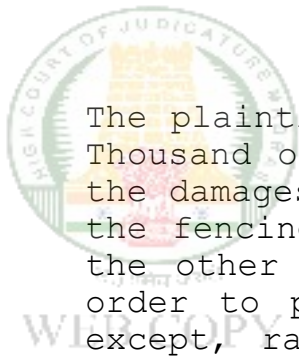
5. The brief substance of the plaint in O.S.No.308 of 1999 is as follows:

Item No.1 of the suit schedule property was purchased by the plaintiff through a registered sale deed, dated 21.09.1971. He has left about 1 ¼ feet as vacant space on the west of his building and one foot on the eastern side of the building. The first defendant purchased the property through a registered sale deed, dated 06.10.1993 and the prior title deed is dated 10.10.1970. The measurement of the building from east to west is 34 feet. The first defendant has built up the entire area. The dispute relates to the lane in between the buildings of the plaintiff and the first defendant. The second defendant is the husband of the first defendant. The lane is referred as Item No.2 in the suit schedule property. Item No.2 of the suit schedule property belonged to the plaintiff. The plaintiff has obtained an approved plan and raised constructions. He has also paid tax for the building. The defendants are attempting to prevent the ingress and egress to the said lane by blocking the entrance and raised constructions in Item No.2 lane portion. Twice complaints have been preferred before the Police. The defendants 1 and 2 sold the property to the third defendant on 10.11.2008. Therefore, the plaintiff prayed for the relief of permanent injunction with regard to Item No.2 of the suit schedule property.

6. The brief substance of the written statement filed by the second defendant in O.S.No.308 of 1999 is as follows:-

(i). The measurements stated in the plaint are not correct. It is wrong to state that the first respondent had encroached an extent of one foot of land on the east of the entire property. The description of the property as stated by the plaintiff is not correct. While remodelling the building, the defendants had left 1 ½ space on the eastern side of the eastern wall. It is wrong to state that the defendants put up a drainage pipe beyond their land. The defendants left 1 ½ feet in their own property. The plaintiff has left only ½ feet space beyond the west of their western wall. Totally two feet open space was available in between the houses of the plaintiff and the defendants. The plaintiff attempted to block the entire two feet open space in the beginning of February 1998 and the same was resisted by the defendants.

(ii) A panchayat was held and an agreement was entered into between the defendants and plaintiff on 01.05.1998, wherein, it was clearly admitted that the plaintiff has left only ½ feet of the



The plaintiff had accepted to pay a sum of Rs.3,000/- (Rupees Three Thousand only) for the expenses incurred by the defendants and for the damages. On the basis of that agreement, the defendants removed the fencing and agreed to put up two gates one in the entrance and the other at the rear side. It was agreed that the plaintiff in order to protect his western wall may raise buttress pillars and except, raising a buttress pillars and a drainage, the plaintiff should not do any other work in the lane. The grill gate has been closed and kept under lock and key and each retaining one key and they can do maintenance (மராமத்து வேலைகள்) works in their respective buildings. The agreement was duly signed by both the parties before the Panchayatdars and other witnesses. The agreement is binding on both the parties. An extent of two feet open space was now enclosed by a grill gate at the front and at the rear side.

7. On the above said pleadings, the following issues were framed by the trial Court:

"1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

2. To what relief, if any?"

8. On the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and twenty documents were marked as Exs.A1 to A20 and on the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and three documents were marked as Exs.B1 to B3. Three documents were marked as Ex,C.1 to C.3 as Court documents.

9. After considering the pleadings and evidence, the trial Court decreed the suit as prayed for. The plaintiff in the suit again preferred an appeal in A.S.No.51 of 2011 before the learned Principal Subordinate Judge, Tiruchirappalli.

10. In the grounds of appeal in A.S.No.51 of 2011, it is stated that as per the Commissioner's report and plan, the defendants have not put up any gate in the suit schedule Item No.2. The trial Court has given wrong observations that the defendants have fixed the gate, whereas, the gate was fixed only by the plaintiff. Whenever the defendants want to do repair works or painting works, they have to approach the plaintiff and they have to get the permission of the plaintiff in writing and that the trial Court judgment has to be modified to that extent.

11. The first Appellate Court has framed the following issue:
"Whether the appeal is to be allowed or not?"

12. After hearing both sides, the appeal was allowed and the Judgment and decree of the trial Court was modified. Against which, the third defendant / appellant herein has come forward with this



13. It is seen that the plaintiff purchased the property through Ex.A.1. The first and second defendants purchased the property through Ex.B.1. Ex.A.2 is its xerox-copy. Ex.A.20 is the Certified Copy of sale deed in favour of the third defendant. Ex.A.4 to Ex.A.11 are documents to show that the plaintiff is in possession of the first item of the suit property.

14. There is some measurement mentioned in Ex.A.5, Ex.C.1 and Ex.C.2. A verification of the records reveal that both the plaintiff and the defendants have encroached $\frac{1}{2}$ feet in the common lane. Both of them have windows facing the lane. They have constructed sun-shades in the lane and both of them are using the lane for letting out water.

15. The trial Court has come to the conclusion that both the plaintiff and the defendants are having right to use the lane. The trial Court has concluded as follows:-

" the plaintiff is entitled to a permanent injunction restraining the defendants, their men, agents, servants, etc., from preventing the plaintiff's ingress and egress in Item No.2 of the suit property by way of any construction or blocking the entrance by the defendant or in any manner whatsoever."

16. Though the suit was decreed, the plaintiff himself has filed an appeal with a fresh prayer that the defendants has to get the permission of the plaintiff to use the common lane. This relief was not at all prayed by the plaintiff in the original suit. But the First Appellate Court has granted such a prayer, without considering that the lane is common to both the parties. In the above circumstances, the order of the First Appellate Court has to be set aside.

17. Considering the fact that the Suit Schedule Item No.2 property belonged to both the plaintiff and the defendants, there is no necessity for the defendants to get the permission of the plaintiff for using the lane. Both the plaintiff and the defendants are having windows facing the lane and there is a bathroom facing the lane. Hence equity requires that both the parties have to intimate the other when they propose to do repair works.

18. Hence both the parties are directed to intimate the other side about the date and period of proposed repair work, one week in advance. Both the plaintiff and the defendants cannot restrain each other the ingress and egress in Item No.2 of the suit schedule property.

19. With the above observations, this Second Appeal is allowed by modifying the Judgment and Decree, dated 26.11.2014 made in S.A.(MD)No.619 of 2015, on the file of the learned Principal



Subordinate Judge, Tiruchirappalli. No costs. Consequently, connected miscellaneous petitions are closed.

20. In view of the order passed in the Second Appeal, this Cross Objection stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

tsg

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal Subordinate Judge,
Tiruchirappalli.

2.The I Additional District Munsif,
Tiruchirappalli.

Copy to

The V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-10399[F] dated 07/03/2022)

S.A.(MD)No.619 of 2015
04.03.2022

RK(12/04/2022) 6P 6C