



S.A. (MD) No. 663 Of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.09.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.(MD) No.663 of 2015

and

M.P.(MD) No.1 of 2015

Rukkaiah Natchiar

... Appellant/Appellant/Plaintiff

Vs

1.P.M.S.Mohamed Aamina Beevi

2.M.A.Hammath Misriya

3.Syed Johara Beevi (Died)

4.Hamsha Beevi

5.Seinambu Sulthan Beevi

6.Seeniammal

.. Respondents 1 to 6/Respondents/
Defendants

7.Sarubudeen

8.Sirajudeen

9.Hajath Nisha

10.Mohammed Faizya

11.Hameed Hussain

12.Jabeer Hasan

.. Respondents 7 to 12

***[Respondents 7 to 12 – brought on record as
LRs of the deceased 3rd respondent vide order
dated 16.09.2022 made in CMP(MD) Nos.8514
to 8516 of 2022 in SA(MD) No.663 of 2015]***



S.A. (MD) No. 663 Of 2015

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 01.09.2015 made in A.S.No.1 of 2013 on the file of the Sub Court, Ramanathapuram confirming the judgment and decree dated 30.08.2012 made in O.S.No.14 of 2004 on the file of the District Munsif Court, Ramanathapuram.

For Appellant : Mr.K.Kaviarasan
for Mr.M.Thirunavukkarasu

For Respondents : Mr.J.Barathan for RR1, 2 & 4 to 6

JUDGMENT

This appeal was allowed vide judgment dated 29.09.2020, without any representation for the defendants/respondents 1 to 6 herein. The judgment is reported in 2020 (6) CTC 390 : 2020 (8) MLJ 279 : 2020 SCC OnLine Mad 22892. For narrative convenience, the parties are referred to by their rank before the trial court.

2. Mr.J.Barathan, learned counsel moved an application in C.M.P.(MD) No.954 of 2021 for recalling the aforesaid judgment dated 29.09.2020 on the ground that the third defendant/third respondent had passed away even



in 2017, and that the learned counsel for the respondents too had died later.

In these circumstances, this Court directed the Registry of this Court to serve a notice on the respondents to intimate them about the demise of their counsel. This however, was not done, but instead their names were printed in the cause list. Given the facts placed, this Court felt it necessary to allow the petition and recalled the judgement for considering the submissions on the facts which the respondents intend to make.

3. Thereafter, the learned counsel had taken out applications in C.M.P. (MD) Nos.8514 to 8516 of 2022 to bring on record the LRs of the deceased third respondent.

4. The pleading of the parties and the argument of the plaintiff and related aspects have already been detailed in the judgment of this Court dated 29.09.2020. Hence this Court refrains from re-producing the same all over again. Therefore, except the discussion of this Court on facts and the final conclusions arrived therein, they may be read as part of this judgement.



5. Opening with the submissions that he would concur fully with the legal propositions exposited in paragraphs 11 to 27 of the judgement of this Court dated 29.09.2020, Mr.J.Bharathan, learned counsel for the defendants made the following submissions:

- The plaintiff claims title to her property Vide Ext.A.8 settlement deed. In this settlement deed, the east-west measurement of the property dealt with thereunder was approximately 19.4 feet on either side. The plaintiff will not be entitled to anything more than the extent covered under Ext.A.8.
- Ext.C.2 and Ext.C.4, Commissioner's plans split this east-west measurement of the plaintiff's property covered under Ext.A8 into two stretches. According to it, the first stretch from the western boundary of the plaintiff's property towards east measures 16 feet 3 inches. The second stretch commences from the point where the first stretch ends and it measures 3 feet towards east. In Ext.C.4 plan the measurement of the first stretch remains the same (16' 3") but the second stretch is found to be one inch short and is shown as 2'11". If the total east-west measurement of the plaintiff's house is 19' 4" in terms of Ext.A.8, the same has been found available on ground as



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well. Indeed the plaintiff has her flight of steps leading to her house in the second stretch and this is also noted in the Commissioner's plans. When the plaintiff has her property measuring the extent mentioned in her title deed, she cannot claim anything in excess of it beyond the western boundary of her property as in Ext.A8. The defendants' properties lie to the west of the plaintiff's property, and necessarily the plaintiff cannot claim any right over it.

- It may be stated here that the defendants' properties are situated to the north and west of the plaintiff's property, and the property covered under S.No.521/14 which they had purchased under Ext.B2 is left as vacant for them to have private access to their house. Now, the plaintiff has laid the suit through a certain Habir Mohamed, her power of attorney. The property to the immediate west of the property covered under Ext.B.2 belongs to this Habir Mohamed. He had laid an independent suit in O.S.No.290 of 2004. Both the present suit as well as O.S.No.290 of 2004 were tried together and both came to be dismissed. While Habir Mohamed did not prosecute his suit, but still has chosen to prosecute the decree passed concurrently against the plaintiff in the present suit.



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- If the plaintiff has any extent beyond the western wall of the house, then, there might be at least a window opened over the property. Nothing however is available. This is also noted in the Commissioner's report. The Commissioner has found that the plaintiff has left a protruding PVC pipe measuring few inches for carrying electric wire to the first floor portion of her western wall. It therefore, cannot be construed that she has any property beyond her western wall. The plaintiff's main entrance to her property is on the east as could be seen from Ext.C.4, Commissioner's plan. In other words, the western wall of the plaintiff's house is on the rear wall to her house.

6. Both the Courts below have therefore, found against the false claim of the plaintiff claiming a right of way over the property beyond her western wall.

7. The learned counsel for the plaintiff/appellant essentially argued along the line of reasoning of this Court in its earlier judgement dated 29.09.2020.



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8. After weighing the rival contentions, this Court is constrained to agree with the submissions of the learned counsel for the defendants. They surely create a preponderating probability of the case they presented before this Court. Though the eastern boundary of the plaintiff's house is shown as a lane, none of the documents details the width of the lane abutting the plaintiff's property on the east, nor has she produced any survey plan indicating the said lane, nor has she pleaded that the flight of steps measuring 2 feet and 11 inches on the east is an encroachment into the public lane. Necessarily, if the width occupied by the flight of steps on the east and the sunshade of the plaintiff's property measuring 2 feet and 11 inches is added to the measurement to its west, the total width of the plaintiff's property would approximate to 19' 4". Necessarily, this Court may have to conclude that the extent occupied by the flight of steps must be considered as part of plaintiff's property.

9. The other part is about the conduct of the Power of Attorney of the plaintiff. While the plaintiff has her house in S.No.521/15, which lies to the east of the disputed lane, her Power of Attorney Habeeb Mohammed,



has his property in S.No.521/14, which lies to the west of the disputed lane. In this lane, the plaintiff claims the eastern half whereas her Power of Attorney claims the western half, and the defendants claim that the lane is their exclusive property. Here, Habeeb Mohammed had laid O.S.No.290 of 2004 for establishing his half right over the disputed lane and failed, and he did not choose to prosecute his suit. However, he continued to prosecute the suit for the plaintiff in this appeal.

10. This Court is not impressed with the strategy adopted by the Power of Attorney of the plaintiff. He presented himself as a title holder to one half of the property, and as a conscience keeper of the plaintiff for the other half. If he is the architect for both the litigations, then how has he explained his description of disputed lane and also the title relating to it.

11. When the appeal was heard and disposed on 29.09.2020, these aspects were not brought before this court as the defendants were not represented. Now this Court is satisfied that its finding on facts as was done in its judgement dated 29.09.2020 needs to be re-visited as they are not consistent with the evidence available on record. But barring this finding



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of fact, this Court confirms all the principles of law exposted in paragraphs 11 to 27 of its judgment dated 29.09.2020.

12. This Court also appreciates the effort of the learned counsel for the appellant in explaining the law in its judgment dated 29.09.2020. This was omitted to be stated in the earlier judgment and this Court does not want to miss this opportunity to state it.

13. In fine, this Court dismisses this Second Appeal without costs. Consequently, connected miscellaneous petition is dismissed.

26.09.2022

Internet: Yes
Index: Yes/No

CM/abr

To

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



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N.SESHASAYEE, J.

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