



S.A.No.691 of 1997

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.10.2022

CORAM : JUSTICE N.SESHASAYEE

S.A.No.691 of 1997

1.Ramadoss (Died)
2.Parvathi ... Appellants/Respondents/
Defendants
3.R.Balasubramani ... 3rd Appellant

*[3rd Appellant brought on record as LR of the deceased
1st appellant vide order dated 24.11.2021 made in
C.M.P.(MD) No.9875 of 2021 in S.A.No.691 of 1997]*

Vs

1.Balakrishnan
2.Ravichandran ... Respondents/Appellants/
Plaintiffs

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 31.01.1997 made in A.S.No.116 of 1996 on the file of the Principal Sub Court, Srivilliputhur, modifying and reversing the judgment and decree dated 24.01.1996 made in O.S.No.265 of 1994 on the file of the Additional District Munsif Court, Srivilliputhur.

For Appellants : Mr.A.Sivaji

For Respondents : No appearance



S.A.No.691 of 1997

WEB COPY

JUDGMENT

1.1 The defendants in O.S.No.265 of 1994 on the file of the Additional District Munsif Court, Srivilliputhur, are the appellants herein. The suit was instituted for declaration that the two schedules of suit properties form a common pathway, besides a mandatory injunction for removing a sunshade of the defendants projecting over the 1st schedule of property and certain other constructions made in the 2nd schedule of property. These constructions are separately scheduled as the 3rd schedule property.

1.2 The suit was dismissed by the trial Court, but in a first appeal in A.S.No.116 of 1996, preferred by the plaintiffs, the same came to be decreed. Hence, the defendants are before this Court. For narrative convenience, the parties would be referred to by their rank before the trial Court.



S.A.No.691 of 1997

WEB COPY

2. The facts can be summarised very briefly as below:

- There is a block of property that situated between Sadar Street on the north and Kannimar Kovil Street on the south. Linking these streets on the north and south is a north-south pathway. This north-south pathway is the 1st schedule of property. About the middle of the 1st schedule of property, another pathway branches out to its east. This east-west running pathway is the 2nd schedule pathway. In other words, both the 1st schedule and the 2nd schedule properties taken together will appear like a tilted 'T'.
- The plaintiffs have their properties both to the east and west of the 1st schedule of property. On to the west of the 1st schedule, they have their business facilities. On to the immediate east of 1st schedule of property and to the north of the 2nd schedule property, is situate the house of the defendants. To the immediate east of the defendants' property is the plaintiffs' property. In other words, the defendants' property is bounded on the west by the 1st schedule property and on the south by the 2nd schedule property, and by the plaintiff's house on



S.A.No.691 of 1997

WEB COPY

the east. Both the houses of the defendants and the plaintiffs open to the 2nd schedule property that runs to the south of these two houses.

- The dispute is that the defendants had purchased the property some time in 1983 under Ext.B.3 and put up some structure in their property. In the process, they have left a sunshade for their property that projects into the airspace over the 1st schedule of property. This apart, they have also put up their septic tank and the drainage in the 2nd schedule of property. As earlier stated, both these constructions are described as 3rd schedule of property.

The cause of action for the plaintiffs' case is that both Schedule-I and Schedule-II properties constitute a common pathway and the defendants do not have any right to make any obstruction obstructing the pathway or on the pathway.

3.1. In their written statement, the defendants contend that the pathway now in dispute, and the adjacent properties were jointly purchased under Ext.A. 2-sale deed dated 19.06.1935 by one Ramasamy Chettiar and another



S.A.No.691 of 1997

Murugan Chettiar. The first plaintiff is the son of Ramasamy Chettiar, and the second plaintiff is the son of the first plaintiff, whereas the defendants derived title under Murugan Chettiar. Indeed after the demise of Murugan Chettiar, there was a partition in his family, in which the property came to be allotted to one Guruvammal and her daughter Govindammal. They sold the property under Ext.B.3 dated 18.05.1983 to the defendants.

3.2. They contend that they have not obstructed the right of user of the common pathway as a common pathway and that they have put up a sunshade some 15 feet above the floor level, but that construction will not obstruct the right of user of the pathway as a pathway. Similarly, the septic tank and drainage system were also put up in Schedule-II beneath the ground and it will not affect the right of any user.

4. The dispute went to trial and before the trial Court, both sides adduced their oral and documentary evidences. The first plaintiff examined himself as P.W.1 and he had produced Ext.A.1 to Ext.A.6. For the defendants, the first defendant examined himself as D.W.1 and produced Ext.B.1 to Ext.B.3.



S.A.No.691 of 1997

The trial Court, on its part, appointed a Commissioner for local inspection and his reports and plan were marked as Ext.C.1 to Ext.C.4.

5. As stated earlier, the plaintiffs preferred A.S.No.116 of 1996 before the first appellate Court, but the first appellate Court reversed the judgment of the trial Court and before the first appellate Court, the plaintiffs have filed certain additional documents which came to be marked as Ext.A.7 to Ext.A.10. The first appellate Court on appreciating the evidence, had declared the right of pathway over both Schedule-I and Schedule-II, but declined the decree for mandatory injunction to the plaintiffs. This is now under challenge.

6. The appeal was admitted for considering the following substantial questions of law:

“i) Whether the lower appellate court is right in reversing and modifying the judgment and decree of the trial court on the basis that each co-owner is entitled to use the common passage in a way beneficial to him without any hindrance to the other co-owner. And



S.A.No.691 of 1997

ii) Is not the lower appellate court committed mis-carriage of justice in granting decree in favour of the plaintiffs that the suit passage is a common passage for all even though it was held that the plaintiffs have not proved by oral and documentary evidence to use the suit properties as passage to reach his oil mill?"

7. The learned counsel for the appellants submitted that the first appellate Court had gone wrong in delivering a judgment that it has delivered. A mere construction of a sunshade above the ground, and constructing a septic tank beneath the ground in the 2nd item of property neither adds any burden to the right of way over it, nor constitute any obstruction of permanent character. In support of his contentions, the learned counsel relied on the authority in ***Balkrishna Dattatraya Galande Vs Balkrishna Rambharose Gupta and another*** [C.A.No.1509 of 2019 dated 06.02.2019]; ***Arunachalam Vs Mariammal*** [S.A.(MD) No.236 of 2012 dated 26.03.2018]; ***Vipin Chandra Babu Vs Tharakeswari*** [S.A.(MD) No.185 of 2005 dated 10.02.2022]; and ***Lakkireddy Narsimha Reddy Vs Lakkireddy Yella Reddy*** [AIR 2008 (NOC) 812 (A.P)].



S.A.No.691 of 1997

WEB COPY

8. Since the respondents/plaintiffs are not before this Court, this Court perused the entire records. It is an admitted fact on both sides that Schedule-I and Schedule-II is a common pathway. And the learned counsel for the appellants does not dispute it, and the first appellate Court has merely granted a declaration that Schedule-I and Schedule-II is a common pathway, and therefore, there is no need to interfere with that part of the decree of the first appellate Court.

9. So far as the prohibitory injunction is concerned, neither of the parties can make any permanent obstruction over Schedule-I and Schedule-II. Therefore, even this decree need not be interfered with. So far as the mandatory injunction part of the suit is concerned, this has already been declined to the plaintiffs and therefore, the defendants/appellants are in no way aggrieved by the same.

10. It appears that the appellants were apprehensive that they might have to remove the sunshade as well as the septic tank. But since no decree for



S.A.No.691 of 1997

mandatory injunction is granted, they need not have any worries on that.

11. In fine, this Court finds that the judgment and decree of the first appellate Court do not require an interference, as the defendants are in no way aggrieved by that. Hence, the Second Appeal is dismissed without costs.

12.10.2022

Internet:Yes
Index:Yes/No

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To

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



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S.A.No.691 of 1997

N.SESHASAYEE, J.

abr

S.A.No.691 of 1997

12.10.2022