



SA.No.530 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.530 of 2006

1. Kandasamy Asari (Deceased)
2. Agilammal
3. Ranganathan
4. Rajamani
5. Shanthi

(Appellants 2 to 5 brought on record as LR's of the deceased sole appellant vide order dated 25.7.2014 made in CMP.No.987/2013)

... Appellants

- Vs -

1. Periyanna Asari
2. Venkatachalam
3. Manickammal (died)
4. Jayammal
5. Chinna Ponnu
6. Sakunthala

(RR1, 2 & 4 to 6 are the LR's of the deceased 3rd respondent as per the Memo dated 11.08.2021)

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree passed in A.S.No.37 of 2004 dated 11.10.2004 on the file of Sub Court, Mettur partly reversing the judgment



SA.No.530 of 2006

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and decree passed in O.S.No.383 of 1996 dated 30.1.2004 on the file of the District Munsiff Court-cum-Judicial Magistrate, Omalur.

For Appellants : Mr.P.Valliappan
Senior Counsel
for Mr.G.RM.Palaniappan
For Respondents : Mr.R.Subramanian
for RR1, 2 5 & 6
R4 – served. No Appearance
R3-died.

JUDGMENT

The first appellant herein is the defendant before the Trial Court, and the respondents herein are the plaintiffs before the Trial Court.

2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

The brief facts, which give rise to the instant second appeal is as follows:-

3. According to the plaintiffs, the plaintiffs 1, 2, 4 to 6 are the children of one Ramasamy Asari. The 3rd plaintiff is the wife of the said Ramasamy Asari. According to the plaintiffs, Ramasamy Asari purchased 15 cents of house site by registered Sale Deed dated 22.09.1961 at Alagusamuthiram Village. The vendor of the said Ramasamy Asari are one Kandasamy Asari



SA.No.530 of 2006

WEB COPY

and his brother Sengoda Asari. However, on survey it was found that there was only 12 ½ cents on land, and new survey number assigned as 78/9. However, the said Sengoda Asari has created a false sale deed dated 30.05.1977 as if there exist remaining land, in favour of one Kandasamy Asari. Based on the said Sale Deed, the defendant has attempted to encroach upon the plaintiff's land. Hence, they come forward with the suit for declaration and injunction.

4. The said suit was resisted by the defendant by contending that they have purchased 5 ½ cents, and that the sale deed in favour of the defendant was duly attested by the plaintiff's predecessor-in-title. This defendant further submits that the first defendant's wife Vasantha has filed a suit in O.S.No.137 of 1993 on the file of the Sub Court, Sankari and obtained an exparte ad interim injunction. According to this defendant, there is no property exist on the ground as alleged by them. Hence, prayed to dismiss the suit.

Evidence, Documents and findings of both the Courts below:-

5. Before the Trial Court, the plaintiffs examined 3 witnesses as PW1 to PW3, and marked as many as 15 documents as Exs.A1 to A15. On behalf of the defendant, 21 documents have been marked as Exs.B1 to B21 and one



SA.No.530 of 2006

witness was examined as DW1. As a Court document, Exs.C1 to C5 have been marked.

6. After considering both oral and documentary evidence and having considered the submissions made by either side, the Trial Court found that the suit property in OS.No.383 of 1996 could not be identifiable, hence, ultimately dismissed the suit. Aggrieved with the said finding, the plaintiff has moved an appeal before the First Appellate Court, where the First Appellate Court has also concurred with the finding of the Trial Court that the suit property could not be identified. However, partly allowed the appeal by granting an injunction restraining the defendant from using any easementary right by necessity. Aggrieved with the said portion of the order, the defendant is before this Court by way of this Second Appeal.

Substantial Question of law:-

7. At the time of admission, this Court has formulated the following question of law:-

“1. Whether the 1st appellate Court is right in granting decree of permanent injunction after dismissing the prayer for declaration of title over the suit property?

2. Whether the 1st appellate court is right in granting decree of injunction with reference to a pathway without any



SA.No.530 of 2006

pleading in the suit?

3. Whether the 1st appellate court right in reversing the judgment of trial court without framing any specific issues and giving reasons for reversing the same in violation of Order 41 Rule 31 of CPC.? ”

Submissions of either side counsel:-

8. The learned Senior Counsel appearing for the defendant would vehemently contend that, when there is a finding of fact in respect of the identity of the property, and that, on that basis, when the Trial Court as well as the First Appellate Court had dismissed the suit, granting an injunction in respect of the relief which was not at all sought for by the plaintiff is erroneous. He would further contend that, even according to the admissions made by PW1, in the Sale Deed, which relied by the plaintiff, the boundary in respect of one of the side has been wrongly stated in the document itself. The learned Senior Counsel relied upon the following judgments to support his contentions:-

1. ***Shafiqur Rehman Khan and another Vs. Smt. Mohammad Jahan Begum and Others*** reported in ***(1982) 2 SCC 456;***



WEB COPY



SA.No.530 of 2006

2. ***V.Sadasivan Nai & 4 others Vs. Raghavan Nair*** reported in ***2009-5-L.W.256***;
3. ***Rajkumar S.Metha and others Vs. Renuka Devi*** reported in ***MANU/TN/4179/2018***.

Hence, prayed to allow the Second Appeal.

9. Per contra, the learned counsel appearing on behalf of the plaintiffs would submit that though there is a finding in respect of the identity of the property, the granting of injunction is based upon the finding given by the Trial Court. Therefore, the injunction granted by the First Appellate Court is liable to be confirmed. In support of his contention, the learned counsel for the plaintiffs relied upon the following judgments:-

- a) ***M.Kallappa Setty Vs. M.V.Lakshminarayana Rao*** reported in ***(1973) 2 SCC 358***;
- b) ***Angammal and 2 others Vs. Komara Gounder and 2 others*** reported in ***2002 (1) CTC 472***;
- c) ***Anathula Sudhakar Vs. P.Buchi Reddy (dead) by LRs. and others*** reported in ***(2008) 4 SCC 594***.

10. I have given my anxious consideration to either side submissions.



SA.No.530 of 2006

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Analysis of the submissions on either side:-

11. In order to answer the substantial question of law, the very basic question which the Court should answer is, when there was no issue in respect of an easementary right, and when there is no relief sought for seeking injunction restraining the defendant from using any easementary right, the relief granted by the First Appellate Court without there being any prayer would be sustainable. In this regard, it is relevant to refer Order 14 Rule 1 of CPC. According to Order 14 Rule 1 of CPC, an issue would only come whenever a fact or law affirmed by one party and denied by the other party. Here, absolutely there is no pleading in respect of the easementary right by either party. To put it in other words, there was no affirmation or denial in respect of easementary right of the plaintiff. Hence, no occasion arise for the First Appellate Court to consider the said point.

12. In this regard, the learned counsel for the plaintiffs would submit that there is a finding in respect of the easementary right by the Trial Court. Therefore, the injunction granted by the First Appellate Court has to be justified. But this Court is respectfully disagree with the submissions of the learned counsel for the plaintiffs as there was no prayer sought for in respect of the injunction restraining the defendant from using any easementary right.



SA.No.530 of 2006

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Therefore, this Court is of the view that the substantial question of law is liable to be answered in favour of the appellants.

13. In the result, this Second Appeal is allowed by setting aside the Judgment and Decree of the First Appellate Court in A.S.No.37 of 2004, thereby confirming the Decree and Judgment of the Trial Court. There shall be no order as to costs.

03.11.2023

kmi

Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No

To

1. The Sub Court,
Mettur.
2. The District Munsif Court-cum-Judicial Magistrate,
Omalur.



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SA.No.530 of 2006

C.KUMARAPPAN,J

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S.A.No.530 of 2006

03.11.2023