



S.A.No.66 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05..04..2023

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.66 of 2013

and

M.P.No.1 of 2013

1. S.Kamalakaran
2. Balaraman

..... Appellants

-Versus-

1. Manikkam
2. Rajakili
3. Peedhambaram
4. Jayakanthan

..... Respondents

Appeal filed under Section 100 of C.P.C. against the judgment and decree dated against the judgement and decree dated 27.08.2012 made in A.S.No.52 of 2008 by the learned Subordinate Judge, Tirupattur, confirming the judgement and decree dated 28.04.2008 made in O.S.No.129 of 2003 by the learned District Munsif, Tirupattur, Vellore District.



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*For Appellants : Mr.N.Gnanalingam for
Mr.K.Thiruvalluvan*

*For Respondents : Mr.PA.Suresh Kumar for
RR1, 2 & 4*

JUDGEMENT

Challenging the concurrent judgement and decree of the courts below, the defendants are before this court with the present Second Appeal.

2. Heard the learned counsel for the appellants.

3. The property in dispute is a common passage in S.No.24/6D situated at Yelagiri, Tirupathur Taluk, Vellore District. The plaintiffs and the defendants are the owners of the properties abutting the common passage. On account of the activities of the defendants which tend to interfere with the use of the common passage, the present suit for bare injunction was presented.

4. The defendants admitted to the common passage. However, their claim is that the common passage extends beyond the land situated in S.No.24/6C, which is the subject matter of ownership by the plaintiffs.



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5. According to the learned counsel for the appellants, the plaintiffs cannot claim the right over the common passage beyond S.No.6/C as they have no right or any land over the property which is abutting the common passage in S.No.24/6D. The trial court as well as the first appellate court have come to the conclusion that the property should be maintained as a common passage and that the revenue proceedings cannot be transfer tittle to either plaintiffs or to the defendants.

6. I have carefully perused the judgement of the trial court as well as the first appellate court. This court did not admit the second appeal, but had only ordered notice of motion. It is not disputed by the learned counsel for the appellants that the land in S.No.24/6D is a common passage. The only issue is, that beyond the properties situated in S.No.24/6C as the plaintiffs did not have any land, they have no right to use that common passage. I am unable to agree with the said contention. The status of the common passage should be maintained as it is by both parties. It matters not whether the plaintiffs own properties beyond a particular point. The predecessor in title of both the plaintiffs as well as the defendants had set apart S.No.24/6D as common passage and therefore, the same shall remain as one. I do not find any reason to



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differ with the findings of the trial court as well as the first appellate court. I am not inclined to admit this Second Appeal. Consequently, the judgement and decree of both the courts below are liable to be confirmed.

In the result, this Second Appeal is dismissed and the concurrent judgement and decree of both the courts below are confirmed. As I did not call respondents to argue the appeal, there shall be no order as to costs in this appeal. Consequently, connected MP is closed.

05..04..2023

Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
kmk

To

- 1.The Subordinate Judge, Tirupattur, Vellore District.
- 2.The District Munsif, Tirupattur, Vellore District.



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V.LAKSHMINARAYANAN, J.

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