



S.A.No.870 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **07.12.2023**

CORAM

THE HONOURABLE Ms. JUSTICE **P.T.ASHA**

S.A.No.870 of 2023
and
C.M.P.No.27442 of 2023

Thangapandian (Died)

1. Meenambigai
2. T.Rajaram
3. T.Kavitha

... Appellants

-Vs-

K.Bakkiam

... Respondent

Prayer:- This Second Appeal filed under Section 100 of the Code of Civil Procedure Code, 1908, to set aside the judgement and decree dated 24.03.2023 on the file of the III Additional Sub Court, Coimbatore, passed in A.S.No.32 of 2021, confirming the judgment and decree dated 10.09.2019 passed by the learned II Additional District Munsif, Coimbatore, in O.S.No.2777 of 2008.

For appellants : Mr.P.G.Thiyagu

For respondent : No appearance

JUDGMENT

The defendants, who have lost in both the Courts below, have filed the above Second Appeal.



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2. The facts are set out hereinbelow with the parties being referred to same ranking as before the learned II Additional District Munsif, Coimbatore, where a suit in O.S.No.2777 of 2008 was instituted by the plaintiff.

FACTS OF THE CASE:

2.1. The above suit was filed for permanent injunction restraining the defendants, their men, agents and servants from in any manner preventing the user of the 4 ½ feet wide east-west common pathway which is the access for the plaintiff to reach the suit property by encroaching or blocking the said pathway.

2.2. It is the case of the plaintiff that she is the absolute owner of the suit schedule property which is a vacant site that has been described as item 1 and another property as item 2 which is a R.C.C. building. She had purchased this property under a registered sale deed dated 26.06.1991 from one R.Govindaraj.



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After the purchase of the suit schedule property, the plaintiff had put up a construction after obtaining necessary approval from the Town Panchayat and she is in possession and enjoyment of the same.

2.3. The plaintiff had also mutated the revenue records in her name and has had the house tax receipts, electricity connection, etc., transferred in her name. The plaintiff had also sold the property described as item 2 in her sale deed to some other party.

2.4. The defendants 1 and 2 are the subsequent purchasers of the property situated on the west and north side of the suit schedule property which they had jointly purchased under the sale deed dated 25.09.1996. They had purchased the property as a vacant site. This purchase was after the purchase and construction of house done by the plaintiff.



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2.5. It is the case of the plaintiff that there is a 4 ½ feet wide east – west common pathway situated on the northern side of the suit schedule property and there is a mention about this pathway in the sale deed executed in favour of the plaintiff. The sale deed in favour of the defendants 1 and 2 would also indicate the existence of this 4 ½ feet wide east – west common pathway.

2.6. It is the case of the plaintiff that she and her family members have been using this 4 ½ feet wide east – west common pathway to reach the suit property. The right of the usage of the said 4 ½ feet wide east – west common pathway is common to both the plaintiff and the defendants. The plaintiff would further submit that, of late, defendants 1 and 2, more particularly, in the last week of November 2008 and finally on 01.12.2008, attempted to trespass into the 4 ½ feet wide east – west common pathway on the northern side of the suit property to block the plaintiff's access to her property by putting up construction stating that this pathway is their



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absolute property.

2.7. The plaintiff would submit that the defendants 1 and 2 have no exclusive right over this pathway. The defendants 1 and 2 had attempted to purchase the property of the plaintiff which was turned down by her. Therefore, in order to get even with the plaintiff and to grab her property, the defendants are attempting to encroach into the suit property. Therefore, the plaintiff has come forward with the suit in question.

2.8. The defendants had filed a written statement *inter alia* denying the claim of the plaintiff. It is case of the defendants that the properties which have been purchased by the plaintiff as well as the defendants originally belonged to one Ramasamy Naidu. Thereafter, the property was allotted to the sons of Ramasamy Naidu viz., Govindaraj, Selvaraj, Swaminathan and Krishnamoorthy. The said property was sold by the above said persons to the plaintiff and the defendants 1 and 2. There existed a



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4 ½ feet wide east – west common pathway to reach the defendants' vendors' property and item 2 of the property which was sold by the plaintiff. Since the suit property abuts the main road, this 4 ½ feet wide east – west common pathway was shown as a boundary/border. The plaintiff has an access to her property from the main road.

2.9. The defendants would submit that the present plaintiff is only attempting to harass the defendants. The plaintiff has encroached a part of the property belonging to the defendants' son Rajaram and without impleading Rajaram as a party to this suit, the suit is liable to be dismissed. The averments made in paragraph no.5 of the plaint are denied as false and imaginary. The defendants and the purchaser of item 2 of the suit property have constructed a building in their entire property and they are living peacefully for 14 years without any hindrance. The east-west pathway has been used only by the defendants for 14 years. They have constructed a gate and were parking their vehicles. Therefore, they sought for the



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dismissal of the suit as proper parties have not been impleaded and there is no cause of action. They therefore, prayed that the suit be dismissed.

TRIAL COURT:

3. The Trial Court has framed the following issues:

“1.Whether the plaintff is in common enjoyment of 4 ½ feet breadth East West pathway situated on the northern side of the suit property?

2.Whether the suit is bad for non joinder of proper and necessary party?

3.Whether the plaintiff is entitled to get the relief of permanent injunction as prayed for in the plaint?

4.To what other relief the parties to the suit are entitled to and the cost of the suit?”

4. The plaintiff has examined herself as P.W.1 and marked Exs.A1 to A9. Exs.C1 and C2 were also marked. On the side of the defendants, the third defendant has examined himself as



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D.W.1 and marked Exs.B1 to B13.

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5. The learned Judge, after taking into account the schedule mentioned in Ex.A1 which is the sale deed under which the plaintiff had purchased the property and Exs.B4, B5 and B6, which are the sale deeds under which the defendants have purchased came to the conclusion that all the documents have clearly mentioned the existence of the 4 ½ feet wide east – west common pathway.

6. The Trial Court has also concluded that the suit is not bad for nonjoinder of necessary parties and taking into account the Advocate Commissioner's Report, ultimately, held that the suit property is a common pathway for both the plaintiff as well as the defendants.



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LOWER APPELLATE COURT:
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7. Aggrieved by the said judgment and decree, the defendants had preferred an appeal in A.S.No.32 of 2021 on the file of the III Additional Subordinate Court, Coimbatore. The learned Judge, by judgment and decree dated 24.03.2023, has dismissed the appeal and confirmed the judgment and decree of the Trial Court.

8. The Lower Appellate Court, being the final Court of fact, has also examined the description of property in the schedule given in the sale deeds under which the plaintiff and the defendants had purchased their property. It is an admitted case that both the plaintiff and the defendants had purchased the property from a common owner.

9. Aggrieved by this, the defendants have come forward with this second appeal.



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WEB COPY 10. Heard the learned counsel appearing for the appellants.

DISCUSSION:

11. Mr.P.G.Tiyagu, learned counsel appearing on behalf of the appellants would contend that the plaintiff has a direct access to the Main Road and therefore, she does not require the suit pathway. Further, Item 2 of the suit property has been sold by her and her tenant has no grievance. However, this Court has taken into consideration the description of the property in each of the sale deeds; i.e., Exs.A1 and B4 to B6. All these sale deeds in their schedules describe the existence of this 4 ½ feet wide east – west common pathway for which this suit has been filed.

12. That apart, D.W.1, during his cross-examination, would submit that the permission for putting up the building has been granted and in this, there is a reference to this 4 ½ feet wide east – west common pathway and he would also admit that in the partition



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deed executed by Ramasamy and others, the 4 ½ feet wide east – west common pathway is mentioned as a general pathway.

13. Both the Courts below have rightly taken into consideration the overwhelming documentary evidence to show the existence of the pathway. Further, once the pathway is provided under the sale deed of each party, the defendants cannot be heard to say that the 4 ½ feet wide east – west common pathway does not belong to the plaintiff. Both the Courts have extensively considered the evidence and decreed the suit. I see no reason to hold otherwise.

Accordingly, this second appeal stands dismissed as it does not contemplate any substantial question of law. Consequently, connected C.M.P. stands closed. No costs.

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Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
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To

- 1.The III Additional Sub Judge, Coimbatore.
- 2.The II Additional District Munsif, Coimbatore.
- 3.The Section Officer, V.R.Section, High Court, Madras.

P.T.ASHA, J.,

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