



S.A.No.730 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.730 of 2023
and
C.M.P.No.23174 of 2023

1.S.Dhanasekar

2.S.Ravichandan

... Appellant

Vs.

1.P.Padmavathi

2.P.Jaya

3.P.Amaresan

4.P.Dhanasekar

... Respondents



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Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree of the Subordinate Judge at Arni, Tiruvannamalai District dated 08.06.2023 in A.S.No.1 of 2022 confirming the Decree and Judgement passed by the District Munsif, Arni, Tiruvannamalai District in O.S.No.16 of 2012 dated 15.11.2021.

For Appellant : Mr.A.Palaniappan

JUDGEMENT

The unsuccessful plaintiffs before the Courts below are the appellants herein. The facts which have given rise to the above Second Appeal are herein below set out and the parties are referred to as the same ranking as before the Trial Court.



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2. The plaintiffs have filed the suit O.S.No.16 of 2012 on the file of the District Munsif, Arni for declaring the plaintiffs' right, title and interest in respect of the C and D schedule properties and for a consequential permanent injunction restraining the defendants from interfering with the plaintiff's possession and enjoyment of the suit C and D schedule properties.

3. It is the case of the plaintiffs that they had purchased a vacant site which is described as the A Schedule property in the suit schedule property and marked as ABCD in the plaint plan. They had purchased the property under a registered sale deed dated 25.05.1992 from one Sumitra wife of Mohan. Similarly, the plaintiffs had purchased the adjoining vacant site described as the B schedule and marked as CGHI in the plaint plan from one Saraswathi Ammal wife of Nandagopal Mudaliar and her sons under a registered sale deed dated 22.06.1992. This property is situate to the east of the A Schedule property.



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4. The plaintiffs would submit that they had constructed a building consisting of ground and 2 floors in the vacant sites from the years 1992 up to 1994. There is a vacant portion left unconstructed in the A schedule property which is described as the C schedule property and to the south of this C schedule property, there is a vacant site which is morefully described as the D schedule. These C and D schedule properties together form the frontage for the building constructed by the plaintiffs. The plaintiffs had originally put up thatched roofing and later they had changed the same to zinc sheet roofing.

5. It is the case of the plaintiffs that the defendants are the owners of the property bearing door no.17 Kalyanasundaranar Street, Arunagirichatram, Arni by virtue of a sale deed dated 19.06.1951. This sale deed was executed by Renu Ammal in favour of Ganapathi



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Mudaliar, the father of the 1st defendant. The house of the defendant faces Kalyanasundaranar Street and is situate between this street on the west and the plaintiffs' vacant portions C and D schedules. The entrance is on the west, namely, Kalyanasundaranar Street. The property consists of a tiled house on the west and a garden on the east. The garden is enclosed with compound walls on the east, south and north and the access is through Kalyanasundaranar Street on the west. The defendants have no access from the eastern side. While so, the defendants had opened out a way on the eastern compound wall of the garden of their house and began to disturb the plaintiffs' peaceful enjoyment of the frontage.

6. The plaintiffs had originally filed suit O.S.No.34 of 1999 for a declaration of their easementary right and for a permanent injunction. The said suit was dismissed on 22.06.2001 and the appeal preferred (A.S.No.40 of 2001) also was dismissed on 13.06.2005 and the Second



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Appeal was immediately filed before this Court. However, later the plaintiffs had been advised to not press the same as the filing of this suit to declare the easementary right was by itself a mistake.

7. The plaintiffs would submit that they have now come to know that the D schedule property which is marked as ADEF in the plaint plan was the ancestral property of Pachiappa Mudaliar and on his demise, the property devolved on his daughter, Saraswati Ammal. The measurement of D schedule properties was left out in the earlier sale deeds relating to the A and B schedule properties. The plaintiffs had purchased the same from Saraswathi Ammal and her two sons for valid consideration under a sale deed dated 11.08.2005. Therefore, it is the contention of the plaintiffs that the D schedule property belongs to them absolutely by virtue of the sale deed dated 11.08.2005. Saraswathi Ammal and her sons had continued to be in possession and enjoyment of the C and D schedule properties by reasons of the sale deed dated



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25.05.1982 and 11.08.2005. Therefore, since the defendants were attempting to claim a right on the same, the plaintiffs have come forward with the suit in question.

8. The 1st defendant had filed a written statement which was adopted by the defendants 2 to 5. At the outset, the defendants had contended that the suit is barred by res judicata since the plaintiffs had already filed O.S.No.34 of 1999 which was dismissed on 22.06.2001 and the appeal in A.S.No.40 of 2001 also has been dismissed and the Second Appeal filed before this Court has been withdrawn.

9. It is the contention of the defendants that the plaintiffs had filed the suit based on fake documents and that they are using the C and D schedule properties as their frontage. The defendants would contend that their house faces Kalyanasundaranar Street on the west and Selvavinayagar Koil Street on the east. Their house has a backyard and



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through the door in this backyard, the plaintiffs have been accessing the said Selvavinayagar Koil Street which is situate on the eastern side of the house. The back gate in the garden has been in existence for several years together. The 1st defendant and his father who were in possession and enjoyment of the property accessed both the streets to reach their house. The defendants would contend that Selvavinayagar Koil Street has been in existence for several years and the plaintiffs property is not in existence on the eastern side of the defendants' property.

10. They would further submit that the C and D schedule properties which are now described by the plaintiffs as their property is situate only in Selvavinayagar Koil Street. The plaintiffs had filed O.S.No.34 of 1999 stating that their house bearing door no.23A/3 was situated on the northern side of Selvavinayagar Koil Street but the Advocate Commissioner had mentioned in his report that portions of the Selvavinayagar Street have been encroached upon and therefore,

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the plaintiffs were not entitled to any right over these portions. The defendants would further submit that in the earlier suit, the plaintiffs who themselves had contended that the D schedule property was part of Selvavinayagar Street, cannot now turn around and claim a right over the same. Therefore, they had sought for the dismissal of the suit.

11. The Trial Court had framed the following issues:-

- 1. Whether the Plaintiffs are entitled for the relief of Declaration of title in 'C' schedule property?*
- 2. Whether the Plaintiffs are entitle for the relief of Declaration of title in 'D' schedule property?*
- 3. Whether the Plaintiffs are entitled for the Permanent Injunction as prayed in the suit?*
- 4. Whether the suit is barred by Res judicata?*



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12. The 1st plaintiff had examined himself as P.W.1 and one other witness as P.W.2 and marked Ex.A.1 to A.16. The defendants have not entered the box but have marked the judgement and decree in O.S.No.34 of 1990 as Ex.B.1. The Report of the Advocate Commissioner and the Surveyor's plan etc has been marked as Court documents, Ex.C.1 to C.4 through C.W.1, the Advocate Commissioner.

13. The learned District Munsif after considering the evidence has dismissed the suit. Aggrieved by which the plaintiffs have preferred A.S.No.1 of 2022. The Lower Appellate Court also confirmed the findings of the Trial Court and dismissed the appeal against which the present Second Appeal has been preferred.

14. Heard Mr.A.Palaniappan, the learned counsel for the appellants.

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15. Admittedly, in respect of the very same property, the plaintiffs had filed O.S.No.34 of 1999 which was dismissed against which an appeal in A.S.No.40 of 2001 was filed which was also dismissed which are evidenced by Ex.P.6 and P.7. The Second Appeal filed against the said judgement and decree was withdrawn which is evidenced from Ex.A.12. The Courts below have found that the properties which have been described as the C and D schedule properties in the instant suit formed the suit property in the earlier suit where the plaintiffs had claimed for a declaration of easementary rights. Having taken such a stand earlier, in the present suit the plaintiffs are claiming an absolute right and title over the said property. The judgment passed in O.S.No.34 of 1990 is clearly binding on the plaintiffs and the present suit is clearly barred by res judicata.



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16. Under Ex.A.6, judgment, the property which has been described as CXYD is the very same property which is described as ADEF in this suit. The Selvavinayagar Kovil Street was being used as a right of easement both for the defendants' property as well the property of the plaintiffs. The plaintiffs who failed to get a right in the earlier suit are now trying to obtain a right by reframing the relief. The Courts below have rightly rejected this attempt and held that the suit is barred by the res judicata in the light of the judgment pronounced in OS.No.34 of 1999. Once the Court comes to the conclusion that the suit is barred by res judicata, there is no necessity for giving a finding with reference to the other issues.

17. Therefore, the lower Appellate Court has rightly rejected the contention of the plaintiffs and I see no reason to re-consider this well-considered judgement and decree of the Courts below. Further, the

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plaintiffs/appellants have not made out any substantial question of law which requires re-consideration of this Court. Accordingly, the Second Appeal stands dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The Principal Sub Court, Mayiladuthurai
2. The District Munsif Court, Seekali
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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