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S.A.No.28 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.01.2023

CORAM

THE HON'BLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.28 of 2023
and C.M.P.No.796 of 2023

Jansi Rani

..

Appellant

Vs.

Poonkothai

..

Respondent

Prayer:- Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree dated 29.07.2022, made in A.S.No.111 of 2021 on the file of V Additional City Civil Court, Chennai by confirming the Judgment and Decree dated 09.01.2018 made in O.S.No.3514 of 2009, on the file of IV Assistant Judge, City Civil Court, Chennai by allowing the present second appeal and to pass such other order as this Hon'ble Court may deem fit and proper upon the facts and circumstances of the cases.

For Appellant : Mr.A.Gouthaman

JUDGMENT

This second appeal has been filed as against the Judgment and Decree dated 29.07.2022, made in A.S.No.111 of 2021 on the file of V Additional City Civil Court, Chennai by confirming the Judgment and Decree dated 09.01.2018 made in O.S.No.3514 of 2009, on the file of IV Assistant Judge, City Civil Court, Chennai, thereby dismissing the suit filed for declaration and injunction.



2. The appellant is the plaintiff and the respondent is the defendant. The appellant filed a suit for declaration and injunction in respect of the suit schedule property. The case of the appellant is that 'A' schedule property is owned by the appellant and she had purchased the superstructure along with the lease hold right, since the suit land belong to Yadhava charities. The vendor of the plaintiff had purchased the suit property from one Govindaraja Pillai and five others under a registered sale deed dated 15.11.1989 vide Document No.799 of 1989. From the date of purchase, she is in exclusive possession and enjoyment of the suit property. The respondent has no manner of right or interest in the suit property. The passage situated on the Southern side of the property measuring an extent of 4 feet width 37 feet length running from East to West leading from Venkatarangampillai Street is used by the appellant for ingress and egress for the backside portion of the property. The respondent is the owner of the house property which is situated behind the appellant's property having entrance from Venkatachala Naicken Street. While being so, the respondent attempted to trespass into appellant's property. Hence, the suit.

3. Resisting the same, the respondent filed her written statement stating that the said Govindaraja Pillai and his children were the owners of the superstructure bearing Door No.155, Venkatarangam Pillai Street, Triplicane,



Chennai, together with the household interest of the site belongs to Yadhava

Charities ad-measuring 1560 sq.ft. The respondent had purchased the rear portion of the building together with the leasehold interest of the site with the passage leading from Venkatarangam Pillai Street to the rear portion namely the passage measuring 4 feet*37 feet East to West and the rear portion measuring 2 feet* 24 feet totally measuring 796 sq.ft from the said Govindaraja Pillai by the registered sale deed dated 13.06.1984 registered vide Document No.371 of 1984. The said Govindaraja Pillai and others had sold the front portion to one Ganthimathi, viz., the vendor of the appellant herein, by the registered sale deed dated 15.11.1989 registered vide Document No.799 of 1989, thereby conveyed the front portion of the entire superstructure ad-measuring 936 sq.ft of land together with the leasehold interest excluding the leasehold interest of the land to the extent of 148 sq.ft ad-measuring East to West 37 feet and North to South 4 feet which is owned by the respondent. Therefore, the appellant's vendor is not entitled for more than 764 sq.ft and as such he could not have conveyed 936 sq.ft to the vendor of the appellant. That apart, the vendor of the appellant had already filed a suit in O.S.No.1184 of 1993 on the file of the I Assistant City Civil Court for injunction in respect of the very same property. In the said suit, the vendor of the appellant had admitted that the respondent herein had purchased 796 sq.ft by the registered



sale deed dated 13.06.1984 registered vide Document No.371 of 1984 including the passage namely 'B' schedule property and the said suit was dismissed, on 10.09.1996 and thereafter no appeal was preferred. Therefore, the sale of 936 sq.ft of land to the vendor of the appellant is not correct and hence the appellant had no title or right over the 'B' schedule property.

4. On the basis of the pleadings, the Trial Court had framed the following issues:-

- “1. Whether the plaintiff is entitled for declaration as prayed for?*
- 2. Whether the plaintiff is entitled for permanent injunction as prayed for?*
- 3. To what other relief is the plaintiff entitled?”*

5. On the side of the appellant, she had examined P.W.1 and marked Exs.A1 to 5. On the side of the respondent, she had examined D.W.1 and marked Exs.B1 to 8. On a perusal of oral and documentary evidences, the Trial Court dismissed the suit. Aggrieved by the same, the appellant preferred an appeal and the same was also dismissed confirming the Judgment and Decree passed by the Trial Court. Hence, this second appeal.



6. The appellant had raised the following substantial questions of law,

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“1. Whether the Courts below were right in dismissing the present suit for declaration of right and title over the plaint B Schedule property, on the ground that the vendor of the plaintiff lost a suit for injunction and hence the present suit is hit by principles of resjudicata to an earlier suit, ignoring law that no question of resjudicata will arise, admittedly when the plaintiff is not a party to earlier suit and the relief claimed to the present suit property is also different from relief claimed by vendor of the plaintiff in earlier suit?

2. Whether the Courts below were right in dismissing my suit, ignoring the law the Judgment passed in a suit for injunction as against the vendor is Judgment in personam and not Judgment in Rem?

3. Whether the Courts below were right in dismissing the suit ignoring the law by way of sale deeds, the plaintiff is enjoying the plaint B schedule property as easement to enjoyment of plaint A Scheduled mentioned property?

4. Whether the Courts below were right in dismissing the suit on the ground that there is no specification regarding the easement in vendors of plaintiff document, ignoring law that as per definition of easement an easement is a right which the owner or occupier of certain land possesses, for the beneficial enjoyment of his land towards land not his own?

5. Whether the Courts below were right in observing that the defendant had established the onus of proof with regard to existence of the passage in the suit property and as though the property?

6. Whether the defendant can be allowed to establish as right in the suit property by claiming non existence passage, especially all the legally valid and relevant document do not show any kind of existence of right, title or interest to the defendant in the suit property?



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7. Whether the Court below is right in law in dismissing the suit on the ground that the plaintiff has not establish the right of easement by prescription and necessity especially when the plaintiff in title has been using the property as right peacefully and openly without any interruption from date of purchase?

8. Whether the Court below collect evidence under Order 26 Rule 10[3] of C.P.C to prove no right accrued to the plaintiff over the suit passage and no encroachment made by the defendant by direct the Advocate Commissioner for further inquiry? ”

7. The learned counsel for the appellant would submit that while pending suit, a Commissioner was appointed and he filed a final report. As per the final report, 'B' schedule was encroached by the respondent and except 'B' schedule property there is no egress to reach the 'A' schedule property by the appellant herein. Though, the vendor of the appellant filed a suit, it was nothing but only for injunction and the principles of resjudicata would not apply to the present suit filed by the appellant, since it was filed for declaration and injunction. Therefore, the Judgment passed in O.S.No.1184 of 1993 is against the vendor of the appellant Judgment in personam, since the appellant was not a party to the said suit and it will not bind her. The appellant had purchased the suit property from the said Ganthimathi, who had purchased the suit property from Govindaraja Pillai and five others by the registered sale deed dated 15.11.1989 vide Document No.799 of 1989. Thereafter, the appellant had purchased the



suit property and from the date of purchase, she is in possession and enjoyment of the suit property.

8. A perusal of records revealed that the appellant had purchased both 'A' and 'B' schedule properties from her vendor viz., Ganthimathi by the registered sale deed dated 23.06.1999 vide Document No.866 of 1999. As per the sale deed she had purchased 936 sq.ft with superstructure including the passage situated on the Southern side of the property measuring an extent of 4 feet width 37 feet length running from East to West leading from Venkatarangampillai Street, which was marked as Ex.A2. Whereas, the case of the respondent is that the vendor of the appellant had purchased from the said Govindaraja Pillai to an extent of 796 sq.ft of land, including 'B' schedule property, which is the pathway, in fact, even before that the said Govindaraja Pillai had executed a sale deed in respect of 936 sq.ft in favour of the respondent herein. Admittedly, the said Govindaraja Pillai owned property to an extent of 1560 sq.ft. Therefore, after the purchase of the property ad-measuring 936 sq.ft by the respondent, the said Govindaraja Pillai had title only in respect of 796 sq.ft and he had no title for 936 sq.ft. The appellant also failed to produce any document to show that the said Govindaraja Pillai and his children owned some other properties in the same survey number. Therefore,



the said Govindaraja Pillai could not have sold more property than what was available in their credit in the survey number after the sale in favour of the respondent ad-measuring 936 sq.ft out of 1560 sq.ft. Therefore, the vendor as well as the appellant without even verifying the parent deed and the other sale deed which was purchased by the respondent, purchased the suit property.

9. A perusal of sale deed, which was marked as Ex.A1 revealed that it confers title to the vendor of the appellant by excluding the said passage since she had no right to confer the title to the property by including the said passage. As per the said sale deed, the appellant had purchased the property by the registered sale deed, which was marked as Ex.A2. The 'B' schedule property was owned by her vendor and she could not have conveyed a better title than what she was holding to the appellant herein. That apart, admittedly, the vendor of the appellant herein had already filed a suit in O.S.No.1184 of 1993 as against the respondent herein for relief of declaration of title in respect of the B schedule property and permanent injunction including mandatory injunction etc., immediately after the purchase of the property. The said suit was dismissed by the Judgment and Decree dated 10.09.1996 by the learned I Assistant City Civil Court, Chennai. It became final, since no appeal was preferred as against the Judgment and Decree passed by the Trial Court in O.S.No.1184 of 1993.



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The same property was purchased by the appellant, who had filed the present suit. Therefore, the present suit is hit by the principles of resjudicata as the issues raised in this case have already been decided between the vendor of the appellant and the respondent herein by the competent Court.

10. Therefore, both the Courts below rightly dismissed the suit and this Court finds no infirmity or illegality in the orders passed by the Courts below and also finds no substantial questions of law involved in this case and the second appeal is liable to be dismissed.

11. Accordingly, this Second Appeal is dismissed. Consequently, connected Miscellaneous petition is closed.

31.01.2023

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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G.K.ILANTHIRAIYAN,J.

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To

1. The V Additional City Civil Court, Chennai.
2. The IV Assistant Judge, City Civil Court, Chennai.

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