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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.11.2023**

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

S.A(MD)NO.101 OF 2021
and
C.M.P(MD)No.1662 of 2021

Kannathal

:Appellant/Appellant/
Defebdant

.VS.

Parimalam

: Respondent/Respondent/
Plaintiff

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree made in A.S.No.17 of 2015, dated 22.02.2017, on the file of Sub-Court(Camp), Thirumangalam confirming the judgment and decree made in O.SNo.588 of 2004, dated 28.10.2014, on the file of the District Munsif Court, Thirumangalam.

For Appellant

:Mr.S.Muthumalai Raja

For Respondent

:Mr.K.Hemakarthiskeyan

JUDGMENT

This second appeal is filed against the judgment in A.S.No.101 of 2021,dated 22.2.2017, on the file of the learned Sub-Court



(Camp), Thirumangalam, confirming the judgment in O.S.NO.588 of 2004, 28.10.2014, on the file of the District Munsif Court, Thirumangalam.

2.The appellant is the defendant before the trial Court. The respondent/plaintiff filed a suit for declaration that the suit property is a common lane of the plaintiff and the defendant and for consequential relief of permanent injunction restraining the defendant from putting up any construction in the common lane to the breadth of 5 ft., to the length of 58 ft.

3.The brief facts of the case of the plaintiff are that, the suit property is the common lane, belong to both the plaintiff and the defendant. On the east of the common lane, the plaintiff has a pucca house and on the west, the defendant has her house and vacant site. The plaintiff purchased eastern side suit property on 07.03.1994. After the purchase, plaintiff had put up a pucca construction. There are three lots in the sale deed. The eastern boundary is shown as a common lane belonging to Kaliappan and the plaintiff. The Plaintiff has put up three windows on the eastern wall. She used to white wash her wall by using the common lane. The cornice of the plaintiff's wall is protruding towards east, ie.,



towards the common lane. The defendant's house also slopes towards west and the rain water runs only through the common lane. However, the defendant tried to obstruct the plaintiff from using the common lane and put up a construction, which necessitated the filing of the suit.

4. In the written statement filed by the appellant/defendant, it is denied that the suit property is a common lane. The case of the defendant is that the suit property absolutely belonged to the defendant and it is a part of her property. The averments made in the plaint contrary to this are totally denied. In the prior document of the plaintiff, there is no mention about the common lane. The plaintiff or her predecessor in title never used the suit lane as a common lane. There are two houses in the defendant's property. The suit lane is used for approaching the two houses in the defendant's property. The defendant has every right to put up construction in her property.

5. During the trial, P.W1 and P.W2 were examined and Ex.A1 to Ex.A6 were marked. D.W1 was examined and Ex.B1 to Ex.B6 were marked. Ex.C1 and Ex.C2 were marked as Court exhibits.



6. On the basis of both oral and documentary evidence, the trial Court decreed the suit holding that the suit lane is a common lane between the plaintiff and the defendant. The judgment of the trial Court was confirmed by the first appellate Court. Therefore, this second appeal is filed.

7. This second appeal was admitted on the following substantial questions of law:

"i) Whether the Courts below were right in concluding that the suit lane is a common lane, despite the fact that it is not shown as a common lane in Ex.B3, dated 10.03.1945?

ii) Whether the Courts below were right in concluding that the father of the defendant had settled 25 feet East West, in favour of the defendant on a wrong interpretation under Ex.B1, dated 19.06.1984?"

8. The learned counsel for the appellant submitted that the Courts below without considering the oral and documentary evidence, have wrongly come to the conclusion that the suit property is a common lane of the plaintiff and defendant. In fact, as per the documents of title of the defendant, the suit common lane is an exclusive lane of the defendant. It situates within the boundaries of the property purchased. In the prior title deed of the plaintiff in



Ex.B3, there is no mention that the suit lane is a common lane between the plaintiff and defendant. The Commisisoner's report also does not indicate the measurement of the properties of the plaintiff and defendant, especially, east-west measurement of the properties. In the absence of this vital information, the decision taken by the Courts below that the suit lane is a common lane between the plaintiff and defendant is not correct and thus this appeal.

9.In response, the learned counsel for the respondent submitted that in Ex.B2 prior title deed of the defendant, there is no mention about the pathway and it was just mentioned that on the west of the property purchased under Ex.B2, western boundary was shown as property of Sangili Kothanar. There is no reference about the lane or common lane. However, under Ex.B1-Settlement Deed in favour of the defendant ingeniously it was introduced claiming that there is a three feet lane exclusively belong to the settlor. The defendant is entitled only for 44 feet north-south and 22 feet east-west and not beyond that. If the case of the defenant is accepted, she would be entitled to $22+3=25$ feet east-west and that is not available in the prior title deed ie, Ex.B2. Thus he prays for dismissal of the Second Appeal.



10.This Court considered the rival submissions made on either side and perused the records.

11.There is no dispute with regard to the properties of the plaintiff and defendant. The dispute relates only to a lane situate in between their properties. The plaintiff claim common right in this lane on the basis of Ex.A2, wherein, it is described that the suit lane is a common lane of plaintiff and defendant.

12.It is the case of the appellant that in the prior title deed of Ex.A2 namely, in Ex.B2, there is no mention about the common lane. This Court finds from Ex.A2 that the suit lane is referred as a common lane of plaintiff and Kaliappan, husband of the defendant. In ExB3, though it is not mentioned as a common lane, there is a reference about the lane and Sangili Kothanar's property.

13.The defendant claims exclusive right to the suit lane through Ex.B1, wherein, it is claimed that it is the settlor's exclusive lane. However, in the prior title deed Ex.B2, there is no mention about the lane or common lane at all. It was just mentioned that on the east, the house of Sangili Kothanar situates. Thus it is quite obvious that in Ex.B1 a new and exclusive right had



been created in the suit lane when there is no mention of the suit lane in Ex.B2, the prior title deed. Advocate Commissioner had inspected the properties of both plaintiff and defendant including the suit lane. Unfortunately, Commissioner had not measured the properties of both to find out whether the suit lane comes within the boundary of the defendant. The learned trial Judge, on a detailed consideration of both oral and documentary evidence, found that as per the document of title ie., ExB2, the defendant is entitled only for 22 feet. Therefore it is not open to the defendant to claim another 3 feet by stating that the suit lane belong to her as an exclusive lane. It is also found on evidence that the common lane is being used by both the parties for maintaining their walls, letting out the drainage water etc. Thus this Court is of the view that both the Courts below on a thorough consideration of both oral and documentary evidence, came to the conclusion that the suit lane is a common lane for the use of both the plaintiff and defendant. In the considered opinion of this Court, this finding needs no interference by this Court.

14. In the light of the discussions held above, this Court answers the substantial questions of law as follows:



When Ex.B2 does not refer to the suit lane as an exclusive lane or for that matter reference is made to any lane, conveying the suit lane as exclusively belong to the settlor under Ex.B1, is not correct. On the basis of the extent of the property available to the plaintiff and defendant, enjoyment in common of the suit lane, the Courts below have rightly decided that the suit lane as a common lane between the plaintiff and defendant. Thus the substantial questions of law are answered.

15.In fine, this Court finds that there is no reason to interfere with the judgments of the Courts below and hence, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

02.11.2023

Index:Yes/No

Internet:Yes/No

NCC:Yes/No

vsn



To

1. The Sub-Judge,
Sub-Court(Camp),
Thirumangalam,
Madurai District.
2. The District Munsif,
Thirumangalam,
Madurai District.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN,J.

vsn

**JUDGMENT MADE IN
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