



S.A(MD)No.131 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A(MD)No.131 of 2017

1. Periyakaruppan

2. P.Kothai

... Appellants

Vs.

Thirunavukarasu

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree of A.S.No.42 of 2014 dated 04.10.2016 on the file of the Subordinate Court, Devakottai, reversing the Decree and Judgment in O.S.No.178 of 2011 dated 26.06.2014 on the file of the District Munsif Cum Judicial Magistrate Court, Karaikudi.

For Appellants : Mr.S.Madhavan

For Respondent : Mr.R.Sundar Srinivasan

JUDGMENT

The Second appeal is filed against the Judgment and Decree, dated 04.10.2016 in A.S.No.42 of 2014 on the file of the Subordinate Court,



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Devakottai, reversing the Decree and Judgment, dated 26.06.2014 in O.S.No.178 of 2011 on the file of the District Munsif Cum Judicial Magistrate Court, Karaikudi.

2. The Defendants are the Appellants herein and the Plaintiff is the Respondent. For the sake of convenience, the rank of the parties shall be referred as plaintiff and defendants as stated in suit.

3. The suit in O.S.No.178 of 2011 has been filed for declaration, declaring that 'A' schedule is the pathway for the B schedule property and consequently, to restrain the defendant from interfering in the enjoyment of the said pathway and the suit was dismissed. Against the said dismissal, the plaintiff has preferred an appeal in A.S.No.42 of 2014 and the same was allowed. Against the same, the defendants have preferred the present Second Appeal before this Court.

4. Admittedly, the plaintiff and the first defendant are brothers. The 2nd defendant is the wife of the 1st defendant. The property belongs to the father



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and after his demise, the property devolved around the plaintiff as well as the 1st defendant. The suit properties contain of four houses on either side. Therefore, the plaintiff and the defendant had partitioned the suit property i.e., one row of four houses belong to the plaintiff and the other row of four houses belong to the defendants. In between the row houses, there is a common pathway. The northern portion belongs to the defendants and the southern belongs to the plaintiff. The allegation of the plaintiff is that the defendants have encroached the portion of the pathway and had put up construction.

5. In the Trial Court, an Advocate Commissioner was appointed who had measured the property and as stated that the pathway is measuring 164.8 feet in length. As far as the width is concerned, 7 feet on the eastern side and 7.6 feet on western side. However, in middle portion, larger extent of 9 feet is available. Even the plaintiff is claiming only 7.6 feet in the suit. Since the same is available, the Advocate Commissioner's report was accepted as it is and the plaintiff is entitled for 7.6 feet common pathway for the houses. The plaintiff and defendants are restrained from encroaching in the 7.6 feet pathway, which is available as per Sketch and Plan of the Advocate Commissioner.



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6. By taking all these facts into consideration, this Second Appeal is partly allowed as stated supra. The Sketch and Report of the Advocate Commissioner is forming part and parcel of the Order. No Costs.

Index : Yes / No
Internet : Yes
KSA

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To

1. The Subordinate Court, Devakottai.
2. The District Munsif Cum Judicial Magistrate Court,
Karaikudi.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J

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**Judgment made in
S.A(MD)No.131 of 2017**

20.12.2023