



S.A.Nos.1837 & 1838 of 1997

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.Nos.1837 & 1838 of 1997

S.A.No.1837 of 1997 :

Sakunthala (Died) ... Appellant/Respondent/
Plaintiff

2.Rajaram

3.Dhamothara Kannan

... Appellants 2 & 3

*[Appellants 2 and 3 brought on record as LR's of
the deceased sole appellant vide order dated
13.07.2022 made in C.M.P.(MD) Nos.5874 and
5875 of 2022 in S.A.Nos.1837 and 1838 of 1997]*

Vs

1.S.V.Alagarsami Naidu (Died)

2.A.Kumaresan

... Respondents 1 & 2/
Appellants/Defendants 1 & 3

3.A.Subbulakshmi

4.A.Venkadeshnan

... Respondents 3 & 4

*[Respondents 3 and 4 were brought on record as LR's of
the deceased 1st respondent vide order dated 17.04.2017
made in M.P.(MD) No.1 of 2013 in S.A.No.1837 of 1997]*



S.A.Nos.1837 & 1838 of 1997

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 15.10.1997 made in A.S.No.188 of 1996 on the file of the Principal Sub Court, Srivilliputhur, reversing the judgment and decree dated 21.03.1996 made in O.S.No.420 of 1994 on the file of the Additional District Munsif's Court, Srivilliputhur.

For Appellants : Mr.M.Jothibasu

For R2 to R4 : Mr.D.P.Sundararaj

S.A.No.1838 of 1997 :

Sakunthala (Died) ... Appellant/5th Respondent/
5th Defendant

2.Rajaram

3.Dhamothara Kannan ... Appellants 2 & 3

[Appellants 2 and 3 brought on record as LR's of the deceased sole appellant vide order dated 13.07.2022 made in C.M.P.(MD) Nos.5874 and 5875 of 2022 in S.A.Nos.1837 and 1838 of 1997]

Vs

1.S.V.Alagarsami Naidu (Died)

2.A.Kumaresan

... Respondents 1 & 2/
Appellants/Plaintiffs

3.Assistant Engineer,
T.N.E.B., Srivilliputhur.

4.Assistant Executive engineer,
T.N.E.B., Srivilliputhur.



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5. Superintending Engineer,
T.N.E.B., Srivilliputhur.

6. Superintending Engineer,
T.N.E.B., Kamarajar District.

... Respondents 3 to 6/
Respondents 1 to 4/
Defendants 1 to 4

7. A. Subbulakshmi

8. A. Venkadeshan

... Respondents 7 & 8

***[Respondents 7 and 8 were brought on record as LRs of
the deceased 1st respondent vide order dated 05.04.2018
made in M.P.(MD) No.1 of 2013 in S.A.No.1837 of 1997]***

Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 15.10.1997 made in A.S.No.189 of 1996 on the file of the Principal Sub Court, Srivilliputhur, reversing the judgment and decree dated 21.03.1996 made in O.S.No.647 of 1994 on the file of the Additional District Munsif's Court, Srivilliputhur.

For Appellants : Mr.M.Jothibas

For R3 to R6 : Mr.S.M.S.Johnny Basha
Standing Counsel

For R2, R7 & R8 : Mr.D.P.Sundararaj



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COMMON JUDGMENT

1.1. S.A.No.1837 of 1997 is arising out of O.S.No.420 of 1994, suit for bare injunction filed by the deceased 1st appellant Sakunthala against respondents 1 and 2 restraining them from constructing stepstone in the 2nd schedule of the suit property.

1.2. S.A.No.1838 of 1997 is arising out of O.S.No.674 of 1994, suit for declaration, permanent injunction and mandatory injunction filed by respondents 1 and 2 against the deceased 1st appellant.

2. The trial Court decreed the suit for bare injunction filed by the 1st appellant and dismissed the suit for declaration, permanent injunction and mandatory injunction filed by respondents 1 and 2. Aggrieved by the same, respondents 1 and 2 filed first appeals in A.S.Nos.188 of 1996 and 189 of 1996 on the file of the Principal Sub Court, Srivilliputhur. The first appellate Court reversed the findings of the trial Court and dismissed the suit for bare injunction filed by the 1st appellant and decreed the suit for declaration, permanent injunction and mandatory injunction filed by



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respondents 1 and 2. Aggrieved by the said judgments, the 1st appellant had filed this second appeal. Pending second appeal, the 1st appellant passed away and her legal representatives were brought on record as appellants 2 and 3.

3. According to the 1st appellant/plaintiff, the 2nd schedule property is a common pathway that lies on the south of the houses of the 1st appellant and also respondents 1 and 2. The house of the 1st appellant is shown as the 1st schedule, the house of the 1st respondent is shown as the 3rd schedule and the house of the 2nd respondent is shown as the 4th schedule. The 1st appellant purchased her house along with the suit property under Ex.A.2 dated 25.01.1994 from one Manokaran. He, in turn, acquired right over the suit 1st and 2nd schedules under Exs.A.13 and A.15 dated 03.09.1975 and 13.12.1976, respectively, executed by his grandfather Azhagarsami Naidu. The 1st appellant in her plaint had averred that the said 2nd schedule property was a common pathway and she had purchased 1/3rd undivided share. The 1st appellant further averred that the 1st respondent herein, who owns the 3rd schedule of the suit property, which lies on the north of the 2nd schedule,



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tried to open a door way towards the 2nd schedule and put up a stepstone over the 2nd schedule common pathway. It was further averred that if the 1st respondent is allowed to put up a stepstone in the 2nd schedule of the common pathway, it would completely hinder the usage of the pathway by the 1st appellant and hence, she was constrained to file a suit for bare injunction.

4. The said suit for bare injunction was resisted by respondents 1 and 2 by filing a written statement, wherein they specifically denied the claim of the 1st appellant that the suit 2nd schedule property is a common pathway. Respondents 1 and 2 specifically claimed exclusive title over the suit 2nd schedule property. Respondents 1 and 2 also filed a suit in O.S.No.674 of 1994 on the file of the Additional District Munsif's Court, Srivilliputhur and sought for declaration of their title over the 2nd schedule of the suit property and also for a mandatory injunction directing the 1st appellant to remove the sewage pipeline put up by her. Respondents 1 and 2 also sought for a permanent injunction restraining the officials of the Electricity Board who were arrayed as defendants 1 to 4 in their suit from giving electricity



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connection to the 1st appellant/5th defendant in their suit. The said suit was resisted by the 1st appellant by filing her written statement reiterating her stand in her suit for injunction.

5. Since the issues involved in both the suits were common, both the suits were tried together and evidence was recorded in O.S.No.420 of 1994 filed by the 1st appellant. Before the trial Court, the husband of the 1st appellant was examined as P.W.1 and the Nattamai of the Village was examined as P.W.2. On behalf of the 1st appellant, 17 documents were marked as Ex.A.1 to Ex.A.17. On behalf of the respondents, the 1st respondent was examined as D.W.1, the Commissioner appointed by the Court was examined as D.W.2 and the Town Surveyor of Srivilliputhur Municipality was examined as D.W.3. On behalf of the respondents, 11 documents were marked as Ex.B.1 to Ex.B.11. The Advocate Commissioner's report and plan were marked as Ex.C.1 and Ex.C.2.

6. The trial Judge, on appreciation of oral and documentary evidences let before him, came to the conclusion that the 1st appellant proved her joint



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ownership over the 2nd schedule of the suit property and decreed the suit for injunction filed by her. The trial Court also found that respondents 1 and 2 failed to prove their exclusive title over the 2nd schedule property and hence, dismissed the suit for declaration, mandatory injunction and permanent injunction filed by them. Aggrieved by the same, respondents 1 and 2 filed first appeals and the first appellate Court reversed the findings of the trial Court and allowed their appeals. Hence, the 1st appellant is before this Court. As mentioned earlier, the 1st appellant died pending second appeal and appellants 2 and 3 were brought on record as her legal representatives.

7. At the time of admission, this Court framed the following substantial questions of law:

S.A.No.1837 of 1997

“1. Whether the Lower Appellate Court is right in holding that the suit Second Schedule is not the common passage belonging to the Plaintiff and the Defendants?

2. Whether the Plaintiff is entitled to right of easement over the suit Second Schedule property especially when there are no other access to the Plaintiff's property in S.No.1603?



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3. Whether the non-joinder of parties is fatal to the suit O.S.No.674 of 1994?”

S.A.No.1838 of 1997

“1. Whether the Lower Appellate Court is right in holding that the suit Second Schedule is not the common passage belonging to the Plaintiff and the Defendants?

2. Whether the Plaintiff is entitled to right of easement over the suit Second Schedule property especially when there are no other access to the Appellant's property in S.No. 1603?

3. Whether the non-joinder of parties is fatal to the suit O.S.No.674 of 1994?”

8. The learned counsel for the appellants elaborating the questions of law framed by this Court, at the time of admission, submitted that the right of the appellants over the 2nd schedule common pathway was proved by the 1st appellant by producing Ex.A.2 sale deed in her favour and Ex.A.13 and Ex.A.15 settlement deeds executed by the grandfather of the vendor of the 1st appellant. The learned counsel also referred to Exs.A.3, A.7, A.8 and A.10 wherein, according to him, a reference had been made with regard to



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the 2nd schedule of the suit property as a common pathway. The learned counsel also had taken this Court to the findings of the trial Court based on the above said exhibits to the effect that the 1st appellant had proved her joint ownership over the 2nd schedule of the suit property.

9. Per contra, the learned counsel for respondents 2 to 4 submitted that it is the specific case of respondents 1 and 2 that the suit property is their ancestral property and by producing Ex.B.9 town survey register of S.No.1604 and Ex.B.10 town survey plan, respondents 1 and 2 proved that the entire extent in S.No.1604 was recorded in the name of the father of the 1st respondent even in the year 1918. The learned counsel further submitted that in the absence of any document to show that the 1st appellant acquired right over the 2nd schedule of the suit property from the father of the 1st respondent or his descendants, the plea of joint ownership raised by the appellants cannot be accepted. The learned counsel also had taken this Court to the findings rendered by the first appellate Court that respondents 1 and 2 proved their exclusive ownership over the 2nd schedule of the suit property.



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10. The main question that has to be decided in these second appeals is with regard to the right of the parties over the 2nd schedule of the suit property. The appellants herein have come to this Court with a specific plea that the 1st appellant has got 1/3rd share over the 2nd schedule of the suit property, which is described as a common pathway in the plaint. Though the 1st appellant produced Ex.A.2 sale deed in her favour and Ex.A.13 and Ex.A.15 settlement deeds executed by the grandfather of her vendor, those documents are relating to the year 1994, 1975 and 1976. On the other hand, it is the case of respondents 1 and 2 that the suit property is their ancestral property and respondents 1 and 2 produced Ex.B.9 town survey register to prove the fact that the entire extent in T.S.No.1604 was originally registered in the name of the father of the 1st respondent viz., Veerappa Naidu. D.W.3 is the Town Surveyor of Srivilliputhur Municipality who deposed that Ex.B.9 and Ex.B.10 came into existence in the year 1918 to 1924. So there is an evidence available on record to show that as early as in 1918, the entire extent in S.No.1604 was owned by the family of respondents 1 and 2. The same was also corroborated by Ex.A.6 mortgage deed executed by the



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1st respondent's brother and his mother in favour of one Subbammal in the year 1947. Ex.B.2 is a sale deed executed by the 1st respondent and his brother Veerasami in favour of Subbammal dated 29.04.1963, whereunder the northern portion of S.No.1604 with a north-south measurement of 30' was sold to Subbammal. The remaining property in the survey number on the southern side has been in possession and enjoyment of the family of respondents 1 and 2. In the absence of any evidence to show that the vendor of the appellants purchased 1/3rd share in S.No.1604 from the 1st respondent's father or his descendants, there may not be any impediment for this Court to come to a conclusion that respondents 1 and 2 proved their exclusive ownership over the 2nd schedule of the suit property. In the light of the old documents viz., Exs.B.9 and B.10, the decree granted by the first appellate Court in favour of respondents 1 and 2 cannot be interfered with.

11. The appellants herein have come to the Court with a clear plea that the 1st appellant got 1/3rd share over the suit 2nd schedule pathway. It is not their case that they have got any easementary right over the 2nd schedule of the suit property. In the absence of any convincing evidence to prove the



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joint ownership of the appellants over the suit 2nd schedule property, this Court is unable to accept the contentions raised by the learned counsel for the appellants and hence, the substantial questions of law raised in these second appeals are answered against the appellants. The Second Appeals stand dismissed by confirming the judgment and decree passed by the first appellate Court. However, the dismissal of the suit for bare injunction filed by the 1st appellant will not come in the way of the appellants filing appropriate suit seeking declaration of their easementary right, if any. With these observations, the Second Appeals are dismissed. In the facts and circumstances of the case, there will be no order as to costs.

02.01.2023

NCC: Yes
Index: Yes/No
Internet: Yes

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S.SOUNTHAR, J.

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To

- 1.The Principal Sub Judge,
Srivilliputhur.
- 2.The Additional District Munsif,
Srivilliputhur.
- 3.The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.

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