



SA.No.10 of 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2024

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.10 of 2002

Arjunan

(Died subsequent to the judgment of lower Appellate Court dated 29.08.2000 and a separate application had been filed to accept the cause title)

1. Kannammal

2. Allimuthu

3. Santhi

(LRs of the deceased appellant)

... Appellants

- Vs -

1. Ramasami @ Ramu Udayar

2. Venkatachalam

3. Kamalam (Died)

4. Sampath Kumar

5. Sasi

(R3 to R5 brought on record as LRs of R1 vide Court order dated 06.08.2019 made in CMP.Nos.1876 to 1878/2009)

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree of the I Additional District Judge cum Chief Judicial Magistrate at Salem dated 29.08.2000 in A.S.No.18 of 2000 confirming the judgment and decree of the II Additional District Munsif



SA.No.10 of 2002

Court at Salem dated 30.09.1999 in O.S.No.242 of 1994.

For Appellant : Mr.P.Dinesh Kumar
for M/s.Sarvabhauman Associates

For Respondents : Mr.P.Jagadeesan for R2 to R4

J U D G M E N T

The plaintiff before the Trial Court is the appellant herein and the defendants are the respondents herein.

2. For the sake of convenience, the parties will be referred according to their litigative status before the Trial Court.

3. The plaintiff herein has filed a suit for the relief of declaration, permanent injunction and for mandatory injunction. It is the contention of the plaintiff that there was a passage, and beyond that passage, a land in S.F.No.46/3 has been encroached by the defendants, hence prayed for the delivery of possession. It appears that the defendants herein have also filed a suit for permanent injunction in respect of a passage in O.S.No.240 of 1994.

On perusal of the records, O.S.No.240 of 1994 was decreed in favour of the



SA.No.10 of 2002

defendants. Therefore, the right of the defendants in respect of the passage was upheld by the Court, which has reached finality by way of the order of this Court in S.A.No. 2149 of 2001.

4. The instant Second Appeal has been filed in the connected suit in O.S.No.242 of 1994. It is pertinent to mention here that O.S.Nos.240 of 1994 and 242 of 1994 were tried together and a common judgment was passed. Even the First Appeals were disposed of jointly confirming the dismissal order passed in O.S.Nos.240 & 242 of 1994.

5. The learned counsel for the appellant would fairly submit that, since the decree in O.S.No.240 of 1994 reached finality, the relief sought for in their plaint in Sl.Nos.1 & 2 got it effaced in view of decree in O.S.No.240 of 1994 then this appellant has right in the passage. But the learned counsel for the appellant would earnestly submit that even in spite of the decree in O.S.No.240 of 1994, by virtue of rough plan annexed in the plaint of O.S.No.242 of 1994, there is a land in S.F.No.46/3 belongs to the appellant/plaintiff, which has been encroached by the defendants. However, it is the contention of the defendants that their land is up to the disputed passage.



SA.No.10 of 2002

WEB COPY

6. Both the Courts below have given a finding of fact that the relief of mandatory injunction could not be granted as there is no measurement to the portion, which is marked as A, E F G H in a rough plan to have mandatory injunction. This Court is in full agreement with the view expressed by both the Courts below as it is imperative that the decree must be executable. If there is no measurement, it would become chaotic to enforce the decree and would become conundrum. Therefore, even if any decree is granted, it will become inexecutable. Therefore, this Court does not want to interfere with the well merited finding of the First Appellate Court. Further, in view of the above detailed discussion, this Court could not find any substantial question of law.

7. In the result, the Second Appeal is dismissed. There shall be no order as to costs.

03.04.2024

kmi

Index : yes/no

Speaking/Non Speaking Order

Neutral Citation Case: Yes/No



SA.No.10 of 2002

To

1. The I Additional District Judge-cum-
Chief Judicial Magistrate,
Salem.
2. The II Additional District Munsif,
Salem.



WEB COPY



SA.No.10 of 2002

C.KUMARAPPAN, J

kmi

S.A.No.10 of 2002

03.04.2024