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SA. No.112 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.11.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

SA. No. 112 of 2024
& CMP Nos. 3647, 3648, 3228 & 7740 of 2024

1.Rajeswari
2.Surjeet
3.Anusha Pradeep

... Appellant

Vs.

Minnie Devadoss

..Respondent

PRAYER : This Second appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 06.10.2023 passed in AS No. 26 of 2023 on the file of the VI Additional Judge City Civil Court at chennai, confirming the judgment and decree dated 27.10.2022 in O.S No. 1954 of 2016 on the file of the V Assistant Judge (FAC), City civil Court at Chennai, granting the relief of mandatory injunction sought for by the respondent/plaintiff with regard to the suit schedule property and allow this appeal consequently dismissing OS No. 1954 of 2016.



For Appellant : Mr.A.K.Sriram

For Respondent : Mr.A.Praveen

JUDGMENT

This second appeal has been filed to set aside the judgment and decree dated 06.10.2023 passed in AS No. 26 of 2023 on the file of the VI Additional Judge City Civil Court at Chennai, confirming the judgment and decree dated 27.10.2022 in O.S No. 1954 of 2016 on the file of the V Assistant Judge (FAC), City civil Court at Chennai.

2. The respondent herein filed a suit in O.S No. 1954 of 2016 on the file of the V Assistant Judge (FAC), City civil Court, Chennai, for the relief of permanent injunction and for mandatory injunction directing the defendants to remove the unauthorized shed put up by the defendants in the common running passage area of the suit property. The said suit was contested by the defendants by filing the written statement. After considering the oral and documentary evidence the Trial Court decree the suit. Challenging the said findings, the defendants preferred the appeal in AS No. 26 of 2023 before the City Civil Court, Chennai, which



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independently analysed oral and documentary evidence dismissed the appeal. Challenging the concurrent findings, the appellants/defendants preferred this second appeal.

3. This Court admitted the second appeal with the following substantial questions of law:

a) Whether both the Courts were right in refusing to consider the presumption under Sec.90 of the Indian Evidence Act, 1872 with respect to the proof and genuineness of Ex.B4 dated 12.11.1934 registered as Doc.No.2749/1934 in the office of Subregistrar, Mylapore, when there is no arbitrariness, capriciousness or perversity in drawing the said presumption which was refused by the Trial Court?

b) Whether the Courts can grant the relief of mandatory injunction in the absence of declaratory relief in violation of Sec. 34 of the Specific Relief Act?

c). Whether the Courts below were right in ignoring Ex.B4, which is binding on the Plaintiffs having been executed by their predecessor in interest?

d). Whether the Lower Appellate Court can ignore the recitals of Ex.B4 which is a validly registered document and pass adverse findings by just reading the nomenclature of the document?"



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4. The brief facts of the plaintiff case as follows:

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The subject matter of the suit property is a common passage measuring on the North by 10 feet width and running on the west side by 70 feet as described in the suit schedule. The case of the plaintiff is that, she is absolute owner of the suit property which is a building consisting of ground floor plinth area 468 square feet and 497 square feet on the first floor situated at bearing Old No.29, New No. 30-B, Musiri Subramanian Road, (Oliver Road), Mylapore, Chennai - 600 041 which is a dead end property along with a common passage of about 10 ft width by 70ft running passage on the Northern side for ingress and egress from Musiri Subramanian Road(Oliver Road). The plaintiff purchased the suit property from Premalatha, daughter of G.Narayanasamy, through sale deed dated 23.01.2013, since then, she is in possession and enjoyment of the suit property along with common passage without any hindrance, the said common passage also mentioned as one of the boundary of her sale deed and using the same for ingress and egress to reach the Oliver Road from their respective properties. While so, the defendant often causing nuisance to the plaintiff and attempted to encroach the common passage of the suit property more particularly, he obstructed to have ingress and egress and



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regress to the suit property by park their car in unauthorized shed in common passage thereby causing obstruction the light and air to the kitchen of the plaintiff's property thereby infringes the right of the plaintiff and as a co-owner of the common passage her right and enjoyment is obstructed and also the defendants threatened the plaintiff. Hence, the plaintiff filed the suit.

5. The contention of the defendant is that one K.S.Ramabhadrappa Iyer sold an extent of 3 grounds land to Musiri Subramanyia Iyer on 12.03.1934. Subsequently, there was a deed between the Ramabhadrappa Iyer and Musiri Subramanyia Iyer, who owned adjacent properties as per the sale deed dated 12.11.1934 by which 15x10 square feet was exclusively given to the Musiri Subramanyia Iyer for express purpose and putting up a garage. An extent of 3x100 ft was purchased by Musiri Subramanyia Iyer by that document, in the common passage, and also to put up a garage, at the Eastern end of the common passage. After the death of the Musiri Subramanyia Iyer, probate was granted this Court in favour of G.Venkateswara Iyer and C.S.Ramachandran being executor of the Will of Musiri Subramanyia Iyer. During the life time of the Musiri Subramanyia Iyer, he executed a settlement to an extent of 1 ground 500 square feet being door No.18, in favour of



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K.Sankaran on 12.03.1975, the said Sankaran executed a settlement deed on 28.11.1984 in favour of the first defendant/Rajeswari. Therefore, by virtue of document dated 12.11.1934, the first defendant is entitled to the land measuring 15x10 ft at the Eastern end of common passage have putting up garage same has not been challenged by the predecessor in title of the plaintiff. Therefore, now the plaintiff has no right to dispute the defendant's right to have garage in the dead end of the common passage. Thus the first defendant predecessor in title have in possession and enjoyment of the same uninterruptedly having purchased the extent of 3x100 ft Rambhadra Iyer as per the deed dated 12.09.1934. Therefore, the first defendant cannot be prevented from her enjoyment and right of ownership and putting up garage in the extent of 15x10 ft for car parking. Therefore based on the deed of agreement dated 12.11.1934 the first defendant claimed that he is entitled to use the 15x10 ft car parking in the common passage.

6. Before the Trial court both parties adduced the oral and documentary evidence. On considering the oral and documentary evidence on record, the Trial Court held that after deed of agreement/Ex.B4 no evidence available in consequent to the said agreement erstwhile owner Subramaniya Iyer Put up garage in the alleged space nor explanation on the



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side of the defendant as to how the agreement was entered between the erstwhile owner Musiri Subramania Iyer would bind the plaintiff's predecessor in title. Accordingly, no value would be given before the agreement. As per the Advocate Commissioner report, the physical feature of the properties shows that thatched shed available in the said common passage which running East to West to the plaintiff's house. Therefore, the defendant has no right to put up construction either temporarily or permanently. Accordingly, the suit was decreed as prayed for. The first appellate Court also affirmed the findings of the Trial Court by dismissing the appeal. Challenging the concurrent findings the appellants/defendants preferred this second appeal.

7. The learned counsel for the appellant submitted that the defendant's erstwhile **owner** Musiri Subramania Iyer entered into an agreement on 12.11.1934 with one Ramabhadra Iyer and the same was effected on the date of sale when Musiri Subramania Iyer purchased the property. Therefore, the said agreement given effect on the date of the sale deed along with right that was given in respect of a common passage. Accordingly, ever since, from 12.11.1934 right of covenant running along with the land and



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has been in existence.

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8. Countering the same, the learned counsel for the respondent/plaintiff submitted that there is no proof on the side of the defendants to show that the said agreement was implemented by the said Musiri Subramania iyer. Even on considering the same, there is no evidence for uninterrupted continuous possession of the defendant in the property and the same was rightly pointed out by the Courts below. Further, he submitted that as per the settlement executed by the first appellant in favour of her daughter on 20.08.2012 she has settled only house on ground bearing old Door No. 18 new Door No. 18/2 and not narrated about the shed at the common passage, which itself shows that she was not given any right based on the alleged deed of agreement/Ex.B4. On considering the settlement deed dated 20.08.2012, the description found in the settlement deed marked in blue colour portion with four boundaries an extent of 1 ground 500 square feet that house bearing new Door No.18/2, at Musiri Subramania Iyer road land was conveyed therefore the first defendant themselves restricted right only in respect of Door No. 18/2 and not retained the alleged shed garage at the dead end of the common passage. Moreover, as per the boundaries of the sale deeds/Ex.A3, the suit common passage of



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10ft house belongs to the appellant/first defendant shown as Northern boundary. Therefore, admittedly it is a common passage and as observed by the Court below there is no proof that Ex.B4/deed of agreement relied by the first defendant was implemented by putting up garage shed at the dead end of the common passage. Furthermore, there is no proof on the side of the first defendant to establish that they purchased the said right along with property while they purchase. Even the settlement deed executed in favour of her daughter was marked as Ex.B5, which shows that only the property which they purchased boundary alone was settled there is no mentioning about the alleged usage of 15x10 ft common passage. Moreover, in O.S No. 784 of 1999 the first defendant, before the City Civil Court, Chennai, filed the suit against the plaintiff's vendor Latha in respect of the same common passage when the same was dismissed by the Trial Court there is no boundary was perfected against the suit. Admittedly, the present plaintiff already not party in the said suit. However, the relief claimed by the first defendant in that suit in respect of common passage also not been accepted by the Court below.

9. The learned counsel for the appellant submitted that plaintiff claiming the right over the common passage as Co-owner as well as by way



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of easementary right as he is not entitled for that relief to that effect he relied the judgment of the Court in the case of E.Elumalai Chetty Vs. Naina Mudali and others in S.A No. 732 of 1980.

1..... The conception of easementary right cannot go with the claim of title and both are contradictory to each other. A title to the property and right of a easement over it are conceptions totally distinct and contradictory to each other. One is the right to possess, enjoy and use the land in assertion of that right and to the exclusion of another; while a right of easement is right in, to or over the property of another. One is a personal right while the other is annexed to and claimed over the land of another and it runs with it. A relief claimed on the basis of title is totally inconsistent with the relief claimed on the basis of the other.....

10. Coming to the facts of the case, the contention of the plaintiff is that the unauthorized shed was constructed in common passage by the defendant as it would cause hindrance to him use the common passage as he was given right to use the common passage and the alleged car shed also put up near the kitchen Window of the plaintiff's house it would cause hindrance to the plaintiff. Therefore plaintiff stated that the defendant has no right to cause interference in the enjoyment of the plaintiff and the same was rightly appreciated by the Court needs no interference.

11. As rightly pointed out by the learned counsel before the Trial Court, as per the said boundaries mentioned in the appellant's document, even the appellant have not given any right to access the common passage,



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as per their parent document and they were given right to have access the 20 feet road on the Western side of the property for ingress and egress.

There is no proof that Ex.B4 was acted upon so also predecessor in title was given four boundaries without mentioning alleged garage in the common passage. Moreover, the settlement deed executed by the first defendant in favour of daughter also clearly reveals that she was given only house property with four boundaries not given any exclusive right in the alleged passage which they are causing hindrance by putting up garage shed for defendant have no right, the Trial Court rightly granted relief as prayed which needs no interference.

12. As discussed above, the defendant failed to establish that Ex.B4/Deed agreement between K.S.RamabhadraIyer and Musiri Subramania Iyer was acted upon nor established that while they purchase the said passage right also conveyed to them. Hence, Ex.B4 would not confer any right to the defendant. Accordingly, questions of law a,b,c,d are answered.



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WEB COPY 13. In the result, appeal is dismissed as no merits. Further, the defendant shall remove the shed within a period of six weeks from the date of receipt of a copy of this order. No Costs. Consequentially connected miscellaneous petitions are closed.

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T.V.THAMILSELVI,J.

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To
1.The Section Officer,
V.R Section.

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