



S.A.No.1485 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.02.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.1485 of 2003

and C.M.P.No.13446 of 2003

1.Chitrambalam (died)

2.V.C.Ganesan

3.V.C.Vinoth kumar

...Appellants

(Appellants 2 and 3 brought on record as LR's of the deceased sole appellant viz., Chitrambalam vide Court order dated 21.03.2018 made in CMP.No.3114 and 3115 of 2018 in S.A.No.1485 of 2003)

Vs

1.Rathinasabapathy (died)

2.Mekala (ex-parte)

3.Nalini (ex-parte)

4.Balasubramanian

...Respondents

(R1 died, R2 to R4 brought on record as LR's of the deceased R1 and R2 & R3 are set ex-parte vide Court order dated 11.01.2023 made in CMP.Nos.17446, 17439 & 17448 of 2022 in S.A.No.1485 of 2003)

PRAYER: Second Appeal is filed under section 100 of the Civil Procedure



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Code, as against the Judgment and Decree of the Subordinate Judge, Chengalpet in A.S.No.33 of 2001 dated 11.4.2003 confirming the decree and judgment in O.S.No.153 of 1993 on the file of the District Munsif, Tambaram dated 22.12.1993.

For Appellants : Mr.R.Mukundan

For R1 : Died

For R2 and R3 : Ex-parte

For R4 : No appearance

J U D G M E N T

The plaintiff in the suit is the appellant before this Court in the Second appeal. Pending appeal, the sole appellant died and his legal heirs are brought on record as 2nd and 3rd appellant. The sole respondent also died and his legal heirs are brought on record as respondents 2 to 4.

2.The Second appeal is filed challenging the Judgment and Decree dated 11.4.2003 in A.S.No.33 of 2001 on the file of the Subordinate Judge, Chengalpet confirming the Judgment and Decree dated 22.12.1993 in O.S.No.153 of 1993 on the file of the District Munsif, Tambaram.

3. For the sake of convenience, the parties are referred as per the



ranking before the trial Court.

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4. According to the plaintiff, he purchased the suit property from Devasenan and Balusami through a registered sale deed dated 30.11.1974 under Ex.A1. After the purchase of the property, he has construed a house and residing there. It is further case of the plaintiff that while selling the land he retained a portion adjoining to Harikrishna Street, and sold the land for certain reasons. The plaintiff's vendor provided the way through 'B' schedule property in the A schedule property. The plaintiff has been utilising the B schedule land as passage to his house in the A schedule property. It is his further case that the B schedule property belonging to the plaintiff's vendor and the said way is mentioned as part and parcel of the sale deed in Ex.A1. According to the plaintiff, he was using the property for the last six years as there is no ingress or egress to reach Harikrishna street. While so, the defendant who has no manner of right over B schedule property made attempts to annexe B schedule property, by constructing a building. Therefore, the plaintiff has come up with the suit for bare injunction.

5. The defendant has filed written statement resisting the suit. The defendant contended that the suit is hit by res-judicata. It is the case of the



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defendant that he has purchased the land and constructed a house and only thereafter, the plaintiff has purchased the suit A schedule property. The defendant has purchased the suit property under Ex.B1 measuring the house east to west 84 feet and north to south 35 feet which the plaintiff never use as passage. The defendant has fenced the boundary but the plaintiff has removed the fencing, upto 5 feet passage.

6. During trial, P.W.1 was examined on the side of the plaintiff and documents Ex.A1 to A4 were marked. The defendant examined himself as D.W.1 and examined further witness as D.W.2 and marked Ex.B1 and B2. The advocate commissioner was appointed and the report has been marked as Ex.C1 and C2. The trial Court after considering the documents and evidences, dismissed the suit. The trial Court found that the plaintiff has not established that his vendor was having any right over the B schedule property and that the B schedule property was conveyed to the plaintiff at any point of time. The trial Court also found that the plaintiff was having alternative access through the 10 feet passage and therefore, the plaintiff is not entitled for the relief of bare injunction.

7. Aggrieved by the Judgment and decree, the plaintiff filed appeal in



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A.S.No.33 of 2001 on the file of the Sub Court, Chengalpet. The lower appellate Court also, after re-appraising the evidence, dismissed the appeal. Aggrieved by the concurrent finding of fact, the plaintiff is before this Court in the above appeal.

8. This Court by order dated 07.11.2003 admitted the second appeal on the following substantial question of law:-

"1.Whether the Courts below erred in not advertng to the recitals in the sale deed Ex.A1 wherein the southern boundary is specifically shown as 'battai'?

2.Whether the Courts below erred in holding that the plaintiff/appellant has not produced evidence to show that the only entrance to the property of the plaintiff/appellant is through the property described in B schedule?

3.Whether the Courts below erred in holding that the pathway mentioned in Ex.B1 relating to the dispute in respect of another property is the pathway available to the plaintiff/appellant?"

9. Mr.R.Mukundan, learned counsel for the appellants submitted that the plaintiff was having right to access through B schedule property. Even though the A schedule property was conveyed by his vendor, later the B schedule property was specifically conveyed in favour of the plaintiff by



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subsequent document. The plaintiff is not having access through any other way from the A schedule. Therefore, the plaintiff can have ingress and egress only through the B schedule property.

10. The learned counsel further contended that before the trial Court for the purpose of filing additional document, they have filed a petition and also to produce witnesses, but the trial Court has dismissed the same. The learned counsel for the appellant further contended that since the battai is mentioned in the sale deed in Ex.A1, the plaintiff is having right to have access to the B schedule property. Therefore, the learned counsel submitted that both the Courts below have not considered the documents in proper perspective. The findings are perverse and sought for allowing the second appeal.

11. Notice to all the respondents have been served. The 2nd and 3rd respondents have been set ex-parte as early as on 11.01.2023 and the 4th respondent has been served and his name is also printed in the cause list, but there is no appearance on the side of the respondent.

12. Heard the learned counsel for the appellant and perused the materials available on record.



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13. The plaintiff has filed the suit for bare injunction in respect of the B schedule property claiming that he has access to the A schedule property only through B schedule property. Therefore, for the purpose of ingress and egress into the A schedule property, the usage of B schedule property is necessary. The plaintiff claims that through the sale deed in Ex.A1, the right over the B schedule has been conveyed to the plaintiff and therefore, the plaintiff is having every right to use the B schedule property.

14. Perusal of the documents in Ex.A1 shows that in the schedule to the property on southern boundary, it is mentioned as Sababathi plot and Battai. It is the specific case of the plaintiff, even as per the plaint that when his vendor conveyed A schedule property through sale deed dated 30.11.1974 in Ex.A1, his vendor has retained the portion adjoining the Harikrishna street and sold the land behind that land for reasons and circumstances best known to him. It is the admitted case of the plaintiff for the purpose of providing way to the plaintiff house in the A schedule property, the plaintiff's vendor has subsequently conveyed the B schedule property. At this juncture, it becomes more relevant that if subsequently his vendor has conveyed the right in the B schedule property, it is for the plaintiff to file the document and establish the



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same.

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15. Further, it is the plaintiff who is bound to prove his right through documents and substantiate that his vendor was having any right over the B schedule property. The plaintiff has not filed any document to show that after the sale deed in Ex.A1, subsequent deed was executed by his vendor conveying the right in the B schedule property and further the plaintiff has also filed to prove by adducing any materials to substantiate that his vendor is having any right over the B schedule property.

16. Further it is the arguments of the learned counsel for the appellant/plaintiff that the plaintiff is having right even as per the sale deed Ex.A1. Perusal of the sale deed in Ex.A1 and the A schedule suit property reveals that both are not the same. Since the plaintiff was not given any right in the B schedule property in Ex.A1, the plaintiff has filed the present suit and sought for a relief in respect of the B schedule property. When the plaintiff has filed the suit for bare injunction in respect of the B schedule property, it is for the plaintiff to establish that he is having right over the B schedule property as against the defendant.



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17. Even as per the argument of the learned counsel, they filed petition before the trial Court seeking to adduce additional evidence by examining the witnesses but the trial Court has rejected the same. While so the appellant has not taken any steps as against the same for adducing the evidences to establish his right over the B schedule property. Therefore, the



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suit filed by the plaintiff for bare injunction has been rightly dismissed by the Courts below.

18. The Courts below have also recorded finding on the basis of the report and plan filed by the advocate commissioner in Ex.C1 and C2 and the evidences that the plaintiff was having an alternative way of access through the 10 feet passage and the claim that the plaintiff cannot have access to the A schedule property without having ingress and egress in the B schedule is not correct. Since all the substantial question of law framed are based on recitals in the sale deed in Ex.A1 and right of access in the B schedule property, the question of law are answered against the appellant.

19. The Courts below have arrived concurrent finding of fact which are based on the materials available on record and there is no illegality or perversity in the finding of the Courts below.

20. In view of the same, the second appeal is dismissed. No cost. Consequently, connected miscellaneous petition are closed.

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Index : Yes/No

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Speaking order/non-speaking order
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G.ARUL MURUGAN, J.,

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To

1. The Subordinate Judge, Chengalpet.
2. The District Munsif, Tambaram.

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