



SA. No.890 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2024

CORAM:

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

SA. No. 890 of 2009

Thirunavukkarasu

... Appellant

Vs.

1.N.Thangammal
2.N.Balakirshnan

...Respondent

PRAYER : This Second appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree of the subordinate judge at Rasipuram Dated 29.01.2009 in A.S No. 96 of 2008, confirming the judgment and decree of the District Munsif Court at Rasipuram dated 29.07.2005 in O.S No. 382 of 2004.

For Appellants : Mr.S.Mukunth, Senior counsel.

For R2 : Mr. R.Murali

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JUDGMENT

This second appeal has been filed to set aside the judgment and decree of the subordinate judge, Rasipuram Dated 29.01.2009 in A.S No. 96 of 2008, confirming the judgment and decree of the District Munsif Court at Rasipuram dated 29.07.2005 in O.S No. 382 of 2004.

2. The appellant herein is the defendant in the suit, the respondents herein are the plaintiffs, who filed the suit for the relief of declaration to declare the second item of the suit property as belongs to them and to remove the encroachment made by the defendant/appellant herein on his cost or else through Court of law in respect of second item of the suit property. According to the plaintiffs/respondent herein, the defendant/appellant herein is their neighbour and they left the vacant lane between the plaintiffs' property and defendant's property which was encroached by the defendants during the absence of the plaintiffs. Hence in spite of objection the defendant refused to remove the said encroachment which shown as second item of the suit property. The said suit was contested by the defendants raised objection that it belongs to them. In



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respect of B schedule property he submitted that it is East West lane which is not to the plaintiff's house, at the same time with the consent of the both parties compound wall was constructed as per the terms arrived in the Panchayat thereby with faith of them the defendant constructed the compound wall accordingly it was constructed on 13.03.2023 thereby North of the Wall belongs to the defendant, South of wall belongs to the plaintiff to that effect Muchalika dated 06.01.2001 was executed in the presence of the Panchayatars. Thereafter, the defendant put up the thatched house by obtaining permission from the panchayat. Therefore he is not hand over the property belongs to the plaintiff. Furthermore, in the title deeds belongs to the plaintiff's predecessors it is mentioned about the lane and **not at all** construction of the common wall said portion was kept as vacant in which the defendant also having equal right, therefore the Panchayat was convened and Muchalika was executed in respect of constructing the said common wall, after construction of the said common Wall "A" portion used as pathway by the defendant to reach the western side and the plaintiff also put up iron post on the North of the common wall in order to prevent the door way portion of the house, the defendant put up (temporary shed)



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Therefore after construction of the compound wall it was enjoyed by the both parties as per the terms of Muchalika. Therefore the defendant also claimed right to enjoy the common wall to that effect he wants relief to declare and not caused any interference to enjoy the common wall as per Muchalika dated 06.01.2021.

3. By way of reply, the plaintiffs denied the said Muchalika stating that no such document was executed nor defendant permitted to put up compound wall. In fact, the said wall belongs to the plaintiff and the vacant lane also belongs to them, the defendant's has no right from the main road, and he is having access to his terrace house in order to cause interference the defendant constructed bathroom, gate through the said lane as such is not permissible.

4. Considering the submission either side both the Court below allowed the suit. Challenging the same the defendant filed the first appeal before the Subordinate Court, Rasipuram, after considering the submissions on either side, the lower appellate court confirmed the findings of the Trial Court.



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WEB COPY 5. Aggrieved that the petitioner preferred the second appeal before this Court. This Court admitted the appeal with the following substantial questions of law:

1. Is not the plaintiffs estopped from reneging from Ex.A1 panchayat muchalika to which they are parties?

2. Whether the judgment and the decree of the courts below are vitiated in as much as they hold the suit lane to be a public land when such is not the case pleaded or proved by either party?

3. Is not the judgment and decree of the courts below substantially erroneous in as much as they have not framed any issue with respect to limitation especially when the appellant in para 15 of his written state has clearly raised this plea?

6. It is undisputed fact that the plaintiffs and defendants are the neighbour. As per the contention of the plaintiff B schedule property more particularly lane along with compound wall is belongs to them but during their absence the defendant constructed protico, sun shade, bathroom thereby causing hindrance to the plaintiffs' right and enjoyment of the suit lane. Hence, the plaintiffs filed the suit for declaration and to remove the encroachment. The learned counsel for the appellant/defendant submitted that in his predecessor's title deed the disputed lane was mentioned but



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during the sub division proceedings it was not properly noticed by the revenue authorities and also patta was granted to the plaintiffs, based on that he claimed absolute right over the B schedule property. The fact that the defendant is having equal right but it was not properly appreciated by the trial court as such is erroneous. Hence, he prays to allow this petition.

7. Admittedly, as per the title relied by the defendant the boundaries are referred as follows:

நைனாமலை உடையா வீட்டுக்கும் தெற்கு

மேற்படி வீட்டுக்கு தென் புறம் உள்ள சந்து நிலம்

8. Therefore, as rightly pointed by the Court below lane is mentioned as revenue boundaries of the defendant's. Further, the defendant claimed right over the common wall based on the Ex.B1/Muchalika(the compromise was arrived between the parties in the presence of the panchayatars) based on the said Muchalika the said common wall was constructed by both parties by equal contribution of the amount in that Muchalika dated **06.01.2021** the plaintiff and the defendant also signed therefore the plaintiffs have no right to claim in respect of said common



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wall shown as B schedule property but the plaintiffs denied the said Muchalika and also contended that during his absence the defendant put up the said construction thereafter he created alleged Panchayat Muchalika grab the property which was rightly indicated by the Court below needs no interference and also the Court below refused to consider the said Muchlika since because the property values more than **10,000** rupees requires compulsory registration as per Section 70 of Registration Act but the same was not complied so said the document would not confer any title. Admittedly, the findings of Court to that effect is acceptable one but at the same time, the document can be used as collateral as submitted by the defendant as per the evidence the plaintiff also admits that he signed in the said document therefore he has no defend about panchayat in its entirety. Based on this Ex.B1/06.01.2001 Panchayat Muchalika the plaintiff and the defendant jointly constructed said common wall by equal contribution. Two of the panchayatars were examined on the side of the defendants from their evidence it is able to convince that they were participated in the panchayat hence, the said evidence on the side of the defendant's side is sufficient to prove that the panchayat Muchalika was executed with consent of both the



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parties. Further there is minor discrepancy in evidence of D.W.2, 3 but as per the evidence of the plaintiffs he admits that signature in the said panchayat Muchalika. But the Court below failed to appreciate the above, needs interference. Admittedly, the value of property was mentioned as rupees one thousand admittedly the document need registration as the value of the sale is fixed Rs.one thousand so it cannot be used as evidence as per section 17 of the Registration Act. However, the same can be utilized for collateral purpose to that extent putting up the construction of common wall in the B schedule property. But the court below declined to accept the said Muchalika for the reason that it was not registered indeed it can be used as collateral purpose in respect of dividing the said common wall in B schedule property. Hence, as per Ex.B1 common wall was permitted to construct by the plaintiff but has no right to claim that suit lane, therefore the Court below failed to appreciate the evidence as such is erroneous. Accordingly first question of law is answered. Based on Ex.B1 the defendant established that it is common wall therefore question of law 2 and 3 need not be answered.

9. As discussed above, the defendant established through Ex.B1 that he is entitled to use the lane in B schedule land for ingress and exgress lane.



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since because the plaintiff already permitted the defendant to put up construction however it also unbelievable that defendant put up construction in their absence as per Ex.B1. Eventually, defendant is entitled to use B schedule lane to ingress and egress. Accordingly, the appeal is partly allowed, in respect removal of encroachment in B schedule property the suit is dismissed. In respect of declaration, the second item of the suit property is belongs to the plaintiff provided the defendant is entitled to use the lane in B schedule for ingress and egress. Suit is partly allowed.

10. In the result, this appeal is partly allowed. No costs.

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T.V.THAMILSELVI,J.

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To

1. The Subordinate judge at Rasipuram
2. The District Munsif Court at Rasipuram.
3. The Section Officer,
V.R Section.

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