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S.A.No.523 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM

THE HON'BLE MR. JUSTICE V.SIVAGNANAM

S.A.No.523 of 2010

1.Kumarasamy (died)

2.Pavadai

3.Karthikeyan

4.Kandasamy

...

Appellants

Vs.

1.Raman

2.Lakshmanan

...

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree as made in A.S.No.61 of 2007 dated 20.11.2009 on the file of the Principal Subordinate Judge, Cuddalore confirming the judgment and decree as made in O.S.No.474 of 2002 dated 21.06.2007 on the file of the Additional District Munsif Court, Cuddalore.

For Appellants : Mr.S.Vediappan

For Respondents : Mr.R.Rajavelavan

JUDGMENT



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Challenge in this second appeal is made to the Judgment and Decree dated 20.11.2009 in A.S.No.61 of 2007, on the file of the Principal Subordinate Judge, Cuddalore, confirming the judgment and decree dated 21.06.2007 in O.S.No.474 of 2002 on the file of the Additional District Munsif Court, Cuddalore.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3.The defendants in O.S.No.474 of 2002 on the file of the Additional District Munsif Court, Cuddalore are the appellants herein.

4.Upon considering the evidence and documents, the trial Court granted the prayer as mentioned by the plaintiffs. Aggrieved over the same, the defendants filed an Appeal in A.S.No.61 of 2007, on the file of the Principal Subordinate Judge, Cuddalore. The First Appellate Court, after considering the entire materials and evidence on record confirmed the Judgment and Decree of the trial Court and dismissed the appeal.



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Aggrieved by the same, the defendants have filed the present second appeal.

5.Learned counsel for the appellants submitted that the First Appellate Court and the trial Court failed to consider that the plaint plan ABCD is not used as a pathway. Therefore, plaintiffs are not entitled for grant of injunction. There are substantial questions of law involved in this case. The trial Court and the First Appellate Court erroneously found that the appellants are not entitled for the relief claimed, without considering the evidence on record and reiterated the other grounds raised in the grounds of appeal and thus pleaded to allow the second appeal.

6.Learned counsel for the respondents supported the judgment of the trial Court and the First Appellate Court and contended that the judgment is based upon the evidence and there is no ground to interfere with the findings and no substantial question of law is involved in this case. Therefore, there is no merits in this Second Appeal for admission and seeks dismissal.



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7.I have considered the matter in the light of the submissions made on either side and perused the materials on records as well as the Judgments passed by the Courts below.

8.On perusing the records and evidence, it is seen that the respondents/plaintiffs filed a suit with the following prayer,

“1.To pass a decree declaring that the 'A' schedule property portion marked as “ABCD” in the plaint is a common public street.

2.Restricting the defendants, their men, agents and any person claiming under them by a decree for permanent injunction from in any manner interfering with the user of the 'A' schedule property as a common public street.”

9.The defendants filed written statement and contested the suit. Further, the plaintiffs' case is that Survey No.446/2016 and other Survey No.492/2001 is a public pathway and it is mentioned as a public way for the usage of public people in the Sale Deed itself. Apart from that, the revenue records also reflected that the plaint schedule property is a pathway used by the public people. The defendants had taken advantage



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of residing near the pathway, as if the pathway belongs to them and prevented the plaintiffs from using the pathway. The trial Court found that the suit property is a pathway. Further, the Commissioner report also evidenced the fact that it is a pathway. The defendant DW2 during his cross examination admitted that the suit property is used as a pathway. Based upon the oral and documentary evidence, the trial Court and the First Appellate Court found that the suit schedule property is a pathway and the findings is based upon the evidence on record.

10. There cannot be any doubt whatsoever for consideration of irrelevant fact and non consideration of relevant fact would give rise to substantial question of law. But here no irrelevant consideration. The case does not meet out the parameter laid down by the Hon'ble Supreme Court in the following decisions:-

1. **AIR 2008 1749 379** in the case of *Moses Vs. Kasturiba*

2. **AIR 2008 SC 956** in the case of *Abdul Raheem Vs.*

Karnataka Electricity Board

3. **AIR 2008 SC 1749** in the case of *Kashmir Singh Vs.*

Harnam Singh and another.



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11. Therefore, the findings of the trial Court and the First Appellate Court are based upon the evidence on record and they are not perverse. There is no ground for reversing the findings recorded by the trial Court and the First Appellate Court. There is no merit for admitting in the Second Appeal. There is no substantial questions of law involved in this case.

12. Accordingly, the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition, if any, is closed.

03.07.2024

gd

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

To

1. The Principal Subordinate Judge, Cuddalore.

2. The Additional District Munsif Court, Cuddalore.



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V.SIVAGNANAM, J.

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