



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.900 of 2011 and
C.M.P.No.22189 of 2023

1.Valliammal
2.R.Ranganathan
3.R.Gopi
4.Ms.Nirmala
5.Ms.Shanthi

... Appellants / Plaintiffs

Vs.

1.Maheswari
2.Sampath

... Respondents / Defendants

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed by the learned VII Additional Judge, City Civil Court, Madras in A.S.No.260 of 2008 dated 30.06.2009, confirming the judgment and decree of the learned VI Assistant Judge, City Civil Court, Madras in O.S.No.3221 of 2003 dated 04.12.2007, dismissing the suit.

For Appellants : Mr.G.Vasudevan

For Respondents : Mr.V.Kuberan for
M/s.Rank Associates



JUDGMENT

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This Second Appeal has been filed to set aside the judgment and decree passed by the learned VII Additional Judge, City Civil Court, Madras in A.S.No.260 of 2008 dated 30.06.2009, confirming the judgment and decree of the learned VI Assistant Judge, City Civil Court, Madras in O.S.No.3221 of 2003 dated 04.12.2007, dismissing the suit.

2. Heard Mr.G.Vasudevan, learned counsel for the appellants and Mr.V.Kuberan, learned counsel for the respondents and perused the materials available on record.

3. The plaintiffs are the appellants who have filed a suit for bare injunction and the Trial Court has dismissed the suit and the First Appeal filed by the plaintiffs was also dismissed by confirming the judgment of the Trial Court.

4. The short facts pleaded in the plaint are as follows:

The plaintiffs have purchased the suit property from one Chandra Bai and Sandhanam by virtue of a sale deed dated 24.04.2002. At the entrance



of the suit property, there is a pathway measuring 4 feet width and 79 feet length and it proceeds from Devaraj Mudali Street to till the plaintiffs' house. The total extent of the suit property is 1644 Sq.ft and in which, there was a building measuring 1032 Sq.ft and 300 Sq.ft. is a common pathway. The plaintiffs have purchased the suit property along with the pathway as stated above and patta has also been granted inclusive of the pathway in favour of the plaintiffs. The defendants are the owners of the property in Door No.47, Devaraj Mudali Street, Kosapettai, Purasaiwakkam, Chennai and their property was situated on the southern side of the plaintiffs' house. The plaintiffs had let their house to the tenants and they were also enjoying the pathway. When the plaintiffs attempted to whitewash the southern side wall of the pathway, the defendants prevented the same. Hence, the plaintiffs have filed a suit for injunction against the defendants.

5. The averments made in the written statement filed by the defendants are as follows:

The plaintiffs are the owners of the suit property in Old Plot No.12 B New No.44 in Devaraj Mudali Street, Kosapettai, Chennai - 12 and they have purchased the same by a sale deed dated 24.04.2002. The defendants



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are the owners of the adjacent plot and also the pathway measuring 8 feet width and 79 feet length (632 Sq.ft) and the same is in Door No.43, Devaraj Mudali Street, Kosapettai, Chennai. The defendants are the exclusive owners of the pathway and it is borne by their title deeds and revenue records. As the plaintiffs do not have any other pathway to reach their house, on humanitarian aspect, the defendants had allowed the plaintiffs to use the pathway on permission. No right has been given in the pathway to the plaintiffs. Even now, the defendants did not restrict the plaintiffs from using the pathway. However, the plaintiffs had approached the defendants to raise a separate wall. But that was not permitted by the defendants. Raising a wall would reduce the width of the pathway and further, the plaintiffs do not have any right over the same.

5.1. The plaintiffs' title deed has simply mentioned as pathway 4/78 measuring 300 Sq.ft. The plaintiffs' predecessor in title have not been given with any right over the pathway and the plaintiffs have obtained patta by giving wrong particulars and the pathway measures 8 feet width which was exclusively belonging to the defendants and the pathway does not facing south side wall of the plaintiffs, but it is adjacent to that wall. As the



plaintiffs tried to erect a wall on the pathway belonging to the defendants illegally, that was prevented by the defendants. As the plaintiffs did not heed to the advise of the defendants, a complaint has been given on 13.05.2003 before the Otteri Police Station. Even now, the defendants have no objection for the plaintiffs to use the pathway. But they should not claim any right over the same. Therefore, the suit should be dismissed.

6. During the course of the trial, on the side of the plaintiffs, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A4 were marked. On the side of the defendants, D.W.1 was examined and Exs.B1 to B9 were marked.

7. At the conclusion of the trial and considering the evidence available on record, the suit was dismissed. The First Appeal preferred by the plaintiffs was also dismissed by confirming the judgment and decree of the Trial Court. Now the plaintiffs have filed this Second Appeal by raising the substantial questions of law along with a petition in C.M.P.No.22189 of 2023 to withdraw the Appeal with liberty to file a fresh suit for including the prayer for declaration and filing a suit in a comprehensive manner. On



perusal of the judgments of the Trial Court and the First Appellate Court, it is seen that even the Trial Court has not framed a specific issue as to the entitlement of the pathway for the plaintiffs. It has dealt the above point instantly and rendered a finding that the plaintiffs have got no entitlement to pathway as its owners. Having suffered such a finding, now the plaintiffs cannot seek permission to withdraw the suit by allowing them to file a fresh suit. That would prejudice the interest of the defendants. As the plaintiffs have canvassed their right by effectively participating in the trial and the Court has also dealt about the entitlement of the plaintiffs over the pathway and rendered a finding, the petition is C.M.P.No.22189 of 2023 has to be dismissed. The following substantial questions of law are raised in the present Second Appeal:

"1. Whether the Courts below were justified in ignoring the clinching documentary evidence of Ex.A1 and A2 to establish the exclusive rights of the plaintiffs over the suit passage?"

2. Whether the Courts below had acted in terms of established legal principles in observing the suit passage to be common when the parties of the suit had made rival claims and in the light of the better evidence placed by the plaintiff for their exclusive ownership of the passage?"



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3. Is it not incumbent on the part of the defendants to establish to the satisfaction of the Courts that the plaintiffs were only permitted to use the passage in the light of Exs.A1 and A2? In other words, having failed to discharge their onus, or the burden of proof and the Courts below having erroneously concluded the legal maxim of "memo debt non habath" the plaintiffs right to exclusive use of the suit passage ought to have been so decreed?

4. Whether the Courts below justified in ignoring the vital documents Ex.A1 & Ex.A2 as per the direction of this Hon'ble Court in 2010 CTC (1) Part V page 505?

8. The learned counsel for the appellants / plaintiffs submitted that the plaintiffs had obtained title in respect of the pathway by virtue of the sale deed Ex.A1. Subsequently, they obtained patta (Ex.A2) which was not considered by the Trial Court and the First Appellate Court. In fact, the patta stands in the name of the predecessor in title of the plaintiffs and that was ignored to be considered by the Courts below.

9. The grievance of the appellants is that they were not allowed to use the pathway. When the Advocate Commissioner who had visited the suit



property did not record a finding that there was a wall erected by the plaintiffs as alleged by the defendants.

10. The learned counsel for the respondents submitted that the issue is not with regard to the usage of pathway, but it was when the plaintiffs tried to erect a wall and that has been observed in the judgment of the Trial Court also. It is the defendants who have purchased the suit property by virtue of Ex.B2 sale deed dated 19.04.1949. One Samandham Naicker has released his rights in respect of 1 3/4 grounds to Arumugam Pillai through a release deed dated 25.05.1949. Out of 1 3/4 grounds belonging to the Samandam Naicker, he had given 3/4 grounds in favour of Krishnammal by way of settlement deed and 1 ground to his wife Gijabai through a release deed which was marked as Ex.B3.

10.1. In view of the same pathway purchased by the Samandham Naicker through Ex.B2, it becomes a common pathway among the family members. Gijabai, for whom 1 ground was released and subsequently, sold the same in favour of Samandhamurthy through a sale deed dated 17.10.1959. So the pathway which has been purchased by Samandham



Naicker through Ex.B2 would become common to Samandhamurthy and Krishnammal. It is not known how Gangabai got the site from Samandhamurthy. However, Gangabai is in enjoyment of Samandhamurthy's portion of land. Gangabai has settled the said portion in favour of her daughter Maheswari and her grandson Abilesh through Exs.B5 and B6 and the common pathway belonged to the family has been settled in favour of Maheswari and Abilesh through Exs.B7 and B8.

10.2. The plaintiffs' sale deed is later in point of time and hence, their vendor cannot have any right over the pathway which was already sold in favour of Samandham Naicker on 19.04.1949. The patta granted in favour of the plaintiffs' predecessor and the plaintiffs in respect of the pathway was behind the defendants. They have not given with any notice. Hence, the plaintiffs are not entitled to the suit pathway.

11. Even though the plaintiffs claim exclusive title in respect of the pathway stating that 4 feet width and 79 feet length would form part of the property sold to them through Ex.A1, no document has been produced to show how their predecessor in title had acquired title in respect of the same.



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The subsequent claim of the defendants is that the pathway measuring 8 feet width and 79 feet length exclusively belonged to the defendants' predecessor through a sale deed dated 19.04.1949, which has been marked as Ex.B2. The property which was purchased through Ex.B1 was subsequently settled in favour of the family members of the owner, the pathway was considered to be enjoyed by them as a common pathway.

12. According to the defendants, since the plaintiffs did not have any pathway, they have been allowed to use the pathway on humanitarian aspect. But the plaintiffs tried to construct a wall on the southern side and thereby attempted to reduce the width of the wall. In fact, while filing the case, the plaintiffs have claimed that they put up a wall already and when they attempted to repair the wall, the same was prevented by the defendants. The Advocate Commissioner who had visited the suit property made an observation that there is no such wall on the southern side. In such case, there cannot even any cause of action for the suit.

13. Even now, the defendants did not restrain the plaintiffs to use the pathway to reach their house. But the grievance of the plaintiffs is that they



should be allowed to avail the sewage connection and water tap connection through the pathway to their house. But, that was not the case of the plaintiffs and they had simply claimed that they have title over the pathway measuring 4 feet width and 79 feet length and the defendants prevented them when they attempted to repair the wall on the southern side of the suit pathway. The Commissioner's report would falsify the stand of the plaintiffs. The Commissioner has categorically stated that there is no wall on the southern side. In such case, there cannot be any cause of action as alleged by the plaintiffs in the suit.

14. In fact, the Trial Court has observed that the parties have taken their sewage connection, water connection and electricity connection through the pathway. So the plaintiffs' claim for entitlement of 4 feet width and 79 feet length of pathway has not been established in view of the fact that their predecessor in title did not have any document to show that they have acquired title to the pathway with the above measurement individualistically.



15. As the suit has been filed without any cause of action and without any exclusive title in respect of the pathway as alleged by the plaintiffs, I do not find any legal or factual infirmity in approaching the case by the Trial Court as well as the First Appellate Court. Even though the plaintiffs have raised four substantial questions of law in this Second Appeal, the materials on record does not make out any question of law much less a substantial question of law for consideration.

16. In the result, this Second Appeal is dismissed and the judgment and decree of the First Appellate Court in A.S.No.260 of 2008 dated 30.06.2009 and the Trial Court in O.S.No.3221 of 2003 dated 04.12.2007 are confirmed. No costs. The Civil Miscellaneous Petition in CMP.No.22189 of 2023 is dismissed.

19.12.2024

Speaking order / Non Speaking Order

Index : Yes / No

Neutral Citation : Yes / No

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To

1.VII Additional Judge,
City Civil Court,
Madras.

2.VI Assistant Judge,
City Civil Court,
Madras.



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R.N.MANJULA, J.

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