



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.1195 of 2012 and
M.P.No.1 of 2013

Shanmugasundaram (died)

1.Tmt.Periyammal
2.Tmt.Malarkodi
3.Muthammal
4.Subramanian

... Appellants / Lrs of Plaintiffs

Vs.

1.Ramalingam

2.Muthulingam

... Respondents / Defendants

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.46 of 1996 dated 01.08.2011 on the file of the Sub-Judge, Ariyalur reversing the judgment and decree in O.S.No.689 of 1992 dated 31.10.1995 on the file of the Principal District Munsif, Ariyalur.

For Appellants : Ms.K.Priyavarshini for
Mr.S.Kamadevan

For Respondents : Mr.S.Mukunth, Senior Counsel for
M/s.Sarvabhauman Associates



JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree in A.S.No.46 of 1996 dated 01.08.2011 on the file of the Sub-Judge, Ariyalur reversing the judgment and decree in O.S.No.689 of 1992 dated 31.10.1995 on the file of the Principal District Munsif, Ariyalur.

2. Heard Ms.K.Priyavarshini, learned counsel for the appellants and Mr.S.Mukunth, learned Senior Counsel for the respondents and perused the materials available on record.

3. The appellants are the legal heirs of the deceased plaintiff. The deceased plaintiff filed a suit for declaration and permanent injunction. The Trial Court has decreed the suit, on the First Appeal filed by the defendants, the First Appellate Court has allowed the Appeal and reversed the judgment of the Trial Court. Aggrieved over that, the legal heirs of the deceased plaintiff has preferred this Second Appeal.

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

The portion shown as A,D,E,F and the suit pathway was purchased by the plaintiff's father Kandasamy Udayar on 16.06.1955 from one



Velayutha Udayar and his sons. The plaintiff's father was in possession and enjoyment of the suit property till his life time. The plaintiff's father died in the year 1960. Subsequent to his death, the plaintiff inherited the same. After the death of the plaintiff's father, he has constructed a tiled roofing house in A,D,E,F portion. There is a vacant portion in front of the house. The plaintiff is residing in the house and he is in possession of the vacant site also. He is in enjoyment of the suit property as pathway leading from east to west street situated on the north. The plaintiff has proposed to put up further construction in the vacant portion in the front of his house and took measurements for the same. At that time, the defendants have made some objections and claimed untenable right over the pathway.

4.1. On verification of both side documents by the Panchayatars, it is found that the measurements given in human feet in plaintiff's document has been correlated with his possession of suit property by taking 10 inches per human feet. On the eastern side of the suit property, the defendants are owing their house and a vacant portion. In the sale deed of the defendants, they have given a standard feet measurement but actually on ground, it is only a human feet measurement. By making use of the above description,



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the defendants claim undue right on the suit property. As the defendants attempted to illegally trespass into the suit property and put up an obstruction, the plaintiff has filed a suit for declaring the title over the suit property and a consequential permanent injunction.

5. The averments pleaded in the written statement of the defendants are as follows:

The suit property was not the subject matter of purchase in the sale deed dated 16.06.1955 as the plaintiff's vendor was not in possession of the suit property at any point of time. The plaintiff has not put any construction in the entire A,D,E,F portion as claimed by him. The sale deed in favour of the defendants' father dated 02.01.1956 would give a correct measurement in a standard feet and how it was enjoyed by their vendor Govindasamy Udayar. The defendants' father had taken possession of the property conveyed under the sale deed dated 02.01.1956 and the portion put up to the western limit has been described as a portion of the suit property.

5.1. The portion west of H G upto A D on the west is the common lane and common to both parties and both the owners of the house sites



have right over the same. The defendants and others have got easementary right on the portion shown as A,D,G,H in the Commissioner's second plan and the plaintiff cannot obstruct the right of the defendants. The entire suit property was owned by a single individual family. So, there ought to have been a pathway to reach their respective tenements as per the provisions of Easement Act. Hence, the suit should be dismissed.

6. During the course of the trial, on the side of the plaintiff, P.W.1 was examined and Exs.A1 to A4 were marked. On the side of the defendants, D.W.1 was examined and no documents were marked. Court Documents Ex.C1 to C4 were marked.

7. At the conclusion of the trial and on considering the evidence on record, the Trial Court has decreed the suit filed by the deceased plaintiff. On the First Appeal preferred by the defendants, the First Appellate Court allowed the Appeal and reversed the judgment of the Trial Court. Now, the Second Appeal has been filed by the legal heirs of the deceased plaintiff by raising the following substantial questions of law:

"1. Whether the Lower Appellate Court is correct and justified in holding that the suit property is not lying



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within boundaries mentioned in Ex.A2 without applying the settled principles of law that boundaries will prevail over the extent when there is a dispute regarding the measurements?

2. Whether the Lower Appellate Court is correct and justified in accepting the defendants' plea of common use or easementary right in the suit passage based on the oral evidence and the same is hit by Section 91 of the Evidence Act?"

8. The learned counsel for the appellants claims that the plaintiff's father had purchased the suit property by virtue of the sale deed dated 16.06.1955 (Ex.A2). The sale deed of the plaintiff's father shows the boundaries on the eastern side and the plaintiff claims that the portion shown as ABCD has been exclusively used by the plaintiff as pathway. The defendants claim that they also have pathway right over the same. The defendants property has been purchased by the defendants' father vide sale deed dated 02.01.1956. The plaintiff's parent title deed has been marked as Ex.A4. In Ex.A3 itself, it has been stated that the suit lane belonged to Kandasamy Udayar who is the plaintiff's father. The plaintiff has also stated in the cross examination that he needed to go through the pathway to reach



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the northern side street. The Commissioner has filed a plan and report which were marked as Exs.C1 & C2 and that would state that only by walking through the suit lane, the northern side streets can be accessed. The plaintiff has succeeded the rights of his father and hence, there cannot be any confusion on the plaintiff's possession over the same. The defendants who claim right over the suit property ought to have convinced their right by producing their title deeds.

9. Though the plaintiff who filed a suit has got an initial burden to prove the right claimed by him, the burden would shift upon the defendants once the plaintiff discharges the same. It seems that the difference is only in view of describing the feet as standard feet instead of human feet. The Commissioner who had inspected the suit property has taken measurement and tallied the measurement only with the help of human feet and confirmed the measurements in the sale deed.

10. However, the plaintiff's eastern side boundary does not satisfy that there is a pathway. The defendant's father had purchased the property shown in B,B1 and C,C1 from one Govindasamy Udayar and the said sale



deed is marked as Ex.A3. In Ex.A3, the eastern boundaries are shown as Kandasamy Udayar's lane. Kandasamy Udayar is none other than the plaintiff's father. But so far as the pathway ABCD is concerned, the documents do not show that it belongs exclusively to the plaintiff or the plaintiff has got joint right over the same. Hence, the relief of declaration as claimed by the plaintiff in respect of portion ABCD could not be granted to him. The First Appellate Court has rightly analysed the materials available on record and held that the judgment and decree of the Trial Court is liable to be set aside. As the First Appellate Court has taken a right decision, I do not find any reasons to interfere with the judgment and decree of the First Appellate Court.

11. In the result, this Second Appeal is dismissed. The judgment and decree in A.S.No.46 of 1996 dated 01.08.2011 on the file of the Sub-Judge, Ariyalur is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Speaking order / Non-speaking order

26.11.2024

Index : Yes / No

Neutral Citation : Yes / No

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1.The Sub-Judge,
Ariyalur.

2.The Principal District Munsif,
Ariyalur.



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R.N.MANJULA, J.

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