



S.A.No.512 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.03.2024	Pronounced on: 22.03.2024
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CORAM :

THE HONOURABLE MR. JUSTICE P. B. BALAJI

S.A.No.512 of 2018
and
C.M.P.No.14077 of 2018

Veerappan (Died)

2. Andal
3. V. Raja
4. V. Ulaganathan
5. Sumathi
6. V. Vasu

[A2 to A6 are brought on record as L.Rs of the deceased A1
vide Order dated 02.01.2024
made in C.M.P.No.3097 of 2022]

...Appellants

Versus

1.Dayanithi Ammal

2.The Project Officer, (Tashildar),
Patta and Passbook Scheme,
Chidambaram.

3.P. Elango

...Respondents

Prayer : Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 16.03.2018 passed in A.S.No.26 of 2014 on the file of Subordinate Court, Chidambaram, confirming the Judgment and Decree dated 18.03.2014,



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passed in O.S.No.103 of 2005, on the file of the Principal District Munsif Court, Chidambaram.

For Appellant : Mr. T.S. Baskaran
For Respondents : Mr. B. Manoharan (for R1)
: Mr. V. Ramesh, Govt. Advocate (for R2)
: No Appearance (for R3)

JUDGMENT

The first defendant, who suffered concurrently before the Trial Court as well as the First Appellate Court is the appellant herein.

2. The parties are described as per their litigative status before the Trial Court.

3. The material facts that are necessary to decide the above Second Appeal are as hereunder:-

3.1 The case of the plaintiff is that a pathway exists between his house site and the house sites belonging to the third defendant. The suit property originally belonged to one Sethuammal, who had title to an extent of 63 Cents and the said Sethuammal has sold 11 house sites with two pathways. According to the plaintiff, his vendor purchased 3 plots measuring a total extent of 15.1 Cents, which lies to the west of the suit property. The plaintiff purchased three house sites on the Western side of the pathway and similarly, the third defendant purchased two plots on the



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Eastern side of the suit property. According to the plaintiff, the plaintiff and the third defendant have been enjoying the pathway without any interference from anybody for more than 18 years. However, the said Sethuammal's power agent, one, Ravi executed a sale deed in favour of one, Rajasekaran on 22.07.2002, conveying the suit pathway. According to the plaintiff, the suit pathway was in the possession and enjoyment of only the plaintiff and the third defendant. It is also contended that the said Rajasekaran subsequently conveyed the suit property in favour of the first defendant. The first defendant was attempting to obtain patta, and under such circumstances, the suit came to be filed.

4. The first defendant filed a written statement as well as an additional written statement, admitting the title of the said Sethuammal, to an extent of 63 Cents, however, the first defendant denied that the suit property was the pathway to approach the rear portion of the plaintiff's properties and rear portion of the third defendant's properties. According to the first defendant, the plaintiff and the third defendant were not in possession as alleged and the original owner, Sethuammal never sold the properties as house sites and also never obtained any layout approval. The



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first defendant further contended that no right in the suit pathway was conveyed to the plaintiff and the third defendant at any point of time. Both the plaintiff and the third defendant's lands are abetting the main road, which is called “Natarajapuram Main Road” and they are not entitled to any right in the suit pathway. It is also contended that the first defendant has been in possession and enjoyment of the suit property, and therefore, the question of trespass never arose.

5. The third defendant filed a written statement, supporting the plaintiff's case. The Trial Court decreed the suit finding that the said Sethuammal had specifically mentioned in her sale deeds that one of the boundaries was the common pathway. The First Appellate Court also concurred with the findings of the Trial Court and dismissed the appeal preferred by the first defendant. Aggrieved by the concurrent findings, the first defendant has preferred the above Second Appeal.

6. Though the second appeal had not been admitted, I have heard the learned counsel Mr. T. S. Baskaran, appearing for the appellant and Mr. B. Manoharan, learned counsel appearing for the first respondent and



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Mr. V. Ramesh, learned Government Advocate appearing for the second respondent, for final disposal of the Second Appeal.

7. I have framed the following substantial question of law :-

“ Whether the Courts below misconstrued Exs.A1, A2 & B1, in order to grant relief to the plaintiff ?”

8. I have heard the counsel on the above substantial question of law.

9. I have gone through the pleadings and documentary evidence and also the report of the Advocate Commissioner, which is marked as Ex.C1 and I have also carefully gone through the Judgments of the Trial Court as well as the First Appellate Court.

10. Admittedly, the stretch of land having a width of 8 feet., and length of 150 feet., existed between the properties belongings to the plaintiff and the third defendant. It is also an admitted case of the plaintiff and the third defendant that they have no title to the said stretch of land.



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However, it is their case that the said stretch of land was a common pathway to enable access to the rear portions of their properties. In this connection, the plaintiff relies on the registered sale deeds executed by the said Sethuammal.

11. The learned counsel for the appellant, Mr. T.S. Baskaran would take me through the title documents, namely, Ex's.A1, A2, and B1. In Ex.A1, in the schedule portion, said Sethuammal has mentioned that Eastern portion boundary as "**her**" patta pathway. In Ex.A2, sale deed in the schedule also it is mentioned that the Eastern boundary is Sethuammal's patta pathway. In Ex.B1, Western boundary is mentioned as Sethuammal's Punjai lands. I do not find any covenant in any of these three sale deeds conferring any right of usage of the said pathway to the purchasers under the three various sale deeds. In fact, in two of the sale deeds, Ex's.A1 & A2, it is clearly mentioned that it is the said Sethuammal's patta pathway. Even in Ex.B1, there is not even any mention of any pathway, but the boundaries are said to be Sethuammal's Punjai lands. While so, the plaintiff and the third defendant cannot claim any enjoyment right over the said pathway, in the absence of any right



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conferred upon them. It is not their case, that there has been a grant in their favour in respect of the said usage of the pathway. It cannot also be their case that it is an easement of necessity, since, admittedly, both the properties belonging to the plaintiff and the third defendant have direct access from the main road, namely, “Natrajapuram Main Road”.

12. Even the Advocate Commissioner's report only mentions that the said Sethuammal's land is vacant and bushes are grown. In any event, unless there is a specific grant in favour of the plaintiff and the third defendant, or any right of usage in the said pathway has been conferred upon them in the documents in their favour, the plaintiff and the third defendant cannot claim any right for the said pathway. It appears that the said Sethuammal was owning a larger track of lands, and in order to reach the other lands she has retained the suit property and this probabilises the mentioning of one of the boundaries in both Ex's.A1 & A2, as said Sethuammal's patta pathway. There is no mention of the suit pathway as a common pathway. Unfortunately, the Courts below have been carried away by the boundary recitals mentioning that there is a pathway and consequently, they have committed an error in appreciating the



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documentary evidence available on record, warranting interference in
Second Appeal.

13. Both the Courts below have rendered an illegal and perverse finding, without proper appreciation of the evidence available before them and consequently, the findings are liable to be interfered with under Section 100 of the Civil Procedure Code.

14. In fine, the substantial question of law is answered in favour of the appellant and the Second Appeal is allowed and thereby the suit in O.S.No.103 of 2005 is dismissed. Consequently, the connected miscellaneous petition is also closed. There shall be no order as to costs.

22.03.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order : Yes/No

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To :

1. The Subordinate Judge, Chidambaram.



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2. The Principal District Munsif, Chidambaram.

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P. B. BALAJI, J.,

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Pre-Delivery Judgment in

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