



S.A.No.518 of 2018

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2024

CORAM:

THE HONOURABLE MR. JUSTICE P.B.BALAJI

S.A.No.518 of 2018
and C.M.P.No.14349 of 2018

1.Perumal
2.Kumar @ Senthilkumar
3.Kandasamy @ Palanisamy ... Appellants

Vs

1.Seerangayee
2.Ganesan ... Respondents

Prayer: The Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 03.04.2018 passed in A.S.No.67 of 2016 on the file of the II Additional Subordinate Judge, Salem, confirming the decree and judgment dated 25.10.2016 passed in O.S.No.763 of 2013 on the file of the Principal District Munsif Court, Salem.

For Appellants : Mr.D.Shivakumaran

For Respondents
For R1 : Mr.T.S.Vijayaraghavan



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JUDGMENT

This Second Appeal has been filed against the Judgment and Decree, dated 03.04.2018 passed in A.S.No.67 of 2016 on the file of the II Additional Subordinate Judge, Salem, confirming the judgment and decree dated 25.10.2016 passed in O.S.No.763 of 2013 on the file of the Principal District Munsif Court, Salem.

2.The suit has been filed by the 1st respondent herein as plaintiff, seeking relief of permanent injunction to restrain the defendants from interfering and disturbing the plaintiff's right over the suit property. The suit property is an 8 feet common pathway, branching out of Perumalpatty Panchayat Road. It is the case of the plaintiff that the property was purchased under the Sale Deed dated 20.08.2010, under Ex.A3. It is the plea of the plaintiff that subsequent to her purchase, she had entered into Ex.A7, Agreement on 09.04.2011, under which the passage rights have also been conveyed in favour of the plaintiff, by her vendor. Since the defendants were interfering with her right to use the said pathway, the plaintiff has been constrained to file the said suit.



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3.The 1st defendant filed a written statement stating that even the plaintiff's vendor had no right in the common pathway and what he purchase was only 872 sq.ft, which has been conveyed to the plaintiff and the plaintiff cannot claim any better right than what the plaintiff's vendor had.

4.The Trial Court decreed the suit, as against which the defendants 1 to 3 preferred an appeal in A.S.No.67 of 2016. The First Appellate Court also found that the plaintiff had a right over the common pathway and confirmed the findings of the Trial Court. The First Appellate Court also dealt with the objection of the defendants that the suit for bare injunction, without seeking the relief of declaration was not maintainable and proceeded to dismiss the appeal, confirming the judgment and decree in favour of the plaintiff.

5.The above Second Appeal was admitted by this Court on 26.10.2018, on the following substantial question of law:

When Ex.A1-Partition Deed, Ex.A2 the Sale Deed



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and Ex.A3, the Sale Deed are totally alien about the alleged "8 feet Road" as the Northern Boundary of 872 sq.ft., purchased by the plaintiff and in the absence of any specific recital about the existence and also conveyance of the right over the alleged "8 feet road", just because there is a recital that the Northern boundary of 872 sq.ft., is a common pathway [பொது தடம்] are the Court below correct in law in granting a decree for permanent injunction in respect of the alleged "8 feet road" in favour of the plaintiff?

6.After hearing Mr.D.Shivakumaran, learned counsel for the appellants and Mr.T.S.Vijaya Raghavan, learned counsel for the respondents, on 08.02.2024, the following additional substantial question of law has been framed,:

Whether the plaintiff, in the absence of a prayer for declaration and also having failed to prove existence of the alleged "8 feet road" would be entitled to a decree for permanent injunction?

7.Mr.D.Shivakumaran, learned counsel for the appellants would



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take me through Ex.A1, Ex.A2, Ex.A3 and Ex.A7 and contend that admittedly, the common pathway has not been conveyed either entirely or even conferring a right in the common pathway in favour of the plaintiff. Therefore, his contention is that under Ex.A7, unregistered Agreement for pathway, the plaintiff's vendor could not confer any such right on the plaintiff and consequently, the plaintiff was also not entitled to claim any right in the common pathway. Moreover, he would stress on the legal issue, which have been argued before the First Appellate Court that the suit for bare injunction, without a prayer for declaration was not maintainable, especially, when the defendants had specifically denied the right of the plaintiff over the common passage.

8.Per contra, Mr.T.S.Vijayaraghavan, learned counsel for the respondents would take me through the schedule of the Sale Deed, under which the plaintiff purchased the property. It is seen from the said registered document that one of the boundaries has been specifically mentioned as a common pathway. He would also invite my attention to the schedule in Ex.A3, which is the title deed for the plaintiff. Even in the Sale Deed, there is a specific mention of right of usage of the pathway.



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9.He would also invite my attention to the valuation specifically given for the pathway, in not only the plaintiff's Sale Deed but also in the plaintiff's vendor's Sale Deed. Therefore, he would pray the Second Appeal being dismissed as the Courts below have rightly appreciated the oral and documentary evidence and decreed the suit in favour of the plaintiff.

10.As rightly contended by Mr.T.S.Vijayaraghavan, learned counsel for the respondents, the documents in Ex.A2 and Ex.A3 clearly set out the right of the plaintiff's vendor initially and subsequently the said right has also been transferred in favour of the plaintiff, to use the common pathway and the common pathway has also been valued in monetary terms and thus, it forms part of the sale consideration also. Thus, it cannot be stated that the plaintiff has no right in the common pathway. Even otherwise, being shown as one of the boundaries in the schedule under which the property has been purchased, the plaintiff cannot be prevented from using the said pathway for the purpose of ingress and egress.



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11.For all the above reasons, I do not find any substantial questions of law to be answered in favour of the appellant. In fine, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

27.02.2024

Index:Yes/No
Speaking order/Non-speaking order

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To

- 1.The II Additional Subordinate Judge, Salem.
- 2.The Principal District Munsif Court, Salem.
- 3.The Section Officer,
VR Section,
Madras High Court,
Chennai.

P.B.BALAJI,J.

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