



S.A.No.359 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.359 of 2021
and
C.M.P.No.6692 of 2021

Elamathi

... Appellant

Vs.

Sengutuvan

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 20.11.2018 in A.S.No.100 of 2017 passed by the learned Sub-ordinate Judge, Jayankondam, Ariyalur District, confirming the judgment and decree dated 23.01.2017 in O.S.No.308 of 2010 passed by the learned District Munsif, Jayankondam, Ariyalur District.

For appellant

: Mr.S.Sarath Chandran

For respondent

: No appearance



S.A.No.359 of 2021

JUDGMENT

The unsuccessful defendant before the Courts below is the appellant herein.

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2. The facts are briefly set out hereinbelow and the parties are referred to in the same rank as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff has filed a suit in O.S No.308 of 2010 on the file of District Munsif Court, Jayankondam, for a bare injunction. It is the case of the plaintiff that he is the family manager and the owner of the suit property. The defendant is having a property to the north of the suit property. The defendant, claiming a cart pathway in the suit property, had attempted to destroy the live fence which was successfully prevented by the plaintiff. Therefore, the plaintiff had come forward with the suit for bare injunction.



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2.2. The defendant has filed a written statement admitting that the suit property belongs to the plaintiff. However, he would admit only the fact that there was a house in the suit property. The defendant would submit that without knowing about the institution of the above suit, he has filed a suit in O.S.No.342 of 2010 for a declaration that he is entitled to use the plaintiff's land and to declare the pathway through the plaintiff's land to reach the defendant's property and for a consequential injunction which is pending disposal.

2.3. The defendant would further submit that the land in Survey No.386/8 belongs to the plaintiff and the land in Survey No.386/10A belongs to the defendant. The property originally belonged to one Arunachalam, son of Natesan and in a partition, the property was allotted to the share of the defendant's father. On his demise, the land in Survey No.386/10A was allotted to the defendant, in a partition between him and his brother.



2.4. The defendant would submit that there is a pathway measuring 8 feet in width and 70 feet in length in Survey No.386/8 (the plaintiff's property) to access the land in Survey No.386/10A (the defendant's land). Since the plaintiff was preventing the defendant from using the land, he had filed the suit claiming easementary right by necessity in O.S.No.342 of 2010 and an Advocate Commissioner has been appointed. Therefore, the defendant sought for the dismissal of the suit.

TRIAL COURT AND LOWER APPELLATE COURT:

3. The Trial Court had framed the following issues:

“1.Whether the plaintiff is in possession of the suit property?

2.Whether there is a cart path way in the suit property as alleged by the defendant?

3.Whether the plaintiff is entitled for the relief as prayed for?

4.To what other relief the plaintiff is entitled?

5.What is the cost?”



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4. The plaintiff/family manager has examined himself as P.W.1 and one Ethirasan as P.W.2 and marked Exs.A1 to A11. The defendant had examined himself as D.W.1 and one Chakravarthi as D.W.2 and marked Exs.B1 to B6.

5. After considering the evidence on record, the Trial Court has decreed the suit, against which, the defendant had filed an appeal in A.S.No.100 of 17 on the file of Sub Court, Jayankondam. The learned Sub Judge has confirmed the judgment and decree of the Trial Court vide judgment dated 20.11.2018 and dismissed the appeal.

6. Challenging the same, the defendant is before this Court.

7. Heard the learned counsel for the appellant and perused the materials available on record.

DISCUSSION:



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8. It appears that on the very same day i.e., on 20.11.2018, the learned Sub Judge, Jayankondam was hearing an appeal in A.S.No.99 of 2017 arising from and out of the judgment and decree passed in O.S.No.342 of 2010 on the file of District Munsif Court, Jayankondam and had dismissed the appeal filed by the appellant herein. In and by this judgment and decree the appellant/defendant's suit for declaration and permanent injunction had been dismissed and the same was upheld by the Learned Sub Judge, Jayakondam in A.S.No.99 of 2017. The learned District Munsif, Jayankondam had dismissed the suit and the said judgment was upheld in the appeal by learned Sub Court Judge in A.S.No.99 of 2017 on the very same day appeal filed by the plaintiff herein in the instant case before the learned Sub-Judge, Jayamkondam, was also dismissed.

9. Against the judgment and decree in A.S No.99 of 2017, the defendant had filed a second appeal in S.A.No.489 of 2023. This Court, by judgment and decree dated 19.07.2023, had dismissed the second appeal and confirmed the judgment and decree of the Courts below. In



S.A.No.359 of 2021.

S.A.No.489 of 2023, this Court had held that the plaintiff who is the appellant herein has not proved his easement of necessity in respect of the very same pathway which is the subject matter of the instant second appeal.

10. The present suit is also with reference to the very same property. It is the admitted case that the pathway is situate in the plaintiff's property and being used by the plaintiff and his predecessors. The defendant herein, who was the plaintiff in the earlier suit in the O.S.No.342 of 2010 had not proved the fact that he is using the pathway.

11. Therefore, taking into account the fact that even the second appeal in the connected suit in O.S.No.342 of 2010 has been dismissed by this Court and taking note of the fact the plaintiff is in possession and enjoyment of the suit property, the findings and the judgments of the Courts below are very much in order and I see no reason to interfere with the judgments of the Courts below since no substantial question of



S.A.No.359 of 2021

law has been made out by the appellant.

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In fine, this second appeal stands dismissed. Consequently,
connected C.M.P. stands closed. No costs.

18.01.2024

Index : Yes/No
Speaking order/non-speaking order
ssa

To

1. The Subordinate Judge, Jayankondam,
Ariyalur District.
2. The District Munsif, Jayankondam,
Ariyalur District.
3. The Section Officer, V.R. Section,
High Court, Madras.



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S.A.No.359 of 2021

P.T.ASHA, J.,

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S.A.No.359 of 2021

18.01.2024