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S.A.No.1057 of 2021
and C.R.P.(NPD).No.1481 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.1057 of 2021
and C.R.P.(NPD).No.1481 of 2020
and C.M.P.No.20050 of 2021
and C.M.P.No.8650 of 2020

S.A.No.1057 of 2021:

1.S.Kamaraj

2.Lakshmiammal

... Appellants

VS

1.Nagarajan

2.Gopalakrishnan

3.Umarani

... Respondents

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set-aside the Judgment and Decree made in A.S.No.35 of 2017 on the file of 1st Additional Subordinate Judge at Salem dated 17.12.2018 confirming the Judgment and Decree made in O.S.No.171/2013 on the file of the Principal District Munsif at Salem dated 10.11.2016 thereby allowing this Appeal.



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For Appellants : Mr.V.Ayyadurai
Senior Advocate
for M/s.V.B.Perumal Raj

For R1 : Mr.A.K.Sriram
Senior Advocate
for M/s.A.S.Kailasam and Associates

For R2 and R3 : No Appearance

C.R.P.(NPD).No.1481 of 2020:

1.S.Kamaraj

2.Lakshmiammal (died) ... Petitioners

VS

1.Nagarajan

2.Gopalakrishnan

3.Umarani ... Respondents

(1st petitioner and 2nd respondent brought on record as LRs of the deceased P-2 viz., Lakshmiammal as per memo dated 07.10.2020 and vide Court order dated 03.01.2022)

Prayer: Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to set aside order dated 05.02.2020 made in R.E.P.No.76 of



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2017 in O.S.No.171 of 2013 on the file of the III Additional District Munsif,
Salem by allowing the Civil Revision Petition.

For Petitioners : Mr.V.Manohar

For R1 : Mr.A.K.Sriram
Senior Advocate
for M/s.A.S.Kailasam and Associates

For R2 and R3 : No Appearance

COMMON ORDER

The defendants 2 and 5 in the suit are the appellants. The 1st respondent herein filed a suit seeking a declaration that suit 'B' schedule lane was a common lane and for mandatory injunction directing the appellants and other respondents to remove the gate fixed at the Eastern entrance of the suit 'B' schedule lane and also to remove three stones planted on midway of the lane. The 1st respondent also sought for injunction restraining the appellants and other respondents from preventing him from using suit 'B' schedule lane as pathway. The suit was decreed by the Trial Court and aggrieved by the same, the appellants preferred first appeal and the same was dismissed by the Appellate Court. Challenging the concurrent finding against them, the

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appellants are before this Court.

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2. According to the 1st respondent/plaintiff, he purchased suit 'A' schedule property under two registered Sale Deeds dated 29.11.1998 and 28.06.2006 marked as Ex.A3 and A4. Originally, there was tiled buildings in the suit 'A' schedule property. The 1st respondent decided to demolish the same and construct a new building in suit 'A' schedule property. The 'B' schedule property is 5 feet lane portion on the Southern side of the suit 'A' schedule property. The lane portion branches out from the North-South Peramanur Main Road on the eastern side and goes towards west. It was pleaded by the 1st respondent that suit 'B' schedule property was the access to the 1st respondent to reach suit 'A' schedule property from Peramanur Main Road and the same had been shown as a common lane in the title deeds of the 1st respondent. It was further pleaded that the appellants and other defendants put up a gate at the Eastern entrance of the lane and planted three stones in the midway of the lane and obstructed the 1st respondent's right of way and consequently, he was constrained to file a suit for above said relief.

3. The appellants filed a written statement and resisted the suit by



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denying right of 1st respondent to use 'B' schedule property as a pathway. The appellants claimed that Ex.A3-Sale Deed in favour of 1st respondent was executed by 1st respondent's wife-Parimala on behalf of her principal and hence, conveniently a recital was included in the said document as if, there was a common lane on the Southern side. Hence, it is the case of the appellants that recitals in the title document of the 1st respondent referring the suit property as a common lane would not advance his case in the absence of any parent document. The appellants also claimed that the stones mentioned in the plaint had been in existence for several years and the allegation of the 1st respondent that he was obstructed by the appellants was a falsehood.

4. Before the Trial Court, the 1st respondent was examined as PW.1 and his vendor under Ex.A4 was examined as PW.2. On behalf of the 1st respondent/plaintiff, 9 documents were marked as Exs.A1 to A9. The 1st appellant was examined as DW.1 and 6 documents were marked on behalf of the appellants/defendants as Exs.B1 to B6.



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5. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the 1st respondent was entitled to declaration and other reliefs as prayed for and decreed the suit. Aggrieved by the same, the appellants preferred an appeal in A.S.No.35 of 2017 on the file of the I Additional Sub Court, Salem. The First Appellate Court concurred with the findings of the Trial Court and aggrieved by the same, the appellants are before this Court.

6. The learned Senior Counsel appearing for the appellants submitted that the Courts below committed a serious error in construing Exs.A1 to A4, as if, there is a common lane in the suit 'B' schedule property. The learned Senior Counsel further submitted that under Ex.A1-Partition Deed was between 1st appellant's father and his brother and they formed a common lane for their own use and hence, the same cannot be interpreted as a common lane for 1st respondent when neither 1st respondent nor his predecessor-in-interest were party to Ex.A1-Partition Deed. Therefore, it is the submission of the learned Senior Counsel that mere inclusion of recitals in the title documents of the 1st respondent describing the suit property as a common lane would not



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per se create any right.

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7. Per contra, the learned Senior Counsel appearing for the 1st respondent submitted that a combined reading of Exs.A1 to A4 would make it clear that 1st respondent established that the suit 'B' schedule property is a common lane and the said finding arrived at by the Courts below is based on evidence available on record and hence, the same need not be interfered with while exercising the power under Section 100 of the Code of Civil Procedure.

8. In order to prove that the suit property is a common lane, the 1st respondent produced his title documents as Exs.A3 and A4, dated 29.11.1998 and 28.06.2006 respectively. Ex.A3 is a Sale Deed in favour of the 1st respondent in respect of Western portion of the suit 'A' schedule property dated 29.11.1998. The suit is of the year 2013. Ex.A4 is a Sale Deed in favour of the 1st respondent in respect of Eastern portion of suit 'A' schedule property. In the title deeds of the 1st respondent, there is a clear recitals that the suit 'B' schedule property which lies on the Southern side of the property covered under Exs.A3 and A4 is a common lane. Therefore, the suit property was



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described as a common lane even in the years 1998 and 2006 well before the filing of the suit. Ex.A1 is a Partition Deed between the 1st appellant's father-Sadaya Gounder and his brother-Marimuthu Gounder. Under the said document, 'A' schedule property to the deed was allotted to the share of Sadaya Gounder and 'B' schedule property to the deed was allotted to the share of Marimuthu Gounder. In the said document, while describing the property of the 1st appellant's father Sadaya Gounder, the suit lane was mentioned as a common lane meant for usage of Mottaiya Gounder Vagaiyara, Chinnathambi Gounder Vagaiyara and parties to the document namely Sadaya Gounder and Marimuthu Gounder. Therefore, Ex.A1 document clearly establish the common lane is meant for usage of Sadaya Gounder father of 1st appellant and his brother-Marimuthu Gounder and two other persons viz., Mottaiya Gounder Vagaiyara and Chinnathambi Gounder Vagaiyara. The relationship between the Mottaiya Gounder Vagaiyara and 1st respondent was established by clear admission of DW.1, which reads as follows:-

“சின்னதம்பி கவுண்டர் என் தகப்பனாரின் பங்காளி. மொட்டைய
கவுண்டர் தெரியும். அவருடைய பிள்ளைகள் ராஜி, வெங்கடாசலம் அய்யனார்



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கவுண்டர் ஆகியோரை தெரியும்.”

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9. A reading of above admission of 1st appellant as DW.1 would indicate that one Ayyanar Gounder was son of Mottaiya Gounder referred to in Ex.A1. The evidence of PW.2 would make it clear he is son of Ayyanar Gounder. PW.2 sold Eastern half of the suit 'A' schedule property in favour of the 1st respondent/plaintiff. Therefore, the vendor of the 1st respondent-Sekar is none other than grandson of Mottaiya Gounder referred to in Ex.A1. The recital in Ex.A1 clearly established the suit common lane meant for use of Mottaiya Gounder Vagaiyara also. Therefore, the recital in Sale Deed in favour of 1st respondent is fortified by recital in 1968 document to which the 1st appellant's father Sadaya Gounder was a party. Therefore, the conclusion reached by the Courts below that suit 'B' schedule property is a common lane is based on proper appreciation of recitals found in Exs.A1, A3 and A4. The same is based on concrete evidence available on record namely documentary evidence Exs.A1, A3 and A4 and admissions of DW.1. When the finding of the fact reached by the Trial Court as well as First Appellate Court that suit 'B' schedule property is a common lane is based on proper appreciation of



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evidence available on record. I do not see any perversity in such findings enabling this Court to exercise its power under Section 100 of Code of Civil Procedure. Once this Court comes to the conclusion that the suit 'B' schedule property is a common lane, the 1st respondent is entitled to declaration, mandatory injunction and injunction as prayed for.

10. As a necessary consequence, the appellants and other respondents are not entitled to interfere with the right of 1st respondent to use the suit 'B' schedule property as a common lane. I do not find any substantial question of law arising for consideration in the second appeal and consequently, the Second Appeal is dismissed.

11. The Civil Revision Petition in C.R.P.(NPD).No.1481 of 2020 was filed challenging the order passed by the Executing Court appointing an Advocate Commissioner to execute the Mandatory Injunction part of the decree. The said order was passed by the Executing Court taking into consideration there was no interim order in the second appeal filed by the appellants, which is being dismissed today. In view of the dismissal of the



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main second appeal, there is no impediment for the 1st respondent to execute the decree.

12. Accordingly, the Civil Revision Petition stands dismissed. No costs.

Consequently, the connected civil miscellaneous petitions are closed.

21.03.2024

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

1.The Principal District Munsif,
Salem.

2.The III Additional District Munsif,
Salem.



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S.SOUNTHAR, J.

dm

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