



S.A. No.652 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.652 of 2024
and
C.M.P.No.20861 of 2024

1.M.Murugan
2.M.Vanajavathi

... Appellants

Vs

1.P.Babu
2.A.Irudhaya Raj
3.A.Haja Mohideen

... Respondents

(The respondents 2 & 3 were set exparte in O.S.No.4557 of 2017 and thus they are not proper and necessary party in the above appeal and thus they are given up.)

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 22.03.2024 made in A.S.No.217 of 2023 on the file of XXI Additional City Civil Court, Allikulam, Chennai by confirming the judgment and decree dated 26.04.2023 made in O.S.No.4557 of 2017 on the file of the learned XXIV Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.T.Karunakaran



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JUDGMENT

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The appellants have filed this Second Appeal challenging the judgment and decree dated 22.03.2024, passed in A.S. No. 217 of 2023 by the learned XXI Additional Judge, City Civil Court, Allikulam, Chennai, which confirmed the judgment and decree dated 26.04.2023 in O.S. No. 4557 of 2017 by the learned XXIV Assistant Judge, City Civil Court, Chennai.

2. Challenging the concurrent findings of the courts below, the defendants have preferred this appeal. The plaintiff originally filed a suit before the trial court seeking a declaration, mandatory injunction, permanent injunction, and other consequential reliefs concerning the usage of a 10-foot common passage described in the plaint schedule. Subsequently, defendants D3 and D4, who purchased the property from the plaintiff, contested the suit. According to the plaintiff, after selling the property, D3 and D4 were not permitted to use the said common passage.

3. The first defendant filed a written statement contesting the case



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before the trial court. Defendants D1 and D2 had purchased the property from the plaintiff and subsequently sold it to defendants D3 and D4, who continued to contest the case. The trial court framed issues for determination.

4. Before the trial Court, both the parties adduced evidence in respect of the relief of declaration. The trial court, after analyzing the documents submitted by the parties, concluded that the plaintiff was the original owner of the property. The evidence showed that the 10-foot common passage was explicitly mentioned in all relevant documents, including the patta, which stood in the plaintiff's name. Therefore, the court held that the defendants had no right to claim exclusive usage of the common passage, as it was meant for shared use. As the defendants caused interference, the plaintiff was entitled to the reliefs sought, including the injunction. Accordingly, the suit was decreed in favor of the plaintiff.

5. The trial judge also observed that the plaintiff and his family owned property on the southern side of the suit property i.e., the common



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passage. The passage had been inherited by the plaintiff from his mother, with a portion of the northern side of the passage being sold. The court held that the plaintiff was entitled to use the common passage as his right, which was shared between the northern and southern owners, including the defendants. Thus, the court decreed the suit in favor of the plaintiff.

6. Challenging this, the defendants filed a first appeal in A.S. No. 217 of 2023. The first appellate court analyzed the entire case and evidence on record. After perusing documents, including sale deeds marked as Ex.A1 to Ex.A3, the court confirmed that the common passage was described with specific boundaries in all documents. The appellate court concurred with the trial court's findings, concluding that the plaintiff had a prima facie case and that the balance of convenience was in his favor. Consequently, the appeal was dismissed, affirming the trial court's judgment. Challenging that the second appeal has been filed by the appellants.

7. One of the contentions raised by the defendants was that the plaintiff had relinquished his rights over the common passage through an unregistered relinquishment deed. However, this argument was rejected by



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the courts below. The courts held that the passage's value exceeded Rs.100/-

, requiring mandatory registration under the law. As the document was unregistered, it had no legal validity. The trial court correctly concluded that the unregistered relinquishment deed was not admissible as evidence, and this finding required no interference.

8. On further examination of the relinquishment deed, it was observed that it pertained only to passing steps and did not address the full extent of the 10-foot common passage.

9. The learned counsel for the appellants argued that the defendants had not caused any interference, and there was no cause of action for filing the suit. However, this contention was not substantiated by the pleadings. The defendants had not raised such a defense in their written statement, and therefore, arguments on these grounds at the appellate stage were not permissible.

10. In Deposition of P.W.1, stated as follows:

"வழக்கு சி பரிகாரம் எனக்கு கிடைக்கத்தக்கதல்ல என்றால் சரிதான். ஆவணம்



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இல்லாததாலும் முகாந்தரம் இல்லாததாலும் வழக்கு சி பரிகாரம் எனக்கு

கிடைக்கத்தக்கதல்ல என்றால் சரியல்ல. வழக்கு போட முகாந்தரம் இல்லாததாலும்

ஆவணங்கள் தாக்கல் செய்யாததாலும் வழக்கு தள்ளுபடி செய்யப்படவேண்டும் என்றால் சரியல்ல."

11. All title deeds, including those of the plaintiff and the defendants, confirmed that the suit property was a 10-foot common passage. The plaintiff's family, as the original owners, retained ownership of the property on both the Northern and Southern sides of the passage. The courts below rightly appreciated that the common passage was shared property, and both the plaintiff and the defendants were entitled to its usage.

12. Based on the records, the trial court and the appellate court rightly held that the plaintiff had a legitimate claim. The courts also correctly noted that the cause of action arose in 2013 when the plaintiff first filed a complaint about interference, which was subsequently compromised but later led to the filing of the present suit.



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13. Since there are no substantial questions of law involved, this

Second Appeal is dismissed at the admission stage. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

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Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

1. The XXI Additional Judge, City Civil Court, Allikulam, Chennai.
2. The XXIV Assistant Judge, City Civil Court, Chennai.
3. The Section Officer, VR Section, High Court of Madras.

T.V.THAMILSELVI, J.

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