



S.A.No.914 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.914 of 2023

M.Shanmugasamy @ Shanmugam

... Appellant

Vs.

M.Rangasamy

... Respondent

Prayer:- Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 26.07.2022 passed in A.S.No.10/2021 on the file of the Hon'ble Sub Court, Mettupalayam, confirming the judgement and decree passed by the Hon'ble District Munsif Court, Mettupalayam in O.S.No.141 of 2010 dated 15.09.2021.

For Appellant : M/s.Karthikaa Ashok

For respondents : M/s.C.R.Prasanan



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JUDGEMENT

The unsuccessful defendant before the Courts below is the appellant before this Court. The facts giving rise to the above Second Appeal are herein below set out briefly and the parties are referred to in the same ranking as before the Trial Court, namely, the District Munsif Court, Mettupalayam in O.S.No.141 of 2010.

2. The plaintiff had filed the above referred suit for an injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit schedule road.

3. It is the case of the plaintiff that the plaintiff, defendant and others had been using a north south itteri to reach their property. This itteri commences from the east west main road which is in the north. This itteri was not a defined road and was not equal in width at all



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places. On either side of the itteri several persons including the plaintiff and the defendant had lands and they were using this itteri as the ingress and egress into their lands. Therefore, they had collectively decided to request the local Panchayat to lay a pucca road for which purpose they had gifted portions of their lands to convert the itteri into a properly formed wide road through which all kinds of vehicle could be taken. Consequent to this joint decision, a gift settlement deed dated 16.11.1998 was executed in favour of the Panchayat and the Panchayat after taking possession of the lands had formed a pucca road spending public money. This road has been in the use of the plaintiff, defendant and others for over 12 years now. The gift settlement comprised of portions of the lands in various Survey Numbers. Out of these Survey Numbers, the lands comprised in Survey No.41/3 and 17/2B3 belonged absolutely to the defendant who had also provided lands for forming the pucca road.

4. While so, after gifting the property and after the Panchayat



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had formed the public road, the defendant had started giving pinpricks to the plaintiff's use of this newly formed road. In fact, on 02.02.2009, the defendant had suddenly closed the road near his lands i.e. near SF.No.17/2B3 and SF.No.41/3. Therefore a complaint had been lodged with the Sirumugai police station. Thereafter, the defendant was warned and had given an undertaking that he would not trouble the plaintiff until there is a proper survey. The lands were thereafter measured during which the defendant had remained silent. Thereafter, whenever the plaintiff used to take his vehicle through this public road, the defendant and his son would attempt to obstruct the use of the road by the plaintiff. Therefore, the plaintiff had come forward with the suit in question.

5. The defendant had filed a written statement in which he had merely denied the allegations contained in the plaint. The defendant had not specifically pleaded that there is no road in existence and that he had not executed the gift deed.



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6. The learned District Munsif had framed an issue as to *"Whether the plaintiff is entitled to get the relief of permanent injunction as claimed by him or whether the plaintiff is entitled to any other relief?"*

7. The plaintiff had examined himself as P.W.1 and marked Ex.A.1 to A.11. The defendant had examined himself as D.W.1 and no documents were marked on the side of the defendant. The Court documents were marked as Ex.C.1 to C.3.

8. The learned Trial Judge had observed that the defendant had himself gifted his lands for forming the road and ultimately decreed the suit as prayed for.



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9. Challenging the said judgement and decree, the defendant

had filed A.S.No.110 of 2021 on the file of the Sub Court, Mettupalayam. The learned First Appellate Judge had also concurred with the findings of the Trial Court and dismissed the appeal. Aggrieved by the same, the defendant is before this Court.

10. Heard the learned counsels on either side.

11. The learned counsel appearing for the appellant/defendant would submit that the gift deed had not been acted upon and therefore the suit as filed was not maintainable. However, this Court is unable to countenance this argument advanced by the learned counsel particularly when the appellant/defendant is a party to the gift deed which has been marked as Ex.A.8 and therefore estopped from questioning the said gift deed.

12. The Advocate Commissioner who had been appointed by the



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Trial Court had given a report stating that a pucca road had been made from out of the itteri and the lands that are the subject matter of Ex.A.8, gift deed and this road is being used by the parties and the general public and the adjoining owners.

13. The public road has been formed through the gifts made by several persons including the lands of the defendant. None of the other owners have questioned the validity of the gift settlement deed. On the contrary, they have all accepted the same and have also started using the public road. The defendant has also done the same. Therefore, the Courts below on perusing the evidence have decreed the suit and I see no reason to interfere with this Concurrent and judgement more particularly when the appellant/defendant has not made out any question of law much less a substantial question of law. Accordingly, the Second Appeal stands dismissed. No costs.

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Index: Yes/No

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Speaking order/non-speaking order

Neutral Citation: Yes/No

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- To
1. The Sub Court, Mettupalayam
 2. The District Munsif Court, Mettupalayam
 3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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