



S.A.No.165 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.07.2024

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

S.A.No.165 of 2021

and

CMP.No.3415 of 2021

Raja,
President of Parents and Teachers Association,
Government Higher Secondary School,
Kathiripuram, Krishnagiri District.

...Appellant

Vs.

1.Panjali @ Nagammal,
2.Karunakaran

... Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure Code, 1908 to Set aside the Judgment and Decree dated 15.07.2019 made in A.S.No.24/2017 on the file of Principal Sub Court, Krishnagiri confirming the Judgment and Decree dated 07.02.2017 made in O.S.No.202/2013 on the file of District Munsif Court at Krishnagiri.



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For Appellant : Mr.K.Venkatasubban

For R1 : Died

For R2 : Mr.C.Jagadish

* * * *

JUDGMENT

The 1st defendant in the suit is the appellant in the Second Appeal. The respondents filed the suit for declaring easement right in the suit cart track in S.No.664 is marked as 'A D E F' in the plaint, granting permanent injunction against the defendants restraining them from constructing the compound wall by closing the suit cart track or in any way obstructing the plaintiffs enjoyment of the suit cart track and for mandatory injunction directing the defendants to demolish and remove the constructed walls during pendency of the suit.

2.The trial court on assessment of entire evidence on record decreed the suit as

prayed for. Aggrieved by the judgment and decree of the trial court, the defendants 2



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to 5 in the suit filed an appeal in A.S.No. 05 of 2018 and the 1st defendant in the suit filed an appeal in A.S.No.24 of 2017.

3.The lower appellate court on consideration of the entire evidence on record modified the judgment and decree of the trial court confirming the decree for declaration of easement right and for permanent injunction and in so far as relief of mandatory injunction was concerned, the lower appellate court directed the plaintiffs to demolish the compound wall in suit B Schedule property and thereafter, the second defendant was directed to construct a compound wall for the school building by leaving a pathway of 2 ½ feet on the western side. Aggrieved by the judgment and decree of the lower appellate court the 1st defendant filed the above Second Appeal.

4.The learned counsel for the appellant has produced the Judgment in S.A.No.1128 of 2019 preferred by the defendants 2 to 5 in the suit in O.S.No.202 of 2013. The first defendant in O.S.No.202 of 2013 is the appellant herein and he is also a party in S.A.No.1128 of 2019, as the third respondent. The learned counsel submitted that in view of the Judgment passed in S.A.No.1128 of 2019 nothing



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survives for further adjudication in the present second appeal. This Court in

S.A.No.1128 of 2019 held as follows:

“41. Mr.C.Jagadish submits that an undertaking has been given by his clients that they will reconstruct the compound wall within the premises of the defendants as directed by the lower appellate Court continues to hold good even before this Court. The statement is recorded.

42. In fine, the judgment and decree of the learned Subordinate Judge at Krishnagiri in A.S.No.5 of 2018, dated 15.07.2019, in partly allowing the judgment and decree passed in O.S.No.202 of 2013, dated 07.02.2017, by the learned District Munsif at Krishnagiri stands confirmed.

43. The plan annexed to the Advocate Commissioner's report shall form a part of the decree. The construction of the compound wall on the Eastern side of the cart track shall be completed within a period of eight weeks from the date of receipt of a copy of this order. In case, the plaintiffs are obstructed by the defendant Nos. 2 to 5 while executing the Clause No.3 of the lower appellate Court decree, the plaintiffs are at liberty to approach the executing Court to get appropriate orders for reconstruction.”



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5. In view of the Judgment dated 26.06.2024 passed by this Court in S.A.No.1128 of 2019, this Second Appeal is dismissed. However, there shall be no order as to costs. Consequently the connected CMP is closed.

25.07.2024

dsn/ah

Index:Yes/No

Speaking order:Yes/No

Neutral Citation:Yes/No

To

1.The Principal Sub Court,
Krishnagiri.

2.The District Munsif Court,
Krishnagiri.

3.The Section Officer,
Vernacular Records,
High Court,
Madras.



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N.MALA,J.

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