



S.A.(MD)No.207 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.06.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.207 of 2007

S.Selvam

... Appellant

Vs

Kaliammal

... Respondent

PRAYER: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 28.01.2000 made in A.S.No.92 of 1997 on the file of the Second Additional Sun Court, Madurai in confirming the judgment and decree dated 26.02.1996 made in O.S.No.606 of 1990 on the file of the District Munsif Court, Thirumangalam.

For Appellant : Mr.P.Athimoolapandian

For Respondent : No Appearance

JUDGMENT

The defendant in the suit is the appellant. The respondent herein filed a suit for bare injunction restraining the appellant / defendant from



S.A.(MD)No.207 of 2007

putting up any construction in the suit property. The suit was decreed by the trial Court. Aggrieved by the same, the appellant / defendant filed a first appeal and the same was also dismissed by the first appellate Court. Hence, aggrieved by the concurrent findings against her, the defendant has come by way of this Second Appeal.

2. According to the respondent / plaintiff, the plaintiff and the defendant are neighboring owners and there is a common lane in between the houses of the plaintiff and the defendant. The entire property, shown as E, F, G and H, in the plaint plan originally belonged to Kanavai Thevar, Virumandi Thevar and Kuppala Thevar. The property was partitioned among them 60 years back and the Southern most house was allotted to the share of Kuppala Thevar. The middle portion was allotted to the share of Virumandi Thevar and the Northern most house was allotted to the share of Kanavai Thevar. It was claimed by the plaintiff that there was a common lane in between the houses with a breadth of three feet. Rain water from the roof of the respective houses drained into the lane on the immediate North of each houses. The Northern most house allotted to the share of Kanavai Thevar has been in possession and enjoyment of his grand daughter viz., defendant. Likewise the middle



S.A.(MD)No.207 of 2007

house portion allotted to the share of Virumandi Thevar has been in possession and enjoyment of his daughter plaintiff herein. It was also claimed by the plaintiff that her house was a tiled house and it was slopping towards the lane portion on the Northern side. The eaves of her house are projecting towards the lane portion. The defendant, who is owning the house on the Northern side, started alteration of her house and new construction. While doing so, she attempted to encroach the suit lane portion and annex the same with her property by putting up construction. Therefore, the plaintiff was constrained to file a suit for injunction as mentioned above.

3. The suit was resisted by the appellant/defendant by denying the existence of common lane in between the houses of the plaintiff and the defendant. The defendant also denied the averment found in the plaint that the rain water from the roof of the plaintiff gets drained into the common lane portion on the Northern side. It was also claimed by the defendant that she was working as a Teacher away from the suit village and taking advantage of the same, the plaintiff constructed a tiled house seven years back using the common lane in between. When the defendant made preparation to construct a house using the common lane,



S.A.(MD)No.207 of 2007

it was objected to by the plaintiff and the suit was filed. It was also claimed by the defendant that recently the plaintiff had put up a new window in the common lane with an ulterior motive. On these pleadings, the defendant prays for dismissal of the suit.

4. Before the trial Court, the plaintiff was examined as PW1 and yet another witness was examined as P.W.2. On behalf of the plaintiff, sample plan was marked as Ex.A1. On behalf the defendant, he was examined as D.W.1 and patta issued in his name was marked as Ex.B1. The Advocate Commissioner's report and plan was marked as Ex.C1 and Ex.C2.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the respondent / plaintiff established her case and granted decree for injunction. Aggrieved by the same, the defendant preferred an appeal in A.S.No.92 of 1997 on the file of II Additional Sub Court, Madurai. The First Appeal was dismissed by the first appellate Court. Aggrieved by the concurrent findings, the defendant has come before this Court.



S.A.(MD)No.207 of 2007

6. At the time of admission, this Court formulated the following substantial questions of law by an order dated 10.07.2007:

“1. Whether the Courts below are correct in coming to the conclusion that the suit property is a common lane?

2. Whether the Courts below are correct in granting relief of permanent injunction without seeking relief of declaration?”

7. The respondent/plaintiff came to the Court seeking injunction on the ground that the defendant was making attempt to encroach the common lane on the Northern side of the suit property and disturb her common enjoyment. In support of her case, she was examined as P.W.1 and yet another witness was examined as P.W.2. P.W.1 in her evidence clearly deposed that her house roof portion is slopping towards the Northern side and the rain water collected in her roof will drain into the common lane portion on the Northern side. She also claimed that the window that is available on the northern wall of her property has been in existence for the past 60 years. The Advocate Commissioner in his report clearly recorded that on the Southern side of plaintiff's house, there was a house of Rama Thevar and his roof was sloping towards the North and the water from the house of Rama Thever will drain into the



S.A.(MD)No.207 of 2007

plaintiff's house to the East-West length of 19 feet. Likewise, he also noted that the tiled roof of plaintiff's house was also slopping towards the North and the water from the tiled roof will drain into the ABCD portion. The said ABCD portion was described as a lane portion in the plaint schedule. The physical features noted by the Advocate Commissioner corroborates the evidence of P.W.1 that her roof portion sloping towards the North and rain water collected in her roof gets drained into the common lane portion. The defendant, who was examined as D.W.1 was also admitted about the existence of a window in the Northern wall of the plaintiff and it was claimed by the defendant that the said window and expansion of Eastern portion was done by the plaintiff when the defendant was not in the suit village seven years back. The explanation offered by the defendant as if the expansion of roof and opening of the window was done 7 years back and the defendant has been keeping quite for all these years is not probable or acceptable.

8. The trial Court as well as the first appellate Court by taking into consideration the oral evidence of P.W.2 and the admissions of P.W.1 and also physical features noted by the Advocate Commissioner, rightly came to the conclusion that the suit lane portion has been enjoyed by the



S.A.(MD)No.207 of 2007

parties as common lane and hence, the defendant was not entitled to interfere with the said right of the plaintiff over the same.

9. The learned counsel for the appellant vehemently contended that the suit for bare injunction simpliciter is not maintainable without prayer for declaration of right of the plaintiff over the suit lane. It is admitted case of both the parties that the suit property along with the portion on the North and South belongs to the common ancestors. The original property was divided into three house portion and the middle portion is in enjoyment of the plaintiff and Northern portion is in enjoyment of the defendant. The physical features noted by the Advocate Commissioner points out to the fact that the rain water collected in the roof portion of the plaintiff drains into the common lane ABCD portion. In such circumstances, the defendant is not entitled to put up construction and obstruct the draining of rain water from the roof portion of the plaintiff. The defendant has not filed any document so as to create any doubt over the right of the plaintiff over the suit lane portion. Hence, there is no need for the plaintiff to seek declaration. If at all the defendant has got any exclusive right over the suit property, he has to file appropriate suit



S.A.(MD)No.207 of 2007

and establish her exclusive right over the same. Both the Courts below by proper appreciation of evidence available on record came to the conclusion that the suit property was a common lane portion and the same shall be preserved. The said factual conclusion is based on proper appreciation of evidence available on record and the same is not vitiated by any perversity. In such circumstances, I do not find any reason to interfere with the factual conclusion while exercising the jurisdiction under Section 100 of C.P.C. Accordingly, both the substantial questions of law framed at the time of admission are answered against the appellant and the second appeal shall stand dismissed. There shall be no order as to costs.

06.06.2024

Neutral Citation : No
Index : No

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S.A.(MD)No.207 of 2007

To

- 1.Second Additional Sub Court, Madurai
- 2.The District Munsif Court, Thirumangalam.
- 3.VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD)No.207 of 2007

S.SOUNTHAR, J.

vsm

S.A.(MD)No.207 of 2007



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S.A.(MD)No.207 of 2007

06.06.2024