



S.A.(MD)No.719 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2024

CORAM:

THE HONOURABLE MR.JUSTICE **S.SOUNTHAR**

S.A.(MD)No.719 of 2007

1.P.Murugesan
2.M.Komathi Nayagam

...Appellants

-Vs-

1.R.K.Ayyappan
2.Abdullah

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the Principal District Judge, Kamarajar District Srivilliputhur, dated 24.01.1996 made in A.S.No. 325 of 1993 confirming the judgment and decree of the Principal District Munsif, Srivilliputhur, Kamarajar District, dated 06.04.1992 in O.S.No.420 of 1991.

For Appellants : Mr.J.Alangaram Jothi
For R1 : Mr.S.Venkatesan
for Mr.A.Sivaji
R2 :Dispensed with



S.A.(MD)No.719 of 2007

WEB COPY

JUDGMENT

The plaintiffs in the suit are the appellants. The suit was laid seeking declaration that the suit second schedule lane is a common lane for the plaintiffs and the first defendant and for consequential injunction restraining the defendants from putting up any construction in the suit second schedule property. The plaintiffs also sought for mandatory injunction seeking removal of a septic tank put up in the suit lane portion. The suit was dismissed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the plaintiffs have come by way of this Second Appeal.

2. According to the plaintiffs, the suit property is a lane portion, which lies in between the properties of the plaintiffs and the first defendant. It is the specific case of the plaintiffs that on 31.03.1987, there was an agreement between the first plaintiff, P.Murugesan and the father of the first defendant, Karuppiyah, where-under, the plaintiffs were given right to enjoy the lane portion as a common lane. Now, violating the terms of the agreement, the



S.A.(MD)No.719 of 2007

WEB COPY

first defendant made an attempt to put up a toilet in the lane portion and hence, the plaintiffs were constrained to file a suit initially for declaration of title and injunction. It was further claimed that pending suit, the defendants had put up a septic tank in the suit lane portion and hence, a prayer for mandatory injunction was added in the plaint.

3.The first defendant filed a written statement and the same was adopted by the second defendant. In the written statement, the defendants denied the right of the plaintiffs over the suit lane portion. The agreement, dated 31.03.1987, relied on by the plaintiffs was denied as a fabricated document. The defendants also contended that the agreement, even assuming was a true document could not convey any right to the plaintiffs, as it was an un-registered document. On these pleadings, the defendants sought for dismissal of the suit.

4.Before the trial Court, the first plaintiff was examined as PW-1 and 13 documents were marked on the side of the plaintiffs as Ex-A1 to Ex-A13. On behalf of the defendants, no witness was examined and four documents



S.A.(MD)No.719 of 2007

WEB COPY

were marked as Ex-B1 to Ex-B4. The Advocate Commissioner's plan and report were 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 plaintiffs were not entitled to any relief and dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.325 of 1993 on the file of the Principal District Court, Kamarajar District at Srivilliputhur. The first appellate Court affirmed the findings of the trial Court. Challenging the concurrent findings, the plaintiffs have come by way of this Second Appeal.

6.Assailing the judgment and decree of the Courts below, the learned Counsel for the appellants submitted that Ex-A7 is only an agreement between the first plaintiff and the father of the first defendant to treat the lane portion in between the properties of the plaintiffs and the first defendant as a common lane and the said document would not amount to conveyance of any interest in an immovable property and as a consequence, rejection of Ex-A7 by the Courts below on the ground of non-registration is not sustainable.



S.A.(MD)No.719 of 2007

WEB COPY

7.The plaintiffs claim right over the suit lane portion only under Ex-A7. As found by the Courts below, in the documents filed by the plaintiffs, there is no reference about the conveyance of title to the plaintiffs over the suit lane portion. A perusal of the recitals in Ex-A7 would suggest that both the parties to the agreement, namely, the first plaintiff and the father of the first defendant agreed to treat the suit lane portion in between the properties, as a common pathway. The plaintiffs have not produced any other document to prove their right over the suit lane portion. The only document relied on by them is Ex-A7. The conferment of right to use the suit lane portion, as a pathway, would amount to creating an interest in an immovable property. It was also noted by the Courts below that under PW-1 during the course of examination admitted that the value of the suit lane portion is Rs.900/-. Therefore, Ex-A7 is a document, which confers an interest in an immovable property worth about Rs.900/-. Therefore, it requires compulsory registration. In the absence of registration, the said document cannot be admitted in evidence to prove the interest in an immovable property which was created in favour of the plaintiffs under the document. Both the Courts



S.A.(MD)No.719 of 2007

WEB COPY

below rightly came to the conclusion that Ex-A7 is an inadmissible document for want of registration and rejected the same. In the absence of any other evidence to substantiate the plea of the plaintiffs that the suit lane portion is a common lane of the plaintiffs and the first defendant, the final conclusion reached by the Courts below negating the claim of the plaintiffs is based on proper appreciation of evidence available on record and there is no perversity in such conclusion. Accordingly, finding no substantial questions of law, the Second Appeal stands dismissed. No costs.

24.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

cmr

To

- 1.The Principal District Judge, Kamarajar District at Srivilliputhur.
- 2.The Principal District Munsif, Srivilliputhur, Kamarajar District.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

6/7



WEB COPY



S.A.(MD)No.719 of 2007

S.SOUNTHAR, J.

cmr

S.A.(MD)No.719 of 2007

24.06.2024