



S.A.(MD)No.435 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.07.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.435 of 2009
and M.P.(MD)No.2 of 2009

Ponnuthai

... Appellant

Vs

1. John Chellappa
2. Natchathira Kaniammal
3. Velsamy
4. Jebamani Ammal

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree passed in A.S.No.97 of 2006 dated 11.01.2008 on the file of the Principal Sub-Court Tenkasi confirming the judgment and decree passed in O.S.No.1019 of 2004 dated 27.09.2005 on the file of the Principal District Munsif Court, Tenkasi.

For Appellant : Mr.V.Meenakshi Sundaram for
Mr.D.Nallathambi

For Respondents : Mr.D.Srinivasaraghavan



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JUDGMENT

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The defendant in the suit is the appellant. The suit is for declaration that the first schedule property is a common pathway and for injunction restraining the defendant from interfering with the right of the plaintiffs to use the suit first schedule property as a cart track. The plaintiffs also sought for mandatory injunction seeking removal of the obstructive construction put up by the defendant in the suit property. The suit was decreed by the trial Court. The appeal filed by the defendant was also dismissed. Aggrieved by the concurrent findings, the defendant is before this Court.

2. According to the respondents / plaintiffs, the suit first and second schedule property originally belonged to one Jebamani Nadar and after his death, his legal heirs plotted out the property and the land which lie on the Western side of the second schedule property and sold the same to various persons by showing the first schedule property as North-South cart track. The same has been recited in the various sale deed executed by the legal heirs. The plaintiffs and the defendant are the purchasers of the plots on the Western side of the suit first schedule property. The



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defendant high-handedly put up a compound wall in the second schedule property and obstructed the usage of the cart track. Hence, the plaintiffs were constrained to file a suit for the above said relief.

3. The appellants/defendants filed a written statement and denied the averments found in the plaint that the suit first schedule property was shown as a cart track in the sale deed executed by the legal heirs of Jebamani Nadar. It was claimed by the defendant that she put up a fence surrounding her house in the year 1998. Thereafter, in the year 2003, she removed the fence and put up a compound wall. When the compound wall was constructed by the defendant, the plaintiffs raised no objection. Therefore, the plaintiffs are estopped by the principle of acquiescence from maintaining the suit. The defendant also raised a plea of non-joinder of other owners of the plots on the Western side of the cart track. It was also contended by the defendant that the suit property was never used as a common pathway by anybody. On these pleadings, the defendant sought for dismissal of the suit.

4. Before the trial Court, the first plaintiff was examined as P.W.1 and the third plaintiff was examined as P.W.2. On behalf of the plaintiffs,



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7 documents were marked as Ex.A1 to Ex.A7. On behalf of the defendant, one witness was examined as D.W.1 and 3 documents were marked as Ex.B1 to Ex.B3. The Advocate Commissioner's report and plan were marked as Ex.C1 and Ex.C2.

5. The trial Court, based on the oral and documentary evidence available on record, came to the conclusion that the plaintiffs proved the suit property as a common cart track and the defendant had put up a obstructing compound wall in the suit second schedule property and consequently, decreed the suit as prayed for. Aggrieved by the same, the defendant preferred an appeal in A.S.No.97 of 2006 on the file of the Principal Sub Court, Tenkasi. The first appellate Court also affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the defendant has come by way of this Second Appeal.

5. The learned counsel for the appellant submitted that the Courts below committed an error in taking into consideration the plaint document which has not been marked before it as an exhibit and rendered a finding based on the document. The learned counsel for the appellant further submitted that the plaintiffs failed to give exact



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measurement of the offending construction allegedly put up by the defendant and hence, the prayer for mandatory injunction cannot be granted. The learned counsel further submitted that when the compound wall was put up by the defendant, there was no objection by the plaintiffs asserting their rights and hence, they were prevented by act of acquiescence from maintaining the suit.

6. The plaintiffs purchased a plot on the West of the suit property from the legal heirs of Jebamani Nadar under Ex.A1. The defendant purchased a Southern most plot on the Western side of the suit common way under Ex.B2 from one David Nadar. The vendor of the defendant purchased the same from the legal heirs of Jebamani Nadar under Ex.B1. The sale deeds in favour of plaintiffs 3 and 4 have been marked as Ex.A3 and Ex.A4. The Courts below taking into consideration the recitals found in Ex.A1, EX.A3, Ex.A4 and Ex.B1 came to the conclusion that the suit cart track has been mentioned as a common cart track in the said documents. In all these sale deeds, the said cart track is described as follows:

“வை சென்ட் 48 நிலத்துக்கு கீழேரத்தில் 15
பதினைந்து லிங்ஸ் அகலத்தில் தெற்கேயுள்ள
மெயின்ரோட்டிலிருந்து வடக்கே போகிற தென்வடல்



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வண்டிப்பாதையில் வண்டியடித்தும் போய்வந்தும்
புழங்கிக்கொள்ளும் வண்டிப்பாதை பொதுப்பாத்தியமும்”

7. Therefore, it is clear that in the title documents of the plaintiffs as well as the defendant, the disputed suit cart track has been described as such with a breadth of 15 links equivalent to 10 feet. It is also seen that the cart track proceeds from the main road on the Southern side to the Northern side. Therefore, the obstruction made by the defendant by putting up compound wall on the Southern side of the Cart track will cause inconvenience to the owner of the plots on the Northern side. The Court below also appointed an Advocate Commissioner to note down the physical features and he filed his report and plan as Ex.C1 and Ex.C2. The Cart track referred to in the title documents produced by the parties was also referred by the Advocate Commissioner. It is also seen that the compound wall put up by the defendant was in a half finished stage.

8. In such circumstances, the Courts below, by proper appreciation of evidence available on record, rightly came to the conclusion that the suit first schedule property was a common cart track available for use of owners of the plots situated on the Western side of the cart track. The



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defendant is not entitled to put up a compound wall in the suit cart track so as to cause inconvenience to the plaintiffs. When the defendant started construction in the suit property, an objection was made by the plaintiffs by issuing a telegram under Ex.A5 dated 25.11.2004. Ex.A6 and Ex.A7 photographs marked by the plaintiffs also indicate that the compound wall put up by the defendant is the half finished stage. In such circumstances, it is clear that the plaintiffs approached this Court immediately after the construction by the defendant and there is no delay or laches on the part of the plaintiffs. In such circumstances, the submission made by the learned counsel for the appellant on the ground of acquiescence is not acceptable to this Court.

9. The Courts below by taking into consideration the evidence available on record came to the conclusion that there is no delay on the part of the plaintiffs in approaching the Court and hence, the statement made by the learned counsel for the appellant on the ground of acquiescence is also rejected. Finding no substantial question of law to interfere with the factual conclusion reached by the Courts below, the Second Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.



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NCC : Yes / No

Index : Yes / No

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S.SOUNTHAR, J.

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To

- 1.The Principal Subordinate Judge, Tenkasi.
- 2.The Principal District Munsif Court, Tenkasi.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

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