



S.A.(MD)No.985 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2024

CORAM:

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

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1.Esakkiammal
2.Murugan

...Appellants

-Vs-

1.Paranjothi Pandian
2.Thayammal
3.Rajkumar

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the learned Principal Subordinate Court, Tirunelveli, dated 15.02.2006 in A.S.No.311 of 2005, confirming the judgment and decree of the learned Principal District Munsif, Tirunelveli, dated 31.03.2005 in O.S.No.391 of 2005.

For Appellant : Mr.J.Ashok
For Respondents : Mr.T.Selvam



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JUDGMENT

The defendants 2 and 3 in the suit are the appellants. The respondents herein filed a suit for declaration that suit item No.4 is a separate pathway available to them and for a consequential injunction restraining the defendants from interfering with their right of user. The suit was decreed by the trial Court, as prayed for. The first appeal filed by the appellants herein was also dismissed by confirming the findings of the trial Court. Aggrieved by the concurrent findings, the defendants 2 and 3 have come by way of this Second Appeal.

2. According to the plaintiffs, the plaintiffs' predecessor-in-title Packiathai Andrews Ammal purchased a portion of suit item No.4 along with the suit Item No.3 under a sale deed, dated 06.01.1939 from one Kanniah Thevar @ Charles Thevar. The said document was marked as Ex-A4. She purchased the remaining portion of the suit item No.4 with east-west measurement 1 carpentry scale by a sale deed, dated 07.01.1939 marked as Ex-A5 from Annathayammal. Thus, Packiathai Andrews Ammal entitled to



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the suit item No.4 pathway portion with east-west measurement of 1¼ carpentry scale. Thereafter, the aforesaid Packiathai Andrews Ammal executed a settlement deed in favour of her daughter Helan Easter Joy Ammal and her husband, J.L.Pandian settling the plaint item Nos.3 and 4 in their favour by a registered settlement deed, dated 09.02.1962. The plaintiffs purchased the suit item Nos.3 and 4 from the above said settles under a sale deed, dated 03.08.1981, marked as Ex-A8. Thus, claiming exclusive right and title over plaint item No.4 pathway, the plaintiffs laid a suit for declaration of plaintiff's exclusive right over item No.4 and consequential injunction, as the defendants attempted to interfere with their possession.

3.The appellants herein, who were arrayed as defendants 2 and 3, filed a written statement and denied the rights of the plaintiffs over the suit item No.4. It was claimed by the defendants that they were also entitled to use suit item No.4 as a pathway and hence, it shall be treated as a common pathway for both parties. The exclusive right of the plaintiffs over the suit pathway was specifically denied in the written statement. On this plea, the appellants/defendants sought for dismissal of the suit.



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4.The suit was taken up along with the connected suit in O.S.No.377 of 2003. The first defendant in the present suit Rajkumar laid a suit against the present the plaintiffs in O.S.No.377 of 2003 seeking declaration and injunction in respect of the present suit property by showing the same as the second schedule in the said suit. The plaintiff in O.S.No.377 of 2003 sought for a declaration that the disputed property was a common lane and consequential injunction restraining the defendants therein (plaintiffs herein) from interfering with their alleged common enjoyment.

5.Before the trial Court, on behalf of the plaintiffs, the second plaintiff and one Vasudevan, Town Surveyor were examined and on their behalf, 11 documents were marked. On behalf of the first defendant, he was examined and four documents were marked on his side. On behalf of the defendants 2 and 3, one Murugan was examined and no document was marked. The Advocate Commissioner's report and plan were marked as ExC1 to Ex-C5.



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6.The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the plaintiffs proved their right over the suit item No.4 and granted a decree, as prayed for. Aggrieved by the same, the appellants/defendants 2 and 3 filed a first appeal in A.S.No. 311 of 2005. The connected suit filed by the first defendant was dismissed. The first defendant filed a separate appeal challenging the decree passed in the present suit in A.S.No.45 of 2006. He has also filed another appeal in A.S.No.36 of 2006 challenging the dismissal of the suit in O.S.No.377 of 2003. All the three appeals were heard together and the first appellate Court also affirmed the findings of the trial Court and dismissed all the three appeals. Aggrieved by dismissal of the appeal presented by the present appellants, namely, defendants 2 and 3 in O.S.No.391 of 2003, they have come by way of this Second Appeal.

7.The learned Counsel for the appellants vehemently contended that the title document of the plaintiffs conveys only a lesser extent to their predecessor-in-interest and therefore, the Courts below committed an error in granting a declaration in respect of the entire suit item No.4 with an east-



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west measurement of 1¼ carpentry scale. The learned Counsel further submitted that the judgment of the Courts below is vitiated by misreading of the title documents of the plaintiffs.

8.The defendants herein claiming themselves, as persons entitled to common enjoyment of the pathway portion described as item No.4 in the suit schedule property. In order to prove the exclusive right of the plaintiffs over the entire suit item No.4, the plaintiffs filed their parent documents under Ex-A3 to Ex-A6. Ex-A3 is a gift deed, dated 24.05.1934, executed by the original owner, Kanniah Thevar @ Charles Thevar in favour of his daughter Annathayammal in respect of the property, which lies on the northern side of the suit property. The very same Kanniah Thevar @ Charles Thevar executed a sale deed, dated 06.01.1939, marked as Ex-A4, conveying portion of the suit item No.4, namely, a narrow strip of lane with a breadth of 1/4 carpentry scale along with suit item No.3 on the southern side, to Packiathai Andrews Ammal. On the very next day, Kanniah Thevar @ Charles Thevar's daughter Annathayammal executed a registered sale deed on 07.01.1939



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marked as Ex-A5, conveying the remaining portion of the suit item No.4 with a measurement of 1 carpentry scale to Packiathai Andrews Ammal. Subsequently, the said Packiathai Andrews Ammal under a settlement deed, dated, 09.02.1962, marked as Ex-A1 settling the suit item No.4, which she got under Ex-A4 and Ex-A5 in favour of her daughter and her husband. The plaintiffs purchased the suit item No.4 from the said settlees under Ex-A8, dated 03.08.1981. Thus, the plaintiffs by producing documents from the year 1939 proved their exclusive right over the suit item No.4 pathway portion with east-west measurement of 1¼ carpentry scale.

9.The appellants/defendants unable to dispute the right of the plaintiffs by producing any anterior title document in their favour. In such circumstances, both the Courts below on proper appreciation of oral and documentary evidence available on record came to the conclusion that the plaintiffs are entitled to declaration and injunction, as prayed for. The said conclusion reached by the Courts below with regard the rights of the plaintiffs over the suit item No.4 is based on evidence and the same is not



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vitiated by any perversity. Accordingly, the Second Appeal is dismissed as devoid of any substantial questions of law. No costs.

24.06.2024

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

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To

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



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S.SOUNTHAR, J.

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