



S.A.(MD).No.927 of 2008

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **23.10.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.927 of 2008

and

M.P.(MD)Nos.1 of 2008 and 1 of 2009

Krishnasamy

... Appellant

/Vs./

1.Parameshwari

2.The Tahsildar,
Aravakurichi Taluk,
Karur District.

...Respondents

Respondent No.2 is suo motu impleaded as per the order of this Court dated 21.08.2024 in SA(MD)No. 927of 2008)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, aggrieved by the Judgment and Decree dated 14.03.2008 made in A.S.No.26 of 2007 on the file of the Subordinate Judge, Karur, reversing the Judgment and Decree dated 15.09.2005 made in O.S.No.446 of 2003 on the file of the Additional District Munsif Court, Karur.



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For Appellant : Mr.V.Meenakshi Sundaram
for Mr.P.Rajesh

For R1 : Mr.K.Govindarajan

For R2 : Mr.V.Om Prakash
Government Advocate

JUDGMENT

The present second appeal is filed by the defendant in the suit against the Judgment and Decree dated 14.03.2008 passed in A.S.No.26 of 2007 on the file of the Subordinate Judge, Karur, reversing the Judgment and Decree dated 15.09.2005 passed in O.S.No.446 of 2003 on the file of the Additional District Munsif Court, Karur.

2. The plaintiff in the suit is the respondent herein and the defendant in the suit is the appellant herein. For the sake of convenience, the parties may be referred as plaintiff and defendant as per the ranking in the suit.

3. The suit is filed for permanent injunction restraining the defendant from encroaching and interfering in the plaintiff peaceful possession and enjoyment of



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4. The contention of the plaintiff is that the Survey No.1205/7 is their own property which was belonged to his family and was inherited through his father. As far as Survey No.1205/8 the plaintiff was granted an assignment patta. As far as land in Survey No.1205/3 and 1205/5 and 1205/4 belongs to the defendant. The contention of the plaintiff is that the land in Survey No.1205/8 belongs to plaintiff as per the assignment patta and a portion of the land in Survey No.1205/8 is encroached by the defendant. Hence, the suit was filed for permanent injunction.

5. But the contention of the defendant is that the disputed portion is used as pathway by both the parties. Further submitted that the plaintiff is holding more extent of the property than the land assigned to the plaintiff. Originally, in the patta, it was granted as 0.00.5 ares but in the settlement, a larger extent was given by the husband to the wife. Therefore, the claim of the plaintiff is that the entire 56 square meter belongs to the plaintiff, which is over and above the assigned land. Hence the plaintiff is not entitled to any injunction for the larger extent and the suit is liable to be dismissed.



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6. In order to resolve this, this Court sought the assistance of the Tahsildar to visit the spot, survey the land and submit a report. The Tahsildar has submitted a report stating that the original patta was granted to the plaintiff in Survey No. 1205/8 to an extent of 0.00.5 ares and in the bracket it has been clearly indicated as “one cent of land”. On perusing the patta which is marked as Exhibit A1, it is seen that in the two places it has been clearly stated only “one cent of land” has been allotted. Even though it is stated in one place as 0.00.5 ares, in the bracket it has been clearly stated as “one cent”. Therefore, this Court is of the considered opinion that the plaintiff is entitled to only 40 square meter of land alone and the balance 16 square meter is available on the ground, which can be used by both the parties as pathway. The said pathway shall be used by the land owners show in Plot Nos.3 to 5, 7 and 8 and the said pathway connects the main street which is in Survey No.1213. Therefore, this Court is of the considered opinion that the bare injunction can be granted only for 40 square meter. And the balance 16 square meter shall be used as pathway by the land owners in Plot Nos.3, 4,5, 7 and 8.

7. The contention of the plaintiff is that the defendant has encroached a portion of the property in Survey No.1205/2 wherein the staircase has been put



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up. This Court is directing the 2nd respondent if there is any encroachment over and above the property belonging to either party, the same shall be removed as per law. Before removing the 2nd respondent shall issue notice and thereafter shall take steps to remove the same. The plaintiff has also filed a subsequent suit in O.S.No. 142 of 2009 wherein schedules B and C are shown as encroachment but there is no survey number mentioned in the property. However, this Court is making clear that the 16 square meter which is stated in Survey No.1205/8 can be used as pathway by all the parties and shall be considered as a common pathway for all the parties. If there is any encroachment, the same shall be removed within a period of five months from the date of receipt of a copy of this judgment.

8. The Judgment and Decree dated 14.03.2008 passed in A.S.No.26 of 2007 on the file of the Subordinate Judge, Karur, reversing the Judgment and Decree dated 15.09.2005 passed in O.S.No.446 of 2003 on the file of the Additional District Munsif Court, Karur is modified as stated supra.

9. With the above said observations, the second appeal is disposed of. The judgment and No costs. Consequently, connected miscellaneous petitions are



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Index : Yes / No

NCC : Yes / No

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1. Subordinate Judge, Karur.
2. Additional District Munsif Court, Karur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.
4. The Tahsildar,
Aravakurichi Taluk,
Karur District.



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Judgment made in
S.A.(MD)No.927 of 2008

Dated:
23.10.2024