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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.10 of 2024

V.P.Palani Naidu

... Appellant

/Vs./

S.Govindaraj

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree passed in A.S.No.4 of 2021 on the file of the Additional Sub Court, Thanjavur, dated 13.09.2022 confirming the Decree and Judgment passed in O.S.No.388 of 2011, on the file of the Additional District Munsif Court, Thanjavur, dated 30.04.2021.

For Appellant : M/s.V.K.Vijayaragavan

For Respondent : Mr.V.Sakthivel

JUDGMENT

The Defendant is the Appellant herein and the Plaintiff is the Respondent herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendant.



2. The suit in O.S.No.388 of 2011 was filed by the plaintiff restraining the defendant and his agents from using the common way and also for permanent injunction restraining the defendant from putting up any permanent construction in the common way. The suit was decreed in favour of the plaintiff. Aggrieved over the same, the defendant has preferred an appeal in A.S.No.4 of 2021 and the same was dismissed. Against the dismissal, the defendant has preferred the present Second Appeal.

3. The contention of the plaintiff is that the disputed property is a common lane, but a private lane for the row houses. The plaintiff and the defendant alone are having houses in the said lane. The defendant has put up six houses, three houses in the ground floor and three houses in the first floor. All the houses are let out for lease and the tenants have occupied in the said houses. The tenants are misusing the lane by parking their two-wheelers thereby no space is available for the plaintiff to approach his house. The defendant had parked the vehicles in the lane. And had constructed steps, which is a hurdle for the two-wheeler rider. Therefore, the plaintiff prays to remove the parked two-wheeler vehicles and also prays to remove the steps which the defendant had constructed.



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4. The contention of the defendant is that the entire stretch of the common lane measures 129 feet length and the width of the lane is 4 feet. The plaintiff is also having a two-wheeler, but the plaintiff is plying in high speed in the common pathway. If the plaintiff is running in the normal speed there will not be any hindrance. Further the plaintiff had erected electrical post in the common pathway and has placed huge drums to store water. Even if the plaintiff's house is at the dead end, taking advantage of the same the plaintiff is using the common pathway near his house as storage place. But the plaintiff is accusing the defendant for parking the two-wheeler alone. And for constructing the steps, which is essential for entering the house. Hence the defendant prayed to allow the second appeal.

5. The Learned Counsel appearing for the defendant has produced photographs to substantiate the plea that the plaintiff is using the common pathway as storage place. On verifying the same it is seen that an electrical post was erected in a common pathway and also blue colour huge drums are placed by the plaintiff. The Learned Counsel also submitted that along with these materials the plaintiff is also parking his two-wheeler but is accusing the defendant for parking two-wheeler. The further contention of the Learned Counsel appearing for the defendant is that if the defendant's tenants are



parking the two-wheelers one after other, then the issue could be sorted out and the space for plying would be available. In fact, to this effect the defendant had filed an affidavit stating that he will not block the entire common pathway and the tenants would park their vehicles one after other. The affidavit filed by the defendant is extracted hereunder:

.....

“11. I undertake to keep my Two-wheelers one behind the other close to my house on the western side and the remaining space available in the lane is totally sufficient for plaintiff's vehicle to pass and re-pass. In other words, I undertake to keep or park my vehicles in such manner that they do not obstruct the passage of plaintiff and his vehicle in the suit passage.”

6. Accepting the said affidavit this Court is inclined to allow the second appeal and according the second appeal is allowed with the following conditions:

- 1.The defendant shall instruct the tenants to park their vehicle one behind other.
- 2.And each tenant is entitled to park only one vehicle.
- 3.The defendant shall reconstruct the steps which were removed which shall be not more than 1 ½ feet.
- 4.The plaintiff and the defendant shall not put up any construction in a common lane in future.



7. The Judgment and Decree passed in A.S.No.4 of 2021 on the file of the Additional Sub Court, Thanjavur, dated 13.09.2022 confirming the Decree and Judgment passed in O.S.No.388 of 2011, on the file of the Additional District Munsif Court, Thanjavur, dated 30.04.2021 are modified to this effect. The Second Appeal is allowed in above terms. No Costs.

29.01.2024

Index : Yes / No

NCC : Yes / No

KSA

TO:

1. The Additional Sub Court,
Thanjavur.
2. The Additional District Munsif Court,
Thanjavur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Judgment made in
S.A.(MD)No.10 of 2024

29.01.2024