



S.A.No.772 of 2002

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.06.2024

CORAM

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

S.A.No.772 of 2002

1.Sellaya Pillai (Died)
2.Ganthimathi
3.Anandhi
4.Chitra
5.Sakthivel
6.Rajesh

...Appellants

-Vs-

1.Bakkiyam
2.Vijaya
3.Sakthi
4.Muthukumarasamy
5.Bagavathy

... Respondents

(Appellants 2 to 6 were impleaded as legal heirs of the deceased first appellant vide order of this Court, dated 16.04.2019 in C.M.P.(MD)Nos.10343 to 10345 of 2018)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the fair and decreetal order, dated 30.01.2002 made in A.S.No.405 of 1999 on the file of the Principal Subordinate Judge Court at Musiri reversing the fair and decreetal order, date 06.01.1995 made in O.S.No. 183 of 1992 on the file of the District Munsif Court at Musiri.



S.A.No.772 of 2002

WEB COPY

For Appellants : Mr.K.Govindarajan
for M/s.Sarvabhauman Associates
For Respondents :Mr.B.Arun
for Mr.Y.B.Seetharaman

JUDGMENT

The plaintiff in the suit is the appellant. The suit is for declaration that the suit lane is a common pathway and for injunction. The suit was decreed by the trial Court and the appeal filed by the defendant was allowed. Hence, aggrieved by the reversal finding, the plaintiff has come before this Court.

2.According to the plaintiff, the plaintiff and the defendant are neighbours. The defendant's house is situated on the east of the plaintiff's house and in between the houses of both parties, there is a disputed lane. The plaintiff purchased his property from Sundara Moorthy and Palanivelu by a sale deed, dated 16.06.1983 marked as Ex-A2. Earlier, the vendors of the plaintiff settled the property in favour of one Chellammal for life with vested reminded to vendors of plaintiff. The said document was marked as Ex-A3. It was claimed by the plaintiff that the suit lane is the only access for him to reach the backyard and the defendant attempted to interfere with his right to use the suit



S.A.No.772 of 2002

WEB COPY

lane portion and hence, he was constrained to file a suit for declaration and injunction.

3.The suit was resisted by the defendant by denying the common right claimed by the plaintiff over the suit property. It is the specific case of the defendant that the suit property belonged to him and the plaintiff never exercised any kind of right over the same. It was also averred by the defendant that the eastern wall of the plaintiff's property was his boundary and he had no right over the suit lane situated on the eastern side of his main wall. The defendant also claimed that he had been in possession and enjoyment of the suit lane portion for more than statutory period and hence, acquired adverse title. On these pleadings, the defendant sought for dismissal of the suit.

4.Before the trial Court, the plaintiff and his vendor, Palanivelu were examined as PW-1 and PW-2 and on behalf of the plaintiff, 22 documents were marked as Ex-A1 to Ex-A22. The defendant was examined as DW-1 and on behalf of the defendant, one document was marked as Ex-B1. The Advocate Commissioner's reports and plan and Surveyor's plan were marked as Ex-C1 to



S.A.No.772 of 2002

WEB COPY Ex-C4.

5.The trial Court on appreciation of oral and documentary evidence available on record came to the conclusion that the plaintiff has got common right over the suit property and hence, granted a decree that the suit property was a common lane portion and the plaintiff was entitled to use the same. The defendant was enjoined from interfering with the plaintiff's said right. Aggrieved by the said judgment, the defendant preferred an appeal in A.S.No. 405 of 1999 on the file of the Subordinate Court, Tiruchirappalli. The first appellate Court reversed the findings of the trial Court and allowed the appeal. Aggrieved by the said judgment and decree, the plaintiff has come before this Court.

6.At the time of admission, this Court formulated the following substantial question of law by order, dated 03.06.2002:

“Whether the judgments and decrees of the Courts below are sustainable in law as they have not considered the evidence which are relevant for the issue and the law applicable to the facts of the case?”



S.A.No.772 of 2002

WEB COPY

7.The learned Counsel for the appellants by taking this Court to the boundary description found in Ex-A2 submitted that the suit lane portion has been described as a common lane under the said document and the said fact has not been considered by the first appellate Court. The learned Counsel further submitted that the suit property was measured with reference to the measurement found in the title document of the respective parties and the Surveyor found that the plaintiff has got right over portion of the suit property and in such circumstances, taking into consideration the said fact, the trial Court rightly came to the conclusion that the suit property was a common lane and the well considered finding of the trial Court was reversed by the first appellate Court ignoring the aforesaid material evidence available on record.

8.The learned Counsel for the respondents submitted that though there was a reference about the suit lane in the title document of the plaintiff, namely, Ex-A2, in the parent documents of the plaintiff, namely, Ex-A3 and Ex-A10, there was no reference about the suit lane portion and therefore, the recitals found in Ex-A2 alone is not sufficient to come to a conclusion that the plaintiff has got common right over the suit lane portion.



S.A.No.772 of 2002

WEB COPY

9. In the title document of the plaintiff, Ex-A2, there is a reference about the eastern as well as western lane portion. The plaintiff's vendor sold the suit house to the plaintiff with a right to use the eastern as well as the western lanes. The eastern lane is the suit lane under dispute and in the sale deed executed by the defendant and his brothers in favour of one Rajammal, which was marked as Ex-A22, the suit lane was referred to as a common lane belong to them and one Subba Pillai. Therefore, in the sale deed executed by the defendant under Ex-A22, there is a reference that the suit lane is a common lane. Therefore, from the recitals found in Ex-A22, we can come to a definite conclusion that the defendants have no exclusive right over the suit lane, but it was enjoyed as a common lane. The Advocate Commissioner and the Surveyor appointed by the trial Court measured the suit property and the lane portion with reference to the title document of the respective parties and the Surveyor's plan has been marked as Ex-C4. The property of the plaintiff has been shown as red washed portion in Ex-C4, Surveyor's plan.

10. A perusal of Ex-C4, Surveyor's plan would indicate that the plaintiff has got right over portion of the suit lane. On the southern side of the lane



S.A.No.772 of 2002

portion, the plaintiff has got right over 6” in the east and west direction and on the northern side of the lane portion, the plaintiff has got right over 4.6 feet in the east-west direction. When the plaintiff has got right over portion of the suit lane by virtue of the measurement found in his document and as per the plan of the Surveyor marked as Ex-C4, we can safely come to a conclusion that the suit lane is a common lane between the owners of the houses situated on the western and eastern side of the lane. The trial Court taking into consideration the measurement found in the title document of the parties and also the Surveyor's plan rightly came to the conclusion that the suit lane is a common lane. However, the first appellate Court was carried away by the absence of reference to the suit lane in Ex-A3 and Ex-A10, parent documents of the plaintiff.

11.As mentioned earlier, from the recitals found in the sale deed, marked as Ex-A2, it is clear that the suit lane is not the exclusive lane of the plaintiff and it is only a common lane. From Ex-C4, Surveyor's plan, the right of the plaintiff over portion of the suit lane is established. In such circumstances, the conclusion reached by the trial Court that the suit lane is a common lane is



S.A.No.772 of 2002

WEB COPY

more probable. The first appellate Court without considering the recitals in Ex-A22 and the Surveyor's report, Ex-C4, came to an erroneous conclusion that the plaintiff has not proved his right over the suit lane. Therefore, the substantial question of law framed at the time of admission is answered in favour of the appellants and it is declared that the suit lane is a common lane and the plaintiff is entitled to use the same as a common lane along with the defendant. As a necessary consequence, the plaintiff is entitled to a decree for injunction, as prayed for restraining the defendant from interfering with the plaintiff's right to use the suit lane, as a common lane.

12. In view of the discussion made earlier, the judgment and decrees passed by the first appellate is set and the judgment and decree of the trial Court is restored. The Second Appeal is allowed accordingly. No costs.

14.06.2024

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

8/10



S.A.No.772 of 2002

WEB COPY

To

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



WEB COPY



S.A.No.772 of 2002

S.SOUNTHAR, J.

cmr

S.A.No.772 of 2002

14.06.2024