



S.A.No.1590 and 1591 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.Nos.1590 and 1591 of 2003

1.Sankararamasubbu
2.Venkatammal

... Appellants in
both S.As.

Vs

1.Isakiammal
2.Vijayasayi
3.Kannabiran
4.Ramasudharsan
5.Parthasarathy
6.Varatharaj
7.Krishnaveni
8.Sarangathara
9.Jeyalakshmi

... Respondents in
both S.As.

(Service of notice on the 9th respondent is dispensed with vide Court order dated 31.01.2004 made in S.A.Nos.1590 and 1591 of 2003)

PRAYER IN S.A.NO.1590 of 2003: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 20.10.2000 passed in A.S.No.109 of 1995 on the file of I Additional District Judge, Tirunelveli confirming the judgment and decree dated 20.06.1995 passed in O.S.No.498 of 1993 on the file of the District Munsif Court,



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Tirunelveli.

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PRAYER IN S.A.NO.1591 of 2003: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 20.10.2000 passed in A.S.No.110 of 1995 on the file of I Additional District Judge, Tirunelveli by partly modifying the judgment and decree dated 20.06.1995 passed in O.S.No.498 of 1993 on the file of the District Munsif Court, Tirunelveli.

For Appellants : Mr.M.P.Senthil
(In both S.As.)

For Respondents : Mr.S.Kumar for R1, R2, R4 & R5
(In both S.As.) Mr.V.Kannan for R7
Mr.R.Manimaran for R8
No Appearance for R3 & R6
R9 dispensed with

COMMON JUDGMENT

The defendants 1 and 2 in the suit are the appellants. The predecessor in interest of respondents viz. Seedhapathy Naidu filed a suit for bare injunction restraining the appellants from interfering with his possession and enjoyment over plaint second schedule common lane more particularly, for reaching the first schedule from third schedule in any manner.



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2. The appellants herein filed a written statement and raised a counter claim, claiming a declaration that the respondents' predecessor have no right of access to the second schedule of property from first schedule and consequently, directing him to close down the doorway found in the southern wall of house (first schedule). The trial Court partly decreed the suit by granting permanent injunction in favour of the respondents / plaintiff restraining the appellants from interfering respondent's right to use second schedule common lane to reach first schedule from third schedule property. However, the trial Court granted declaration that respondents / plaintiff were not entitled to reach third schedule property from first schedule property by using the second schedule common lane. The mandatory injunction part of the prayer in the counter claim was declined by the trial Court. Aggrieved by the same, the appellants preferred two appeals challenging the portion of the decree passed against them in the suit as well as dismissal of their prayer for mandatory injunction.



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3. The first Appellate Court, while dismissing the appeals filed by the appellants, modified the decree granted by the trial Court, by declaring the right of respondents / plaintiff to use second schedule of property to reach either first schedule or third schedule without causing any disturbance or hindrance to the right of user available to the appellants. Aggrieved by the same, the appellants are before this Court.

4. The learned counsel appearing for the appellants submitted that the suit first schedule property was purchased by the respondents / plaintiff under Ex.A1, wherein there is a recital about right of user available to the respondents over the suit second schedule property. However, in the parent documents, which were marked as Ex.B5 and B6, there were no reference about right of user available to the vendors of respondents over the said second schedule property. Therefore, the learned counsel submitted that Ex.A1 is only a self serving document and the limited right of user available to the appellants to use second schedule property to reach first schedule property from the third schedule property cannot be enlarged by relying on Ex.A1. The learned counsel further submitted that the first appellate Court failed to take into consideration the Advocate Commissioner's report and plan wherein, he



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clearly mentioned that door way available on the southern main wall of first schedule property was a recently installed one and the said fact noted by the Advocate Commissioner falsified the right of user claimed by the appellants.

5. As far as the right of user available to the respondents / plaintiff to reach first schedule property from third schedule property by using the second schedule common lane is concerned, there is no dispute. In fact, the appellants' side witnesses admitted the said right available to the respondents / plaintiff. The only dispute available is with regard to the right of the respondents to reach the third schedule property from first schedule property through second schedule common lane. A perusal of recitals found in Ex.A1, sale deed in favour of respondents / plaintiff would suggest that the right of usage over the suit second schedule property was given to the respondents to reach third schedule property from first schedule property. Ex.A1 is dated 22.05.1968 and the same is a sufficiently old document. The suit was filed only in the year 1983 nearly 25 years after the said document came into existence.

6. In such circumstances, the right of user mentioned in Ex.A1



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cannot be brushed aside merely because, such user was not mentioned in parent documents, which were marked as Ex.B5 and Ex.B6. When the appellants' own witnesses admit the right of user available to the appellants to reach first schedule property from third schedule property, the reverse use of the same viz., to reach third schedule from first schedule is only a corollary of the said right. The first appellate Court rightly appreciated the same and modified the findings of the trial Court in order to remove the contradictions in the findings rendered by the trial Court.

7. The learned counsel appearing for the appellants vehemently contended that the Advocate Commissioner found that the door opening available in the southern wall of the first schedule property was a new one. When there is a recital in 1968 document with regard to right of user available to the respondents, merely because, the cement plastering in the door way found to be new, we cannot come to the conclusion that the door way was opened only recently. In such circumstances, I do not find any question of law much less substantial question of law to interfere with the conclusion reached by the first appellate Court.



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8. It is made clear that the respondents / plaintiff are entitled to use second schedule property as a common lane without causing any disturbance or hindrance to the right of user available to the appellants over the second schedule property.

9. With these clarifications, the second appeals stand dismissed by confirming the judgment and decree passed by the first appellate Court. There shall be no order as to costs.

04.04.2024

NCC : Yes / No
Index : Yes / No
vsm

To

- 1.I Additional District Judge, Tirunelveli.
- 2.The District Munsif Court, Tirunelveli.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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