



S.A.No.494 of 2003

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 18.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.494 of 2003

Evangeline Mangalaraj

...Appellant

-Vs-

1.Jeyasingh(died)

2.Pauline

3.Devadass

4.Jayakumar

... Respondents

(Respondents 2 to 4 are brought on record as LR's of the deceased Sole respondent vide Court order dated 16.06.2023 made in C.M.P(MD) Nos.353 to 355 of 2022)

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 26.11.2002 made in A.S.No.25 of 2002 on the file of the learned Additional District Judge cum Chief Judicial Magistrate, Tuticorin reversing the judgment and decree dated



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31.08.1995 made in O.S.No.600 of 1990 on the file of the District Munsif, Srivaikuntam.

For Appellant : Mr.G.Sridharan
for Mr.T.M.Hariharan

For R2 to R4 : Mr.G.Rajaraman

JUDGMENT

The unsuccessful defendant in the suit is the appellant. The deceased first respondent filed a suit for declaration that the suit 'D' schedule lane is a common lane and for consequential injunction restraining the appellant/defendant from interfering with his right of using the common lane. The suit was dismissed by the trial Court. Aggrieved by the same, the deceased first respondent filed an appeal in A.S.No.25 of 2002 on the file of the Additional District Judge cum Chief Judicial Magistrate, Tuticorin. The first appellate Court reversed the findings of the trial Court and decreed the suit. Hence, the defendant is before this Court. Pending second appeal, the original plaintiff/first respondent died and his legal representatives were brought on record as respondents 2 to 4.



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2. According to the plaintiff, the suit 'A' schedule property belonged to him and 'B' and 'C' schedule properties belonged to the defendant. The suit lane which lies on the eastern and southern portion of suit 'B' and 'C' schedule leading to 'A' schedule was shown as 'D' Schedule property. It was claimed by the plaintiff that the suit 'D' schedule property had been used all along as a common lane by both the plaintiff and the defendant. All of a sudden, the defendant put up gates in 'D' schedule property so as to cause hindrance to the common right of the usage. Therefore, he was constrained to file a suit for declaration and injunction.

3. The defendant filed a written statement denying the right of common usage claimed by the plaintiff. It was claimed by the defendant that suit 'B' and 'C' schedule properties originally belonged to one Tharamaraj Nadar and he executed a gift deed in favour of John Thangaraj. In the said gift deed, there was no reference about 'D' schedule common lane. The plaintiff attested the said document without raising any objection. Hence, he was estopped from claiming any right in the suit 'D' schedule common lane. It was also claimed by the defendant that in his title document dated 15.05.1980, the plaintiff managed to



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introduce a boundary description as if suit 'D' schedule property was a common lane. On these pleadings, the defendant sought for dismissal of the suit.

4.Before the trial Court, the plaintiff was examined as P.W.1 and two documents were marked on his side as Ex.A1 to Ex.A2. On behalf of the defendant, he was examined as D.W.1 and six documents were marked as Ex.B1 to Ex.B6.

5.The trial Court, on appreciation of oral and documentary evidence, came to the conclusion that the plaintiff was estopped from claiming any right in the suit 'D' schedule property as the same was not mentioned in Ex.B.2, parent document of the defendant and dismissed the suit. Aggrieved by the same, the plaintiff filed an appeal in A.S.No.25 of 2002 on the file of the Additional District Court, Tuticorin. The first appellate Court relying on the boundary description found in Ex.B4, title document of the defendant, came to the conclusion that the suit property was a common lane and decreed the suit as prayed for. Aggrieved by the same, the defendant is before this Court.



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6. At the time of admission, this Court formulated the following substantial questions of law, by order, dated 03.04.2003:-

1. Whether the respondent/plaintiff is entitled to a decree to declare his common title to the suit lane without producing his documents of title and establishing his title and whether recitals if any in the document of the appellant would operate to convey title to the respondent?

2. Whether the non-production of the documents of title of the respondent is not fatal to his case on title and whether utmost adverse inference ought not to be drawn on this score?

3. Whether, in any event, the respondent is not estopped by attestation of Ex.B2 and on his categorical admission that he is aware that his rights are excluded under Ex.B2?

4. Whether the approach of the Appellate Court in relying on uncertified interpolations made in Ex.B4 in a different link and in haste using the space in the instrument is legal and proper when the trial Court has for sufficient reasons rejected the same?



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7.The learned counsel for the appellant contended that having filed a suit for declaration and injunction, the plaintiff failed to file any title document to establish his alleged right over the suit common lane. Therefore, the first appellate Court ought not to have reversed the well-considered findings of the trial Court. The learned counsel, by taking this Court to the description of the property in his parent document Ex.B2, submitted that there was no mention about the common lane in Ex.B2 and mere boundary description in the title document of the defendant as if the suit 'D' schedule property was a common lane, would not give any right to the plaintiff to succeed in a suit for declaration of title. The learned counsel, by taking this Court to the evidence of P.W.1, submitted that the absence of reference about the common lane was very well known to the plaintiff even at the time of execution of Ex.B2. Therefore, he is estopped from claiming any right over the suit 'D' schedule property.

8.The plaintiff filed a suit seeking declaration that the suit 'D' schedule property is a common lane and for consequential injunction. Even in the pre-suit notice issued by the plaintiff under Ex.A1, he referred about the title document of the defendant and boundary description in the said document referring the suit 'D'



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schedule property as a common lane. The defendant in his written statement came with an averment that the boundary description found in his title document as if the suit 'D' schedule property was a common lane, was an interpolation made by the plaintiff. Ex.B4 is the title document of the defendant, wherein the property purchased by the defendant was described as follows:- “

“கோயில்தெரு தென்கிழக்கில் உள்ள தெருவுக்குத் தெற்கு
பரியோவான் ஆலய காம்பவுண்டுச் சுவருக்கும் தங்களுக்கும்
தே.ஜெயசிங்குக்கும் பாத்தியப்பட்ட முடுக்கும் மேற்கு மர்காஷிஸ்
மேல்நிலைப்பள்ளி காம்பவுண்டுச் சுவருக்கும் தங்களுக்கும்
தே.தே.ஜெயசிங்குக்கும் பாத்தியப்பட்ட முடுக்கும் வடக்கு
தேவதாசன் நாடார் வகயரா வீட்டுச்சுவர் பாதிக்குக் கிழக்கு..--“

9. A perusal of the boundary description in Ex.B4 would indicate that the suit 'D' schedule property which lies on the eastern and southern sides of the defendant's property as described in the plaintiff's plaint had been clearly mentioned as common lane. The description found in the defendant's property referring the suit lane as a common lane, is binding on the defendant. The learned counsel for the appellant by relying on the Judgment of this Court in



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V.A.Amiappa Nainar Vs V.Annamalai Chettiar reported in ***(1972)1 MLJ 317***

submitted that the recital in the document not inter party could be pressed into service in support of plaintiff's case. Though the plaintiff was not a party to Ex.B4, the defendant predecessor in title was a party to Ex.B4 and hence, any description in the said document referring the suit lane as common lane, would be binding on the defendant. In fact, in the above-mentioned judgment, it was held by the Division Bench that recitals in a documents which are not inter parties are inadmissible in evidence unless one of the excutants was examined to prove the document. In the case on hand, the defendant is claiming right under Ex.B4 and it was marked as defendant's side document. Therefore, any recital or description in that document is binding on the defendant who produced the document before the Court.

10. In the case on hand, the plaintiff by relying on the boundary description in the defendant's own document, established that the suit lane is a common lane and therefore, even in the absence of any title document on the side of the plaintiff, the case of the plaintiff that the suit lane was a common lane stood proved by preponderance of probabilities. The conclusion reached by the first



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appellate Court based on the description in Ex.B4, is not vitiated by misreading of the document.

11.The learned counsel for the appellant also submitted that in the parent document of the defendant, namely, Ex.B2, there is no reference about the common lane and the plaintiff attested the said document as witness and therefore, he is estopped from claiming that the suit lane is a common lane. There is no positive description in Ex.B2 document as if the 'D' schedule property is the exclusive property of defendant. When Ex.B2 document is silent about the right of parties over the lane, merely because the appellant attested the said document, the same cannot estop him from claiming any right over the suit lane. The first appellate Court rightly considered the same and in the absence of any positive recital in Ex.B2 denying the right of the plaintiff, his attestation of Ex.B2 would not estop him from claiming right of common usage over the suit lane. Further it is settled law, attester to a document need not have knowledge about it's contents.



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12. The learned counsel for the appellant further submitted that description of the suit lane as a common lane was introduced in Ex.B4 by way of interpolation and therefore, the same shall be ignored. In fact, in the written statement averments, it was claimed by the defendant that the interpolation in his document was made at the instigation of the plaintiff. However, there is no evidence on the side of the defendant to prove that the said interpolation was made by the plaintiff. The defendant failed to examine any other person, except himself in support of the plea that the interpolation was made by the plaintiff. Ex.B4 was a sale deed executed by one Yesulamar in favour of defendant's husband Mangalaraj. The plaintiff was not a party to the document. He was not even signed as an attester or scribe. In such circumstances, the allegation made by the defendant in his written statement as if the alleged interpolation in Ex.B4, was made by the plaintiff, is not acceptable to this Court. If the allegation of the defendant in the written statement that the description of the suit lane as a common lane was introduced in Ex.B4 by way of interpolation is true, he could have easily proved the same by producing certified copy of Ex.B4. However, for the reason best known to the defendant, he has not produced the certified copy of Ex.B4 to establish that there was interpolation in her document.



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13. In view of the discussion made earlier, all the substantial question of law framed at the time of admission were answered against the appellant and in favour of the respondents. Accordingly, this Second Appeal stands dismissed. No costs.

18.04.2024

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

1. The Additional District Judge cum Chief Judicial Magistrate,
Tuticorin.
2. The District Munsif,
Srivaikuntam.
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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