



S.A. No. 1016 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2025

CORAM:

THE HONOURABLE Dr. JUSTICE R.N.MANJULA

S.A. No. 1016 of 2010

Srinivasan

... Appellant

Vs.

Karunamurthy

... Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree in O.S. No.173 of 2001 on the file of the Civil Judge, Arani dated 27.03.2006 confirming the decree and judgment in A.S. No. 40 of 2006 on the file of the Subordinate Judge, Arani dated 08.11.2006.

For Appellant : Mr. B. Vijayakumar

For Respondent : Mr. M. Suresh

J U D G M E N T

The Second Appeal has been filed challenging the judgment and decree passed in O.S. No. 173 of 2001 dated 27.03.2006, which was confirmed by the judgment and decree in A.S. No. 40 of 2006, dated 08.11.2006.



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2. The unsuccessful defendant is the appellant. The suit was filed by the plaintiff seeking a declaration and a permanent injunction.

3. The trial Court decreed the suit, and the first appeal was also dismissed, confirming the judgment of the trial Court. Aggrieved by the same, the defendant has filed this second appeal.

4. The short facts pleaded by the plaintiff in the plaint are as follows:

The suit property was originally belonged to one Chinnathambi Gounder who had two sons namely Arumugam and Perumal Gounder. The plaintiff is the son of Arumugam. Perumal Gounder is the deceased, and the defendant is his son. A partition was entered into between Arumugam and Perumal Gounder, and on that basis, the suit schedule property was allotted to Arumugam. The plaintiff has acquired rights or interest in the suit property in that manner. On 04.12.1995, a further partition was entered into between the plaintiff, his father Arumugam and the plaintiff's other brother, Rajendran. Under this partition, the first item of the property was allotted to the plaintiff, and as per the terms of the partition deed, the pathway right in the 'B' schedule property was given only to the plaintiff and his brother.



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4.1. The defendant was allotted with a vacant site on the Eastern side of the suit property, on which he has constructed a house. Further to the eastern side of the said house, there is a street, and the defendant can access his house only through that street. Therefore, he has no necessity to enter into the plaintiff's pathway in 'B' schedule property. The plaintiff has purchased his brother's share through a sale deed dated 09.02.2000 and has constructed a house on that portion. While the plaintiff is in enjoyment of the entire share originally allotted to his father by paying kist, the defendant is falsely claiming a right over the pathway belonging to the plaintiff. Hence, the plaintiff has filed the present suit seeking the relief of a permanent injunction in respect of the 'B' schedule property.

5. The written statement of the defendant in brief:

The suit passage is not the exclusive pathway of the plaintiff. It belongs to both the plaintiff's family as well as the defendant's family. The plaintiff's father Arumuga Gounder, had sold his half share in the vacant site and house measuring 14 feet east to west and $\frac{3}{4}$ feet north to south in big street. The remaining half share belonged to the defendant's father, Perumal Gounder. Perumal Gounder died 15 years ago, and the defendant, being his sole legal heir, became the owner of the remaining portion retained by his father.

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5.1. On the western side of the house, a thottam belonging to both the plaintiff's and defendant's families is situated, and, it can be accessed only through the common passage from erikarai street. The north-south measurement of the plaintiff's house property is 18 feet and the north-south measurement of the common passage is 6 feet. The undivided thottam belonging to the plaintiff's family and the defendant's family measures 24 feet north to south.

5.2. The plaintiff's house property and the common thottam are situated in S.No.279/17. The house property belonging to the defendant is situated in natham S.No.281/1 and it measures 11 ½ feet north to south. This corresponds to the measurement found in the sale deed dated 11.09.1973 executed by the plaintiff's father.

5.3. Since the width of the property is only 11 ¼ feet, the house occupies the full north-south extent of the site. Therefore, the cattle cannot be taken to the common thottam through any route other than the suit passage. Both the plaintiff's family and the defendant's family have been using the suit passage for taking cattle to the thottam, which is described as Item No.2. Hence, the plaintiff is not the exclusive owner of the property shown in Item No.1.

5.4. The plaintiff cannot deny the defendant's right by merely executing a partition deed among the family members. The plaint and the



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measurement submitted by the Commissioner are incorrect and cannot be accepted. Therefore, the plaintiff has no basis for the suit claim and hence, liable to be dismissed.

6. On the basis of the above pleadings, the following issues were framed:

“1.thjp jhthtpy; nfhhpa[s;sgo jhth brla{ypy; Fwpg;gpl;Ls;s 2tJ ,dr;brhj;jhd ,.vg;.rp.o. vd;w 5mo mfyKk;/ 111 mo ePsKk; bfhz;l tHp ghjahtJ thjpapd; jdp;g;l;l tHpghij vd;W tpsk;g[if ghpfhuk; bgwj;jf;ftuh>

2.nkny Fwpg;gpl;l 2tJ ,dr;brhj;jhd ,.vg;.rp.o. vd;w thjpapd; jdp;g;l;l tHpghijapy; gpupthjpnah/ mtuJ Ml;fnsh/ mj;JkPwp gpuntrpf;ff;TlhJ vd;W epue;ju cWj;Jf;fl;lis ghpfhuk; thjpf;F fpilf;fj;jf;fjh>

3.thjpf;F fpilf;Fk; ntW ghpfhuk; vd;d>”

7. During the course of the trial on the side of the plaintiff, five witnesses were examined as PW1 to PW5, and Ex.A1 to Ex.A14 were marked. On the side of the defendant, two witnesses were examined as DW1 and DW2 and Ex.D1 to Ex.D3 were marked. The Court documents were marked as X1 to X3.

8. On conclusion of the trial and after considering the evidence available on record, the trial Court decreed the suit as prayed for. The first appeal preferred by the defendant was also dismissed, confirming the judgment of the trial Court. The second appeal has been preferred by the appellant by raising the following questions of law:



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i). Learned counsel for the appellant submitted that the plaintiff has not proved that the pathway exclusively belongs to him. It is contended that the Trial Court and the First Appellate Court failed to properly appreciate the documents filed on behalf of the defendant properly and wrongly concluded that the 'B' schedule property exclusively belongs to the plaintiff.

ii) The trial Court did not frame an issue as to whether the defendant has any alternate pathway to reach the thottam, which is jointly enjoyed by both the plaintiff and the defendant. The plaintiff's father sold half of the vacant site to the defendant's father under Ex.B1. Hence, the plaintiff cannot deny the defendant's right to use the common pathway in respect of the suit property.

iii) There is no connectivity between the pathway and the property owned by the defendant in S.No.281/1. Under Ex.A8, the partition deed, the pathway is reserved only for the plaintiff, the defendant and his brother Rajendran. In the earlier partition deed executed between the plaintiff's father and the defendant's father and the subsequent partition deed entered into between the plaintiff's father and the plaintiff and his brother, it is clearly stated that the pathway is to be enjoyed only by the plaintiff and his family.



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Discussion:

9. There is no dispute with regard to the relationship between the parties, nor is it denied that a partition entered into between the plaintiff's father and defendant's father in the year 1973. The plaintiff is the son of Arumugam and the defendant is the son of Perumal Gounder, who is the brother of Arumugam. After the said partition between the Arumugam and Perumal Gounder, both the families lived separately. The plaintiff and his brother Rajendran along with their father, subsequently entered into another partition in the year 1995, which is marked as Ex.A8, dated 04.12.1995. In the said partition deed, it has been clearly mentioned that the pathway exclusively belongs to the plaintiff and his brother Rajendran.

10. After the death of Arumugam, the plaintiff and Rajendran became legal heirs and inherited the share allotted to their father. Subsequently, Rajendran sold his share in favour of the plaintiff through Ex.A1, sale deed dated 09.02.2000. Therefore, it is the claim of the respondent / plaintiff that the entire pathway, which is meant for the enjoyment of the plaintiff's family was acquired by the plaintiff by virtue of Ex.A8 (partition deed) and Ex.A1 (sale deed). However, it is the claim of the appellant / defendant that the plaintiff's father had sold a



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portion of the house site in favour of the defendant's father through Ex.B1, under which a common pathway right in respect of the 'B' schedule property was granted.

11. The trial Court extracted the recitals contained in Ex.B1 in the judgment and observed that the western boundary has not been described as a common pathway. In order to conclude that the defendant also has a right of pathway right in the 'B' schedule property as claimed, the trial Court noted that the defendant did not produce any patta to prove that the thottam was under the common enjoyment of both the plaintiff and the defendant, and that the property is situated in S.No.281/1, as recited in the Ex.B1 sale deed. The property particulars and boundary details in Ex.B1 do not contain pathway, as alleged by the appellant / defendant.

12. In the absence of any material evidence to show that the suit 'B' schedule pathway was given for the common enjoyment of both the plaintiff and the defendant, the trial Court has rightly arrived at a conclusion that the suit property belongs exclusively to the plaintiff. Further, the respondent / plaintiff has established through Ex.A8, the partition deed, that the pathway belongs only to them.

13. The appellant / defendant has not produced any contrary



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evidence to disprove the same. The only document relied upon by the defendant is Ex.B1, sale deed, which also does not indicate the existence of a common pathway on the western side of the property. In view of this, the trial Court has rightly appreciated the evidence and concluded that the suit pathway has been under the exclusive enjoyment of the plaintiff. Therefore, there is no reason for the First Appellate Court to take a contrary view without any legal basis.

14. In fact, the appellant / defendant claimed that they have a common thottam, but it has not been established that it lies in the same survey number where the suit pathway is situated. Therefore, it cannot be said that the Courts below have erred in applying the preponderance of probabilities and relying upon the documentary evidence produced by the plaintiff, which clearly establishes his exclusive right over the suit property.

15. I find no substantial question of law arises for consideration in this appeal. Hence, the appeal is **rejected** and not admitted. No costs.

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Index : Yes / No
Speaking Order/Non Speaking Order
AT

Dr. R.N. MANJULA, J.



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AT

To

1.The Civil Judge, Arani.

2.The Subordinate Judge, Arani.

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