



SA(MD)No.357 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 25.07.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.357 of 2018

1.R.Muthulakshmi

2.Rathinam

... Appellants / Appellants / Defendants

Vs

1.V.Kannathal

2.K.Thenammai

... Respondents / Respondents /Plaintiffs

Prayer : This Second Appeal is filed under Section 100 C.P.C., against the judgment and decree dated 26.06.2018 passed in A.S.No.93 of 2013 on the file of the Sub-ordinate Judge, Sivagangai confirming the judgment and decree dated 14.06.2013 passed in O.S.No.139 of 2011 on the file of the District Munsif Court, Sivagangai.

For Appellants : Mr.K.K.Samy

For Respondents : Mr.S.Srinivasa Ragavan



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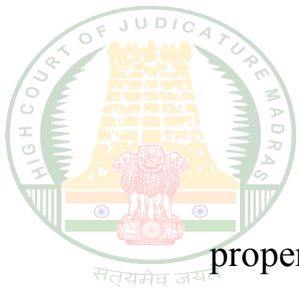
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JUDGMENT

The defendants are before this Court on appeal. The Second Appeal is filed challenging the judgment and decree dated 26.06.2018 passed in A.S.No.93 of 2013 on the file of the Sub-ordinate Judge, Sivagangai, confirming the judgment and decree dated 14.06.2013 passed in O.S.No.139 of 2011 on the file of the District Munsif Court, Sivagangai.

2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. It is the case of the plaintiffs that the suit property originally was purchased by the plaintiff's grandfather Saminadhan Chettiar through sale deed dated 28.09.1935. As per the sale deed, he had purchased the property measuring 30 feet East - West and 200 feet North - South. Since Saminathan did not have any male legal heir, he had adopted Thenappa Chettiyar through an adoption deed. Pursuant to the death of Saminathan Chettiar, Thenappa Chettiar, as his adopted son, inherited the



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property. Thenappa Chettiyar had five sons and three daughters. In a partition executed on 04.01.1951, Thenappa Chettiar gave certain properties to his three sons and by another partition dated 29.02.1972, he gave certain other properties to other two sons and he retained the other properties himself. Thereafter, Thenappa Chettiar, during his lifetime, on his own free will and volition bequeathed the other properties retained by him in favour of his three daughters through a will dated 13.11.1984. After the death of Thenappan, three daughters got the properties as per the Will and they are in possession and enjoyment of the properties. Since the plaintiffs' sister Theivanai, is staying away, the plaintiffs are managing the properties. The old house in the suit property was demolished and in the year 2002, the plaintiffs have constructed five houses and shops. The plaintiffs are paying the taxes and were in possession and enjoyment of the properties. While so, the first defendant had purchased the adjacent property through sale deed dated 28.10.1987. As per the sale deed of the first defendant, he had purchased 24 feet East - West and 150 feet North-South and he had constructed a building, even prior to the construction of building by the plaintiffs in the suit property. The defendants by taking advantage of some records, created under the



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natham land revenue scheme, attempted to interfere in the suit property on 16.09.2011 and as such the plaintiff had come up with the suit seeking for permanent injunction.

4. The defendant resisted the suit by disputing the claim made by the plaintiffs. It is the case of the defendants that since the plaintiffs had not obtained patta, they have not established the exact extent to which they are entitled to. Further, the plaintiffs had not stated as to what is the exact extent to which they have constructed the building. When the defendants had constructed the building in the year 1987, the plaintiffs had constructed the building in the suit property only in the year 2002. It is the further claim of the defendants that when they constructed the house in the year 1987, the original owner had allowed the defendants to put up the RCC pillars and had permitted the defendants to use the pathway in the suit property and therefore the defendants are having right to use the pathway which the plaintiffs cannot prevent and sought for dismissal of the suit.



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5. During trial, the first plaintiff examined herself as P.W.1 and one O.S.T.S.Swaminathan as P.W.2 and marked Ex.A1 to Ex.A19. On the side of the defendants, the second defendant examined himself as D.W.1 and marked Ex.B1 to Ex.B9. An advocate commissioner was appointed and the report and plan has been marked as Ex.C1 and Ex.C2. The trial Court after analyzing the evidences, came to the conclusion that when the plaintiffs had by marking the sale deed have established their title that they are entitled to the property having 30 feet East-West, actually they are only in enjoyment of 28.11 feet in the frontage and 28.6 feet in the back side and therefore already they are possessing a lesser extent than the sale deed. On the contrary, the defendants who is entitled to only 24 feet East-West is in possession of 24.11 equal to 25 feet on the East - West and therefore the claim of the defendants in resisting the suit cannot be sustained and decreed the suit. On appeal, the lower appellate Court on finding that the defendants had not brought in any evidence by marking documents to establish his contention that he was permitted to use the pathway in the suit property and when the plaintiffs are having title to the suit property, they are entitled for the consequential injunction and thereby dismissed the appeal, confirming the judgment and decree of

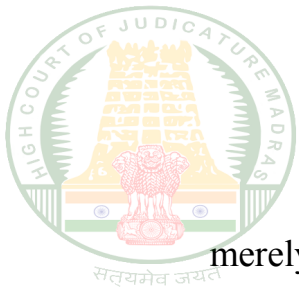


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the trial Court. Assailing the concurrent finding of fact, the defendants are before this Court on appeal.

6. The appeal has not been admitted and this Court by order dated 15.11.2018 has issued only notice to the respondents.

7. Learned counsel appearing for the appellants argued that in view of the report and plan filed by the advocate commissioner, the existence of the pathway had been established, then naturally the defendants would have a right to use the pathway. It is his further contention that the plaintiffs had allowed the defendants to use the pathway and only based on such a facility extended, the defendants had constructed the entire building in his property and therefore now the plaintiffs cannot stop or prevent the defendants from using the pathway. Learned counsel further by relying on the photographs filed by him in Ex.B1 to Ex.B7 contended that the photographs clearly establish the existence of the pathway. It is his vehement contention that when the defendants had proved the existence of the pathway through the advocate commission report and the documents filed, the Courts below had erroneously decreed the suit by



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merely concluding that the plaintiffs are having right in the suit property, based on the sale deed executed in favour of their grandfather and therefore the finding rendered by the Courts below are perverse and sought for interference of this Court.

8. Contending contra Mr.Srinivasa Ragavan, learned counsel appearing for the respondents argued that when the plaintiffs had established the title to the suit property, by filing the original title deeds and the defendants had not disputed the title by filing any documents to assert their right and when there is no cloud raised on the title, the Courts below, on rightly finding the title of the plaintiffs had decreed the suit. It is his further contention that when the defendants come up with the claim, contrary to the documents that the defendants was permitted to use the pathway in the suit property which admittedly belongs to the plaintiffs, the onus is on the defendants to prove that he had been extended with such a permission by executing some documents. In the absence of discharging his burden as required under Section 103 of the Indian Evidence Act, the Courts below have rightly decreed the suit which needs no interference and sought for dismissal of the appeal.

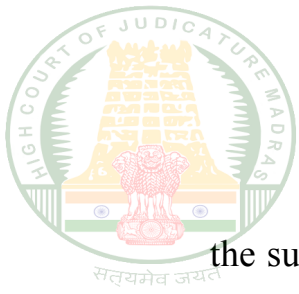


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9. Heard the rival submissions and perused the materials available on record.

10. Admittedly, the suit property was originally purchased by one Swaminathan Chettiar through registered sale deed dated 28.09.1935 for valuable consideration. The property purchased by Swaminathan Chettiar had 30 feet East - West and 200 feet North-South which is the suit property. The sale deed has been filed by the plaintiffs in Ex.A1. Swaminathan had adopted Thenappan Chettiar who had five sons and three daughters. Pursuant to the death of Swaminathan Chettiar, Thenappa Chettiar, being the adopted son who had inherited the properties had disposed of the properties in favour of his sons, through two partition deeds and had retained some of the properties for himself. From among the particular properties retained by him, he had executed a Will in Ex.A2 dated 13.11.1984 giving the properties in favour of his daughters. Pursuant to the death of Theynappa Chettiar, the plaintiffs along with their sister, had got the suit properties and are in possession and enjoyment of the same. It is also an admitted case that the plaintiff had demolished the old superstructure and had constructed building in



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the suit property in the year 2002. From the documents filed on the side of the plaintiffs, the title of the plaintiffs over the suit property has been established and also by filing the other documents in Ex.A3 to Ex.A9, the building constructed by the plaintiffs and the taxes filed by the plaintiffs for the constructions made in the suit property stands proved. When the plaintiffs had established title, they are entitled for the consequential injunction to safeguard their possession.

11. The defendant had only resisted the suit by contending that he was given permission by the plaintiffs' father to use the pathway in the suit property. The defendants had not filed any documents except the photographs filed by him in Ex.B1 to Ex.B7. When the defendants make a claim or claim right against the admitted owners, who had purchased the property through registered documents, then the onus is on the defendants to prove the fact claimed by them. As per Section 103 of the Indian Evidence Act, the party who wants the Court to accept a fact has to prove that fact by bringing in necessary evidence. In the instant case, when the defendants has come up with a claim that though the suit property belongs to the plaintiffs, they were given permission to use the



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pathway in the suit property, then it was for the defendants to prove the claim made by them by filing appropriate documents. However, the defendants miserably failed to prove the claim made by them by adducing any evidence.

12. In the appeal, grounds are raised to the effect that the defendant is disputing the title of the plaintiff over the suit property, based on which submission is made. Eventhough, as per the decision of the Hon'ble Supreme Court in the case of ***Ananthula Sudhakar Vs P.Buchi Reddy***, reported in ***(2008) 4 Supreme Court Cases 594***, when the defendants dispute the title of the plaintiffs and raise a cloud on title, the plaintiffs must seek for declaration and without which a mere injunction would not be sustainable. However, it is not that in all cases where a denial is made on title, then the plaintiffs, has to seek for declaration. Only in a case where true and genuine cloud is raised over the title of the property with some documents establishing the right of the defendants, a need arises on the plaintiffs to seek for a declaration. In the instant case, when the defendants have not filed any documents to establish their right, no need arises for the plaintiffs to seek for declaration.



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13. The lower appellate Court had by placing reliance on the advocate commissioner's report, rendered a clear finding that when the plaintiff is entitled to an extent of 30 feet East-West, from the advocate commissioner's report, it has been established that the plaintiffs are only having possession of 28.11 feet in the frontage and 28.6 feet in the back side which is lesser than the extent purchased by them, whereas the defendants who has purchased only 24 feet is in possession of 24.11 equal to 25 feet, which is more than the extent they purchased. The plaintiffs having established their title to the suit property, the Courts below had rightly come to the conclusion that the plaintiffs, being the title holders are entitled for the relief of injunction.

14. The concurrent finding of fact arrived at by the Courts below are based on the evidences available on record. This Court does not find any illegality or perversity in the finding rendered by the Courts below. No substantial question of law arise for consideration in this Second Appeal.



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15. Accordingly, this Second Appeal is dismissed. However, there shall be no order as to costs.

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

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To

1. The Sub-ordinate Judge, Sivagangai.
2. The District Munsif, Sivagangai.
3. The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ARUL MURUGAN, J.

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