



S.A(MD).No.418 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2023

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A(MD).No.418 of 2022

P.Ruban

.. Appellant/Appellant/Defendant

Vs.

1.Rajarethinam

2.P.Thankaraj

.. Respondents/Respondents/Plaintiffs

Prayer: Appeal is filed under Section 100 of the Code of Civil Procedure, to suspend the decree granted in A.S.No.27 of 2016 on the file of the Subordinate Court, Padmanabhapuram, dated 17.12.2018 confirming the judgment and decree in O.S.No.202 of 2012 on the file of the learned Additional District Munsif, Padmanabhapuram, dated 29.04.2016.

For Appellant : Mr.M.Krishna Sreethar

For Respondents : Mr.N.S.Ramakrishnadas (for R2)

No representation (for R1)

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The defendant in the suit is the appellant



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herein. The suit in O.S.No.202 of 2012 was filed by the respondents/plaintiffs before the Additional District Munsif Court, Padmanabhapuram, seeking for declaration, claiming easementary rights for the pathway to access the graveyard. A written statement was also filed by the appellant/defendant in the trial Court denying the contention of the respondents/plaintiffs that they have easementary rights to use the pathway leading to the graveyard. The said graveyard is utilised by the respondents/plaintiffs to bury their family members.

2. Before the trial Court, the respondents/plaintiffs filed 6 documents, which are marked as Ex.A.1 to Ex.A6. On the side of the appellant/defendant, 5 documents were filed, which are marked as Ex.B.1 to Ex.B.5. Apart from that, three Court exhibits were also marked, namely Ex.C.1 to Ex.C.3.

3. Admittedly, one of the brothers of the respondents/plaintiffs had sold the portion of the larger extent of the property to the appellant/defendant under a sale deed, which has been marked as Ex.B.2, dated 28.01.2009. It is also not in dispute that there is no access



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available for the respondents/plaintiffs to enter into the graveyard meant for burial of their family members. The oral and documentary evidence placed on record before the trial Court confirmed the said fact. Having purchased the portion of the property from one of the brothers of respondents/plaintiffs and when it is not in dispute that there is no access for the respondents/plaintiffs to use the graveyard meant for burying the family members of the respondents/plaintiffs, the trial Court after giving due consideration to the oral and documentary evidence available on record, has decreed the suit in favour of the respondents/plaintiffs by granting the relief of easementary rights, namely, usage of the common pathway leading to graveyard utilised by the family members of the respondents/plaintiffs.

4. The Advocate Commissioner was also appointed by the trial Court to physically inspect the suit schedule property. The report of the Advocate Commissioner was also marked as Court exhibits, namely, Ex.C.1 to Ex.C.3. All the Court exhibits, namely, Ex.C.1 to Ex.C.3 categorically stated that the only access available to the respondents/plaintiffs for entering into the graveyard meant for burying



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the family members is through the property purchased by the appellant/defendant under sale deed dated 28.01.2009 marked as Ex.B.2. Only after giving due consideration to all the above mentioned factors and after correctly appreciating the evidence available on record, the trial Court has decreed the suit in favour of the respondents/plaintiffs by its judgment and decree dated 29.04.2016 in O.S.No.202 of 2012.

5. The Lower Appellate Court, namely, the Subordinate Court, Padmanabhapuram, in the first appeal filed by the defendant in A.S.No. 27 of 2016 has also correctly confirmed the findings of the trial Court as oral and documentary evidence available on record clearly established the case of the respondents/plaintiffs that they are entitled for grant of easementary rights for usage of common pathway leading to the graveyard. The Lower Appellate Court has rightly dismissed the first appeal filed by the appellant/defendant.

6. This Court is of the considered view that there is no substantial question of law involved in this second appeal. The substantial questions of law raised by the appellant in the grounds of appeal are all factual



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issues, which have been rightly considered by the Courts below based on the oral and documentary evidence available on record. There is no merit in the second appeal. Accordingly, this Second Appeal is dismissed. No costs.

17.03.2023

NCC : Yes/No
Index : Yes / No
Rmk

To

- 1.The Subordinate Judge, Padmanabhapuram.
- 2.The Additional District Munsif, Padmanabhapuram.



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ABDUL QUDDHOSE.J.,

Rmk

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