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S.A.No.982of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.982 of 2013

Ganesan ... Appellant/Respondent/Defendant

Vs.

Ayyasamy ... Respondent/Appellant/Plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and decree of the Sub-Court, Namakkal in A.S.No.49 of 2011 dated 25.03.2013 modifying the decree and judgment of the Additional District Munsif Court, Namakkal in O.S.No.398 of 2007 dated 31.03.2013.

For Appellant : Mr.Bala ganesh for
Mr.T.M.Hariharan

For Respondents : Mr.S.Saravana Kumar for
Mr.I.Abrar Md. Abdullah

JUDGMENT

The present second appeal arises out of the judgment and decree of the Court of the Subordinate Judge, Namakkal in A.S.No.49 of 2011 dated 25.03.2013 in reversing the judgment and decree of the Additional



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District Munsif Court at Namakkal in O.S.No.398 of 2007 dated 31.03.2013 and thereby decreed the suit for permanent injunction filed by the respondent herein.

2. For the sake of convenience, the parties shall be referred to as per their ranks in the suit.

3. The case of the plaintiff is that he is the owner of the property situated in S.No.260/1A to an extent of 2.43 acres together with a “Well” situated thereon. He would state that the defendant is the owner of the adjacent property in S.N.261/1. According to him, there is an access to the property over the S.No.261/1A from the point 'X1' to 'X' connecting his property to S.No.263 which is a Government road. He would state that under the sale deed dated 10.12.2001, access had been given to him to reach S.No.263 over the VelanKuttai Karai i.e., over the banks of a pond called Velan Kuttai. He would state that the defendant had interfered with his right. According to him, the plaintiff and the defendants were using the pathway running from S.No.260/8B through S.No.260/1A to reach the road situated in S.No.263. Since the pathway is obstructed, he has filed the suit.



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4. The defendant would state that the plaintiff has a direct access on the other side of his property namely from S.No.260/2F to reach the Government road in S.No.269/1. He would state that 261/1B is his own pathway to reach the property in 261/1C. He would claim exclusive pathway over the property and would state that since the plaintiff wanted a right to be created by virtue of the suit, the suit is not maintainable.

5. On the basis of these pleadings, the Court framed the following issues:

- “1. Whether the Sale deed of the defendant binds the plaintiff?*
- 2. Whether the Suit is bad for non-joinder of necessary parties?*
- 3. Whether the pathway right claimed by the plaintiff is in existence?*
- 4. Whether the plaintiff is entitled for the relief of permanent injunction?*
- 5. To what other relief the Plaintiff is entitled to?”*

6. On the side of the plaintiff he examined himself as P.W1 and other witness as P.W2. He marked Exs.A1 to A9. On the side of the defendant he examined himself as D.W1 but did not mark any document.



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7. On the basis of these issues and the evidence, the learned trial Judge came to the conclusion that the plaintiff has not established the existence of a pathway and the legal possession and enjoyment of the same. She also found that what was given under Ex.A1 is pathway for “கரைமேடு” and not access over Velankuttai and therefore on the basis of this conclusion, she dismissed the suit.

8. The learned first appellate Judge reversed the judgment and decree on the basis of evidence of D.W1, against which the present second appeal has been presented to this Court.

9. This second appeal has not been admitted but notice regarding admission had been ordered on 25.10.2013. The matter was argued before me by Mr.Bala Ganesh and Mr.Saravana Kumar on 14.03.2024. I felt that records are essential for the disposal of the appeal and therefore, I called for the records from the Courts below. The records have been received and I heard Mr.Bala Ganesh and Mr.Saravana Kumar in this matter.



10. Mr.Bala Ganesh would suggest that following substantial questions of law arises before this Court:

“i. Whether the appreciation of both oral and documentary evidence by the First Appellate Court is according to law and correct?

ii. Whether the First Appellate Court in granting a decree for the plaintiff in the absence of the Government which is a necessary and proper party in the proceedings?

iii. Whether the First Appellate Court in granting a decree and judgment favouring the plaintiff in the absence of non-existing pathway which has been admitted by the plaintiff and whether the First Appellate Court can eschew the admitted evidence of the plaintiff?

iv. Whether the First Appellate Court is correct in granting a decree for permanent injunction in respect of a right of easement without a declaratory relief?”

He would further state that the judgment of the lower appellate Court is laconic and therefore it requires interference in the hands of this Court . He would point out that the plaintiff seeks to create a pathway by virtue of the suit and such a relief cannot be granted because the Court declares the right that a party already has and it does not create a new right for the parties.



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11. Mr.S.Saravana Kumar would rebut this argument by inviting my attention to Ex.A1, Ex.A2 and Ex.A3 and to the deposition of D.W1, in order to state that he has not created a new right over the pathway but by virtue of the sale deed starting from October 1969 till his purchase in 2001, the right of the pathway has already been granted under the sale deeds.

12. I have carefully gone through the records and the judgment of the Courts below and applied my mind as to the argument of both sides.

13. Mr.Bala Ganesh is right in his submission that the Court does not and cannot create a new right of pathway especially in a suit for bare injunction. If there exist a pathway and the plaintiff has a right over the pathway, the Court can certainly grant an order of injunction against any person who seeks to obstruct the said pathway. I have to see whether, in the facts of this case, a pathway exist and whether the plaintiff was entitled to use the same.



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14. As Mr.Saravana Kumar had contended, from Ex.A1 the document dated 11th October 1969, I am able to see that in S.No.261/1 on the kuttai karai or on the banks of the kuttai, the pathway exist for the purpose of running a cart track and for usage of persons. This is the parent document for the plaintiff. Nine years after the said document, the other document that come into force is Ex.A3 under which the plaintiff's vendor was given an access over the properties situated in S.No.261/1A. Though both the parties are litigating over the property claiming the pathway right, it is pertinent to point out that S.No.261/1A and S.No.261/8C happen to be poramboke lands.

15. The lands of the defendant running from S.No.263 namely, the poramboke road, right until the end of it in S.No.260/8C. The defendant has been having access over the portion marked 'X', 'X1', 'X2' and 'X3'. The dispute now lies only to the portion marked 'X', 'X1' in the plaint plan. If the defendant claims an exclusive right over the property to the exclusion of the plaintiff and others to have access over the pathway, he must have show the better title than the plaintiff. Unfortunately, for the defendant he has not filed any document to substantiate his case.



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16. On the contrary he has entered the witness box and literally given up his case. He has stated as follows:

"குட்டை பாகைத்தை பொறுத்து நான் கிரையம்
பெற்றபோது அதையும் சேர்த்து நான் கிரையம்
வாங்கவில்லை. குட்டை பாகத்தின் ச.எண்.
எனக்கு தெரியாது."

17. The aforesaid extract would show that since the defendant had negotiated purchase of the pathway, he would claim that he has a right over the same. When S.No.261/1A happens to be a Government Poramboke running land, and that too a bank of water body namely a kuttai. Neither the plaintiff nor the defendant can claim to have purchased the property exclusively.

18. The evidence of D.W1 is sufficient for me to conclude that 261/1A is a Government Poramboke land. The plaintiff also concedes that it is a Government Poramboke land. From Ex.A1 to Ex.A3, read with the evidence of D.W1, I am able to conclude that the pathway which runs on the banks of the Kuttai/Pond has been utilised by the vendors of the plaintiff as well as by the vendors of the defendant in order to access the road in S.No.263. Under such circumstances, neither



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the plaintiff nor the defendant can claim exclusive right over the pathway.

The cause of action for the suit is that the defendant started claiming an exclusive right over the pathway which constrained the plaintiff to file a suit for bare injunction. When both parties are entitled to use the pathway, without one obstructing the other, then the issue of claiming exclusive right does not arise at all.

19. Therefore, in the light of the above discussion, I am of the clear view that being a Government pathway both the plaintiff as well as the defendant have a right of usage over the same and neither can claim an exclusive right. The trial Court had mis-directed itself by stating that karai padhai is not Velankuttai padhai and therefore, dismissed the suit. It has been rectified by the lower appellate Court.

20. Hence, I do not find any reason to interfere with the judgment of the lower appellate Court, viz the judgment and decree of the learned Subordinate Judge at Namakkal in A.S.No.49 of 2011. The appeal is not admitted as the substantial questions of law suggested by Mr.Bala Ganesh does not arise for consideration.



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21. In fine, the second appeal stands dismissed and the judgment and decree of the Court of the Subordinate Judge, Namakkal, in A.S.No.49 of 2011 dated 25.03.2013 is confirmed. The suit in O.S.No.398 of 2007 on the file of the Additional District Munsif at Namakkal will stand decreed as prayed for. The parties being neighbours, I do not find any reason to impose costs.

21.03.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To:

- 1.The Additional District Munsif Court,
Namakkal
- 2.The Subordinate Judge,
Namakkal
- 3.The Section Officer,
Vernacular Section,
High Court of Madras.



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V.LAKSHMINARAYANAN, J.

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