

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 08.01.2015

CORAM:

THE HONOURABLE Ms. JUSTICE K.B.K.VASUKI

S.A.No.1731 of 2000

1.Kiliyan
2.Nallan
3.Andavan

.. Appellants/Defendants

Vs.

Karuppan

.. Respondent/Plaintiff

PRAYER: This Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and Judgment dated 24.04.2000 made in A.S.No.103 of 1997 on the file of the Subordinate Court, Gobichettipalayam, reversing the decree and Judgment dated 30.11.1993 made in O.S.No.415 of 1992 by the District Munsif Court, Gobichettipalayam.

For appellants : Mr.A.K.Kumaraswamy
For Respondent : Mr.M.Narayanasamy

JUDGMENT

The defendants are the appellants herein. The suit in O.S.No.415 of 1992 came to be filed by the respondent herein for the relief of declaration and injunction in respect of ABCD pathway having 12 feet east-west and 100 feet north-south. The plaintiff has claimed the right to use the pathway on the strength of Ex.A1-Sale deed, dated 31.08.1981 executed in favour of the plaintiff by one Karuppan S/o Kupparamadhari. The plaintiff/purchaser has filed the suit only for using the suit property as access to reach his property as his right to use the same was interfered by the respondents/defendants.

2. The suit was seriously resisted by the defendants stating that there was no ABCD cart track in the suit schedule property and the disputed area was purchased by the father of the defendants on 21.03.1968, for valuable consideration, as such no right was conveyed to the plaintiff, under the registered sale deed dated 31.08.1981 which is later in point of time. It is their case that the portion shown as cart track, in the front yard of the building side measuring 6 to 7 ½ cents was forming part of the property purchased by the defendants' father from one Makali Madhari, during his life time and enjoyed by the father absolutely and the defendants have been

enjoying the property as absolute owners after the death of the father.

3. During the pendency of the suit, the trial Court appointed an advocate commissioner to ascertain the existence of cart track in the suit mentioned property. The Advocate Commissioner after duly inspecting the property filed his report and plan, which were marked as Exs.C1 and C2, regarding the existence of AB Pathway having 9 feet width and 95 feet length. The report also shows that the cart track has been leading to the house belonging to the plaintiff. The report further states that there is no other access to reach the plaintiffs' house from the eastern side road. The trial Court on the basis of the oral and documentary evidence adduced before the same and in the light of the physical features available in respect of the land as shown in Exs.C1 and C2, dismissed the suit on the ground that the plaintiff failed to establish his right over the suit cart track. Aggrieved against the judgment and decree of the trial Court, the plaintiff preferred A.S.No.103 of 1997.

4. However, the lower Appellate Court having accepted the plaintiff's right to use the cart track and having found that the plaintiff has no other access to reach his house was inclined to uphold the right of the plaintiff to use the same by way of easementary right. The lower appellate Court allowed the appeal thereby declaring the plaintiff's right to use the ABCD cart track as common path way and by granting the relief of declaration and injunction in respect of the suit property as sought for in the suit. Hence, this second appeal by the defendants before this Court.

5. Heard the rival submissions made on both sides and perused the records.

6. The Second Appeal is admitted on the following substantial question of law:

a) Whether the lower appellate Court is justified in granting a decree for an easementary right to use the suit property as pathway, overlooking that the suit is filed for declaration of title to the suit property"

7. The learned counsel for the appellants in the second appeal questioned the correctness of the Judgment and Decree of the lower appellate Court mainly on the ground that when the suit relief is based on exclusive right, the relief granted in favour of the plaintiff for easementary right without any pleadings is legally unsustainable.

8. Whereas, the learned counsel for the respondent/plaintiff would in support of his contention draw the attention of this Court to Ex.A1 sale deed with regard to the plaintiff's right to use the cart track and defend the Judgment and Decree of the lower appellate court.

9.While the plaintiff claimed his right to use the pathway on the basis of Ex.A1 sale deed, the defendants denied the same on the basis of Ex.B2, which is in the name of their father. Ex.B2, sale deed in the name of the defendants' father referred to the plaintiff and his right to use 12 feet on northern side of the cart track which is described as pathway. The existence of path way cart track is clearly mentioned in Exs.C1 and C2 Advocate Commissioner's report and plan and admittedly there is no objection filed for the same by either of the parties. The advocate commissioner has clearly referred to in Exs.C1 and C2 report and plan that it is the only pathway having access to the plaintiff's property. That being so, the lower appellate court while declining to accept the plaintiff's exclusive right over the ABCD cart track, accepted the plaintiff's claim for lesser right to use the same as common pathway along with others and rightly granted the relief of declaration and injunction in favour of the plaintiff and as the judgment of the court below is based on factual finding and the same warrants no interference by this Court. The substantial question of law is hence answered in favour of the plaintiff.

10. In the result, the second appeal is dismissed. No costs.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1.The Subordinate Judge, Gobichettipalayam.

2.The District Munsif, Gobichettipalayam.

+1 cc to Mr.A.K.Kumarasamy, Advocate,SR.1180

+1 cc to Mr.M.Narayanasamy, Advocate,SR.1102.

Tej (co)
krd 12/6

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