

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.12.2016
Date of Verdict : 07.12.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

S.A.No.1330 of 2007

1.Suseela
2.Karuppaththal

... Appellants
(1st & 4th Defendant)

Vs.

1.S.Nagaraj
2.Poovaththal
3.Poongodi

... Respondents (Plaintiff
& Defendants 2 & 3)

Prayer:- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree passed in A.S.No.161 of 2006 dated 28.02.2007 on the file of the Principal Sub Judge, Coimbatore reversing the Judgement and decree passed in OS.No.204 of 2003 dated 01.11.2006 on the file of the First Additional District Munsif, Coimbatore.

For Appellants : Mr.N.Kannan

For Respondents : Mrs.Lesi Saravanan for R1

JUDGMENT

The first and fourth defendants in the suit are the appellants herein. The suit is for permanent injunction against the defendants who were trying to trespass into the land of the plaintiff claim right of passage through the lane connecting Pattallamkoil street and Municipal lane.

2. The trial court after considering the evidence let in by both sides, held that, it should be innated immensely and imperatively that the suit passage that runs at the West of the plaintiff's house must be only a public pathway. The plaintiff failed to prove that the access to the residents at the south of Municipal lane, from their respective houses to Pattalamman Koil street except the suit pathway. For this reason, the trial court dismissed the suit.

3. The First Appellate Court, on re-appreciation of evidences has reversed the finding of the trial court on the ground that, the schedule of property mentioned in the title deeds of the plaintiff and the first defendant which are marked as Ex A-1 and Ex B-1 respectively, proves the title of the plaintiff over the suit land. Patta for the suit property Ex A-4 and Ex A-5 to A-10 establishes the possession is with the plaintiff. While the evidence belies the plea of the first defendant that she is the owner of the lane in dispute, her alternate plea of right of way as necessity also fails in view of the advocate commissioner report which says, the defendants have access to their property through the Municipal lane.

4. This court while admitting the second appeal has formulated the below substantial question of law:

" Has not the learned first appellate judge erred in holding that one cannot claim easementary right unless he accept the ownership of the other?"

5. The learned counsel for the appellant while admitting the title of the property to the plaintiff, submitted that the defendant ever since 1957 as a tenant in her property and later as owner using the pathway to reach Pattalamman Koil street without any hinderance. The plaintiff purchased the property where the pathway locate only in the year 2000. Even before that, in the year 1987 itself the 4th defendant has laid her water pipeline under the pathway thus their right to enjoy the pathway to access Pattalamman Koil Street ought not to have been restrained by the Lower Appellate Court. However he conceded that, the defendants have access to their property through Municipal lane but the disputed pathway is short cut for them to reach Pattalamman Koil Street.

6. Per contra, the Learned Counsel appearing for the respondents submitted that, the trial court failed to appreciate the fact that the pathway pointed out by the advocate commission was used by them as to have access to Pattalamman Koil Street. It is in their property and it was used for their personal use. No doubt they have another access through Municipal lane. It does not mean that, the pathway used by them for their convenience to reach Pattalamman Koil Street to be treated as public pathway. The first appellate court has corrected the error and allowed the appeal. There is no necessity to interfere on fact in the second appeal.

7. The examination of the findings of the courts below in the light of the evidence let in by parties, it is obviously clear that the trial court has erred in dismissing the suit for

injunction despite the fact that the plaintiff is the owner of the property and the pathway in dispute is not the only access for the defendant. The trial court has observed that the plaintiff is having access to their property through Municipal lane so there is no necessity for the plaintiff to have one more private path or passage at the West of his house. At the same time he has erred in omitting to note that the defendants also have access to their property through the very same Municipal lane and there is no easement of necessity over the plaintiff's property as pleaded by the first defendant in her written statement.

8. The First Appellate Court is perfectly right in reversing the judgment of the trial court which has erred both on facts and law. Having pleaded ownership over the suit lane based on the boundaries described in their title deed, as an alternate the defendant has pleaded right of easement on necessity. When the defendant has failed on both the grounds, the suit is liable to be allowed. Which the first appellate court has done.

9. In the light of the proven facts, this court hold that the substantial question of law formulated fails the test of law.

10. In the result, second appeal dismissed. No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rts

To

1. The Principal Sub Judge,
Coimbatore.

2. The First Additional District Munsif,
Coimbatore.

+lcc to Mr.N.Kannan, Advocate, S.R.No.72267

+lcc to Mrs.Lesi Saravanan, Advocate, S.R.No.72096

S.A.No.1330 of 2007

SV(CO)
CA(06/01/2017)