

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.10.2016

PRONOUNCED ON : 25.10.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.492 of 2008 and
M.P.No.1 of 2008

Ponnusamy ...Appellant/ 2nd Plaintiff

Vs

1.Narayanan

2.Ramalingam

... Respondents/
Defendants

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.160 of 2006 on the file of the Principal Sub Court, Virdhachalam, dated 10.07.2007 in confirming the judgment and decree in O.S.No.192 of 1998 on the file of the Additional District Munsif Court, Virdhachalam dated 19.10.2006.

For Appellant : Ms.V.Srimathi

For Respondent : Mr.C.Deivasigamani

JUDGMENT

The second plaintiff in the suit is the appellant herein. The suit was filed for declaration of easementary right of pathway in respect of the second Item of the suit schedule property and for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiffs in respect of the right of way from all corners of the second Item of the suit schedule property.

2.Originally the suit was filed by one Ms.Pounammal and Mr.Ponnusamy (the appellant herein) for a similar prayer against the defendants. It was claimed by the plaintiffs that the First Item of the suit schedule property was enjoyed continuously without any disturbance for 20 years by Ms.Pounammal and the second Item of the suit schedule property was enjoyed

continuously for more than 12 years without any disturbance by the second plaintiff. While so, the first defendant trying to put up a construction obstructing their right of pathway. Pending suit, based on the memo filed by the first plaintiff, her name was deleted and the relief as against the defendants in respect of the first item of property was also deleted.

3.The case of the second plaintiff (appellant) is that the second item of the property is in his possession and enjoyment for more than 12 years and to reach the road known as 'Moopanar Koil Street', on the Northern side of his property, he was using the vacant portion of the disputed land which is now being obstructed by the first defendant at the instigation of the second defendant.

4.The defendants in the written statement, contested the plaint averments on the ground that the property described in the suit schedule and Survey Number are not relevant to the subject matter of the suit. With an imaginary survey number, for which the second defendant has no right, the suit has been filed just to harass the defendants.

5.The second plaintiff attempted to trespass into the vacant site of the first defendant which was prevented by the first defendant, aggrieved by that with a false information, the suit has been filed to cause harassment to the defendants. The survey numbers referred to in the suit were not owned by the defendants and there was no road or pathway over the land of the first defendant. The second defendant in his written statement, has categorically contended that he is not a necessary party at all to the suit and he has no right or any grievance over the subject matter. The trial Court after framing issues, in respect of the relief sought by the second plaintiff re-framed the following issues:-

"1.Whether Moopanar Koil Street located on the Northern boundary of the suit property as alleged by the second plaintiff?

2.Whether it is correct to say that the first defendant's patta land is located on the North of suit property?

3.Whether the second plaintiff is entitled for the relief of declaration and permanent injunction in respect of the land located on the North of the second item of suit schedule property?

4.What other relief the second plaintiff is entitled for ?”

6.After considering the oral as well as documentary evidences let in by both parties, the trial Court held that the North of the second item of the suit schedule property, patta land of first defendant is situated and rejected the plea of the plaintiff that the Northern boundary of the second item of property is pathway and that being obstructed by the defendants. The trial Court has also positively found through documents Ex.B.5 - photo and oral evidence of P.Ws.1 to 3 that pathway (battai) for the suit property lies on its West side and not on the Northern side as claimed by the second plaintiff. The First Appellate Court after re-assessing the evidence, confirmed the trial Court finding and dismissed the appeal.

7.Desuited by both the Courts below, the plaintiff has preferred the present second appeal on the ground that the Courts below have erred by misconstruing the document in Ex.A.4 and failed to give weightage on the admission of D.W.1 regarding existence of pathway on the North of S.No.207/7. It is also contended by the appellant/second plaintiff that the defendants have failed to substantiate the case of oral purchase of the suit property; the plaintiff ought to have been granted the relief of easementary right and further, questions the veracity of the finding of the Courts below in respect of Ex.A.1. It is cordinal principle of law that the plaintiff has to stand or to fall on his own leg. The specific plea of the appellant/the second plaintiff is that, on the Northern portion of the second item of the suit schedule property, Moopanan Koil Street, is located and the first defendant has put up construction on it, trying to obstruct the ingress and egress to the plaintiff's house. The second item of the schedule property is identified by the second plaintiff as S.No.207/7 and the four boundaries are mentioned as under:-

“East of Battai
North of Narayanan thottam
West of Kuttai and
South of Kovil Veedhi.”

8.Whereas, from Ex.A.4, relied on by the second plaintiff which is in the plaint copy of suit No.581/2004 and through Ex.A.1 patta, the trial Court has rightly found that North of the second item of schedule property is S.No.207/6 and the land is classified as Natham and patta has been issued in favour of the first defendant. Suppressing these facts, the second plaintiff/appellant has pleaded, as if the vacant land North to East of the suit property being used as pathway by him.

9.As pointed by the trial Court, the second plaintiff/appellant has not even taken any measures to inspect the disputed portion of the land by an Advocate Commissioner to ascertain the physical feature knowing fully well that such an inspection will be futile to this case. However, through the evidence let in by the second plaintiff, the averments of the plaint is not established. From the evidence of P.W.3, it is found that in the suit village, the Government has granted house site patta to the landless till during the years 1984-1994. The second plaintiff and the first defendant are one such the beneficiaries to it. While the plaintiff was granted patta for S.No.206/7, the first defendant has been granted patta for S.No.207/6. It proved through the evidence and accepted by both the Courts below that pathway for the second plaintiff house is on its Western side and not on the Northern side.

10.For grant of easementary right of pathway, the parties should first establish the existence of pathway and also long use of the said pathway. Such a right of way could be vest with a particular individual or the owner of a particular tenaments by grant of particular description. In some case, it may be by custom. The second plaintiff falls under none of the above said category, while so, his plea seeking right of way through the land of the first defendant suppressing all the material facts is not tenable and the Courts below have rightly dismissed it. The appellant has not brought out any ground muchless substantial question of law for this Court to interfere with the findings of the Courts below. Hence the second appeal is liable to be dismissed.

11.In the result, the second appeal is dismissed and the decrees passed by the Courts below are confirmed. There shall be no order as to cost.

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Sd/-
Asst.Registrar (CS VII)

/true copy/

Sub Asst. Registrar

jbm

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To

1.The Principal Sub Court,
Virdhachalam.

2.The Additional District Munsif Court,
Virdhachalam.

1 cc to M/s.C. Deivasigamani, Advocate, Sr. 60808

1 cc to M/s.V. Raghavachari, Advocate, Sr. 61157

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