

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.188 of 2015
and
MP No.1 of 2015

1.Kuppayee
2.Yovaan

... Appellants/Plaintiffs

vs.

B.Anjali

...Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C. against the judgment and decree passed by the learned Principal Subordinate Judge, Erode dated 30.09.2013 in A.S.No.35 of 2013 confirming the judgment and decree passed by the learned First Additional District Munsif, Erode in O.S.No.678 of 2011 dated 18.03.2013.

For Appellants : Mr.N.Manokaran
For Respondent : Mr.B.Nedunchezhiyan

J U D G M E N T

The appellants are the defendants. The respondent filed the suit for bare injunction restraining the defendants either from putting up any well or any obstacles in the B schedule property or interfering with her user of the same.

2.The case of the plaintiff is that the 'B' schedule property is a pathway only through which she can have access to her property conveyed under Ex.A1 assignment. On the other hand, the defendants claimed the 'B' schedule pathway as their exclusive property and therefore, contended that the plaintiff cannot have any right of access through such property.

3.The trial court based on the respective pleadings of the parties and the evidence let in by them came to the conclusion that the defendants cannot claim any exclusive right over the 'B' schedule property, when the plaintiff has proved her case of only access to her property through the suit pathway referred to in 'B' schedule. It is also found by the trial court that the defendants failed to establish their claim of exclusive right over the pathway.

4.The defendants preferred an appeal before the Appellate Court which in turn, on appreciation of the facts and circumstances, dismissed the appeal thereby confirming the finding of the trial court. The Appellate Court specifically pointed out that the first defendant has not chosen to examine herself as a witness and no satisfactory and acceptable reasons are given for her non-examination and that the second defendant, is not a competent person to speak about the boundaries given in Ex.A1 patta and Ex.B2 Assignment order which came into existence long before the birth of DW1. Further, the Appellate Court pointed that unless the first defendant examine herself regarding as to why she has not objected to division of S.No.1/16 to T.S.No.65,66,67, the court cannot presume that she has objected to the division of T.S.No.66 as suit lane and that she having not taken any steps so far, cannot say such division was done behind her back and the same is not binding on her.

5.Challenging the concurrent findings rendered by the courts below, the present second appeal is filed before this court. While admitting the second appeal, the following substantial questions of law were framed:

"a. Whether the courts below were right in holding that the 'B' schedule property is a common lane based on the Commissioner's Report and the Sketch, that too, the Commissioner has not been examined, thereby affording opportunity to the defendants to challenge the same?

b. Whether the courts below were right in ignoring Ex.A.1 and Ex.B.2 which would clearly go to show that there is no common lane?

c. When the title for the 'B' schedule property is with the defendants, whether the courts below were right in granting decree for permanent injunction without ascertaining as to whether the so called right claimed by the plaintiff is by easement of any category?"

7.Heard Mr.N.Manokaran, the learned counsel appearing for the appellants and Mr.B.Nedunchezian, the learned counsel appearing for the respondent and perused the materials placed before this court.

8.It is not in dispute that the suit 'B' schedule is a pathway. The claim of the plaintiff is that the said pathway is the only access for her to reach her own property conveyed under Ex.A1 Assignment. On the other hand, the defendants contended that though it is a pathway, the plaintiff is not having any right over the same and on the other hand, they have their exclusive right and claim over the said pathway. Both the courts below have concurrently found against the appellants and

rejected their claim based on appreciation of facts, circumstances and the evidence let in by the parties. I don't find any perversity in such findings. Thus, it is evident from the findings rendered by the courts below that the suit pathway cannot be claimed by the defendants as their exclusive pathway and on the other hand, it is a common pathway available for both parties. Therefore, such factual finding rendered based on appreciation of evidence does not warrant any interference. Consequently, the substantial questions of law raised are answered against the appellants. Thus, the second appeal fails and the same is dismissed. The connected miscellaneous petition is also dismissed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1.The Principal Subordinate Judge,
Erode.

2.The First Additional District Munsif,
Erode.

Copy to:

The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to M/s.B.Nedunchezhiyan,advocate,sr.59418

+1 cc to M/s.N.Manokaran,advocate,sr.59358.

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S.A.No.188 of 2015

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