

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2016

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Second Appeal No.163 of 2016

1. Kannan  
2. Durgaraman ..... Appellants/Plaintiff

vs.

Packirisamy ...Respondent/Defendant

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 17.06.2015 made in A.S.No.16 of 2014 on the file of Additional Sub-Court, Mayiladuthurai, confirming the judgment and decree dated 29.11.2013 made in O.S.No.156 of 2011 on the file of Additional District Munsif Court, Mayiladurthurai.

For Appellants : Mr.S.Sounthar  
For Respondent : Mr.A.Muthukumar

J U D G M E N T

The appellants are the plaintiffs who lost before the Courts below in a suit for declaration of their easementary right over the suit property and for consequential relief of mandatory injunction and also for permanent injunction.

2. It is the case of the plaintiffs that they are entitled to easementary right over the suit property and that the defendant has caused obstruction by erecting a fence and cement pillar. On the other hand, it is contended by the defendant that there is no such pathway, as alleged by the plaintiffs and therefore, the plaintiffs cannot seek the relief, muchless the one of easementary right.

3. Before the trial Court, both the parties adduced their respective evidence. The trial Court also appointed an Advocate Commissioner, who in turn, filed a report and a sketch. Upon

considering the rival pleadings of the parties and the evidence let in by them, the trial Court found that the plaintiffs have not proved the existence of the suit pathway and their easementary right over the same by adducing any material evidence. Consequently, the trial Court dismissed the suit. Challenging the judgment and decree of the trial Court, the plaintiffs preferred an appeal before the First Appellate Court which also came to be dismissed after hearing both the parties by confirming the findings rendered by the trial Court.

4. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent and perused the materials placed before this Court. This matter is listed before this Court under the caption 'notice of motion' and therefore, this Court has to see as to whether any substantial question of law arises for consideration to entertain this appeal and to hear the matter further on such question of law.

5. On hearing the learned counsel for the appellants and on perusing the concurrent findings rendered by the Courts below which in turn were rendered on appreciation of evidence let in by the respective parties, I do not find any substantial question of law arises for consideration in this appeal, more particularly, I do not find any perversity in the findings rendered by both the Courts below as well. That being the position, I do not think that the appellants are entitled for any indulgence before this Court in this Second Appeal. Accordingly, the Second Appeal fails and the same is dismissed. No costs.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Additional Subordinate Judge, Mayiladuthurai.
2. The Additional District Munsif, Mayiladurthurai.

Copy to

The Record Keeper,  
VR Section, High Court, Madras.

+lcc to M/S.S.Sounthar, Advocate Sr.68934

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mp[co]  
srg 04/01/2017