



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: **17.11.2016**

C O R A M

WEB COPY

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

Second Appeal (MD) No.438 of 2011

1.The Tamil Nadu Police Housing Corporation,
Rep.by its Director General of Police,
Having Office at Poonamalee High Road,
Chennai-600 101.

2.The Commissioner of Police,
Madurai City,
Madurai.

: Appellants/Appellants/Defendants

Vs.

R.Dhanalakshmi

: Respondent/Respondent/Plaintiff

Prayer: - Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, to set aside the Judgment and Decree dated 11.01.2010 made in A.S.No.186 of 2009 on the file of the learned Principal Subordinate Judge, Madurai, partially modifying the Judgment and Decree made in O.S.No.1609 of 2004 on the file the Principal District Munsif, Madurai.

For Appellants : Mr.S.Sathish Kumar
Addl.Govt.Pleader.

For Respondent : Mr.S.Ramesh

J U D G M E N T

The defendants in the suit in O.S.No.1609 of 2004 on the file of the Principal District Munsif Court, Madurai, are the appellants in this Second Appeal.

2. The plaintiff/respondent filed a suit in O.S.No.1609 of 2004 for declaration that the plaintiff is entitled to the right of passage of 20 feet road, more fully, described in the ' B ' Schedule property for her ingress and egress to the property described in the ' A ' Schedule. The title to the property which is described as ' A ' Schedule is not in dispute. However, the plaintiff claimed that she has got a right to use the said 20 feet road to have access to 'A' Schedule property from the Telegraphic Office road and the O.C.P.M Road in Goripalayam, Madurai, as alleged in the plaint.



3. It is the specific case of the plaintiff that even before the defendants could construct the quarters, the pathway was in existence across the land and after the construction of Police quarters, the pathway became the road for the lay out. Since the plaintiff's case is that she has been using this 20 feet road which runs on eastern side of the property for a long time, she also claimed easementary right by prescription, apart from contending that she is entitled to use the pathway by necessity as there is no other alternative pathway to the plaintiff to have access to the property in 'A' Schedule property.

4. Incidentally, the plaintiff referred to an earlier suit which had filed in O.S.No.715 of 1974 filed by her predecessor-in-title on the file of the District Munsif Court, Madurai Town, claiming easement of necessity in respect of another property as against the owner thereof. The said suit came to be dismissed only on the ground that the plaintiff has got another pathway, viz., the present 'B' Schedule property and that therefore, she cannot succeed in the suit. It was held in the earlier suit that the plaintiff's predecessor-in-interest was not entitled to use the pathway therein by way of necessity. The appeal filed by the plaintiff's predecessor-in-interest in A.S.No.29 of 1996 was dismissed on 30.09.1980 and thereafter the second appeal filed by the plaintiff's predecessor in title in S.A.No.1273 of 1997 was also dismissed on 30.09.1980.

5. The suit was contested by the appellants mainly on the ground that the 'B' Schedule property belongs to the defendants absolutely and that the plaintiff or her predecessor in interest had no right in respect of 'B' Schedule property, which lies within T.S.No.1069. Since the suit 'B' Schedule property and the surrounding properties having a larger extent in T.S.No.1069, vested with the Police Department as per the proceedings of the Government the appellants contended that the suit 'B' Schedule is their absolute property. After dismantling the existing houses, it was further stated by them that the Government sanctioned 48 Women Police Quarters in T.S.No.1069. Since the Government gave permission to the Police Department to enter upon by proceedings dated 19.12.2003, the claim of the plaintiff that she has got easementary right, was stoutly under dispute. Except disputing the title of the plaintiff in respect of any portion of the 'B' Schedule property, the written statement filed by the second defendant is silent as to the enjoyment of the suit property by the plaintiff as a pathway to reach her property in 'A' Schedule property.

6. The trial Court decreed the suit as prayed for by taking into consideration the admission of DW.2 regarding the existence of the suit pathway and the enjoyment of the plaintiff as pathway. The lower appellate Court in A.S.No.186 of 2009 also fell in line



with the trial Court and confirmed the judgment of the trial Court.

7. Aggrieved by the concurrent findings of the Courts below, the present Second Appeal has been filed by the defendants.

8. The defendants have raised the following questions of law in the memorandum of grounds:

"a) Whether the trial Court is right in decreeing the suit as prayed for?

b) Whether the Court is right in decreeing the suit when the plaintiff had not established his possession over the suit mentioned property?

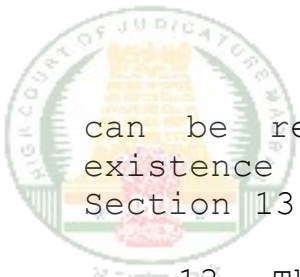
c) Whether the Court is right for non consideration of DW.2?"

9. Before considering the substantial questions of law raised in the second appeal, it is relevant to consider the oral evidence of DW.2, wherein, he has admitted that the plaintiff alone is enjoying the suit second items and that he is using the said second item as a pathway.

10. The evidence of DW.1 is also clear to the effect that the plaintiff has obtained drainage connection and water connection and even electricity service connection only through the suit second schedule property. Though the case of the defendants with regard to title in respect of the suit 'B' Schedule property is not in dispute, the easementary right, which is only a right attached to the defendants property, is not in derogation of appellant's claim of title. There is no specific denial in the written statement about the enjoyment of the property by the plaintiff as contended by the plaintiff. Merely by establishing the title of property, the defendants cannot dispute the plaintiff's easementary right.

11. In this case, the easement is not by prescription or by grant, but by easement of necessity. The only question that was posed before the Courts below was whether the plaintiff had any alternative pathway. Even in the earlier suit filed by the plaintiff, the plaintiff's predecessor in interest was unsuccessful as he failed to establish the right of easement through another property on the ground that the plaintiff's predecessor-in-interest was also enjoying the pathway which is described as 'B' Schedule in the present suit. In other words, the existence of pathway in 'B' Schedule was asserted and accepted even in the previous proceedings.

<https://hcservices.courts.gov.in/hcservices/> circumstances, though the Judgment and Decree in the previous suit is not binding on the Government or the defendants, the Judgment and Decree in the previous proceedings



can be relied upon for the limited purpose of assertion of existence of a right of easement which is permissible under Section 13 of the Indian Evidence Act.

13. The conclusion of mine is supported by the judgment in **Ranjithkumar -Vs- Gopal and another** reported in **(2003) 1 MLJ 573** wherein this Court has held that the judgment not *inter parties* is admissible in evidence to show that there was an assertion of a right to property in dispute.

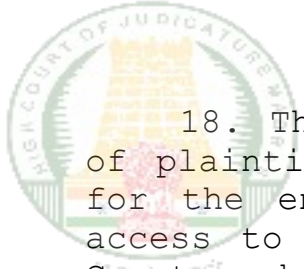
14. In another matter, the Honourable Supreme Court in **Tirumala Tirupati Devasthanams -Vs- K.M.Krishnaiah** reported in **1998 (3) MLJ 49**, in paragraph 8 held as follows:-

"8) A contention that judgments other than those falling under Secs.40 to 44 of the Evidence Act were not admissible in evidence was expressly rejected. Again B.K.Mukerjee J (as he then was) speaking on behalf of a Bench of four learned Judges in **Sital Das -Vs- Sant Ram and others A.I.R 1954 S.S. 606** held that a previous judgment not *inter partes*, was admissible in evidence under Sect.13 of the Evidence Act as a 'transaction' in which a right to property was asserted and 'recognized', In fact, much earlier, Lord Lindley held in the Privy Council in **Dinamonyi -Vs- Braimohini, (1902) I.L.R 29 Cal.190 (P.C)** that a previous judgment, not *inter partes* was admissible in evidence under Sec 13 to show who the parties were, what the lands in dispute were and who was declared entitled to retain them."

15. Hence, the contention of the learned Additional Government Pleader appearing for the appellants that the plaintiff has not proved her title to the 'B' Schedule property does not hold water as the plaintiff's claim is not based on the title, but on the basis of right to use 'B' Schedule property as a pathway which serves as an easement of necessity to enjoy the property of the plaintiff described in 'A' Schedule property.

16. Having regard to the findings of the Courts below and the admission of DW.2, the question of law raised by the appellants are answered against them.

17. For the reasons above stated, the Judgment and Decree in A.S.No.186 of 2009 on the file of the sub-Court, Madurai, confirming the Judgment and Decree of the trial Court in O.S.No.1609 of 2004 on the file of the Principal Sub-Court, Madurai, are upheld.



18. The trial Court has granted a decree declaring the right of plaintiff to use 20 feet road specified in suit 'B' Schedule for the enjoyment of plaint 'A' Schedule in the sense to have access to the plaintiff's 'A' Schedule. Consequently, the trial Court has granted the injunction restraining the defendants/appellants from preventing the plaintiff to use the pathway/20 feet road by any obstruction or by putting up any construction in the suit 'B' schedule property. The decree of the trial Court was modified by the lower Appellate Court directing the defendants to shift the compound wall which is marked as CD in Ex.A1 to the place marked as AB in Ex.A1. Since the document under Ex.A1 was marked, to avoid any confusion, the same may form part of the decree of the lower appellate Court.

19. In the result, the Second Appeal is dismissed, however, subject to the above modification. No costs.

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar

To

1.The Principal Subordinate Judge,
Madurai.

2.The Principal District Munsif,
Madurai.

3.The Director General of Police,
Tamil Nadu Police Housing Corporation,
Poonamalee High Road, Chennai-600 101.

4.The Commissioner of Police,
Madurai City, Madurai.

+1 CC to M/s.V.RAGHAVACAHARI, Advocate, SR No.69986

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No.70246

Second Appeal (MD) No.438 OF 2011

17.11.2016

gsr

SH/RR-ME:24.01.2017:5P/7C