

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23-11-2017

Delivered on : 11-12-2017

CORAM

THE HONOURABLE MS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.652 of 2017

and

C.M.P.No.16221 of 2017

1. Chinnaponnu
2. Gnanavadivel
3. Rajendran
4. Manippan
5. Krishnan
6. Mani

... Appellants/Respondents/Defendants

...vs..

1. Lakshmi
- 2.Kannan

... Respondents/Appellants/Plaintiff

Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree passed by the Hon'ble Sub-Judge, Dharmapuri in A.S.No.19 of 2015 dated 07.04.2017 reversing the decree and judgment passed by the Hon'be District Munsif (Trainee District Judge), Dharmapuri in O.S.No.36 of 2013 dated 17.10.2014.

For Appellants : Mr.R.Rajamani

For Respondents : Mr.R.Jayaprakash

J U D G M E N T

The unsuccessful defendants are the appellants. The suit is filed by the plaintiffs, seeking declaration of their easementary rights and for permanent injunction restraining the defendants from disturbing the usage of the suit pathway by the plaintiffs and to restore the 5 feet pathway by issuing a mandatory injunction.

2. The suit property is a pathway measuring 5 x 225 feet in Survey No.170/1, 168/1B in Umiyampati village, Dharmapuri. The Plaintiff's mother had purchased the same as per Ex.A1 in the year 1957. She had been using the pathway to lease her lands.

Survey No.170 belong to the defendants and the said pathway starts from the eastern side and runs up to Survey No.165.

3. It is stated that the defendants had changed the pathway at the southern end and the same was agreed by the plaintiff's mother Rajammal. The property purchased by the plaintiff's mother was sub- divided as 168/1B and the pathway also was sub divided as 170/2. As the plaintiffs refused to sell the property when approached by the defendants, the defendants started obstructing the usage of the pathway by the plaintiffs. Hence, the suit is filed for declaration, permanent injunction, and for mandatory injunction.

4. The defendants denied all the averments mentioned in support of the cause of action arising for the suit. According to the defendants, the plaintiffs are using the pathway running from Thoppur-Bommidi road and hence, sought for dismissal of the same.

5. A Commissioner was appointed in the Trial Court for the purpose of ascertaining the existence of the suit pathway. The plaintiffs have also filed their document of title, Chitta, Adangal etc., to prove their long usage of the suit pathway. The Trial Court dismissed the suit and on appeal the same was reversed and the suit was decreed.

6. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the caveator.

7. On a perusal of the written statement, it can be seen that the defendants have categorically admitted that even as per the revenue records, the pathway is running through Survey Nos.170, 168 and passing through several lands. Thus, the defendants have categorically admitted that there was a pathway mentioned in the revenue records in Survey No.170 which goes through Survey No. 168 also. The Lower Appellate Court has categorically found that Survey No.168/1B is 3 feet higher than the defendants property and Survey No.167 is 5 feet deep situated on the western side of 168/1 and the other Survey numbers are also lying at different heights or levels. Therefore, the contention of the defendants is rejected that the plaintiffs had been using the alternate pathway.

8. A perusal of the report of the Commissioner would go to show that in paragraph 5 of the report, it is stated that the defendants had obstructed from the point 'K' to 'O' by barbed iron fence. It is also found by the commissioner that the said barbed iron wire fencing is done very recently. Even from the point 'O' and 'K', the defendants had deliberately blocked the way by putting the coconut branches. The commissioner could find

a clear pathway after removing the obstructions. It is further stated in the report of the commissioner that there was a formation of 5 feet pathway and the defendants objected while measuring the same. The pathway between point 'C' and 'H' is also mentioned in the report of the commissioner. Thus, by taking into consideration, the report of the Commissioner, the Appellate Court had found that there is a 5 feet pathway situated on the southern side of Survey No.170/2. D.W.1 had also denied the existence of pathway provided in the FMB.

9. P.W.2 and P.W.3 also had stated in a clear categorical statement that there is a pathway on southern side of Survey No.170/2 which was used by the public and the same was prevented by the defendants by putting up fence. The allegation of the defendants that there was a pathway which had been used by the plaintiffs are not believed as the said pathway are of different heights or levels at different places and not fit for usage as pathway. Besides, there is no evidence that the same was intended to be used as a pathway.

10. Considering the above aspects, the Lower Appellate Court found that the plaintiffs and their mother were using the said pathway for a long time as it is the revenue pathway. The so called alternate pathway pointed out by the defendants is not available or not used by anybody. Thus, the Lower Appellate Court has also held that the plaintiffs are entitled to use the pathway as right of easement of necessity. It is also stated that the plaintiffs have been using the said pathway for more than 20 years i.e., from the date of purchase of the said property under Ex.A1 by the mother of the plaintiffs. Thus, the plaintiffs are entitled for the easementary right over the pathway and they are also entitled for an order of injunction restraining the defendants from disturbing the usage of the same.

11. In such circumstances, in the absence of any question of law, no interference is warranted to the Judgment of the Lower Appellate Court. सत्यमेव जयते

12. In the result, the Second Appeal is dismissed and the Judgment of the Lower Appellate Court granting the decree in favour of the plaintiffs are confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

raja

To

1. The Sub-Judge,
Dharmapuri.
2. The District Munsif
Dharmapuri.

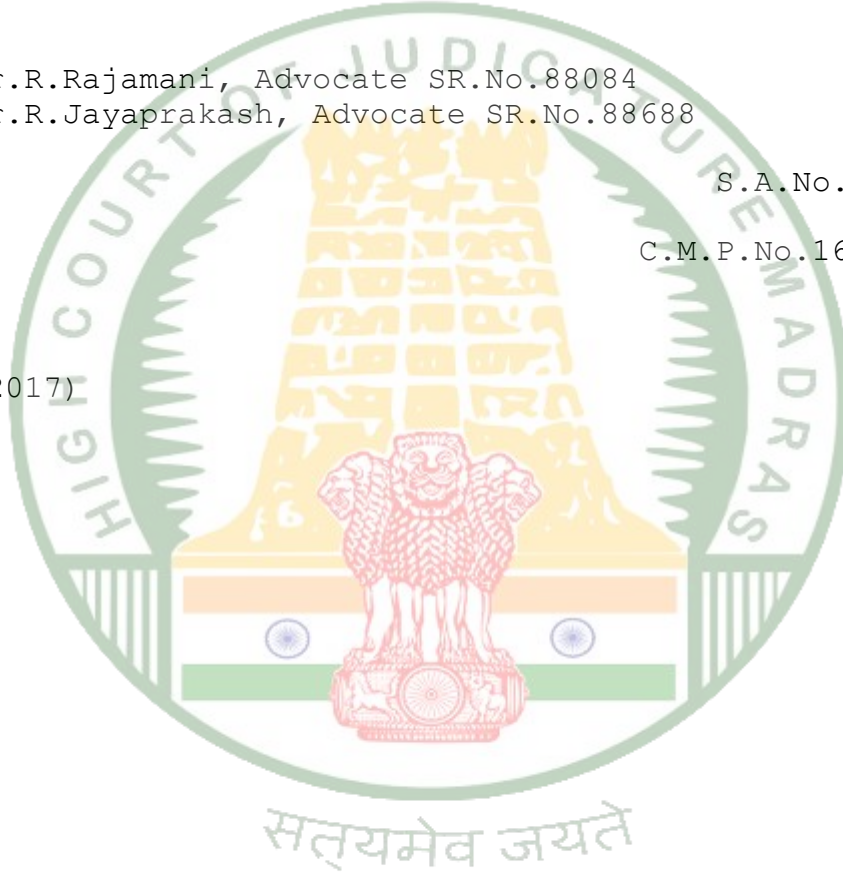
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V.R.Section, High court, Madras.

+1cc to Mr.R.Rajamani, Advocate SR.No.88084
+1cc to Mr.R.Jayaprakash, Advocate SR.No.88688

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