

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2017

CORAM

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

S.A.No. 688 of 1999

P.Balusamy ... Appellant/Plaintiff
Vs.
1. Palaniappan
2. P.Prabhakaran
3. P.Kanakaraj ... Respondents/Defendant

Prayer:- This Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgement and decree made in A.S.No.211 of 1997 on the file of the learned Principal Sub-Judge, Erode, dated 26.06.1998, confirming the Judgement and decree of the learned District Munsif Court, Erode in O.S.No.1121 of 1995 dated 10.09.1997.

For Appellant : Mr.A.Chanrasekar

For Respondents: Mr.P.T.Ramadevi

JUDGMENT

The suit in O.S.No.1121 of 1995 was filed by the present appellant against the respondents herein for relief of easement right in respect of the suit schedule property which lies on the eastern side of the appellants building. According to the appellant, he has right of easement over the suit schedule property about 5 feet space measuring 19 feet on the east to west and 37 feet on the north to west direction which is northern portion of the respondents' side.

2. The trial Court after appreciating the evidence let in by the rival parties particularly, the report of the Advocate Commissioner and Sketch which are marked as Ex.C.1 and Ex.C.2 and the other connected title deeds, held that the plaintiff has encroached upon the suit land and had constructed illegally bath room and septic tank which is bound to be removed and also confirmed the right of the plaintiff to use the suit portion as an access to carry out repair works and white washing his house. In all other aspects the trial Court rejected the plea of the plaintiff and made certain observations in the connected suit in O.S.No.404 of 1996 filed by the respondents. Aggrieved by that

the plaintiff has preferred appeal before the Sub Court, Erode in A.S.No.211 of 1997 and the same was dismissed and confirmed the order of the trial Court.

3. Aggrieved by that, the present appeal has been preferred by the plaintiff raising the following substantial questions of law:-

1. Whether the learned Judge is correct in holding that the plaintiff does not possess title to the disputed portion when under Sec.13 of Easement Act, it is enacted that on partition the grant of an easement of necessity or of an apparent continuous easement shall be implied?
2. Whether the Court below is correct in not considering the easementary right when admittedly the plaintiff has entry to his house only through the disputed portion of land.
3. Whether the plaintiff has established his title to the disputed portion by proving that he is in possession of the property by construction of the bathroom, entrance and windows ousting the rights of the other sharers even before others acquitted their rights.
4. Whether the Court below is correct in interpreting the document declaring title to the defendant when admittedly the plaintiff was allowed to put up construction and enjoy the disputed portion by the original owner of the property.

4. The learned counsel for the appellant submitted that the right of easement over the suit property has been wrongly deprived by the Courts below without considering the scope of Section 13 of easement Act. The spirit of easementary of necessity and established fact of denial of that enjoyment not been taken note by the Courts below.

5. This Court after going through the judgement of the Courts below finds that the respondent herein has filed the counter suit in O.S.No.404 of 1996, wherein they have sought for declaration for title and possession in respect of the suit property and the same has been allowed by the trial Court and confirmed by the first appellate Court. The second appeal of this appellant against the decree declaring the title of the respondent was dismissed.

6. When a competent Court has granted decree declaring the title of the respondent herein over the suit property, the appellant has no legs to sustain this second appeal on the ground that he had already being in possession and enjoyment by putting up construction in the encroached land.

7. Insofar as the right of pathway, if an easement is apparent and continuous and necessary for enjoying the said property, then the plaintiff have reason to sustain this appeal and seek for declaration in respect of his easement right under Section 13(b) of the Easement Act, contrarily, here in this case, the plaintiff has not established any such right of apparent of continuous enjoyment.

8. On this aspect both the Courts after considering the evidence as reserved the right of using the suit property for maintenance and white washing. Therefore, any limited right of easement available to the plaintiff is already been indicated by the Courts below and no further order is required.

9. Therefore, this Court finds no merit in the second appeal. Hence, the second appeal is dismissed. No order as to cost.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1. The Principal Sub-Judge,
Erode.
2. The District Munsif Court,
Erode.

+1cc to Mr.A.Chandrasekar, Advocate Sr.12050
+1cc to M/S.P.T.Ramadevi, Advocate Sr.12500

S.A.No.688 of 1999

nm[co]
srg 15/03/2017