

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.263 of 2018
and C.M.P.No.6710 of 2018

Singaraj
Represented by Power Agent
Nagarajan ... Appellant/Appellant/Plaintiff

Vs.

1.Vijayakumar
2.Sivan
3.Ponnusamy
4.Raja ... Respondents/Respondents/Defendants

Second Appeal filed under Section 100 of C.P.C against the judgment and decree dated 11.08.2017 made in A.S.No.60 of 2014 on the file of the Subordinate Court, Namakkal, confirming the judgment and decree dated 29.01.2014 made in O.S.No.864 of 2007 on the file of the Additional District Munsif Court, Namakkal.

For Appellant : Mr.S.Kalyanaraman

JUDGMENT

The Second Appeal is filed against the judgment and decree dated 11.08.2017 made in A.S.No.60 of 2014 on the file of the Subordinate Court, Namakkal, confirming the judgment and decree dated 29.01.2014 made in O.S.No.864 of 2007 on the file of the Additional District Munsif Court, Namakkal.

2.The appellant is the plaintiff, who lost in both the Courts below. The appellant filed O.S.No.864 of 2007 on the file of the Additional District Munsif Court, Namakkal, for injunction restraining the respondents from interfering with his use of pathway 'A', 'B', 'C', 'D', 'E' and 'F' to reach his properties. According to the appellant, he is having 2/10 shares in pathway 'A' and 'B' and he has easementary right by prescription in pathway 'C', 'D', 'E' and 'F'. His predecessor in title had the easementary right to use 'C', 'D', 'E' and 'F' pathway and the appellant purchased the said pathway by two sale deeds dated 20.10.2005 and 10.05.2006. His right of pathway is mentioned in the schedule in both the sale deeds, which are

mentioned as Exs.A1 and A2. The respondents have interfered with his right of use of pathway 'A', 'B', 'C', 'D', 'E' and 'F'. Hence, he has come out with the above suit.

3.The second respondent filed written statement and the same was adopted by the respondents 1, 3 and 4. The respondents denied all the averments made in the plaint and contended that the appellant has no easementary right in respect of pathway 'C', 'D', 'E' and 'F' and also denied that he has 2/10 shares in pathway 'A' and 'B'. According to the respondents, the appellant has an alternative pathway.

4.Based on the pleadings, the learned trial Judge framed necessary issues. Before the learned Judge, the appellant has examined one Nagarajan, his power agent as P.W.1 and one Palanisamy as P.W.2. The appellant marked nine documents as Exs.A1 to A9. The third respondent examined himself as D.W.1 and one Jayaraman, Village Administrative Officer, as D.W.2. The respondents did not mark any document. The witness documents were marked as Exs.X1 to X5 and the Court documents i.e., Advocate Commissioner's report and sketch were marked as Exs.C1 and C2 respectively.

5.The learned trial Judge considering the pleadings, oral and documentary evidence and Exs.A1, A2, A6 and A9, dismissed the suit holding that the appellant has failed to prove his easementary right over pathway in 'C', 'D', 'E' and 'F'.

6.Against the said judgment and decree dated 29.01.2014 made in O.S.No.864 of 2007, the appellant has filed A.S.No.60 of 2014 on the file of the Subordinate Court, Namakkal.

7.The learned Appellate Judge framed necessary points for consideration and independently considering the materials available on record, report of the Advocate Commissioner and sketch, Exs.A6 and A9 and judgment of the trial Court, dismissed the appeal.

8.Against the said judgment and decree dated 11.08.2017 made in A.S.No.60 of 2014, the present Second Appeal is filed by the appellant.

9.Heard the learned counsel for the appellant and perused the materials available on record.

10.The contention of the learned counsel for the appellant that the Courts below failed to properly appreciate Exs.A6 and A9 and also evidence of P.W.2, who has deposed about the easementary right of the appellant in pathway 'C', 'D', 'E' and 'F'. The said contention is without merits. Both the Courts

below have considered all the documents relied on by the appellant, especially Exs.A6 and A9 and evidence let in by the appellant and respondent, report of the Advocate Commissioner and rejected the claim of the appellant. The Courts below have held that the suit for bare injunction without seeking the relief of declaration is not maintainable, when the respondents denied the right of the appellant. Both the Courts below have rejected the claim of the appellant on considering the facts of the case and such finding is finding of facts. It is a concurrent finding and there is no illegality in such finding. No question of law much less than the substantial question of law has been raised in this Second Appeal.

11.In the result, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Subordinate Judge,
Namakkal.
- 2.The Additional District Munsif,
Namakkal.

+1cc to Mr.S.Kalyanaraman, Advocate Sr.25815

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