

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2018

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.No.101 of 2008
and MP.No.1 of 2008

1.S.Velusami
2.C.Mani
3.B.Venkatesan

..... Appellants/Appellants/Plaintiffs

Vs

1.The State of Tamil Nadu
Rep by District Collector
Erode District, Erode.

2.The Tahsildar
Erode Taluk
Erode -1.

3.T.Muthuvel
4.S.Sengodan

5.Kathirampatti Panchayat
Rep by its President
Kathirampatti
Erode Taluk and District.

..... Respondents/Respondents/Defendants

Prayer : Second Appeal filed under Section 100 of CPC against the judgment and decree of the learned Principal Subordinate Judge, Erode in A.S.No.105 of 2005 dated 7.3.2006, confirming the judgment and decree of the learned First Additional District Munsif, Erode in O.S.No.758/2000 dated 28.09.2005.

For Appellants : Mr.S.Kaithamalai Kumaran

For Respondents : Mr.N.Manikandan
Government Advocate [RR1, 2 & 5]

JUDGMENT

The appellants herein are the plaintiff in O.S.No.758 of 2000 on the file of First Additional District Munsif Court, Erode, which the plaintiffs have filed for declaration of their right of access along every point of their eastern boundary of the property in Survey No.67/5 of Kathiirampatti Village, Erode Taluk. The property to the further east of S.No.67/5 is Survey No.71, wherein the defendants 3 and 4 have encroached and put up some huts, have obstructed the plaintiffs' right of access to the road on further east. It is in this circumstance, the plaintiff seeks a decree of mandatory injunction against the defendants 1 and 2, to remove the obstruction caused by the defendants 3 and 4. There are other reliefs as well. Parties would be referred to by their rank before the trial Court.

2. The suit was dismissed on the ground that the property to the east of the plaintiff's property comprised in Survey No.71 is classified in the revenue records as a "Odai", a water body, and the nature of this property is such that the plaintiffs cannot have any right of access. The first Appellate Court concurred with the same in A.S.No.3105 of 2005. Aggrieved by the decree of the Courts below, the plaintiffs are before this Court in the present appeal.

3. The learned counsel for the appellants submitted that the revenue classification is wrong, and there exists a cart-track along Survey No.71 through which, the plaintiffs have got absolute right of access along the eastern boundary.

4. In response, Mr.N.Manikandan, learned Government Advocate appearing for the respondents 1, 2 and 5 submitted that the property in Survey No.71 and the property to its east in Survey No.72 are all classified as 'Odai' that they are all rain-fed and when it dried, the villagers make use of those property to cut across Survey Nos.71 and 72 and therefore, there is only a cart-track available. Ms.Amutha, Tahsildar, Erode Taluk Office, too is present to assist this Court and the Tahasildar explained the relative position of these survey numbers with the aid of necessary plans. This apart, the learned Government Advocate submitted that the huts put up by the defendants 3 and 4 have since been removed, and also added that as per revenue records, as on 09.01.2008, the appellants have sold the property to one Logakumaresan. He also added both the Courts below have found that there is a pathway to the north of the plaintiff's property in Survey No.67/5 and the plaintiffs already have access to his property through this pathway.

5. This appeal has not yet been admitted. On perusing the records and on hearing the learned Government Advocate, this Court finds that there is no perversity or wrong appreciation of evidence by the Courts below. It is not a case that the plaintiffs' property has no access. And, whatever access they claim beyond their eastern boundary is only seasonal, and during rainy season it may not be possible to have an access, and to seek a right of access over a water-body itself would amount to encroachment, and the channel/odai is now free from all the encroachments put up by the respondents 3 and 4 and also by others elsewhere in the said Odai.

6. In view of the above fact, this Court does not find anything to be interfered with and accordingly this appeal is dismissed and the judgment and decree of the Principal Subordinate Judge, Erode in A.S.No.105 of 2005 dated 7.3.2006, confirming the judgment and decree of the learned First Additional District Munsif, Erode in O.S.No.758/2000, is hereby confirmed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Principal Sub Judge
Erode.

2.The I Additional District Munsif
Erode.

3.The Section Officer
VR Section
High Court, Madras.

+1cc to the Spl Government Pleader, S.R.No.82824

S.A.No.101 of 2008

EV(CO)

GSP(13/02/2019)