

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.06.2018
PRONOUNCED ON : 06.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1928 of 2004

1. Viswanathan
2. Palaniammal (Deceased)
3. Chellammal
4. Saraswathi

... Appellants/Appellants/
2nd Defendant/LR of 1st Defendant

(Appellants 1,3 & 4 are recorded as
Lrs of the deceased 2nd appellant vide
order of the Court dated 20.06.2018
in S.A.No.1928/2004)

Vs.

Karuppanna Gounder

... Respondent/Respondent/
Plaintiff

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the court of the Principal District Judge, Namakkal in A.S.No.281 of 2002 dated 29.12.2003 confirming the judgment and decree of the court of the Additional District Munsif, Namakkal in O.S.No.1136 of 1987 dated 28.10.1994.

For Appellants : Mr. C.Jagdish

For Respondent : Mr.K.R.Nishanth
for M/s. V.P.Sengottuvel

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 29.12.2003, passed in A.S.No.281 of 2002 on the file of the Principal District Court, Namakkal, confirming the judgment and decree dated 28.10.1994, passed in O.S.No.1136 of 1987, on the file of the Additional District Munsif Court, Namakkal.

2. The second appeal has been admitted on the following substantial questions of law:

"1. Whether the plaintiff has satisfied the requirements of Sec.15 of the Easements Act, for claiming acquisition of easement by prescription through suit pathway A,B,C,G.?

2. Whether the Courts below are right in decreeing the suit in respect of P and P1 lands on the mere boundary recitals contained in Ex.A1, A3 and A5?

3. Whether the Courts below erred in ignoring Ex.B1 which does not show the existence of A,B,C,G suit pathway?"

3. Considering the scope of the controversy involved in this matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail. Suffice to state that the plaintiff has laid the suit claiming the easementary right of prescription in respect of the suit pathway shown as ABC in the plaint plan. It is found that the properties shown as P, P1 and P2 belong to the plaintiff and the properties shown as D, D1 and D2 belong to the defendants. The plaintiff claims to have acquired the properties belonging to him by way of the sale deeds marked as Exs.A1, A3 and A4. As above noted, the case of the plaintiff is that the ABC pathway is in existence from time immemorial and the same has been used as a pathway to take men, cattle and vehicles for reaching his lands and accordingly, it is the case of the plaintiff that he and his predecessors had been using the suit ABC pathway openly, continuously and adversely to the knowledge of everyone, including the defendants and thereby, acquired the easementary right by way of prescription in respect of the suit pathway and inasmuch as the defendants obstructed the usage of the plaintiff in respect of the suit pathway without any authority, according to him, he has been necessitated to lay the suit for appropriate reliefs.

4. The defendants, in brief, had taken the plea that the suit pathway is not in existence as depicted in the plaint plan and further, according to the defendants, the plaintiff and his predecessors in interest had not used the suit pathway as put forth in the plaint and according to the defendants, the plaintiff has alternative pathway to reach his lands and it is the case of the defendants that the plaintiff has not prescribed his right to the alleged suit pathway by way of prescription and hence, the suit is liable to be dismissed.

5. As above noted, the plaintiff claims title to the

properties P, P1 and P2 by way of the sale deeds marked as Exs.A1, A3 and A4. Of them, Ex.A1 sale deed is dated 15.09.67 and as found from the recitals contained therein and the boundary recitals, it is found that by way of the said document, the purchaser therein had been given the right of way to carry men, cattle and vehicles in the north south common pathway situated on the western end and also in the mamool pathway and similarly, it is also noted that in Ex.A4 sale deed, dated 05.11.75, there is a reference about the mamool pathway and similarly, in Ex.A3, dated 10.11.78, the property therein is conveyed inclusive of the right of pathway over the east west pathway and north south pathway on the western side and accordingly, it is found that the Courts below, on an appreciation of the recitals contained in the abovesaid documents, particularly, the boundary recitals and the nature of the right conferred in respect of the pathway, including the mamool pathway, rightly held that the ABC pathway is in existence from time immemorial and had been in usage by the plaintiff's predecessors-in-interest as well as the plaintiff and accordingly held that the plaintiff is entitled to the usage of the suit pathway by way of easementary right by prescription.

6. That apart, it is also noted that in respect of the 84 cents of land purchased by the defendants under Ex.A6 sale deed, dated 22.11.67, it is found that there is a clear reference about the east west itteri on the northern side of the said property. Accordingly, it is found that the first defendant also during the course of cross examination has admitted the existence of the east west itteri shown as the northern boundary in Ex.A6. However, according to the defendants, the said boundary recital had been wrongly mentioned in the sale deed. However, the fact remains that inasmuch as the east west itteri has been in existence over a long period of time from time immemorial, accordingly, under Ex.A6 sale deed, the same has been depicted as the northern boundary and therefore, the contention of the defendants that the same had been incorporated wrongly as the northern boundary cannot be accepted in any manner. Not only that, the sale deed in respect of the property lying to the north of the east west itteri has come to be marked as Ex.A7, dated 18.06.1934, wherein, the property described under the said document has been shown to be located to the north of the east west itteri and accordingly, it is found that the east west itteri shown as the southern boundary under Ex.A7 document has been in existence from time immemorial and in such view of the matter, it is found that the defendants as such cannot be allowed to claim any exclusive right over the suit pathway as put forth in the written statement.

7. As rightly found by the Courts below, it is found that

the defendants seem to have projected exclusive claim of title to the suit pathway by way of the purchase of the same on 21.08.87, a few days prior to the institution of the suit. However, when it is found that the suit pathway has been in existence from time immemorial and accordingly, the right over the suit pathway had been enjoyed by the plaintiff's predecessors in interest as well as the plaintiff beyond the statutory period and accordingly, the right in respect of the same had been specifically set out and detailed in the sale deeds as above referred to, it is found that the defendants cannot be allowed to stifle the abovesaid entitlement of the plaintiff by claiming exclusive right over the suit pathway.

8. The defendants though would claim that the plaintiff has other access to reach his lands, as rightly found by the Courts below, if any alternative pathway is available to the plaintiff, the defendants would have pointed the same to the Advocate Commissioner and on the other hand, it is found that the defendants have not pointed about the existence of any other alternative pathway to the plaintiff for reaching his lands. The said facts has also been admitted by DW1, during the course of cross examination. Accordingly, it is found that inasmuch as there is no alternative pathway to the plaintiff to have access to his lands, the defendants have not endeavoured to pointout the same to the Advocate Commissioner during the inspection of the properties concerned.

9. The Courts below, on the basis of the appreciation of the abovesaid materials placed on record, coupled with the commissioner's report and plan, noting the existence of the suit pathway as well as the existence of the same from time immemorial and the usage of the same by the plaintiff and his predecessors beyond the statutory period openly and continuously, accordingly determined that the plaintiff is entitled to the reliefs of declaration and permanent injunction in respect of the suit pathway as prayed for.

10. The only point that has been urged in this second appeal is that the plaintiff's earliest sale deed being 15.09.1967, marked as Ex.A1 and the suit having been laid in the year 1987, according to the defendants' counsel, the plaintiff cannot be held to be enjoying the right over the suit pathway by prescription as the said enjoyment does not cover the period contemplated under Section 15 of the Easement Act and therefore, it is urged by him that the Courts below had erred in upholding the plaintiff's case. However, the fact remains that, as above discussed, when the suit pathway is found to be in existence from time immemorial, as found from the recitals contained in the documents above referred to, when according to the plaintiff's case, he and his predecessors in interest had been

using the suit pathway openly, continuously and adversely to the knowledge of everyone and including the defendants by way of prescription and when the plaintiff has established the abovesaid claim by placing acceptable and reliable materials and also the defendants had failed to establish the existence of any other pathway for the plaintiff to have access to his lands, accordingly, it is found that in the nature of the preponderance of probabilities, the Courts below are justified in upholding the reliefs sought for by the plaintiff in respect of the suit pathway and no interference is called for in respect of the same. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

11. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District Court,
Namakkal.
2. The Additional District Munsif Court,
Namakkal.

Copy To

The Section Officer,
V.R.Section, High Court,
Madras. (2 Copies)

+2ccs to M/s.V.P.Sengottuvel, Advocate, S.R.No.44424

S.A.No.1928 of 2004

PPA(CO)
CS/23/08/18