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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.06.2018

PRONOUNCED ON : 05.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No. 2155 of 2004

Sultan Abdul Khader
rep. by His Power Agent
Mr.Mohammed Jabbar Saddique
No.17-A, Malaya Street,
Kodikalpalyam,
Tiruvavarur Taluk and District.

..

Appellant

Vs.

The Commissioner,
Tiruvavarur Municipality,
South Main Street,
Tiruvavarur Town.

..

Respondent

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 12.02.2004 passed in A.S.No.39 of 2002 on the file of the Subordinate Court, Tiruvavarur, confirming the Judgment and Decree dated 26.11.2001 passed in O.S.No.252 of 2000 on the file of the District Munsif Court, Tiruvavarur.

For Appellant : Mr.B.Ramamoorthy

For Respondent : Mr.V.Raghupathi

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 12.02.2004 passed in A.S.No.39 of 2002 on the file of the Subordinate Court, Tiruvavarur, confirming the Judgment and Decree dated 26.11.2001 passed in O.S.No.252 of 2000 on the file of the District Munsif Court, Tiruvavarur.

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

" (i). Whether the findings of the Courts below that suit for injunction without the prayer of declaration is



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correct and whether it is mandatory to pray for declaration of easement right?

(ii). Whether the finding that the appellant has not proved the easement by prescription for statutory period is sustainable when Ex.A5 to Ex.A7 can be relied for collateral purpose to prove the usage of the suit property as pathway for more than statutory period?

(iii). Whether the defence of the respondent that appellant can join with neighbours and arrange an alternative pathway is sustainable in law and whether the Court can dismiss the suit overlooking such vital admissions?

(iv). Whether the reasons for dismissing easement of necessity and easement by prescription has to be pleaded in detail as found by the Court below are sustainable in law?"

3. After hearing the submissions put forth by the counsel for the appellant and the respondent, it is seen that the dispute, with reference to the suit property, had been already determined by this Court in another litigation and accordingly, it is seen that no further discussion is required as regards the entitlement of the plaintiff to the reliefs sought for in the suit.

4. Suffice to state that the plaintiff has laid the suit against the respondent/defendant for the reliefs of mandatory injunction and permanent injunction in respect of the suit property described as Ward No.2, Block No.44, T.S.No.2712 extent 3375 sq.feet Panagal Road, boundaries West of Panagal Road, East of property belonging to the plaintiff, North of property in the possession of Venkatachalam, South of property in the possession of Ramachandran in Therkkuchethy Vattam, Tiruvarur Taluk No.3, Tiruvarur Municipal Limits and the compound wall newly raised by the defendant on the west and the fence on the east should be removed and the above property should be kept vacant. It is contended that as the defendant has put up the compound wall and the fence in the abovesaid property, thereby, preventing the access of the plaintiff to his property from Panagal Road, the plaintiff has come forward with the reliefs above mentioned. The defendant has disputed the claim of right of pathway in respect of the suit property projected by the plaintiff and contended that no right accrues to the plaintiff to have access



to his property through the suit property as alleged in the plaint and accordingly, the suit property being vested with the defendant Municipality, the defendant Municipality is entitled to put up the compound wall and fence as deemed fit and accordingly, sought for the dismissal of the plaintiff's suit.

5. From the materials placed on record, it is found that in respect of the same property directing the defendant Municipality to remove the compound wall and the fence as claimed by the plaintiff in the present suit, particularly, from the evidence adduced in this matter through DW1, it is seen that the title holder of the property situated to the north of the plaintiff's property viz., Sivakumar and the title holder of the property situated to the south of the plaintiff's property viz., A.K.M. Towers Private Limited, had preferred similar suits against the defendant Municipality seeking for the removal of the compound wall and the fence claiming that they have a right of access through the suit property for reaching their respective properties and it is found that the above mentioned Sivakumar and A.K.M.Towers Private Limited., had preferred the suits in O.S.Nos.119 & 120 of 2000 on the file of the District Munsif Court, Thiruvarur, against the defendant Municipality and it is seen that though the above suits had come to be dismissed by the trial Court, the first appellate Court set aside the judgement and decree of the trial Court and accordingly, granted the reliefs sought for by them in the abovesaid suits. Challenging the same, the defendant Municipality had preferred the second appeal Nos.678 and 703 of 2004 respectively and in the abovesaid second appeals, this Court, after holding that the plaintiffs therein are entitled to use the disputed property for having access to their respective properties, accordingly on an analysis of the materials placed on record, dismissed the second appeals preferred by the defendant Municipality and thereby, confirmed the judgement and decree of the first appellate Court. Accordingly, it is found that the defence witness DW1 examined in this matter has also admitted that Sivakumar and A.K.M. Towers had laid the civil suits against the defendant Municipality seeking the similar reliefs sought for by the plaintiff in this suit. When the litigants viz., Sivakumar and A.K.M.Towers had been granted the right of access through the property in dispute by directing the defendant Municipality to remove the compound wall and the fence and when it is found that the plaintiff had also sought the similar reliefs against the Municipality, as rightly put forth by the plaintiff's counsel, I do not find any reason to deviate from the determination of this Court rendered in Second appeal Nos.678 and 703 of 2004 in upholding the entitlement of the plaintiffs in O.S.Nos.119 and 120 of 2000 on the file of the District Munsif Court, Thiruvarur, granting the similar reliefs against the defendant Municipality and accordingly, following the same, I hold that



the plaintiff is also entitled to seek the reliefs sought for against the defendant Municipality as the plaintiff is only seeking the similar right of access through the suit property by removing the compound wall and the fence put up by the defendant Municipality. Accordingly, it is found that the judgment and decree of the Courts below are liable to be set aside in the light of the decision of this Court rendered already in respect of the same subject matter in Second appeal Nos.678 and 703 of 2004.

6. Not only that, it is found that as seen from the decision reported in 2014 (6) CTC 255 (Tiruvarur Municipality by its Commissioner Vs. A.K.M.Towers Private Ltd.), the defendant Municipality has preferred SLP against the judgement of this Court passed in S.A.Nos.678 & 703 of 2004 in respect of the present subject matter and it is found that the special leave petition preferred had been dismissed and it is also noted that the review application preferred by the Municipality seeking to review the judgment and decree of this Court passed in second appeal Nos.678 & 703 of 2004 also had come to be dismissed. Thus, when in respect of the same subject matter, this Court had upheld the entitlement of the plaintiff's neighbours viz., Sivakumar and A.K.M.Towers Private Limited, to have access through the suit property by directing the defendant Municipality to remove the compound wall and the fence put up by them, following the same, I hold that the plaintiff is also entitled to obtain the similar reliefs as prayed for.

7. In the light of the abovesaid discussions, the substantial questions of law formulated in the second appeal are answered in favour of the plaintiff in consonance with the determination of the subject matter by this Court in second appeal Nos.678 & 703 of 2004 dated 27.08.2012.

In conclusion, the Judgement and Decree dated 12.02.2004 passed in A.S.No.39 of 2002 on the file of the Subordinate Court, Tiruvarur, confirming the Judgment and Decree dated 26.11.2001 passed in O.S.No.252 of 2000 on the file of the District Munsif Court, Tiruvarur, are set aside and the suit laid by the plaintiff in O.S.No.252 of 2000 is decreed as prayed for. Accordingly, the second appeal is allowed. There is no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms



To

1. The Subordinate Court,
Tiruvarur.

2. The District Munsif Court,
Tiruvarur.

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

+1cc to Mr.B.Ramamoorthy, Advocate, S.R.No.43333

+1cc to Mr.V.Raghupathi, Advocate, S.R.No. 43823

S.A.No. 2155 of 2004

SS(CO)
GN(29/01/2019)