

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :23.03.2018
PRONOUNCED ON:04.04.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.544 of 2004

Deepan Nagar Residents by

1.G.Kaliyasamy

2.A.Arumugham ...Plaintiffs/Respondents 1 & 2/ Appellants

Vs.

1.The Government Industrial Institute,
Cuddalore,
rep. by its Principal.

2.The Collector of Cuddalore District,
Cuddalore.

3.The Commissioner of Cuddalore Municipality,
Cuddalore. ...Defendants/Appellants/3rd Respondent

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree made in A.S.No.90 of 2003 on the file of Principal District Judge, Cuddalore dated 25.02.2004 reversing the judgment and decree made in O.S.No.543 of 2000 on the file of the Principal District Munsif Court, Cuddalore, dated 11.03.2003.

For Appellants : Mr.K.Venkatapathy

For RR1 and R2 : Mrs.A.Madhumathi
Additional Government Pleader (CS)

For RR3 : No representation

No appearance

Set exparte vide order dated
23.03.2018

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 25.02.2004 passed in A.S.No.90 of 2003 on the file of the Principal District Court, Cuddalore reversing the judgment and decree dated 11.03.2003 passed in O.S.No.543 of 2000 on the file of the Principal District Munsif Court, Cuddalore.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiffs in brief is that they are the residents of Deepan Nagar and there are 74 plots in the nagar and to the south of Deepam Nagar, lie the Counselor Sundaram Nagar with about 30 houses, Ratchagar Nagar with about 200 houses and Kannaiah Nagar with about 50 houses and to the east of Deepan Nagar are the plots in the name of Thirumurthy garden and the plaintiffs have filed a plaint plan and the existing pathway leading to all the aforesaid nagars from Nellikuppam-Cuddalore main road is described in the 'B' schedule property and Deepan Nagar is the 'A' schedule property and the original pathway is shown as the 'C' schedule property and the first defendant's institute is abutting Cuddalore-Nellikuppam main road and there was a regular 30 feet wide pathway along points H-I-D-J and E-K as shown in the plaint plan, down south upto Tirupathiripuliyur crossing Gadilam river and in or about 1958, the first defendant requested the Government to allot the area between the points H-I-J-D for its use which is shown as 'C' schedule and objections were put forth for taking over the said property and after negotiations, it was agreed that the residents would be provided with the alternative road and accordingly a new pathway was formed along with A-B-C-D-E-F-P-A to a width of 30 feet during the year 1959 itself and thereafter the C schedule property was handed over to the first defendant and the first defendant had constructed on that portion and west of it, up to B-C and thereafter the property west of A-G was purchased by the first defendant and the pathway, the 'B' schedule property is the only way and the same has been in existence and in the common use of the general public for more than 40 years and thereby the residents have prescribed the right of easement in respect of the same and the first defendant has also acquiesced to the same and in fact, pipes, telephone connection wires etc., are running beneath the abovesaid pathway and while so, the writ petitions were filed in respect of the problems faced by the public and they were disposed of on 01.08.1994 directing the parties to approach the Civil Court for appropriate reliefs and the first defendant objected to the use

of the plaintiffs in using the suit pathway by giving out threats that they would put up the compound wall or erect the fencing and hence left with no other alternative, according to the plaintiffs, they had been necessitated to lay the suit for appropriate reliefs.

5.The case of the defendants in brief is that the suit laid by the plaintiffs is not maintainable either in law or on facts. The plaint plan is not correct and the pathway shown as H-I-D-J is not the pathway and the said portion of the land was transferred from the Revenue Department to the Department of Industries and Commerce as per G.O.Ms.No.1897, Revenue Department dated 29.06.1959 and on the whole, the Government Industrial Training Institute is located in a total area of 24 acres and 09432 sq.feet and no public was allotted to use that area and no public has claimed this area for their usage and hence the plaintiffs are not entitled to claim any easementary right in respect of the alleged pathway and the public have purchased the plots from the real estate owners without knowing correctly the exact approach road to the Nagar and the real estate owners are very well aware that the suit property belongs to the first defendant and hence the claim of the prescriptive right over the suit property by the plaintiffs does not arise and the suit is without any cause of action and therefore liable to be dismissed.

6.In support of the plaintiffs' case, P.Ws.1 to 4 were examined. Exs.A1 to A7 were marked. On the side of the defendants, D.Ws.1 to 3 examined. Exs.B1 to B10 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit as prayed for. On appeal, the first appellate court, on an appreciation of the materials placed, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendants 1 and 2, dismissed the suit laid by the plaintiffs. Aggrieved over the same, the present second appeal has been laid.

8.At the time of admission of the second appeal the following substantial questions of law were formulated for consideration.

- i. Whether lower appellate court is right in law in dismissing the suit by reversing the well considered judgment and decree of the trial court without considering that the plaintiffs/appellants have acquired the right of easement over the pathway by prescription especially such right having been accrued to the plaintiffs more on

necessity than an equity?

ii. Whether the lower appellate court erred in law by dismissing the suit by not applying the principles laid down by this Court in 1992-2 L.W Page 392: 1998-2 L.W. Page 660 and 99 L.W. Page 833?

9.The 'B' schedule property is the suit property. The plaintiffs' claim eastmentary right in respect of the suit property, by way of prescription and further according to them, they are also entitled to use the suit property as pathway to have access to their nagars by way of eastment of necessity.

10.The materials placed on record would go to show that the first defendant had been allotted a portion of the property shown as H-I-D-J in the plaint plan, by the Revenue Department as per G.O.Ms.No.1897 Revenue Department dated 29.06.1959. It is the case of the plaintiffs that at that point of time, after several negotiations, the suit property had been earmarked to be used as the pathway for the residents of the various nagars in the adjoining area. The suit property as above noted is shown as the 'B' schedule property. It is the case of the first defendant that inclusive of the suit property, the first defendant institute is functioning and hence there is no question of the plaintiffs gaining access through the suit property claiming the same as the pathway for reaching their nagar. It is thus the specific case of the defendants that the suit property has never been used as pathway and hence the suit laid by the plaintiffs is liable to be dismissed.

11.As above seen, on two grounds the plaintiffs claim right over the suit property. It is the case of the plaintiffs that when the property shown as 'C' schedule was given to the first defendant's institute by the Government, the suit property has been agreed to use as pathway by the general public. However, with reference to the same, the abovesaid claim of the plaintiffs, there is no acceptable material forthcoming.

12.In this connection, the documents marked as Exs.A1 and A2 do not throw any light on the plaintiffs' claim of right over the suit property as pathway. Ex.A3 is the field map and the said document would also be of no assistance to uphold the plaintiffs' case. Ex.A4 is the copy of G.O.Ms.No.1897 dated 29.06.1959. A reading of the same would go to show that the land comprised in TS.No.2577 measuring 33454 sq.feet (77 cents) in Cuddalore Town and Taluk was transferred to the Department of Industries and Commerce for the construction of the Industrial School. There is no indication contained therein that by way of the abovesaid transfer, the suit property had been agreed to be used as the path way for the general public.

It is thus found that as regards the case of the plaintiffs that before the lands had been transferred to first defendant, the suit property had been agreed to be used as the pathway by one and all for having access to their respective nagars as such cannot be accepted in the absence of any proof pointing to the same. Ex.A5 is the copy of the order passed in the writ petition Nos.5417 to 5419 of 1997 and by way of the said order, the High Court had directed the petitioners to approach the Civil Court for appropriate remedies as regards their claim of the pathway right to their respective nagars. Therefor the above said document would of no help to hold that the suit property had been earmarked as the pathway for the plaintiffs and the general public. Ex.A6 the copy of the letter sent by the Tahsildar to the first defendant informing that the the first defendant should not block the road leading to Deepan Nagar without consulting the Revenue and Police officials. By way of the same it cannot be held that the first defendant had agreed that the suit property had been used as the pathway by the plaintiffs and the general public. As rightly determined by the first appellate court, the said letter marked as Ex.A6 is found to have been issued in the light of the land and order problem prevailing in the locality and by way of the same, the dispute in respect of the suit property as such cannot be said to have been determined in favour of the plaintiffs. Ex.A7 series are the photographs. Therefore, it is found that apart from the above said documents that is Exs.A1 to A7 there is no other material placed by the plaintiffs to show that while the C schedule property was transferred to the first defendant's institute, the Government or the parties concerned had agreed that the suit property should be earmarked as the pathway for the plaintiffs and the general public to have access to their respective nagars. In such view of the matter, it is found that the claim of the plaintiffs that the suit property has been used as the pathway right from 1959 onwards and thereby they have asserted right over the same, by way of prescription as such cannot be countenanced. Particularly, when there is no material placed to hold that the suit property had been really earmarked for the use of the same as the pathway by the general public, particularly, as to the first defendant's institute, giving any acquiescence to the same, when it is found that the property inclusive of the suit property i.e., the 'B' schedule property had been entrusted to the first defendant for running the institute and when it is found that the same is under the control, possession and enjoyment of the first defendant institute, the claim of the plaintiffs that the pathway shown therein has been intended to be used for the general public as such cannot be accepted and it is found that the first appellate court has correctly found that the plaintiffs have miserably failed to establish that the 'B' schedule property had been earmarked and used by the pathway for several years as stipulated under law for claiming right in respect of the same

by way of prescription.

13. The plaintiffs have also projected the case as if the 'B' schedule property is the only pathway for gaining access to their nagars and thereby it is contended that the plaintiffs are entitled to seek easement in respect of the same by way of necessity. No doubt, as per the Commissioner's report and plan, the same is shown to be the only access for reaching the plaintiffs' nagar. However, as rightly determined by the first appellate court, P.W.1 himself admitted that Chavadi -Gadilam road goes up to Thirupathiripuliyur on one side and up to Bahor on the other side and thereby holding that the said road could be used to reach their nagar and accordingly, finding that the mere inconvenience cannot be a ground for claiming easement of necessity in respect of the suit property and holding that the plaintiffs have the abovesaid access to reach their nagar and thereby negated the claim of right of easement by way of necessity of the plaintiffs in respect of the suit property. No valid reason is projected to interfere with the same. As rightly determined by the first appellate court, when it is found that the 'B' schedule property i.e., the suit property forms part of the land in which the first defendant institute his functioning, the claim of the plaintiffs that they had been using the suit property as the pathway for access to their nagar cannot be accepted, when it is noted that the plaintiffs have other access to reach their property. That apart, when it is found that Deepan Nagar was formed only in the year 1989, the claim of the plaintiffs that they had been using the suit property as the pathway for 40 years and above as such cannot be accepted, when there is no material placed on record by the plaintiffs to hold that the suit property had been earmarked and used as the pathway by the plaintiffs or by the general public and such being the position, it is found that, the first appellate court has rightly appreciated the materials placed on record to negative the claim of the plaintiffs for seeking easementary right in respect of the suit property both by way of prescription as well as by way of necessity. In addition to that, it does not stand to reason as to how the plaintiffs could maintain the case of their claim of easementary right over the suit property both by way of prescription and necessity, when such claims are found to be inconsistent, contradictory and destructive to each other.

14. In the light of the above said reasonings, the first appellate court is found to be justified in reversing the judgment and decree of the trial court by holding that the plaintiffs have failed to establish that they had acquired easementary right over the suit property by way of prescription as well as by way of necessity based on the correct appreciation of the materials placed on record. The first appellate court is found to be justified in dismissing the suit laid by the

plaintiffs by following the correct principles of law, governing the subject matter and the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs and in favour of the defendants

15. In support of their respective contentions, the plaintiffs counsel and the defendants counsel placed reliance upon the decisions reported in

- (1) 2017 (2) CTC 770 [Chinnusamy and Rajeswari Vs. Sundaram]
- (2) 2010 SAR (Civil) 149 Supreme Court [Sree Swayam Prakash Ashramam & Another Vs. G. Anandavally Amma & Others]
- (3) 1999 Law weekly Page 833 [Bharathamatha Desiya Sangam, Madhavaram, by its Secretary M. Subramania Naicker and another Vs. Roja Sundaram & 2 others]

- (4) 1998 (2) Law weekly 660 [Jeyabalan and 2 others Vs. V. Bal Naicker (died) and 3 others]

and
(1) MANU/SC/0995/2004 [Justiniano Antao and others Vs. Smt. Bernadette B. Pereira]

(2) MANU/TN/3065/2017 [O.K. Venkatramani and others Vs. Coimbatore Diocese Society]

(5) MANU/TN/4066/2016 [Aranthangi Co-operative Town Bank Ltd. Vs. Mohammed Beevi and others]

(3) MANU/TN/1104/1997 [Nanjammal and others Vs. Marappa Gounder and another]

(4) MANU/TN/0348/2017 [Athappan and others Vs. Sengoda Gounder and others] respectively. The principles of law outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

16. At the end, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

-s/d-
सतगमेव जयते

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

mfa
To

1. The Principal District Judge,
Principal District Court,
Cuddalore.

2.The Principal District Munsif,
Principal District Munsif Court,
Cuddalore.

3.The Government Industrial Institute,
Cuddalore,
rep. by its Principal.

4.The Collector of Cuddalore District,
Cuddalore.

5.The Commissioner of Cuddalore Municipality,
Cuddalore.

6.The Section Officer,
VR Section,
High Court.

+1 CC to Mr. Venkatapathy, Advocate sr 25243.

+1 CC to Mr.P. Srinivas, Advocate sr 25572.

+1 CC to Spl. Govt. Pleader sr 24720

AD(CO)
SP(27/07/2018)

S.A.No.544 of 2004



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