



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.03.2019
PRONOUNCED ON : 12.04.2019

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.333 of 2007

Mr.Moulasa ...Appellant/2nd Defendant

Vs.

1.S.Saratha ... 1st Respondent/Plaintiff

2.Ibrahim Rowthar ...2nd Respondent/1st Defendant

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 30.06.2005 on the file of the Principal Subordinate Judge, Mayiladuthurai made in A.S.No.113 of 2004 confirming the judgment and decree of the Additional District Munsif Court, Mayiladuthurai, made in O.S.No. 560 of 1998 dated 03.04.2003.

For Appellant : Mr.S.Ilamparthi

For Respondent : Mr.S.Sounthar for R1

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 30.06.2005 passed in A.S.No.113 of 2004 on the file of the Principal Subordinate Court, Mayiladuthurai, confirming the judgment and decree dated 03.04.2003 passed in O.S.No. 560 of 1998 on the file the Additional District Munsif Court, Mayiladuthurai.

2. The second defendant, who has lost in both the courts, has come forward with the present second appeal.

3. It is found that the plaintiff has laid the suit against the defendants 1 and 2 claiming the reliefs of declaration, permanent injunction and mandatory injunction in respect of the suit property contending the same is a pathway measuring 4 feet north-south and 50 feet east-west and to the east of the same, the property comprised in R.S.No.57/1 is lying and owned by Haj



Mohamed, son of Yacuf Rowthar and that the abovesaid property lying in R.S.No.57/1 had been taken on lease by the plaintiff's husband Subbaiyan and Subbaiyan was cultivating crops in the abovesaid property and it is stated that, even prior to the same, the suit property has been the way for gaining access to R.S.No.57/1 and accordingly, after the lease also, the plaintiff's husband has been using the suit property as the way for reaching R.S.No.57/1 and it is further stated that the plaintiff entered into an agreement of sale with the owner of R.S.No.57/1 to purchase the said property and accordingly paid a part of the sale consideration and in fact, it is stated that the plaintiff had paid the entire sale consideration and the same had been endorsed in the sale agreement and thus it is put forth that the plaintiff is put in the possession of the property in R.S.No.57/1 pursuant to the sale agreement and accordingly, using the suit property as an access to reach her property and accordingly, shown the suit property as ABCD in the plaint plan and putting forth the case that the defendants, without any entitlement, are attempting to restrict the plaintiff from using the suit property as an access to reach her property and hence it is stated that the plaintiff has been necessitated to lay the suit against the defendants for appropriate reliefs.

4. The defendants resisted the plaintiff's suit contending that there is no pathway in the suit property as put forth in the plaint and it is stated that the suit property lying in R.S.No.58/15-B and 58/16 is in the possession and enjoyment of the defendants and there is no dividing ridge between R.S.No.58/15B and 58/16 and contending that no one has got any right of access through the abovesaid properties and denied the case of the plaintiff that the suit property is the only access for the plaintiff to reach her property as put forth in the plaint and contended that the plaintiff cannot claim any easementary right over the suit property as projected in the plaint and therefore, the defendants sought for the dismissal of the plaintiff's suit.

5. In support of the plaintiff's case P.W.s.1 to 3 were examined and Exs.A1 to A5 were marked and on the side of the defendants D.Ws.1 and 2 were examined and no document has been marked. Exs.C1 and C2 were also marked.

6. On a perusal of the materials placed on record by the respective parties and, in particular, the commissioner's report and plan, the trial court was pleased to determine that the plaintiff has access to her property only through the suit property and accordingly held that the plaintiff has entitlement to use the suit property as a pathway, both by way of prescription as well as by way of necessity and accordingly



granted the appropriate reliefs in favour of the plaintiff as prayed for and disposed of the suit. The defendants preferred the first appeal and the first appellate court, on an appreciation of the materials placed on record, holding that the plaintiff is having access through the property belonging to one Narayanasamy on permission, accordingly, determined that, in such view of the matter, the plaintiff is not entitled to claim easementary right over the suit property by way of necessity, however, determined that the plaintiff has established her claim of easementary right over the suit property by way of prescription and accordingly determined the case in favour of the plaintiff and thereby confirming the judgment and decree of the trial court, dismissed the appeal preferred by the defendants. Challenging the same, the second defendant alone has preferred the present second appeal.

7. On a perusal of the judgment and decree of the courts below, the courts below had rightly appreciated the materials placed on record, particularly, the commissioner's report and plan and noting the lie of the properties belonging to the parties to the lis as well as the suit property, finding that the plaintiff can have access to her property only through the suit property and accordingly the plaintiff and her ancestors had been using the same beyond the statutory period, accordingly both the courts have correctly determined that the plaintiff has prescribed right of easement over the suit property and entitled to obtain the reliefs with reference to the same as prayed for.

8. As above noted, the trial court has determined that the plaintiff is entitled to claim easementary right over the suit property by way of necessity also, however, the first appellate court has reversed the abovesaid finding of the trial court on the footing that the plaintiff is found to have admitted that she had been, of late, using the property belonging to Narayanasamy for gaining access to her property and accordingly noting that the plaintiff has other mode of access to reach her property, on that basis, the first appellate court held that the right of easement claimed by the plaintiff over the suit property by way of necessity cannot be sustained and negatived the said relief. However, as rightly put forth by the plaintiff's counsel, the abovesaid determination of the first appellate court cannot be countenanced. It is found that inasmuch as the defendants resisted the plaintiff's usage of the suit property as a way for gaining access to her property, it is seen that the plaintiff had requested Narayanasamy to permit her to use his property for reaching her property and accordingly, on Narayanasamy granting the permission, it is found that, of late, the plaintiff has been using the property of Narayanasamy as a mode of access to reach her property. But, once the permission granted by Naraya Samy is revoked, it is found that,



other than the suit property, the plaintiff would not have other access to reach her property. In such view of the matter, when the alternative access now available to the plaintiff is at the pleasure of Narayanasamy, the same could not be determined as an alternative access to the plaintiff of a permanent nature and in such view of the matter, the determination of the first appellate court that the plaintiff has the other access to reach her property and therefore, she is not entitled to seek easementary right over the suit property by way of necessity, as such, cannot be countenanced.

9. As abovenoted, both the courts below, on an appreciation of the factual materials available on record, determined that other than the suit property, the plaintiff has no other access to reach her property, accordingly also noted that, as available from the features noted by the advocate commissioner and pointed out in his report and plan, the suit property has been the access for the plaintiff and her ancestors over the period of time continuously and accordingly held that the plaintiff has prescribed her right of easement over the suit property for gaining ingress and egress to her property. The said determination of the courts below is based on the appreciation of the factual materials available on record and when the said determination had been arrived at by the courts below by properly appreciating the materials on record and not shown to be suffering from any perversity or being illogical in any manner, in all, it is found that no interference is called for in the judgment and decree of the courts below in granting the appropriate reliefs in favour of the plaintiff.

10. In the light of the abovesaid discussions, it is found that no substantial question of law is involved in this second appeal and accordingly it is seen that the second appeal has also not been admitted and only notice has been ordered to be issued to the plaintiff in this matter.

11. For the reasons aforestated, the second appeal is found to be devoid of merits and accordingly the same is dismissed with costs. Consequently, connected miscellaneous petition, if any, is dismissed.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

bga



To

1. Principal Subordinate Judge,
Mayiladuthurai.

2. Additional District Munsif,
Mayiladuthurai.

Copy to

The Section Officer,
V.R.Section, High Court,
Madras

+1cc to Mr.S.Ilamparithi, Advocate, S.R.No. 37792

S.A.No.333 of 2007

GMR (CO)
GN (11/10/2019)