

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

S.A.No.902 of 2008

& MP.No.1 of 2008

Rajkumar ... Appellant/ Appellant /Plaintiff

Vs.

1.S.Sellammal

2.Nachimuthu

3.Rajammal ... Respondents/ Respondents/ Defendants

PRAYER: Appeal filed under Section 100 of Civil Procedure Code, against the Judgment and Decree, dated 10.10.2007 made in A.S.No103 of 2004, on the file of the Subordinate Judge, Namakkal District, confirming the Judgment and Decree, dated 05.08.2004 made in O.S.No.11 of 2003, on the file of the District Munsif Court, Namakkal.

For Appellant : Mr.S.Mukunth for Savabhauman Associates

For RR1 & 2 : Mr.M.Sudhakar

R3 : No Appearance

JUDGMENT

This second appeal has been filed against the Judgment and Decree of the lower Appellate Court dated 10.10.2007 made in A.S.No103 of 2004, confirming the Judgment and Decree of the trial Court dated 05.08.2004 made in O.S.No.11 of 2003.

2. The appellant herein is the plaintiff and the respondents herein are the defendants before the trial Court. For the sake of convenience, the parties will be referred to as 'the plaintiff and the defendants'.

3. The above suit was filed by the plaintiff before the trial Court praying for declaration that the defendants 1 & 2 herein did not have any right of pathway over and across the suit property and to restrain them by a consequential and permanent injunction etc.

The case of the plaintiff before the trial Court was that the third defendant, who was his mother had entered into an agreement with the defendants 1 & 2 on 11.09.1995 giving right of a way to the said defendants in a portion of the property belonging to the plaintiff. At that time, the plaintiff was a

minor. Without obtaining any directions from the Court, on her own volition, the mother of the plaintiff, who was not a natural guardian, had given a way to a portion of the suit property for using as common pathway to the defendants 1 & 2. Since such agreement was void ab initio, after becoming major, the plaintiff challenged the same by filing the above suit.

4. The suit was resisted by the defendants 1 & 2. Earlier, the mother of the plaintiff had filed a suit in O.S.No.190 of 1995 as she was facing disturbance from third parties in interfering with her peaceful possession and enjoyment of the property. But the said suit was withdrawn as being settled out of Court and thereafter, an agreement was entered into between the mother of the plaintiff and the defendants 1 & 2 by giving a right of way in the suit property to the defendants 1 & 2.

5. The trial Court, after adverting to the materials available on record, particularly, Ex.A2, which was an Agreement dated 11.09.1995, had dismissed the suit particularly, on the ground that the suit was hit by limitation since the suit came to be laid after a period of three years, on attaining the age of majority by the plaintiff. The trial Court has also held against the plaintiff as regards the other issues framed in the suit. The trial Court has held that the defendants 1 and 2 had been enjoying the pathway for 20 years and it was a right accrued to them through easement by prescription.

6. As against the trial Court's judgement and decree, an appeal was preferred before the Sub-Court, Namakkal in A.S.No.103 of 2004. The lower appellate Court while dealing with the appeal, has agreed with the findings of the trial Court and dismissed the appeal as being devoid of merits. As against that, the present Second Appeal has been preferred by the unsuccessful plaintiff.

7. Mr.S.Mukunth, learned counsel appearing for the plaintiff would vehemently contend that the trial Court as well as the Appellate Court have erred in dismissing the claim of the plaintiff, particularly, on the ground of limitation, without appreciating the fact that the plaintiff was a minor at the time of agreement which was entered into between the mother of the plaintiff and the defendants 1 & 2 on 11.09.1995. He would submit that the trial Court ought to have seen the circumstances of the case when the minor plaintiff had filed the suit at early point of time after attaining the age of majority. Therefore, he would submit that the trial Court judgment in non-suiting the plaintiff on the ground of limitation was contrary to the legal principle and concurrent view taken by the Appellate Court is also contrary to law and therefore, the judgments and decrees of both the Courts below are liable to be interfered with by this Court.

8. Mr. M.Sudhakar, learned counsel for the defendants 1 & 2 made his submissions. This Court has framed the substantial questions of law while admitting the Second Appeal. The entire case hinges on the simple legal issue whether the law of limitation could be applied in the facts and circumstances of the case, while discountenancing the claim of the plaintiff as against the defendants 1 & 2 herein.

9.This Court finds that both the trial Court as well as the lower Appellate Court have given a clear finding that the suit was hit by limitation since the plaintiff could not pursue the legal remedy in time and the suit was laid beyond the time prescribed even after the attainment of majority by the plaintiff, although the plaintiff was minor at that time when the agreement was entered into between the mother of the plaintiff and the defendants 1 & 2 on 11.09.1995 conceding the right of common pathway to the defendants 1 & 2, yet having knowledge of such an agreement, the plaintiff did not promptly pursue his legal remedy after attaining the age of majority. Therefore, the trial Court as well as the Appellate Court have rightly held that the suit was barred by limitation. Even otherwise, both the trial Court as well as the Appellate Court have clearly held that the defendants 1 and 2 have been enjoying the common pathway for 20 years also and such enjoyment of common pathway for more than 20 years is accrued by way of easementary right by prescription and hence, the suit filed by the plaintiff was found to be unsustainable and dismissed the same on merits. In fact, all the issues framed in the suit have been answered against the plaintiff in clear and categorical terms which were confirmed in appeal by the lower Appellate Court. On the whole, this Court finds that there is no infirmity both legally and factually in the judgements of both the Courts below and hence, the Second Appeal is liable to be dismissed as being devoid of merits. The substantial questions of law, which were framed at the time of admission of the Second Appeal are to be held against the appellant.

10. The Second Appeal is therefore, dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Subordinate Judge, Namakkal
- 2.The District Munsif, Namakkal

Copy to:

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

+1cc to Mr.Sarvabuman, Advocate SR.No. 103855

S.A.No.902 of 2008

A.SK(11/09/2020)