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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.02.2019

PRONOUNCED ON : 27.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.682 of 2006

Ranganathan ... Appellant/ Defendant

Vs.

1.Rajavel
2.Kanagavalli ... Respondents/Plaintiffs

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 27.09.2004 passed in A.S.No.42 of 2003 on the file of the Principal Subordinate Court, Viruthachalam, confirming the judgment and decree dated 31.01.2003 passed in O.S.No.200 of 1998 on the file of the District Munsif-cum-Judicial Magistrate Court, Thittakudi.

For Appellant : Mr.G.J.Bhaskar Narayanan

For Respondents : Mr.J.Ramakrishnan

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 27.09.2004 passed in A.S.No.42 of 2003 on the file of the Principal Subordinate Court, Viruthachalam, confirming the judgment and decree dated 31.01.2003 passed in O.S.No.200 of 1998 on the file of the District Munsif-cum-Judicial Magistrate Court, Thittakudi.

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

" (a).Are not the courts below wrong in decreeing the suit in respect of item 2 in the absence of any plea on prescription of easementary right as required in Sec.15 of the Easements Act?"

3.Considering the scope of the issues involved in the second appeal between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.



4.The second appeal is confined only as regards the second item of the plaint schedule properties.

5.The parties are referred to as per their rankings in the trial Court, for the sake of convenience.

6.The plaintiffs have laid the suit against the defendants seeking the reliefs of declaration and possession as against the first item of the plaint schedule properties and claimed the reliefs of declaration and permanent injunction as regards the second item of the plaint schedule properties.

7.Based on the materials placed on record by the respective parties and the submissions made, the trial Court was pleased to decree the suit in favour of the plaintiffs as regards the second item of the plaint schedule properties and dismissed the suit laid by the plaintiffs as regards the first item of the plaint schedule properties. Challenging the judgment and decree of the trial Court, the first defendant preferred the first appeal and challenging the dismissal of their suit as regards the first item of the plaint schedule properties, it is seen that the plaintiffs have preferred a cross objection in the abovesaid first appeal. The first appellate Court, on an appreciation of the materials placed on record and the submissions made, dismissed the first appeal preferred by the first defendant and thereby, confirmed the judgment and decree of the trial Court granting the reliefs in favour of the plaintiffs as regards the second item of the plaint schedule properties, furthermore, dismissed the cross objection preferred by the plaintiffs. Impugning the same, the first defendant has come forward with the present second appeal. Thus, it is seen that the second appeal is confined only with reference to the second item of the plaint schedule properties.

8.Briefly stated, the plaintiffs claimed title to the first item of the plaint schedule properties by virtue of the sale deed dated 08.02.1988 and accordingly, put forth the case that they had been enjoying the said property by paying kist etc., and inasmuch as the plaintiffs had refused to part away the said property in favour of the defendants as claimed by them, it is put forth by the plaintiffs that the defendants, without any authority, had trespassed into the portion shown as EFGH in the plaint plan of the first item of the plaint schedule properties and also started interfering with the plaintiffs' enjoyment of the common pathway described as the second item of the plaint schedule properties and hence, it is stated by the plaintiffs that they had been necessitated to lay the suit against the defendants for appropriate reliefs.

9.The defendants put forth the defence that there is no common pathway as described in the second item of the plaint



schedule properties and contended that the abovesaid portions shown as common pathway form part of the property belonging to the defendants ancestrally and also disputed the claim of the plaintiffs that they had encroached into a portion of the first item of the plaint schedule properties shown as EFGH in the plaint plan and on the other hand, put forth the case that it is only the plaintiffs, who had encroached into the portion belonging to the first defendant and on being questioned by the defendants, according to them, the plaintiffs had come forward with the false case.

10. Inasmuch as the reliefs sought for by the plaintiffs as regards the first item of the plaint schedule properties had been negatived by the Courts below, it is unnecessary to refer the case of the parties with reference to the same, in detail. Suffice to state that the plaintiffs claimed title to the first item of the plaint schedule properties based on the sale deed dated 08.02.1988 marked as Ex.A2. Their vendors' title deed dated 16.04.1958 has been marked as Ex.A3. From the abovesaid documents, it is seen that the property acquired by the plaintiffs by way of Ex.A2 is shown to be lying to the east of the lane and the other boundaries are also described in the said instrument. Further, in Ex.A3, the property comprised therein is shown to be lying to the east of the street. The same extent of the property in survey No.190/1 has been described both in Exs.A2 & A3. It is not in dispute that for the old survey No.190/1, the new survey number 248/9 has been assigned and in this connection, the plaintiffs had come forward with the patta marked as Ex.A6 as well as the "A" register extract marked as Ex.A7, FMB sketch marked as Ex.A8 and accordingly, it is seen that new survey No.248 corresponds to survey No.190/1. The VAO examined as DW2, in his evidence, has clearly stated that new survey No.248 corresponds to old survey No.190/1 and he has also further testified that survey No.248/11 stands in the name of Adiyapatham, survey No.248/9 stands in the name of the first defendant, survey No.248/10 stands in the name of Vasantha, survey No.248/4 stands in the name of Ramasamy and to the East of the abovesaid properties the lane comprised in survey No.248/8 is lying and the abovesaid lane connects the Mariamman Kovil Street and Kuttaikara street on the southern side and Mariamman Kovil is lying in survey No.246/22 and Kuttaikkara street is lying in survey No.255/6 and the lane comprised in survey No.248/8 lane extends upto the house of Raman lying in survey No.248/4 and the width of the lane is 148 metres. The abovesaid common lane has been described by the plaintiffs in their plaint plan as ABCD and put forth the case that the plaintiffs, the defendants as well as the others had been in the possession and enjoyment of the abovesaid common lane for reaching their respective properties. The first plaintiff examined as PW1 as well as the witnesses examined on behalf of the plaintiffs as PWs2 to 5, have clearly deposed about the existence of the common lane shown as ABCD in the plaint plan and the enjoyment of the said lane by the plaintiffs, the defendants and the



others respectively for reaching their respective properties and also put forth the case that with a view to deprive the same from the common enjoyment, the defendants are attempting to include the lane with their properties. The evidence of PWs1 to 5, with regard to the enjoyment of the common lane by one and all, has not been discredited by the defendants in any manner during the course of cross examination. The evidence of PWs1 to 5 on the abovesaid aspects is found to be reliable, convincing and trustworthy.

11.It is mainly putforth by the defendants that the common lane shown as ABCD in the plant plan is not in existence and according to the defendants, the abovesaid portion of the property belongs to them ancestrally and according to the defendants, the plaintiffs had been using only the north-south lane connecting Mariamman Kovil Street and Kuttaikaran street lying on the western side and therefore, contended that the plaintiffs cannot be allowed to lay any claim of common right in the lane portion shown as ABCD in the plant plan. Furthermore, according to the defendants, if really, the common lane shown as ABCD had been in existence as put forth by the plaintiffs, the same would have been depicted or pointed out in the sale deeds of the neighbouring land owners and in this Connection, they had projected the documents marked as Exs.B1 to B6.

12.Insofar as this lis is concerned, it is seen that the Commissioner had inspected the suit property and filed his report and plan and inasmuch as the commissioner had not clearly pointed out the existence of the suit property and filed his report and plan with reference to the same, objections had been put forth by the plaintiffs to the commissioner's report and plan. However, as rightly determined by the Courts below, though the parties put forth their objection to the commissioner's report and plan, they had not endeavoured to take further action as provided under law with reference to the same and in any event, the Courts below had not endeavoured to place reliance upon the commissioner's report and plan, particularly, on noting that the commissioner had not responded to the objections put forth by the respective parties to his report and plan.

13.As rightly determined by the Courts below, considering the documents of title projected by the plaintiffs marked as Exs.A2 & A3 as regards the first item of the plant schedule properties, when the documents depicts that the same lies to the east of the lane /street and furthermore, the lane portion has been clearly depicted in the revenue documents projected by the plaintiffs as Exs.A6 to A8 as comprised in survey No.248/8 and when the lane portion comprised in survey No.248/8 is shown to be lying in porambokku area and when it is further seen that the plaintiffs, the defendants and the others are owning lands all around the common lane shown as ABCD in the plant plan, accordingly, it is seen that the lane



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running in survey No.248/8 is found to be in existence on the western and northern side of the plaintiffs' property. That the lane is in existence as put forth by the plaintiffs in survey No.248/8 has been clearly deposed by the VAO examined as DW2 and when DW2 has testified that the first plaintiff has access to his property only through the said lane from the southern street and accordingly, the existence of the lane is found to be depicted as above seen in the sale deed as Exs.A2 & A3 and the revenue documents marked as Exs.A6 to 8, in such view of the matter, the case projected by the defendants that the lane portion shown as ABCD in the plaint plan forms part of the properties belonging to them does not merit acceptance, particularly, the defendants having failed to place any material worth acceptance to show that the said portion forms part of the property belonging to them.

14. According to the defendants, some objections have been put forth by the defendants as regards the the common lane shown lying in survey No.248/8 to the revenue authorities and according to them, the concerned authority directed them to approach the civil Court for appropriate remedies. However, with reference to the abovesaid case put forth by the defendants, when there is no material placed on their part, in such view of the mater, it is seen that the defendants cannot be allowed to lay a valid claim of title to the lane portion as belonging to them sans any material pointing to the same as such. Merely because, the neighbouring owners had not shown the properties as abutting the common lane in their title deeds that by itself would not lead to the conclusion that the lane shown as ABCD in the plaint plan is not in existence, particularly, when it is seen that the revenue documents marked as Exs.A6 to A8 clearly point out the existence of the lane in survey 248/8 shown as running towards northern direction and thereafter, turning to the eastern direction and furthermore, when DW1 during the course of cross examination has admitted that his house property is shown lying to the east of survey No.248/8 comprising the lane portion and also admitted that the first plaintiff, Adiyapatham, Pannerselvam are also residing to the east of the lane portion and further admitted that the lane portion as such proceeds towards northern direction and then turns to the eastern direction and also further admitted that to the south of the lane portion, Vasantha is residing and Ramasamy is residing to the north of the lane portion and also further admitted that at the entrance of the house belonging to the first plaintiff, Adiyapatham, panneerselvam, Ramasamy, Vasantha are only facing towards the lane and further admitted that the lane portion connects the main road as well as Kuttaikkara Street and despite the abovesaid admission on his part, when he has not filed any document of title with reference to his property, particularly, showing the extent, to which, he actually owns, in such view of the matter, the case projected by the defendants that the lane portion shown as ABCD in the plaint plan i.e. the second item of the plaint schedule



properties forms part of the property belonging to them as such cannot be believed and rightly turned down by the Courts below sans any proof placed by the defendants pointing to the same.

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15. In the light of the abovesaid factors, it is seen that the lane portion shown by the plaintiffs in the second item of the plaint schedule properties is in existence as common lane and being in the enjoyment of the plaintiffs, the defendants and the others residing surrounding the same and accordingly, had been using the same as a common lane for gaining access to their respective properties one way or the other and in such view of the matter, when the lane in question is shown to be a common lane belonging to one and all as pointed out, there is no question of seeking any easementary right by the plaintiffs with reference to the same against the defendants and when the defendants are also found to be entitled to have the usage of common lane for having access to their properties, in such view of the matter, the courts below are found to be fully justified in upholding the plaintiffs' case with reference to the second item of the plaint schedule properties and in such view of the matter, in my considered opinion, no substantial question of law is found to be involved in the second appeal and the issues involved between the as regards the second item of the plaint schedule property being centred on factual matrix and the same had been analysed and determined by the Courts below in the right perspective based on the materials placed on record, no interference is called for with reference to the same in any manner. Be that as it may, in such view of the matter, there is no need on the part of the plaintiffs to claim any easementary right in respect of the second item of the plaint schedule properties by way of prescription, particularly, when the materials projected on the part of the plaintiffs and as above discussed, point out the long and continuous enjoyment of the said lane portion by the plaintiffs and the others for a considerable period of time and accordingly, the substantial question of law formulated in the second appeal is answered in favour of the plaintiffs and against the defendants.

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

Sd/-

Assistant Registrar (CS VIII)

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Sub Assistant Registrar

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To

1.The Sub Judge,
Principal Subordinate Court,
Viruthachalam.

2.The Judge,
District Munsif-cum-Judicial Magistrate Court,
Thittakudi.

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

+1cc to Mr.G.J.Bhaskar , Advocate SR.No. 17875
+1cc to Mr.J.Ramakrishnan , Advocate SR.No. 18726

S.A.No.682 of 2006

A.SK(17/09/2019)