

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.08.2019
CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

S.A.No.1347 of 2004
and
C.M.P.No.10595 of 2004

1. Kannadasan S/o.Narayanan
2. Murthy, S/o.Narayanan
3. Kasthuri Ammal W/o.Perumal
4. Jai Shankar S/o.Perumal
5. Lakshmi D/o.Perumal
6. Visalakshi,D/o.Perumal
7. Amudha, D/o.Perumal
8. Jayakrishnan,S/o.Perumal
9. Mahalakshmi,D/o.Perumal
10. Daivanayagi,D/o.Perumal ...Appellants/Plaintiffs
(Appeal abates against 4th Appellant
vide order dated 25.07.2019)

Vs.

Kannabiran ...Respondent / Defendant

Prayer:- Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 25.02.2004 in A.S.No.14 of 2003 on the file of Sub-Court, Panruti, reversing the judgment against the Judgment and Decree dated 25.04.2003 in O.S.No.467 of 1993 on the file of District Munsif Court, Panruti.

For Appellants : Mr.R.Venkatesulu
for Mrs.Usha Raman
For Respondent : Mrs.R.Meenal

JUDGMENT

1.1 The present suit is laid seeking a declaration of right of easement of pathway over a piece of land measuring about 11' X 126' in S.Nos.135/6 and 135/9 of Ezhumedu Village in Panruti Taluk, Cuddalore District. Parties would be referred to by their ranks before the trial Court.

1.2 According to the plaintiffs, the plaintiffs and the defendant trace their ancestry to one Naina Naidu. Naina Naidu had three sons namely Subbiah Naidu, Veerasamy Naidu and Ablu Naidu. Naina Naidu possessed a block of land. After his demise, it devolved equally on his three sons. Whiles, Veerasamy Naidu

had sold his 1/3rd share of the property to Ablu Naidu Vide Ext.A1 Sale Deed dated, 19.11.1939.

1.3 Ablu Naidu had two sons, namely, Narayanan and Perumal. The plaintiffs 1, 2 and 3 are children of Narayanan. Defendant is the grand son of Subbiah Naidu, born to latter's son Harikrishna Naidu.

1.4 According to the plaintiffs, Subbiah Naidu, Veera samy Naidu and Ablu Naidu divided the said property equally between themselves and for convenient enjoyment of the respective portion they are provided with a 6 feet wide pathway on the north of their properties. Since they could not use this width conveniently for the purposes associated with the use of pathway, the brothers have decided to leave another 5 feet on the north, and thus they widened the pathway to 11 feet. The defendant, however, attempted to put up some constructions and obstructed the use of the pathway to its entire width of 11 feet, and hence, the plaintiffs reported the same before the Panchayatars. Before the Panchayatcdars, the defendant had agreed that he would not obstruct the 11 feet pathway. As they faced threat to the right of pathway, the plaintiffs laid the suit for declaration of right of pathway over 11' X 126'.

2. The defendant in his written statement had admitted the existence of a 6 feet wide pathway, but disputed that their ancestors at no time had decided to enlarge the width of the pathway from 6 feet to 11 feet.

3.1 During trial, both sides adduced oral and documentary evidence. On appreciating the evidence, the trial Court decreed the suit. Challenging the same, the defendant had preferred A.S.No.15 of 1999 and the First Appellate Court allowed the appeal and remanded the matter back to the trial Court.

3.2 When the suit is pending, Perumal Naidu died and his legal representatives were impleaded as plaintiffs 4 to 11. Post remand, the suit again came to be decreed. This was however reversed by the First Appellate Court. Hence, the plaintiffs are before this Court with this second appeal.

4.1 It may now be stated that the trial Court while decreeing the suit, has taken note of the fact that it has been found by the Commissioner appointed by it that the width of the alleged pathway on lie is anywhere between 12'6'' and 11'8''.

4.2 The First Appellate Court, however, has found that the defendant has put up a small cemented veranda for a width of 1.25 feet in front of his house, and this would bring down the width of the pathway from the alleged 11 feet to below 11 feet.

Secondly, it also held that the additional vacant space in the front of his house is essentially left for the parties for doing some celebrations, or for carrying activities connected with agriculture.

5. This appeal was admitted on the following substantial question of law:

'Whether the judgments and decrees of the courts below are sustainable in law, as the entire evidence which is relevant to decide the issue and the relevant question of fact applicable to the facts of the case were not taken into consideration?'

6.1 Heard both sides. On perusal of the records before this Court, the following facts are highlighted:

- DW1 admits that his house in south of the pathway was constructed some 40 years back by his ancestor.
- The Commissioner finds that the distance from the house of the parties on the south of the pathway in question, to those properties on to its north vary anywhere between 12.5 feet to about 12.75 feet.

6.2 These two facts would imply that for the last 40 years prior to the time when evidence was given before the trial Court, (which is sometime prior to 2003) the pathway in question has always maintained an average width of 11 feet. There is no evidence on record to indicate that any of the parties have exercised any independent right of ownership over any extent in excess of admitted 6 feet width. Yet another factor that now requires to be collated is that during the cross-examination of PW1, it appears to have been suggested to him, if the plaintiffs would object the defendant from using the entire 11 feet width X 125 feet length pathway, to which PW1 has responded that he would not obstruct.

7. There may be some discrepancies in the evidence on both sides, but the Court looks only for the broad probability which the facts proved by evidence create. Indisputably, the facts indicated in the earlier paragraph stands out to create a probability that the pathway always had a width of 11 feet, though its precise origin was not be known. Ext.A1 is dated 19.11.1939, which refers only to 6 feet by pathway. Ext.B2 is the mortgage deed dated 31.12.1928, and even it refers to a 6 feet pathway and according to the pleading of the plaintiff the 11 feet pathway was subsequently agreed to by his ancestors. But the fact remains that a pathway with an approximate average width of 11 feet is available on lie for considerable for over 40 years prior to institution of the present suit was laid and some 60 years from now.

8. Turning to the judgment of the First Appellate Court, the learned Judge has undertaken a meticulous analysis of every evidence before him, that he has even taken exception to a 1.5 feet verandah sort of a construction put up by the defendant, which according to him, has reduced the entire width of the pathway from 11 feet to something below 11 feet, and treated this discovery as a significant fact. In cases such as this, it is imperative that facts must be appreciated broadly and not meticulously. The appreciation of evidence by the first appellate court, ignores the rule of preponderance of probability which is the rule of the thumb which Courts naturally looks to while deciding civil disputes.

9. In conclusion, this appeal is allowed and the Judgment and Decree dated 25.02.2004 in A.S.No.14 of 2003 on the file of Sub-Court, Panruti, is set aside. The Commissioner's report in Ext.C2 is directed to be appended to the decree. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CSVI)

True Copy

Sub-Assistant Registrar

ssn

To

1. The Subordinate Judge,
Panruti.

2. The District Munsif ,
Panruti.

3. The Section Officer
V.R.Section,
High Court of Madras,
Chennai 600 104.

+1 cc to M/s.R.Subramanian Advocate sr67321

+1 cc to M/s.Usha Ramman Advocate sr68043

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