

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.04.2019
PRONOUNCED ON: 03.06.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1365 of 2004
and
C.M.P.No.10638 of 2004

Mansurali ... Appellant/Plaintiff

Vs.

1.Erumapatty Town Panchayat,
by its Executive Officer,

2.M.Raju ... 1st & 2nd Respondents/Defendants

3.A.Mohamedali

4.A.Abdulsalam ... 3rd & 4th Respondents/2nd & 3rd Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 24.06.2003 made in A.S.No.321 of 2002 on the file of the Principal District Court, Namakkal District, confirming the judgment and decree dated 03.10.2002 made in O.S.No.526 of 1999 on the file of the Additional District Munsif Court, Namakkal to set aside the same.

For Appellant : Mr.R.Thirugnanam

For RR1 : Mr.P.P.Shanmuga Sundaram

For RR2 : M/s.Mythili Suresh for
Sarvabhauman Associates

For RR3 & R4 : M/s.S.Umapathy

J U D G M E N T

In this second appeal, challenge is made to the judgment and decree dated 24.06.2003 passed in A.S.No.321 of 2002 on the file of the Principal District Court, Namakkal, confirming the judgment and decree dated 03.10.2002 passed in O.S.No.526 of

1999 on the file of the Additional District Munsif Court, Namakkal.

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

1. Whether the Courts below have committed an error of law in rejecting the claim of the plaintiffs for the relief sought for without properly appreciating Exs.A3 to A8 in proper perspective.

2. Whether the Courts below have not committed an error of law in holding that the second defendant has prescribed right by easement of necessity in the absence of proper pleadings and proof.

3. Considering the scope of the issues involved 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. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

5. The suit has been laid by the plaintiffs seeking for the reliefs of declaration and permanent injunction.

6. Along with the plaint, the plaintiffs have filed a plaint plan and in the plaint plan, the portion shown as "P" is stated to be the suit property. Particularly stated, according to the plaintiffs, their father had purchased an extent of 1.69 acres in the suit survey No.116/6 from Veerapa Asari and divided the same into various plots and alienated the same to various persons and retained the suit property and on his death, according to the plaintiffs, they had succeeded to the same and they are in the possession and enjoyment of the suit property through their power of attorney agent and according to the plaintiffs, the second defendant owns the property lying in survey No.116/8 situated to the east of the suit property and a road running on the west of the suit property is under the maintenance of the first defendant's town panchayath and according to the plaintiffs, the second defendant offered to purchase the suit property belonging to the plaintiffs and on the same being refused by the plaintiffs, according to the plaintiffs, the second defendant in collusion with the first defendant, is attempting to put up the road in the suit property and hence according to the plaintiffs, they had been necessitated to lay the suit against the defendants for appropriate reliefs.

7. The first defendant resisted the plaintiffs' suit contended that the layout approval is sanctioned to the property situated in survey No.116/6 by the Panchayath and the suit pathway is laid by the Panchayath and belongs to Panchayath and in the portion shown as "XY" in the plaint plan, pucca road has been formed and the suit property is part of the abovesaid "XY" pathway and the plaintiffs are not entitled to the same and hence the suit is liable to be dismissed.

8. The second defendant resisted the plaintiffs' suit contending that the plaintiffs' father had not retained the suit property after alienating the various plots to others and according to the second defendant, the plaintiffs have no right or interest in any portion of the property in survey No.116/6 and the suit property is the continuation of XY road and at the time of subdivision of the plots, the plaintiffs' father had laid the pathway and sold the plots to various persons with the pathway and not retained any portion in the plots and the defendants had put up the house in his property and also recently constructed another house in front of his old construction and the defendant has been using the "XY" portion approved pathway to reach his house from Erumapatty to Dhuraiyur Main road and the plaintiffs' right to the suit property, if any, has been ousted and the same had been enjoyed by the defendants and others and accordingly the defendants are entitled to use the suit property as the pathway by way of prescriptive easementary right and the drainage is also laid in the pathway and furthermore, the electrical post and telephone lines are also fixed in the pathway and water connection has also been provided through the pathway. Therefore, the suit is liable to be dismissed.

9. Based on the materials placed on record both oral and documentary evidence adduced by the respective parties and the submissions made, the courts below were pleased to dismiss the plaintiffs' suit. Impugning the same, the present second appeal has been preferred.

10. It is found that the plaintiffs' father had acquired the extent of 1.69 ares in survey No.116/6 from Veerapa Asari and converted the same into various plots and sold to various persons and the above facts are all not in dispute. While forming the plots, it is found that the plaintiffs' father had also formed the pathway for the enjoyment of the plot owners. Now according to the plaintiffs, after the alienation of the various plots, it is their case that their father had retained the suit property and the plaintiffs had succeeded to the same on the demise of their father. The suit property is stated to be located within the specific boundaries. The defendants have challenged the abovesaid case of the plaintiffs and according to

the defendants, in particular, the second defendant, the plaintiffs' father or the plaintiffs have no right to the suit property and the suit property is only a continuation of the pathway shown as "XY" in the plaint plan and the same had been used by the second defendant as well as the others for having access to the main road on the western side and it is also alleged that the water, drainage, electricity and telephone lines are all drawn through the suit property i.e., under the pathway and enjoyed by the second defendant and others over a period of time continuously and thereby the second defendant had also prescribed his right of easement over the suit property and hence according to the defendants, the plaintiffs are not entitled to seek and obtain the reliefs prayed for.

11. In the light of the abovesaid defence projected, at the foremost, the plaintiffs should establish that their father had retained the suit property in survey No.116/6 after alienating the same to others by laying out the plots in the suit survey No.116/6. As could be seen from the materials placed on record, particularly, the Commissioner's report and plan marked as Exs.C1 to C4, in toto, it is found that the suit property measures about 20 ft in width and the Thaar road is lying on the east of the same and furthermore, it is found that there is a drainage of 2 ft width on the eastern side of the suit property and both on the northern and southern side of the same, the old and the new house of the second defendant are located and also the trees put up in front of the second defendant's old house and it could also be seen that there is a cement ramp on the southern side of the suit property for taking the vehicles into the house situated on the south of the same and the drainage, water connection etc., are passing through the suit property as well as the telephone lines are also drawn through the suit property and the electric lines are also pulled through the suit property and accordingly, it is found that as depicted in the Commissioner's report and plan, the suit property serves only as the pathway to reach not only the property of the second defendant but also the other houses located on the south of the suit property and furthermore, the Commissioner has also noted that other than the suit property there is no alternative way for the second defendant and other houses adjacent thereto to reach the main road and accordingly it is seen that just to the west of the suit property, the pucca road is lying in continuation of the suit property and the suit property does not appear to be an independent plot and accordingly, as rightly determined by the Courts below, the suit property is found to be only the continuation of the pucca road lying to the west of the same and the road is the access for reaching Dhuraiyur to Erumapatty main road and in such view of the matter, the claim of the plaintiffs that their father and they had retained the ownership of the suit property cannot at all be countenanced in

any manner.

12.Despite the abovesaid position, the plaintiffs had not evinced interest to putforth any objection to the Commissioner's report and plan. Per contra, the plaintiffs during the course of his evidence has admitted that while laying the plots, they had put up the roads on all the directions for the convenience of the plot owners and accordingly also admitted that the roads so formed are maintained by the Panchayath and though they and the plot owners had not entrusted the road portion to the Panchayath, the same are only being maintained by the Panchayath for the utility of the plot owners and the public and also admitted that the Thaar road has also been laid and further admitted that in the portion shown as "XY" in the plan formerly the metal road was laid and thereafter the Thaar road has been laid and also admitted that the ramp is available on the southern side of the suit property for the vehicles to have access and further admitted that the telephone wires are drawn through the suit property and also further admitted that the Commissioner has reported that other than the suit property i..e, the suit pathway, there is no other access for the second defendant and though he would claim that he had shown the alternative pathway for the second defendant to gain access to his property, the Commissioner had failed to note the same, albeit the same, also admitted that he has not filed any objection to the abovesaid Commissioner's reports and plans.

13.The position being above, as determined by the Courts below from the Commissioner's report and plan, it is evident that the suit property is only a continuation of the Thaar road lying to the west of the same and the same has been used as the access by the second defendant and other adjacent plot owners and in such view of the matter, the case of the plaintiffs that their father and they had retained the ownership of the suit property, after the alienation of the various plots put up by them in the area, as such, cannot be countenanced.

14. Furthermore, as could be seen from the sale deeds projected by the defendants dated 25.03.1968 and 27.05.1967 marked as Exs.B1 and B2 executed by the plaintiffs' father in favour of others and when the abovesaid sale deeds are found to be pertaining to the lands situated on the south and east of the suit property which fact has been admitted by P.W.1 and therein the recitals are given while describing the said property in the abovesaid sale deeds as lying adjacent to the common pathway and not described the suit property as belonging to the plaintiffs' father or the plaintiffs. Therefore, when the sale deeds marked as Exs.B1 and B2 executed by the plaintiffs' father described the suit property only as the common pathway, in such view of the matter, the case of the plaintiffs that their father had

retained the exclusive ownership of the suit property, as such, cannot be countenanced. To establish that the suit property has been in their exclusive possession and enjoyment right from the days of their father, absolutely there is no convincing and reliable material putforth on the part of the plaintiffs.

15.The plaintiffs' counsel contended that the defendants have failed to establish their right of easement over the suit property as the pathway beyond the prescriptive period. However, the abovesaid contention does not merit acceptance. Considering the lie of the suit property as the continuation of the Thaar road and when the existence of the common pathway in the suit property had been clearly depicted in Exs.B1 and B2, the sale deeds which are pertaining to the years 1967 and 1968, in such view of the matter, it is found that over a considerable period of time, the suit property had been used only as the common pathway by the second defendant and others for gaining access to the main road on the western side, in such view of the matter, the contention of the plaintiffs' counsel that the defendants have failed to establish their prescriptive right over the suit pathway had been rightly discountenanced by the Courts below. I do not find valid reason to interfere with the abovesaid determination of the Courts below.

16.The plaintiffs' counsel would rely upon the documents marked as Exs.A3 to A8 pertaining to the partition suit laid between the plaintiffs and others in respect of the suit property and other properties and the allied documents pertaining to the same, in support of their case, however as rightly determined by the Courts below, when the abovesaid documents are found to be created interse between the plaintiffs as such and the second defendant or the first defendant not being a party to the same, the abovesaid documents would not in any manner bind the defendants as such and in such view of the matter, the plaintiffs cannot be allowed to place reliance upon the abovesaid documents for sustaining the reliefs prayed for in the suit.

17.As abovenoted, considering the lie of the suit property as the extension of the pucca road from the main road on the western side and the enjoyment of the same as the common pathway by the second defendant and others over a considerable period of time and also the description of the suit property only as the common pathway by the plaintiffs' father himself in Exs.B1 and B2, the sale deeds pertaining to the years 1967 and 1968 and when it is found that the second defendant and others had been using the suit property as pathway and furthermore, both the suit property and the continuation of the road on the western side has been maintained by the first defendant's Panchayath for the benefit of the general public and the various public service

utilities had been drawn through the suit pathway as above pointed out, in all, it is found that as rightly determined by the Courts below the plaintiffs have miserably failed to establish their claim of title, possession and enjoyment of the suit property and accordingly, the Courts below are found to be justified in declining the reliefs prayed for by the plaintiffs. No reason is warranted to interfere with the abovesaid determination of the Courts below.

18.In the light of the above position, I do not find any substantial question of law being involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiffs and in favour of the defendants.

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

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Principal District Judge,
Principal District Court, Namakkal District.
- 2.The Additional District Munsif,
Additional District Munsif Court,
Namakkal.

Copy to

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

+1cc to Mr.P.P.Shanmugasundaram, Advocate, S.R.No.44636
+1cc to Mr.Sarvabhauman Associates, Advocate, S.R.No.44616
+1cc to Mr.R.Thirugnanam, Advocate, S.R.No. 44815

S.A.No.1365 of 2004
and

C.M.P.No.10638 of 2004

GP(CO)
GN(24/01/2020)