

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.03.2019
CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A.No.1416 of 2005

M/s. India Cements Limited,
represented by its
General manager,
Sankari West.

... Appellant/Defendants

Vs.

M/s. Karuna Mines and Minerals,
a Registered Firm by Partner P.Sellappan

... Respondent/Plaintiff

Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 10.10.2003 in A.S.No.63 of 2000 on the file of the Subordinate Court, Sankari, setting aside the judgment and decree dated 29.10.1999 in O.S.No.330 of 1994 on the file of the District Munsif Court, Sankari.

For Appellant : Mr.G.R.Lakshmanan

For Respondent : Mr.V.Bhiman

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 10.10.2003 passed in A.S.No.63 of 2000 on the file of the Subordinate Court, Sankari, reversing the judgment and decree dated 29.10.1999 passed in O.S.No.330 of 1994 on the file of the District Munsif Court, Sankari.

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

"(1) In the absence of pleading and proof that the plaintiff, as a matter of right has been using the suit property as a cart track uninterruptedly for twenty years and two years preceding the plaint, has not the appellate Court committed an error of

law in recognizing such an easementary right by prescription?

(2) If the case of the plaintiff is considered on the basis of the easement of necessity, then, in the face of an alternative way available, could a Court recognize and grant a right by way of easement of necessity?"

3. The respondent has laid the suit against the appellant seeking declaration of his easementary right over the suit cart track and also consequential relief of permanent injunction and the same has been challenged by the appellant in toto.

4. Based on the materials placed on record, the Trial Court was pleased to dismiss the suit laid by the respondent. The first Appellate Court reversing the judgment and decree passed by the Trial Court, granted the relief to the respondent as prayed for. Impugning the same, the second appeal has been laid.

5. A Joint memo has been filed by the counsel for the appellant and the respondent counsel along with the letter addressed by the appellant to his counsel. In the abovesaid letter, it is mentioned by the appellant that the respondent/plaintiff has discontinued working for more than ten years and accordingly, the cart track in question had been in the exclusive possession and enjoyment of the appellant and not in the usage of the respondent/plaintiff.

6. Adverting to the same, joint memo has been filed by the appellant counsel and the respondent counsel today. Inasmuch as the respondent has discontinued the working for more than ten years and admittedly, the cart track/passage in question belongs to the appellant company, the relief sought in the suit in respect of the cart track has become infructuous and therefore, nothing survives in the suit further.

7. In the light of the abovesaid position on the basis of the joint memo filed by the appellant counsel and the respondent counsel, the second appeal preferred by the appellant is allowed by setting aside the judgment and decree 10.10.2003 passed in A.S.No.63 of 2000, by the Subordinate Court, Sankari and consequently, the judgment and decree dated 29.10.1999 passed in O.S.No.330 of 1994, by the District Munsif Court, Sankari, are restored.

Accordingly, the second appeal is allowed. No costs.
Connected, miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Subordinate Judge,
Sankari.

2. The District Munsif Judge,
Sankari.

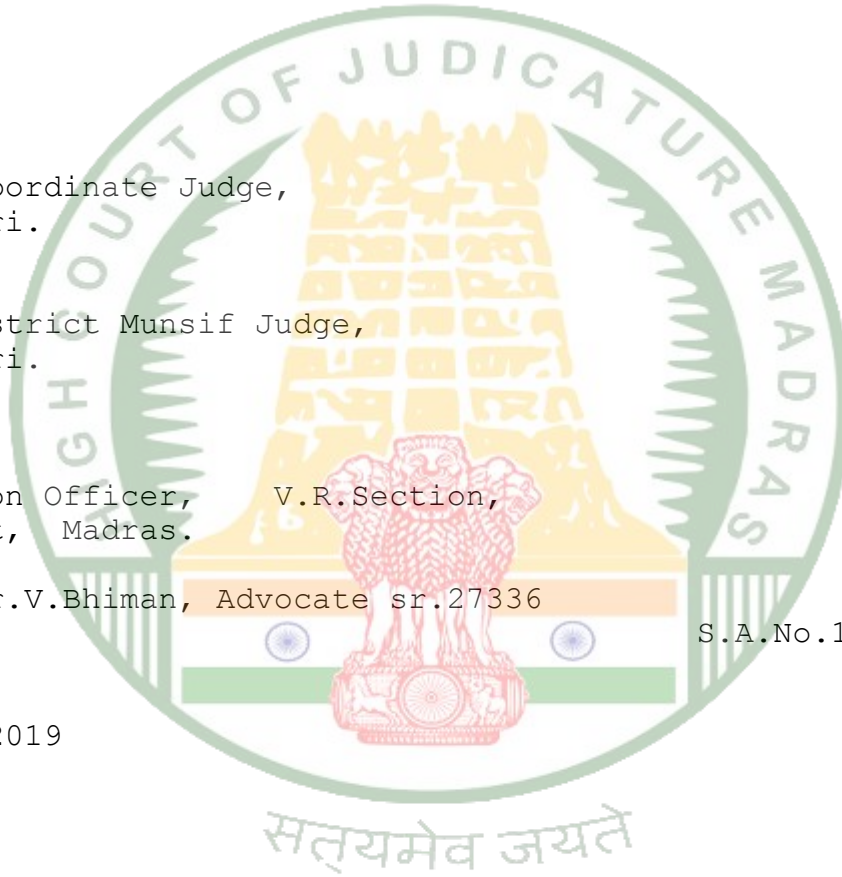
Copy to

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

+1cc to Mr.V.Bhiman, Advocate sr.27336

S.A.No.1416 of 2005

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