

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 14.06.2019
CORAM:

The Hon'ble Mr.Justice N.Seshasayee

S.A.No.1461 of 2005
and
C.M.P.No.19081 of 2005

1.Kumarasamy
2.Thirumalaisamy ...Appellants/ Appellants/ Defendants

Vs

Saraswathy ...Respondent/ Respondent/ Plaintiff

Prayer:- Second Appeals filed under Section 100 of Civil Procedure Code against the Judgment and Decree of the learned Subordinate Judge, Dharapuram in A.S.No.22/2004 dated 4.3.2005 confirming the Judgment and Decree of the learned District Munsif of Dharapuram in O.S.No.297/2000 dated 13.2.2004.

For Appellants : Mr.S.Kaithamalai Kumaran
For Respondent : M/s.M.Srividhya

JUDGMENT

The defendants who have lost successively in a Suit for declaration that the suit property is a common pathway before the Court below, has come before this Court.

2.The facts are substantially admitted except for a small dispute as to whether the pathway is an exclusive pathway of the defendants or a common pathway. The suit property originally belonged to one Palani Gounder. He, under Ex.B.1, sale deed, dated 05.09.1955, sold the property to one Manickammal and Thulasiammal. Subsequently, on 25.06.1970, under Ex.B.2, Muchalika the purchasers of the property under Ex.B.1, divided the property among themselves. In the said portion, Manickammal was allotted 3.54 acres and Thulasi Ammal was allotted to 84 cents.

3.The entire property was originally comprised in Old Sy.No.206. The property is since re-surveyed and correlated to re-survey Nos.310/1, 310/2 and 310/3. The property of the plaintiff falls under Sy.No.310/3. This plot is approximately triangular in shape. The defendants' property is comprised in Sy.No.310/2 which comes about the vertex end of this triangle, pointing towards south. In other words, a substantial part of

the triangle in the north falls under Sy.No.310/3, whereas, the tip or the vertex falls under Sy.No.310/2. Along the eastern boundary of the triangular plot runs a pathway. It runs through re-survey No.310/2, belonging to the defendants and proceeds northwards.

4.The issue is whether this pathway that admittedly runs through the property in Sy.No.310/3 is intended for the exclusive use of the defendants property on the south or whether the plaintiff has right to use the same.

5.1 The trial Court finds that it is a common pathway and this finding came to be confirmed by the first Appellate Court in A.S.No.22 of 2004.

5.2 In arriving at this conclusion, both the trial Court and the first Appellate Court have noted that in Ex.A.1, Sale Deed under which the plaintiff has purchased the property from Manickammal the disputed pathway is described as a common pathway. Ex.A.6 is a sale deed under which the defendants have purchased the property from Thulasiammal, wherein, the right of the defendants to use the pathway on the property of the plaintiff has been recognized. Aggrieved by the same, the defendants are before this Court.

6.The appeal is admitted on the following substantial questions of law;

1.Are the Courts below justified in holding that as the defendants/appellants have failed to prove their case of exclusive ownership over the suit property, the plaintiff/respondent's case of common right over the suit pathway has to be accepted?

2.If the interpretation given to the recitals in Ex.A.1, sale deed, which is the plaintiff's document of title, legally sustainable?

3.Have not both the Courts below committed an error in law in not considering the appellants documents of title Exs.B.1, B.2 and B.4?

7.The learned counsel for the appellants laid considerable emphasis on Ex.B-2, Muchalika. The Muchalika states that the cart track in Manickammal's property must be left for the benefit of Thulasi Ammal, for her convenient use of property in Sy.No.209. This would indicate that the intention of the parties under Ex.A.2 is that Thulasiammal shall have exclusive right over the pathway.

8.1 This Court considers that the defendants/appellants have helped themselves with considerable doses of fallacy in believing that the suit pathway is their exclusive pathway.

Ext.B.1, is a sale deed that Palani Gounder had executed in favour of Manickammal and Thulasiammal. This document inter alia deals with properties in old Sy.Nos.206 and 209. Under Ex.B.2, Muchalika, this property was divided between Manickammal and Thulasiammal. Admittedly, before Ext.B.2, both these ladies were holding the property jointly, and there was unity of that title. When the unity of the title was disintegrated under Ex.B.2, an easement right of way may have to be provided. This is a class of easement of necessity within the meaning of Sec.13 of the Indian Easements Act, 1882. However, parties to Ext.B-2 themselves have recognized this right and accordingly they had contractually granted a right of user for Thulasiammal over the property of Manickammal.

8.2 Right of user of any property as a pathway only entitles the party in whose favour the right is created to use the surface of the property as a pathway. It does not confer any title or property over the land on which the pathway runs. The soil belongs to the party who has the title and that party has every right to exercise his right as a owner of the land. In other words, a right of pathway created cannot exclude the right of the owner of the land to exercise his right as a title-holder thereof. The only limitation on the owner of the land is that he should not do such acts of ownership as would go to interfere with the right of pathway conferred on the other party. Thus, this Court finds that the plaintiff has every right to use the same as a pathway and this right cannot be denied to him by the defendants.

9.In conclusion, this Court does not find any merit in the appeal and the same is dismissed. The judgment and decree of the learned Subordinate Judge, Dharapuram in A.S.No.22/2004 dated 4.3.2005 confirming the Judgment and Decree of the learned District Munsif of Dharapuram in O.S.No.297/2000 dated 13.2.2004 is hereby confirmed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Subordinate Judge,Dharapuram.
- 2.The District Munsif,Dharapuram.
- 3.The Section Officer
VR Section, High Court, Madras.

+1cc to Mr.s.Kaithamalai Kumaran , Advocate SR.No. 48925
+1cc to M/s.M.Srividhya , Advocate SR.No. 49240

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