

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 03.10.2019

JUDGMENT PRONOUNCED ON : 18.10.2019

CORAM

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.931 of 2019

1.Saloni

2.Ramesh Sardar Singh

3.Ronak

..Appellants 1 to 3/Appellants 3 to 5/
Defendants 3 to 5

Vs.

1.Srinivasan

2.Geetha Singh

3.Vinoth Singh

..1st Respondent/1st Respondent/Plaintiff

..Respondents 2 & 3/Appellants 1 & 2/
Defendants 1 & 2

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 22.06.2018 made in A.S.No.273 of 2017 before the XV Additional City Civil Court, Chennai confirming the judgment and decree dated 11.08.2017 made in O.S.No.6716 of 2013 before the XV Assistant Judge, City Civil Court, Chennai by allowing this Second Appeal.

For Appellants : Mrs.Saloni
Mr.Ramesh Sardar Singh
Mr.Ronak
Parties-in-person

For Respondents : Mr.S.Sethuraman

J U D G M E N T

The defendants 3 to 5 in O.S.No.6716 of 2013 who suffered a decree for permanent injunction and mandatory injunction on its affirmation by the lower appellate court in A.S.No.273 of 2017 have come forward with this Second Appeal.

2. The suit was filed by the 1st respondent/ plaintiff seeking a declaration that the suit pathway is a common pathway and that he is entitled to use the same for ingress and egress to his house and to take water, sewerage, electricity and telephone lines to his house situate on the Northern side of the

pathway from Mangesh Street situate on the Southern side, for a permanent injunction restraining the defendants from interfering with his peaceful enjoyment of the said rights and for a mandatory injunction directing the defendants to remove the obstructions such as air conditioner, iron grill, slabs etc., obstructing the common passage.

3. According to the plaintiff, he had purchased the property comprised in New Door No.24/4, Old Door No.16, Mangesh Street, T.Nagar, Chennai from one A.Nageswara Singh along with a right of usage over the common passage measuring 10 ft in width and 75 ft in length leading to Mangesh Street from his house property. The plaintiff after purchasing the vacant site with a right over the pathway has put up construction and he has been in possession of the said property.

4. It is the further case of the plaintiff that the land measuring 5400 sq.ft and building in premises No.16, Mangesh Street, T.Nagar, Chennai belong to one A.Nageswara Singh husband of the 1st defendant and father of the defendants 2 and 3. He had entered into an agreement with M/s.Appasamy Builders for developing the property. The builder had developed the front portion and had sold the rear portion measuring about 2700 sq.ft to him under the registered sale deed dated 23.08.1990 along with a right of usage over the 750 sq.ft. common passage.

5. The plaintiff after his purchase had put up construction in the land purchased by him. The suit pathway is the only way for him to reach Mangesh Street on the South. The predecessor of the defendants Mr.Nageswara Singh was in exclusive occupation of the front portion of the property and he had a separate entrance with a gate from Mangesh Street. It is his contention that he has been exclusively using the suit pathway for more than 20 years without any interference till the original owner Mr.Nageswara Singh was alive. After the death of Nageswara Singh, the defendants who are his legal heirs started giving pinpricks to the plaintiff which snowballed into a big issue leading into the present suit.

6. According to the plaintiff, the defendants have let out a portion of the house to the tenants and the tenants were using the staircase situate on the Eastern side which had a approach through the common passage. The tenants who are in occupation of the 1st floor started using the passage to reach the demised premises. The plaintiff did not object to the use of the passage as they were only using it without bringing in vehicles. Over a period of time the tenants started bringing in two-wheelers inside the passage and parked them in a haphazard manner

obstructing free flow of vehicles through the passage. The plaintiff whose house is situate on the Northern end of the passage could not take his vehicles particularly four wheelers to reach his house. The plaintiff objected to the defendants regarding such haphazard parking of two wheeler.

7. The defendants claimed that they being the original owners of the property have a right to park the vehicles anywhere and the plaintiff cannot question the same. The plaintiff could not park his car on the road also since the street viz., Mangesh Street is a crowded street situate in a busy locality namely T.Nagar. Therefore the plaintiff was facing harassment from the Police Authorities also. Hence, the plaintiff has come forward with the present suit for declaration, permanent injunction and mandatory injunction.

8. The defendants 3 and 4 filed identical written statements. The suit was resisted by the defendants contending that the plaintiff is not the absolute owner of the passage. While admitting the right of the plaintiff, the defendants claim that the passage is a common passage. Therefore, they are also entitled to use the passage along with the plaintiff. They denied the fact that they are creating nuisance by parking cars in the common passage. According to them, two of the cars parked belong to the plaintiff and only one car belonged to the defendants.

9. As regards the projections in the passage by installation of air conditioner etc., the defendants would claim that the air conditioner has been in existence for more than 30 years and the same was not an interruption into the rights of the plaintiff. The defendants who appeared in person before the trial court were more worried about the order of interim injunction that was granted by the trial court. The entire written statement proceeds as if it is a counter to the interim injunction petition filed by the plaintiff. But the essence of the written statements is that the plaintiff has no exclusive right over the common passage and the defendants and their tenants also have right to use the common passage.

10. On the above pleadings, the trial court framed necessary issues and on a consideration of the evidence concluded that the plaintiff has a right over the common passage and the defendants cannot obstruct the same. On the said findings, the trial court decreed the suit granting a declaration that the plaintiff has a right to use the common passage or the suit passage with the right of ingress and egress and take water, sewerage, electricity and telephone lines to his

house situate on the North of the suit pathway from Mangesh Street situate on the South.

11. The trial court also granted the relief of mandatory injunction directing removal of the air conditioner that was protruding into the pathway obstructing free ingress and egress of the plaintiff. A permanent injunction was also granted restraining the defendants from interfering with the peaceful enjoyment of the plaintiff of the suit passage. Aggrieved the defendants preferred an appeal in A.S.No.273 of 2017. The lower appellate court also concurred with the trial court and dismissed the appeal. Aggrieved the defendants 3 to 5 have come forward with this Second Appeal.

12. I have heard the appellants 1 and 2 who appeared in person and Mr.G.Senthil Kumar, learned counsel appearing for the respondents. Since there was a delay in filing the appeal, notice was ordered and upon service M/s.S.Sethuraman and G.Senthilkumar had entered appearance for the respondents. Their names were printed when the matter was listed for admission and hence I have heard the counsel for the respondents also.

13. Though the plaintiff originally claimed exclusive right to use the suit pathway, during the course of trial he had conceded that it is a common passage and the defendants are also entitled to use the same. The defendants also had conceded the right of the plaintiff to use the common pathway. This is evident from the very pleadings in the written statements filed by the defendants. In the written statement filed by the 3rd defendant before the trial court, the 3rd defendant had specifically claimed as follows:-

"I further submit that my said father, Mr.A.Nageshwar Singh, who was the legal heir of the above ancestral property sold out the rear portion of the above property, viz., 2700 square feet sized vacant plot [Schedule B property] to the plaintiff Mr.L.Srinivasan on 23.08.1990. During such Sale, in the above Sale Deed, it has been written that such 10 feet width x 75 feet length measuring common passage is a right to passage and in the said common passage, the plaintiff may make use of water line, [pipe] drainage pipe, electric line, and telephone line therein. This is specifically stated in the Sale Deed dated 23.08.1990 in page

No.22, the Sale Deed Document No. is 1863, Schedule C Property."

14. The 4th defendant had filed a separate written statement, wherein, he has pleaded as follows:-

"I further submit that my said father-in-law, Mr.A.Nageshwar Singh, who was the legal heir of the above ancestral property sold out the rear portion of the above property, viz., 2700 square feet sized vacant plot [Schedule B property] to the plaintiff Mr.L.Srinivasan on 23.08.1990. During such Sale, in the above Sale Deed, it has been written that such 10 feet width x 75 feet length measuring common passage is a right to passage and in the said common passage, the plaintiff may make use of water line, [pipe] drainage pipe, electric line, and telephone line therein. This is specifically stated in the Sale Deed dated 23.08.1990 in page No.22, the Sale Deed Document No. is 1863, Schedule B Property."

15. Therefore, the defendants had in fact conceded the right of the plaintiff not only to use the pathway for ingress and egress and also to lay water pipe line, drainage line, electricity line and telephone lines therein. It is also admitted by them that these rights are specifically conferred on the plaintiff under the sale deed dated 23.08.1990 executed by the original owner A.Nageswara Singh. Therefore, there was in fact no dispute regarding the right of the plaintiff to use the pathway in the manner suggested in the sale deed dated 23.08.1990.

16. The appellants 1 and 2 who appeared as parties in person had also submitted that the air conditioner which was directed to be removed has been removed and there was no obstruction for ingress and egress of the plaintiff from Mangesh Street situate on the South to his house situate on the North of the suit pathway.

17. In the light of the statements made in the written statements and the evidence on record, the conclusions of the courts below that the plaintiff is entitled to declaration, permanent injunction and mandatory injunction cannot be faulted. However, the grievance of the appellants seems to be that the plaintiff taking advantage of the decree is preventing them from parking two wheelers in the suit pathway even for a while. It is

their grievance that the plaintiff keeps complaining to the police Authorities and he has also launched execution proceedings as and when the appellants parked their two wheelers in the suit pathway even for a short while in case of urgency.

18. Upon a suggestion made by the court, the learned counsel appearing for the plaintiff/ respondent upon instructions of the plaintiff/ respondent had submitted that he would not object to the defendants parking the two wheelers for a short while in the common pathway. But according to him, the defendants are parking their vehicles for a considerable length of time in the pathway affecting his ingress and egress to his house on the Northern side. He is unable to take his belongings through the passage to his house which is about 75 ft. away from the East West of Mangesh Street situate on the Southern side of the pathway. Being the very busy locality, he could not park his car on the road also.

19. The learned counsel for the plaintiff/ respondent would submit that the defendants adopt a hostile attitude and wantonly park their two wheelers in the haphazard manner on the pathway preventing the plaintiff from taking his four wheelers to his house on the Northern side.

20. I have considered the rival submissions. The entire dispute between the parties seems to be driven by ego. The 1st appellant who is a handicapped person has a special vehicle and she parks it on the pathway, thus preventing the plaintiff from taking his four wheeler to his house. A request for removal of the vehicle evokes an angry response from her.

21. The courts below have adverted to the evidence and the report of the Commissioner to conclude that the plaintiff has a right to use the passage for ingress and egress and for having other amenities like water, sewerage, telephone and electricity lines through the common passage, it could not be prevented by the defendants from exercising the said right. If the defendants park their vehicles particularly two wheelers in a haphazard manner preventing the plaintiff from taking his four wheelers to his house through the common passage definitely the right of the plaintiff would be jeopardised.

22. I find that the courts below have appreciated the evidence on record and reached a right conclusion that the plaintiff has got a right to use the pathway as per the sale deed dated 23.08.1990 and the defendants cannot prevent him from exercising the said right. Therefore, I do not find any perversity in the conclusions of the courts below, in order to

enable me to entertain the Second Appeal. Now that the defendants have removed the air conditioner also, the decree for mandatory injunction has been complied with.

23. The only dispute seems to be the parking of vehicles for a short duration when the defendants come home for lunch or some time in the morning. The learned counsel for the plaintiff/ respondent has assured the court that the plaintiff/ respondent will not make a mountain out of a mole hill in making the grievance of such parking for a limited period.

24. I am therefore of the considered opinion that this appeal could be disposed of with the following observations:

1. The Second Appeal is dismissed confirming the judgment and decree of the courts below as it is devoid of any question of law.

2. The statement of the counsel for the respondent/ plaintiff made upon his instructions that he will not object to the parking of two wheelers for a limited period in the pathway by the defendants is recorded. It is also made clear that the defendants shall not park the two wheelers in the pathway for a long time say for more than ½ an hour at any given point of time in a manner that ingress and egress of the plaintiff would be affected by such parking.

3. Considering the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The XV Additional Judge,
City Civil Court, Chennai.

2. The XV Assistant Judge,
City Civil Court, Chennai.

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

+1 cc to M/s.S.Sethuraman, Advocate Sr.No. 87481

AKM/02.03.2020/7P- 5C /

Judgment
in S.A.No.931 of 2019