

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 944 of 2019

and

C.M.P.No. 20083 of 2019

D.Lakshmi

..Appellant/Appellant/1st Plaintiff

Vs.

1.K.Vanathatchi

2.N.Kumar

3.S.Rani

4.M.S.Shanmugam

5.V.Sathish Kumar

6.Sujatha

7.Kavitha

8.Banumathi

9.N.S.Mani

10.N.Kalavathi

11.A.Malathi

..Respondents 1 to 11/Respondents/
Defendants

12.Pappammal

13.A.Gangaiammal

..Respondents 12 & 13/Appellants 2 & 4/
Plaintiffs 2 & 4

Prayer: Memorandum of Second Appeal filed under Section. 100 of C.P.C. against the judgment and decree passed by the 1st Additional City Civil Court at Chennai dated 20.02.2019 made in A.S.No.259 of 2014 confirming the judgment and decree passed by the XI Assistant Judge, City Civil Court at Chennai dated 11.04.2014 made in O.S.No.7408/2018.

For Appellant : Mr. M.Liagat Ali

JUDGMENT

The plaintiffs in O.S.No. 7408 of 2008 having lost their claim for easement of necessity over the suit pathway have come forward with this appeal.

2. The plaintiffs filed the suit, claiming that they are in possession of the rear portion of the property as tenants under the first defendant, which has a common entrance with premises bearing Old Door No.64, New Door No.105, Meyer Vasudev Street, Old Washermenpet, Chennai - 600 021.The second defendant, who

had purchased the property pending the suit is now putting up construction, so as to block the pathway leading to Meyer Vasudev Street. According to the plaintiffs, they had been using the said pathway and there is no other alternative pathway to reach the Meyer Vasudev Street, which is situate on the Eastern side.

3. The suit was resisted by the defendants contending that the plaintiffs have no right of way over the suit pathway. It is their contention that the plaintiffs are using the pathway, which is situate in the Northern side of the property to reach the Meyer Vasudev Street, which is on the East.

4. Both the Courts below have found that the plaintiffs have an alternative pathway and they have not established their claim of easement of necessity. The Courts below have also found that the plaintiffs, who are the tenants under the first defendant cannot claim right over the second defendant's property, though the second defendant is a purchaser, pending suit.

5. Aggrieved, the plaintiffs have come forward with this appeal. Pending appeal before the lower Appellate Court, the 3rd plaintiff/ 3rd appellant died. The 2nd and 4th plaintiffs, who were 2nd and 4th appellants had withdrawn the appeal. Therefore, the first plaintiff alone had come forward with this second appeal.

6. I have heard Mr.M.Liagat Ali, learned counsel appearing for the appellant. Mr.M.Liagat Ali, learned counsel appearing for the appellant would submit that the plaintiffs have been in possession of the property since 1987 and they have been using the suit pathway to reach the Meyer Vasudev Street, which is situate on the East. According to him, the pathway that is situate on the Northern side is inconvenient as the drainage lines and water lines run through the said pathway. He would also submit that ever since their occupation of the suit property in 1987, the appellant has been using the suit pathway to reach the street on the eastern side. I am unable to countenance the said submissions of the learned counsel appearing for the appellant. The plaintiffs have come to Court with specific plea of easement of necessity on the ground that there is no other pathway to reach the street on the Eastern side. It is the contention of the defendants that the pathway on the Northern side is available to the plaintiffs and the same is not obstructed. The defendants also contend that the plaintiffs, being tenants under the first defendant cannot claim right of way over the second defendant's property.

7. Both the Courts below have found that there is an alternative pathway on the northern side and the same is being used by the plaintiffs and the plaintiffs, who are admittedly tenants under the first defendant cannot seek a right over the property of the 2nd defendant.

8. The findings of both the Courts below being factual and nature, I do not think, I can re-appreciate the evidence and substitute my own conclusions, unless it is shown that the findings are perverse. The findings are based on the evidence available and therefore the plaintiff / appellant cannot claim right over the 2nd defendant's property.

9. Hence, I do not find any question of law much less a substantial question of law in order to enable this Court to entertain this appeal. The appeal is dismissed without being admitted. Consequently, connected Civil Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The I Additional Judge,
City Civil Court,
Chennai.
- 2.The XI Assistant Judge,
City Civil Court, Chennai.

+1 cc to M/s.M.Liagat Ali,Advocate Sr.No. 80229
+1 cc to M/s.A.Manimaran,Advocate Sr.No.80836

AKM/18.11.19/3P-5C /

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