

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRP.(NPD).No.1462 of 2009

and

MP.No.1 of 2009

1.State of Tamilnadu Owning
Public Works Department,
rep.by District Collector,
Erode.

2.The Assistant Engineer,
L.B.P Canals, Public Works Department,
Kavundapadi.

... Petitioners

Versus

1.Pandarinathan (died)

2.P.Alamelu

3.P.Gayathri

... Respondents

[R2 and R3 brought on record as LR's
of the deceased respondent viz., Pandarinathan
vide order of this Court dated 19.07.2019 made
in CMP.No.6606 to 6609 of 2019]

Civil Revision Petition filed under Section 115 of Code of Civil Procedure, against the order dated 20.12.2002 passed in A.S.No.76 of 2002 on the file of the Fast Track Court No.IV (Additional District Judge), Erode at Bhavani by reversing the judgment and decree dated 29.10.2001 made in O.S.No.108 of 1999 on the file of the District Munsif, Bhavani.

For petitioners : Mr.S.Jaganathan, (Govt.Advocate)

For Respondents : R1 – Died

: No Appearance – R2 & R3

ORDER

Heard the learned Government Advocate appearing for the petitioners.

2.The first respondent herein filed the suit in O.S.No.108 of 1999 before the District Munsif Court, Bhavani, seeking relief of declaration to declare that the plaintiff is entitled for easmentary right to use the WXYZ (15 feet wide and about 100 feet in length, as mentioned in the plaint) cart track or in the alternative declare the plaintiff's title to the suit WXYZ suit itteri described in the B Schedule property and for a consequential permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the WXYZ cart track in any manner that are detrimental to the right of the plaintiff.

3.According to the plaintiff, A-Schedule property is a residential buildings and workshops and B-Schedule property is the Cart track over which, he claim the right of easement of necessity and easement of prescription. It is stated that the plaintiff/first respondent herein has purchased an extent of 17 cents within specific boundaries on 10.07.1975 from Kaliannan and others as a vacant site in S.F.No.398A2B of Kavundapadi village where he constructed residential buildings, workshops

erected lathes, Drilling machineries, welding sets and other accessories and obtained service connections from the Tamil Nadu Electricity Board, obtained permission and licence from the competent authorities such as small scale industries, District Industries Center, obtained loans and is carrying on machinery workshop lathe, Drilling welding and Manufacturing for the last about 24 years. The residential house and the workshops are numbered as old Door No.28G1 and New Door No.302 & 303. The plaint proceeds on the basis that the plaintiff is reaching his house and workshop through the well defined cart track WXYZ shown in the plaint plan, which is about 15 feet wide and about 100 feet in length. The said cart track was originally an itteri for the last about 70 years and more. The plaintiff and his predecessors in title peacefully, openly, continuously and also adversely enjoying the property as cart track. The said itteri cart track is morefully shown in the plaint plan as WXYZ and described as B-Schedule property hereunder. Even though the first defendant acquired the lands for the Lower Bhavani Project canal and also a small place for PWD Office, the defendants have not acquired WXYZ cart track formerly, itteri. However, the defendants demanded the plaintiff to stop the workshop activities and prevented the plaintiff from using the WXYZ cart track. Thus, the plaint prayed the relief as prayed for.

4.The defendants filed written statement stating that for implementing the Lower Bhavani Project, lands in S.F.No.398 & 399 of

Kavundapadi village had been acquired for formation of branch channel. The necessary compensation has also been paid to the land owners as per award No.18/1954 dated 30.04.1954. The lands acquired were with the possession and enjoyment of the public works department ever since 1954. As per the operation of Section 16 of the Land Acquisition Act, the Possession and title absolutely vests in the Government free from all encumbrances. The suit survey field in S.F.No.338 is having an alternative cart track on the southern side running parallel of Erode – Sathy main road. The plaintiff is not entitled to claim any easementary right by way of grant and he can not claim right by prescription and easement of necessity. On the other hand, the plaintiff is causing hindrance to the free flow of water flowing from sluice No.27 by dumping debris and storing workshop materials. At times he used to store such materials in public works department land causing much inconvenience.

5.In the trial, PW.1 and PW.2 were examined. Ex.A1 to A15 marked. On the side of the defendants DW.1 alone was examined. EX.B1 to B6 were marked and the Court documents Ex.C1 and C2 were marked. After conclusion, the Trial Court has dismissed the suit.

6.Thereafter, the plaintiff preferred an appeal suit in A.S.No.76 of 2002, and the same was allowed in favour of the first respondent herein/plaintiff. Against which, the Civil Revision Petition has been filed by

the District Collector on behalf of the State.

7.Learned Government Advocate for the petitioners drew my attention to the cross-examination of DW.1 and the Court exhibits of Ex's. C1 and C2 based on which the Appellate Court determined that the suit cart track is the only access to the lands of the plaintiff and there is no other cart track. The Appellate Court failed to note that the suit Survey field in S.F. No. 238 is having an alternative cart-track on the southern side running parallel to Erode-Sathy Main Road. On the north of the schedule property water channel is situate. As per the admission of PW.1 in the cross-examination the suit property was purchased from one Kaliyannan in the year 1975, but in the year 1954, land acquisition proceedings were initiated and the subject matter of the lands have been acquired. Further, DW.1 in the cross-examination has admitted that from Arankadu to Kovunthampadi Road from the 27th sluice, on the right point the water channel can be reached to the petitioner's property and also the distance between the plaintiff's land and the 27th sluice is only 60 meter and also stated that it can be reached in the alternative route through shortest distance. When the projected was completed and there is a water channel in existence, the plaintiff cannot claim any title to the land. DW1 also in the cross-examination referred about the alternate pathway while so, the question on easement of necessity does not arise. In the similar circumstances of this Court in the case of **Periyanna Gounder (died) and another Versus**

Komarasami reported in **2000 (1) MLJ 431** wherein, it has held that "Easements Act (V of 1882), Sections 14 and 15, Plaintiff, claiming easementary right both by prescription and necessity, inconsistent-When a right of easement is claimed pleadings should be precise-Easement of necessity cannot be claimed merely on ground that other ways are inconvenient-Decree set aside." As per the ratio laid down in the said decision, the learned Government Advocate has stated that *"Right of easement guidelines and principles-suit for declaration and injunction by the plaintiff – claiming easementary right over cart-track plaintiff also claiming easementary right on prescription. Held prescription and necessity inconsistent mere the ground that another way is inconvenient easement of necessity cannot be claimed. Decree set aside."*

8. In the written statement, it is stated that a similar suit in O.S. No. 607 of 1979 filed by one Ponnusamy claiming easementary right of a cart track measuring 15 feet upto Erode-Sathy Road was dismissed by the District Munsif Court Erode. The relief claimed in the present suit as well as O.S. No. 607 of 1979 are identical and this was considered by the trial Court. Further, in Ex.B2, B3, B4 and B5, field measurement maps, the suit property was mentioned only as Channel poromboke and nowhere it was mentioned as cart track. Further, the land was already acquired by the Government as part of implementing a public project and necessary compensation was also paid to the land owners even in the year 1954,

while so, the land absolutely vests with the government. While so, the title claimed by plaintiff on the basis of sale in the year 10.07.1975 from Kaliannan is not correct. Even in Exs. C1 and C2, the existence of alternate land for using it as Cart track is clearly mentioned, hence, easement of necessity does not arise. Since the land was acquired, it is vested with the Government and the question of easement on prescription also does not arise. The Lower Appellate Court committed an error in allowing the appeal and setting aside the decree passed in the suit without properly examining the answer elicited in the cross-examination of PW1 and PW2. In this view of the matter, I find that the decree and judgment rendered by the First Appellate Court is hereby set aside and the decree and Judgment rendered by the trial court is restored. The Civil Revision petition is allowed and the suit in O.S.No.108 of 1999 on the file of the District Munsif, Bhavani shall stands dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

सत्यमेव जयते

12.02.2020

Index : yes/no
Internet : yes/no
Speaking/Non-Speaking order
klt

To

The District Munsif Judge, Bhavani.

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