

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.07.2020

Pronounced on: 31.07.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

S.A.No.1099 of 2009
& M.P.No.1 of 2009

N.Lakshaman Gounder,
S/o. Nachimuthu Gounder,
Orthupalayam, Kannivadi,
Dharapuram, Erode District.Appellant/Plaintiff

/versus/

P.Muruges,
S/o.Palanisamy,
Orathupalayam,
Kannivadi, Dharapuram,
Erode District.Respondent/Defendant

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code praying against the judgment and decree dated 01.06.2009 made in A.S.No.47 of 2008 on the file of the Sub Court, Dharapuram, partly confirming the judgment and decree dated 04.04.2008 made in O.S.No.488 of 2004 on the file of the District Munsif Court, Dharapuram.

For Appellant : Mr.N.Manokaran

For Respondent : No appearance

J U D G M E N T

(The case has been heard through video conferencing)

The plaintiff is the appellant before this Court. The suit was filed seeking relief of declaration regarding right of easement and access to 'B' schedule property for maintaining the compound wall of the plaintiff morefully described as 'A' Schedule property. In addition to a relief of injunction to restrain the defendant and its agent from preventing the plaintiff from having access to 'B' Schedule property and mandatory injunction to remove the hallow block walls and the cement sheet roof which carries the rain water collected from

the defendant's property and let in to the plaintiff's property was also sought. The Trial Court dismissed the suit in toto. On appeal, relief regarding mandatory injunction to remove the cement sheet roof alone was granted.

2. The plaintiff as the owner of the 'A' Schedule property claims that the southern side wall of his property has been maintained by entering through 'B' schedule property which is a lane of 2 to 2 ½ of feet width. South of the lane, defendant's house is located. The ingress to the lane was obstructed by the defendant by putting up hallow bricks wall which has driven the plaintiff to file the suit for the relief stated above.

3. The defendant contested the suit on the ground that the property in possession of the plaintiff originally belongs to one Pannadi Iyan @ Palanisamy Gounder. The said property was encroached by the plaintiff and has constructed the house. Even before the plaintiff encroached the land, the defendant had put up construction and enjoying the property. The plaintiff have no right of easement over the 'B' schedule property and never given access for maintaining the wall. The cement sheet roof over the B schedule property was put by the defendant in the year 1980 itself, which is nearly six feet away from the southern side wall of the plaintiff and no rain water falls over the property of the plaintiff.

4. The trial Court has framed the following issues:-

(i). Whether the plaintiff is entitled to the relief sought for in the suit?

(ii). Whether the plaintiff or his ancestors have no easementary right over 'B' Schedule property as alleged by the defendant?

(iii). Whether the plaintiff is entitled to seek right over the 'B' Schedule property when the southern wall belonged to him put up without leaving any space bringness?

(iv). Whether the defendant is justified in claiming that the plaintiff have no access at any point of time and easementary right over the passage?

5. On the side of the plaintiff and the defendant two witnesses each were examined. 3 documents were marked in support of the plaintiff and 6 documents were marked in support of the defendant. The Advocate Commissioner appointed by the Court has submitted the report and sketch, which are marked as Ex.C.1 and Ex.C.2.

6. The trial Court after considering the evidence held that the plaintiff has not proved the easementary right to have access over the B Schedule lane for maintaining the southern side wall and dismissed the suit.

7. Aggrieved by that, the plaintiff has preferred the Appeal Suit before the Subordinate Court, Dharapuram.

8. The Learned Appellate Judge, on considering the evidence and the Advocate Commissioner's report which has stated that the rain water collected on the cement sheet of the defendant falls on the wall and land of the plaintiff. Holding that the draining of rain water by slanting cement sheet roofing would certainly cause loss and inconvenience to the plaintiff and it to be averted by way of granting mandatory injunction, therefore granted a limited relief. While rejecting the plea of the plaintiff regarding the easementary right over the 'B' schedule property for maintaining the wall and mandatory injunction to remove the hallow bricks obstructed for access to 'B' schedule property, granted mandatory injunction regarding removal of slanting cement sheet structure, which was carrying the rain water to be discharged over the southern wall of the plaintiff. As against the disallowed portion of the relief, the present Second Appeal is filed.

9. The Learned Counsel for the appellant would submit that the Courts below ought to have granted relief of declaration as well as permanent injunction as prayed since the right of maintaining the wall is the conventional easementary right which cannot be denied or deprived.

10. The Learned Counsel for the appellant submitted that, the Courts below failed to properly appreciate the law of easement and has erroneously disallowed the relief of declaration and injunction.

11. The contention of the appellant challenging the findings of the Courts below does not have the support the law and facts. This Court finds no substantial questions of law involved in this matter.

12. The Courts below have rightly found that the plaintiff has not placed any material to prove his easementary right to have access over the 'B' schedule lane. Further, the 1st Appellate Court on appreciating the Advocate Commissioner's report and has granted the relief of mandatory injunction directing the defendant to remove the cement sheet which was carrying rain water into the land of the plaintiff.

13. In the absence of evidence to prove easementary right of access to 'B' schedule property, neither the relief of declaration nor injunction can be granted.

14. The Learned Counsel for the appellant would submit that for maintenance of the compound wall, the plaintiff must have the right of access taking note of the Principle of Urban Servitude. The right of access to the neighbouring land to carry out the maintenance of the wall, no doubt been recognised under law by judicial pronouncements. However, even for that the plaintiff ought to have establish the implied grant of easement. In this case, the plaintiff has not established the long acquiescence blossoming into right of easement. Hence, this Court finds no substantial questions of law involved in this case for interference.

15. As pointed out by the Court below, the appellant ought to have provided space in his own land before constructing the compound wall. After putting up the compound all on the boundary line of his property, he cannot force his neighbour to grant him unrestricted across over the land which is admittedly owned by the defendant.

16. This Court is impelled to add if the outer wall of the plaintiff's property is left unattended for years without maintenance, it may get damaged by efflux of time. Therefore, as a goodwill gesture to the neighbour, the respondent herein may permit the appellant once in a year for two days to carry out the maintenance work of plaintiff's wall laying on the southern side.

17. With the above observation, this Second Appeal is dismissed. The judgment passed by the Subordinate Court, Dharapuram, in A.S.No.47 of 2008, dated 01.06.2009 is confirmed. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

bsm
To,

1.The Sub Court,
Dharapuram.

2. The District Munsif Court,
Dharapuram.

+lcc to Mr.N.Manokaran, Advocate SR.25791

S.A.No.1099 of 2009

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srg 03/11/2020



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