

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 284 of 2020
and
C.M.P.No. 5923 of 2020

Venkatappan

..Appellant/Plaintiff

Vs.

1.Madhu
2.Chenroyan
3.Veerappan

..Respondents/Defendants

Prayer in both the appeals: Second Appeals filed under Section. 100 of C.P.C. against the judgment and decree passed in A.S.No.3 of 2016 dated 05.09.2019 on the file of the Additional Special Court, Krishnagiri confirming the judgment and decree dated 23.11.2015 in O.S.No.231 of 2011 on the file of the District Munsif Court, Krishnagiri.

For Appellant : Mr.V.Rameshvel

J U D G M E N T

The plaintiff in O.S.No.231 of 2011 whose suit for declaration and permanent injunction was dismissed in part granting a right of way to the defendants in a pathway having a width of about one feet and length of 36.4 metres shown as A and B in Ex.C3 has come up with this second appeal.

2. The plaintiff sought for a declaration contending that the suit properties situated in Survey No.673/13 and 678/4 absolutely belonged to the plaintiff and the defendants who are owning lands adjacent to the suit lands on the Northern side are trying to interfere with the plaintiff's possession, since the plaintiff refused to part with his lands as demanded by them. It is also contended that there was no obliteration of the cart track which as claimed by the defendants. The defendants have several pathways to reach their lands from the road lying in forest poromboke land.

3. The suit was resisted by the defendants contending that they entitled to a right of way over three feet pathway that is running through the land in Survey No. 673/13 while claiming the said right, the defendants admitted the title of the plaintiff to the land in Survey No.673/13. Their only claim was they are entitled to use the pathway situated on the North of Survey No.673/13. At Trial, the plaintiff was examined as P.W.1 and one other witness Mohan was examined as P.W.2. On the side of the defendants, the first defendant was examined as D.W.1 and two other witnesses namely, Chinnasamy and Ramar were examined as D.W.2 and D.W.3 respectively. Village Administrative Officer was examined as Court witness. A Commissioner was appointed pending suit and his report and plan were marked as Ex.C3. Adangal Extract and FMB Sketch were marked as Exs.C1 and C2.

4. Upon a consideration of the evidence on record, the Courts below found that the plaintiff has established his title to the land in Survey No.673/13 and therefore he is entitled to relief of declaration. While considering the claim for permanent injunction, the Courts below found that the defendants were entitled to right of way over the pathway in the plaintiffs' land which is shown as AB in the Commissioner's plan. The width of the pathway was shown as one foot and length was about 36.4 metres. Upon finding that the defendants entitled to right of way over the said pathway / ridge, the decree for injunction was granted only subject to the right of the defendant to the extent of pathway mentioned in the Commissioner's plan as AB. Aggrieved, the plaintiff has come up with this second appeal.

5. Heard Mr. V.Rameshvel, learned counsel appearing for the appellant.

6. Mr. V.Rameshvel would strenuously contend that having claimed a right of way over a 3 feet width pathway, the defendants cannot be granted a decree for a lesser extent. He would also further contend that in the absence of a suit for declaration regarding the easementary right, the Courts below were not right in dismissing the plaintiff's suit for injunction for the extent of the pathway.. I have considered the submissions of the learned counsel for the appellant.

7. On the second submission of the learned counsel appearing for the appellant, I find that it stem out of misconception of law relating easements. A person having an easementary right need not establish his right by filing a suit for declaration. It is open to him to resist a suit for injunction by the owner claiming that he has got a right of easement over the property. Therefore, the second contention of the learned counsel is liable to be rejected.

8. Both the Courts below have factually found that there is a 1 feet wide pathway used by the defendants to reach the land which is situate on the North. The Commissioner's plan and report show the existence of the pathway and user of it, by the defendants, as a pathway. Of course, the defendants preferred cross-objections claiming a 3 feet wide pathway. The said cross-objections were rejected by the lower Appellate Court. The findings of the Courts below regarding the existence of the pathway and it user by the defendants are factual findings which are based on evidence. Despite his best efforts, the learned counsel appearing for the appellant is unable to show that the factual findings can be termed as perverse. I do not find any question of law much less a substantial question of law in order to enable me to entertain this appeal. Hence, the appeal is dismissed without being admitted. Consequently, connected civil miscellaneous petition is closed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kkn
To:-

1. The Additional Special Judge, Krishnagiri.
 2. The District Munsif, Krishnagiri.
- +1 CC to Mr.V.Rameshvel, Advocate sr 22763.

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SR(CO)
SP(18/12/2020)

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