



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 19.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. (MD)Nos.284 and 285 of 2005

and

C.M.P. (MD)Nos.2471 and 2472 of 2005

WEB COPY

Kailass Mooppan ... Appellant in S.A.(MD)No.284 of 2005/
Respondent/Plaintiff
1.Kailass Mooppan
2.Kandasamy ... Appellants in S.A.(MD)No.285 of 2005/
Respondents/Defendants
Vs.

V.Periannan ... Respondent/Appellant/Defendant
in SA(MD)No.284 of 2005
V.Periannan ... Respondent/Appellant/Plaintiff
in SA(MD)No.285 of 2005

COMMON PRAYER: These Second Appeals filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 30.09.2004 passed in A.S.Nos.354 and 353 of 2003 on the file of the Principal District Judge, Trichirappalli, reversing the judgment and decree dated 24.09.2003 passed in O.S.Nos.312 of 1996 and 777 of 1997 on the file of the II Additional Subordinate Judge, Trichirappalli, respectively.

For Appellants : Mr.P.Rajagopalan
For Respondent : Mr.S.Anand Chandrasekar,
For M/s.Sarvabhauman Associates.

COMMON JUDGMENT

Aggrieved over the reversal finding of the First Appellate Court, decreeing the suit in O.S.No.777 of 1997 and dismissing the suit in O.S.No.312 of 1996, both the Second Appeals are filed.

2.The parties are referred to as per their rank in O.S.No.777 of 1997.

3.The brief fact, leading to file these Second Appeals, is as follows:-

The suit in O.S.No.777 of 1997 has been filed for permanent injunction, in respect of the pathway measuring 16 ½ feet north-south in point A and 15 feet in point B, shown as AB in the plaint schedule. It is the case of the plaintiff that he had purchased the house site situated on the east of the said east-west pathway from one Leela Ammal on 17.11.1982. Ever since the date of purchase, he



is enjoying the pathway. The suit AB pathway is in existence from time immemorial. The predecessors in title of the plaintiff were also enjoying the suit AB pathway for more than 60 years. The said pathway has been shown in UDR survey. The defendants are brothers. The defendants are having house on the north of AB pathway and on the west of the plaintiff's house. The residents of the house situated on the north and south of the said AB pathway and they are using the AB pathway to go to their houses. The suit AB pathway does not belong to the defendants absolutely. The defendants have tried to obstruct the pathway. Hence, the suit is filed.

4.It is the case of the defendants in the above suit that the description of the property detailed in the plaint is not correct and the suit property, which belongs to the plaintiff, is situated in S.F.No.406/1 of 0-07 cents and the plaintiff has failed to state that in which the survey number the suit AB pathway is situated and he is entitled to the same either by prescription or by right of purchase. The suit property belonging to the plaintiff is situated entirely at a different survey number and he and his neighbors on his eastern side constitute an entirely different area of occupation and the right of pathway to that area is accessible from the north-south main road by an entirely different pathway, which is not at all connected as stated by the plaintiff in his plaint. The plaintiff's house is situated on the east of the defendants' property in a different survey number and he has constructed a building in it and the plaintiff is no way related or connected with the defendants or their property. The property measures 50 human feet north-south and 17 human feet east-west comprising a thatched house, cattle shed and vacant site with all easementary rights and with an eye over the vacant site and cattle shed on the southern side are belonging to the defendants. The plaintiff tried to encroach upon the same in the month of April, 1996, which was successfully thwarted by the defendants. Accordingly, the first defendant has filed O.S.No.312 of 1996, for bare injunction. It is the further contention of the defendants that the plaintiff and his neighbors in the same survey number have access to their house through some other pathway extending from north-south main road, which is not at all connected with this alleged suit pathway, hence, prayed for dismissal of the suit.

5.Both the suits were tried together and evidences were recorded. The trial Court after analyzing the evidences decreed the suit in O.S.No.312 of 1996 filed by the first defendant and dismissed the suit in O.S.No.777 of 1997 filed by the plaintiff. Against which, the appeals in A.S.(MD)Nos.354 and 353 of 2003 were filed by the plaintiff / respondent herein. The First Appellate Court, after considering the entire materials and on re-appreciation of the facts, has allowed both the appeals. Against which, the present two Second Appeals are filed by the defendants.



6.At the time of admission, the following substantial questions of law have been framed:-

"1.Whether Natham belongs to the Government or to the person who is in possession of the same?;

2.Whether the lower appellate Court is right in reversing the well considered finding of the trial Court without giving any reasons in the eye of law?;

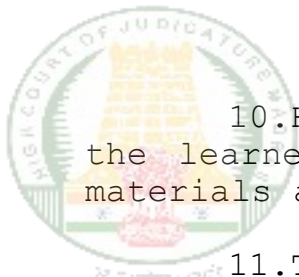
3.Whether the suit filed for bare injunction for AB pathway by the respondent is maintainable in the absence of Declaratory relief for usage of pathway as per the Law of Easement?;

4.Whether the Court below is right in not considering the admission of PW.1 and DW.2 and DW.3 contrary to the Evidence Act?."

7.The learned counsel appearing for the appellants argued the matter vehemently and meticulously.

8.The learned counsel appearing for the appellants submitted that the First Appellate Court has not properly appreciated the evidence. In fact, the evidence of P.W.1 and P.W.2 clearly indicates that the suit pathway ends with the appellants property and will not extend thereafter. Whereas, survey number of the plaintiff is different one. The plaintiff and his neighbor have a different access from the main road. Therefore, when the revenue records and the evidence of D.W.3 clearly shows that the property belongs to the appellants and there is no existing pathway. The First Appellate Court has wrongly appreciated the evidence. Hence, he prayed for allowing the appeal.

9.The learned counsel appearing for the respondent submitted that the First Appellate Court has rightly appreciated the entire evidence. Exs.A.1 to A.3 and Ex.B.1 earlier title deeds of both sides clearly show the existence of pathway. The evidence of P.W.1 and P.W.2 also clearly shows that the pathway was very much existence. Even the evidence of D.W.3 also clearly shows that though the car track is existence upto the appellant property, it continuous as detailed pathway and revenue record clearly shows that there is a pathway in the records. Such view of the facts, the First Appellate Court has rightly come to the conclusion that the pathway is very much existence and never extinguished at any point of time. It is the further contention that the appellants have not established the alleged extinguishment also, whereas the record itself clearly shows that the pathway is shown as the detailed pathway. Such view of the matter, when the right is acquired through the document at the time of purchase, the same cannot be obstructed by the appellants, hence, prayed for dismissal of the appeal.



10. Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondent and perused the materials available on record carefully.

11. Though two appeals are arising out of common judgment, the suit property in both suits is the pathway, shown as AB in the suit in O.S.No.777 of 1997. The house of the defendants namely, appellants situated at the western side of the plaintiff's house and existence of the suit pathway is not disputed by the defendants, namely appellants. Their main contention is that the alternative pathway is very much available and the suit pathway extends only on the appellants' property, thereafter, it do not extend further. *Inter alia*, it is the contention of the appellants that the suit pathway is absolutely belonging to the appellants alone. In this regard, a careful perusal of Exs.A.1 to A.3 and Ex.B.1 shows that the suit pathway has been specifically provided, while purchasing the property by both sides. Exs.A.1 to A.3 title deeds relates to the plaintiff, wherein there is a clear mention about the pathway. Similarly, Ex.B.1 is title deed of the defendant. In the above documents also, the existence of pathway has been mentioned as early as in the year 1944 and 1949 itself.

12. P.W.1 and P.W.2 have also clearly spoken about the existence of pathway. Though D.W.2 and D.W.3 stated that the property has been sub-divided later and their evidence also clearly indicate that though upto the appellant property, car track was available later time, it was reduced into mere pathway and in the revenue records, it is stated as detailed pathway. From this it can be concluded that the pathway was existence right from the date of purchase still available on ground as per the revenue records. Further, the Commissioner's report filed before the trial Court also clearly indicates that even after the appellants' house, the pathway is continuing in usable condition, which was also not objected by the appellants by filing any objection. Therefore, this Court has to certainly conclude that the finding of the First Appellate Court is based on the proper appreciation of evidence.

13. It is also to be noted that it is not the case of the appellants that the pathway granted in the documents were extinguished by passage of time. The main contention is that as the colony has been developed at a later point of time, there was an alternative pathway, therefore, the respondents cannot have a right to use the passage though granted under sale deeds. It is to be noted that unless or until the extinguishment has been proved, it cannot be said that merely alternative passage is available to the colony, which was said to have been developed at a later point of time, after purchase of the property, the right, which was granted under the deeds, are extinguished without proving the extinguishment.



14.In such view of the matter, this Court hold that the judgment of the First Appellate Court is based on the proper appreciation of evidence and on factual basis, the findings are arrived. Accordingly, all the substantial questions of law have been answered and this Court does not find any merits in the appeals.

15.In the result, these Second Appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Principal District Judge,
Trichirappalli.

2.The II Additional Subordinate Judge,
Trichirappalli.

Copy to:

The Section Officer,
Vernacular Records, (2 Copies),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.SARVABHUMAN ASSOCIATES, Advocate (SR-7073[F] dated 19/02/2020)

+2 CC to Mr.R.DEVARAJ, Advocate (SR-7603[F] dated 21/02/2020)

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