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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.07.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.1232 OF 2008

AND

M.P.NOS.1 OF 2008 & 1 OF 2009

1.Chinnathambi
2.Loganathan
3.Selvaraj

.. Plaintiffs/Respondents/
Appellants

Vs

1.Sevan Padayachi
2.Shanmugam
3.Ayyanar
4.Periasami
5.Arumugham

.. Defendants/Appellants/
Defendants

Prayer : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the learned Additional District Judge (Fast Track Court) Namakkal in A.S.No.250 of 2003 dated 25.01.2008 reversing the judgment and decree of the learned District Munsif of Rasipuram in O.S.No.10 of 1996, dated 14.08.2003.

For Plaintiffs : Mr.A.K.Kumaraswamy,
Senior Counsel
for M/s.S.Kaithamalai Kumaran

For Defendants : Mr.T.Dhanyakumar

JUDGMENT

The plaintiffs are the appellants. The parties are referred to in their original rank as arrayed in the Civil Court.

2. The plaintiffs have filed a suit for a declaration that the plaintiffs have a right to take their vehicle, cart track through the C, C1, C2, C3, (suit cart track) to reach their land as shown in plaint plan, for a permanent injunction restraining defendants from creating any obstruction over the cart track except for the portions between C1 & C2; now brought under



cultivation, for a mandatory injunction to direct the defendants to remove the destructions placed at the points X, X1, C, C1, C2, C3 particularly between the points C1 and C2; failing compliance of the decree to permit the plaintiffs to remove the obstructions at the expenditure of the defendants and restore the cart track to its original state.

3. It is a case of the plaintiffs that they have got a right to the suit cart track by virtue of the sale deed executed in their favour dated 21.04.1986 (two sale deeds). It is their case that this right has been available even to their predecessors in title and they have been in enjoyment of the cart track to an extent of 15 feet in breadth. The cart track proceeds East from the Pachal Road from the point C in the plaint plan till the point C1 and thereafter proceeds South till the point C2 and once again turns East till the point C3. The properties of the plaintiffs and the defendants are situate on either side of this cart track. It is their case that the defendants had encroached into this path way and started cultivating the lands between the points C1 to C2, which has been shown as R, R1, R2, X, X1, in the plaint plan.

4. The plaintiffs would therefore, submit that they have prescribed an easement over the pathway and they also claimed a right by way of an easement of necessity. The defendants had filed a written statement inter alia denying the right of the plaintiffs to the suit property and their primary defense was that the cart track has not been identified by survey numbers and that the plaintiffs have also not produced any documents to show that the plaintiffs are entitled to the cart track measuring a breadth of 15 feet. They would also submit that the documents of title of the plaintiffs describes the cart track differently. They would submit that the plaintiffs should elect as to whether they have claiming a right by prescription or by necessity.

5. Pending the suit, an Advocate Commissioner had been appointed who had inspected the suit property, measured the same and submitted a report and plan. The Commissioner's Report would state that there is a 9 feet wide pathway running from the Rasipuram to Pachal Road proceeding east-west from A to B and thereafter taking a turn towards the south till the point C. He has also stated that at the points T, T1, T2, T3, the defendants have recently cultivated to an extent of 5 feet as a result of which the pathway has been reduced to an extent of 4 feet from the point T to C and it was impossible for the plaintiff to take a vehicle to his house which has been indicated as point - P. The trial Court had decreed the suit as prayed for.

6. Challenging the same, the defendants / appellants had



filed A.S.No.250 of 2003 on the file of the Additional District Court, Namakkal. The learned District Judge without going into the merits of the suit has allowed the appeal only on the ground that an easement by prescription and necessity are two contradictory claims and the animus with reference to both are totally different. Therefore, the trial Court has erred in decreeing the suit.

7. The matter was argued by both the counsels and ultimately taking into account, the respective sale deeds as well as the Commissioner's Report, the counsels have agreed that there shall be a decree with reference to a 9 feet path way as described in Ex.C2 plan starting at point A on the Rasipuram to Pachal Road proceeding east-west till the point B and thereafter turning south till the point C and from point C turning east-west once again. The defendants have agreed to restore the pathway to the extent of 9 feet at points T, T1, T2, T3 between points B and C to the extent of 9 feet. The Commissioner's plan C2 shall form part of the decree.

8. The Second Appeal is allowed, on the above lines. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pns

To

1. The Additional District Judge (Fast Track Court),
Namakkal.

2. District Munsif Court, Rasipuram.

Copy To

The Section Officer,
VR Section, High Court.

+1cc to Mr.T.Dhanyakumar, Advocate, S.R.No.35381

+1cc to M/s.S.Kaithamalai Kumaran, Advocate, S.R.No.35642

+1cc to the Government Pleader, S.R.No.35349

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PP(CO)

CS/19/11/2021