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IN THE HIGH COURT OF JUDICATURE AT MADRAS

27.04.2021

CORAM

THE HONOURABLE Ms.JUSTICE P.T. ASHA

S.A.No.567 of 2008

Alageerappa

...Appellant

Vs

1. Veerabadrasamy

2. Jadagappa

...Respondents

PRAYER: Second Appeal filed under section 100 of the Civil Procedure Code against the judgement and decree of the learned Principal Sub-ordinate Judge, Gobichettipalayam, dated 8.10.2007 in A.S.No.43 of 2006 reversing the Judgment and decree of the Learned District Munsif Court, Gobichettipalayam dated 28.09.2006 in O.S.No.21 of 2001.

For Appellant : Mr. R.T. Doraisamy

For Respondents : Mr. M .Roshan Atiq for R1
R2 : died - steps due

JUDGEMENT

The plaintiff is before this Court challenging the judgment and decree dated 8.10.2007 in A.S.No.43 of 2006 in and by the which the learned Principal Subordinate Judge, Gobichettipalayam had reversed the judgment and decree dated 28.9.2006 in O.S. No. 21 of 2001 passed by the learned District Munsif, Gobichettipalayam.

2. The parties are referred to in the same array as in the suit.

3. The plaintiff had filed O.S.No.21 of 2001 on the file of the learned District Munsif, Gobichettipalayam, seeking for a bare injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit pathway and subsequently the suit was amended to include the relief of mandatory injunction as the defendants had put up a fence, blocking the access of the plaintiff.



4. The case of the plaintiff was that under a sale deed dated 7.04.1974 he had purchased the suit schedule property along with right of way attached to the property. The defendants, who had property adjacent to the properties of the plaintiff, had started interfering with the plaintiff's right of way which was being enjoyed from time immemorial by himself and his predecessor in title. On 29.01.2001, the first and second defendants had joined together and were putting up a stone barbed-wire fence. Since his access would be cut off, if the said fence is put up, the plaintiff had objected and requested the defendants not to put up the same. However, the request was turned down and further the Panchayat talk also failed. Therefore, the plaintiff was left with no other alternative, except to approach the Court.

5. The second defendant had filed written statement inter alia denying the title of the plaintiff's vendors to the suit property. They had also denied the fact that the plaintiff and his predecessor in title have been using the east-west pathway for taking men, materials and vehicles to carry manure and harvested crops from their lands to the main road on the eastern side and that this right of way has been granted in the sale deed dated 7.4.1974, executed in favour of the plaintiff. The defendants would categorically state that there was no such pathway in existence and the plaintiff did not have the pathway right. They would further contend that the plaintiff has not given any detail about the pathway with its description in the suit schedule and has not even filed a plaint plan to identify the pathway.

6. He would submit that prior to the filing of the written statement, he had taken out an application for appointing an Advocate Commissioner and the Advocate Commissioner had visited the property and clearly stated that there was no cart track through the defendants' lands to reach plaintiff's land.

7. The Advocate Commissioner had submitted his reports dated 08.03.2001 and 08.06.2001. In the comprehensive report dated 08.06.2001, a plan was attached. At the southern end of the first defendant's property, there are two pathways running east-west till the eastern boundary of the second defendant's property. These pathways have been coloured blue in the Commissioner's plan, which has been marked as Ex.C.2. The Commissioner would note that these blue colour pathways were on a higher level than the lands situate to the north of the pathway, meaning thereby the property of the first and second defendants. The Commissioner has also noted a cart track running from the western end through the plaintiff's property, then through the properties of third parties and thereafter through the property of the second defendant and finally



8. The defendants would contend that the plaintiff had alternative cart track running through his lands from the west. The allegation that the defendants had encroached and clandestinely put up the fence was stoutly denied. The defendants would therefore seek for the dismissal of the suit.

10. The learned District Munsif by judgment dated 28.09.2006 has dismissed the suit.

1. Whether the plaintiff is entitled to the relief of bare injunction?
2. Whether the plaintiff was entitled to the relief of mandatory injunction?
3. To what reliefs the plaintiff is entitled to?

12. The Appellate Court reversed the said judgment on the ground that there was no easement by necessity as the plaintiff had an alternative pathway running from the west to northwards. The Appellate Court observed that the plaintiff has not filed any document to show that he was entitled to the right of pathway through the defendants' property to his property and therefore allowed the appeal, setting aside the judgment and decree of the Trial Court.

<https://hcservices.ecourts.gov.in/hcservices/>



19. The suit schedule property is described as follows:

"தற்போது கோபிசெட்டிபாளையம் ரிடி தாளவாடி சப்ரிடி. தாளவாடி பஞ்சாயத்து யூனியன் எல்லைக்குட்பட்ட தாளவாடி கிராமம் பழைய க.ச.25 ப.எ.8.55 இதில் மேற்கு ப.ஏ.2.14 ரிசர்வே படி க.ச.671.2 ப.செறக் 0.94.0 இதற்கு செக்பேந்தி (கிழக்கு) செனைன ஸ்சப்பா பூடி (மேற்கு) புட்டம்மாள் பூமி (தெற்கு) மாதையன் பூமி (வடக்கு) புட்டு மாதம்மாள் பூமி ஷை பூமிக்கு க.ச.25 நெம்பர் காலை ஷை பூமிக்கு பொதுவாய் நடமாடும் பாத்தியுங்கள் சகிதம். "

20. From a perusal of the above schedule of property, the same does not give any clarity as to whether there is a pathway in the property and if so where the same is situated. The suit schedule is nothing but an extract of the schedule given in Ex.A1 sale deed, under which the plaintiff has purchased the property. Therefore, the plaintiff is not able to establish the first ground namely the existence of the pathway. A reading of Ex.A1 would show that the plaintiff's vendor had got it under a settlement deed dated 28.05.1939. However, that settlement deed has not been produced. The Commissioner's report would show that there is a cart track running from the western side through the plaintiff's property. At the north end, it proceeds further northwards. Therefore, the plaintiff cannot plead easement by necessity as there is a well defined cart track available within the plaintiff's property itself.

21. As regards the plea of easement of grant, the plaintiff would be entitled to all, that has been sold to him. The sale deed does not describe the pathway in the suit property. In fact, in the suit property it is only stated that the plaintiff would be entitled to the common pathway rights in the lands without defining the location of the pathway or the pathway. There is a pathway on the southern side of the plaintiff's lands which is evident from the reading of the Commissioner's report. Without the plaintiff identifying the location of the pathway through documentary evidence, he cannot seek to have his right established on the basis of a Commissioner's report. Even in the plaint pleadings, the plaintiff has not described the pathway and its usage.

22. In the above circumstances, the questions of law are answered against the plaintiff and the Second appeal stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar



1.The Principal Sub-ordinate Judge,
Gobichettipalayam.

2.The District Munsif Court,
Gobichettipalayam.

Copy to:

The Section Officer,
V.R.Section,
High Court,
Madras.

S.A.No.567 of 2008

AKII (CO)
PR (09/11/2021)