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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

S.A.NO.334 OF 2012
AND M.P.NO.1 OF 2012

K.Muthusamy

... Appellant/
Defendant

Vs.

E.Palanisamy

... Respondent/
Plaintiff

PRAYER:

The Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 10.12.2011 in A.S.No.35 of 2010 on the file of the I Additional Sub Court, Salem, confirming the Judgment and Decree, dated 21.12.2009 in O.S.No.748 of 2008 on the file of the I Additional District Munsif, Salem.

For Appellant : Mr.N.Manokaran

For Respondent : Mr.V.Sekar

J U D G M E N T

The defendant is the appellant before this Court. Aggrieved over the concurrent findings of the Courts below, the above second appeal has been preferred.

2. The plaintiff filed a suit for declaration of his right over the suit pathway shown as BD, attached to the plan and for mandatory injunction directing the defendant to remove the barbed wire fence which interrupt the pathway lying in BD points, failing which, to remove the same through the process of Court. Originally, the entire extent of property was owned by



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one Periyanna Gounder who has four sons namely Irusa Gounder, Arumuga Gounder, Chinna Irusa Gounder and Chinnappa Gounder. The plaintiff purchased the properties situate in Survey Nos.11/3 and 11/5 from Chinnappa Gounder. The defendant purchased the properties situate in S.Nos.11/4 and 11/6 from Chinna Irusa Gounder. It is the case of the plaintiff that the access to the plaintiff's land lies through the land which is purchased by the defendant. The recital contained in the sale deeds specifically mentioned that the purchasers are entitled to use the usual access for pathway and other easementary right available on land. However, the defendant put up a barbed wire fence taking away the access to the plaintiff's land. Aggrieved over the same, the Panchayat was convened by an ex.MLA and a police complaint was also lodged. Eventhough, the defendant initially compromised with the decision of the Panchayat, violated the same later and hence the present suit has been filed.

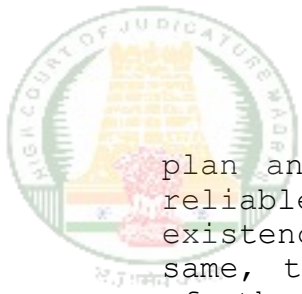
3. Denying the averments made in the plaint, the defendant / appellant filed a written statement that he is the absolute owner of the properties in 11/2, 11/4, 11/6 and suppressing many facts, the plaintiff has come before this Court. The plaintiff had never used any road and the pathway mentioned in the recital of the Sale Deed is not the one mentioned by the plaintiff in his plan and the sketch which are annexed with the plaint. The plaintiff has attempted to encroach upon the land of the defendant without having any pathway right. Therefore, he is not entitled to the relief of declaration.

4. At trial, the plaintiff has examined himself as P.W.1 and one Seerangan has been examined as P.W.2. On the side of the defendant, the defendant has examined himself as D.W.1 and one Senthilkumar has been examined as D.W.2. Exs.A1 to A10 were marked on the side of the plaintiff and Exs.B1 to B3 were marked on the side of the defendant.

5. The trial Court after framing appropriate issues and after elaborate enquiry, decreed the suit in favour of the plaintiff. The first appellate Court on a reappreciation of the evidence on record, has confirmed the decree and Judgment passed by the trial Court. Aggrieved over the same, the defendant preferred the above second appeal.

6. Upon notice, Mr.V.Sekar, learned counsel has entered appearance on behalf of the respondent.

7. Today, when the matter is taken up for hearing, the learned counsel for the appellant/defendant would submit that the Courts below have drastically erred in decreeing the suit. Without there being any evidence of usual pathway, Ex.A3, the



plan and sketch of the plaintiff, showing the pathway, is not reliable. In the event, the plaintiff failed to prove the existence of suit cart track and his legal right to use the same, the declaration ought not to have been granted in favour of the plaintiff. Even though, the respondent/plaintiff has filed an application for appointment of a Commissioner which was dismissed for having filed at belated stage, the plaintiff has not taken the matter on appeal. Therefore, there is absolutely no proof with regard to the existence of the pathway much less any legal right on the plaintiff to use the so called pathway. Therefore, he contended that the Judgments and Decree of the trial Court to be interfered with.

8. I have perused the sketch annexed along with the memorandum of grounds in the second appeal. Admittedly, the properties belong to the appellant/defendant lies at the east and western side and the plaintiff's property lies in between the two properties of the defendants situate in S.No.11/4, 11/6 on the eastern and southern side. As admitted by both the parties, the property was originally belonged to Periyanna Gounder and a joint family was using the property with usual pathway (formal pathway) to have access to the entire land. The plaintiff examined one of the grandson of the said Periyanna Gounder as P.W.2 who deposed categorically that they had pathway to access the land from East to West.

9. From the perusal of the sketch, it is quite obvious that without crossing the land of the defendant in S.No.11/2, the plaintiff cannot have any access to his land in S.No.11/5. The defendant put up a barbed wire fence around the property purchased by the plaintiff in S.No.11/3. Therefore, it is very clear that the access from 11/3 to 11/5 is denied to the plaintiff by virtue of the barbed wire fence by the defendant in S.No.11/2. In this regard, it is also relevant to note that the defendant himself admits that the access from S.Nos.11/5 and 11/3 is through S.No.11/2. Therefore, the Courts below on considering the recitals in the Sale Deeds, actual topography of land in question and also the evidence of P.W.2 who had sufficient knowledge about the land owned by his grandson, had come to the conclusion that the plan showing BD points is the access to the plaintiffs property. Admittedly, the land situate in S.No.11/2 belongs to the defendant and it should not be denied and accordingly, the decree was granted by both the Courts below. Hence, I do not find any discrepancy in the concurrent findings of the Courts below. I therefore conclude that the objections raised by the appellant/defendant to use the pathway lies in BD point by the plaintiff, is without any merits and the questions of law raised in the memorandum of grounds of appeal are actually questions of fact, much less they are not substantial questions of law.



10. In fine, the Second Appeal stand dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The I Additional Subordinate Judge,
Salem.
2. The I Additional District Munsif, Salem.
3. The Section Officer,
VR Section,
Madras High Court,
Chennai.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.53117
+1cc to Mr.V.Sekar, Advocate, S.R.No.53525

S.A.No.334 of 2012
and M.P.No.1 of 2012

EV (CO)
PM/06/06/2022