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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2021

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THE HON'BLE MR.JUSTICE G.CHANDRASEKHARAN

S.A.NO.822 OF 2021

AND

C.M.P.NO.15898 OF 2021

K.Ravichandran

... Appellant/Appellant/Defendant

Vs.

K.Subramaniam

... Respondent/Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 20.12.2019 made in A.S.No.49 of 2015 on the file of the learned Principal District Court, Ariyalur confirming the judgment and decree dated 16.06.2014 made in O.S.No.93 of 2008 on the file of the learned District Munsif Court, Jayankondam by allowing this Second Appeal.

For Appellant : Mr.N.Manoharan for Mr.T.K.S.Gandhi

JUDGMENT

This Second Appeal is directed against the judgment of the learned Principal District Court, Ariyalur in A.S.No.49 of 2015 confirming the judgment of the learned District Munsif Court, Jayankondam in O.S.No.93 of 2008.

2. The respondent as a plaintiff filed the suit against the appellant seeking the relief of declaration of his right to enjoy the suit passage as an easementary right.

3. The plaint averment in brief reads as follows:

The appellant and respondent are brothers. The suit properties (passage) are shown as ABCD and EFGH. Apart from appellant/respondent, they have one more brother Rajendran. There was a family partition between the brothers on 05.05.1981.



After the partition they are enjoying their respective portions independently. The portions shown as JABGHI measures 26cents and its survey number is No.345/24. The item No.1 shown in the partition deed measuring 0.6cents was allotted to respondent, item No.2 measuring 0.6cents was allotted to Kattabomman and item No.3 and 4 is a house. There is an entrance on the South of this house. Item No.3, half of the house portion, backyard portion was allotted to the respondent. Item No.4 house and the portions in front and back of the house measuring 0.4cents was allotted to Kattabomman. Item No.5 measuring 0.5cents was allotted to Ravichandran. Item No.2 belongs to Kattabomman was purchased by appellant/respondent. The ABCD passage measures 10feet breadth and 45feet length. It extends to item No.2. Jayamkondan to Andimadam is a tar road. These passages are essentially required for the beneficial enjoyment of the respondent's property. Except these passages, there are no other passages to reach the respondent's property. Appellant put up a shed in ABCD passage. There was a complaint given to Andimadam Police Station on 19.03.2008. Then, appellant removed the hut on his own. Appellant is trying to interfere with respondent's peaceful enjoyment of the right of usage of these passages. Therefore, the suit.

4. Appellant filed written statement denying the allegations made by the respondent. The alleged hut is in existence for more than ten years. There is no passage is in existence, as on ground, as claimed by the respondent. The appellant has been using the place as cattle shed for more than ten years. There are trees aged fifteen years. Respondent has to reach his property only on the passage available on the South of the appellant's property. Till now, they are using this southern passage to reach their property. There is no necessity to go to his property through North and northern portion has not been used as a passage so far. Only when there is no passage, there can be claim of right of easement. When there is already a passage available on the South to reach the respondent's property, respondent cannot claim any right of easement on the North of appellant's property.

5. On the basis of the above pleadings, the learned Trial Judge framed the following issues,

i)Whether the plaintiff is entitled to claim the right of easement and consequent relief of permanent injunction?

ii)What relief, if any the plaintiff is entitled?



6. During the trial PW1 to PW3 were examined on the side of the plaintiff and Exhibits A1 to A7 had been marked. DW1 and DW2 were examined on the side of the defendant and Exhibits B1 to B5 were marked.

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7. On thorough appreciation of oral and document evidence produced before the Trial Court, the learned District Munsif Judge, Jayamkondam, found that there is no passage available in ABCD portion and therefore, found that the respondent cannot claim the right of easement through ABCD portion. On the same breadth, the learned District Munsif, Jayamkondam, found that there is a passage available in EFGH portion and found in favour of the respondent and declared respondent's right of easement to use EFGH portion to reach respondent's property.

8. Challenging the judgment of the learned District Munsif, Jayamkondam, both the plaintiff and defendant preferred appeal. Defendant preferred appeal in A.S.No.49 of 2015 challenging the declaration of easementary right in EFGH portion and the plaintiff filed appeal in A.S.No.1 of 2016 challenging the denial of the relief of declaration of easementary right in so far as ABCD portion is concerned. The learned Principal District Judge, Ariyalur, on going through evidence, submissions of learned counsels and judgment of the Court below found no reason to interfere with the judgment of the learned District Munsif, Jayamkondam, and confirmed the judgment of the learned District Munsif, Jayamkondam. Now the appellant/defendant is before this Court by way of Second Appeal.

9. The learned counsel for the appellant submitted that though the appellant admitted the right of passage to reach appellant's property on the South of appellant's property, his concern and grievance is that the respondent is not entitled to the passage with the measurement of 13feet breadth and 32feet length in EFGH portion. It is submitted by him that EFGH portion does not measure 13feet breadth and 32feet length. That apart, it is his submission that there are four coconut trees to the height of 10 to 40feet. These coconut trees situate 4feet on the North of southern extreme boundary of the appellant. If the respondent is permitted to use the passage as claimed by him, there is a possibility that respondent may seek to remove the coconut trees. This is the only main and serious concern raised by the learned counsel for the appellant. In view of the restricted hope in this appeal, this Court proceeds to dispose this appeal.



10. It is seen from the written statement filed by the appellant that appellant categorically admitted the existence of passage to reach the property of the respondent on the southern side of appellant's property. The Advocate Commissioner's report and plan are also clear that there exist a passage as EFGH portion. It shows that EF,GH measures 32feet in length, FG,EH measures 13feet in length. Thus, it is established beyond any doubt that there exist a passage in EFGH portion on the southern side of appellant's property to reach the respondent's property. Both the Courts below have considered the evidence thoroughly and concurrently found that respondent is entitled to be declared his right of easement in using the EFGH portion as the passage to reach his property. There is no substantial question (s) of law involved in this Second Appeal to entertain. This Court finds no reason to interfere with the judgment of the learned Principal District Judge, Ariyalur in A.S.No.49 of 2015 confirming the judgment of the learned District Munsif, Jayankondam, in O.S.No.93 of 2008.

11. Accordingly, this Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar(CS-VII)

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Sub Assistant Registrar

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To

1. The Principal District Judge,
Ariyalur.
2. The District Munsif, Jayankondam.
3. The Section Officer,
V.R. Section,
High Court of Madras.

+1cc to M/s.T.K.S.Gandhi, Advocate, S.R.No.61420

S.A.No.822 of 2021
and C.M.P.No.15898 of 2021

BP(CO)
RLP(26/05/2022)