



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.06.2021

CORAM:

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
S.A. (MD)No.318 of 2021**

WEB COPY

1.M.J.T.Philip

2.Mary Jayakumari

... Appellants/Appellants/Plaintiff

Vs.

1.Pransis

2.Pushpalatha

... Respondents/Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 11.02.2021 passed by the Sub Court, Padmanabapuram in A.S. No.43 of 2018 confirming the judgment and decree dated 13.06.2018 passed by the Additional District Munsiff Court, Padmanabapuram in O.S.No.88 of 2015 and allow this second appeal.

For Appellants

: Mr.K.Samidurai

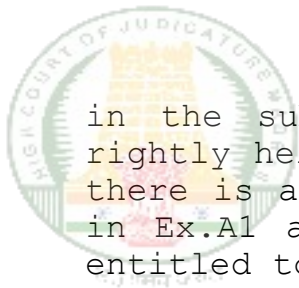
JUDGMENT

The plaintiffs, who lost before both the Courts below, have filed the above second appeal.

2.The appellants/plaintiffs filed the suit for the relief of declaring their right of pathway and for permanent injunction. The appellants had placed their claims by heavily relying upon the sale deed executed in their favour, which was marked as Ex.A1. The specific case of the appellants is that "B" schedule property is the only access to their property situated in "A" schedule property and the same was in enjoyment for more than 33 years without any interruption. In short, the appellants were claiming an easementary right of way.

3.The Courts below on appreciation of the oral and documentary evidence, came to a categorical conclusion that even as per the sale deed, which was marked as Ex.A1, there was absolutely no indication that "B" schedule property was the pathway through which "A" schedule property is being accessed. This is a very crucial finding since the appellants are placing their rights only on this title document.

4.The Courts below have also found that the appellants did not recognize the dominant tenement of the respondents and without such recognition, an easementary right cannot be claimed by the servient tenement. The appellants having denied the right of the respondents



in the subject property, cannot claim the right of easement as rightly held by the Courts below. Apart from the above said facts, there is an alternative pathway available, which was even indicated in Ex.A1 and under such circumstances, the appellants will not be entitled to claim an easementary right on the ground of necessity.

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5.This Court does not find any substantial question of law involved in the present second appeal and this Court finds that both the Courts below have properly appreciated the oral and documentary evidence and rendered findings, which do not require the interference of this Court.

6.In the result, this second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Sub Court,
Padmanabapuram.

2.The Additional District Munsiff Court,
Padmanabapuram.

Copy to

The Section Officer, V.R.Section (2C)
Madurai Bench of Madras High Court,
Madurai

+1 CC to M/s.K.SAMIDURAI, Advocate (SR-18702[F] dated 03/06/2021)

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KB(16.06.2021) 2P 6C