



S.A.No.1290 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1290 of 2006

Union of India
Rep. by Secretary
Auroville Foundation
Auroville
Vanur Taluk

... Appellant

Vs.

1. Sathya Narayana Nanda

2. Savithri Nanda
as mentally infirm
Rep. by next friend and Father
Sathyanarayana Nanda

3. Jurgen Holst
Quiet Community
Auroville Foundation
Auroville.

... Respondents



S.A.No.1290 of 2006

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgement and decree made in A.S.No.152 of 2004 dated 28.02.2006 on the file of Additional Sub Judge, Tindivanvam, confirming the Judgement and Decree made in OS.No.75 of 1997 dated 15.03.2004 District Munsif cum Judicial Magistrate, Vanur.

For Appellant : Mr.D.Ravichandran

For Respondents : M/s. Prithivi for M/s Kaithamalai

Kumaran [R.1]

R.2- Rep. by R.1

R.3 -No Appearance

JUDGMENT

The defendant has filed the above Second Appeal challenging the concurrent judgment and decree of the Courts below. The facts in brief are being narrated herein below with the parties being referred to in the same rank as before the Trial Court.

Plaintiff's case:-

2. The plaintiffs had filed the suit originally before the District Munsif, Tindivanvam numbered as OS.No.530 of 1992 and thereafter transferred to the District Munsif cum Judicial Magistrate, Vanur and re-



numbered as OS.No.75 of 1997. The suit has been filed for declaring the plaintiffs' easementary rights of pathway to the beach, air and right to the plaintiff schedule mentioned property shown as A B C D in the suit plan over the defendants' land shows as G H I J in the suit plan and to restrain the defendants and their agents permanently from interfering with the aforesaid rights of the plaintiff.

3. The 1st plaintiff would submit that he had purchased the property in the name of his daughter, the 2nd plaintiff, who is a minor from Jayarama Gounder and his 3 sons under a registered sale deed dated 21.06.1986. The 1st plaintiff had purchased this property at a higher cost on account of its location and proximity to the beach and its serene atmosphere. He had put up 3 small thatched houses in the said property for residential, official and spiritual purpose. The plaintiffs have been residing in the said property along with his family. He has been regularly paying the taxes to the authorities.



4. The property is situate just 30 metres away from the Bay of Bengal, and the beach in between the suit property and the Bay. There are no houses on the beach. The area of habitation around the plaint schedule mentioned property is called the "Quiet Community" which forms part of the Auroville. There is a small stretch of land which is a part of the "Quiet Community" area between the beach and the plaintiffs' property (suit property). This is the access to the Sea from the plaintiffs' property. The plaintiffs would submit that they and prior to them, their predecessors in title have been using the pathway to reach the beach and the Sea. He is entitled to use this pathway with an un-obstructed flow of breeze and light into the suit schedule property. The plaintiffs would state that they have an easementary right over the said property. The 1st defendant who had joined the health centre of the Aoruville recently had a separate residence in the "Quiet Community" area. He started making attempts to put up a building in front of the plaintiffs' property to block the air, light and the pathway with the oblique motive of chasing away the plaintiff and his family from the schedule mentioned property and to annex their property to the "Quiet Community".



5. The 1st plaintiff had vehemently objected to the said act and he had got an assurance from the 1st defendant that he would not put up the construction. However, after he and his family returned from a holiday at Kodaikanal, the 1st plaintiff was shocked to find that the 1st defendant had commenced construction work contrary to the assurance given to him. Therefore, the plaintiff has come forward with the current suit.

6. The 1st defendant was set ex parte and it was the 2nd defendant who had filed a written statement in which they would deny the claim of the plaintiffs. In fact, the purchase by the plaintiffs was also denied and since the purchase was denied the defendant would submit that the plaintiffs have not right, interest or title to to the suit property. They would also question the plan annexed with the plaint which according to him would falsify the case of the plaintiffs. They would submit that there was never a pathway in existence, much less, on the date of the suit. The property was purchased in the year 1986 and the suit was filed only on 19.07.1992 and therefore, the plaintiffs cannot state that they have prescribed a right of access in the pathway. Therefore, they sought to have the suit dismissed.



7. The learned District Munsif had recast the issue on the date of judgement as follows:-

- 1. Whether the plaint plan details are correct?*
- 2. Whether the pathway shown in the plaint plain as GHIJ has been in use as path way leading to the beach by the plaintiff and his predecessors is in title is true?*
- 3. Whether the plaintiffs have not got any easementary right of way in GHIJ area?*
- 4. Whether the plaintiffs are entitled to the relieves as prayed for ?*
- 5. What are the other relieves plaintiffs are entitled to ?*

8. The 1st plaintiff has examined himself as P.W.1 and marked Ex.A.1 to Ex.A.6. On the side of the defendant, one Raman was examined as D.W.1 and the 1st defendant who had remained ex parte had adduced evidence as D.W.2. They had marked Ex.B.1. Pending the suit, an Advocate Commissioner had been appointed who had filed his report and plan which



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was marked as Ex.C.1 and Ex.C.2 respectively.

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9. The learned District Munsif had decreed the suit as prayed for. Challenging the same the defendants had filed AS.No.152 of 2004 on the file of the Additional Sub Court Tindivanvam. The learned Additional Sub Judge had also confirmed the judgement and decree of the Trial Court. Only the 2nd defendant has challenged the judgement and decree in the First Appeal and filed the above Second Appeal.

10. The above Second Appeal has been admitted on the following Substantial Questions of law:-

"a) Is the learned Subordinate Judge right in granting decree on the basis of easement by prescription when the plaintiff failed to satisfy the requirement under Section 15 of the Easement Act namely enjoyment of the right over twenty years and within two years from the date of plaint?"

b) In the absence of any documentary evidence and independent oral evidence to prove the enjoyment of right of way, light or air for over a statutory period required under



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the law of easement, is the learned Subordinate Judge right in decreeing on the basis of easement?

c) Is the learned Subordinate Judge right in granting a decree on the basis of prescriptive easement especially when the land in question is admittedly an agriculture land and beyond the scope of easement Act regarding light and air? "

11. Mr. D. Ravichandran, learned counsel appearing on behalf of the appellant would raise a preliminary objection that the plaintiffs are not entitled to the easementary right as they have claimed an easement of prescription and necessity. He would contend that the plaintiffs had purchased the property only on 21.06.1996 and the suit has been filed in the year 1997 that is within a period of 6 years and therefore, the plaintiffs cannot raise a plea of prescriptive title. He would state that under Ex.A.1, no right has been granted in the suit property. He would further argue that even according to the plaintiffs they had put up construction only in the year 1986 and that the property was being used for an agricultural purpose prior to that. Therefore, their claim that they have been using the property by way



of prescription coupled with the fact that the suit property was an agricultural land would surely show that the suit as framed is not maintainable. In this regard, the learned counsel would rely upon the following judgments reported in **2005 1 SCC 471 - Justiniano Antao and Ors. Vs. Bernadette B. Pereira**, **2009 3 CTC page 442 - Arangasamy Vs. Valarmathy and Ors** , **2008 (1) CTC 137 - N.Boriah Vs. The Nilgiri Co-operative Printing Press & 2009 (1) CTC 753 - Chellam Iyer Vs. J.Ranganathan**. He would further submit that the plaintiffs have an alternative pathway and therefore there is no easement of necessity.

12. Per contra, Mrs. Prithvi, learned counsel appearing on behalf of the respondent would submit that under Section 4 of the Easement Act, a person is entitled to a beneficial enjoyment of all possible conveniences, remote advantage to the earth and even a mere amenity. She would submit that apart from the easement of necessity and prescription, the plaintiffs are entitled to a declaration. She would submit that both the Courts below have considered the fact that even prior to the plaintiffs, their predecessor in title have been enjoying the property and since there has been no suspension of the easement, the Courts below are correct in law in decreeing the suit as



prayed for.

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13. Heard the counsels on either side.

14. A perusal of Ex.C.1 and Ex.C.2 would clearly show that the suit property is the only access from the property of the plaintiffs to the sea. This is a right which has been enjoyed by the plaintiffs and prior to them by their predecessors in title. Therefore, the right to use of the pathway has enured to the plaintiffs through their predecessor in title. Therefore, the contention that the plaintiffs cannot claim a prescriptive right is rather fallacious.

15. D.W.2, in his cross examination has admitted that the suit pathway is the direct access to the beach and the water and any other way would be a circuitous one. The Commissioner in his report has stated that there is a well defined pathway from the plaintiffs' gate to the beach gate which has been marked as A and B respectively. The pathway is only a foot pathway. The Commissioner has found new construction being put up on the suit pathway which clearly shows that prior to the construction, the pathway was clear and the plaintiffs could access the beach. From the



Commissioner's plan it is clearly evident that if any construction is put up in the suit pathway the access to the beach as well as the view of the same would be totally cut off. There is no reason as to why the defendants have chosen the suit pathway to put up construction when there is a lot of vacant space on either side of the suit pathway. Therefore, this would clearly show the malafides on the part of the defendants. Since the plaintiffs and prior to them, their predecessors in title have been enjoying this pathway, the plaintiffs are entitled to a decree for declaration particularly when the defendants have not been able to rebut the claim of the plaintiff that they and prior to them their predecessor in title were enjoying the use of the suit property. The existence of the pathway and the lie of the land particularly the gate in the plaintiffs' property which is shown as A and the gate at the beach front which is shown as B would clearly show that this pathway is being used by the plaintiffs as an access to reach the beach. Therefore, the judgement of the Courts below which are based on the evidence cannot be countenanced.

16. The easement of prescription pleaded by the plaintiffs do not commence from the date of their purchase but their clear case is that their



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predecessors in title were in enjoyment of the same and they have purchased the property only on this basis and therefore, it can be safely concluded that the plaintiffs and their predecessors in title have been in enjoyment of the suit pathway for more than 20 years and within 2 years from the date of the plaint. as the plaintiffs had purchased the property in 1986 and have been enjoying the way till attempts had been made to close it in the year 1997. Therefore, substantial question of law number A is answered in favour of the plaintiffs. The Commissioner's report would clearly show the plaintiffs' right to enjoy the right of way, light and air and that apart, the admissions of the defendant's witnesses would also clearly prove the case of the plaintiffs. Therefore, Substantial question of law number B and C are also answered in favour of the plaintiffs. The judgment relied upon by the plaintiffs are not relevant to the facts of the case on hand and further the plaintiffs have pleaded the ingredients of an easement. Consequently, the Second Appeal is dismissed. No costs.

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Index : Yes/No
Internet : Yes/No
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To

- 1.The Subordinate Judge, Tirupattur, Vellore District.
- 2.The Principal District Munsif of Tirupatur.



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