



S.A.No.1023 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.1023 of 2012
and M.P.No.1 of 2012

Venkatesan alias Venkatesh

...Appellant

Vs.

1.Duraisamy

2.Alamelu

3.Kaliammal

... Respondents0

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree of learned Subordinate Judge, Mettur, made in A.S.No.23 of 2009 dated 30.11.2009 confirming the judgment and decree of the learned District Munsif, Mettur, made in O.S.No.96 of 2006 dated 20.07.2009.

For Appellant : Mr.J.Ramakrishnan

For Respondents : No Appearance



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JUDGMENT

The plaintiff is the appellant in the Second Appeal.

2.The plaintiff filed the suit seeking for the relief of declaration to declare his right over the suit pathway and for a permanent injunction restraining the defendants from in any manner interfering with the usage of the pathway by the plaintiff.

3.The case of the plaintiff is that the property in S.No.101/29 belongs to the plaintiff. According to the plaintiff, he has been using the suit pathway measuring an extent of 22 x 11 ft situated in the eastern side of the house belonging to the defendants and which connects the main road. The further case of the plaintiff is that the defendants started obstructing the pathway and prevented the plaintiff from using the same. Left with no other option, the plaintiff has filed the suit seeking for the reliefs stated *supra*.

4.The 1st defendant filed the written statement. The 2nd defendant is the wife of the 1st defendant and the 3rd defendant is the daughter of the 1st and 2nd defendants. According to the defendants, the suit property in



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S.No.101/32 originally belonged to one Siddaiya gounder. The property was acquired from the said Siddaiya gounder by the 1st defendant and he has put up the house bearing Door No.7-395 and he is living with his family in the said property. Hence, the defendants have taken a stand that there is no pathway as claimed by the plaintiff. That apart, the defendant has also taken a stand that there is an alternate pathway available to the plaintiff to reach the main road and hence, the right of easement by necessity will not enure in favour of the plaintiff. Accordingly, the defendants have sought for the dismissal of the suit.

5.Both the Courts below after considering the oral and documentary evidence and after taking into consideration the facts and circumstances of the case, concurrently dismissed the suit filed by the plaintiff. Aggrieved by the same, the present second appeal has been filed by the plaintiff before this Court.

6.Heard the learned counsel for the appellant and carefully perused the findings rendered by both the Courts below.

7.It is seen from records that the house of the plaintiff is situated in S.Nos.101/28, 101/29 and 101/30. Originally, the property formed part of a



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joint family property. The father of the plaintiff and his two brothers divided the property into three portions and the middle portion was allotted to the father of the plaintiff and the eastern and western portions were allotted to the two brothers of the father of the plaintiff. It is an admitted case that the plaintiff has been in possession and enjoyment of the property that was allotted to his father. Both the Courts below based on the report submitted by the Commissioner found that there is no dividing wall or partition of the vacant space even though the property was divided into three shares. That apart, there were two streets that were running north to south on both the eastern and western sides of the house of the plaintiff and the other co-owners. That apart there was also existence of a vacant space in front of the house of the plaintiff.

8.Both the Courts below based on the evidence available on record found that even though the plaintiff was having access to both the streets on the eastern and western sides, he did not want to enter into the lands of the other co-owners to access these two streets. In other words, there was an alternative pathway available to the plaintiff and he was not willing to use it only on the ground that he wanted to maintain a cordial relationship with the other co-owners. It is therefore clear that the plaintiff instead of claiming his right to use the pathway against the other co-owners, was



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unnecessarily fighting with the defendants and claiming for an exclusive pathway right.

9.Both the Courts below after analyzing the materials available on record came to a very categorical conclusion that there is no pathway available measuring an extent of 11 x 22 ft as claimed by the plaintiff near the house of the defendants. That apart, since there was an alternate pathway available to the plaintiff both on the eastern and western side of the plaintiff's house, both the Courts below found that the plaintiff is not entitled for the right of easement of necessity.

10.In the considered view of this Court, the findings have been rendered by both the Courts below based on the evidence available on record and this Court does not find those findings to be perverse. In any event, no substantial questions of law are involved in this second appeal.

11.In the result, the second appeal stands dismissed. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No



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Internet :Yes/No
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N.ANAND VENKATESH.,J

ssr

To

- 1.The Subordinate Judge, Mettur.
- 2.The District Munsif, Mettur.

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