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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.NO.1122 OF 2012

AND

M.P.NO.1 OF 2012

Venkatasamy

... Appellant/Appellant/Plaintiff

Vs

Indirani

... Respondent/Respondent/Defendant

PRAYER : Second Appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 20.06.2012 passed in A.S.No.42 of 2011 on the file of the Subordinate Judge, Tiruvannamalai confirming the Judgment and Decree dated 23.12.2010 passed in O.S.No.67 of 2008 on the file of the Principal District Munsif, Tiruvannamalai.

For Appellant : Mr.A.Gowthaman

For Respondent : Mr.S.Chandrasekaran
for M/s.Kumar and Baskar

JUDGMENT

The plaintiff is the appellant in the second appeal.

2. The plaintiff filed the suit seeking for the relief of permanent injunction.

3. The case of the plaintiff is that he is the owner of the property that has been described in the 'A' Schedule of the suit property. According to the plaintiff, he is having access to his property only through the 'B' Schedule property and this property has been categorised as a Government Poramboke. The grievance of the plaintiff is that the defendant attempted to put up a wall in the 'B' Schedule property and thereby prevent the plaintiff from having access to his property in the 'A'



Schedule. Hence, the suit came to be filed seeking for the relief of permanent injunction.

4. The defendant filed the written statement. She took a categorical stand that the plaintiff has intentionally described the 'B' Schedule property as if it is a pathway and whereas it is not a pathway as claimed by the plaintiff. The further defence taken by the defendant is that the plaintiff has never enjoyed the 'B' Schedule property or used it as pathway to his property and the suit itself has been filed only to prevent the defendant from putting up a construction. Accordingly, the defendant sought for the dismissal of the suit.

5. Both the Courts below, after considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, concurrently held against the plaintiff and dismissed the suit. Aggrieved by the same, the plaintiff has filed this second appeal.

6. When the matter was taken up for hearing, the learned counsel for the appellant submitted that he has already given change of vakalat long back and also handed over the papers to the appellant. Therefore, the learned counsel for the appellant submits that he no longer represents the appellant.

7. The second appeal is yet to be admitted and therefore this Court wanted to see if any substantial question of law is involved in the second appeal, so that the same can be framed and notice can be sent to the appellant. To determine the same, this Court carefully went through the materials available on record and the findings of both the Courts below.

8. It is seen from the findings of the both the Courts below that the plaintiff had purchased the property in the 'A' Schedule only in the year 2002. The suit was filed in the year 2008. Hence, the claim made by the plaintiff as if he has been using the 'B' Schedule property for more than 20 years to access his property as pathway was found to be false. That apart, both the Courts also found that the State has not been made as a party in the suit when admittedly the 'B' Schedule property is a Poramboke land. This was also put against the plaintiff. Thus both the Courts below found that the plaintiff did not establish his right of pathway in the 'B' Schedule property. Apart from that, the plaintiff was claiming for an easement of necessity in this case and while doing so, the actual owner of the property was not made as a party. Even otherwise, the plaintiff did not establish that there was no other alternative way available to access his property except the 'B' Schedule property.



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9. In the considered view of this Court, the findings rendered by both the Courts below are factual in nature and this Court does not find any perversity in those findings. In any event, no substantial question of law is involved in the second appeal.

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

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Judge,
Tiruvannamalai
2. The Principal District Munsif,
Tiruvannamalai.

+1cc to M/s.Kumar and Baskar, Advocate, S.R.No.28858

S.A.No.1122 of 2012
and
M.P.No.1 of 2012

NRL(CO)
RLP(02/06/2022)