



S.A.No.104 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.104 of 2013

1.Potharaja

2.Kasi

3.Pandu

4.Sampath

5.Murthy

6.Radha

...Appellants

Vs.

1.Alamelu

2.Ganesan

3.Mani

4.Selvam

5.Devaraj

6.Rajagopal

7.Selvaraj

... Respondents

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the impugned Decree and Judgment of the learned Subordinate Judge at



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Dharmapuri dated 31.01.2012 in A.S.No.33 of 2010 confirming the Decree and Judgment dated 27.07.2010 of the learned District Munsif at Palacode in O.S.No.203 of 2005.

For Appellants : Ms.Sucharitha for
Mr.Mushtaq Ahmed

For Respondents : Mr.S.C.Vishwanth
for R2 to R7

R1 – Died
Steps taken

JUDGMENT

The plaintiffs are the appellants in the Second Appeal.

2.The case of the plaintiffs is that the cart track shown as 'ABCD' in the suit plaint runs through the 1st defendant's property in R.S.No.600 and reaches the plaintiffs lands. The plaintiffs are having their property at R.S.Nos.592, 594, 595 and 596. The case of the plaintiffs is that right from the days of the predecessors, they have been using the 'ABCD' cart track without any interruption to reach their properties. The further case of the plaintiffs is that there is no other cart track for ingress and egress from their property.



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3.The grievance of the plaintiffs is that the defendants were attempting to prevent the plaintiffs from using the cart track and hence, left with no other option, the suit came to be filed seeking for the relief of declaration of the right of the plaintiffs to use the cart track and for a permanent injunction. The basis of right claimed by the plaintiffs is easement by necessity.

4.The case of the defendants is that there was no such cart track available for the plaintiffs or their predecessors at any point of time. The further case of the defendants is that the plaintiffs were using the mud road which runs on the eastern side of the Dharmapuri-Palacode highways and it goes up to the railway road and it runs beneath the railway bridge and adjoining to the railway pathway. Thereafter, it starts running towards the north to reach Perumal temple which leads to the property of the plaintiffs. The defendants therefore, denied the very existence of the cart track and sought for the dismissal of the suit.

5.Both the Courts below based on the oral and documentary evidence and taking into consideration the facts and circumstances of the case, found that the plaintiffs did not establish their easementary right either through documents or oral evidence and hence, proceeded to dismiss the suit



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concurrently. Aggrieved by the same, the present Second Appeal has been filed before this Court.

6.The learned counsel for the appellants submitted that the evidence of DW2 would clearly show the availability of the cart track running through the property belonging to the defendants. The learned counsel further submitted that the plaintiffs do not have any other alternative cart track and the so called alternative access that was projected on the side of the defendant belongs to the railways and the plaintiffs cannot have access through the said pathway without the permission of railways and it will be considered to be a trespass if the pathway is put to use. The learned counsel further submitted that even as per the report of the Advocate Commissioner and the plan submitted along with the report, marked as Exs. C1 and C2, there is existence of the suit cart track which is evident from the report. The learned counsel therefore submitted that the findings of both the Courts below warrants the interference of this Court.

7.This Court has carefully considered the submissions of the learned counsel for the appellants and carefully perused the materials available on record and the findings of both the Courts below.



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8.The specific case of the appellants is that there is a cart track described as 'ABCD' in the plaint which runs through R.S.No.600, north to south and reaches the property belonging to the plaintiffs in R.S.No.592, 593, 594 and 596. The further case of the plaintiffs is that there is no other alternative cart track and they are claiming their right as an easement of necessity.

9.Both the Courts below after analyzing the documents relied upon by the plaintiffs and which was marked as Exs.A1 to A5, found that there is absolutely no proof in these documents to show the existence of alleged cart track described as 'ABCD' in the plaint rough plan. Both the Courts below also analyzed the oral evidence and found that PW1 in his own evidence had deposed about the existence of an alternative pathway. Both the Courts below also found that the report filed by the Advocate Commissioner also did not help the case of the plaintiffs. The report of the Advocate Commissioner has been analyzed in detail by both the Courts below.

10.In the considered view of this Court, the findings of both the Courts below is based on the oral and documentary evidence and the report submitted by the Advocate Commissioner. This Court does not find any perversity in the findings of both the Courts below.



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ssr

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In any event, no substantial questions of law are involved in the present 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.

25.02.2022

(2/2)

Index :Yes/No

Internet :Yes/No

ssr

To

1.The Subordinate Judge, Dharmapuri.

2.The District Munsif, Palacode.

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