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*C.M.P.No.10414 of 2021
in S.A.No.34 of 2006*

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KRISHNAN RAMASAMY, J.,

This petition has been filed by the petitioners/appellants seeking to withdraw the above Second Appeal and grant liberty to file a fresh suit for declaration and injunction before the District Munsif Court, Kotagiri.

2.The case of the petitioners/appellants is that the present suit proceedings pertains to a pathway measuring 3 feet width and 200 feet length in Kotagiri village. The petitioners/appellants have been enjoying this pathway and there was a threat of interference from the respondents/respondents. Therefore, they filed a suit seeking for bare injunction in O.S.No.106 of 2003 before the District Munsif, Kotagiri. The respondents/respondents denied the existence of the pathway. The Trial Court after hearing both the parties, dismissed the suit stating that



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without asking for declaration, the suit for bare injunction cannot be filed as in the present case, complicated facts are involved.

3. Against the judgment and decree, the petitioners/appellants preferred an appeal in A.S.No.18 of 2005 before the Subordinate Court, The Nilgiris and the first appeal also came to be dismissed for the same reason.

4. Aggrieved over the same, the present Second Appeal has been filed in the year 2006.

5. The learned counsel appearing for the petitioners/appellants would submit that at the time of filing the Second Appeal, there were judgments supporting the maintainability of the suit filed by the petitioners/appellants. The Hon'ble Supreme Court in the year 2008 in the case of *Anthulla Sudhakar vs. P.Buchi Reddy* reported in **2009 2 L.W. 546**, declared that the bare injunction suit is not maintainable



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without asking for declaration in the event of the complicated issues involved in the suit. When the Second Appeal was listed, the petitioners/appellants were advised that to file a comprehensive suit for declaration and the suit for bare injunction is not maintainable since complicated issues involved in the suit. Further, the learned counsel referred to the judgment of this Court made in S.A.No.640 of 2012 in the case of *E.Chandrasekar and Ors. vs. V.Nadamuni and Ors.* reported in *MANU/TN/2324/2012*, wherein this Court has referred to the Anathula Sudhakar case (cited supra). By referring to the above said judgment, the learned counsel appearing for the petitioners/appellants seeks leave of this Court to withdraw the suit with a liberty to file fresh suit for declaration and injunction.

6.The learned counsel appearing for the respondents/respondents would submit that the suit is barred by limitation. The petitioners/appellants cannot claim for declaratory relief at present since the earlier suit was filed as early as in the year 2003 i.e 19 years back



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and thereby, the interest of the respondents/respondents would get affected. The Hon'ble Supreme Court, in number of cases, has held that before granting liberty to institute a fresh suit, the Court should consider the aspect as to whether the interest of the respondents would be affected. In this regard, he referred to the judgment passed by the Hon'ble Supreme Court in the case of “***K.S.Bhoopathy and Others vs. Kokila and Others***” reported in (2005) 5 SCC 458 and hence, he opposed to grant the liberty to the petitioners/appellants to file a fresh suit.

7.Heard the learned counsel appearing for the petitioners/appellants as well as the learned counsel appearing for the respondents/respondents and perused the materials available on record.

8.From the above submissions, it appears that in the year 2003, the petitioners/appellants filed suit for bare injunction. According to the petitioners/appellants, they have been using the suit pathway. However,



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according to the respondents/respondents, the petitioners/appellants

never used the said suit pathway. The First Appellate Court, in

Paragraph No.11 & 15 of its judgment has held as follows:

“11. I have carefully examined the plaint, drafted by the plaintiffs' counsel in which, the plaintiffs have not stated under what category, the plaintiffs are seeking injunction for 'D' schedule property straight way without a prayer of declaration. We can presume from the bald pleadings of the plaintiffs in the plaint that the plaintiffs are seeking pathway right over the defendants land situated in C.S.No.1016/4 corresponding to new S.No.939/3, which is just abutting on the western side of the Kodanadu Road, On the southern extreme of R.S.No. 1016/4 corresponding to New S.No.939/3 the plaintiffs are seeking a pathway right of 3 feet width feet 200 feet length. We can presume from the plaint pleadings. The plaintiffs are claiming pathway under the easement of necessity in one paragraph and in another paragraph they are claiming the right of pathway over the defendants land under easement



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by grant. It has not been explicitly mentioned in the plaint that whether the plaintiffs are claiming injunction as proprietary right or easementary right. As I have expressed that the plaintiffs are claiming an easementary right of pathway over the land exclusively belonging to the defendants in R.S.No.1016/4 corresponding to new S.No.939/3.

15. As per the decision reported in AIR 1993 Kerala 9, the party who claim easement must specifically plead under what category of easement they are claiming the said right. Without a declaratory relief of easement even if there is a pathway on ground, even if the plaintiffs enjoying the said right of pathway on ground, we cannot grant permanent injunction in the absence of a declaratory relief. Easement right has to be declared at on one point of time or other. Since the right of easement claimed by the plaintiffs has not so far declared by any court of competent jurisdiction, with the incurable infirmity in the plaint, for want of declaratory relief, we cannot straight away grant the permanent injunction as prayed for in the suit. Admittedly, none of the plaintiffs or parties to the



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documents marked on the side of the plaintiffs were granted easement right in their favour and their vendors. Hence the easement right claimed through Ex.A.14 by the plaintiffs cannot be granted in the absence of declaratory relief.”

9.A perusal of the above judgment would show that when there is no prayer for declaration, the permanent injunction cannot be granted where the issue involved is complicated question of fact.

10.For better appreciation, the relevant portion of the judgment made by this Court in S.A.No.640 of 2012 in the case of ***E.Chandrasekar and Ors. vs. V.Nadamuni and Ors.*** reported in ***MANU/TN/2324/2012***, is reproduced hereunder:

“6.Of Course, it cannot be said that a suit for bare injunction based on possession and alleged title is not maintainable. On the other hand what the Apex Court has held in the case of Anathula Sudhakar vs. P. Buchi Reddy reported in MANU/SC/7376/2008 : 2008(6) CTC 237 2009 2 L.W. 546 is that, the



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questions of title can be decided by the court in a suit for injunction provided such questions are simple and not complicated and in case of arisal of complicated issues of title, the court dealing with the bare injunction suit shall relegate the plaintiff to a more comprehensive and costlier procedure of seeking declaration and injunction as a consequential relief. The same is a rule of convenience of the court. When the plaintiff who has filed the suit for bare injunction based on title and his title is disputed, the plaintiff should be either given a chance to amend the plaint for seeking the relief of declaration also, if question of title involved is complicated issues or to non suit him for the relief of bare injunction and at the same time grant leave to him to file a fresh comprehensive suit for the relief of declaration and other consequential reliefs. Even when the litigation had gone up to the Supreme Court, the Supreme Court held in that case that the plaintiff therein should be given the liberty to file a comprehensive suit to establish his title and in such an event any observation made by the trial court, Appellate court, second Appellate court and the Supreme Court in the said case should not be taken into account for taking



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a decision on merit. Keeping the same in mind, we have to approach the present prayer of the appellants/plaintiffs seeking leave of the court to withdraw the suit with liberty to file a comprehensive suit.”

11.No doubt the question of the title can be decided by the Court in a suit for injunction provided such questions are simple and not complicated and in the case of arisal of complicated issue and title, the Court dealing with the bare injunction suit shall relegate the plaintiff to a more comprehensive and costlier procedure of seeking declaration and injunction as a consequential relief.

12.When the petitioners/appellants who have filed suit for bare injunction based on title and when once their title is disputed by other side, the petitioners/appellants should be given a chance to amend the plaint for seeking the relief of declaration also, if the question of title involved is complicated issue or to non-suit the petitioners/appellants for the relief of bare injunction, liberty can be granted to them to file a



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fresh comprehensive suit for the relief of declaration and other consequential reliefs.

13.It appears that the petitioners/appellants have filed the suit with an impression that the issue involved in the suit is simple issue so that the title can be decided. If the question of title is simple, the same can be decided in a suit filed for bare injunction without any specific prayer for declaration. However, the trial Court as well as Appellate Court held that the issue involved in the present case is not simple, but complicated one and as such, the title cannot be decided in the suit for bare injunction in the absence of the prayer seeking declarative relief. In these circumstance, the Hon'ble Supreme Court laid down the law in the year 2008 in *Anthulla Sudhakar* case (cited supra), wherein the Hon'ble Supreme Court has categorically held that the title can be decided only when the issue is simple in a suit for bare injunction and in the event of complicated issue, the Court shall relegate the parties to



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seek declarative relief and the same is a rule of convenience of the Court. When such being the position, this Court is of the view that it would be appropriate to grant leave to the petitioners/appellants to file a fresh suit for declaration and other consequential reliefs.

14.The Courts below found that the issue involved in the present case is complicated one and instructed the petitioners/plaintiffs to file fresh suit, thus the petitioners/appellants seek permission to withdraw the present Second Appeal with liberty to file fresh comprehensive suit for declaration and other reliefs.

15.As far as the question of limitation to file the fresh suit is concerned, it does not arise since the suit itself was filed under the impression that it is a simple issue whereby the declaration of title which can be decided even in the suit for bare injunction. Therefore, if the issues involved in the suit are simple in nature there is no impediment and the Courts below would have very well adjudicated the



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declaration of title first and thereafter to proceed to grant the bare injunction. Therefore, the movement when the petitioners/plaintiffs filed the suit for bare injunction itself provides a cause for declaration of title includes the declaratory reliefs as well. Though the suit was filed for bare injunction, due to the reason that complicated issues were involved in the suit, for the purpose of adjudicating the said issues, relegating the parties to file a fresh suit for declaratory relief, in the opinion of this Court, would not in any way bar the petitioners/plaintiffs to file fresh suit on the same cause of action and also would not attract limitation aspect. In fact, the declaratory relief which is going to be sought for by the petitioners/plaintiffs in a comprehensive suit is, nothing but continuation of the relief sought for in the original suit, where declaratory relief could have been granted while deciding the relief of bare injunction, but for the reasons that the issues involved in the suit are complicated one, the same could not have been granted and thereby, relegated the petitioners/plaintiffs to file a fresh suit. In such circumstances, the Courts below have rightly considered and held that



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the issue involved in the suit is not simple, but complicated one and in the absence of specific declaratory relief, it cannot be decided, and in view of law laid down by the Hon'ble Supreme Court of India in Anthulla Sudhakar's case (cited supra), which prompted the petitioners/appellants to come forward with the present petition, seeking liberty to withdraw the appeal and file a suit for declaration and injunction. Therefore, this Court is of the view that the case involves complicated issue of title which cannot be conveniently decided in the suit for bare injunction, it will constitute a sufficient ground for allowing the petitioners/appellants to withdraw the present appeal with liberty to file a comprehensive suit, seeking declaratory relief as well as other consequential reliefs, which will be ultimately decided on the merits by the concerned competent Court of law after affording fair opportunity to the respondents/defendants as well as dealing with their objections in such event, no serious prejudice would be caused to the respondents/defendants.



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16. Accordingly, this petition is allowed as prayed for with the costs of Rs.10,000/- (Rupees Ten Thousand Rupees Only) payable by the petitioners to the respondents. The petitioners/appellants are directed to file fresh comprehensive suit within a period of two months from the date of receipt of a copy of this order.

30.09.2022

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