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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.NO.9 OF 2014

Ramasamy

...Appellant / Appellant /
Plaintiff

Vs.

1.Kalianna Gounder

2.Kandasamy

3.Mallika

4.Ramasamy

5.Perumal
S/o.Peria Gounder

6.Perumal
S/o.Kolandha Gounder

7.Kuppusamy

...Respondents / Respondents /
Defendants

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 22.07.2013 made in A.S.No.14 of 2012 on the file of the Subordinate Judge, Namakkal confirming the Judgment and Decree dated 23.12.2011 made in O.S.No.926 of 2006 on the file of the Additional District Munsif, Namakkal.

For Appellants : Mr.T.Dhanyakumar

For Respondents : R1 to R4 - No Appearance
Mr.K.Nagarajan for R5

JUDGMENT

The plaintiff is the appellant in the Second Appeal.

2.The plaintiff filed the suit seeking for the following reliefs:



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- a) directing the defendants 2, 6 and 7 by a Mandatory injunction to restore the 'O' point in the plan and the pathway Portion in S.No.43/7C, 43/9B2 and 43/9C2 of Vagurampatty Village to its original position (i:e) 'O' point pit to be filled up to the ground level and ABCDE course shown in the plaint plan to its original four meters in width within a time stipulated failing which providing the restoration through the process of court at the expenses of the said defendants;
- b) Indirecting the defendants by a Permanent Injunction from interfering with the user of the ABCDEF path to a width of Four Metres for men, cattle, carts and vehicles of all types by the Plaintiffs and their men for reaching his S.Nos.43/12C, 43/14, 43/15 of Vagurampatty Village, Namakkal Taluk;
- c) Restraining Defendant-3 and her men and her family members including Defendant-1 and 2 by a Permanent Injunction from using ABCDE pathway course shown in the Plaint Plan as well the Plaintiffs lands in S.No.43/12C, 43/14 and 43/15 of Vagurampatty Village, Namakkal Taluk, for reaching S.No.33/2 or for any purpose.

3.The case of the plaintiff is that the defendants are owning lands near the lands belonging to the plaintiff. The further case of the plaintiff is that he is using the pathway which goes through S.Nos.43/7C, 43/9B2, 43/9C2 and 43/6C to reach the main road and the same has been used for more than 50 years to take the vehicles and carts from the agricultural lands belonging to the plaintiff to the main road. It is stated that the defendants had encroached and reduced the width of the pathway and an attempt was made by the 3rd defendant to have a fresh passage not only along the above survey numbers but also through the property belonging to the plaintiff. That apart, the defendants were also preventing the plaintiff and interfering with the usage of the pathway to reach the main road. Hence, this suit came to be filed seeking for the reliefs mentioned supra.

4.The suit was contested only by the 5th and 6th defendants. The 5th defendant took a stand that they never obstructed the plaintiff and the plaintiff does not have the right to use the point E.F. as a pathway. The 6th defendant pleaded that the plaintiff had never used the "ABCDEF" pathway and the plaintiff was using a different pathway. Accordingly, both the defendants sought for the dismissal of the suit.

5.Both the Courts below on 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.The Second Appeal was admitted and the following substantial question of law was framed:

Whether both the Courts below erred in not granting the relief of permanent injunction as sought for by the plaintiff even insofar as the 5 Feet pathway that is in existence out of the original extent of 4 meters?

7.Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the respondents.

8.This Court also carefully perused the materials available on record and the findings of both the Courts below.

9.Both the Courts below on appreciation of the evidence available on record have given a categoric finding that S.Nos.43/7C, 43/9B2 and 43/9C2 are classified as a pathway and it originally measured a width of 4 meters. The pathway runs in S.No.43/6C and it ends in S.No.43/14. However, by passage of time, the width of the pathway got reduced from 4 meters to 5 feet. This pathway at the best can only be used by the parties to travel by foot to the main road and it can no more be used for taking vehicles. In other words, it cannot be used as a cart track.

10.Both the Courts concurrently found that the plaintiff established his case with regard to the existence of "EF" pathway in S.No.43/6C with a width of 5 feet.

11.While considering the relief of mandatory injunction, both the Courts below refused to grant this relief on the ground that the plaintiff never established as to when the encroachments took place and which defendant had encroached the pathway. The Courts below refused to restore the pathway to its original position, since the plaintiff did not even state as to when the width of the pathway shrunked from 4 meters to 5 feet.

12.In the considered view of this Court, both the Courts were right in not granting the relief of mandatory injunction. However, the only issue that is involved in the Second Appeal is as to whether the Courts below were right in rejecting the relief of permanent injunction sought for by the plaintiff. The Courts below having found that the plaintiff had established the right of pathway, should have atleast ensured that the available



pathway is not disturbed and the 5 feet width pathway is maintained without the same being obliterated. To that extent, the Judgment and Decree of both the Courts below requires modification. The substantial question of law framed by this Court is answered accordingly.

13. In view of the above discussion, the Judgment and Decree of both the Courts below are modified and the relief of permanent injunction is granted in favour of the plaintiff with respect to the available pathway with width of 5 feet. Accordingly, there shall be a permanent injunction restraining the defendants from interfering with the use of the ABCDEF pathway by the plaintiff to the width of 5 feet for reaching his property in S.Nos.43/12C, 43/14 and 43/15 at Vagurampatti Village, Namakkal Taluk. There shall also be a permanent injunction restraining the defendants from changing the character of the pathway which leads to the main road and shall maintain the width of the pathway to an extent of 5 feet as is available in the suit property.

14. In the result, the Second Appeal is partly allowed in the above terms and the Judgment and Decree of both the Courts below are modified accordingly. Considering the facts and circumstances of the case, there will be no order as to costs.

Sd/-

Assistant Registrar (CS-VIII)

// True Copy //

Sub Assistant Registrar

ssr

To

1. The Subordinate Judge,
Namakkal.

2. The Additional District Munsif,
Namakkal.

Copy To

The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to M/s. T. Dhanyakumar, Advocate Sr.No.27030

S.A.No.9 of 2014

SSV(CO)
RVM(13/06/2022)