



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

SECOND APPEAL NO.971 OF 2014

AND

MP NO.1 OF 2014

Kaliammal (died)

1. M.V.Subramaniam

2. V.Karuppusamy

3. Pongiya Gounder

... Appellants

Vs.

Saradhamani

... Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree 17.04.2014 made in A.S.No.55 of 2011 on the file of the learned Sub Court, Bhavani confirming the judgment and decree dated 23.09.2011 made in O.S.No.262 of 2009 on the file of the learned Principal District Munsif Court, Bhavani.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.A.K.Kumarasamy,
Senior Counsel
for M/s.S.Kaithamalai Kumaran

JUDGMENT

The defendants 2 to 4 are the appellants in the Second Appeal.

2. The respondent/plaintiff filed a suit seeking for the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property.



3. The case of the plaintiff is that the suit properties were originally allotted to her father through a Partition Deed dated 17.04.1967 marked as Ex.A1. The father of the plaintiff thereafter executed a Settlement Deed dated 21.11.2007 in favour of the plaintiff and thereby the plaintiff became the absolute owner of the suit property. The grievance of the plaintiff is that the defendants attempted to trespass into the suit property and interfere with the peaceful possession and enjoyment of the plaintiff. Hence the suit came to be filed seeking for the relief of permanent injunction.

4. The second defendant filed a written statement. On carefully reading the written statement, it is seen that the second defendant has basically questioned the very right of the plaintiff in the suit property and according to the defendant, no title was conferred on the plaintiff since the plaintiff and her father were in loggerheads. That apart, the defendant has also claimed that he and his family members are entitled to have mamool right of cart track through the suit property. It has been further pleaded that the plaintiff is not in possession and enjoyment of the suit property and there is no question of the defendants interfering with the same. Accordingly, the defendants sought for the dismissal of the suit.

5. Both the Courts below on considering the facts and circumstances of the case and after examining the oral and documentary evidence, concurrently held in favour of the plaintiff and decreed the suit. Aggrieved by the same, the defendants have filed the Second Appeal.

6. Heard Mr.N.Manokaran, learned counsel appearing for the appellants and Mr.A.K.Kumarasamy, learned Senior Counsel appearing for M/s.Kaithamalai Kumaran, for the respondent. This Court carefully considered the materials available on record and the findings of both the Courts below.

7. It is clear from the materials available on record that the plaintiff is the owner of the suit property. Even though, the defendants made a faint attempt to question the right and title of the plaintiff over the property, they were not able to make any inroads and establish their defence and in any case, the defendants are rank third parties insofar as the suit property is concerned. Both the Courts below on analysing the oral and documentary evidence came to a categorical conclusion that the plaintiff is the owner of the suit property and hence the defendants do not have any right to interfere with the peaceful possession and enjoyment of the plaintiff in the suit property.



8. The learned counsel for the appellants submitted that both the Courts failed to appreciate that the defendants were using the cart track over the property belonging to the plaintiff as their only access to their property. The learned counsel also brought to the notice of this Court the Report of the Advocate Commissioner, who was appointed at the stage of Appeal. The learned counsel on reading the Report of the Advocate Commissioner and drawing the attention of this Court to the sketch filed along the Report, submitted that there was a cart track that was available in the property belonging to the plaintiff and it was also found that there was no other alternative pathway for the defendants to have access to their property. The learned counsel submitted that the Lower Appellate Court failed to consider the Report of the Advocate Commissioner and the judgment of the Trial Court has been mechanically upheld without any application of mind. The learned counsel in order to substantiate his submissions, relied upon the judgment of the Hon'ble Supreme Court in *Sree Swayam Prakash Ashramam and another v.s G.Anandavally Amma and others*, reported in 2010 (2) SCC 689.

9. Per contra, the learned Senior Counsel appearing on behalf of the respondent submitted that the defendants cannot be allowed to improve their case without necessary pleadings in the written statement. The learned Senior Counsel submitted that easement of necessity was not even taken as a pleading and hence there was no occasion for the Courts below to consider it as an issue in this case. It was further submitted that no amount of evidence can be looked into without necessary pleadings in the written statement. Hence the learned Senior Counsel sought for the dismissal of the Second Appeal.

10. On carefully considering the submissions of the learned counsel for the appellants, it is seen that the learned counsel was trying to impress upon this Court as if the defendants had a right of cart track over the property belonging to the plaintiff and that they had a right of easement by necessity. That is the reason why, reliance was placed on the Report of the Advocate Commissioner and the sketch. The plaintiff has approached the Court and established her right and title over the suit property and hence both the Courts have held that the defendants cannot interfere with her possession and enjoyment in the suit property. If really the defendants have a right of easement by necessity over the property belonging to the plaintiff, foundation should have been laid even in the written statement filed in the suit. Right of easement by necessity has to be pleaded and necessary particulars have to be furnished since it is not a matter of assumption. Since there were absolutely no pleadings with regard to the right of easement by necessity,



there was no occasion for the Trial Court to even frame an issue on this plea taken by the appellants. The defendants did not take any steps to either amend the pleadings or to make a counter claim and establish their right of easement by necessity over the property belonging to the plaintiff. Without laying the foundation, it is not possible for a Court to rely upon some evidence not supported by pleadings and grant a relief. Therefore, merely because there is an Advocate Commissioner's Report and sketch which came very late at the stage of Appeal, that by itself is not a ground to grant the defendants the right of easement by necessity over the suit property belonging to the plaintiff.

11. The judgment that has been relied upon by the learned counsel for the appellants will not have any relevance to the facts of the present case. On carefully reading the judgment, it is seen that the case involved an easement by grant and the Hon'ble Supreme Court had the advantage of analysing the facts as was available in the pleadings. Hence the Hon'ble Supreme Court had held that availability of an alternative pathway will become irrelevant in a case where the right of easement is claimed as a grant. In the present case, right of easement by necessity is claimed by the defendants even without necessary pleadings.

12. In the considered view of this Court, the findings of both the Courts below does not suffer from any perversity and there are no grounds to interfere with the same. In any case no substantial questions of law are involved in this Second Appeal.

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

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Sub Judge,
Bhavani.



2. The Principal District Munsif,
Bhavani.

3. The Section Officer,
VR Section, High Court Madras.

Copy To

1. The Registrar General,
High Court of Madras.

2. The Section Officer,
B Section, High Court of Madras.

+1cc to M/s.S.Kaithamalai Kumaran, Advocate, S.R.No.21242

+1cc to M/s.N.Manokaran, Advocate, S.R.No.21521

Second Appeal No.971 of 2014
and MP No.1 of 2014

SPD (CO)
RLP (25/04/2022)