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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2022

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

CRP.NO.2621 OF 2021
AND C.M.P.NO.19460 OF 2021

Kamaraaj

...Petitioner

Vs

Vijayakumar

...Respondent

PRAYER:

Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the Judgment and Decree passed by Learned Subordinate Judge, Chidambaram, in I.A.No.283 of 2021 in O.S.No.68 of 2013 dated 26.08.2021.

For Petitioner	: Mr.T.Saravanan
For Respondent	: Mr.A.Muthukumar

ORDER

Challenging the order passed by the learned Subordinate Court, Chidambaram in allowing an amendment petition filed in I.A.No.283 of 2021 in O.S.No.68 of 2013 by the plaintiff/respondent the defendant is before this Court. The brief facts of the case are as follows:-

2.The plaintiff had filed the suit O.S.No.68 of 2013 on the file of the learned Subordinate Judge, Chidambaram seeking a declaration that the Sale deed dated 16.08.2011 has been fraudulently obtained by the defendant from the plaintiff and therefore the same is null and void and unenforceable or in the alternative cancel and set aside the said Sale deed and also for an injunction restraining the defendants their men and agents for interfering or obstructing the plaintiff's use of the 'B' schedule property.



3. The respondent/plaintiff had contented that the defendant is his maternal uncle. Four items of property had been described in the plaint plan and all these four items were comprised in T.S.No.977. This property was owned by a religious institution called "Thiruppanandhal Sri Kaashi Madam". The portion marked 'A' in the plaint plan was purchased by the plaintiff on 09.04.2008. The defendant on the very same day had purchased the site marked as 'B' and 'C' to the north of the property that the plaintiff purchased. This site also measured 20 ft east west and 41 ½ ft north south. Under two Sale deeds the vendor had also conveyed a portion described as D measuring 3 ft east west on the northern side and 0 ft east west on the southern side with a total measurement of 83 ft north south. This portion was specifically conveyed for use as a pathway to reach the property of the plaintiff from the street.

4. When the properties were purchased the entire property was a vacant site. After the purchase the plaintiff and the defendant wanted to put up separate residential houses in their respective properties. The plaintiff was not in a position to freely take men and material through this pathway marked as 'D'. The plaintiff therefore requested the defendant to provide an additional extent of 3 ft east west and 41 ½ ft north south on the eastern side to be used as a pathway in common by both of them. The defendant also agreed to the said suggestion and the plaintiff had also agreed to compensate the defendant. In pursuance of this agreement the defendant had executed a Sale Deed on 18.03.2011 earmarking 3 ft and 41 ½ ft pathway on the eastern side of the site on the north and conveying half share of this 3 ft and 41 ½ ft extent which is marked as 'C' in the plaint plan. By reason of this, the pathway on the eastern side became wider and its measurement was 6 ft on the northern side and 4ft 6inches at the end of the 41 ½ on the south side. The plaintiff would submit that except for this pathway he had no other access to reach his property. The defendant approached the plaintiff in the month of August 2011 and informed him that he was arranging for a loan for constructing his house and for which a registered document has to be executed confirming that the pathway belongs to both of them and for which purpose the plaintiff should execute a deed. Believing his words, the plaintiff had gone to the Registrar Office on 16.08.2011 and the plaintiff was surrounded by 5 to 6 unknown persons. As soon as the defendant entered the Registrar's office, the plaintiff was rushed into signing the document. The plaintiff had not entertained any doubt with regard to the document, since the defendant was his maternal uncle and he has not suspected anything amiss.

5. After the execution of the document also the plaintiff continued to use 'C' and 'D' lane in the plaint plan and it was



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not objected by the defendant. The defendant thereafter constructed a house once again leaving the 'C' portion as a lane. Thereafter the plaintiff obtained a permission from the Municipality for constructing a residential house in his pathway. He got a permission on 22.06.2012 and when he started construction, the defendant requested him to sell his property to him, so that he could extend his construction. Since the plaintiff was keen on living in the said premises, he did not agree to the same. Thereafter the defendant started disturbing the usage of the pathway and the plaintiff was then informed on 16.08.2011 the document that the defendant had executed was a Sale Deed in which the plaintiff had conveyed his half share in the pathway to the defendant thereby making the defendant the sole owner of the pathway. This document is the result of a fraudulent act. Therefore the plaintiff had come forward with the present suit.

6.The defendant had filed a written statement inter-alia denying the claim and stating that the pathway belongs to him exclusively. When the suit was posted for the cross examination of PW1, the plaintiff had come forward with an application for amending the plaint, primarily to seek a declaration that he has easementary right over the suit pathway. Since the plaintiff has no other pathway except this pathway in dispute, the plaintiff had asked for a alternative relief of a decree to declare the plaintiff's easementary right over the 'B' schedule property to reach 'A' schedule. In the description of property in the 'B' schedule he had sought to delete the alphabets 'B' and 'C' and substitute it as 'C' and 'D'.

7.The respondent had filed a counter contending that it is belated and that a new case was sought to be introduced by way of an amendment and in case amendment is allowed the very nature of the suit would change. The defendant would also contend that if plaintiff is entitled to easementary right, he has to file a separate suit.

8.The learned Subordinate Judge, Chidambaram, after hearing the learned Counsel on either side allowed the application. Aggrieved by this order that the revision petitioner/defendant is before this Court.

9.Mr.T.Saravanan who appears on behalf of the revision petitioner would contend that the plaintiff has already sought for a relief in respect of the pathway and there was no necessity to once again seek the very same relief. According to him the amendment is redundant. He would submit that the plaintiff has already sought for an injunction with reference to the suit pathway which has been described as the 'B' schedule property and the grant of the injunction itself would suffice



and there was no necessity to grant the relief of declaration.

10.Mr.Muthukumar appearing on behalf of the respondent would submit that the revision petitioner/defendant has denied the right and title of the plaintiff to the suit pathway. Infact in the written statement they have clearly and categorically contended that the pathway is the exclusive pathway of the defendant. He would submit that no new case was introduced, since in the plaint the plaintiff has clearly set out in detail the usage of the pathway and the fact that there is no other alternative pathway available. So therefore, it is that no new case was being introduced and that apart PW1 is yet to start his cross examination and therefore no pre-judice would be caused to defendant. Hence, the application is allowed.

11.Heard the Counsels and perused the records. The plaintiff has in extenso set out his enjoyment of the pathway in paragraph 5 of the plaint the petitioner has set out as follows:-

"..
(5).The plaintiff has no other access to reach his property on the south except this pathway (C & D). It was only with the intention and object of providing a pathway the vendor originally conveyed the eastern portion 'D' as pathway. Later for purpose of convenience the plaintiff purchased half share in the defendant's property marked as 'C'. Thus the plaintiff is entitled to the easement of pathway as an easement by grant and also as an easement of necessity. The easement cannot be revoked, cancelled or disturbed and must continue to exist as pathway and amenity eternally. This pathway portion marked as 'C' and 'D' in the plaint plan is described as 'D' schedule property."

The usage of this pathway further reiterated in paragraph 7 which reads as follows:-

"..
(7)Even after the execution of the document the plaintiff continued to use the 'C' and 'D' portion lane ('B' schedule property) as before and it was never objected to, by the defendant at any time thereafter. Subsequently the defendant constructed a house in his property leaving 'C' portion as lane. Still later the plaintiff also obtained permission from the Municipality for construction of a residential house in his property i.e. 'B' portion in the plan. He got permission on 22.06.2012. He started construction thereafter. During that process, he carried all the materials



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only through the lane and all his men engaged in the construction work used only the suit pathway to reach the plaintiff's 'A' schedule property. The building has been constructed upto the ceiling level and finishing work is to be done."

12. Therefore the pleadings are already available and the plaintiff is not seeking to introduce any new case. The only amendment that is sought for is a declaration that the pathway is the only pathway which is used to reach the 'A' schedule property. The application has come to be filed only on account of the fact that the defendant has denied the petitioner's right to even access the pathway.

13. The learned Subordinate Judge, Chidambaram has taken into account all these factors before allowing the application. Therefore, I do not see any reason to disagree with this well considered order of the learned Judge and accordingly, the CRP stands dismissed. The connected miscellaneous petition is closed. No costs. The suit is for the year 2013, therefore, a direction is issued to the learned Subordinate Judge, Chidambaram to dispose of the suit in O.S.No.68 of 2013 on or before 30.06.2022.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gd

To

The Subordinate Judge,
Chidambaram

Copy To

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

+1cc to Mr.A.Muthukumar, Advocate, S.R.No.7932

CRP.No.2621 of 2021

KG(CO)
PM/09/03/2022