



WEB COPY

S.A.No.1144 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

**S.A.No.1144 of 2007 &
M.P.No.2 of 2007**

Vijaya

... Appellant/Plaintiff

Vs

1.Sengodan
2.Ashok Samraj
3.Sellappan
4.Kumar

... Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgment and decree dated 03.03.2006 passed in A.S.No.50 of 2005 on the file of the I Additional District Judge, Salem reversing the judgment and decree dated 16.10.2003 passed in O.S.No.899 of 2002 on the file of the court of Principal District Munsif, Salem.

For Appellant : Mr.P.Mani

For Respondents : No appearance



JUDGMENT

By consent of the parties, this appeal was taken up for hearing.

2. Bare facts in this appeal are that the suit property was purchased by the plaintiff on 17.09.1993 under Ex.A1. The plaintiff purchased the property from one Lakshmi and claimed that from the date of purchase, she has been in possession and enjoyment of the property. The dispute is not with respect to the land and building purchased by the plaintiff, but with respect to a three feet passage which runs on the southern side of the plaintiff's property. The plaintiff laid claim on the basis of schedule given in the property under Ex.A1.

3. The defendants pleaded that there is a passage, but the passage has been left out for their enjoyment in the property. According to them, it is not a common passage belonging to the plaintiff and the defendants, but a passage for convenient enjoyment of their property which runs entirely within their property.



4. The trial court as well as the lower appellate court has examined the evidence. The trial court decreed the suit as prayed for, whereas the lower appellate court has reversed it and dismissed the suit.

5. At the time of admission of this second appeal, the following substantial question of law was framed:

"Whether in law the plaintiff is entitled to use the suit pathway as easement by lost grant/implied grant or constructive easement when the suit pathway which runs on various survey numbers, is all along being used as common pathway by the general public as admitted by the defendants themselves in their evidence, even assuming that the suit pathway is situated in private lands?"

6. The frustum of the case of the plaintiff is the evidence of VAO one Anwar Basha who was examined as DW3. He had deposed that the plaintiff's property is situated in S.No.34/4B and to the south of her property is S.No.31/4C1. The patta had been granted for the said property in the name of three persons namely the second defendant, Ashokan, Muthusamy and Rajan. He has also stated that the pathway runs in the patta land.



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7. The title and the right of the plaintiff having been denied, she ought to have filed a suit for declaration of her right of easement and injunction.

The suit for bare injunction is not maintainable as held by the ***Hon'ble Mr.Justice.Ravindran*** in the case of ***Anathula Sudhakar vs. P.Buchi Reddy*** reported in ***(2008) 4 SCC 594*** (paragraph 13.3). In this case, the right of the plaintiff to the property had been denied, yet she chose to keep quiet and did not seek for any declaration of her right.

8. However, I do not want to just rest my decision on the technical point. I had found from the evidence of DW3 that the pathway is on the patta land belonging to the second defendant. On a private land, a person cannot claim a public right, for the purpose of easement. There must be a sufficient pleading and being a suit for bare injunction, it is absent.

9. In view of the above, the substantial question of law raised does not arise for consideration. This Second Appeal is dismissed. The Judgment and decree of the court of I Additional District Judge, Salem in A.S.No.50 of 2005 dated 03.03.2006 in reversing the judgment and decree of the Principal



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District Munsif, Salem in O.S.No.899 of 2002 dated 16.10.2003 stand confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No
Speaking/Non speaking orders
Neutral citations : Yes/No



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To

1. The I Additional District Judge, Salem.
2. The Principal District Munsif, Salem

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V.LAKSHMINARAYANAN, J.

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