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S.A.No.349 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.349 of 2007

1.Peddalakshmi Ammal (died)

2.K.Murugesan

3.K.Venkatesh

4.K.Velu

5.K.Gopal

6.K.Ramesh

7.K.Manjula

.. Appellants

(Appellants 2 to 7 brought on record
as legal heirs of the deceased 1st
appellant vide Court order dated
31.08.2021 made in S.A.No.349 of 2007)

Vs.

1. Chairman-cum-District Collector
District Development Council
Collector Office, Dharmapuri.

2.Hosur Municipality
Represented by Commissioner
Bypass Road, Hosur Post
Dharmapuri District.

.. Respondents

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 30.04.2004 made in A.S.No.1 of 2003 on the file of Sub Court, Hosur, reversing the judgment



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and decree dated 22.07.2002 made in O.S.No.110 of 1996 on the file of the District Munsif Court, Hosur.

For Appellants : Mr.J.Saravana Vel

For R1 : Mr.B.Tamil Nidhi
Additional Government Pleader (CS)

For R2 : Mr.N.Subbarayalu

J U D G M E N T

I heard the arguments of Mr.J.Saravana Vel, learned counsel for the appellants, Mr.B.Tamil Nidhi, learned Additional Government Pleader for the 1st respondent and Mr.N.Subbarayalu, learned counsel for the 2nd respondent/Municipality and I have carefully perused the judgments of the trial Court, lower Appellate Court and the records furnished by this Court.

2. The appellants are the plaintiffs. The respondents are the defendants. The appellants claim a free passage way from the new bus stand to their property. They also sought for mandatory injunction directing the respondents to remove the wall around the new bus stand. In addition, they wanted to remove all the three shops on the northern side of the property so that the appellants/plaintiffs can have access to S.No.826/3 of Hosur Village, Krishnagiri District.



3. It is on record that the lands were acquired by the Government of Tamil Nadu for creation of the bus stand. Whatever easement is available prior to the acquisition, comes to an end on acquisition and a party cannot claim continuous right of easement after the acquisition has been made. Apart from that, there is no definite pathway in the suit records. It shows that there is an “arabi kollai” which was also a subject matter of the acquisition. Therefore, the entire plot which stood acquired by the Government of Tamil Nadu for creation of the bus stand includes any right of easement, passage or any such right which existed prior to the acquisition.

4. The Municipality has secured its property by construction of a wall and it is not open to a party to state that pre-existing passage gave them easy access to the road as that right too stood acquired. The right of easement can be claimed, if and only, if it is either easement of necessity or by grant or by prescription. None of the categories fall for consideration in the present case. The bus stand was acquired in and around 1986 and the present suit was filed in the year 1993. Therefore, there is no easement by prescription. The learned Advocate Commissioner found that there is an alternate passage. Therefore,



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easement of necessity also does not arise. To reiterate, however, inconvenient alternate passage may be, if it is available, then a party cannot be granted a relief of easement of necessity. The 2nd defendant has not executed any document in favour of the appellants agreeing to a passage way. Therefore easement by grant also does not arise.

5. Apart from that, it is open to the Municipality to protect its property by construction of wall. Mandatory injunction can be granted only if the plaintiff has subsisting right and that right is infringed either by encroachment or by any illegal construction by the defendant. That not being the position in the present case, I am not able to agree with the arguments of the learned counsel for the appellants. None of the question of law framed by the appellants arise for consideration in the present case, as it would be clear from the discussions made above. Hence, the Second Appeal is dismissed. No costs.

18.04.2023

Index : Yes / No
Neutral Citation : Yes / No
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To

1. Chairman-cum-District Collector
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Collector Office
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2. Hosur Municipality
Represented by Commissioner
Bypass Road, Hosur Post
Dharmapuri District.

3. The Record Keeper
V.R. Section
High Court, Chennai.



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V.LAKSHMINARAYANAN,J.

Kj

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