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S.A.No.625 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

S.A.No.625 of 2007

A.Koteeswaran ... Appellant
- Vs -

M.H.Rafiunnisa ... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 26.10.2006 made in A.S.No.17 of 2005 on the file of the Principal District Judge, Villupuram reversing the Judgment and Decree of the trial Court in O.S.No.421 of 2003 dated 24.01.2005 on the file of the Principal Subordinate Judge, Villupuram.

For Appellant : Mr.D.Vasanth
for Mr.N.Suresh

For Respondent : Mr.T.R.Rajagopalan, Sr.Counsel
for M/s.T.R.Rajaraman



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JUDGMENT

The appellant herein is the defendant and the respondent herein was the plaintiff before the trial Court.

2. For the sake of convenience, the parties will be referred to according to their litigative status.

3. **The brief facts which gives rise to the instant second appeal is.**

that:

The defendant has purchased an extent of one acre 71 cents of land in S.F.No.78/1 and 78/2 by virtue of sale deed dated 16.04.1981. After purchase of the said property in order to form a layout, he executed a power of attorney in favour of one Lakshminarayanan by virtue of General Power of Attorney dated 16.04.1989. In pursuance thereof it appears that the power agent has formed a layout and had sold plot Nos.6 and 7 to the plaintiff. In the sale deed, it has been referred that the eastern boundary for the properties, is the north to south 24 feet road. Since the



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defendant obstructed the usage of the said passage, the plaintiff approached the Court for the relief of permanent injunction.

4. The said suit was resisted by the defendant by contending that the Power Agent Lakshminarayanan has not acted upon to the instruction of plaintiff and the power of attorney was subsequently cancelled and the entire property is in the possession of the defendant. It was further contended that the plaintiff cannot seek any easementary right as he has the direct access from the Villupuram - Pondy National Highway. Hence, prayed to dismiss the suit.

5. Evidence and documents:-

Before the trial Court, the plaintiff examined herself as PW1 and Exs.A1 to A8 have been marked on the side of the plaintiff. The defendant was examined as DW1 and no document was marked on the side of the defendant.

6. Finding of the both the Court below:-



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7. The second appeal was admitted on the following substantial questions of law:

"1. Whether the Court below is right in reversing the well considered judgment of the trial Court when admittedly the plaintiff has not pleaded any easementary right in respect of the 24 feet pathway?

2. Whether in law the Court below is right in decreeing the suit in favour of the plaintiff when admittedly the plaintiff has not been conferred with any right under Ex.A1 in respect of the 24 feet pathway, the subject matter of the suit?

3. Whether in law the Court below is right in reversing the finding of the trial Court, when



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admittedly the plaintiff has got an alternative way to have access to his property by the National Highways abutting his property?"

8. Submissions of either side counsel:-

The learned counsel for the appellant/defendant would submit that the Court below ought to have seen that no right had been conferred on the plaintiff in the sale deed Ex.A1. It is further submitted by the learned counsel for the appellant that 24 feet road has not been vested with the Government and the plaintiff has got direct access from Villupuram – Pondy highway and therefore, he cannot claim any right of easement on the eastern side North-south 24 feet road. To substantiate the same, he relied upon the judgment of this Court in ***A.Arumugam v. P.M.Sayinathan & Others*** reported in ***CDJ 2011 MHC 4439***. Hence, prayed to allow the second appeal.

9. Per contra, the learned Senior Counsel appearing on behalf of the plaintiff would submit that, according to the defendant, he executed



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Ex.A1 – sale deed, through his Power of Attorney, only to form a layout under the name and style of "Guberan Nagar". The learned Senior Counsel further contended that Power of Attorney of the defendant had formed layout and he sold the plot Nos.6 and 7 to the plaintiff. Wherein, there is a clear reference about eastern side passage. Therefore, there is an implied grant for the said passage and that the defendant cannot alter the passage subsequently. In support of his submissions, the learned Senior Counsel relied upon on the following judgments:

1) *Ratanchand Chordia and others v.Kasim Khaleeli* reported in *AIR 1964 Mad 209*.

2) *L.Govindarajulu Chettiar v. V.N.Srinivasalu Naidu* reported in *AIR 1972 Mad 307*.

3) *Sree Swayam Prakash Ashramam and Another v. G.Anandavally Amma and Others* reported in *(2010) 2 SCC 689*.

10. I have given my anxious consideration to either side submissions.



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WEB COPY **Analysis of the submissions:-**

11. The point for consideration arising in this appeal is whether the subsequent change of mind of the defendant in not having layout and to retain the entire property as one lot, will have any impact upon the grant already given to the plaintiff. In this regard, this Court would like to consider the description of property mentioned in Ex.A1 sale deed. Admittedly there is reference about existence of passage on the eastern side. The learned Senior Counsel would also draw the attention of this Court that the passage is still in existence, and admittedly one T.S.Subramanian who is the owner of plot No.17 had been using the same. In support of the same, he has also marked T.S.Subramanian's sale deed as Ex.A8. Therefore, this Court is of the view that the existence of passage and usage by the plaintiff cannot be disputed.

12. The learned counsel for the defendant would contend that the owner of the layout has got every right to alter the plan and to change the lie of the road from one place to another place. In this regard, the learned counsel relied the judgment of the learned Single Judge of this Court, in



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the case of ***A.Arumugam v. P.M.Sayinathan & Others (CDJ 2011***

MHC 4439). The facts of the reported case is not applicable to the facts of the present case, as the plaintiff in the reported case has not at all purchased any plot from the promoters and purchased the nearby property not connected to the layout in question. In that context, the learned Single Judge held that changing the plan of the layout and formation of the road cannot be objected by the neighbouring land owners. In the present case, the plot was formed by the defendant, and only from the defendant, the plaintiff has purchased the property, with the right to use the passage under challenge.

13. In support of the plaintiff's case, the learned Senior Counsel relied on the judgments in ***Sree Swayam Prakash Ashramam and Another v. G.Anandavally Amma and Others*** reported in ***(2010) 2 SCC 689***, in which in paragraph 31 is relevant:

"Considering this aspect of the matter, although there is no specific issue on the question of implied grant, but as the parties have understood their case



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and for the purpose of proving and contesting implied grant had adduced evidence, the trial court and the High Court had come to the conclusion that the plaintiff had acquired a right of easement in respect of B schedule pathway by way of implied grant. Such being the position, we are not in a position to upset the findings of fact arrived at by the Courts below, in exercise of our powers under Article 136 of the Constitution of India."

The learned Senior Counsel also relied yet another judgment of ***Ratanchand Chordia and others v.Kasim Khaleeli*** reported in ***AIR 1964 Mad 209*** on the same point. Therefore, through the above said judgments, the learned Senior Counsel impressed upon this Court that the reference of the existence of passage is nothing but an implied grant. This Court is on full agreement with the submissions made by the learned Senior Counsel appearing for the respondent/plaintiff. Even the First Appellate Court relied on the factum of the existence of the disputed passage and also based upon the judgment reported in 1924 MLJ 477,



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has ultimately arrived that the respondent/plaintiff is entitled to have decree as prayed for. This Court could not find any material to deviate from the said well considered findings recorded by the First Appellate Court. Therefore, the substantial questions of law are answered in favour of the respondent/plaintiff.

14. In the result, this Second Appeal is dismissed and the Judgment and Decree dated 26.10.2006 made in A.S.No.17 of 2005 on the file of the Principal District Judge, Villupuram reversing the Judgment and Decree of the trial Court in O.S.No.421 of 2003 dated 24.01.2005 on the file of the Principal Subordinate Judge, Villupuram is hereby confirmed. There shall be no order as to costs.

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ssn

Index : yes/no

Speaking/Non Speaking Order

Neutral Citation Case: Yes/No

To



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1. The Principal District Judge,
Villupuram.
2. The Principal Subordinate Judge,
Villupuram.



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C.KUMARAPPAN, J.,

ssn

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