



SA.No.710 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.No.710 of 2007

1. Aaravayee ammal
2. Thangammal
3. Jagathammal
4. Dhanam
5. Nagamuthu
6. Palanisamy
7. Devaki
8. Minor Sasikumar
S/o.Vadivel
9. Minor Karthic
S/o.Vadivel
- 10.Dhanabakkiam
- 11.Pappayee
- 12.Mallika
- 13.Minor Boopathi
- 14.Minor Deepika
- 15.Veeramani Selvam
- 16.Ponnammal
- 17.Lakshmi
- 18.Latha
- 19.Minor Karthic
S/o.Late.Murugesan
- 20.Minor Gowthami

... Appellants

- Vs -

1. S.Shanmugam
2. S.Sangapillai
3. M.Karuppannan @ Nannaran



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4. Kunnudaiyan

5. M.Sangapillai

6. Thiagarajan

(No relief sought against respondents 4 to 6
in S.A and they are given up)

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 12.07.2004 made in A.S.No.395 of 2002 on the file of the Principal District Court, Namakkal reversing the judgment and decree dated 06.02.1998 made in O.S.No.727 of 1996 on the file of the Principal District Munsif, Namakkal.

For Appellants : Mr.Dhanyakumar

For Respondents : Mr.S.Saravanakumar

for Mr.J.Senthil Raghavan for RR2 & 3
R4 to R6 – given up
R1-died.

JUDGMENT

The appellants herein are the plaintiffs and they filed a suit for permanent injunction based upon the easementary right by prescription.

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



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3. **The brief facts, which give rise to the instant second appeal is as**

follows:-

(a) The suit property was purchased by one Veeramalai Muthuraja under registered Sale Deed dated 30.07.1950 and he had four sons. Three of the sons were dead and the plaintiffs 1 and 2 and 4 to 8 are the legal heirs of the deceased sons. The surviving son of Veeramalai Muthuraja is the 3rd plaintiff in the suit. According to the plaintiffs, the Sale Deed dated 30.07.1950 specifically recites about the pathway for the schedule of property. Therefore, they have perfected title by way easement by prescription. Since the defendants have threatened their usage from 14.12.1996, they were constrained to file a suit for permanent injunction.

(b) The suit was resisted by the defendants with the contention that there was no right as claimed by the plaintiffs. The defendants were very much disputed the very existence of the passage. It is the further submission of the defendants that the Sale deed dated 30.07.1950 will not bind upon them, as they are not at all party to the said Sale Deed. Hence, prayed to dismiss the suit.

4. **Evidence and Documents:-**

Before the Trial Court, the plaintiffs examined 2 witnesses as PW1



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and PW2 and marked as many as 6 documents as Exs.A1 to A6. On behalf of the defendants, 2 documents have been marked as Exs.B1 and B2 and one witness has been examined as DW1. As a Court document, Exs.C1 and C2 have been marked.

5. After considering both oral and documentary evidence and having considered the submissions made by either side, the Trial Court ultimately decreed the suit. Aggrieved with the said finding, the defendants moved an appeal, wherein, the First Appellate Court has found that the easementary right has not been proved in the manner known to law and that the suit has been filed beyond the period of two years from the date of the alleged obstruction. Therefore, the First Appellate Court has ultimately allowed the appeal and thereby, dismissed the suit. Aggrieved with the same, the plaintiffs have approached this Court by way of this Second Appeal.

6. Submissions of either side counsel:-

(a). The learned Counsel for the plaintiffs would vehemently submit that, by virtue of the sale deed-Ex.A1, their long usage and the prescriptive right over the passage has been very well established. However, the First Appellate Court, without even considering the said aspect, has given undue weightage to the oral evidences and dismissed the suit, which according to



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the appellants is illegal. The learned counsel for the appellants would also submit that the Commissioner's report would prove the existence of the passage and the First Appellate Court has miserably failed to consider the same. Hence, the learned counsel for the appellants prayed to allow this appeal.

(b). Per contra, the learned counsel for the respondents with great deft would submit that the very claim of easementary right has not at all been proved, and that even according to the Commissioner's report, there is an obstruction made by the defendants over those passage and even according to the admission of PW2, the obstruction was for a period time immemorial. Therefore, the very suit for the relief of permanent injunction was filed beyond the period of limitation. It was also the submission of the learned counsel for the defendants that the suit for mere injunction without the relief of declaration in respect of the easementary right is not maintainable and hence, prayed to dismiss the appeal. In support of his contention, the learned counsel relied upon the following judgments:-

1. *Arangasamy Vs. Valarmathy and another* reported in **2009 (3) CTC 442;**
2. *Karthikeyan and others Vs. A.Palanisamy and another* reported in **2021 SCC OnLine Mad 1632.**



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

Substantial Question of law:-

8. At the time of admission, this Court has formulated the following substantial question of law:-

“Whether the finding of the lower appellate Court that the right of pathway is discontinued or extinguished by reason of cessation of enjoyment of the same because of the obstruction caused at Point 'A', is not based on any pleading or evidence available on record and is vitiated.”

Analysis:-

9. Even according to the admission made by PW2, there was an obstruction to the passage, which claimed by the plaintiffs. The PW2 is aged about 72 years. He has stated that even from his childhood, the suit passage was obstructed by the defendants. Relying upon the said admission, the First Appellate Court has arrived at a conclusion that the instant suit has been filed beyond the period of 2 years.

10. At this juncture, the learned counsel for the respondents would invite the attention of this Court in respect of Section 15 of the Indian Easements Act, 1882 and also relied upon the *Arangasamy's* case [cited



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supra]. The relevant portions of the said judgment are paragraphs 10 & 11 and the same are as follows:-

“10. In order to acquire easement by prescription, as per Section 15 of the Indian Easements Act, he should have proved before the Court that he had been using it for 20 years. Section 15 is extracted hereunder for ready reference.

“15.Acquisition by prescription.— Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years;

and where support from one person's land, or things affixed thereto, has been peaceably received by another person's land subjected to artificial pressure or by things affixed thereto, as an easement, without interruption, and for twenty years;

and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years; the right to such access and use of light or air, support or other easement, shall be absolute.

Each of the said period of twenty years shall be taken to be a period ending within two years next before the institution of the Suit wherein the claim to which such period relates is contested.”

11. The very Complaint averments would exemplify and convey as though the plaintiff has been using the suit pathway only for 12 years and there is no indication that for 20 long years his vendor and following him, the plaintiff has been using it. Both the Courts below adverting



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to the factual circumstance, and both oral and documentary evidence, arrived at the finding of fact that over the suit pathway, the plaintiff or his vendor had no right. Hence, I could see no question of law much less substantial question to interfere with the findings of both the Courts below.”

11. According to the above judgments, there is a duty cast upon the plaintiffs to prove the continuous usage of the passage more than 20 years, and if there is any obstruction, the suit has to be filed within a period of 2 years from the date of obstruction. In this case, as rightly contended by the learned counsel for the respondents, there is no proof as to the long usage of 20 years and further more, from the evidence of PW2, it appears that the suit has been filed beyond the period of two years.

12. The next line of argument put forth by the learned counsel for the respondents is that when they stoutly dispute the very existence of the easementary right, there is duty cast upon the plaintiffs to file a suit for declaration. In this regard, the learned counsel relied upon the judgment of **Karthikeyan's** case [cited supra]. The relevant portion of the said judgment is paragraph 13 and the same is as follows:-

“13. The suit has been laid only for the relief of permanent injunction. By way of the suit, the plaintiffs are claiming the easementary



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right over the lands belonging to Kandasamy. In such view of the matter, when the plaintiffs' claim of easementary right over the lands belonging to Kandaswamy had been stoutly disputed tooth and nail by the defendants in the written statement, as rightly contended by the defendants' counsel, the plaintiffs should have come forward with the relief of declaration as to the nature of the easementary right claimed by them over the lands belonging to Kandaswamy. The plaintiffs have also not come forward as to what is the nature of the easementary right they claim over the lands belonging to Kandaswamy, whether they are claiming easementary right by way of necessity or easementary right by way of prescription and despite the specific denial of the plaintiffs' alleged easementary right over the lands belonging to Kandasamy, the failure of the plaintiffs in amending the suit for the relief of declaration is found to be totally not in consonance with the decision of the the Apex Court reported in CDJ 2008 SC 603 (Anathula Sudhakar v. P. Buchi Reddy (dead) by Lrs). Furthermore, the Apex Court in the decision reported in (2008) 17 SCC 491 (Bachhaj Nahar v. Nilima Mandal) has held that the suit for declaration of title and possession relates to the existence and establishment of natural rights which inhere in a person by virtue of his ownership of a property and on the other hand, a suit for enforcement of an easementary right relates to a right possessed by a dominant owner/occupier over a property not his own, having the effect of restricting the natural rights of the owner/occupier of such property and accordingly pointed out that the pleadings regarding the claim of easementary right should be more precise and particularly as to the nature of the easementary right claimed by the plaintiffs and the position of law has been outlined by the Apex Court in the abovesaid decision as follows:”

13. As per the above judgment, the learned Single Judge of this Court held that whenever easementary right has been disputed by the defendants,



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there is a duty cast upon the plaintiffs to file a suit for the relief of declaration. Here admittedly the suit does not have the prayer of declaration.

Thus, this Court is of the view that the finding of fact recorded by the First appellate Court as to the absence of proof in respect of right of easement by prescription, and the finding of the First Appellate Court that the suit as framed without the relief of declaration is defective, is perfectly in order.

Further, this Court has no material to deviate from the said finding.

Therefore, this Court is of the view that the substantial question of law has to be answered in favour of the respondents.

14. In the result, this Second Appeal is dismissed, confirming the judgment and decree in A.S.No.395 of 2002. There shall be no order as to costs.

02.11.2023

kmi

Index : Yes/No

Speaking Order : Yes/No

NCC : Yes/ No

To

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



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C.KUMARAPPAN,J

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