



S.A.Nos.1503 and 1504 of 2011

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.Nos.1503 and 1504 of 2011

V.N.Dhamayanthi

...Appellant in both the appeals

Vs.

1.U.K.Lakshmi

...Respondent in both the appeals

2.Dr.Dhandavamoorthi

...2nd Respondent in S.A.No.1503/11

Prayer in S.A.No.1503 of 2011: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the Subordinate Judge, Gobichettipalayam, dated 30.08.2011 in A.S.No.68 of 2010 confirming the judgment and decree of the District Munsif, Gobichettipalayam, dated 04.08.2010 in O.S.No.340 of 2007.

Prayer in S.A.No.1504 of 2011: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the Subordinate Judge, Gobichettipalayam, dated 30.08.2011 in A.S.No.67 of 2010 confirming the judgment and decree of the District Munsif, Gobichettipalayam, dated 04.08.2010 in O.S.No.360 of 2007.

For Appellant : Mr.P.Valliappan in both Appeals

For Respondents : Mr.P.V.Ramachandran for R1 in both Appeals



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COMMON JUDGMENT

Two suits have been presented in O.S.No.340 of 2007 and

O.S.No.360 of 2007 on the file of the District Munsif Court, Gobichettipalayam. The relief sought for in the first suit in O.S.No.340 of 2007 is for a declaration of easement right over a 4 ft. A-B passage for white washing the wall shown in yellow colour and the right of draining rain water and to declare the plaintiff's right over C-E cart track and for a consequential relief of injunction. The suit in O.S.No.360 of 2007 was filed for a permanent injunction restraining the defendant [who was the plaintiff in O.S.No.340 of 2007] from encroaching upon the suit property or from interfering with the plaintiff's right to use the suit property in any manner.

2. The parties have come to the Court and have let in exhaustive evidence with regard to title. I am not going into the issue of title as the very fact that the plaintiff in O.S.No.340 of 2007 has claimed easement right shows that she concedes to the title of the defendant in that suit property.



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3. Mr.P.V.Ramachandran, learned counsel appearing for the

respondent would also say that he is not going into the question of title and he is confining himself only with respect of right to drain rain water and for maintenance of A-B wall.

4. The trial Court decreed the suit only with respect to the drainage of water and for maintenance of the wall. It held title in favour of the appellant. The defendant has also not preferred any second appeal as against the judgment and decree in A.S.No.67 and 68 of 2010 before this Court. Therefore, the issue of title has become final. The only issue that is being urged is that a party cannot claim easement by necessity, easement by grant and easement by prescription all in one and the same suit.

5. At the time of moving this appeal, it was admitted and the following substantial questions of law have been framed:

1) When the respondent had sought right on the basis of Ex.A1 Will dated 04.12.1991 and the same did not confer any right over the suit property, whether the Courts below are correct in law in



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decreeing the suit with respect to the AB portion?

2) Whether the Courts below are correct in law in non-suiting the appellant with regard to the relief of mandatory injunction, after having found that the suit property belongs to the appellant by virtue of Ex.A1 Will dated 04.12.1991?

3) Whether the Courts below are correct in law in granting relief to the 1st respondent with respect to the AB portion measuring an extent of 4 feet without any oral or documentary evidence?

4) When the 1st respondent was found not entitled to the suit cart track shown as CE in the plaint plan, since the same was not conferred by Ex.A1 Will, dated 04.12.1991, whether the Courts below are correct in law in granting right over the AB portion when the same is also not conferred under the same Will?

5) When the pleas of easement by necessity, easement by grant and easement of prescription are mutual destructive, whether the 1st respondent is



*entitled to claim right by pleading all the three,
which only would prove the falsity in his claim?*

*6) Whether the Courts below are correct in
law in misconstruing Exhibits C1, C2, C4 and C5
Commissioner's report and plans?*

6. Though the issues with respect to cart track have been given up, still the learned counsel has framed a question of law to be answered by this Court. There is no appeal which has been filed by the respondent with respect to dismissal of the suit qua right over the cart track. Therefore, that question of law does not arise.

7. The learned counsel has also invited the Court to the point that the plaintiff has claimed title over the property and therefore, that having not been granted, the Court ought not to have granted the easementary relief. The Court has found that the property belongs to V.N.Dhamayanthi/ appellant by virtue of Ex.A1 Will dated 14.12.1991. Easement can be granted only on others property and not on ones own property. Hence, there is no contradiction in the denial of title to the respondent while granting the



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decree of easement of drainage. Therefore, the second question of law also does not arise for consideration.

8. The last question of law the appellant would urge is that the easement by necessity, easement by grant and easement of prescription are mutually destructive and ought not to have been granted.

9. I am unable to agree with the learned counsel for the appellant. A careful perusal of the judgment of the lower appellate Court would show that it has rejected the plea of easement by grant as no document was produced by the appellant to show that there was a grant in his favour. Similarly, easement of prescription was also rejected on the ground no evidence has been tendered that the appellant has been enjoying it for a period of 20 years continuously and 2 years prior to presentation of the plaint. The ground on which the right of the plaintiff has been declared is with respect to white washing of the wall and for drainage of rain water. This relief is based on easement by necessity. Therefore, the vehement plea by Mr.G.R.M.Palaniappan that the trial and lower appellate Court granted



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the relief on the basis of all the three sources of easements is not found on record.

10. The Courts have found that there is no other manner in which water can be drained from the house of the respondent other than as shown in the plaint plan. Neither the appellant nor the respondent can predict as to how water flows from the roof top on to the ground. If the rain water were to stagnate, it would cause huge damage to the house of the respondent. Hence, the trial Court and the lower appellate Court have granted a decree on the evidence of easement by necessity to drain the water. Apart from this, the access to the property of the defendant is through the A-B lane, absolute right has not been granted to the plaintiff. The right is only for white washing and for maintenance. This too is not even going to affect the right of the appellant. On the contrary, if the wall is not maintained, it will seriously prejudice the right of the respondent. No other point is raised in the appeal.

11. Hence, the second appeals are **dismissed**. The judgment and



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decree in A.S.Nos.67 and 68 of 2010 on the file of Subordinate Court, Gobichettipalayam dated 30.08.2011 in confirming the judgment and decree in O.S.No.340 of 2007 and 360 of 2007 dated 04.08.2010 on the file of the District Munsif Court, Gobichettipalayam stands confirmed. Considering the close relationship between the parties, I am not imposing costs.

12.04.2023

dsa
Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
Speaking order / Non-speaking order



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To:-

1. The Subordinate Judge,
Gobichettipalayam.
2. The District Munsif,
Gobichettipalayam.



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V.LAKSHMINARAYANAN, J.

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