



S.A.No.422 of 2017

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 12.10.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE S.SOUNTHAR**

**S.A.No.422 of 2017**

1.Vijaya  
2.Sivaprakasam

...Appellants

Vs.

Arumugam (Died)

1.M.Vijaya  
2.Kanimozhi  
3.Kaviyarasi

...Respondents

**Prayer:** Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 05.01.2016 made in A.S.No.51 of 2011 on the file of the Subordinate Judge, Dharmapuri, confirming the judgment and decree dated 23.09.2011 made in O.S.No.130 of 2010 on the file of the District Munsif Court, Dharmapuri.



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For Appellants : Mr.C.Munusamy

For Respondents : Mr.C.Prabakaran for R1 to R3

### **JUDGMENT**

The unsuccessful plaintiffs in the suit are the appellants. They filed a suit for declaration of easementary right in respect of stair case in suit 'B' Schedule property and injunction restraining the respondent from interfering with his right of user and also mandatory injunction directing the respondent to remove the wall and iron gate put up by him in the 'B' Schedule property so as to obstruct his easementary right. The suit was dismissed by the trial Court. The First Appeal filed by the appellants was also dismissed. Aggrieved by the same, the appellants are before this Court.

2. According to the appellants/plaintiffs, the first appellant purchased the suit 'B' Schedule property from the respondent on 03.11.1995 by way of a registered sale deed. The second appellant is the husband of the first appellant and the respondent is brother of the second appellant. It was pleaded by the appellants that when a house was constructed by them in the suit 'A' Schedule property purchased from the respondent, they constructed a stair



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case on the eastern side of 'A' Schedule property to enable them to reach the first floor of the building. The stair case was put up by the appellants with iron gate in the suit 'B' Schedule property. It is the specific case of the appellants that they have been using the same to reach the first floor for the past 15 years. The respondent at the time of constructing the first floor of his building on the east of 'B' Schedule property, constructed a wall and put up iron gate in the suit 'B' Schedule property to prevent the appellants from using the same. Therefore, the appellants were constrained to file a suit for the above said relief.

3. The respondent filed written statement and denied the right of the appellants over the suit 'B' Schedule property. It was the specific case of the respondent that the suit 'B' Schedule property absolutely belonged to him and he was the one, who put up the stair case in the suit 'B' Schedule property to enable him to reach his first floor. The respondent also denied the appellants' plea of using the staircase for the past 15 years.

4. Before the trial Court, the second appellant was examined as PW1 and 13 documents were marked as Ex.A1 to Ex.A13 on behalf of the



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appellants' side. On behalf of the respondent, he was examined as DW1 and 3 documents were marked as Ex.B1 to Ex.B3. The trial Court also appointed an Advocate Commissioner for local inspection and his report and plan were marked as Ex.C1 and Ex.C2.

5. The trial Court on appreciation of evidence available on record came to the conclusion that the appellants failed to prove the easementary right over the suit 'B' Schedule property and they are not entitled to the relief prayed for and accordingly, dismissed the suit. Aggrieved by the same, the appellants filed the First Appeal in A.S.No.51 of 2011 on the file of the Subordinate Court, Dharmapuri. The First Appellate Court concurred with the findings of the trial Court. Aggrieved by the same, the appellants are before this Court.

6. The learned counsel for the appellants by taking this Court to the Advocate Commissioner's report plan and the evidence of PW1 submitted that the long user of the suit 'B' Schedule property has been proved by the appellants and however, the Courts below rendered a finding as if appellants failed to prove the easementary right over the suit property and therefore, the



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said finding is contrary to the evidence available on record. The learned counsel for the appellants further submitted that the findings rendered by the Courts below are vitiated by non consideration of Advocate Commissioner's report and plan. The plaintiffs sought for declaration of their easementary right, right of user over the stair case situated in the suit 'B' Schedule property. Therefore, it is implied that the appellants admitted the title of the respondent over the suit 'B' Schedule property. It is not in dispute that the suit 'A' Schedule property was purchased by the first appellant from the respondent.

7. The trial Court based on the evidence of PW1 came to the conclusion that the appellants purchased the vacant site from the respondent and thereafter, put up construction in the entire vacant site. The second appellant who was examined as PW1 also admitted that when the first floor of his building was constructed, he used the suit 'B' Schedule property with the leave of the respondent. Therefore, it is clear that suit 'B' Schedule property had been used by the appellants only with the leave of the respondent.

8. In such circumstances, they are not entitled to claim the easementary right by prescription. description. Even otherwise as per the



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pleadings of the appellants in the plaint, they allegedly used the suit 'B'

Schedule property only for the past 15 years, less than statutory period of 20 years under Section 15 of Easementary Act. Therefore, the trial Court rightly came to the conclusion that the appellants are not entitled to claim easementary right by prescription.

9. The trial Court also based on the admission of PW1 came to the conclusion that there is an alternative stair case to reach the first floor of the appellants' building. In such circumstances, the appellants are not entitled to claim easementary right by necessity. In any event, the appellants purchased the vacant site from the respondent and thereafter, put up building in the entire extent property purchased by them. Therefore, the appellants are not entitled to claim any easementary right of necessity. The findings rendered by the trial Court with regard to the failure of the appellants to prove their easementary right over the suit 'B' Schedule property was confirmed by the First Appellate Court on appreciation of admission in the evidence of PW1. I do not find any illegality or perversity in the findings of the facts by the Courts below.

10. a) In the result, the Second Appeal stands dismissed by



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confirming the judgment and decree passed by the Courts below.

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b) In the facts and circumstances of the case, there shall be no order as to costs.

**12.10.2023**

Index : Yes/No  
Internet : Yes/No  
Neutral Citation Case : Yes/No  
dna

**To**

- 1.The Subordinate Judge, Dharmapuri.
- 2.The District Munsif Court, Dharmapuri.



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**S.SOUNTHAR, J.**  
**dna**

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