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S.A.No.494 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No.494 of 2017
and C.M.P.No.1713 of 2019

1.A.Subbraya Gounder
2.S.Muthusamy
3.S.Arjunan

...Appellants

Vs.

1.K.Ponnusamy
2.Chinnasamy

...Respondents

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned Subordinate Judge, Dharapuram in A.S.No.9 of 2014 dated 01.11.2016 in confirming the Decree and Judgment of the learned District Munsif, Kangayam in O.S.No.251 of 2011 dated 01.02.2015.

For Appellants : Mr.S.Parthasarathy
Senior Advocate
for Mr.M.R.Thangavel

For Respondents : Ms.S.Yogalakshmi
for Mr.K.Rajasekaran



S.A.No.494 of 2017

WEB COPY

JUDGMENT

The unsuccessful defendants are the appellants. The respondents herein filed a suit for bare injunction restraining the appellants from interfering with their right to lay pipeline underneath the suit common pathway to take water to their land and for other reliefs. The suit was decreed by the Trial Court and the findings of the Trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings, the defendants have come by way of this second appeal.

2. According to the respondents/plaintiffs, the appellants/defendants are their Southern neighbours. There is a East West pathway on the Southern side of the defendants' property, which turns North on the Eastern side of defendants' property and reach the respondents'/plaintiffs' property. The suit property originally belongs to Karuppa Gounder's family and there was a partition in his family on 25.09.1970, under Ex.A1. The property of the respondents/plaintiffs was allotted to the share of One Ponnusamy Gounder son of Molagounder and grandson of Karuppa Gounder under B Schedule to the said Partition Deed. Thereafter, there was a partition under Ex.A2 on



S.A.No.494 of 2017

28.03.2007 and the property of the respondents was allotted to the share of Ponnusamy Gounder's son Subramaniyan under B Schedule to the said Partition Deed. Subsequently, the first respondent purchased the suit property with an extent of 15 cents from Subramaniyan under Ex.A3 dated 25.07.2007. Thereafter, the first plaintiff sold 7 1/2 cents in the said property in favour of second plaintiff under Ex.A4 dated 13.09.2007. Therefore, the respondents/plaintiffs claimed right over the entire 15 cents together with easement right to use the pathway on the Southern and Eastern side of the appellants'/defendants' property. It was further averred by the respondents that even in the Sale Deed executed by Subramaniyan in favour of the first plaintiff under Ex.A3, the vendees/plaintiffs were given right to lay pipeline underneath the pathway. When the respondents/plaintiffs attempted to lay pipeline underneath the pathway and take water to their house and industry, the same was opposed by the appellants. Therefore, the respondents were constrained to file the suit for bare injunction as mentioned above.

3. The appellants/defendants filed the written statement and resisted the suit on the ground that the suit for bare injunction filed by the respondents was not maintainable in the absence of prayer for declaration of



S.A.No.494 of 2017

their alleged easement right to lay pipeline. It was further averred by the appellants that as per the Partition Deeds dated 25.09.1970 and 28.03.2007 which were marked as Ex.A1 and Ex.A2. The respondents were not given any right to lay water pipeline underneath the suit pathway. In such circumstances, the respondents were not entitled to seek injunction restraining the appellants from interfering with their alleged right to lay pipeline. It was also specifically averred by the appellants that the respondents were not co-owners of the suit pathway and they were entitled to enjoy the same only as a pathway and no right was conferred on them under Ex.A1 and Ex.A2 to lay water pipeline underneath the suit pathway. On these pleadings, the appellants sought for dismissal of the suit.

4. Before the Trial Court, the first respondent was examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3. On behalf of the respondents, 8 documents were marked as Ex.A1 to Ex.A8. The second appellant was examined as D.W.1 and 7 documents were marked on behalf of the appellants as Ex.B1 to Ex.B7.

5. The Trial Court on appreciation of evidence available on record



S.A.No.494 of 2017

came to the conclusion that both the appellants and the respondents were co-owners of the suit pathway and hence, the respondents were entitled to lay water pipeline underneath the common pathway and consequently granted a decree for injunction as prayed for. Aggrieved by the same, the appellants herein preferred an appeal in A.S.No.9 of 2014 on the file of Subordinate Court, Dharapuram. The First Appellate Court also concurred with the findings of the Trial Court dismissed the appeal. Aggrieved by the same, the appellants have come by way of this second appeal.

6. At the time of admission, this Court formulated the following substantial questions of law vide order dated 22.01.2019, which read as follows;

"(a) Whether a relief of permanent injunction based on title and a claim for easement right be raised simultaneously?

(b) Whether the suit for bare injunction is maintainable without seeking for a relief of declaration when the defendants had denied the title of the plaintiffs?

(c) Whether the court could extend the usage of the pathway to lay pipeline beyond the right to ingress under the guise of easement right?

(d) Whether the suit for bare injunction is maintainable without impleading the co-sharers of the suit property?"



S.A.No.494 of 2017

WEB COPY

7. The learned senior counsel appearing for the appellants by drawing the attention of this Court to recitals found in parent documents of the respondents, namely Ex.A1 and Ex.A2 submitted that in the parent documents, the respondents were given right only to use the suit pathway as access to the property lying on the Northern side and in the absence of any specific recital in Ex.A1 and A2 conferring right to lay pipeline underneath the suit pathway in favour of the respondents' predecessor in interest, the respondents are not entitled to claim such right by virtue of subsequent documents. The learned counsel further submitted that the recital introduced in Ex.A3 conferring right to lay water pipeline under the suit pathway would amount to enlargement of original easement conferred on the respondents' predecessor in interest under Ex.A1 and Ex.A2. The learned senior counsel further submitted that the Courts below proceeded on the mistaken assumption that both the appellants and the respondents were co-owners of the suit pathway. The easement right conferred under Ex.A1 and Ex.A2 would suggest that the respondents' predecessor were given easementary right to have access through the suit pathway and they have not been given any right of ownership over the suit pathway. In support of the said contention,



S.A.No.494 of 2017

the learned senior counsel relied on the followings decisions;

WEB COPY

(1) *K.Kolandaisami Gounder and others v. Manickam* reported in **2001-3-L.W.832**

(2) *Parvathy v. Ponnusamy* reported in **2002(2) CTCOL 21(Mad)**

8. Per contra, the learned counsel appearing for the respondents submitted that right to lay pipeline underneath the suit pathway is only a right which is necessary to secure full enjoyment of easementary right of access conferred on the respondents' predecessor under Ex.A1 and Ex.A2. Therefore, even assuming that no such right is expressly conferred to the respondents under Ex.A3 and Ex.A4, still by virtue of Section 24 of Indian Easements Act, the respondents /plaintiffs are entitled to lay pipeline underneath the suit pathway. The learned counsel further submitted that the right to lay pipeline has been expressly conferred on the first respondent under Ex.A3 Sale Deed in his favour. Therefore, the appellants are not entitled to object the exercise of said right by the respondents.

9. It is not in dispute originally the suit property was owned by one Karuppa Gounder's family. The partition entered into between the members



S.A.No.494 of 2017

of Karuppa Gounder family is marked as Ex.A1 under the document, the said pathway and its adjacent land on the side of said pathway i.e., property of the respondents were originally allotted to the share of one Ponnusamy Gounder son of Molagounder. Thereafter, there was another partition in the family of Ponnusamy Gounder on 28.03.2007, under Ex.A2. Under the said document, the respondents' property was allotted to the share of Subramaniam son of Ponnusamy Gounder. The respondents herein are claiming right over their property under a Sale Deed executed by said Subramaniam in favour of the first respondent under Ex.A3. Subsequently, portion of the property purchased by the first respondent was sold to the second respondent. Thus, it is clear that the respondents are claiming right over the property only under Subramaniam. In these circumstances, the easement right conferred on Subramaniam under Ex.A1 and Ex.A2 assumes significance. The relevant recitals in Ex.A1 read as follows;

"சிவன்மலை கிராமத்திய 859 நெ.கா. உயில்
தெற்குக்கோடாக மாமூல் தடத்தில் கிழக்கே
வெட்டுக்காடு கிழக்குக்கோடு வரை சென்று மேட்டில்
வடக்கே திரும்பித் தங்கள் பாகம் வரை
நிலபாகஸ்தர்கள் செல்ல 15 அடி அகலத்தில்



S.A.No.494 of 2017

பாகஸ்தர்கள் தடம் விட்டுவிட வேண்டியது."

WEB COPY

10. A perusal of Ex.A1 would make it clear that A Schedule property was allotted to the share of Ponnusamy Gounder and he was given easement right to use 15 feet pathway. Therefore, it is clear that the predecessor of respondents' namely Ponnusamy Gounder was given easementary right of access over the suit pathway with 15 feet width. No right has been conferred on the said Ponnusamy Gounder to lay pipeline underneath the pathway . The said recitals in Ex.A1 is reiterated in Ex.A2 wherein the respondents' property was allotted to 1st respondent's vendor Subramaniyan. However, when Subramaniyan sold 15 cents property to the 1st respondent under Ex.A3 a recital has been included as if the vendee in the document, namely the first respondent was entitled to lay pipeline underneath the pathway. It is settled law that a person can convey only a right which he has and he cannot convey more right than what he had. Under Ex.A1 and A2, above said Ponnusamy Gounder and the vendor of respondents namely Subramaniyan got only easement right of access over the suit pathway. They were not given any right to lay water pipeline underneath the suit pathway. However in Ex.A3, subsequent document, Subramaniyan included a new right to the 1st



S.A.No.494 of 2017

respondent by including a recital as if the 1st respondent is entitled to lay pipeline underneath the suit pathway. Certainly, introduction of such recital in the subsequent document would amount to enlargement of the right of respondents' vendor, which is not permissible in law.

11. In this regard it would be appropriate to refer the decision of this Court in the case of ***K.Kolandaishami Gounder and others v. Manickam*** reported in ***2001-3-L.W.832***. The relevant observations of this Court in this regard read as follows;

"11. When the specific right was given to use the land of the defendant only as a pathway, the defendant cannot be burdened with more obligations, and the right given under Ex.A1 can be used to the extent necessary for such enjoyment by the other sharers. In the present case, except Ex.A2 to A4, the learned counsel appearing for the respondent/plaintiff has not pointed out any other evidence to show as to how the 6ft. width of pathway is necessary for them to reach the street. As stated above, additional burden cannot be imposed on the defendant. In view of the fact that under Ex.A1, only a right of pathway has been given to the other settlees, from whom the plaintiff



WEB COPY



S.A.No.494 of 2017

derived title, the defendant cannot prevent the plaintiff from enjoying such right. But, at the same time, the respondent/plaintiff also cannot claim 6ft., width of pathway, which was not given under Ex.A1 settlement deed."

12. In the case of **Parvathy v. Ponnusamy** reported in **2002(2) CTCOL 21(Mad)** while considering the similar question this Court observed as follows;

"25. In the absence of any declaration declaring the joint owner or co-ownership of the vendor of the plaintiff, the plaintiff cannot claim a right as a co-owner and hence, I find that in view of the recitals contained in Ex.A1 and the civil decree between the father of the defendant and the father of the vendor of the plaintiff under Ex.B2, the plaintiff is not a co-owner of the disputed property and she can claim only easementary right and not as that of the co-owner of the property and hence, I find that the decision reported in K.Kolandaisamy Gounder case is applicable to the facts and circumstances of this case, in view of the facts, as discussed supra."



S.A.No.494 of 2017

WEB COPY

13. A cursory look at the above case laws would make it clear easementary right conferred by a parent document cannot be enlarged by a subsequent document so as to burden the servient tenement with more obligation. Therefore this Court comes to the conclusion that under Ex.A1 and Ex.A2 parent documents vendor of respondents were given only right of access over the suit pathway and they were not given any right to lay pipeline underneath the pathway. In such circumstances, the respondents are not entitled to maintain a suit for bare injunction claiming right to lay pipeline underneath the suit pathway. The learned counsel for the respondents also pressed into service Section 24 of Indian Easements Act in support of her contention. She submitted that even in the absence of specific recital in the parent documents the right to lay pipeline is important right which is necessary to secure full enjoyment of easementary right of access.

14. Section 24 of Indian Easements Act reads as follows;

"24 Right to do acts to secure enjoyment -The dominant owner is entitled, as against the servient owner, to do all acts necessary to secure the full



S.A.No.494 of 2017

enjoyment of easement; but such acts must be done at such time and in such manner as, without detriment to the dominant owner, to cause the servient owner as little inconvenience as possible; and the dominant owner must repair, as far as practicable, the damage (if any) caused by the act to the servient heritage. Accessory rights.-Rights to do acts necessary to secure the full enjoyment of an easement are called accessory rights"

15. Illustration C & E to Section 24 of Indian Easements Act read as follows;

"(c) A, as owner of certain house, has a right of way over B's land. The way is out of repair, or a tree is blown down and falls across it. A may enter on B's land and repair the way or remove the tree from it.

(e)A, as owner of certain house has a right or way over B's field. A may remove rocks to make the way."

16. A reading of above provision and illustrations extracted above would make it clear that a person who is conferred with the right of easement of access over a pathway is entitled to enjoy other ancillary right which are



S.A.No.494 of 2017

necessary to secure full enjoyment of easement right conferred on him. When respondents are conferred with easementary right of access under parent documents namely Ex.A1 and Ex.A2, in case of any obstruction to their access the respondents are entitled to enter the said pathway and remove the obstruction so as to facilitate full enjoyment of easement right conferred on them. However, laying of pipeline underneath the said pathway would not facilitate right of access to the respondents. It is clearly a different right, even without laying any water pipeline in the said pathway the respondents are entitled to use the same as access to reach their land. Therefore, the claim made by the respondents seeking right to lay pipeline underneath the suit pathway would clearly amount to enlargement of easement right conferred on their predecessor in interest under parent documents Ex.A1 and Ex.A2. Therefore, the contention raised by the learned counsel for the respondents based on Section 24 of Indian Easements Act is not acceptable to this Court and the same is rejected.

17. As rightly contented by the learned senior counsel for the appellants both the Courts below proceeded on the assumption that the appellants and the respondents are co-owners of the suit property. The recital



S.A.No.494 of 2017

in parent document Ex.A1 clearly established that the respondents' predecessor in interest was only given easement right of access over the suit pathway they have not been given any right or title over the suit pathway. In such circumstances, the conclusion reached by the Courts below based on the assumptions as if the respondents are co-owners of suit pathway is without any acceptable evidence on record and consequently, the same is liable to be set aside.

18. The learned counsel for the respondents submitted that the right to take water to their land on the Northern side of suit pathway is a necessity for proper enjoyment of respondents' land. This is not the case where the respondents sought for declaration of their alleged easement right of necessity. In such circumstances, this Court is not inclined to make any observation with regard to the alleged right of easement by necessity available to the respondent. It is always open to the respondents to file a suit for declaration of alleged easement of necessity and seek other consequential relief.

19. In view of the discussions made earlier, all the substantial questions



S.A.No.494 of 2017

of law raised at the time of admission are answered in favour of the appellants and against the respondents. Accordingly, the second appeal stands allowed by setting side the judgment and decree of the Subordinate Judge, Dharapuram in A.S.No.9 of 2014 dated 01.11.2016, confirming the judgment and decree of the District Munsif, Kangayam in O.S.No.251 of 2011 dated 01.02.2014. No costs. Consequently, connected miscellaneous petition is closed.

24.11.2023

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WEB COPY



S.A.No.494 of 2017

To

1. The Subordinate Court, Dharapuram.
2. The District Munsif, Kangayam.



WEB COPY



S.A.No.494 of 2017

S.SOUNTHAR, J.

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S.A.No. 494 of 2017

24.11.2023