



S.A(MD).No.469 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 16.03.2023

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

S.A(MD).No.469 of 2020

Natarajan

... Appellant/Appellant/Plaintiff

Vs.

Vellaisamy Nadalvar (died)

1.Ponnusamy Nadalvar (died)

2.Janaki

3.Maheswari

4.Krishnamoorthy

5.Ramachandiran (died)

... Respondents/Respondents/defendants

6.Jakkammal

7.Pavithra

... Respondent Nos.6 and 7

(R6 and R7 are brought on record as LR's of the deceased first respondent vide Court order dated 31.03.2022 made in C.M.P(MD).Nos.1683 and 1684 of 2022 in SA(MD).No.469 of 2020)

8.K.Gayathri

.. Respondent No.8

(R8 is brought on record as LR of the deceased 5th respondent vide Court order dated 31.03.2022 made in CMP(MD).No.1683 and 1684 of 2022 in SA(MD).No.469 of 2020)

Prayer: Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree dated 16.04.2019 made in A.S.No.47 of 2016 on the file of the Subordinate Court, Palani, by confirming the judgment and decree dated 19.09.2016 passed in O.S.No. 115 of 2009 on the file of the District Munsif, Palani.



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For Appellant : Mr.P.Santhoshkumar
For Respondents : R1, R5 -died
Mr.M.P.Senthil
(for R2 to R4, R6 and R7)

JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The plaintiff is the appellant herein. He had filed a suit claiming easementary rights in O.S.No.115 of 2009 on the file of the District Munsif Court, Palani. He had filed a suit for declaration and for mandatory injunction. The declaratory relief sought for by the appellant/plaintiff is to declare that he has got easementary rights. He has also sought for a mandatory injunction to direct the respondents/defendants to demolish the wall erected by them, which has blocked his easementary rights. The trial Court dismissed the suit on the ground that no documentary evidence was produced by the appellant/plaintiff to prove that he is entitled for the pathway measuring 3ft./48 ft., (measuring a total extent of 144 sq.ft.,) adjoining the window, which the appellant/plaintiff claims has been blocked by the construction of the compound wall by the respondents.



2. The respondents/defendants in the suit have categorically pleaded that 3ft./48ft., pathway measuring total extent of 144 sq.ft., absolutely belongs to them. The burden of proof to establish that the aforementioned pathway belongs to the appellant/plaintiff is certainly on the appellant/plaintiff as it is he, who has filed the suit for declaration and for mandatory injunction. Admittedly, as seen from the sale deed (Ex.A.2), by which, the appellant/plaintiff claims ownership of property does not disclose that the appellant/plaintiff is the owner of the aforementioned pathway, where the compound wall has been constructed by the respondents/defendants, which, according to the appellant/plaintiff, has blocked his window, thereby depriving his easementary rights. The trial Court has rightly based on the evidence available on record dismissed the suit. The Lower Appellate Court, namely, the Subordinate Court, Palani, in A.S.No.47 of 2016, by its judgment and decree, has rightly confirmed the findings of the trial Court by dismissing the appeal.

3. The substantial questions of law raised by the appellant in this second appeal are all factual issues, which have been rightly considered by the Courts below and the Courts below have rightly rejected the contention of the appellant/plaintiff based on the oral and documentary evidence available on record. There are no



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debatable issues of fact or law involved and therefore, this Court is of the considered view that there is no substantial questions of law involved in this second appeal and there is no merit in this appeal. Accordingly, the Second Appeal stands dismissed. No costs.

16.03.2023

NCC : Yes/No
Index : Yes / No
Rmk

To

- 1.The Subordinate Judge, Palani.
- 2.The District Munsif, Palani.
- 3.The Record Keeper,
VR Section, Madurai Bench of Madurai High Court,
Madurai.



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ABDUL QUDDHOSE.J.,

Rmk

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