



S.A.(MD)No.107 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.04.2023**

CORAM:

THE HONOURABLE **MR.JUSTICE ABDUL QUDDHOSE**

S.A.(MD)No.107 of 2019

Sellakannu

... Appellant

/Vs./

Mahalingam

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree passed in A.S.No.10 of 2014, on the file of the Subordinate Judge-Camp Court, Tirumangalam, dated 25.01.2017 confirming the judgment and decree passed in O.S.No.729 of 2004 on the file of the District Munsif, Tirumangalam, dated 19.12.2013.

For Appellant : Mr.N.Vallinayagam

For Respondent : Mr.J.Barathan



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JUDGMENT

This second appeal has been filed challenging the concurrent findings of the Courts below. The plaintiff in the suit in O.S.No.729 of 2004 on the file of the District Munsif Court, Thirumangalam is the appellant herein. The respondent is the defendant in the suit. In the forthcoming paragraphs, the parties are described as per their litigative status in the suit.

2. The suit was filed for permanent injunction to restrain the defendant from interfering with the plaintiff's usage of the suit pathway. The plaintiff claims easement of necessity for the usage of suit pathway on the ground that the suit pathway is the only access to his property, which is neighbouring the defendant's property. However, as seen from the written statement, the defendant has categorically contended that the plaintiff does not have any right to use the suit pathway, as the suit property absolutely belongs to him. According to him, there is also no easement of necessity, as claimed by the plaintiff in the plaint.



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3. Before the trial Court, the plaintiff filed seven documents, which were marked as Exs.A1 to A7 and two witnesses were examined on his side, namely, the plaintiff himself as P.W.1 and a third party, by name Karuppaiah as P.W.2. On the side of the defendant, three documents were filed, which were marked as Exs.B1 to B3 and two witnesses were examined, namely, the defendant himself as D.W.1 and a third party, by name Palani as D.W.2. The trial Court dismissed the suit of the plaintiff by giving the following reasons:

(a) Under the registered sale deed dated 02.09.1941 (Ex.A2), which is the basis of the plaintiff's claim, there is no reference to the suit pathway;

(b) Under the registered sale deed dated 30.01.1967 (Ex.A4) executed by Periyakaruppan Ambalam and others in favour of Kandhasamy Ambalam, there is no reference to the suit pathway;

(c) The sale deed dated 30.01.1967 (Ex.A4) executed by Periyakaruppan Ambalam and others in favour of Kandhasamy Ambalam would also show that an extent of middle 31 cents has been sold and in the said sale deed also, there is no reference to the suit pathway;



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(d) P.W.2, in his cross examination, has admitted that there is an alternate access available to the plaintiff, which is extracted herein:

“.....69 சென்டிற்ரு கிழக்கே உள்ள ஸாறும்ஸாக்கு
நிலம் தற்போது தென்வடல் வண்டிப்பாதை மாறிவிட்டது
என்றால் சரிதான்.....”

(e) Similarly, P.W.1, in his cross examination, had admitted that there is an alternate access available to the plaintiff's property as extracted herein:

“.....கிழக்கு பக்கம் சோணை மகன் ஸாரியகருப்பன்
பாதையில் நடந்து வருகிறோம்.....”

(f) Once there is an alternate pathway, the plaintiff cannot seek the easementary right in the defendant's property.

4. The learned counsel appearing for the appellant relied upon Section 13 (e) and (f) of the Indian Easements Act, 1882.

5. Admittedly, as seen from the cross examination of P.W.1 and P.W.2, there is an alternate access available to the plaintiff's property. Admittedly, the documents relied upon by the plaintiff, which have been marked as exhibits, which have been referred to supra do not refer to the



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suit pathway. The plaintiff has also not purchased his property from the defendant, who claims that the suit property is his absolute property and the defendant has also filed documents to prove the same, which has not been rebutted by the plaintiff by way of any oral and documentary evidence. Section 13 of the Indian Easements Act, 1882, deals only with easements of necessity.

6. The learned counsel appearing for the respondent relied upon Section 41 of the Indian Easements Act, 1882 for contending that an easement of necessity will get extinguished, when necessity comes to an end. According to him, when P.W.1 and P.W.2 have themselves admitted in their cross examination that there is an alternate access to the plaintiff's property, easement of necessity claimed by the plaintiff has got extinguished by virtue of Section 41 of the Indian Easements Act, 1882.

7. Section 41 of the Indian Easements Act, 1882 reads as follows:

“41. Extinction on termination of necessity.—An easement of necessity is extinguished when the necessity comes to an end”



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8. The learned counsel appearing for the appellant had also relied upon the decision of the Single Judge of this Court in the case of **Murugesha Moopanar vs. Sivagnana Mudaliar** reported in **1997 (1) CTC 348** to substantiate the plaintiff's claim. However, as seen from the said judgment, it has no applicability to the facts of the instant case, as the said decision dealt with a case, where it is impossible for the parties to enjoy the property without easementary rights sought for in the plaint, whereas in the case on hand, it is not so. As admittedly there is an alternate access available to the plaintiff, even as per the admission made by P.W.1 and P.W.2 in their respective cross examinations, the claim of the plaintiff has been rightly rejected by the Courts below.

9. The reasons for rejection of the plaintiff's claim is also supported by the decision of the another Single Judge of this Court in the case of **K.Kalianna Gounder vs. Sundararaj** reported in **2019 (5) CTC 80** relied upon by the learned counsel appearing for the respondent. In the said decision, it has been made clear that the Doctrine of Easement of Necessity is applicable only if the Dominant Tenement establishes that (a) no other access to reach except through Servient Tenement; (b) for the



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property in usage, if right of passage is deprived. In the case on hand, the aforementioned conditions have not been satisfied by the plaintiff and rightly the Courts below have rejected the plaintiff's claim seeking for easement of necessity in respect of the suit pathway.

10. This Court has also perused and examined the Judgment of the lower appellate Court, namely, Sub Court, Thirumangalam, in A.S.No.10 of 2014 dated 25.01.2017 and after careful perusal of the same, this Court is of the considered view that the lower appellate Court has also rightly confirmed the findings of the trial Court by dismissing the first appeal filed by the plaintiff. The issues raised by the plaintiff in this second appeal are all issues, which have been rightly considered by the Courts below against the plaintiff. There are no substantial questions of law to be considered by this Court under Section 100 of C.P.C., and there is no merit in this Second Appeal. Accordingly, this Second Appeal stands dismissed. There shall be no order as to costs.

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Index : Yes / No
NCC : Yes / No
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ABDUL QUDDHOSE, J.

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TO:

- 1.The Subordinate Judge-Camp Court, Tirumangalam.
- 2.The District Munsif, Tirumangalam.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court,
Madurai.

Judgment made in
S.A.(MD)No.107 of 2019

Dated:
18.04.2023