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S.A. No. 1062 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.09.2024

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

S.A. No. 1062 of 2012

and

M.P.No.1 of 2012

1. Arumugam (Died)

2. Ponnusamy

... Appellants

(A1 Died, A2 is brought on record as L.R. of the deceased A1 vide Court order dated 22.12.2023 made in C.M.P.No.4285 of 2018 in S.A.No.1062 of 2012 by KGTJ)

Vs.

1. Prakasam

2. T. Neducherry Village Panchayat,
Rep. by its President
having its Office at T.Neducherry & Post,
T.Neducherry, Chidambaram TK.

3. The Tahsildar
Chidambaram Taluk.

4. The Collector of Cuddalore District
having his Office at Cuddalore,
Respondents 2 to 4 are given up as unnecessary parties.

... Respondents



S.A. No. 1062 of 2012

PRAYER: Second Appeal filed Under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 30.07.2012 passed in A.S. No.72 of 2011 on the file of II Additional District Court, Chidambaram, reversing the judgment and the decree dated 12.01.2010 in O.S.No.232 of 2008 on the file of Additional District Munsif's Court, Chidambaram.

For Appellants : M/s. A.Nilaphar
for M/s.R.Meenal

For Respondents : Mr.K.Rajkumar
for Mr.R.Bharath Kumar

JUDGMENT

This appeal has been filed challenging the Judgment and Decree dated 30.07.2012 passed in A.S. No.72 of 2011 on the file of II Additional District Court, Chidambaram, which was filed against the judgment and the decree dated 12.01.2010 in O.S.No.232 of 2008 on the file of Additional District Munsif's Court, Chidambaram.

2. The 1st Respondent herein, originally the Plaintiff, filed a suit claiming that he has a land in Old R.S. No.55, New R.S. Nos.216/10A and No.216/10B in T. Nedunchery Village of Chidambaram Taluk and he claims



his right of easement by necessity for the land in R.S.No.216/7. According to him, the land in R.S.No.216/7 described as Item No.3 in the Schedule of Property is a Government poramboke pathway and he has the right to use this pathway, which forms his right of easement by necessity. He used the pathway to reach the rear portion of the land in other two survey numbers. The Appellant herein, originally the 1st Defendant obstructed the use of the aforesaid land in the Item No. 3 of the Schedule of Property. Hence the plaintiff came forward with a suit in O.S.No.232 of 2008 to pass permanent injunction, thereby restraining the 1st defendant and those who claim any sort of right under him from any manner interfering with plaintiff's lawful, perspective title and right or easement by necessity upon the suit property by encroaching the Item No.3 of the Schedule of Property.

3. The suit was resisted by the 1st defendant who is having a land on the southern side of the disputed pathway. The land in Survey No.216/7 measuring to the extent of 0.43 acres was in possession of the family members of the 1st defendant and his brothers. They have orally partitioned the properties which were in possession and the southern side land of the disputed pathway was allotted to the 1st defendant and he is enjoying the said land by



having access to the disputed pathway. It is also stated by them that the plaintiff's land is having direct access from Manmathasamy Temple Street and thereby easement of necessity does not arise in this case since he is having access to the property from the northern side of the said land. Thus, there is no question of providing any prescriptive right or by easement of necessity arising in this case.

4. The Trial Court appointed a Advocate Commissioner to note down the physical features of the property and rough sketch was also taken on file and marked as Exhibits C1 and C2. After considering the pleadings and Commissioner's report, the Trial Court dismissed the suit holding that the plaintiff is not entitled for the relief of permanent injunction.

5. Aggrieved by the judgment of the Trial Court, the plaintiff filed an Appeal in A.S.No.72 of 2011. The Appellate Court after considering the nature of the pathway recorded in the revenue records has held that the pathway is a Government poromboke land and hence the property belongs to the government which is classified as pathway and that the plaintiff was also entitled to use the property. Accordingly, the judgment of the Trial Court was



set aside by the Appellate Court and relief of injunction was granted.

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6. Aggrieved over the Judgment and Decree of the Appellate Court, this Second Appeal has been filed framing the following substantial questions of law:

(i) Whether in law the lower appellate Court was right in ignoring the fact that in a suit for permanent injunction, an undivided easement of necessity could not be decided? (vide 2009 (1) CTC 753 BD (Chellam Iyer and another v. J.Ranganathan and others)

(ii) Whether in law the lower appellate Court was right in overlooking that when there had never been common ownership or its cessation under Section 13 of the Indian Easements Act ? (vide 1997 (1) CTC 348, Murugesu Moopanar v. Sivagnana Mudaliar)

7. Admitted case of the plaintiff is that he is having access to his land in Survey Nos. 216/10A and 216/10B from Manmathasamy Kovil Street. Since the plaintiff is having access, he cannot claim it as an easement by



necessity, as the principle of easement of necessity is based on the necessity to reach the land. In this regard it may be relevant to refer to the pertinent portion of the judgment of the High Court of Madras in the case of *Murugesha Moopanar v. Sivagnana Mudaliar*, reported in 1997 (I) CTC 348:

"16. The necessity contemplated under Section 13 of Easements Act is the absolute necessity, and not convenient necessity. At page 240, on "Easements and Licences" by BLB.Katlyar - 11th Edition (1993), the learned Author, on the basis of several decisions of this Court and also various other High Courts, has said thus:-

....An easement of necessity means an easement without which the property cannot be used at all. Mere convenience is not the test of an easement of necessity. It can be claimed only when there is absolute necessity for it, ie. when the property cannot be used at all without the easement and not merely where it is necessary for its reasonable, or more convenient enjoyment. A man cannot acquire a right of way as an easement of necessity. if he has any other means of access to his land however more inconvenient it may be than be passing over his neighbours.

An easement of necessity is not to be granted merely on the ground of convenience and advantage. but solely on the ground of absolute necessity. When there are other ways of ingress and exit. an easement of necessity cannot be claimed merely on the ground that such ways are inconvenient.

The right of way as easement of necessity implies that there is no other means of access, however, inconvenient. When the dominant



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tenement cannot be enjoyed without imposing burden on the servient tenement, then the question of easement of necessity arises. If an alternative way exists no question of necessity arises."

8. In this case the plaintiff is having specific approach to the road and thereby he cannot claim to use the pathway on the plea of easement by necessity. Similarly, he has not shown any documents to show his title in the sale deed which grants any right over the disputed pathway. He has not sought for the declaration over the pathway to claim that he is having any easement right or exclusive right over the disputed land. The learned Appellate Judge by relying on the evidence of Surveyor PW2 and the entries made in the Exhibits X2 and X3 of the Revenue Records, found that the nature of the property in the 'A' Register is recorded as Government poromboke land and in the Column No. 13 of the remarks column it has been described as pathway. The evidence of Surveyor, 'A' Register and Field Map Book (FMB) has clarified the issue very patently that the disputed pathway was common poromboke pathway, which means that no one is in possession of the land and it is used as a pathway by everyone in the locality. That being the case, since the land is a Government poromboke pathway, every person in the locality are entitled to use the land as a pathway and the defendant is not entitled to



prevent the plaintiff from accessing this land. Even though the plaintiff is not entitled to claim any right exclusively or right of easement, he is entitled to use the land as a pathway.

9. Similarly, the defendants are also not having any exclusive right over the land in Survey No.216/7. According to the submission of the defendant, he is also using the land as a pathway, to approach the Manmathasamy Kovil road. His brothers are also having lands adjacent to the pathway. The defendants have not adduced any evidence to show that this pathway is part of their land prior to the partition and their family alone has exclusive right of enjoyment. In such circumstances, the entries in the Government Register are to be accepted as a conclusive proof to show the nature of the land as a Government poromboke pathway. The relief of injunction is to be granted in favour of the plaintiff, on the ground that the Government poromboke pathway is to be accessed by everyone of the locality and the plaintiff is entitled to use the land as a common pathway and he does not have any independent right in using the land.



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10. The substantial question of law is answered to the effect that, lower appellate court is rightly held that the disputed land shall be accessed by everyone of the locality including the plaintiff and defendant. The defendant has no manner of right to interfere in the plaintiffs enjoyment of the suit property commonly along with other public.

11. Accordingly, this Second Appeal is dismissed on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No



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K. RAJASEKAR, J.

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To:

1. The Section Officer,
VR Section,
High Court,
Madras.

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