



S.A.(MD)No.35 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.06.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.35 of 2007

- 1.Moses
- 2.Velayyan
- 3.Sivalingam
- 4.Suseela
- 5.Chellathurai
- 6.Kalavathy

... Appellants

Vs

- 1.Hynthava Seva Sangam,
Poochathan Vilai,
Thalakulam Village,
Kalkulam Taluk,
Kanyakumari District,
Rep. by its President.
- 2.President,
Hynthava Seva Sangam,
Poochathan Villai,
Thalakulam Village,
Kalkulam Taluk,
Kanyakumari District.
- 3.Secretary,
Hynthava Seva Sangam,
Poochathan Villai,
Thalakulam Village,
Kalkulam Taluk,
Kanyakumari District.

... Respondents



S.A.(MD)No.35 of 2007

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the learned Subordinate Judge, Padmanabhapuram in A.S.No.46 of 1998, dated 07.10.2003 reversing the judgement and decree dated 29.10.1997 in O.S.No.327 of 1995 on the file of the Additional District Munsif, Eraniel.

For Appellants : M/s.J.Ananthavalli for
Mr.K.Sreekumaran Nair

For Respondents : Mr.P.Thiyagarajan

JUDGMENT

The plaintiffs 2 to 7 are the appellants. The suit is filed for declaration that the plaintiffs have got easementary right to use 'B' schedule property as a pathway and for consequential injunction restraining the defendants from interfering with the plaintiffs' right of user. The suit was decreed by the trial Court and on an appeal filed by the defendants, the findings of the trial Court were reversed. Aggrieved by the same, the plaintiffs 2 to 7 are before this Court.

2. According to the plaintiffs, the suit 'A' schedule property was



S.A.(MD)No.35 of 2007

purchased by them from one Kumarapillai under the sale deed dated 25.10.1971. The suit 'B' schedule property lies on the Northern side of 'A' schedule property. It was claimed by the plaintiffs that the suit 'B' schedule property was a poramboke pathway and the plaintiffs have no other pathway except 'B' schedule property to reach the Monday Market Road on the Northern side. The defendants attempted to interfere with the plaintiffs' right of user and hence, they were constrained to file a suit for declaration of easementary right and for consequential injunction.

3. The suit was resisted by the defendants by filing written statement claiming that the suit 'B' schedule property was their patta land. The defendants also claimed that there are other access to plaintiffs' property and therefore, the plaintiffs were not entitled to claim easement by necessity.

4. Before the trial Court, the third plaintiff was examined as P.W.1 and 5 documents were marked as Ex.A1 and Ex.A5. On behalf of the defendants, one witness was examined as D.W.1 and 4 documents were marked as Ex.B1 to Ex.B4. The Advocate Commissioner's report and plan were marked as Ex.C1 and Ex.C2.



S.A.(MD)No.35 of 2007

WEB COPY

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to a conclusion that the plaintiffs were entitled to declaration of their easementary right as prayed for and for consequential injunction. Aggrieved by the said judgment and decree, the defendants preferred an appeal in A.S.No.46 of 1998 on the file of Subordinate Judge, Padmanabhapuram. The first appellate Court reversed the findings of the trial Court and dismissed the suit. Hence, the plaintiffs are before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law by an order dated 18.01.2007:

“1. When the main question to be decided in the suit and appeal is whether the plaintiffs are entitled to easement by prescription as provided under Section 15 of the Easements Act, whether the lower Appellate Court is right in ignoring the finding given by the trial Court and dismissing the suit?

2. Whether the appellate Court is right in not considering all the points dealt with by the trial Court before reversing the judgment of the trial Court and dismissing the suit?”



WEB COPY



S.A.(MD)No.35 of 2007

7. The learned counsel for the appellants tried to assail the judgment and decree passed by the first appellate Court by taking this Court to the Advocate Commissioner's report and plan and submitted that the Advocate Commissioner clearly noted that the suit 'B' schedule property is the only access available to the plaintiffs to reach the Monday Market on the Northern side and the alternate pathway pleaded by the defendants only leads to the property on the Southern side of the plaintiffs' property and there is a dividing wall between that property and the plaintiffs' property. The first appellate Court failed to take into consideration the dividing wall in between the properties on the Southern side and the plaintiff's property and hence, the findings rendered by the first appellate Court is vitiated by non consideration of evidence available on record. The learned counsel further submitted that the observation of the first appellate Court as if P.W.1 admitted about existence of alternative pathway is also not correct.

8. The learned counsel appearing for the respondents submitted



S.A.(MD)No.35 of 2007

that the plaintiffs sought for declaration of their easementary right.

However, in their pleadings, they specifically pleaded that the suit 'B' schedule property was a poramboke pathway. In such circumstances, the declaration regarding easementary right cannot be granted unless plaintiffs admitted the title of the defendants and sought for easementary right in another person's property.

9. A perusal of the plaint averment would suggest that the plaintiffs specifically pleaded that 'B' schedule property was a poramboke pathway. Therefore, the plaintiffs have not admitted the title of the defendants over the suit property. A person claiming easementary right must admit the title of the owner of the servient tenement and seek enforcement of their easementary right. In the case on hand, the plaintiffs have not pleaded that 'B' schedule property belongs to the defendants. They claimed that suit 'B' schedule property was a proamboke pathway. In such circumstances, the prayer sought for in the plaint, regarding declaration of alleged easementary right, is misconceived and the same is not maintainable in the light of the averments found in the plaint. The prayer for injunction is a consequential one. When the Court is not inclined to grant main prayer for declaration, the consequential prayer for injunction



S.A.(MD)No.35 of 2007

should also be negated. In view of the specific pleading in the plaint claiming the suit 'B' schedule property as a poramboke pathway, the plaintiffs are not entitled to claim any easementary right over the suit 'B' schedule property. The substantial questions of law framed at the time of admission are answered accordingly against the appellants/plaintiffs. The Second Appeal stands dismissed.

10. The dismissal of the Second Appeal will not come in the way of the plaintiffs working out their remedy in respect of poramboke pathway, by resorting to appropriate legal proceedings.

11. With these observations, the Second Appeal stands dismissed.
There shall be no order as to costs.

25.06.2024

NCC : Yes / No

Index : Yes / No

vsm

To

1.The Subordinate Judge, Padmanabhapuram.

2.The Additional District Munsif, Eraniel.



S.A.(MD)No.35 of 2007

3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)No.35 of 2007

S.SOUNTHAR, J.

vsm

S.A.(MD)No.35 of 2007

25.06.2024