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C.A.No. 1389 OF 1999

ITEM No.102 P.H.

Court No. 11

SECTION XII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 1389 of 1999

R. Vishalakshi and Anr.Appellant (s)

VERSUS

O.S. RangaswamyRespondent (s)

(With office report)

Date : 24-03-2004 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE P. VENKATARAMA REDDI
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. V. Krishna Murthy, Adv.

For Respondent (s)Ms. V. Mohana, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed. No costs.

[Alka Dudeja] [Shelly Sengupta]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1389 OF 1999

R. Visalakshi and Anr. ... Appellant (s)

Versus

O.S. Rangaswamy ... Respondent(s)

O R D E R

This appeal is against the judgment of the Madras High Court dismissing the second appeal filed by the appellants herein, who were the plaintiffs in the suit, for declaration of their right to use the portion marked as A B C D E F G H in the plan annexed as cart track and also as a pathway and for granting permanent injunction restraining the defendant from interfering with the rights to use the cart track. The claim is laid on the basis that the appellants have acquired the prescriptive right to make use of the cart track and alternatively, the cart track/pathway is in the nature of easement of necessity. Reliance was also placed on Exhibit A-2, which is an unregistered agreement to which the plaintiffs and the defendant, among others, were parties. As far as Exhibit A-2 is concerned, as pointed out by the High Court, it does not refer to any existing pathway. The agreement is only to form a pathway in a particular manner over the lands of the parties to the agreement. The plaintiffs have not sought to enforce the said agreement pertaining to the future formation of the pathway. Therefore, the plea based on Exhibit A-2 was rightly negatived.

-2-

As regards the acquisition of easement by prescription, it was held by all the Courts that the evidence was insufficient to hold that the pathway/cart track was being used by the plaintiffs as a matter of right for the statutory period.

The High Court focused its attention mainly on the claim of easement based on necessity. We are of the view that the finding in this regard is based on appreciation of evidence and the concurrent finding could not have been interfered with by the High Court in the second appeal. However, the High Court has, in fact, considered all the aspects in detail once again and recorded the conclusion that there was no satisfactory evidence to establish the easement of necessity. The High Court, inter alia, adverted to the Commissioner's report. The High Court observed that the plaintiffs failed to establish that the defendants' lands were severed from a larger block of land originally owned by a single person and that the retained land cannot be enjoyed at all without having the easementary right in question. The learned counsel for the appellants points out that the High Court has not considered the fact that in the written statement the averments in regard to the ownership of the lands in question by two persons, namely, Sivanae Gounder and Rangaswamy Gounder has not been denied and the land has been acquired by the appellants as a result of division of the property.

In this context, our attention has been drawn to the deposition of D.W.1, which is as follows:

-3-

"I do not know one Rengasamy Gowder, forefather of the plaintiffs. I do not know Rengasamy Gowder and Sivanae Gowder are cousins. They are the Owners of this entire land. The forefathers of Visalakshi and Duraisamy are relatives. Vellaiangiri, the Owner of the land in Survey No. 515 is my relative. I do not know how the lands of these plaintiffs and the defendants which were one before and got partitioned later."

We find it difficult to construe the deposition extracted above as an admission that the property belonging to the common ancestor of the plaintiffs and the defendant was partitioned between them. Even the plaintiff's averments in this behalf are quite vague and do not furnish any details in regard to the original ownership of the properties and the genesis of acquisition by the appellants. Moreover, as observed by the High Court, the claim of the plaintiff is not clear and specific.

We do not find any ground to interfere under Article 136 of the Constitution with the concurrent conclusions reached by the High Court and the courts below.

The appeal is dismissed. No costs.

.....J.
(P. Venkatarama Reddi)

.....J.

(D.M. Dharmadhikari)

New Delhi,
March 24, 2004.