
(1971) 07 MAD CK 0048

In the Madras High Court

Case No : Second Appeal No. 29 of 1968

L. Govindarajulu Chettiar

APPELLANT

Vs

V.N. Srinivasalu Naidu

RESPONDENT

Date of Decision : 23-07-1971

Acts Referred:

Law of Property Act, 1925 — Section 62

Citation : AIR 1972 Mad 307

Hon'ble Judges : Gokulakrishnan, J

Bench : Single Bench

Judgement

1. The defendant is the appellant. The suit was for declaration of the plaintiff-respondent's title to the suit item and for injunction restraining the appellant from interfering with the respondent's peaceful possession of the suit property.

2. On 30-6-1958, the respondent-plaintiff purchased the suit property and has been in possession and enjoyment thereof ever since. The suit item is of an extent of 1.52 acres in S. No. 248/2.B, Chikkavasampalayam village. On 12-5-1964, the defendant trespassed into the same and attempted to lay a road 30-ft. wide. On these allegations, the respondent brought the suit for the said reliefs.

3. The appellant-defendant contended that originally S. No. 248/2.B, of an extent of 2.06 acres, which was divided into a number of house-sites, belonged to one Subbiah Chetti. He left space for a road for giving access to the house-sites. On 1-5-1945, he sold seven sites to one Guruswami Naicker, specifically mentioning a 30-ft. road on the south of the sites. On 29-10-1962. Guruswami Naicker sold the entire property to one Thirumakkal, the mother of the defendant, and, in a partition made on 15-5-1963, this was allotted to the defendant. The remaining plots were sold by Subbiah Chetti to the plaintiff on 30-6-1958. This 30-ft. road is demarcated by masonry basement wall. In 1952, Thirukammal applied to the Municipality for construction of a building in the first block, showing the layout of the road. The plaintiff and his predecessors were using the road as access to

their plots. While the defendant wanted to re-lay the road, the plaintiff obstructed it. There is no other access to the remaining plots of the defendant. The original vendor himself lose his title to the 30-ft. road since 1945. Now, the plaintiff cannot claim any right in this road. All the owners of the plots abutting the 30-ft, road are entitled to this 30-ft, road. By the grant of the original owner, this has become the common property of the owners of the sites abutting the road. The defendant has also perfected his right by prescription.

4. The trial Court held that the defendant has acquired the right to use the road, that the vendor of the plaintiff had divested himself of his right over the road and that the plaintiff cannot claim any title thereto. He also found that the defendant has perfected right to it by prescription. On this view, the trial court dismissed the suit.

5. On appeal, the Subordinate Judge, Coimbatore, on a consideration of the documents, held that the plot covered by the proposed road was not sold to the predecessor-in-interest of the defendant, that there was also nothing to show grant of an easement right to use 30-ft. road, given to the predecessors-in-interest of the defendant and that it was for the defendant to provide access to the vacant site through his own site. The lower appellate Court has also observed that, Subbiah Chetti might have left out a 30-ft. road, that "there is nothing to show that the 30-ft. road was left for the benefit of the property sold to the defendant's predecessor-in-interest" and that "the idea to leave 30-ft. road was to benefit only the remaining portion". the lower appellate Court has also observed that road had not been formed, that the said sites were not intended to be north-to-south sites to which access could be had from the said 30-ft, road, that there were east-to-west sites with access from the main road and that the defendant could not convert them into north-to-south sites and claim the road. It has been further held that it is not possible to hold that the plaintiff should be restrained from preventing the defendant from using the said road in question. On these observations and findings, the lower appellate Court allowed the appeal and decreed the suit as prayed for.

6. Aggrieved by the judgment and decree of the lower appellate Court, the defendant has preferred this second appeal.

7. Thiru D. Ramaswami Iyengar, the learned counsel for the appellant, submitted that there is an implied grant of easement already over the 30-ft, road by the original owner and the same has been confirmed by the various documents produced in this case. The learned counsel further submitted that the lower appellate Court has completely gone wrong in not properly appreciating and applying the law of implied grant of easement despite the fact that the documentary evidence on record makes it clear that such a right is conferred. According to the learned counsel, there is absolutely no warrant for the presumption that the 30-ft, road might have been left for the benefit of the property sold to the plaintiff, and not for that of the defendant.

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(His Lordship discussed the evidence and proceeded).

8. From all these documents Thiru D. Ramaswami Iyengar stated, it is clear that there is an implied grant of easement over the 30-ft. road. He cited M. Ratanchand Chordia and Others Vs. Kasim Khaleeli, , wherein a Bench of this Court has laid down the principles on which an implied grant can be inferred. The question whether a grant can be implied or not would only arise in a case where there is no express grant. To say the least the contention that the absence of an express grant would negative an implied grant is quite untenable. It is from attendant circumstances and other documentary evidence that an implied grant has to be inferred. It is pity that the lower appellate Court has not bestowed its attention before it disposed of the appeal, on the aspect of spelling out an implied grant, which is recognised by law.

9. Annapurna Dutta Vs. Santosh Kumar Sett and Others, also makes it clear that in law implied grant can be inferred and lays down that grant can be presumed from the description of boundaries in the conveyance which mentions the same to be a common passage.

10. In Kuppakkal Vs. Mathan Chettiar and Others, the facts were: The owner of a block of a vacant land sold a portion thereof as a building site to A. In the conveyance in favour of A the parcel of land sold to him was described as bounded on its southern side by a pathway intended to be set apart by the vendor. Shortly after the sale to A, the vendor conveyed the remainder of the block including the site of the intended pathway to B, who refused to allow A a right of way over his land. On those facts, this Court held that A was entitled to a right of way on B's land along the intended pathway and that neither the vendor nor anybody claiming under him could dispute A's right of way.

11. Thiru M. S. Venkatarama Iyer, the learned counsel for the respondent, stated that there is absolutely no right created in favour of the defendant under Exts. B-1, B-2 and the various other documents to have a right of way over the alleged 30-ft. road. He referred me to the description of "one thakku" in Ex. B-1, the sale in favour of Guruswami, and urged that the whole plot has to be taken as one site and should not be considered as different sites. According to learned counsel, the description of the property in this document by the original owner Subbiah Chetti, is "the east-to-west 7 sites, and if the 7 sites were described as the north-to-south 7 sites, it can be inferred that there must be opening into the road on the south, but since it is mentioned as "east-to-west 7 sites" there cannot be any inference that the sites have access to the 30-feet road on its south. he also sought to distinguish the decisions in M. Ratanchand Chordia and Others Vs. Kasim Khaleeli, , on the ground that they are cases where the building on certain sites cannot where the buildings on certain sites cannot have access except through the disputed opening. According to the learned counsel, the appellant can as well leave an opening in his land, construct suitable

buildings and give access to the houses he may put upon the sites; as it is, the defendant has opening on the Ooty-Coimbatore road and as such he cannot have opening on the south.

12. In the text book "Gale on Easements" 13th Edn. at page 102, it has been stated thus-

"A conveyance or other disposition of land will operate to create an easement over other land of the conveying party if the general words imported into the conveyance by Section 62 of the Law of Property Act 1925 (or actually inserted), can, in the light of the circumstances at the time of the conveyance, be fairly said to include it. This result arises from the conveyance itself, independently of any preceding contract."

From such propositions, it is clear that the contention taken by Thiru M. S. Venkatarama Iyer cannot be sustained. The documents ranging from 1945 to 1952 make out very clearly that there is opening on the south of the sites in question, that is the 30 ft. east-to-west road. It is too much to expect that the purchaser of the 7 sites measuring in all 354-ft. east to west and 53-ft. north-to-south, must have opening only on the eastern side. It could not have been visualised that with the breadth of 53-ft north to south a building having a length of 354-ft. east to west, will be constructed on the land sold under Ex. B-1. The word "thakku" has no such significance, as much as the word "jaga" occurring in some of the documents. The intention of the original owner is clear that there must be 7 sites and it has been made clear in these documents that the 7 sites are intended to be house-sites. In such case, the reasonable interpretation can only be that the house-sites are intended to be independent and also intended to have access to the 30-ft. road on the south, mentioned in these documents. While the vendor under Ex. B-1 had rights over the southern property sold under Ex. B-1 including the 30-ft. road, he has specifically intended to give space for the 30-ft. road. The 30-ft. southern road running east to west was intended to be the access even to the vendees under Ex. B-1. Refusal by the Municipality to sanction the plan until the 30-ft, road is formed also seems to visualise the necessity and importance of having this access for the 7 sites purchased under Exs. B-1 and B-2. It would also be difficult for the future vendee of the respective plots sold under Ex. B-1 to have access to the main road unless the 30-ft. space intended to be left out is made available. It is too much to say that the vendee under Ex. B-1 has to further leave another 30-ft. space or some portion in the lands purchased for the purpose of giving access to other intended purchasers of the plots. It is unnecessary that there should be a pucca road formed, for the purpose of giving the right to the defendant to claim the 30-ft. road. Formation of a pucca road can take place at any time. But there must be space available for such formation. From the case-law cited by Thiru D. Ramaswami Iyengar and on the interpretation of the documents in this case, it is very clear that there is an implied grant in favour of the vendees and they must enjoy access through 30-ft. road left in Ex. B-1.

13. In this view, I am not agreeing with the conclusion arrived at by the lower appellate court which has missed to apply the clear proposition of law as regards implied grant. The lower appellate court has also failed to properly interpret the various documents in their proper perspective, which, if done, clearly spell out an implied grant in favour of the purchasers of the sites comprised in Ex. B-1. The lower appellate court has not at all applied its mind to this proposition of law except formulating the points for determination as to whether the defendant has right to the pathway and as to whether he has perfected the right to the pathway by prescription.

14. In view of my discussion above and the conclusion arrived at by me, I am of the view that the defendant has the right to use the road which is south of his land and which road has been mentioned in Exs. B-1 and B-2. In the circumstances the second appeal is allowed; the decree and judgment of the lower appellate court is reversed and that of the trial court is restored. There will be no order as to costs in this second appeal. No leave.