
(1997) 11 MAD CK 0157
In the Madras High Court
Case No : S.A. No. 322 of 1984

P. Perumal Naidu and Others

APPELLANT

Vs

Krishnasamy Naidu and Others

RESPONDENT

Date of Decision : 17-11-1997

Acts Referred:

Easements Act, 1882 — Section 60

Citation : AIR 1998 Mad 148 : (1997) 3 CTC 513

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Single Bench

Advocate : K.V. Sundararajan, for N. Sankaravadivel, for the Appellant; M.S. Umapathy, for the Respondent

Final Decision : Allowed

Judgement

S.M. Abdul Wahab, J.—The Second appeal has been preferred by the plaintiffs.

2. The plaintiffs filed the suit for declaration that they are entitled to use the B schedule passage without obstruction or blocking the passage by the defendants in any manner and for an injunction restraining the defendants, their men or their agents etc. from preventing the use of the passage.

3. The case of the plaintiffs is that under registered sale deed dated 21.11.1975 they purchased vacant site from V.C. Govinda Doss and two others for valuable consideration. They put up construction and by virtue of registered partition deed dated 9.4.1975, the vacant sites were divided by four parts into ABCD. They left the passage. Though the passage is conned to C and D yet, the other two persons have been given permission to use passage. The partition deed mentions that the allottees A and B and their successors in interest are also entitled to use the common passage. Therefore the plaintiffs are entitled to use the passage. But the defendants have started preventing and obstructing the use of the passage. Hence the suit.

4. The defendants contended that the passage was conveyed only to the owners

of the C and the allottees of other shares i.e., A and B are not entitled to use the passage. They also contended that the plaintiffs have been access to the road directly from their property. There is no necessity to use the passage. There is no record to show that any permission or licence was granted to the plaintiffs. The trial Court after considering the evidences, has come to the conclusion that the plaintiffs are entitled to use the B schedule passage. It is also found that intention of the parties to the partition deed has been very clearly stated in the recital and such intention could not be brushed aside.

5. The Appellate Court has reversed the finding and judgment and decree of the trial Court. According to the appellate Court the clause contained in the partition deed with respect to the passage amounts to the licence and since it is not the licence coming under the definition to Section 60(a) of the Indian Easements Act, the plaintiffs are not entitled to claim right over the passage.

6. The learned counsel for the appellants contended that the lower Appellate Court is thoroughly gone wrong in assuming that the plaintiffs were claiming the right as an easement. The learned counsel for the respondents on the other hand contended that there is no plea of licence and there is no necessity also for using the passage. Further the licence can be cancelled since the plaintiffs have committed nuisance in the passage.

7. The lower Appellate Court has found that the right conferred under the partition deed does not come u/s 60(a) of the Indian Easements Act. According to the Appellate Court, unless the grant of licence and the transfer of property relate to the same property, it is not possible to hold that the licence granted is coupled with the transfer of property within the meaning of Section 60(a) of the Act. The learned appellate Judge has thoroughly gone wrong. The plaintiffs have not at all, Further from the evidence of Ex.A.4, the partition deed there is no question of licence. The licence is defined u/s 52 of the Indian Easements Act as follows:

Where a person grants to another, or to a defined number of other persons, a right to do or continue to do, in or upon the immovable property of the grantor something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.

First of all to attract the above Section the person who grants the licence must be the owner of the property. The other person who gets the permission must be stranger or had no right in the property. But here in this case, the parties have entered into a partition agreement dividing the property and giving to themselves certain rights and it is not as if one party has given a right to another party. All the parties have given a right to themselves. Therefore the definition contained in Section 52 of the Act is not attracted, Section 60 of the Act providing for revocation is also not attracted.

8. The learned counsel for the respondent cited K. Subramaniam and Another Vs.

M. Sankaran Pillai and Another, . In the said case the land was sold by the first appellant to the respondent on 12.2.1972 under Ex.B.I and on the very same day the licence under Ex.A.I was granted by the first appellant in favour of the respondent to use the suit lane for the purpose of enabling the respondent to the access to the toilet in their house which was purchased on 12.2.1972. The first appellant sold to the suit lane under Ex.A.2. dated 12.6.1977. The words used in the documents is as follows:

In the said case the learned single Judge has taken a view that the licence was granted by the vendor to the vendee. The learned Judge refers to the provisions contained u/s 60 of the Indian Easements Act. From the facts of the case it is clear that the grantor of the permission and the grantee of the permission are not having any common interest jointly in the lane. It is a transaction between the vendor and the vendee. But here there is no such relationship. The permission is granted amongst themselves. All the four persons joined together and agreed upon the partition in a manner. When they agreed to use the passage, it is no a licence given by one party to another and all were owners and when division took place they agreed to use their shares in a particular manner as they like. Therefore the said case is not helpful to the first respondent.

9. In my view, the lower Appellate Court has thoroughly gone wrong in construing that the permission granted in the partition deed is a licence. In the circumstances since the appellate Court has committed a serious error of law and decided the case on that basis the same has to be set aside. Accordingly it is set aside, The judgment and decree of the trial Court are restored. The second appeal is allowed. However there is no order as to costs.