



S.A.No.898 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2023

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THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.898 of 2023
&
C.M.P. No. 28776 of 2023

R.Eswaramurthy

...Appellant

Vs.

1.K.Palanisamy

2.R.Krishnamurthi

3.M.Chandrasekar

...Respondents

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree made in A.S.No.18 of 2022 dated 24.02.2023 on the file of the Additional Subordinate Judge, Tiruppur, confirming the Judgement and Decree as made in O.S.No.141 of 2013 dated 25.03.2022 on the file of the Principal District Munsif, Tiruppur.



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For Appellant : Mr. A.K. Sriram
Senior Counsel

For Mr. V.Balamurugan.

For Respondent 1: Mr. N.S.Suganthan
For NSS Advocacy LLP
(Caveator).

JUDGMENT

The plaintiff who has lost concurrently before the Courts below has preferred this Second Appeal. The facts necessary for disposing of this Second Appeal at the admission stage is herein below set out and for ease of understanding, the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.141 of 2013 on the file of the Principal District Munsif, Tiruppur, for declaration that the suit Cart-track agreement which is registered in Thottipalayam Sub Registrar office as Doc. No.1573 of 2010 by the 2nd defendant in favour



of the 1st defendant regarding the suit Cart-track is not valid under law and void abinitio and to declare that the 1st defendant has got no right and enjoyment to use the Cart-track and to grant an order of permanent injunction in favour of the plaintiff against the 1st defendant and his men restraining them from using the Cart-track.

3. The plaintiff's case is that the plaintiff and the 2nd defendant are brothers. The 3rd defendant is a co-sharer of the suit Cart-track and the 1st defendant is a total stranger to the Cart-track. The plaintiff would submit that the suit Cart-track and other properties originally belonged to one Sivan Malai Gounder, the paternal grandfather of the plaintiff and the 2nd defendant. He had obtained the property under a registered partition deed which he had entered into with the other co-sharers.

4. It is the case of the plaintiff that in this partition deed the plaintiff's grand father Sivan Malai Gounder was allotted the D – Schedule property and the suit Cart-track was kept in common for all the sharers. In the said partition deed, a right was given to use the suit



cart track situate on the eastern extreme of S.Nos. 673, 669, 675/1 and 675/2 as also the east – west pathway measuring 5 muzham in breadth situate abutting the southern fence of S.No. 675 / 2 allotting to the 4th party therein. Therefore, the parties to the partition deed registered as Doc.No.1101 / 1941 were entitled to the said pathway and therefore the plaintiff who are also entitled to the same has been enjoying it peacefully.

5. Under this partition deed, the plaintiff and the 2nd defendant's properties are comprised in S.F.No.673 and 675. The 3rd defendant was allotted the B – Schedule comprised in S.F.No.669. It is their contention that the pathway was formed for exclusive use of the parties to the partition deed, Doc. No.1101 / 1941. The 1st defendant own property south of the plaintiff's property in Kandiyar Kovil Village bearing S.F.Nos.672/2 and 682/3. The 1st defendant's property is nothing to do with the plaintiff's property as well as that of the defendants 2 and 3. The 1st defendant cannot use the suit pathway to reach his property and he has never been enjoying the same.



6. While so, the 1st and the 2nd defendants had entered into an agreement for use of the pathway. On the strength of this agreement, the 1st defendant was trying to enter into suit pathway. The agreement is a rank forgery and created by the 1st and 2nd defendants. Therefore, the plaintiff has come forward with the suit in question.

7. The 1st defendant had filed a written statement inter alia admitting the existence of the Cart-track which they say has been in existence for over 70 years. It is also his contention that the 1st defendant and his father have been enjoying this Cart-track for more than 70 years, openly, continuously and without interruption to the knowledge of all the owners of properties along the 27 links Cart-track.

8. The 1st defendant would submit that his share in S.F.No.676/2 was sold to third parties retaining the 27 links wide Cart-track. The 1st defendant would submit that he has no other access to reach his land in S.F.No.682/3. The 1st defendant would further submit that the plaintiff



and the 2nd defendant who are siblings, own properties to the east and south of the defendant's land comprised in S.F.No.682/3. They had approached the 1st defendant and requested him to provide 8 feet wide Cart-track in S.F.No.682/2 in continuation of the 27 links wide Cart-track in S.F.No.676/2. The 1st defendant agreed to provide Cart-track to the plaintiff and the 2nd defendant for use and enjoyment without claiming any right on the land.

9. The 1st defendant would submit that since the plaintiff and the 2nd defendant had requested the 1st defendant to provide the Cart-track in his land, a Cart-track agreement dated 20.04.2010 was entered into between the 1st defendant and 2nd defendant, where the 2nd defendant had mentioned the right of the 1st defendant to enjoy the ABCD Cart-track. The plaintiff had informed the 1st defendant that it was the 2nd defendant who had a right in the ABCD Cart-track and he was the right person to execute the document. The agreement has been attested by the 3rd defendant.



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10. Under this agreement, the 2nd defendant had agreed to provide the Cart-track. The agreement recognised the existing right of the 1st defendant in the Cart-track. By another agreement dated 18.05.2010 the 1st defendant agreed to provide Cart-track for the 2nd defendant and the plaintiff in S.F.No.676/2, 682/3 to reach the lands of the plaintiff and the 2nd defendant. This document has also been registered. This agreement has also been attested by the 3rd defendant who also has a share in the Cart-track.

11. The 1st defendant would submit that both the agreements were drafted by one and the same person and the registration of the same was known to the plaintiff and the other sharers of the Cart-track in the year 2010 itself. The Cart-track agreement dated 20.04.2010 was drafted by the document writer who had drafted that a new Cart-track was formed which was incorrect as the Cart-track was already in use. The plaintiff who had tacitly agreed to this agreement has now come forward with the suit in question totally suppressing his assent.



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12. The 1st defendant would deny the allegations that he had no right in the Cart-track and that agreement dated 20.04.2010 has been executed without the knowledge of the other sharers. The 1st defendant would submit that the live fence in ABCD Cart-track was uneven as branches were hanging over the fence and he had requested the plaintiff and the 2nd defendant to cut these branches. They had informed him that no labourers were available to do the work and therefore the 1st defendant had himself cut the over hanging branches. Thereby a misunderstanding had arisen between the 1st defendant and the plaintiff and the 2nd defendant and the suit is the outcome of this misunderstanding.

13. The Trial Court had framed the following issues:

“1. தாவா தடத்தை பொறுத்து 20.04.2010ல்
ஏற்படுத்திய ஒப்பந்த பத்திரம் சட்டப்படி
செல்லத்தக்கதல்ல, இல்லநிலையானது என்பது
சரியா?”

2. தாவா தடத்தை பயன்படுத்த /ம்



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பிரதிவாதிக்கு உரிமையும் அனுபவமும் இல்லையா?

3. தாவாவில் கோரியவாறு வாதிக்கு

விளம்புகை பரிகாரங்கள் கிடைக்கத்தக்கதா?

4. தாவாவில் கோரியவாறு வாதிக்கு நிரந்த

உறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?

5. வேறு பரிகாரம் என்ன?

14. The plaintiff had examined himself as P.W.1 and through him Ex.A.1 and Ex.A.2 were marked and one Balasubramaniam was examined as P.W.2. The 1st defendant had examined himself as D.W.1 and one Sanmugasundaram was examined as D.W.2. Ex.B.1 to Ex.B.12 were marked on the side of the defendants. An Advocate Commissioner had been appointed and the commissioner's report and plan were marked as Ex.C.1 and Ex.C.2.

15. The Trial Court on considering the evidence on either side and relying upon the documents filed held that from a reading of Ex.A.1 it is clear that the suit Cart-track was not formed for the private



usage of the said Sivan Malai Gounder and co-owners. The Court also relied upon the admission of P.W.1, wherein he has stated that the defendants are using suit pathway.

16. The Trial Court had held that if the suit property was only for a private usage, then it would not have touched the boundaries of the 1st defendant's property. The 2nd and 3rd defendants are co-sharers and there are other sharers who have not added as parties to the proceedings. Since the relief claimed is one for declaration with reference to Cart-track, the plaintiff ought to have impleaded all the co-sharers as a party. However, this is not been done and that appears to be a reason why the 2nd defendant had entered into an agreement with the 1st defendant.

17. The other co-sharers have not objected to the agreement entered into between the 1st defendant and the 2nd defendant. Ultimately, the learned Judge had held that the suit Cart-track is a common Cart-track. The Trial Court has observed that the 1st



defendant has a legal right to use the Cart-track since the same has been used by his grand father as well.

18. Challenging the same, the plaintiff had filed A.S.No.18 of 2022 on the file of the Additional Sub Court, Tiruppur. The learned Additional Sub Judge on perusing the records have proceeded to dismiss the appeal and confirmed the Judgement and Decree of the Trial Court.

19. Mr. A.K.Sriram, learned senior counsel appearing on behalf of Mr. V.Balamurugan for the appellant / plaintiff would submit that although the Court below has not framed a point for consideration though a heading to this effect is found in the Judgement. That apart, he would submit that under Ex.A.1 partition deed only the parties to partition deed have right to use the Cart-track. He would once again plead the existence of an alternate pathway, thereby dis-entitling the 1st defendant from staking a claim of the suit Cart-track.



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20. The learned senior counsel would further submit that the agreement with the 2nd defendant would not make the schedule pathway a common Cart-track. That apart, a plea of the 1st defendant that he did not have an alternate pathway has not been proved by him.

21. Heard the learned senior counsel and perused the records.

22. The Courts below have considered the evidence of both the sides and dismissed the suit which is confirmed in appeal. The Courts below have taken into consideration the fact that in the partition deed, Ex.A.1 the Cart-track was mentioned as another Cart-track and the plaintiff during his cross examination has submitted that the suit pathway runs from Kandiyan Kovil Village and the same proceeds southwards and proceeds across S.No.669, 673 and 675 to reach the defendant's property. The independent witness who has been examined on the side of the plaintiff has also admitted the fact that the 1st defendant's grand father and his brothers also had a right to this Cart-track. The 1st defendant's grand father has been allotted a share in



S.F.No.673.

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23. That apart, the Courts below have taken note of the fact that the plaintiff has not challenged Ex.B.4 agreement dated 18.10.2010, which is also an agreement with reference to Cart-track. P.W.1 who is none else than the plaintiff has admitted that on the south side of the 1st defendant's land the plaintiff and 2nd defendant have property. Even in the partition deed, Ex.A.1, the Cart-track has only been mentioned as mamool Cart-track and not as a private Cart-track.

24. The Advocate Commissioner has also taken note of the fact that the 1st defendant has no other pathway except for the suit pathway. Having analysed the oral and documentary evidence in great detail, the Courts below have dismissed the suit filed by the plaintiff. No grounds whatsoever has been made out for interfering with the concurrent Judgement and Decree. Further, no substantial question of law has been made out.



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25. In the result, the Second Appeal stands dismissed.

Consequently, the connected Civil Miscellaneous Petition is closed.

No costs.

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Index : Yes/No

Internet : Yes/No

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To

1.The Additional Subordinate Judge,
Tiruppur.

2.The Principal District Munsif,
Tiruppur.



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P.T. ASHA, J,

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