



Second Appeal No.1186 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.1186 of 2013

1.Kanniyappa Udayar
2.Ramayammal
3.Vijaya Lakshmi
4.Venkatachalam

.... Appellants

-Vs-

1.Karuppasamy Gounder (Deceased)
2.Velumani
3.Kalianna Gounder (Deceased)
4.Palaniammal
4.Subramaniam
6.Satchithanandam
(R4 to R6 legal representatives of
the deceased 1st respondent brought
on record vide order of the Court dated
22.07.2013 made in MP Nos.1 and 2 of
2013 in SA.SR.No.104657 of 2010)

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 25.02.2005 made in A.S.No.32 of 2005 on the file of the learned Principal Sub Judge, Gobichettipalayam reversing the judgment and decree dated 24.07.2003 made in O.S.No.349 of 1998 on the file of the learned District Munsif Court, Gobichettipalayam, Erode.

For Appellants	: Mr.K.J.Shiva Arudhra for Mr.S.Kumaradevan
For Respondents	: RR 1 and 3 died RR 2,4,5,6,7,8 and 9



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served - no appearance

J U D G M E N T

The present Second Appeal arises out of the judgment and decree of the Court of the Principal Subordinate Judge at Gobichettipalayam in A.S.No.32 of 2005 dated 25.02.2005 in reversing the judgment and decree of the Court of the District Munsif at Gobichettipalayam in O.S.No.349 of 1998 dated 24.07.2003.

For the sake of convenience, the parties are referred to as per their rank in the suit.

2. O.S.No.349 of 1998 is a suit for permanent injunction restraining the defendants, their men, agents and subordinates from interfering with the pathway shown as 'ABCD' in the suit plan. It is the case of the plaintiffs that the suit pathway exclusively belongs to themselves, one Dr.Sundaramoorthy, and one Manoharan. They would plead that the defendants have access through the property shown as S,S1,S3,S4 and therefore have no necessity to come in over the property shown as 'ABCD'. Seeking exclusive right to the property, the present suit came to be filed.

3. The defendants entered appearance and filed a detailed written



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statement. According to them, 'ABCD' is a common pathway, which had been shown as such as early as on 28.03.1906 under Ex.B1 and in their document under Ex.B11. According to them, there is no connection between the plaintiffs and the pathway shown as S,S1,S3,S4 in the suit plan. They would plead that since they are co-owners of Survey No.515, the present suit is not maintainable against a co-owner.

4. Before the learned trial Judge, on the side of the plaintiffs, 12 documents were filed and four witnesses were examined. On the side of the defendants, two witnesses were examined and 11 documents were marked. Apart from that, pending the proceedings, an advocate commissioner was appointed, who visited the suit schedule mentioned property and filed a report in C1 and a plan under C2.

5. After a detailed analysis, the learned trial Court came to a conclusion that the suit pathway which runs 'ABCD' has been in existence right from the year 1906 and therefore the defendants cannot be enjoined from using the same. Consequently, it came to the conclusion that the plaintiffs have not proved exclusive right over the pathway and hence dismissed the suit.

6. Feeling aggrieved over the same, the plaintiffs preferred an appeal to



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the learned Subordinate Judge at Gobichettipalayam, who came to the conclusion that, by virtue of the purchase shown under Ex.B11, under which the defendants claim, there is nothing to show that the defendants had a right over the pathway and consequently decreed the suit. Against the reversing finding, the present Second Appeal has been presented before this Court.

7. Notice regarding admission has been ordered by this Court on 18.11.2013. Though the respondents have been served, none had entered appearance on their behalf.

8. Heard Mr.Siva Arudhra for Mr.S.Kumara Devan for the appellants. The respondents, though served, have not entered appearance.

9. Mr.Siva Arudhra would very vehemently argue that the learned appellate Judge had failed to appreciate that in the document of the year 1906, the pathway 'ABCD' running over S.No.515 had been shown to be abutting it and was described as 'இட்டேரி'. He submits that 'இட்டேரி' means public pathway. Apart from that, he would submit that pathway shown in the suit plan as S,S1,S3,S4 has no connection to the suit schedule mentioned properties and therefore, that cannot be treated as alternate pathway. He would state that the well reasoned judgment of the trial Court had been unnecessarily interfered with



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by the lower appellate Court and it had ignored vital evidence and therefore it requires interference at the hands of this Court. He would state that two substantial questions of law would arise in this appeal, which are as follows:

" (i) Whether the 1st appellate Court correct in granting permanent injunction against the co-sharer of the Cart Track despite the Hon'ble High Court as well as Hon'ble Supreme Court of India held that the relief of injunction should not be granted against co-owner of the property?

(ii) Whether the 1st appellate Court corrected to have conclusion and decide that the defendant should not use the cart track which was made available for the past 100 years both under usage / custom and as per sale deed of the year 1906?"

10. I have carefully considered the arguments of the appellants and have gone through the records. I heard the appeal on the above said questions of law.

11. As rightly submitted by Mr.Siva Arudhra, a perusal of Document No.547 of 1906 would reveal as follows:



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"சர்வே எண்.515 4 ஏகரா 10டி31 தரம் ரூ.15.7.0 இதில் எங்களுக்கு பாத்தியப்பட்டது கீழ்புறம் ஏகரா 7 டி73 தரம் ரூ.7.11.6 தீர்வையான பூமியும் அதிலிருக்கும் புனியமரம் 1 மற்ற மாவடை மரவடை சகிதம் இதற்குள்ள வழிநடை பாத்தியம் கீழ்மேலாக இட்டேரி பாத்தியம் கிரையம் செய்திருக்கிறோம்."

12. This shows that 'இட்டேரி ' was existing in Survey No.515 for at least 92 years before the presentation of the plaint. Apart from this, a perusal of Ex.B11, the title document of the defendants reveals as follows:

"எங்கள் தென்புறத்து பங்குக்கு வழிநடை பாத்தியம் கிரையத்தை கண்ட பூமியில் தென்வடலாக மேல்புறம் நாலு முழ அகல வழிநடை நாங்கள் நடந்து கொள்ளும் பாத்தியம் தவிர மேலே கண்ட பூமியை கிரையம் செய்திருக்கிறோம்."

13. The findings of the learned appellate Judge that the defendants' document did not relate to Survey No.515 is contrary to the record that has been placed before the Court. Failing to consider important documentary evidence or rather ignoring to look into the same would render the judgment of the lower appellate Court perverse.



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14. The existence of 'இடேளி' has been proved by the defendants. In case the plaintiffs plead that it is an exclusive pathway which belongs only to them, the burden is on them to prove the same. No document worth its salt has been produced to show that the suit pathway 'ABCD' is an exclusive one, which meant only for the owners to the Southern side of the property abutting the pathway. In fact, the Lower Bhavani Project Canal runs across the lands starting from 'ABCD' pathway and cutting across the pathway 'S,S1,S3,S4'.

15. The report of the advocate commissioner makes it clear that there has been a recent disturbance by planting of fresh crops as well as plantain trees in order to prevent access which runs along with the Lower Bhavani Project Canal through 'ABCD' pathway. Further more, a careful perusal of the report makes it clear that the defendants who are in the southern side of the pathway would have no access if an injunction is granted restraining them from using the pathway 'ABCD' to access their property. The question of 'S,S1,S3,S4' being an alternate pathway and therefore defeating the rights of the defendants would arise had the defendants filed a suit claiming easement over the property. When it comes to public pathway, no individual can claim exclusive rights, especially when all of them are owners of S.No.515, Koogalur Village, Gobichettipalayam



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Taluk. The judgment of the lower appellate court is laconic. The learned appellate Judge has not given any reasons why he has set aside the judgment and decree of the trial Court which is a detailed one.

16. In the light of the above discussion, I find the judgment of the lower appellate Court is perverse and requires interference at the hands of this Court and accordingly it has been interfered with.

17. In fine, S.A.No.1186 of 2013 stands allowed. The judgment and decree of the Court of the Subordinate Judge at Gobichettipalayam in A.S.No.32 of 2003 dated 25.02.2005 is set aside. The judgment and decree of the Court of the District Munsif at Gobichettipalayam in O.S.No.349 of 1998 dated 24.07.2003 is restored. The suit shall stand dismissed. As the respondents / plaintiffs did not enter appearance before this Court, no costs is being ordered.

28.02.2024

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST

To

1.The Subordinate Judge, Gobichettipalayam.



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2.The District Munsif, Gobichettipalayam.

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V.LAKSHMINARAYANAN, J.

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