



S.A.No.1221 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.1221 of 2013

1.M.K.Basha

2.B.Khadar Sha

3.Shahen Sha

4.Hussain Sha

5.Badh Sha

6.Barkath Sha

.. Appellants

Vs.

1.Abdul Rahib

2.Nowsath

3.Chan Basha (died)

4.Abdul Rahman

5.Sufeya

6.Irfan

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7.Heema
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8.Jamruth

.. Respondents

(R3 – Died, RR5 to 8 are brought on record as LR's of the deceased R3 vide Court order dated 07.02.2024 made in C.M.P.Nos.2930, 2935 and 2934 of 2024 in S.A.No.1221 of 2013 by VLNJ)

Prayer : The Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 19.03.2013 made in A.S.No.10 of 2012 on the file of the Principal Sub-Court, Krishnagiri confirming the judgment and decree dated 06.02.2012 made in O.S.No.266 of 2010 on the file of the District Munsif Court, Krishnagiri.

For Appellants : Mr.P.M.Duraiswamy

For RR1, 2 & 4 to 8 : Mr.P.Mani

JUDGMENT

The present Second Appeal has been filed against the judgment and decree of the Court of the learned Principal Subordinate Judge at Krishnagiri in A.S.No.10 of 2012, dated 19.03.2013 in confirming the judgment and decree of the Court of the learned District Munsif at Krishnagiri in O.S.No.266 of 2010, dated 06.02.2012.



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WEB COPY 2. O.S.No.266 of 2010 is a suit for permanent injunction.

3. The claim of the plaintiffs is that they had purchased the 1st item of the suit schedule mentioned property on 07.08.2002 and the 2nd item of the suit schedule mentioned property was exclusively purchased by the 1st plaintiff/M.K.Basha on 26.10.2004. They would claim that a cart track exists between the 2nd item of suit property and other properties. They claimed exclusive right over the cart track/pathway. It is not in dispute that the defendants are the neighbors of the plaintiffs. They would plead that an alternative cart track exists for the defendants to enter into their lands and the cart track which runs over the suit schedule mentioned property is the exclusive cart track of the plaintiffs, over which, the defendants do not have any right. Since the right of the plaintiffs was denied, they filed a suit for permanent injunction.

4. The defendants entered appearance and filed a written statement. It is admitted by the defendants that a cart track exists over the property but they would plead that it had been laid by one Abdul Haik, the predecessor



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in title of the plaintiffs and the defendants. According to them, this cart track has been in existence for over 45 years and had been used by both the plaintiffs as well as by the defendants in common. They denied the right of the plaintiffs claiming exclusive right over the car track.

5. On these pleadings, the learned Trial Judge framed the following issues :

- “ 1. தாவா வண்டிப்பாதையானது பொதுபாதை இல்லை என்பது உண்மையா?
2. தாவா வண்டிப்பாதையில் வாதிகளுக்கு வண்டிபாதை உரிமை உள்ளதா?
3. வாதிகள் கோரும் நிரந்திர உறுத்துக்கட்டளை பரிகாரம் கிடைக்கத்தக்கதா?
4. வேறு என்ன பரிகாரம்? ”

6. On the side of the plaintiffs, P.W.1 and P.W.2 were examined and the sale deeds and other documents were marked as Ex.A1 to Ex.A5. On the side of the defendants, they examined four witnesses, namely, D.W.1 to D.W.4 and Ex.B1 to Ex.B5 were marked.

7. After a detailed consideration of the case of the plaintiffs and the defendants, the trial Court came to the conclusion that the plaintiffs have



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not proved their exclusive possession over the property and dismissed the suit.

8. Aggrieved by the same, an appeal was preferred before the learned Principal Subordinate Judge at Krishnagiri in A.S.No.10 of 2012. The learned Principal Subordinate Judge confirmed the same against which the present Second Appeal.

9. This Second Appeal was admitted by this Court on 02.12.2013 on the following substantial questions of law :

“ 1. Whether the Courts below are justified in dismissing the suit when the plaintiffs' title in respect of the suit properties remained undisputed by the defendants?

2. Is it proper for the Courts below to dismiss the suit for permanent injunction against the defendants in its entirety when the defendants in the trial claiming only usage right in the cart track situated in the suit properties?

3. Is it proper for the Courts below to hold the cart track in the suit properties as a common cart track without any documentary evidence? ”



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10. For the sake of convenience, all the substantial questions of law were taken together.

11. At the time of final hearing, I framed an additional question of law, which is as follows :

“ Whether the suit for permanent injunction is maintainable when the exclusive right of the plaintiffs had been denied by the defendants ? ”

12. I take up this question of law first.

13. Mr.P.M.Duraiswamy would argue on the basis of the sale deed that his clients have an exclusive right over the property. Immediately, Mr.P.Mani would point out that this exclusive right claimed by the Plaintiffs had been denied by his clients not only in the written statement but even in the deposition during the cross examination of D.W.1.

14. It is the specific case that the cart track is not exclusive but one used by all the parties.



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15. The position of law, where the title of the plaintiffs has been denied, has been settled in the judgment of the Supreme Court in ***Anathula Sudhakar vs. P.Buchi Reddy(Dead) By LRs & Ors. [2008 (4) SCC 594]***. In that classic judgment, the Supreme Court held that, where the title of the plaintiff is denied or it is set up in the name of a third party and a cloud is cast over the same, a suit for permanent injunction is not maintainable. The Court further held that it is the duty of the plaintiff to either amend the plaint or bring forth the suit for declaration and for permanent injunction.

16. In this case, there is a clear and categorical denial of the exclusive right of the plaintiffs and therefore, I answer the substantial questions of law on the basis of the aforesaid judgment against the appellants.

17. Consequently, the suit for permanent injunction is not maintainable, I have left with no other option than to confirm the judgment and decree of the Court of the learned Principal Subordinate Judge at Krishnagiri in A.S.No.10 of 2012, dated 19.03.2013 in confirming the judgment and decree of the Court of the learned District Munsif at Krishnagiri in O.S.No.266 of 2010, dated 06.02.2012.



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18. The dismissal of suit for an injunction in the present case does not mean the claim of the plaintiffs that they have the exclusive right over the property will stand defeated in its entirety. Being a pathway claim, the cause of action accrues each time there is an obstruction. Consequently, since the suit has been dismissed on a technical point, I grant liberty to the plaintiffs to file a suit for declaration of title and for an injunction, if they are so advised.

19. With the above liberty, the Second Appeal stands dismissed. No costs.

06.03.2024

Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No
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To

1.The Principal Sub-Court,
Krishnagiri

2.The District Munsif Court,
Krishnagiri



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V. LAKSHMINARAYANAN, J.

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