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S.A.No.1271 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

HONOURABLE MR. JUSTICE SATHI KUMAR SUKUMARA

KURUP

S.A.No.1271 of 2013

and

M.P.No.1 of 2013

Kalamani

...Appellant

Vs.

1. Aruchamy

2. Panchalingam

3. Palaniammal

4. Pankajavalli

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, against the Judgment and Decree dated 24.01.2013 made in A.S.No.11 of 2012 on the file of the Sub Court, Pollachi confirming the Judgment and Decree dated 14.09.2011 made in O.S.No.231 of 2002 on the file of the District Munsif Court, Pollachi.

For Appellant : Ms.Zeenath Begum

For Respondents : Mr.R.Nandhakumar for R-1
R-2 to R-4- Given up



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S.A.No.1271 of 2013

JUDGMENT

This Second Appeal has been filed to set aside the Judgment and Decree dated 24.01.2013 made in A.S.No.11 of 2012 on the file of the Sub Court, Pollachi confirming the Judgment and Decree dated 14.09.2011 made in O.S.No.231 of 2002 on the file of the District Munsif Court, Pollachi.

2. The learned Counsel for the Appellant submitted that the Defendant-3 in O.S.No.231 of 2002 before the learned District Munsif, Pollachi is the Appellant in this Second Appeal. The suit was instituted by the Plaintiff in O.S.No.231 of 2002 seeking relief of declaration, the Plaintiff's right over the suit track in B Schedule property and the consequential permanent injunction. The suit was resisted by the Defendant-1 to Defendant-3. After full trial, the learned District Munsif, Pollachi by judgment dated 14.09.2011 partly decreed the suit.

3. Aggrieved by the same, the Defendants preferred A.S.No.11 of



2012 on the file of the learned Sub Judge, Pollachi. The learned Sub Judge, after hearing the arguments of both the parties dismissed the Appeal and confirming the judgment and decree of the learned District Munsif, Pollachi dated 14.09.2011.

4. Aggrieved by the same, the Defendant-3 in O.S.No.231 of 2002 and the Appellant-2 in A.S.No.11 of 2012 had preferred this Second Appeal. The learned Counsel for the Appellant invited the attention of this Court to the contents of the plaint in O.S.No.231 of 2002 and the contents of the written statement in O.S.No.231 of 2002, issues framed by the learned District Munsif, the discussion of the evidence by the learned District Munsif in O.S.No.231 of 2002 and also to the grounds of appeal preferred by the Appellant in A.S.No.11 of 2012 and the discussion of the evidence before the trial Court by the learned first Appellate Court in judgment in A.S.No.11 of 2012.

5. It is the contention of the learned Counsel for the Appellant that as per the sale deed marked as Ex.B-1 and Ex.B-2 and as per the partition deed, there is no cart track as stated in the plaint. Therefore the judgment of the trial Court as well as the first Appellate Court are perverse and are to be



set aside.

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6. The learned Counsel for the Respondents submitted that the Plaintiff before the learned District Munsif, Pollachi is the Respondent herein. The Second Appeal had been filed against the concurrent findings of the learned District Munsif, Pollachi and the learned Sub Judge, Pollachi. It is the contention of the learned Counsel for the Respondents herein that the Plaintiff in the Suit claims the right of easement of cart track through the partition deed between Palani Gounder and his son Ganapathy Gounder in the year 1954 which was marked as Ex.A-1 in which there are specific recitals relating to cart track which reads as follows:

புளியமரத்தில் பாதியும், மேற்படி பங்கு மீதியில் உள்ள மற்ற மாவடை மரவடைகளும், தென வடல் இட்டேரியிலிருந்து 1 லக்கமிட்டவர் பாகத்தில் கண்ட 12 நெ கல்லாங்குத்து காட்டில் தெற்கு கோர்ட்டில் கிழ மேலாக இந்த பாகஸ்தனும் இவனிட ஆட்கள் கால்நடை வண்டி வகையறாவும் நடந்துக்கொள்ளும் பாத்தியமும் சகிதம், இப்போது நடக்கும் சர்வே படி மேற்படி பூமியின் கூடுதல் குறைச்சல்கள் இந்த பாகஸ்தனையே சேர்ந்தது.

7. It is the contention of the learned Counsel for the Respondents that the cart track refers to sufficient width provided by grant in the partition deed. The Defendant herein having purchased the property from Palani Gounder claiming title through the father of the Defendant/Raasu Gounder



who had purchased it from Palani Chettiyar who in turn has purchased it from Palani Gounder. Therefore, after having the purchased the property, the cart track was extinguished. Therefore, denied the right of cart track in the written statement. In the cross-examination, when D.W-1 was confronted regarding tracing of the title of the Defendant and right to cart track, she fairly conceded the right to cart track.

8. It is the contention of the learned Counsel for the Respondents that the plea taken by the Defendant in the written statement is mutually destructive. Since the learned District Munsif, Pollachi had in the concluding paragraph of the Judgment observed that even though the partition deed between Palani Gounder and his son Ganapathy Gounder did not specify the width of the cart track since the Plaintiff in the Suit had claimed the right for moving across the carts. The suggestion of the learned District Munsif to the learned Counsel for the Plaintiff that at the time of argument, Whether 10 feet would be sufficient? It was accepted by the learned Counsel for the Plaintiff. Therefore, the learned District Munsif had specified the width of the cart track as 10 feet, even though the Plaintiff pleading stated the width of 15 ft cart track. Therefore, the learned District



Munsif, Pollachi in Judgment in O.S.No.231 of 2002 dated 14.09.2011 had specifically stated that *“12. Though the Plaintiff is entitled to use the cart track as per the right granted under Ex.A-1 and Ex.A-2, the width of cart track is not mentioned in Ex.A-1 and Ex.A-2, whereas the Plaintiff has mentioned 15 Feet width cart track in 'B' Schedule property. Hence I hold that the Plaintiff is entitled to take the carts and vehicles through 'B' Schedule Cart track and since the width of the cart track is not mentioned in Ex.A-1 and Ex.A-2, the Plaintiff is entitled for the right of cart track to take the carts and vehicles and it is sufficient that the cart track measuring above only 10 feet width is provided. The learned counsel for the Plaintiff argued that it is sufficient that the cart track to take carts is provided. Hence I hold that the cart track to an width of 10 feet is sufficient. Therefore, these issues are decided partly in favour of the Plaintiff.”*

9. Also, the learned Counsel for the Respondents invited the attention of this Court to the observation of the learned Sub Judge, Pollachi in A.S.No.11 of 2012 dated 24.01.2013 in paragraph No.10 wherein the learned Sub Judge had stated that even though the cart track was easement by grant, it had not in extinguish thus become easement by necessity. The



learned Counsel for the Respondents also relied on the reported ruling of the Hon'ble Supreme Court in **2006 (4) CTC 79 in the case of Hero Vinoth (Minor) Vs. Seshammal** in which it had been observed that the Sections 13 & 41 of Indian Easements Act, 1882. Therefore, claims even though the easement was granted as per partition deed had not been extinguished because the Plaintiff had purchased it from Ramathal and Defendant had claimed right over lands from Palani Gounder who is the party to the 1954 partition deed. Just because the Plaintiff had purchased from Ramathal the grant of easement as per the partition deed will not be extinguished, as per Sections 13 and 41 of the Indian Easement Act, 1882. The learned Counsel for the Respondents seeks to dismiss this Appeal as having no merits.

10. On perusal of the grounds of the Second Appeal, there is no substantial question of law raised in this Second Appeal. Hence, this **Second Appeal is dismissed** in the admission stage itself. Consequently, connected Miscellaneous Petition is closed. No costs.

05.07.2024

Index : Yes/No



S.A.No.1271 of 2015

Internet : Yes/No
Speaking Order : Non-speaking Order
dh

To

1. The District Munsif Court,
Pollachi.
2. The Sub Court,
Pollachi.



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S.A.No.1271 of 2013

SATHI KUMAR SUKUMARA KURUP.J.,

dh

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