

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

Reserved On : 21.12.2023	Delivered on : .1.2024
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CORAM :

THE HON'BLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI**S.A.No.586 of 2016**

1. C.Palanisamy
2. Elango
3. Prabha
4. Arulanandham
5. Uthayakumar
6. Raju

.. Appellants

Vs.

A.K.Patchagounder (deceased)

1. Mrs.Muthayal
2. Easwaran
3. N.Venkateshwaran

... Respondents

Prayer: This Second Appeal is filed under Section 100 of the CPC against the Judgment and decree dated 04.11.2015 made in A.S.No.41 of 2011 on the file of the learned Subordinate Judge, Sathyamangalam, confirming the decree and Judgment dated 24.06.2011 made in O.S.No.107 of 2009 on the file of the learned District Munsif of Sathyamangalam.



For Appellants

: Mr.S.Mukunth

Senior Counsel for Mr.R.Sivakumar

For Respondent
Nos.1 to 3

: Mr.S.Kaithamalai Kumaran

JUDGMENT

This Second Appeal has been directed against the judgment and decree dated 04.11.2015 passed in A.S.No.41 of 2011 passed by the Subordinate Court, Sathyamangalam confirming the decree and judgment dated 24.06.2011 made in O.S.No.107 of 2009 on the file of the District Munsif Court, Sathyamangalam.

2. The respondents / plaintiffs filed the above suit before the District Munsif Court, Sathyamangalam for the following reliefs:

i) வாதிகளுக்கு பாத்தியப்பட்ட வழக்கு சொத்துக்களுக்கு, வழக்கு A,B,C,D,E,F வண்டித்தடத்தைப் பொறுத்து வாதிகள் வண்டி வகையறா ஒட்டியும், நடந்து கொண்டும், கால்நடைகள் கொண்டு சென்றும், உபயோகப்படுத்தி கொள்ளும் உரிமையை விளம்புகை செய்தும்



ii) வாதிகள் தாவா A,B,C,D,E,F வண்டித்தடத்தை சமாதான முறையில் உபயோகப்படுத்துவதை பிரதிவாதிகளோ, அவரது ஆட்களோ, உள்ஸீட்டார்களோ, உறவினர்களோ, எவ்வகையிலும் இடையூறு செய்யாமலிருக்கும் பொருட்டு பிரதிவாதிகளுக்கு எதிராக ஒரு நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வழங்கியும்

iii) தாவா பிளானில் A,B,C,D,E,F வண்டித்தடத்தில் பிரதிவாதிகள் X,XI புள்ளிகளுக்கு இடையில் முங்கில் தட்டி படல் வைத்து கட்டி ஏற்படுத்தியுள்ள தடையையும், தாவா பிளானில் Y,YI, புள்ளிகளுக்கு இடையில் பிரதிவாதிகள் கம்பி வேலி அமைத்தும் புதியதாக தென்னம்பிள்ளைகள் மற்றும் வாழைக்கன்றுகள் போன்றவை வைத்தும் ஏற்படுத்தியுள்ள தடைகளை அப்புறப்படுத்த ஒரு வலியுறுத்துக் கட்டளை உத்திரவு பிறப்பித்தும், அவ்வாறு பிரதிவாதிகள் செய்யத் தவறும் பட்சத்தில் கோர்ட்டு நடவடிக்கைகள் மூலம் மேற்படி தடைகளை அகற்ற உத்திரவு பிறப்பிக்கும்படிக்கும்

iv) தாவா செலவு தொகைகள் வாதிகளுக்கு கிடைக்கும் படிக்கும் மற்றும்

v) சமூகம் கோர்ட்டார் அவர்களுக்கு உசிதமாய் தோன்றும் இதர பரிகாரங்கள், வழங்கி தீர்ப்பு செய்து, தீர்ப்பாணை வழங்க வேண்டுமாய் வாதிகள் வணக்கமாய் பிராத்திக்கிறார்கள்.



The learned District Munsif, Sathyamangalam, by judgment and decree dated 24.06.2011, decreed the suit.

3. Not being the satisfied with the findings arrived at by the Trial Court, the appellants/ defendants preferred an appeal in A.S.No.41 of 2011 before the Subordinate Court, Sathyamangalam, praying to set aside the judgment and decree of the Trial Court. However, by judgment and decree dated 04.11.2015, the First Appellate Court, dismissed the appeal and confirmed the judgment and decree passed by the Trial Court. Being aggrieved by the judgment and decree of the Trial Court, the defendants are before this Court by way of this second appeal.

4. For the sake of convenience, the parties are referred to, as described before the Trial Court.

5. The averments made in the plaint, in brief, are as follows:-

The plaintiffs 1 and 2 are husband and wife and the 3rd plaintiff is the younger son of the plaintiffs 1 and 2. Since the elder son of plaintiffs 1 and 2 namely one Mr. Nagarajan died, his son, viz., one Mr.N.Venkateshwaran, is arrayed as the fourth



plaintiff in the suit. The plaintiffs are the absolute owners of the suit properties. The wife and daughter of the deceased Mr.Nagarajan relinquished their rights in the suit property by way of two release deeds dated 04.08.2005 in favour of the fourth plaintiff and the same were registered before the Sub-Register Office, Sathyamangalam as Documents Nos.2435 & 2436 of 2005.

(ii) The suit properties are situated at Ariyappampalayam Village in Survey Nos.112, 113 and 114, which is described as ABCDEF in the plaint plan. The cart track is described in the plaint plan, for which, the defendants are restraining the plaintiffs from enjoyment of the said portion and therefore, the plaintiffs sought the relief of permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful enjoyment in the said portion of the suit properties. In respect of ABCDEF portion as mentioned in the plaint plan, one Mr.N.Avinasilingam filed a suit against the plaintiffs 2 and 3 and the father of the fourth plaintiff along with 10 other persons before the District Munsif Court, Gobichettipalayam in O.S.No.480 of 1984. In the said suit, there was consent decree dated 19.09.1985 passed by the said Court. In the said suit, the first defendant was arrayed as the 13th defendant.

(iii) After passing of the said decree dated 19.09.1985, the plaintiff in the said suit



viz., the said Mr.A.N. Avinasilingam sold his share of the property to the second defendant and from then onwards, the second respondent was in enjoyment of the said property. The 6th defendant herein was the 9th defendant in the said suit. Defendants 2,4 & 5 are the sons of the first defendant. The third defendant is wife of the second defendant. Therefore the consent decree passed in O.S.No.480 of 1984 will be binding on defendants 1 to 6 in the present suit. While so defendants 1to 6 turned down the judgment and decree passed in O.S.No.480 of 1984 and are acting against the same. Moreover, in the compromise memo filed in O.S.No.480 of 1984, it has been clearly stated that in ABCDEF portion, which is a cart track, the plaintiffs are entitled to take their men and cattle and are entitled to use the same for other purposes also. It has also been mentioned in the said decree that the plaintiffs in the said suit should not change or obliterate the said cart track and that it should be maintained as it is.

(iv) While so, the defendants herein, with an ulterior motive to grab the suit property from the plaintiffs, approached the plaintiffs to sell the suit property for meagre consideration. When the same was refused by the plaintiffs, obstructed the defendants the usage of the cart track by putting fence shown as XX1 & YY1 in the plaint plan. Hence, the plaintiffs are unable to enjoy the said cart track shown as ABCDEF in the plaint plan. Moreover, the defendants have no right to obstruct the



enjoyment of the suit property by the plaintiffs. The plaintiffs are using the cart track as pathway to reach thier house since there is no other alternative pathway to reach the house of the plaintiffs. Hence, the plaintiffs were constrained to file the above suit seeking the relief of declaration, permenant injunction and mandatory injunction for removal of the obstructions made by the defendants.

6. On the other hand, the defendants filed a written statement stating as follows:-

(i) The defendants are the owners of the land in S.F.No.249, which is adjacent to the plaintiffs' land in S.F.No.249. There is an East West cart track in S.F.No.249, which is absolutely situated in the defendants' land and the same absolutely belongs to the defendants alone and it is used to take cart and cattels in order to reach the other portion of the defendants' land. The plaintiffs have no right, title or interest over the same at any point of time. The plaintiffs never enjoyed the said suit cart track as alleged in the plaint.

(ii) The compromise decree dated 19.09.1985 passed in O.S.No.480 of 1984 on the file of the District Munsif Court, Gobichettipalayam is not binding on the defendants since they were not parties to the said compromise and therefore, the same could not be



enforced against them. The compromise was entered into between the parties who had no valid title to the suit property. Hence, the plaintiff cannot claim any title based on the above said compromise decree. Even if the 1st defendant and the 6th defendant were added as parties to the suit in O.S.No.480 of 1984, they were set ex-parte and therefore, the said decree could not be enforced against them. Moreover, the alleged purchase of the portion of the land from the said Mr.Avinasilingam, did not create any right to use the cart track. Though the defendants have put up a new fence in the ABCDEF portion, it would not create any right or title to the plaintiffs over the suit cart track since the defendants are entitled to put up any construction in their land. Even the sale deeds dated 03.12.1980 & 26.03.1987, through which the plaintiffs' purchased their land, do not give any right in the suit cart track. Hence, the suit filed by the plaintiffs are liable to be dismissed.

7. Based on the above averments, the Trial Court framed necessary issues and tried the suit. On the side of the plaintiffs, PW1 (4th plaintiff) and PW2 were examined and Exs.P1 to P23 were marked. On the side of the defendants, DW1 (the 1st defendant) & DW2 were examined and Ex.D1 was marked. The Trial Court also marked the Commissioner Report and his sketch as Exs.C1 & C2.



8. Having considered the materials placed, the Trial Court, by judgment and decree dated 24.06.2011, passed the decree in favour of the plaintiffs. In the appeal filed by the defendants, the findings arrived at by the Trial Court were confirmed by the First Appellate Court. Aggrieved by the judgment of the First Appellate Court, the defendants are before this Court with the above Second Appeal.

9. When the Second Appeal came up for admission before this Court on 02.08.2016, this Court formulated the following substantial questions of law:-

“ i) Whether the decrees and judgments of the courts below are legally sustainable in as much as that they have failed to note that the compromise decree passed in O.S.No.480 of 1984 on the file of the District Munsif Court, Gobichettipalayam is not binding on the appellants as they were not parties to the compromise and the same cannot be enforced against these defendants?

ii) Whether the decrees and judgments of the courts below are legally sustainable in as much as that they have failed to note that the respondents have not



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based their suit making any claim of title or easement of necessity over the suit cart track?

iii) Whether the decrees and judgments of the courts below are legally sustainable in as much as they have not properly considered the Exs.A2 to A6 and also Ex.A7 the Sale Deeds in favour of the respondents which are not giving any right or title over the suit cart track? ”

10. Heard both sides and perused the materials available on record.

11. The learned counsel appearing for the appellants / defendants contended that the Courts below erroneously held that the compromise decree passed in O.S.No.480 of 1984 is not binding on the appellants and that, the property mentioned in O.S.No.480 of 1984 is different from the property mentioned in the present suit and that the cart track mentioned in the present suit is not situated in the property belonged to the said Mr.Avinasilingam, who was the plaintiff in O.S.No.480 of 1984. The learned counsel further contended that the Courts below failed to note that the respondents never enjoyed the suit cart track, that they have not made any claim of title or easement of necessity over the suit cart track and that the Courts below had not properly considered



the sale deeds dated 03.12.1980 and 26.03.1987, through which, the respondents purchased their land which did not give and right or title over the suit cart track.

12. The learned counsel for the appellants would submit that as per the description of the property in Ex.B1 Sale Deed, the first defendant and his wife purchased 7 acres of land including the disputed cart track. His further contention is that the Advocates Commissioner's Report and plan would reveal that the said 7 acres of land is owned by the first defendant and his wife. The compromise decree dated 19.09.1985 passed in O.S.No.480 of 1984 could not be enforced against the defendants, since the same was entered into between the parties, who had no title over the suit property. He would further submit that though the 1st defendant and 6th defendant were added as parties in the said suit, they were set ex-parte and therefore, it is not binding on them and that the other defendants herein were not added as parties to the said suit. Therefore the plaintiffs are not entitled to a decree in the present suit pursuant to the compromise decree passed in O.S.No.480 of 1984.

13. On the other hand, the learned counsel appearing for the respondents/plaintiffs would submit that the said compromise decree in O.S.No.480 of 1984 should be acted upon for the reason that the said compromise was entered into



between the vendor of the second defendant, viz., the said Mr. Avinasilingam, who was the plaintiff in O.S.No.480 of 1984. Moreover, for the reasons best known to the defendants, the said Sale Deed executed by the said Mr.Avinasilingam, and the second defendant was not marked at the time of Trial, which would show that with an ulterior motive, the said Sale Deed in favour of the second defendant in respect of the their property was not marked by the defendants. The second defendant is none other than the son of the first defendant. Even in written statement filed by the defendants, it was not demonstrated that the sale deed was entered into between the plaintiff in O.S.No.480 of 1984 and the second defendant. Further, the 1st and 6th defendants in this suit were added as 13th and 9th defendants in O.S.No.480 of 1984. Though they remained ex-parte, unless the decree passed against them is set aside, the decree is still in force and enforceable against the defendants. Therefore, the said compromise decree is binding upon of the defendants who are closely related to the first defendant. Hence, the present Second Appeal is liable to be dismissed.

14. This Court has carefully considered the submission on either side.

15. It is not in dispute that both the plaintiffs and defendants are owning lands adjacent to the disputed portion. The claim of the plaintiffs is that pursuant to the



decree passed in O.S.No.480 of 1984, the plaintiffs are entitled to ABCDEF portion as mentioned in the plaint plan. It is the case of the plaintiffs that the said Mr.Avinasilingam filed a suit in O.S.No. 480 of 1984 on the file of the District Munsif Court, Gobichetteipalayam against plaintiffs 1 to 3, the father of the 4th plaintiff, viz., Mr.Nagarajan and 10 others with regard to the suit ABCDEF cart track, in which, on 19.09.1985, there was a compromise decree passed in the said suit. In the said suit, the first defendant herein was added as 13th defendant and after the said compromise decree passed in O.S.No.480 of 1984, the 2nd defendant herein had purchased the suit property from the said Mr.Avinasilingam and he has been in enjoyment of the same. The 6th defendant in this suit was added as the 9th defendant in O.S.No.480 of 1984. Therefore the compromise decree passed in O.S.No.480 of 1984 is binding on the defendants. However, now, the defendants are acting contrary to the decree passed in O.S.No.480 of 1984 in spite of specific mentioning in the compromise memo with reference to the cart track.

16. The plaintiffs have extracted para 2 and 3 of the Compromise memo filed in O.S.No.480 of 1984 and the same are extracted herein: -

" அ.வ.480/84ல் ஒத்திசைவு மனுவின் 2வது பாராவில்
தெளிவாக கீழ்க்கண்டவாறு கூறப்பட்டுள்ளது



'இத்துடன் தாக்கல் செய்துள்ள வரைபடத்தில்

A,B,C,D,E,F வண்டித் தடத்தை உபயவாதிகள் வண்டி வகையறா ஓட்டிச் செல்லவும், கால்நடைகள், ஆட்கள் நடந்து செல்லவும் உபயோகப்படுத்திக்கொள்ள வேண்டியது '

என்று குறிப்பாக காணப்பட்டுள்ளது. அதே போல ஒத்திசைவு மனு 3வது பாராவில் கீழ்க்கண்டவாறு தெளிவாகக் கூறப்பட்டுள்ளது :-

" வரைபடத்தில் ABCDEF என்று காட்டப்பட்டுள்ள வண்டித் தடத்தை உபயவாதிகள் யாரும் மாற்றவோ, அழிக்கவோ கூடாது. " வண்டிப்பாதையை உபயவாதிகள் அனைவரும் அவ்வப்போது செப்பனிட்டு நல்ல நிலையில் வைத்துக் கொள்ள வேண்டியது."

17. While so, the defendants put up a bamboo barricade in XXI portion as shown in the plaint plan and iron fence in Y, Y1 portion. The defendants also planted Coconut and Banana Trees in the cart track, thereby, obstructing the plaintiffs from enjoying 'ABCDEF' cart track, for which, the defendants had no right or title as per the compromise decree passed in O.S.No.480 of 1984. Therefore, the contention of the defendants, that the compromise decree passed in O.S.No.480 of 1984 is not binding on them as the same was entered into between the parties, who had no valid title over the



suit property is unsustainable. The learned counsel for the appellants would further contention is that as per Ex.B1 Sale Deed, the defendants are entitled to get 7 acres of land in the suit property includes the disputed cart track.

18. Admittedly there is a compromise decree passed in O.S.No.480 of 1984, in which, the plaintiffs 1 to 3 and the father of the 4th plaintiff and defendants 1 and 6 were added as parties. The defendants have not denied that the second defendant purchased the property from the plaintiff in O.S.No.480 of 1984 viz., the said Mr.Avinasilingam, who is a party to the said compromise decree. In the said suit, the first defendant and the sixth defendant were set ex-parte. However, they failed to challenge the decree passed in the above suit. Therefore, the decree in O.S.No.480 of 1984 would be binding on all the defendants though the defendants, through Ex.B1, claimed that they are entitled to 7 acres of land pursuant to the decree passed in O.S.No.480 of 1984. The defendants cannot deny the plaintiffs' right in using the disputed cart track and the same cannot be obstructed by the defendants. Therefore, the findings arrived at by the Courts below, do not warrant interference, which are based upon factual and legal aspects. Therefore, I am of the considered opinion that no substantial question of law arises for consideration in this appeal.



19. In view of the above discussions, the Second Appeal is dismissed. The Judgments and decrees of the Trial Court and the First Appellate Court are hereby confirmed. No costs.

.01.2024

Index : Yes/No
Speaking order/Non speaking order
adl/vsn

To

1. The learned Subordinate Judge, Sathyamangalam,
2. The learned District Munsif of Sathyamangalam.



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MRS.JUSTICEK.GOVINDARAJAN THILAKAVADI, J.

adl/vsn

Pre-Deliver Order in

S.A.No.586 of 2016

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