



S.A.NO.403 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 18 / 09 / 2024

JUDGMENT PRONOUNCED ON : 18 / 12 / 2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.403 OF 2019

AND CMP NOS.5972 & 12252 OF 2019

S.Murugan	...	Appellant / Appellant / 7 th Defendant
<i>versus</i>		
1.K.C.Chinnusamy	...	Respondent / Respondent / Plaintiff
2.D.Vasantha	...	2 nd Respondent / Not a party / 1 st Defendant
3.D.Senapathi	...	3 rd Respondent / Not a party / 2 nd Defendant
4.P.Chandrasekaran	...	4 th Respondent / Not a party / 3 rd Defendant
5.S.D.Indrani	...	5 th Respondent / Not a party / 4 th Defendant
6.S.P.Kasthuri	...	6 th Respondent / Not a party / 5 th Defendant



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7.S.P.Dhanalakshmi

... 7th Respondent / Not party /
6th Defendant

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PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated November 6, 2014 made in A.S.No.35 of 2011 on the file of the Sub Court, Sankari, confirming the Judgment and Decree dated February 14, 2007 made in O.S.No.48 of 2001 on the file of the District Munsif Court, Sankari.

Note: Cause title accepted vide Order of this Court dated February 27, 2019 made in MP.No.1 of 2015 in SA.SR.No.35633/2015.

For Appellant : Mr.V.Sekar
For Respondents : Mr.N.Manokaran
(vide this Court's Order
dated 12.03.2019)

JUDGMENT

This Second Appeal is directed against the Judgment and Decree dated November 6, 2014 passed in A.S.No.35 of 2011 by the 'Sub Court, Sankari' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated February 14, 2007 passed in O.S.No.48 of 2001 by the 'District Munsif Court, Sankari' ['Trial Court' for brevity] was confirmed.



2. For the sake of convenience, hereinafter, the parties will be

referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The Suit Property is an extent of 1 Acre punja land comprised in R.Survey No.512/2. It also includes a 10 feet Cart Track. The plaintiff purchased the Suit Property vide Sale Deed dated July 9, 1986 from the defendants 1 to 6. Since then, he has been in its possession and enjoyment as absolute owner. Revenue records in respect of Suit Property stand in the name of plaintiff. In the said Sale Deed, the 10 feet Suit Cart Track was specifically granted to the plaintiff for absolute enjoyment. However, recently the defendants 1 to 6 sold their lands adjacent to the Suit Property granting right of passage in the Suit Cart Track in favour of 7th defendant. The said Sale *qua* Suit Cart Track does not bind the plaintiff. Further, the defendants attempted to disturb the plaintiff's possession and enjoyment of the Suit Property on March 26, 2001. Hence the Suit for permanent injunction.

SEVENTH DEFENDANT'S CASE

4. The seventh defendant filed written statement denying the plaint averments except those specifically admitted. He has stated that he



owns the adjacent lands to the Suit Property and the Suit Cart Track passes through his land. He has admitted the averment that the plaintiff purchased the Suit land vide Sale Deed dated July 9, 1986 and that revenue records in respect of Suit land stand in plaintiff's name. However, he has denied that the Suit Cart Track was given for plaintiff's absolute enjoyment vide the said Sale Deed. Accordingly to him, the plaintiff is having only the easementary right over the Suit Cart Track. Accordingly, he sought for dismissal of the Suit.

TRIAL COURT

5. At trial, plaintiff – K.C.Chinnusamy was examined as P.W.1 and Ex-A.1 to Ex-A.4 were marked on the side of the plaintiff. On the side of the defendants, the 7th defendant – Murugan was examined as D.W.1, one Chandrasekaran was examined as D.W.2 and Ex-B.1 and Ex-B.2 were marked. Two court documents were marked as Ex-X.1 and Ex-X.2.

5.1. After full-fledged trial and upon hearing both sides, the Trial Court concluded that the plaintiff purchased the Suit Cart Track and he is in possession and enjoyment of the same. Hence, the plaintiff is entitled to protect his possession by way of injunction. Accordingly, it



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allowed the Suit by granting permanent injunction in respect of the Suit Property against the defendants.

FIRST APPELLATE COURT

6. Feeling aggrieved, the 7th defendant preferred an appeal in A.S.No.35 of 2011 before the First Appellate Court arraying the plaintiff alone as respondent therein. The Defendant Nos.1 to 6 were not added as respondents in the Appeal Suit. The First Appellate Court after hearing both sides and perusing the documents available on record, concluded that defendants 1 to 6 contested the Original Suit along with 7th defendant and therefore, the appeal is not maintainable in their absence as parties. Further opined that the Suit filed by the 7th defendant in O.S.No.313 of 2007 seeking the relief of declaration of title in respect of Suit Cart Track is pending before Trial Court and title dispute in respect of Suit Cart Track shall be decided in that Suit. In these circumstances, Judgment and Decree passed by the Trial Court restraining the defendants from interfering with the plaintiff's usage of the Cart Track is sustainable. Upon these observations, First Appellate Court dismissed the Appeal Suit and confirmed the Judgment and Decree of the Trial Court.



SECOND APPEAL

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7. Feeling aggrieved by the Judgment and Decree passed by the First Appellate Court, the 7th defendant has preferred this Second Appeal, which was admitted on August 21, 2024 on the following substantial questions of law:

- "(1) *Whether the interpretation of the Trial Court that the plaintiff purchased the Suit Cart Track including soil thereof is correct in Law?*
- (2) *Whether Ex-A.1 – Sale Deed conveys title to the plaintiff or easementary right?*

ARGUMENTS:

8. Mr. V. Sekar, learned Counsel for the appellant / 7th defendant would argue that the plaintiff purchased the Suit Property vide Ex-A.1 – Sale Deed from the defendants 1 to 6. In the said Sale Deed, right over a pathway of 10 feet width branching off from the Panchayat Road was granted as right of easement by grant to access the Suit Property. However, the plaintiff claims title over the Suit Cart Track which is not conveyed under Ex-A.1.



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8.1. Further he would argue that Ex-A.1 has a recital which appears to recite that the Suit Cart Track belongs to the plaintiff exclusively இந்த இடம் உனக்கு மட்டும் பாத்தியப்பட்டது. The said recital should not be read in isolation but along with other recitals. Such comprehensive reading would show that mere easementary right was granted in favour of plaintiff. It has to be noted that on the same day of execution of Ex-A.1, the plaintiff's vendor executed another Sale Deed in respect of the property on the eastern side of Suit Property to one Periyasamy and others. It has to be further noted that on the date of Ex-A.1, the property on the western side of Suit Property was being enjoyed by 7th defendant's father as a lessee. From a comprehensive reading of Ex-A.1 in this backdrop, it can be understood that the vendor's intention behind the said recital was only to secure the plaintiff's easementary right over the Suit Cart Track from adjacent land holders or third party claims. The vendors out of good will were intending to be clear to prevent anyone from hindering the plaintiff's easementary right.

8.2. He would refer to Paragraph No.6 of the plaint and Paragraph No.4 of P.W.1's Chief Affidavit, and submit that the plaintiff



himself has claimed easement by grant only. Further defendants 1 to 6 sold the western and eastern side lands of the Suit Property to 7th defendant.

Now the 7th defendant steps into the shoes of defendants 1 to 6 and therefore, they have no interest in this case. In these circumstances, the First Appellate Court ought not to have dismissed the appeal. Further, defendants never caused any hindrance to the plaintiff to exercise his easementary right over the Suit Cart Track. Since the claim of the plaintiff i.e., title of the Suit Property is denied, the plaintiff ought to have amended the relief seeking declaration. But the plaintiff did not do so. In that ground also, the Suit is to be dismissed. The Trial Court under a wrong notion observed that the plaintiff has title over the Suit Cart Track and accordingly, granted permanent injunction. The said decision is erroneous in law. Though the First Appellate Court observed that the plaintiff claims easementary right only, it confirmed the Trial Court's verdict without setting aside the observations made by the Trial Court, which caused prejudice to the appellant. Accordingly, he would pray to allow the Second Appeal and dismiss the Suit.

9. In response, Mr.N.Manokaran, learned Counsel for the first respondent/plaintiff would argue that along the northern side of the



defendants' property, there is an East- West Panchayat Road. Hence, the defendants can enter into their land from each and every inch of the road.

The defendants have no necessity to use the Suit Cart Track mentioned under Ex-A.1 - Sale Deed. In Ex-A.1 – Sale Deed, it has been specifically mentioned that the plaintiff alone is entitled to use Cart Track as exclusive owner. The 7th defendant, who is a subsequent purchaser from the vendors of the plaintiff have no right in the Suit Cart Track. Further, the plaintiff has specifically pleaded the cause of action in his plaint. Since the defendants attempted to interfere with the plaintiff's right over the Suit Cart Track, the plaintiff filed the Suit. Plaintiff has proved the cause of action pleaded by him. Hence, the Trial Court as well as the First Appellate Court are right in decreeing the Suit.

9.1.He would further argue that the appellant / 7th defendant filed a Suit in O.S.No.313 of 2007 on the file of the Trial Court seeking declaration of title in respect of the Suit Cart Track and the same was dismissed for default. Hence, the appellant / 7th defendant cannot renew his plea in this case. Further in view of the concurrent findings, there is no question of law much less Substantial Questions of Law in this Second Appeal. Accordingly, he prayed to dismiss the Second Appeal.



9.2.He would rely on the following decisions in support of his

contentions:

- (i) Judgment of Hon'ble Supreme Court in ***Hero Vinoth vs. Seshammal***, reported in ***(2006) 5 SCC 545***;
- (ii) Judgment of this Court in ***T.V. Ravi vs. B.R. Mohan***, reported in ***2016 SCC OnLine Mad 9911***;
- (iii) Judgment of High Court of Madhya Pradesh in Dhananjan ***Bisen Vs. Smt. Devi Bai***, reported in ***2002 (1) M.P.L.J. 149***.

DISCUSSION:

10.This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

11.The Suit Property and the adjacent properties in Survey No.512 of Iruppali Village were originally owned by the defendants 1 to 6. On July 9, 1986, the defendants 1 to 6 executed Ex-A.1 - Sale Deed in favour of the plaintiff conveying one Acre of land within specified four boundaries along with easementary right over 10 feet pathway proceeding from East-West Panchayat Road to access the property covered under Ex-A.1 - Sale Deed (Suit Property). The description of property in Ex-A.1 reads thus:



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'கிரயச்சொத்துக்கள் விபரம் :

சேலம், ரி.டி.ஜலகண்டபுரம், சப்.ரி.டி.

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இருப்பாளி கிராமம் ரி ச நெ. 512 பு எ 6-09 க்குத் 7-65 இந்த நெம்பர் நிலத்தில் 1-00 ஒரு ஏக்கர் நிலத்திற்கு சக்குபந்தி விபரம்: இதில் செட்டிமாங்குறிச்சி கிராம எல்லைக்கும் - வடக்கு இதே நெம்பரில் நாளது தேதியில் நாங்கள் மைனர் பெரியசாமிக்கு கிரயம் செய்யும் - நிலங்களுக்கும் - மேற்கு - எங்கள் இதர பாகத்தை செல்லப்பன் அனுபவித்து வரும் நிலத்திற்கும் - கிழக்கு - தெற்கு - இதன் மத்தியில் உள்ள 1-00 ஒரு ஏக்கர் நிலம் பூராவும், இந்த கிரய நிலங்களுக்கு வடபுரம் கிழமேலாய் உள்ள பஞ்சாயத்து ரோட்டிலிருந்து எங்கள் நிலமான ஷை 512ல் செல்லப்பன் பாகத்தின் கிழபுரமாக (10) பத்து அடி அகலத்தில் தென்வடல் நீளத்தில் உள்ள இந்த வழிநடை நிலத்தின்வழியாக நீர் வண்டி வாகனங்கள் ஓட்டிச்செல்லவும் நடைபாதையாகவும் நீர் பயன்படுத்தி அனுபவித்து வர வேண்டியது, இந்த வழிநடையின் நிலங்களில் யாரும் எவ்விதமான மகசூல்களும் செய்யக்கூடாது. நீர் இந்த தடத்தை வழிநடைக்காக பயன்படுத்தும் காலங்களில் யாரும் எவ்விதமான ஆட்சேபனையோ தடங்கல்களோ வழிகளை அடைக்க கூடாது. இந்த தடம் உமக்கு மட்டும் பாத்தியப்பட்டது. இந்தச் சொத்துக்கள் எடப்பாடி பஞ்சாயத்து யூனியன் கவுன்சில் எல்லைக்குட்பட்டது.'



12.From the above reading, it is clear that the vendors of the plaintiff granted easementary right alone while retaining the ownership i.e., soil. Further, in Paragraph No.6 of the plaint, the plaintiff has clearly claimed easement by grant. Relevant extract reads as follows:

'6.The plaintiff submits that the Suit Cart Track was granted to the plaintiff for absolute enjoyment to the plaintiff which was specifically mentioned in the sale deed dated 09.07.1986. In the said sale deed which was specifically recited that the suit cart track is entitled only to the plaintiff's ingress and egress by taking cart, vehicles, men and cattle with absolute enjoyment to the plaintiff. As such the plaintiff has been enjoying the suit cart track absolutely as easement by grant.'

13.In Paragraph No.4 of the Chief Affidavit also, he claims easement by grant only. The plaintiff cannot approbate and reprobate his stand. The 7th defendant has stated in his written statement that the plaintiff was granted mere easementary right in Ex-A.1. In these circumstances, this Court is of the view that plaintiff is entitled to use the pathway as a right of easement by grant. Yet another reason to come to the above conclusion is that Ex-A.1 stipulates that the plaintiff purchased only one Acre of land in the Suit Survey number and as such, he paid consideration for that one Acre of land alone. Transfer of dominant



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heritage does not extinguish easement. Similarly, transfer of servient

heritage does not discharge the burden of easement upon it. It is a permanent liability, subject to exceptions as per the Indian Easements Act, 1882. The Trial Court erred in concluding that the plaintiff has title over the Suit Cart Track. Though the First Appellate Court did not render a specific finding, the First Appellate Court relegated the issue to be decided in the Suit in O.S.No.313 of 2007 that was pending before the Trial Court. Considering the clear recitals found in Ex-A.1 – Sale Deed, this Court decides that the plaintiff has only easementary right over the Suit Cart Track and the plaintiff has no title / ownership in the soil. There is no quarrel with the legal position stated in the Judgments relied on by the learned Counsel for the plaintiff. The Substantial Questions of Law are answered accordingly.

CONCLUSION:

14.Resultantly, the Second Appeal is partly allowed and the Suit is decreed in the following terms:

- (i) The plaintiff is entitled to use the Suit Cart Track of



10 feet width mentioned in Ex-C.1 and Ex-C.2 - Advocate Commissioner's Report and Plan respectively, to access the Suit Property as a right of easement by grant;

- (ii) The plaintiff has no title over the soil of the Suit Cart Track;
- (iii) The plaintiff is entitled to use the Suit Cart Track to access his land by taking Carts, Vehicles *etc.*, as per the express grant provided under Ex-A.1 – Sale Deed. To this extent, the plaintiff is entitled to permanent injunction against the defendants; and
- (iv) Considering the nature of the disputes, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.

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Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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To

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1.The Subordinate Judge
Subordinate Court
Sankari.

2.The District Munsif
Sankari.



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R. SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.403 OF 2019

18 / 12 / 2024