

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2015

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.316 of 2009
and M.P.No.1 of 2009

A.Sivaperumal

... Appellant/Plaintiff

Vs.

1.Ethirajulu Ammal
2.Ramachandran

.... Respondents/Defendent

Prayer:- This Second Appeal has been filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 29.09.2008 passed in A.S.No.190 of 2007 on the file of the Additional Sub Court, Salem, confirming the judgment and decree dated 02.07.2007 made in O.S.No.2153 of 2004 on the file of II Additional District Munsif Court, Salem.

For Appellant : Mr.T.Sezhian
For Respondent-2 : Mr.S.Kalyanaraman
For Respondent-1 : Not Appearing

J U D G M E N T

The plaintiff, who lost his case in O.S.No.2153 of 2004 has filed the above appeal, challenging the concurrent judgments of the Courts below.

2.The brief facts of the case is as follows:

a.The plaintiff is the appellant. He has filed the suit for declaration of his right over AB cart track described in the schedule of the suit property; for permanent injunction restraining the defendants from using the said cart track and for mandatory injunction to restore the suit cart track to original condition.

b.The case of the plaintiff is that he is the owner of the property bearing Survey Nos.227/1 and 228/1, Pallapatti Village, Salem Taluk. The said property was obtained by him in a family partition dated 09.04.1981 which was marked as Ex.A2. The cart track in dispute is situated in Survey No.216/2 running through the southern ends of the said survey number which belongs to the first defendant and then through S.No.227/1 belonging to the plaintiff. The rough plan is also attached to the plaint described the cart track ABCD and the disputed portion is only between A and B which is lying in Survey No.216/2.

c.The said suit was resisted by the defendants on the ground that there is no cart track in Survey No.216/2. The entire land is under cultivation and there was no cart track in existence anywhere. The defendants had also fenced the portion of B and C, marked in the plan to safeguard their own property as there is no cart track as pleaded by the plaintiff. The plaintiff has placed his claim on Ex.A1 which is the Sale Deed dated 31.01.1974 in favour of the plaintiff's father and Ex.A2/Partition Deed between plaintiff's father and his children.

d.The trial Court as well as the lower Appellate Court had concurrently held that the portion marked B, C, D in the rough sketch is in Survey No.227/1B which is purchased by the father of the plaintiff under Ex.A1 fell to the share of plaintiff under Ex.A2. But the dispute is regarding the cart track at Survey No.216/2 which is exclusively belonging to the defendants.

e.The plaintiff has not produced any evidence to show that the cart track between the points A and B in Survey No.216/2 was used by him and he is ready to use the same by way of Easmentary right. The plaintiff also further contended that Ex.A9 which is an agreement specifically mention about the right of cart track over Survey No.216/2. The said agreement is between plaintiff and his brothers which only says that in the event of any one of the brothers buying the land, they can have the right of Easmentary right over Survey No.216/2 to use the same as the cart track.

3.On the pleadings of both the parties, necessary issues were framed by the Trial Court. Before the Trial Court, the Plaintiff had marked Exs.A1 to A10 and PW.1 and P.W.2 were examined on the side of the plaintiff. D.W.1 and D.W.2 were examined on the side of the Defendants and Ex.B1 was marked on the defendants' side.

4.The Trial Court, after considering both the oral and documentary evidence, dismissed the suit and the first appeal filed as against the Judgment and Decree of the Trial Court was also dismissed by the lower Appellate Court. Hence, this second appeal has been filed by the plaintiff.

5.This court heard the submissions of the learned counsel for the appellant as well as the learned counsel for the respondent and also perused the material records placed.

6.The Court below has rejected Ex.A9 on two grounds. Firstly, it is not a Registered agreement. Secondly, it is not proved by the plaintiff. Therefore, no credence can be given to the said document. Also, other documents filed by the plaintiff namely, Exs.A3 to A8 are all relating to Survey Nos. 228/1 and 227/1 which are not relevant to the suit property. As the plaintiff has come with a specific case that he is entitled to the suit cart track as Easmentary right, the burden is on him to establish the same. Having been failed to establish his right over Survey No.216/2 which belongs to the defendants, the Courts below had rightly and concurrently dismissed the suit. Notice was only issued at the

time of admission by this Court and there is no substantial question of law is framed. In the above factual matrix, there is no question of law that arise for consideration in the above Second Appeal. Hence, this Court finds that there is no illegality or infirmity in the findings of the Courts below and the same are confirmed.

7. Accordingly, the Second Appeal is dismissed and the judgment and decree dated 02.07.2007 made in O.S.No.2153 of 2004 on the file of II Additional District Munsif Court, Salem, as confirmed by the judgment and decree dated 29.09.2008 passed in A.S.No.190 of 2007 on the file of the Additional Sub Court, Salem, are affirmed. Consequently, connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

- 1.The Additional Sub Court, Salem.
- 2.The II Additional District Munsif Court, Salem.

+ 1 cc to M/s. R. Meenal, Advocate SR.22019
+ 1 cc to M/s. S. Kalyanaraman, Advocate SR.21865

NM(CO)
EU 03.06.2015

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