

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26...11..2015

CORAM

THE HON'BLE MR.JUSTICE S.NAGAMUTHU

Second Appeal No.770 of 2015

S.Mohan

... Appellants/Plaintiff

-Versus-

1.Sooriyakala
2.M.Madheswaran
3.Santhi
4.P.Sankar
5.Thangavel

... Respondents/Defendants

This second appeal is filed against the decree and judgement dated 29.01.2015 made in A.S.No.52 of 2014 by the learned Subordinate Judge, Namakkal, confirming the decree and judgement dated 15.04.2014 made in O.S.No.254 of 2007 by the learned Additional District Munsif, Namakkal.

For Appellant : Mr.T.Dhanyakumar

JUDGMENT

The plaintiff in O.S.No.254 of 2007 on the file of the learned District Munsif, Namakkal, is the appellant herein. The respondents are the defendants in the suit. The said suit was filed for declaration that the plaintiff has got title for the suit property and that he has got every right to use the same as pathway and also for declaration that the defendants have got no right to use the suit property as pathway and for a permanent injunction restraining the defendants from claiming any right over the suit property. By decree and judgement dated 15.04.2014, the learned District Munsif, Namakkal, dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.52 of 2014 before the learned Additional Subordinate Judge, Namakkal. The first appellate court, by decree and judgement dated 29.01.2015 dismissed the appeal thereby confirming the decree and judgement of the trial court. Challenging the same, the plaintiff is now before this court with the present second appeal.

2. This second appeal has come up today for admission.

3. I have heard the learned counsel for the appellant/plaintiff and also perused the records carefully.

4. The case of the plaintiff in brief is as follows:- The plaintiff claims that the properties comprised in S.Nos.292/2A1 and 292/2A2 absolutely belong to him. His grand father executed a Will on 04.05.1973 bequeathing the suit property to him. Patta has also been transferred to his name. According to the plaintiff, he is the absolute owner of the suit property and he has been using the same as pathway to reach his other lands. The 4th defendant has got property in S.No.269 and there is a pathway in S.No.269/1 to reach his land. So far as the other defendants are concerned, they have got no right what so ever over the suit property.

5. But, the defendants have claimed that the suit property is a common pathway over which they have got right to use to reach their lands. According to them, there is no pathway in S.No.269/1. Even in the title deeds of the defendants the suit property has been shown as common pathway.

6. Based on the above pleadings, the trial court framed appropriate issues. On the side of the plaintiffs, he was examined as P.W.1 and as many as 13 documents were exhibited. while on the side of the defendants, 1st defendant was examined as D.W.1 and the official witnesses namely, Mr.Dayalan, Village Administrative Officer, Navani and Mr.Selvakrishna, Administrative Officer of Lakhapuram were examined as D.W.2 and D.W.3 respectively and 3 documents were exhibited. Besides the above, through official witnesses, Ex.X-1 to X-8 were exhibited as witness documents.

7. Having considered all the above, the trial court dismissed the suit which was later on confirmed by the first appellate court. That is how, the plaintiff is now before this court with the present second appeal.

8. In this second appeal, the learned counsel for the appellant/plaintiff would submit that both the courts below had not appreciated the oral as well as the documentary evidences in their proper perspective and thus, the courts below were not right in dismissing the suit. He would further submit that from Exs.A1 to A.3 it has been clearly established that the suit property absolutely belongs to the plaintiff. But, the courts below have given undue weightage for D.W.2 and D.W.3 and the documents filed by the defendants, the learned counsel contended.

9. In my considered view, I find no question of law much less any substantial question of law in this second appeal. The courts below on appreciating both the oral as well as the documentary evidences have come to the conclusion that the plaintiff has got no right or title over the property and the suit property is used only as a common pathway. This is essentially a question of fact and that there is no question of law at all involved. Further, I do not also find any perversity in the judgments of the courts below. Though it is stated by the appellant that in the Will executed by his grand father in the year 1973 under Ex.A.1, the suit property has been mentioned as that of the plaintiff, that itself would not go to prove that the plaintiff has got absolute title for the property and the defendants have got no right to use the same as pathway. The documents produced by the defendants, more particularly, the partition deed under Ex.B.3 dated 16.09.1924 would go to prove the existence of the suit property as a pathway. Thus, the judgments of the courts below cannot be stated to be perverse. Thus, I do not find any merit at all even to admit the second appeal and the same must fail.

10. In the result, the second appeal is dismissed and the decree and judgement of both the courts below are confirmed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1.The Subordinate Judge, Namakkal,
Namakkal District.

2.The Additional District Munsif,
Namakkal,
Namakkal District.

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mg (CO)
srg (08/01/2016)