

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.10.2016

PRONOUNCED ON : 24.10.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.14 of 2008

1.Arukkani
2.Pappayee
3.N.Chinnusamy
4.Manimegalai
5.P.Natesan

...Appellants

Vs

K.Ramasamy

... Respondent

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 13.03.2006 in A.S.No.22 of 2003 on the file of the Principal District Court, Namakkal erroneously confirming the judgment and decree made in O.S.No.204 of 1994 dated 26.12.2002 on the file of the District Munsif, Tiruchengode.

For Appellants : Mr.V.Ravi

For Respondent : Mr.P.Jagadeesan

JUDGMENT

This second appeal is directed against the judgment and decree of the trial Court granting injunction against the defendants and the same being confirmed by the First Appellate Court.

2.The crux of the case is that, the plaintiff has inherited the suit schedule property through his great grand father and now he is in possession and enjoyment of the suit property. While so, the defendants who are neighbours claiming right of pathway upon the land of the plaintiff trying to disturb his peaceful possession and enjoyment of the suit property. Hence, the present suit for permanent injunction was filed by the plaintiff.

3.The appellants herein as defendants in the suit contested the case, on the ground that, one of the suit schedule property which falls under S.No.458/2 belongs to one Ms.Sornammal and not to the plaintiff likewise the other suit schedule property at S.No.459/1 also not owned by the plaintiff but by one Mr.Perumal Gounder and others. The defendants using the pathway running East West and Southern side of S.No.459/1 and 458/1 to reach their lands in S.No.457 without any interruption by anybody including the plaintiff and his purchaser in title ever since 25.03.1936. While so, there is no cause of action for

the plaintiff to lay the present suit. The trial Court after considering the pleadings of the parties have framed the following two issues:-

“1.Whether the plaintiff is entitled for permanent injunction ? and

2.What are all the reliefs the plaintiff is entitled for ?”

4.After considering the evidence let in by either side and the exhibits, the trial Court held in favour of the plaintiff and granted permanent injunction. It was found by the trial Court that there is an alternate pathway for the property of the defendants through S.No.467. The trial Court relying upon the Commissioner's report and sketch marked as Exs.C.1 and C.2 respectively, has found that the defendants never used the suit schedule property as pathway to reach their land and therefore, they are not entitled for the right of way by easement and the plaintiff is entitled for permanent injunction.

5.On facts, the trial Court has held that the defendants were using only the odai or itteri to reach their land and not the land of the

plaintiff. The said finding was confirmed by the First Appellate Court also. This Court at the time of admission of this second appeal, has framed the following substantial questions of law:-

"a. Whether the Courts below were right in not accepting Ex.B2 and decreeing the suit for permanent injunction ?

b. Whether the Courts below were right in granting injunction for S.No.458/2 when admittedly the plaintiff was filed an appeal before Revenue Divisional Officer, Sankagiri and the same is pending ?

c. Whether the Courts below were right in granting injunction for S.No.458/2 when the patta stands in the name of Swarnambal and land is under the possession of the defendants ?

d. Whether the Courts below were correct in decreeing suit when under Ex.A1 only 4.61

acres has been purchased ?

e. Whether the Courts below were right in not considering the defendant's easementary rights to their property in S.No.457 enjoying from 25.03.1936 and use cart track by the predecessors in title from the time immemorial?

f. Whether the Courts below were right in holding water channel-odai in the alternative pathway to the defendant/appellant's property in S.No.457 ?

g. Whether the Courts below were right in not upholding the "cart track" rights of the defendant as establish through the recitals and schedule in the Ex.A2 sale deed?

h. Whether the courts below were right relying upon notice issued under Section 7 of Act 3, 1905 and still landing injunction ?

i. Whether the Courts below were right in ignoring the cart track pathway which has been under use from several decades by the predecessors in title of this appellant and subsequently by the appellant themselves?

j. Whether the Courts below were right in not considering the subsequent development of highway over bridge which cutails the entry to the water channel "odai" from the appellant?

k. Whether in view of the subsequent development of construction "highway over bridge" can the appellants cart track rights over the suit property be denied any more ?"

6. The learned counsel for the appellants appeared before this Court and submitted that pending suit, there was some change in the physical feature of the suit schedule property whereby, a over bridge

has been constructed across the odai and the appellants have already sold out the property to one Mr.P.Babu s/o Periyasamy.

7.It is submitted by the learned counsel for the respondent that in view of the change in the physical structure of the suit schedule property, question of claiming easementary right of way to the property of the defendants in S.No.457 through the property of the plaintiff in S.No.458/2 has no relevance. This fact has not been disputed by the appellants.

8.This Court apart from the change in circumstances and physical feature of the suit schedule property also find no reason to interfere with the well considered judgments of the Courts below based on the Commissioner's report and sketch which have not been questioned or objected by the appellants herein.

9.On examination of records, this Court find that, either Ex.B.2 - patta is in the name of Ms.Sornammal for S.No.458/2 for the fasali year 1404 or any other documents which stand in the name of Ms.Sornammal and relied on by the defendants have bearing on this particular case since, the Court has taken steps to serve notice on

Ms.Sornammal, to appear before the Court and the said steps ended in futile. The returned summon issued to Ms.Sornammal has been marked as Ex.C.4. Therefore, none of the substantial questions of law framed by this Court, at the time of admission of this second appeal, does not merit consideration to interfere with the judgments of the Courts below and therefore, the second appeal is liable to be dismissed.

10.In the result, the second appeal fails and accordingly, the same is dismissed. The judgments of the Courts below shall stand confirmed. There shall be no order as to cost.

24.10.2016

jbm

Index: Yes/No

To

1.The Principal District Court,
Namakkal.

2.The District Munsif,
Tiruchengode.

Dr.G.JAYACHANDRAN.J.,

jbm

**Pre Delivery Judgment made in
Second Appeal No.14 of 2008**

24.10.2016

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