

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.11.2016

PRONOUNCED ON : 25.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.221 of 2011

and

M.P.No.1 of 2011

Subramani

...

Appellant

Vs.

1.Rukmani Ammal

2.K.S.Thangavel

3.Thannasi @ Ponnusamy

...

Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 06.09.2010 made in A.S.No.35 of 2010 on the file of Principal Sub Court, Erode, confirming the judgement and decree dated 11.01.2010 made in O.S.No.455 of 2008 on the file of the Principal District Munsif Court, Erode.

For Appellant : Mr.A.K.Kumarasamy

For Respondents : Mr. V.Raghunathan
for M/s.S.Dhanasekaran

JUDGMENT

Impugning the judgement and decreed dated 06.09.2010 made in A.S.No.35 of 2010 on the file of the Principal Sub Court, Erode, confirming the judgement and decree dated 11.01.2010 made in O.S.No.455 of 2008 on the file of the Principal District Munsif Court, Erode, the plaintiff has preferred this second appeal.

2. The suit has been laid for permanent injunction.

3. The case of the plaintiff, in brief, is as follows:

The suit property was purchased by the plaintiff's father Songappa Gounder under the sale deed dated 06.08.1963 and after his death, the property is inherited by the plaintiff and the plaintiff has been enjoying the suit property absolutely. There is a Cart Track proceeding from Ganapathypalayam main road towards west and the same turns to the north and again proceeds east-west up to the plaintiff's property and thereafter, proceeds towards west as pathway and the plaintiff and his predecessor in interest and also, the other owners adjoining the suit cart track/pathway have been using the same, for ingress and egress to their respective properties. Even in the sale deed pertaining to the property belonging to Venugopal situated on the western side of the suit Cart Track/Pathway, there is a reference about the east-west pathway. Thus, the suit Cart Track/Pathway is common to all the adjoining owners and the plaintiff has also left vacant site on the southern side of his property and put up construction on the northern side. While so, the defendants, without any authority and against law, attempted to interfere with the plaintiff's possession and enjoyment of the suit Cart Track/Pathway illegally and despite the prevention of the same by the plaintiffs and others, as the defendants persisted with their unlawful acts, the plaintiff has been necessitated to lay the suit.

4. The case of the defendants, in brief, is as follows:

After denying all the averments contained in the plaint, it is stated by the defendants that the suit Cart Track/Pathway is not common as alleged in the plaint. On the other hand, the suit Cart Track/Pathway belongs only to the defendants absolutely and none has any right over the same. The first defendant's husband Chellappa Gounder purchased the property from one Ramasamy Gounder inclusive of 4 1/2' east-west pathway showing the same as southern boundary under the sale deed dated 17.10.1968 and thus, only the defendants have absolute right over the east-west suit Cart Track/Pathway and the plaintiff has no right over the same and the plaintiff has put up construction up to the southern limits. Further, the plaintiff has not pleaded on what basis, he claims right over the suit Cart Track/Pathway. There is no common suit Cart Track/Pathway running east-west as alleged in the plaint/plaint plan. Therefore, the suit laid by the plaintiff without any cause of action is liable to be dismissed.

5. In support of the plaintiff's case, PWs1 and 2 were examined and Exs. A1 to 4 were marked. On the side of the defendants, DW1 has been examined and Exs. B1 and B2 were marked.

6. On a consideration of the oral and documentary evidence adduced by the respective parties, the trial Court was pleased to dismiss the suit. The first appeal preferred by the plaintiff also failed. Challenging the judgments and decrees of the Courts below, the plaintiff has come forward with the second appeal.

7. The plaintiff has claimed right for ingress and egress over the suit Cart Track/Pathway. According to the plaintiff, he claims right over the suit Cart Track/Pathway under the sale deed dated 06.08.1963 and the same has been marked as Ex.A1. On the other hand, according to the defendants, the suit Cart Track/Pathway is not common as alleged by the plaintiff in the plaint and it is the separate property of the defendants and that, the defendants lay claim over their property inclusive of east-west pathway under the sale deed dated 17.10.1968 and the same has been marked as Ex.B1.

8. The plaintiff, in the plaint, has not mentioned as to, on what basis, he claims right over the alleged suit Cart Track/Pathway. It is not made clear whether the plaintiff is claiming right over the alleged Suit Cart Track/Pathway as an easementary right by way of grant or as easement of necessity or by prescription. As rightly put forth by the respondents counsel, the mode of claim of right over the suit pathway by the plaintiff has not been clearly spelt out either in the plaint or during the course of evidence by the plaintiff.

9. Now, according to the plaintiff, he has been given the right under his title deed marked as Ex.A1. As rightly found by the courts below, on a perusal of Ex.A1, it could be seen that there is no mention about any east-west pathway running to the south of the plaintiff's property. If really, the plaintiff and his predecessor in interest had been using the east-west pathway as a common pathway, as now claimed by the plaintiff, as rightly put forth by the respondents' counsel, reference about the same would have been incorporated in Ex.A1. However, the same is conspicuously absent in Ex.A1. Further, the case of the plaintiff is that the reference about east-west common suit pathway also find a place in Ex.A3, which is stated to be the sale deed pertaining to the property of one Venugopal, who has property situated on the western side to the alleged east-west pathway. However, as rightly found by the courts below, even in Ex.A3, it could be seen that there is no specific reference about the alleged east-west common pathway and therefore, it could be seen that neither Ex.A1 nor Ex.A3 indicate that there existed a common suit Cart Track/Pathway as alleged by the plaintiff in the plaint plan.

10. Now, according to the defendants, the suit pathway absolutely belongs to them and according to them, they had purchased the absolute right of the east-west pathway under their document Ex.B1. On a perusal of Ex.B1, as also found by the Courts below, it

could be that the vendor under Ex.B1 had alienated absolute right over the east-west pathway measuring about 4 1/2 ' and therefore, it could be seen that under Ex.B1, the defendants have been given absolute right over their property inclusive of the suit pathway. In the above situation, the case, now, put forth by the plaintiff that there existed a east-west pathway as alleged in the plaint/plaint plan cannot be accepted in any manner, without any material or proof.

11. The plaintiff has not produced any revenue document to show that there existed a east-west suit pathway in between his property and the defendants property as pleaded by him. For the reasons best known to him, the plaintiff has also not cared to produce his patta. On the other hand, the defendants produced their patta marked as EX.B2, which would go to indicate that there is no mention of the existence of any common east-west pathway. Therefore, if really, had there been a common east-west pathway in between the plaintiff's property and the defendants' property, as per the case of the plaintiff, at the time effecting sub division of the respective properties, a clear mention of the common pathway would have been noted. To establish the same, as rightly found by the courts below, the plaintiff has not evince interest to summon the revenue records to buttress his case. Other than marking Exs.A1 and A3 ,the plaintiff has not placed any other material proof to substantiate his case. As adverted to

earlier, Exs.A1 and A3 do not advance the case of the plaintiff either about existence of east-west suit pathway or the plaintiff's right over the same or that it is a common pathway to all the adjoining owners.

12. Further, as rightly found by the courts below, the plaintiff is having access to his house on the northern side of his property and therefore, it could be seen that the plaintiff would not be entitled to seek any easement of necessity also in the alleged east-west pathway. At the foremost, as seen earlier, the plaintiff has not established that there existed a common east-west pathway as alleged by him.

13. In the light of the above discussions, it could be seen that the courts below have correctly found that the plaintiff has miserably failed to establish his case and accordingly, non suited him. No valid reason has been projected to interfere with the findings of the courts below.

In conclusion, the second appeal sans involvement of any substantial question of law is found to be devoid of merits. Accordingly, the second appeal is dismissed.

25.11.2016

Index : Yes/No
Internet: Yes/No
sms

To

1. The Principal Sub Court,
Erode.
2. The Principal District Munsif Court,
Erode.

T.RAVINDRAN,J.

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Pre-delivery Judgment in
S. A.No.221 of 2011
and
M.P.No.1 of2011

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