

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 16.11.2016****PRONOUNCED ON : 23. 11.2016****CORAM****THE HONOURABLE MR. JUSTICE T.RAVINDRAN****S. A.No.343 of 2011****and****M.P.No.1 of 2011**

1.N.Periyasamy

2.K.Arumugham

3.Kunju @ Madheswaran

...

Appellants

Vs.

1.P.Arumugham

2.Palani gounder (died)

3.Rajammal

(R3 brought on record as LR of
the deceased R2 vide order of
Court dated 22.06.2011 made
in M.P.No.2 of 2011)

...

Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 24.09.2010 in A.S.No.19 of 2010 on the file of the Sub-Court, Rasipuram, confirming the judgment and decree dated 24.02.2010 in O.S.No.38 of 2007 on the file of the District Munsif Court, Rasipuram.

For Appellants : Mr.V.Sekar

For Respondent : Mr.P.Valliappan

JUDGMENT

The defendants have preferred this second appeal impugning the judgement and decree dated 24.09.2010 passed in A.S.No.19 of 2010 on the file of the Sub-Court, Rasipuram, confirming the judgement and decree dated 24.02.2010 passed in O.S.No.38 of 2007 on the file of the District Munsif Court, Rasipuram.

2. The suit has been laid for declaration and permanent injunction.

3. The suit has been laid in respect of the Cart Track shown as "ABCDE" in the plaint plan. According to the plaintiffs, they claim right to the suit Cart track depicted in the plaint plan under the sale deed dated 27.01.1965 marked as Ex.A1. Further, according to the plaintiffs, they have prescribed their title to the suit cart track by prescription and also, it is contended that other than the suit Cart track, there is no other cart track for reaching the plaintiffs suit property.

4. The defendants have disputed the plaintiffs' right and title over the suit cart track as pleaded. However, the defendants have admitted the existence of the suit Cart Track. According to the defendants, the suit Cart Track exclusively belongs to them and the

plaintiffs are not entitled to use the suit cart track to reach the suit property. Further, according to the defendants, the plaintiffs have other cart track situated on the eastern side to reach their property and therefore, the plaintiffs' case should not be accepted.

5. Both the courts below have rejected the defence put forth by the defendants and decreed the suit as prayed for holding that the plaintiffs have prescribed the right and title over the suit pathway by prescription and they have easementary right over the suit cart track and other than the plaintiff suit cart track, there is no other cart track to reach the plaintiff suit property. In this connection, the courts below have also relied upon the evidence marked as Exs.C1 to 4.

6. As found above, the existence of the suit Cart Track is not in dispute. Only dispute is, according to the defendants, the suit cart track is their exclusive property and the plaintiffs cannot claim any easementary right over the suit cart track as projected by them. That the plaintiffs have been given the cart track right under their title deed marked as Ex.A1 could be seen from the recitals found in the document. According to the defendants, there is no reference in specific about the suit cart track under Ex.A1.

7. As found by the courts below under Ex.A1, the second plaintiff has purchased the suit property including the cart track right from Kandappa Gounder Vahaiyara. The defendants claim title to the suit Cart Track under the partition deeds marked as Exs.B2 and 3. It could be seen that the heirs of Kandappa Gounder have divided their properties under Ex.B2 partition deed and further, under Ex.B3 partition deed, the heirs of Sengoda Gounder have partitioned the properties. It could be seen that Sengoda Gounder is one of the sons of Kandappa Gounder. Therefore, it could be seen that the partition deeds marked as Exs.B2 and 3 also reflect the existence of the suit Cart Track. That the suit cart track has been in existence for a long period of time could be gathered from Exs.B2 and 3 dated 23.03.1967 and 27.06.1979 respectively and Ex.A1 dated 27.01.1965. Therefore, it could be seen that even prior to the above said documents, the cart track had been in existence and been in usage of the property owners as Mamool cart track to reach their respective properties. Therefore, when it is found that the common owner of the properties adjoining the cart track was one and the same and subsequently, their heirs have alienated/partitioned their properties, it could be seen that for reaching having access to their respective shares/properties, they have reserved the cart track for common usage.

8. Now, the plaintiffs claim easementary right over the cart track. According to the defendants, the cart track in existence is only used by them to reach their properties including survey No.4/1. S.No.4/1 is situated to the north of the plaintiffs' property in survey No.4/2. Therefore, as rightly found by the courts below, the contention that the suit cart track is not used by the plaintiffs to reach the suit property in survey No.4/2 cannot be readily accepted. Further, as rightly found by the courts below, the commissioner report and plan marked as Exs.C1 to C4 also would go to show that the existence of the suit cart track and the advocate commissioner has also noted that other than the suit cart track, there is no other cart track for reaching the plaintiffs suit property.

9. As found by the courts below, the plaintiffs, through the evidence of PWs1 to 4 and Exs.A1 to 5 and Exs.C1 to C4 have established that they have prescribed easementary right over the suit cart track and other than the suit cart track, there is no other cart track for reaching their property.

10. Though the defendants have claimed that there is another cart track for reaching the plaintiffs suit property, in particular, according to the defendants, there is a pathway to reach the plaintiffs suit property through the land of Palaniammal, the plaintiffs' aunt, no

step has been taken by the defendants to establish that such a cart track is available for enabling the plaintiffs to reach their property. That apart, as adverted to earlier, the advocate commissioner has not noted the existence of any other alternative cart track for the plaintiffs to reach their property. The defendants have not projected any enmity or motive on the part of the advocate commissioner suggesting that there is no other alternative cart track for the plaintiffs to reach their property. Further, as seen earlier, PWs 2 and 3 also, in their evidence clearly deposed that the plaintiffs have been using the suit cart track for several years to reach their property.

11. The findings of the courts below in holding that the plaintiffs have easementary right over the suit cart track have not been shown to be perverse or misdirected in any manner by the appellants.

12. In support of the respondents case, the counsel for the respondents placed reliance upon the decisions reported in **2010 (1) CTC 455 (Sree Swayam Prakash Ashramam and another V. G.Anandavally Amma and others), 1999-2-L.W.392 (Samsudeed V. Krishnan and seven others), 1998-2-L.W.660 (Jeyabalan and two others V. V.Bal Naicker (died) and 3 others) and 2011 (2) MWN (Civil) 291 (S.Arulammal and another V. P.Renjamony and another).** The principles of law

outlined in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the case at hand.

In fine, I do not find any substantial question of law is involved in this second appeal. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.11.2016

Index : Yes/No
Internet:Yes/No
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To

1. The Sub-Court, Rasipuram.
2. The District Munsif Court, Rasipuram.

T.RAVINDRAN,J.

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Pre-delivery order in
S. A.No.343 of 2011
and
M.P.No.1 of 2011

23.11.2016

pre-delivery order made in
S.A.No.343 of 2011
and
M.P.No.1 of 2011

To
The Hon'ble Mr.Justice T.Ravindran

Most respectfully submitted
sms
(P.A.to the Hon'ble Judges)

<http://www.judis.nic.in>