

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

S.A.No.204 of 2017

1.Palaniammal
2.Kathirvel
3.Jagadeesh
4.Krishnamoorthy
Samiathal (Died)
W/o SaongappaGounder
5.Shanmugam
6.Pushpagandhi ... Appellants/Appellants/
Plaintiffs

vs.

1.Sakthi Sugar Ltd.,
By its Managing Director,
Sakthi Nagar, Appakudal,
Bhavani Taluk, Erode District.
2.Gowriammal
3.Poosamani
4.Krishnamoorthi ... Respondents/Respondents/
Defendants

Second Appeal filed under Section 100 of C.P.C. against the judgment and decree dated 30.08.2013 passed in A.S.No.50 of 2012 on the file of the I Additional Subordinate Judge, Erode, confirming the judgment and decree dated 22.12.2011 passed in O.S.No.788 of 2006 on the file of the II Additional District Munsif Court, Erode.

For Appellants : Mr.K.Kumar
for M/s.Sree and Associates

J U D G M E N T

The plaintiffs who lost before the Courts below are the appellants. The appellants/plaintiffs filed the Suit in O.S.No.788 of 2006 on the file of the II Additional District Court, Erode against the defendants 1 to 4, praying for a judgment and decree declaring that the plaintiffs and the defendants 2 to 4 are entitled to "B"Schedule property (Cart Track) and also for a permanent injunction restraining the first defendant, its men, officials etc., from any manner

obliterating the Suit "B" Schedule Property or interfering with plaintiffs user and enjoyment of the same and for a mandatory injunction directing the first defendant to restore the B C D E portion of the Suit Cart Track to its original possession within the time specified by his Court and on its failure to do so, execute the same through an Officer of the Court at the cost of the first defendant and also for costs.

2. The plaintiffs would aver among other things that the suit properties are situated at Thuyampoondurai Village, Erode Taluk and District and through registered sale deed dated 17.06.1954- Ex.A1, Nachimuthu Gounder had purchased 3.32 acres in Old S.F.No.199-B, corresponding to R.S.No.84/2 from one Kuppanna Gounder and it is shown as Item No.1 to A Schedule Property and under the above said sale deed, the predecessors in title to the plaintiffs and the defendants 2 to 4 have been given right of access through a north south cart track described in "B" Schedule property. Nachimuthu Gounder had purchased an extent of 4.25 acres in Old S.F.No.203-A, Resurvey No.93/1, from the very same Kuppanna Gounder under registered sale deed dated 21.04.1955-Ex.A4 and it is described as Item No.2/3 of "A" Schedule property and the said lands are also having access through "B" Schedule Property. The plaintiffs would further aver that North South "B" Schedule Cart Track runs in the eastern end of R.S.No.92 and it originally belong to the predecessors in title, namely Kuppanna Gounder and the cart track measures about 12 feet in width and it starts from east west road on north and the said width of 12 feet is in existence upto resurvey No.93 and on reaching the R.S.No.93, the width of the cart track varies from 6 feet to 8 feet runs towards south upto R.S.No.84, then runs towards west and runs to each other fields.

3. It is the case of the plaintiffs that the said cart track is in existence for several decades and it is the only access to the lands described in "A" Schedule Property and as such, they prescribe their right only through claiming easement of necessity and also grant. It is further averred by the plaintiffs that the first defendant purchased several acres of land in the nearby locality including R.S.No.92 and with oblique and malafide reasons, they cut down the existed western side live fence of "B" Schedule cart track in the 2nd week of November 2006 and on 07.12.2006, the officials and workman of the first defendant attempted to obliterate the "B" Schedule cart track and annex the same with their lands on the western side and therefore, the plaintiffs came forward to file the Suit.

4. The first defendant filed the written statement denying the averments made in the plaint and took a stand that the entire extent of 7.96 acres in R.S.No.92/1 absolutely belong to them and the plaintiffs are having alternative cart track to reach the "A" Schedule property and also took a stand that the plaintiffs cannot claim cart track right under easement of necessity and easement by grant simultaneously and prays for dismissal of the Suit.

5. The second defendant had filed the written statement which was adopted by the defendants 3 and 4, wherein the second defendant took a stand that "A" Schedule Property is having access through the Suit "B" Schedule cart track and it is in existence for several decades and it is the only access available to reach the "A" Schedule Property and prays for decreeing of the Suit.

6. The first defendant had filed an amended written statement and took a stand that under Ex.B4- registered sale deed dated 30.06.2006, there is no reference to grant of easement right in favour of the plaintiffs and the plaintiffs claim easement rights under two sale deeds dated 17.06.1954 and 21.04.1955 and there is no reference at all as to the availability of easement right to pathway in G.S.No.201 and 202 and also took a stand that there are rocks in the alleged pathway. The first defendant would further aver that the Commissioner, who inspected the properties, noted that there are rocky portions and there is no indication of cart track beyond the rocky portion and it is also possible to reach the lands of the first defendant through the cart track, plaintiffs land and south could be reached by the 15 feet mud pathway and as such, the plaintiffs are not entitled to any relief.

7. The Trial Court, on consideration of the pleadings, framed the following points for consideration:

1. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for ?
2. Whether the plaintiffs are entitled to the relief of Mandatory injunction as prayed for ?
3. To what other relief?

8. On behalf of the plaintiffs, the second plaintiff examined himself as PW1 and one Deivasigamani has been examined as PW2 and Exs.A1 to A12 were marked. On behalf of the

defendants, one Muthusamy and Sampath were examined as DWs.1 and 2 respectively and Exs.B1 to B16 were marked. Two Advocate Commissioners were appointed and their reports were marked as Exs.C1 to C7.

9. The Trial Court, on consideration of pleadings, oral and documentary evidence, dismissed the Suit, vide judgment and decree dated 22.12.2011. The plaintiffs, aggrieved by the same, filed an Appeal Suit in A.S.No.50 of 2012 on the file of the First Additional Subordinate Court at Erode.

10. The Lower Appellate Court, on perusal of the grounds of appeal and other materials, framed the following points for consideration:

1. Whether the decree and judgment passed by the Trial Court is correct?
2. Whether the sale deed dated 5.2.2007 has been considered by the trial Court or not? And whether the findings of the trial court is correct?
3. Whether the appeal is allowed or not?

The Lower Appellate Court, on appreciation of oral and documentary evidence, found that as per the recitals found in Exs.A1 and A4-sale deeds, the right of using the cart track has been given and according to the plaintiffs, the said cart track has been subsequently obliterated during the year 2006 and immediately, they filed the Suit. The Lower Appellate Court, taking into consideration the Advocate Commissioners report, namely Exs.C1 and C2, found that the Advocate Commissioner even during his first visit did not find any cart track and further, there is no cart track in existence as shown by the plaintiffs in the plaint plan as well as in "B" Schedule Property. The Lower Appellate Court has also taken into consideration Exs.A11-A and found that even as per the recitals in Exs.A1 and A4-sale deeds, the right of taking carts through the Survey Nos.201 and 202 has not been given and as per the recitals found in Ex.A11-A, it has been shown as north south and therefore, held that the plaintiffs had failed to establish about the existence of the cart track immediately prior to the filing of the Suit. The Lower Appellate Court, also taken into consideration the two Advocate Commissioners report, namely Exs.C3 to C5 and found that there are rocky materials found in the suit cart track and taking into consideration the testimony of DW2-revenue official, found that the reports of the Advocate Commissioners did not disclose about the used cart track as shown in the plaint plan and there is absolutely no

evidence available as to the taking of the cart through the plaint "B" Schedule Property. Insofar as the plea of easement of necessity put forward by the plaintiffs, the Lower Appellate Court found that there is an alternative pathway available to reach the lands of the plaintiffs on the basis of the evidence of PW1 as well as Exs.C1 to C6. The Lower Appellate Court, citing the said reasons, had dismissed the Appeal Suit, vide impugned judgment and decree dated 30.08.2013. Challenging the legality of the same, the plaintiffs had filed this Second Appeal.

11. In the Memorandum of Grounds of Appeal, the following Substantial Questions of Law are raised:

1. Whether the trial Court/First Appellate Court are correct in applying the provisions of law in dismissing the suit on the ground the plaintiff has not established the right of easement, especially when the plaintiff has been using the cart track/pathway land as of right, peacefully and openly without any interruption from the date of his purchase i.e., 17.6.1954?
2. Whether the Courts were justified in ignoring the fact that the southern side cart track available to reach the Appellant's property is a forest land cannot be used to reach the property of the Appellants with their carts and cattle?
3. Whether or not the Courts below are justified in granting injunction restraining the Appellant from utilizing the cart track shown in Schedule "B" to reach their property?

12. The learned counsel appearing for the appellants/plaintiffs would vehemently contend that Exs.A1, A4 and A11-A had conclusively proved and established about the existence of pathway through "B" Schedule Property and the Courts below, without properly appreciating the said documents, merely went by the Advocate Commissioners report to reach the conclusion and the said approach of the Courts below is per se unsustainable. It is the further submission of the learned counsel appearing for the appellants/plaintiffs that except the cart track the plaint "B" Schedule Property cart track, there is no other pathway to reach the lands of the plaintiffs and even for the sake of arguments that the appellants/plaintiffs had failed to substantiate their case as to the easement of grant, however conclusively probablised their case by pleading easement of necessity and the Courts below without properly appreciating the oral and documentary evidence, erroneously reached the conclusion to dismiss the case of the plaintiffs.

13. This Court paid it's best attention to the rival submissions and also perused the materials placed before it.

14. No doubt, in Exs.A1 and A4, there is no recital with regard to the Suit cart track. It is the specific case of the plaintiffs that just prior to the filing of the Suit, the suit pathway was obliterated and it is also an alternative plea that since it is the only cart track to reach their lands, they got their right by way of easement of necessity and also easement of grant. At the instance of the appellants/plaintiffs two Advocate Commissioners were appointed and they also filed their reports. The Lower Appellate Court, in the impugned judgment, has elaborately considered the reports and plans submitted by two Advocate Commissioners and found that there is no iota of evidence available as to the existence of the cart track as pleaded by the plaintiffs. It is also pertinent to point out that though it is the case of the plaintiffs that the Suit "B" Schedule Property cart track has been obliterated by the first defendant in the year 2006, there is no evidence available to substantiate the same for the reason that if the cart track has been obliterated by the first defendant, he could not have kept quiet and at least he could have taken steps in the form of a police complaint and the appellants/plaintiffs did not issue any Pre-Suit notice indicating their stand.

15. The Lower Appellate Court has taken into consideration Exs.C1 to C6 and found that there are no evidence to show about the existence of cart track and there are rocky materials found in the cart track and also taking into consideration the testimony of DW2-revenue official, found that there is no mention about the cart track in the revenue records. Insofar as the plea of easement of necessity claimed by the plaintiffs is concerned, this Court is of the view that the appellants/plaintiffs though pleaded easement of grant as well as necessity, even then the Courts below, in the light of the reports submitted by the Advocate Commissioners, held that there is an alternative path available to reach the land of the plaintiffs. In the considered opinion of the Court, the existence/nonexistence of the suit cart track and the easement of necessity pleaded by the appellants/plaintiffs have been answered by the Courts below on a proper consideration and appreciation of the relevant materials placed before it. The Lower Appellate Court, which is a final court on facts and law, had elaborately discussed the points urged by the learned counsel appearing for the appellants and reached the conclusion to dismiss the Appeal Suit. The findings rendered by the Courts below are concurrent in nature and this Court, on an independent application of mind to the entire materials, is of the view that there is no error apparent or perversity in the

said findings and the substantive questions of law raised in the Memorandum of Grounds of Appeal have been answered by the Lower Appellate Court. In the considered opinion of the Court, there are no questions of law much less substantial questions of law arises for consideration in this Second Appeal.

16. In the result, this Second Appeal is dismissed at the admission stage itself, confirming the judgment and decree dated 30.08.2013 passed by the learned I Additional Subordinate Judge, Erode in A.S.No.50 of 2012, confirming the judgment and decree dated 22.12.2011 passed by the learned II Additional District Munsif, Erode in O.S.No.788 of 2006. No costs.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

To

1. I Additional Subordinate Judge, Erode.

2. II Additional District Munsif, Erode.

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S.A.No.204 of 2017

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