

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :03.08.2017
PRONOUNCED ON:10.08.2017

CORAM

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.2033 of 2000
and
C.M.P.No.19927 of 2000

Eswaramoorthy ... Appellant/Appellant/
1st Defendant

Vs.

1.Komarasamy gounder ... 1st Respondent/1st Respondent/
Plaintiff

2.Samiappa gounder

3.Shanmugam

(Respondents 2 and 3 were set exparte
in the Court below. Hence notice on them
is not necessary in this second appeal)

... 2 & 3 Respondents/2 & 3 Respondents/
Defendants 2 & 3

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 25.08.2000 made in A.S.No.38 of 1999 on the file of the First Additional District Court-cum-Chief Judicial Magistrate, Erode, which confirmed the judgment and decree dated 16.11.1999 made in O.S.No.617 of 1996 on the file of the District Munsif cum Judicial Magistrate, Perundurai.

For Appellant : Mr.N.Manokaran

For Respondents : Mr.Sundarmohan for R1
R2 and R3-NDW

J U D G M E N T

This appeal is preferred by the 1st defendant in O.S.No.617 of 1996 against the concurrent finding of the Courts below. The suit is filed for declaration and injunction on the premise that the suit cart track in S.No.537/6 with 4.6 meters breadth and 110 meters length is owned by the plaintiff, in which the defendants have encroached upon it and raised sugarcane and tobaco, after obliterating the cart

track. Since the defendants are trying to further obliterate, injunction is also sought for.

2. According to the plaintiff, large extend of ancestral land inclusive of the subject suit property was divided among the plaintiff and one Muthusamy gounder, vide partition deed dated 27.06.1955 (Ex.A3). In the said deed, the 'A' schedule property along with the cart track on west and south of it were allotted to him. The 'B' schedule property on the south of the east-west cart track was allotted to Muthusamy gounder. Originally, these properties fell under old P.No.37/A1 and P.No.37/A3. Later, after resurvey, they were assigned S.Nos.537/6, 537/7 and 537/8. The cart track bearing old S.No.37/A3 was assigned S.No.537/6. The land under 'A' schedule is S.No.537/7 and the land allotted to Muthusamy falls under S.No.537/8. The defendants, who purchased the property in the year 1981 under Ex.B1 and Ex.B2, have no right or title over the land in S.No.537/6 used as cart track by the plaintiff's family. Neither the vendor of the defendants nor the vendor of the vendor Pappammal, w/o Muthusamy have right over the suit property. The defendants have obliterated the cart track and cultivating on it. Hence, suit for declaration of title and injunction not to further obliterate the suit cart track.

3. The defendants contested the suit questioning the title of the plaintiff over the suit property and the usage of the suit property as cart track by the plaintiff and his family members. The specific case of the defendants is that there is no cart track in existence as alleged by the plaintiff and even if there was a cart track existed earlier the plaintiff has abandoned his right for a quiet long time and presently the plaintiff is not in possession of the suit property. Hence, he is not entitled to the claim.

4. The Trial Court, after considering the evidence let in by the respective parties and taking note of the Advocate Commissioner's Report, has held that, after re-survey of the land, the old S.No.37/A3 has been assigned as R.S.Nos.537/5, 537/6, 537/7 and 537/8. The suit subject property, which is in S.No.537/6, has always been a cart track. Neither the defendants nor their predecessors, had right or title over the said cart track and allowed the suit.

5. On appeal, the lower appellate Court, while reiterating the findings of the trial Court, had pointed out that, patta in the name of Pappammal the dependents predecessor in title will not confer any title or right to the defendants over the suit cart track when Muthusamy gounder, the husband of Pappammal was allotted 'B' schedule property (R.S.No.537/8) in the partition deed Ex.A3, the boundary is shown as south of East-West pathway. After the death of Muthusamy, his wife Pappammal has sold the property to R.R.Ponnuamy and others. They in turn sold to the

defendants. When the parent deed clearly describe the property lying south of cart track, the defendants cannot take advantage of non disclosure of cart track in his sale deed Ex.B1 and Ex.B2 and try to obliterate the cart track taking advantage of erroneous entry of Pappammal name in the patta. Further, the lower appellate Court has also pointed out that after resurvey the defendant is found in possession of excess land than the extent found in his title deed, which is left unexplained by the parties.

6. Lost before both the Courts below, the first defendant has preferred this second appeal and at the time of admission, this Court has formulated the following Substantial Questions of Law for consideration:

(i) Whether the Court below erred in law and misdirected themselves in granting the declaration relief merely on the basis of the self serving document Ex.A1, in the absence of any other oral or documentary evidence of title or in the absence of alleged acquiring of suit property in the alleged title deed?

(ii) On the findings by the Courts below that the plaintiff has not proved the existence of the suit cart track, can a decree for title be granted to plaintiff on the weakness of the defendants case?

7. The learned counsel appearing for the appellant took through the judgments of the courts below and contended that, when none of the documents relied by the plaintiff co-relates with the alleged cart track, the Courts below ought not to have granted declaration. He further contended that, Ex.A1-partition deed is a self serving document and therefore, the Courts below ought not to have relied upon it. The plaintiff, without establishing the existence of cart track, has sought for a declaration to a piece of land to which, he has no title, right or possession.

8. Per contra, the learned counsel appearing for the respondents submitted that the entire stretch of land was originally owned by their forefather and initially in the year 1955 through Ex.A3, there was a partition between the sharers wherein, 'A' schedule property was allotted to the plaintiff and 'B' schedule property was allotted to one Muthusamy gounder. The defendants, who have purchased S.No.537/8 from the legal heirs of Muthusamy gounder, had obliterated the cart track and preventing the plaintiff from using the cart track, which is in S.No.537/6 for which, the defendants have no right or title. Referring the plan annexed to the Commissioner's Report, the learned counsel appearing for the respondents submitted that the width of the cart track on the

north of the plaintiff's land gets reduced gradually from 15 feet to 6 feet whereas, width of the cart track running south west leading to the main road is uniformly 15 feet. The Advocate Commissioner's sketch and Report clearly indicate that the entire stretch of land which was once owned by the ancestors of the plaintiff, was divided in the year 1955 and further divided in the year 1988. To have ingress and egress to the respective shares, the pathway has been provided and now, the defendants having purchased the property in the year 1981 have encroached upon portion of it and are trying to totally obliterate the cart track, which had been in use for several years.

9. The cumulative assessment of the title deeds, the Courts below have concurrently held that, existence of cart track is established through Ex.A1, Ex.A3 and Ex.B3. The report of the Advocate Commissioner, who has inspected the suit property and the evidences stated above, has clearly indicated that in between the plaintiff's land, from north to south, there is a cart track with 15 feet width, while the said cart track near the defendants land turns towards south east and run east west, it gets narrow from 15 feet to 3 feet at the end. While there is a reference about the cart track and common enjoyment between the parties to the partition deed Exs.A1 and A3, the title deed of the defendants Ex.B1 and Ex.B2 does not show the cart track as its northern boundary.

10. Mere absence of such description in the defendants sale deed does not mean that there was no cart track on the field, while other documents earlier to Exs.B1 and B2 refers about the existence of cart track.

11. It is settled principle of law that, when the parties trace their title to common owner, if their documents speaks about the existence of pathway for common usage of the sharers, the same shall be preserved and also devolve upon the subsequent purchasers. In this case, the plaintiff and the defendants trace their title to the property from common ancestors. When it is proved through document and Commissioner's Report, a cart track of 15 feet width runs in between the plaintiff's land, is unaltered. There is no reason for it to be narrowed, where the defendants property is located. The Courts below have concurrently found that the defendants have encroached upon the suit cart track, after thoroughly analysing the title deeds, measurement and found that, boundaries furnished in the appellants parent deed also refers the existence of cart track and not Ex.A1 alone. Therefore, the Substantial Question of Law that the Courts below relied only upon Ex.A1 self serving document to arrive at the conclusion, is factually incorrect. A cumulative assessment of the evidence regarding title of the property and existence of cart track has found in favour of the plaintiff by the Courts below and allowed the suit.

12. This Court finds no infirmity in the concurrent finding of the Courts below for interference. Hence, this Second appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The First Additional District court cum
Chief Judicial Magistrate,
Erode.

2.The District Munsif cum Judicial Magistrate,
Perundurai.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras 104.

+lcc to Mr.N.Manokaran, Advocate, S.R.No.58043

S.A.No.2033 of 2000

PPA(CO)
CA(27/10/2017)

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