

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.07.2017

CORAM :

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

S.A.No.527 of 2015

and

M.P. No. 1 of 2015

1. R. Murugan
 2. K. Ganesan
- ...Appellants/Plaintiffs

Vs.

1. P.R. Arunachalam
 2. Gomathi
 3. Gowtham
 4. Thenmozhi
- ... Respondents/Defendants

PRAYER : This Appeal is filed under Section 100 C.P.C., against the Judgment and decree dated 04.12.2014, passed in A.S.No. 54 of 2014 on the file of the 1st Additional Sub Court, Erode reversing the decree and Judgment dated 27.02.2014 passed in O.S.No. 167 of 2012 by the Principal District Munsif Court, Erode & District.

For Appellants : Mr. I.C. Vasudevan

For Respondents : Ms. S. Varsha
for Mr. Naveen Kumar Murthi

J U D G M E N T

This Second Appeal arises out of the Judgment and decree dated 04.12.2014, passed in A.S.No. 54 of 2014 by the 1st Additional Sub Court, Erode reversing the decree and Judgment dated 27.02.2014 passed in O.S.No. 167 of 2012 by the Principal District Munsif Court, Erode District.

2. Brief facts of the case is as follows :-

The appellants herein filed the suit in O.S. No.167 of 2012 for permanent injunction restraining the defendants from altering or disturbing their peaceful possession and enjoyment of the suit cart track. The plaintiffs purchased the suit properties from the defendants 1, 3 and 4 and from one Rangasamy Gounder (late) by registered sale deed dated 30.08.2006. The 1st defendant is the husband of the second defendant and the defendants 3 & 4 are their children. The

deceased Rangasamy Gounder is the father of the 1st defendant. When the plaintiffs purchased the property, the defendants formed a cart track from the existing cart track in RS No.46/6 in order to reach the plaintiffs' land in R.S. No.40/13 measuring 1.22 acres. The said cart track runs towards north, turning to the west and reaches the plaintiffs' property. At the point of turn, the width of the cart track is about 15 to 16 ft and the shape of the junction is curved. Since the defendants are attempting to prevent the plaintiffs from using the cart track, the plaintiffs filed the suit for permanent injunction, seeking the aforesaid prayer.

3. The 1st defendant has filed the written statement stating that the contention of the plaintiffs that width of the cart track is 15 to 16 feet is false and that as per the sale deed the width of the cart track is uniformly 12 feet. Hence, prayed that the suit is liable to be dismissed.

4. Based on the pleadings, the trial Court framed necessary issues. During the course of trial, the 2nd plaintiff examined himself as P.W.1 and marked Exs.A1 to A8. On the side of the defendants, the 1st defendant examined himself as D.W.1 along with one other witness but marked no documents. The report and plans of the Advocate Commissioner were marked as Exs.C1 to C3. After hearing the parties and on perusing the oral and documentary evidences of the suit, the court below has held that the plaintiffs have proved that they are entitled to use the suit cart track, which has 12 feet width throughout the cart track but has curve shape at the point of turning. Pending the suit, the trial court has appointed an Advocate Commissioner and the learned Advocate Commissioner submitted his report along with two sketches prepared during his visits. The first sketch reveals that 'B' and 'E' portion is the disputed schedule property and as per the report, there is a curve between 'B' and 'E'. As per the second sketch, between 'B' and 'E', there is a square. The above has been stated in paragraph 5 and 6 of the said report. No objection has been filed by the defendants, against the learned Advocate Commissioner's report. The trial court decreed the Suit in favour of the plaintiffs. Challenging the same, the respondents herein filed an appeal in A.S. No.54 of 2014 before the 1st Additional Subordinate Judge, Erode.

5. In the aforesaid appeal, the lower Appellate Court had held that the plaintiffs cannot seek the relief beyond 12 ft., as per the sale deed. The lower Appellate Court after formulating necessary points for determination reversed the judgement and decree of the trial court and allowed the appeal filed by the defendants.

6. The Second Appeal filed by the appellants/ plaintiffs, is admitted by this Court, framing the following substantial questions of law:

- a) Whether the first Appellate Court is correct in reversing the judgment and decree passed by the trial court without considering the same on proper manner, especially when the trial court granted the relief with regard to 12 feet pathway only ?
- b) Whether the Court below was correct in holding that the appellants were entitled only to 12 feet pathway by relying on the sale deed without specifying the existence of the pathway at the curved portion whether it is curved or straight one as found by the trial court especially when the sale deed is silent with regard to the fact of existence of the pathway either curved or straight one ?
- c) Whether the court below is correct in holding that the 12 feet pathway mentioned in the sale deed refers to the existence of the pathway even at the curved point should be taken as a straight one only.

7. The learned counsel for the appellants herein would submit that the entire case of the appellants/ plaintiffs is the 12 feet cart track, as per the document produced under Exh.A1 sale deed. There is no doubt that while filing the suit, the plaintiffs have claimed 15 - 16 ft. But after the findings of the trial court, the claim has been restricted to 12 feet of the suit property. But the Appellate Court has wrongly interpreted and has reversed the judgment, as if the appellants/ plaintiffs are claiming more than 12 feet of the suit property. Even before the Appellate Court, the appellants have restricted only 12 feet cart track, as per the sale deed marked under Ex.A1. Ms. S. Varsha, the learned counsel appearing for the respondents vehemently objects this second appeal, stating that the appellants/ plaintiffs cannot claim any right beyond 12 feet cart track, as per the sale deed. The Appellate Court has discussed the grounds raised by the appellants/ plaintiffs and has rejected the contention of the appellants/ plaintiffs and reversed the judgment of the trial court. The learned counsel for the respondents clearly submitted that both the courts had concurrently held that the appellants/ plaintiffs are entitled only for 12 feet cart track in the suit property. If the appellant restricts only to 12 feet, then the respondents would have no grievance for considering the questions of law, framed by this Court.

8. In view of the said submissions of the learned counsel for the parties concerned, if the said curved portion is within 12 feet, then the appellant is entitled for the claim made out, in the suit. On perusal of the relief prayed in the present appeal, it is seen that the appellants have filed the suit only for permanent injunction. Admittedly, as per the learned Advocate Commissioner's report in the 1st sketch, there is a curve in between 'B' and 'E'. On his second visit, between 'B' and 'E', there is a square, in the

disputed suit property. The respondents/ defendants have not filed any objection against the said Advocate Commissioner's report, before the trial Court. Therefore, the relief that was prayed in the suit, cannot be granted by this Court. It is for the appellants / plaintiffs to work out their remedy before the concerned forum. Hence, this Court is of the view that there is no question of law involved in the second appeal.

9. Therefore, the Second Appeal is dismissed. However, it is open to the parties concerned to work out their remedy before the appropriate forum, for necessary relief. Consequently, the connected Miscellaneous petition is closed. No order as to costs.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

avr

To

1. The 1st Additional Subordinate Judge Court,
Erode.
2. The Principal District Munsif,
Erode District.
3. The Section Officer, Vr Section, High Court, Madras.

+ 1 cc to Mr. I.C. Vasudevan, Advocate Sr.54865

+ 1 cc to Mr. Naveen Kumar, Advocate Sr.54270

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