

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.7.2017

CORAM

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

S.A.No.657 of 2015

and

M.P.No.1 of 2015

1.R.Muniappan
2.Kottaminti Ramasamy
3.R.Narayanan
4.Chettiappan
5.M.Veerabhadran ... Appellants/Defendants

Vs.

1.Mahendran
2.Kamalanathan ... Respondents/Plaintiffs

Second appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree of the Additional Subordinate Judge, Krishnagiri dated 30.04.2015 made in A.S.No.29 of 2013 reversing the Judgment and Decree of the District Munsif, Krishnagiri, dated 11.7.2013 made in O.S.No.251 of 2009.

For Appellants : Mr.V.Nicholas

For Respondents : Mr.T.Panchatsaram

JUDGMENT

Brief facts of the case as follows:

The suit property was originally belongs to Malammal by virtue of registered Gift deed, dated 25.8.1953 executed by her mother Gangammal and since then she was in possession and enjoyment of the suit property. Patta was also transferred in her name. The suit property was subdivided by assigning survey No.332/1 0.69.5 Hectare. Malammal died on 27.9.1999 intestate leaving behind her two sons viz., the plaintiffs herein and her two daughters viz., Lakshmi and Sarasu. In the family arrangement, the suit property was allotted to the share of the respondents/plaintiffs and since then the plaintiffs have been in possession and enjoyment of the suit property. Due to prior enmity between the plaintiffs and the 5th defendant, at the instance and the instigation of the 5th defendant, the defendants joined together and attempting to form a road in the suit land even though there is already a cart track in S.No.331, which is situated on the west of the suit land. Therefore, the respondents/plaintiffs have filed the suit in O.S.No.251 of 2009 before the District

Munsif, Krishnagiri for permanent injunction against the defendants/appellants. The aforesaid suit was dismissed. Challenging the judgment and decree, the respondents/plaintiffs filed an appeal in A.S.No.29 of 2013. The appellate Court after considering the oral and documentary evidence adduced by both sides, set aside the judgment and decree passed by the trial Court and allowed the appeal. Challenging the judgment and decree of the appellate Court, the defendants/ appellants preferred the Second appeal before this Court.

2. Counsel for the appellants/defendants would submit that at the instance of the respondents/plaintiffs, the revenue authorities have wrongly subdivided the land in S.No.331 without giving notice to the 5th defendant and his family members. The cart track starts from S.No.333 runs through S.No.332/2, 332/1, 330/7, 330/6C and 330/5 and ends in Elathagiri-Jedukothur road. S.No.332/2 belongs to one Chinna-thambi and S.No.330 belongs to Venkataramansamy temple and others. During festival in the said temple, the said cart track has been used by the villagers to reach the temple. The aforesaid cart track has been used by the defendants and the villagers for more than 50 years. By accepting the said contention, the trial Court has rightly dismissed the suit and held that the suit is liable to be dismissed for non joinder of necessary parties in the suit and also on the basis of the report submitted by the Advocate Commissioner which states that there is cart track in the plaintiffs' property in S.No.332/1. Aggrieved by the same, the respondents/ plaintiffs filed an appeal in A.S.No.29 of 2013 before the appellate Court. On the basis of the Advocate Commissioner's report and on the basis of the oral and documentary evidence, the appellate court held that there is cart track which runs through S.No.332/1. Therefore, there is no dispute with regard to existence of cart track in the suit property and set aside the judgment and decree passed by the trial Court.

3. In so far as the second proviso is concerned, the appellate Court considered the point and held that the appellant has not sought for declaratory relief, on the basis of easementary right or on the basis of customary right for the usage of the said cart track by the defendants. In the absence of any relief prayed for by the defendants, Appeal suit was allowed and decreed the suit as prayed for by the plaintiff. Therefore, the defendants have filed the present Second appeal raising substantial questions of law before this Court.

4. Heard the learned counsel for the appellants/defendants, the learned counsel for the respondents/plaintiffs and perused the materials available on record.

5. It is clear from the facts of the case and the findings rendered by the Courts below, no relief for

declaration has been sought for by the appellants/defendants and thus, the suit was decreed by the appellate court holding that the respondents/ plaintiffs are entitled to get relief of permanent injunction against the defendants/appellants. Moreover, the appellants/defendants have not filed any documents before the courts below to establish their right in the suit property. Therefore, in the absence of any materials to establish the right of the defendants, the substantial questions of law are answered against the appellants/defendants.

6. At this stage, learned counsel for the appellants/ defendants seeks liberty of this court to file appropriate suit without affecting his right in view of the observations made in the appeal.

7. In view of the foregoings, the Second appeal is dismissed. In the event of filing suit by the appellants/ defendants against the plaintiffs in respect of other relief of the suit property, the same has to be decided independently, without being influenced by any observations made in the Second appeal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vaan

To

1.The Additional Subordinate Judge,
Krishnagiri

2.The District Munsif,
Krishnagiri.

+1cc to Mr.V.Nicholas, Advocate, S.R.No.53909

+1cc to Mr.T.Panchatsaram, Advocate, S.R.No.53585

S.A.No.657 of 2015

RJ(CO)
CA(15/11/2017)