

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.12.2017

PRONOUNCED ON:21.12.2017

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A. No.1384 of 2002

1.Chellammal
2.Sambasivam
3.Kembu
4.Murugan

... Appellants/Appellants/Defendants.

Vs.

Rajagopal Gounder ... Respondent/Respondent/plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 28.03.2002 made in A.S.No.52 of 2000 on the file of the Subordinate Judge, Arani, Tiruvannamalai District, confirming the Judgment and Decree dated 27.09.2000 made in O.S.No.34 of 1993 on the file of the District Munsif, Polur.

For Appellants : Mr.Dhalapathy Vigneshkumar
for MR.M.Sriram

For Respondent : Mr.V.Raghavachari

J U D G M E N T

This second appeal is directed against the judgment and decree dated 28.03.2002 made in A.S.No.52 of 2000 on the file of the Subordinate Court, Arani, confirming the judgment and decree dated 27.09.2000 made in O.S.No.34 of 1993 on the file of the District Munsif Court, Polur.

2. The parties are referred to as per the rankings in the trial court.

3. Suit for permanent injunction.

4.The case of the plaintiff in brief is that he is the owner of the "A" schedule property described in the plaint and the plaintiff has been in possession and enjoyment of the "A" schedule property from the days of his predecessor in interest and the "A" schedule property is situated in the north street and on the south of the house, the backyard is situated and there is a cart pathway to a width of 8 feet leading from north street to backwards of the plaintiff, defendants, one Periyasamy and Kulandai gounder and the cart pathway has been existence for more than 60 years and only through the same, the plaintiff and the other house owners have to take their cattle and the same is described in the "B" schedule of the plaint and due to recent enmity, the defendants attempted to obstruct the pathway above stated illegally and hence the suit for appropriate reliefs.

5.The case of the defendants in brief is that there is no cart pathway as described in the "B" schedule and the same is also not reflected in the sale deeds of the parties and the U.D.R. Tashildar has no right to give joint patta in favour of the plaintiff, the suit is bad for non-joinder of Periyasamy gounder, the resident neayby and the property claimed to be the cart pathway is mentioned only as defendants' Thottam and the defendants are using the backyard as defendants Thottam and even in their sale deeds there is no mention of any cart pathway and the U.D.R patta has not come into force and the "B" schedule property belong to the defendants and hence the same cannot be used as cart pathway by the plaintiff as claimed and the suit is liable to be dismissed.

6. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A3 were marked. On the side of the defendants', D.Ws.1 to 4 were examined. Exs.B1 and B2 were marked. Exs.C1 and C2 were also marked.

7. On a consideration of the oral and documentary evidence and the submissions made, the Courts below were pleased to accept the plaintiff's case and accordingly granted the reliefs in favour of the plaintiff. Aggrieved over the same, the present second appeal has been laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

(1)Whether the Courts below are right in granting decree when the suit is bad for non-joinder of necessary party?

(2)Whether the Courts below are justified in not dismissing the suit when the suit for

bare injunction without relief for easementary right is not maintainable?

9. The suit property described in the plaint "B" schedule is the cart pathway and according to the plaintiff, the same has been used as a pathway by the plaintiff and the neighboring property owners including the defendants for reaching their backyards from the north street and further according to the plaintiff, the said pathway has been in existence and been in use for several years and accordingly enjoyed by the plaintiff and his predecessor's interest and it is the case of the plaintiff that on account of enmity, the defendants are obstructing plaintiff from enjoying the cart pathway.

10. The defendants have taken a plea that the cart pathway as described in the plaint "B" schedule is not in existence and the same is also not reflected in any of the title deeds of the parties concerned and the plaintiff has never used the "B" schedule property as cart pathway and it is being used only as Thottam by the defendants along with their property and the plaintiff cannot take advantage of the wrong joint patta issued under U.D.R scheme and lay a false claim to the "B" schedule property as if, it is a common pathway for taking cattle to the backyards of the plaintiff and other neighboring property owners and hence according to them the suit is liable to be dismissed.

11. No doubt, the suit cart pathway is not reflected in the title deeds of the parties concerned. However, to show the existence of the cart pathway, it is seen that in this matter, an Advocate Commissioner has been appointed and he has inspected the property concerned and filed his report and plan marked as Exs.C1 and C2. A perusal of Exs.C1 and C2 would go to show that the Advocate Commissioner has inspected the property with the assistance of Surveyor and V.A.O and accordingly has noted the presence of the cart pathway to a width of 6 feet and length of 49 feet and also mentioned that the existence of the above said pathway is also reflected in the field measurement book and the features on ground tally with the entries of the field measurement book and the cart pathway runs north to south from Aottu street. Thus, it is found that the cart pathway is in existence as pleaded by the plaintiff, it is found that P.W.2 examined on behalf of plaintiff, who is a neighboring property owner also speaks about the existence of cart pathway. D.W.2 also accepted that the Commissioner during time of his inspection had identified the cart pathway. Despite the identification of the existence of the cart pathway by the Advocate Commissioner, as put forth by the Advocate Commissioner with reference to the same, in his report and plan marked as Exs.C1 and C2, the defendants have not resisted the same by placing any objection to the report and plan. It is

therefore found that the defendants have admitted the existence of the cart pathway as noted and determined by the Advocate Commissioner. Further, the report of the Advocate Commissioner is also fortified by the field measurement book as stated by him and also the cart pathway has been given a separate sub-division number under U.D.R scheme and accordingly it is seen that the cart pathway has been in use by all the neighboring property owners for access to their backyards from the main street and also for taking their cattle etc., and such being the position, the contention of the defendants that the cart pathway as determined by the Advocate Commissioner is not available on ground does not merit acceptance.

12. The Courts below have rightly determined the existence of the cart pathway as found by the Advocate Commissioner and reflected in Exs.C1 and C2 and accordingly granted the appropriate reliefs in favour of the plaintiff. The above reasonings and conclusion of the Courts below have accepting the plaintiff's case, as such, are not shown to be suffering from any infirmity or defects and hence, it is seen that when the plaintiff and the neighboring property owners including the defendants has been using the same in common as a pathway as above discussed, it is seen that the defendants are not entitled to prevent the plaintiff from enjoying the same and hence on that basis, the suit laid by the plaintiff is found to be maintainable and there is no necessity on the part of the plaintiff as such to claim any easementary right in respect of the said pathway as the defendants have failed to establish that they have any exclusive and absolute right over the same and the cart pathway as found by the Advocate Commissioner is seen to be a common pathway for one and all and there is no necessity on the part of the plaintiff to claim any easementary right as such from the defendants.

13. The defendants have taken a plea that the suit is bad for non-jointer Periyasamy gounder, a neighboring property owner. However, when according to the plaintiff, only the defendants had illegally obstructed his enjoyment of the cart pathway and not the others including Periyasamy gounder, it is seen that the plaintiff is not necessitated to implead all the neighboring property owners as parties to the suit and it is therefore rightly found by the Courts below that the suit is not bad for proper and necessary parties.

14. The substantial questions of law formulated in the second appeal are accordingly answered in favour of the plaintiff and against the defendants.

15. In conclusion, the second appeal fails and accordingly is dismissed with costs. Connected miscellaneous petition if any is closed.

Sd/-
Assistant Registrar (CS-viii)

//True Copy//

Sub Assistant Registrar

mfa

To

1. The Subordinate Judge, Arani, Tiruvannamalai District.
2. The District Munsif, Polur.

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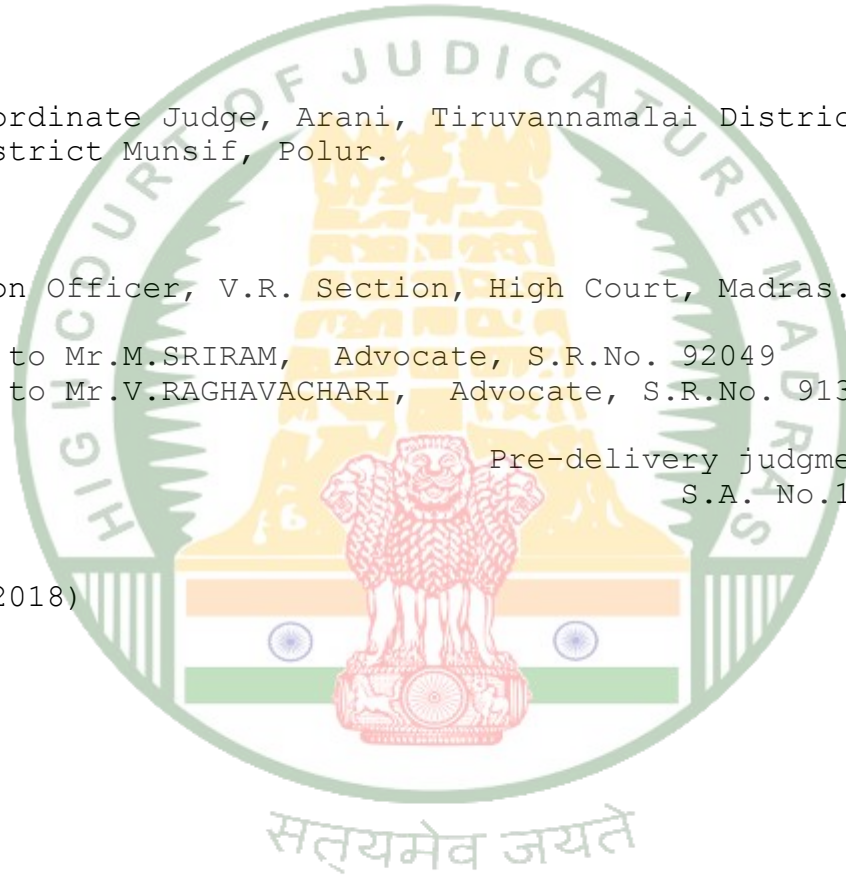
The Section Officer, V.R. Section, High Court, Madras. (2 COPIES)

+1cc to Mr.M.SRIRAM, Advocate, S.R.No. 92049

+1cc to Mr.V.RAGHAVACHARI, Advocate, S.R.No. 91319

Pre-delivery judgment made in
S.A. No.1384 of 2002

GJ(CO)
TR(30/01/2018)



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