

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 12.01.2017**

**PRONOUNCED ON : 20.01.2017**

**CORAM**

**THE HONOURABLE MR. JUSTICE T.RAVINDRAN**

**S. A.No.737 of 2011**

**and**

**M.P.No.1 of 2011**

Subbaian

...  
Vs.

Appellant

Nanjundappan

...

Respondent

Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.34 of 2010 passed by the Subordinate Judge, Sathyamangalam, dated 31.01.2011 confirming the Judgment and Decree in O.S.No.95 of 2006 passed by the District Munsif Court, Sathyamangalam, dated 27.04.2009.

For Appellant : Mr.R.T.Doraisamy

For Respondent : Mr.I.C.Vasudevan

**JUDGMENT**

Challenge in this second appeal is made by the plaintiff against the judgment and decree dated 31.01.2011 passed in A.S.No.34 of 2010 on the file of the Sub-Court, Sathiyamangalam, confirming the judgment and decree dated 27.04.2009 passed in O.S.No.95 of 2006

on the file of the District Munsif Court, Sathiyamangalam.

2. The suit has been laid by the plaintiff for a declaration that the recitals, with reference to the enjoyment of common share in Survey No.284/3 for Cart Track purpose, had been included in the sale deed dated 04.04.2006 executed by him in favour of the defendant without the consent of the plaintiff and without properly reading the sale deed and consequently, for permanent injunction.

3. The sale deed, in question i.e. dated 04.04.2006, has been marked as Ex.A2. A perusal of Ex.A2 would go to show that the plaintiff is not impugning the sale deed wholly as such and on the other hand, is challenging only the recitals as regards the above said sale deed with reference to the enjoyment of the common share in Survey No.284/3 for Cart Track purpose. According to the plaintiff, there was no consensus *ad idem* between the parties for the inclusion of the above said common share in Survey No.284/3 for Cart Track purpose and it is further stated that the defendant has fraudulently incorporated the said recitals in the sale deed and the plaintiff also without reading the same had signed the sale deed and only subsequently, he had come to know about the fraud committed by the

defendant and hence, has filed the suit.

4. The above case of the plaintiff has been stoutly opposed by the defendant and according to the defendant, only with an intention of giving the enjoyment of Cart Track situated in Survey 284 / 3 for the common enjoyment of all the adjacent owners thereto, the recitals were incorporated and therefore, there is no need for deleting the above recitals as prayed for by the plaintiff.

5. Inasmuch as the plaintiff has pleaded that fraud has been played by the defendant in incorporating the said recitals, it could be seen that it is for the plaintiff to establish his case with acceptable proof and material. However, both Courts have found that the plaintiff has miserably failed to establish his case.

6. According to the plaintiff, at the time of purchase of the property under Ex.A2, the defendant was owning the other lands in the locality and he was making use of a pathway for reaching the said lands and the parties have agreed that the defendant should also make use of the said pathway for reaching the property purchased under Ex.A2 and therefore, there is no need for leaving any common share in

Survey No.284/3 for Cart Track purpose to the defendant in Ex.A2 and therefore, according to the plaintiff, the above recitals have been fraudulently included in the document by the defendant. However, giving a go bye to the above case, the Courts below have found the plaintiff himself has admitted during the course of his evidence that the defendant was not owning any property nearby at the time of purchase of the property from him under Ex.A2. Therefore, the plea that the defendant had agreed to make use of the pathway used by him to reach the other properties in the locality for enjoying the property purchased under Ex.A2 falls to the ground.

7. Further, it could be seen that even in the boundary recitals of Ex.A2, the common Cart Track in Survey No.284/3 has been shown as the western boundary along with the extent in the survey number 284/2 belonging to the plaintiff. It is not the case of the plaintiff that the boundary recitals have also been wrongly given and no relief with reference to the same is sought for. Further, as found by the courts below, even in the parent document marked as Ex.A6, there is reference about the common Cart Track in Survey No.284/3. Further, as per Ex.A7, the plaintiff has purchased an extent. Further, as found by the Courts below, it could be seen that the plaintiff has retained an

extent of 0.10 cents in Survey No.284/3, which is situated immediately to the south of the survey No.272/2. Further, the plaintiff has also purchased an extent of property in Survey No.284/2 from Desappa Gounder and the defendant has purchased a property in survey No.284/2, which is found to be situated to the west and south of survey No.284/2 purchased by the plaintiff from Desappa Gounder. As found earlier, the property purchased by the defendant from the plaintiff in Survey No.284/3 as found to be situated to the East of the extent of 0.10 cents retained by the plaintiff and also, the extent of 0.05 cents purchased by the plaintiff in Survey No.284/2.

8. Therefore, it could be seen that as found by the courts below, for reaching his lands in survey No.284/3 and 284/2, the defendant has to have access only through the common Cart Track found in 0.10 cents retained by the plaintiff in survey No.284/3. Accordingly, it could be seen that necessary recitals permitting the defendant to use the common Cart Track situated in Survey No.284/3 have been incorporated in Ex.A2 and in such view of the matter, the case of the plaintiff that the above said recitals have not been intended to be included in the document and the same have been incorporated by the defendant without his knowledge as such cannot be accepted in any

manner.

9. Ex.A2 is a registered document. Further, the plaintiff in his evidence has also admitted that the recitals in Ex.A2 had been incorporated to his knowledge and only as per his direction, the recitals had been incorporated therein. Prior to Ex.A2, the defendant was not owning any property in the locality, therefore, it could be seen that as found by the courts below, the defendant would not have been aware of the physical features obtaining in the locality and accordingly, inasmuch as the common Cart Track found in Survey No.284/3 had been used by the owners of the land abutting thereto, it could be seen that as directed by the plaintiff, necessary recital as regards the enjoyment of the common Cart Track in Survey No.284/3 have also been included in the sale deed Ex.A2 and in such circumstances, the case of the plaintiff that the parties have not intended to include the said recitals in the document as such cannot be accepted and equally, the case of the plaintiff that the defendant had fraudulently incorporated the said recitals in the document as such cannot be accepted.

10. Further, it is also seen from the evidence adduced by the

plaintiff himself that there is no other pathway for the defendant to reach his property and further, the defendant has also not laid any new pathway by making use of the recitals found in Ex.A2. In such view of the matter, the contention of the plaintiff that the defendant by making use of the recitals incorporated in Ex.A2 is adttemting to create a new Cart Track in Survey No.284/3 as such cannot be accepted. On the other hand, when it is found by the Courts below that the Cart Track had been in existence from time immemorial in Survey No.284/3 and been in the use of the land owners abutting thereto, it could be seen that accordingly, the plaintiff had also granted permission to the defendant to use the common Cart Track and in such view of the matter, it is found that only as directed by the plaintiff and to his knowledge, necessary recitals to that effect have been incorporated in Ex.A2 and therefore, the plaintiff cannot now turn around and plead that the recitals to that effect have been fraudulently incorporated in Ex.A2 by the defendant and without his knowledge.

11. The Courts below have rightly on the basis of the evidence available on record in the proper manner disbelieved the plaintiff's case and accordingly, non suited him. No interference is called for with reference to the above findings and conclusions of the courts

below.

At the end, no substantial question of law is found to be involved in this second appeal and accordingly, the second appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

20.01.2017

Index : Yes/No  
Internet: Yes/No  
sms

To

1. The Sub-Court, Sathiyamangalam.
2. The District Munsif Court, Sathiyamangalam.

**T.RAVINDRAN,J.**

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**Pre-delivery Judgment in**  
**S. A.No.737 of 2011**  
**and**  
**M.P.No.1 of 2011**

**20.01.2017**

