

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.10.2017

PRONOUNCED ON : 24.10.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.354 of 2001

Chenniappan

...Appellant/Appellant/
Plaintiff

Vs.

1.Velusamy

2.Rangayal

...Respondents/Respondents/
Defendants

Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 16.11.2000 made in A.S.No.39 of 1994 on the file of the Principal Sub Court, Gobichettipalayam confirming the judgment and decree dated 11.03.1994 made in O.S.No.316 of 1991 on the file of the District Munsif Court, Gobichettipalayam.

For Appellant : Mr.M.Narayanasamy

For Respondents : Mr.P.R.Balasubramanian

JUDGMENT

This second appeal has been directed by the plaintiff, impugning the Judgment and decree dated 16.11.2000 made in A.S.No.39 of 1994 on the file of the Principal Sub Court, Gobichettipalayam confirming the judgment and decree dated 11.03.1994 made in O.S.No.316 of 1991 on the file of the District Munsif Court, Gobichettipalayam.

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

3. Suit for Permanent Injunction.

4. The case of the plaintiff is that the plaintiff is the owner of the suit property and the suit Cart Track running east - west had been purchased by the plaintiff from the first

defendant by way of the sale deed dated 03.07.1989 and thence from, it is only the plaintiff, who has been in possession and enjoyment of the suit property as the Cart track by paying necessary tax in respect of the same and the first defendant's property situate adjacent to the suit property and the first defendant made a request to the plaintiff to re-convey the suit property again to him and the said request of the first defendant was declined by the plaintiff and therefore, the defendants, developing enmity against the plaintiff are making attempts to prevent the plaintiff from taking his cart through the suit Cart Track and preventing the plaintiff from enjoying the suit property and hence, the suit for permanent injunction.

5. The case of the defendants, in brief, is that there is no Cart Track as shown in the plaint plan and it is true that the plaintiff has purchased the property from the first defendant on 03.07.1989 and the lands of other persons are situated West of the first defendant's land and the plaintiff had informed that he intends to purchase the lands of other persons also so as to form the Cart Track to reach his lands and accordingly, purchased the property from the first defendant. However, as the other land owners had refused to sell their properties to the plaintiff, the plaintiff was unable to enjoy the property purchased from the first defendant as Cart Track and also not evinced interest to use the same as Cart Track and accordingly, agreed to re-convey the suit property to the first defendant and in evidence thereof, the first defendant had paid a sum of Rs.2,000/- to the plaintiff and the plaintiff agreed to execute the deed of re-conveyance on the receipt of the balance amount of Rs.700/-. However, the plaintiff refused to re-convey the suit property to the first defendant and on the other hand, laid the suit on false cause of action and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs 1 & 2 were examined and Exs.A1 to 6 were marked. On the side of the defendants, DWs 1 & 2 were examined and no documentary proof had been adduced. Exs.C1 to C3 were also marked.

7. On a consideration of the oral and documentary evidence adduced in the matter, the Courts below were pleased to dismiss the suit laid by the plaintiff. Aggrieved over the same, the second appeal has been preferred.

8. The following substantial questions of law were formulated for consideration at the time of admission of the second appeal:

" 1. Whether the Courts below are correct in dismissing the suit when the defendants/respondents raised pleas and deposed evidence against the recitals found in Ex.A1, registered sale Deed, contravening the provisions of Sec.92 of the Evidence Act?.

2. Whether the lower appellate Court is correct in dismissing I.A.No.222/2000 when there is sufficient reasons to allow the application?"

9. It is not in dispute that the plaintiff had purchased the property described in the plaint schedule by way of the sale deed dated 03.07.1989 marked as Ex.A1. It is the case of the plaintiff that he had purchased the suit property under Ex.A1 for the purpose of using the same as Cart Track to reach his lands. It is found that following the purchase of land under Ex.A1, it is only the plaintiff, who has been in possession and enjoyment of the said property by paying necessary revenue charges, which could be evidenced from Exs.A2 to 6. It is, thus, found that the plaintiff has title to the suit property.

10. According to the plaintiff, inasmuch as the first defendant made a request to him to re-convey the suit property and as the above said request had been declined by him, it is stated that the defendants started making attempts to interfere with his possession and enjoyment of the suit Cart Track, but they are not entitled to do so and hence, the suit for appropriate reliefs.

11. The conveyance of the suit property under Ex.A1 in favour of the plaintiff is not disputed by the defendants. According to the defendants, the suit property had been purchased by the plaintiff for the purpose of forming Cart Track to reach his lands and as the plaintiff had not purchased the adjacent properties from the other land owners, he was unable to lay the Cart Track to reach his lands and hence, requested the first defendant to again purchase the property and accordingly, the first defendant parted with a sum of Rs.2,000/- to the plaintiff and the plaintiff agreed to execute the deed of re-conveyance on the receipt of the balance sale consideration and the plaintiff, instead of executing the deed of re-conveyance, had laid the suit with false particulars and hence, the suit is liable to be dismissed and it is the specific case of the defendants that the suit Cart track had never been used by the plaintiff to reach his lands and the same is not in existence.

12. When it is not in dispute that the plaintiff had purchased the suit property from the first defendant under Ex.A1, it is seen that it is only the plaintiff, who is the owner of the suit property. The defence put forth by the defendants that the parties had agreed to reconvey the property to the first defendant and subsequently, the plaintiff has gone back against his promise etc., has not been established by the defendants by adducing acceptable and reliable evidence. It is seen that the Courts below have also not believed the above said defence version put forth by the defendants that the plaintiff has agreed to re-convey the suit property to the first defendant or the version of the defendants that they had paid a sum of Rs.2,000/- to the plaintiff for the same. Hence, it is found that the plea of re-conveyance projected by the defendants is false and accordingly, not established.

13. It is found that when the defendants have admitted the purchase of the suit property from the first defendant by the plaintiff under Ex.A1 and thereafter, the first defendant has no right in respect of the suit property and when it is further found that subsequent to Ex.A1, the first defendant or the defendants as the case may be have not been shown that they are in possession and enjoyment of the property conveyed under Ex.A1 and on the other hand, when it has been established clearly by the plaintiff that it is only he, who is in possession and enjoyment of the suit property by marking necessary Kist receipts as Exs.A2 to 6, it is seen that it is only the plaintiff, who is in possession and enjoyment of the suit property as described in the plaint. A perusal of Ex.A1 would go to show that the plaintiff has purchased the same only for the purpose of using the said property as Cart Track.

14. It is the plea of the defendants that inasmuch as the adjacent land owners had refused to sell their properties to the plaintiff, the plaintiff is unable to lay the Cart Track to reach his lands and hence, it is contended that the suit property is not used as Cart Track by the plaintiff and the existence of the Cart Track as pleaded by the plaintiff is false and hence, the suit is liable to be dismissed.

15. The above version of the defendants has found acceptance by the Courts below. In this connection, reliance has been placed upon the Commissioner's Report and Plan marked as Exs.C1 to 3. A perusal of Exs.C1 to 3 cumulatively would go to show that up to a certain level only, the Cart Track is in existence of a width of 7' and thereafter, gradually the Cart Track is not in existence and traces of Cart Track are available and only the

footpath is in existence to reach the plaintiff's land. Based upon the above said materials as evidenced from Exs.C1 to 3, the Courts below have proceeded to hold that inasmuch as the suit property has not been used by the plaintiff as Cart Track to reach his lands and the existence of Cart Track is not continuous till the lands of the plaintiff, the Court below have held that the plaintiff is not using the suit property as Cart Track and accordingly, dismissed his case. However, in my considered opinion, the above approach of the Courts below is erroneous, both on facts as well as on questions of law.

16. Once it is seen that the plaintiff has acquired title to the suit property by virtue of Ex.A1 and when it is further seen that it is only the plaintiff, who is in possession and enjoyment of the suit property and when it is further seen that the defendants are not in possession and enjoyment of the suit property after Ex.A1 and also have no valid title to the same and the defence of the defendants that they had endeavoured to get back the suit property from the plaintiff has also not been established and further when it is seen that the defendants are not entitled to interfere with the possession and enjoyment of the suit property purchased by the plaintiff under Ex.A1, the plaintiff is entitled to maintain the suit. No doubt, the suit property has been purchased by the plaintiff under Ex.A1 only for the purpose of using the same as Cart Track. Further, it is also seen that the existence of Suit Cart Track till the other lands of the plaintiff is not on ground. However, it is seen that up to a certain level, the existence of the suit Cart track is there. When it has been admitted that the plaintiff has purchased the property concerned under Ex.A1 and has valid title to the same, it is for the plaintiff to use the same as Cart Track or for any other purpose to which he is entitled to. When it is seen that the plaintiff has lawful title to the suit property and when the defendants have no manner of right or title to the same, as rightly put forth by the plaintiff's counsel, the defendants cannot be allowed to raise or plead a new case contrary to the recitals found in Ex.A1, as the same would amount to contravening the provisions of Section 92 of the Indian Evidence Act. Once the recitals found in Ex.A1 clearly show that the suit property had been conveyed to the plaintiff for the purpose of using the same as Cart Track, when according to the plaintiff, he has been using the same as Cart track, no doubt, on ground the existence of Cart Track upto his other lands is not available, still upto to a certain level the suit Cart Track is in existence and when for the said purpose, the plaintiff is entitled to use the same or make use of the suit property for any other purpose as he deems fit as he is lawful owner of the same, it is found that the defendants are not entitled to disturb the plaintiff's possession and enjoyment of

the suit property as such and on the said ground, it is seen that the plaintiff is justified to seek the relief of permanent injunction in his favour. Merely because the existence of the Cart track up to the other lands of the plaintiff is not available on ground, that by itself would not disentitle the plaintiff to seek the relief as regards the property admittedly purchased by him under Ex.A1 and in such view of the matter, it is found that the Courts below have erroneously discountenanced the case of the plaintiff, both on factual aspects as well as on legal aspects. The mere failure of the plaintiff to establish that the suit property has been used as Cart Track, that by itself would not disentitle the plaintiff to claim the relief of permanent injunction. When it is found that he is the lawful owner of the suit property and enjoying the same, his possession cannot be allowed to be interfered with by the defendants unlawfully. On the above score, it is seen that the plaintiff is entitled to obtain the relief of permanent injunction as prayed for.

17. Considering the nature of the relief sought for in the plaint, it is seen that the plaintiff has sought for the relief of permanent injunction, restraining the defendants from interfering with his possession and enjoyment of the suit property and when it is found that admittedly the suit property had been purchased by the plaintiff under Ex.A1, dehors the mode of enjoyment of the suit property as Cart Track, the plaintiff is entitled to enjoy the suit property as he deems fit and the said possession and enjoyment of the plaintiff cannot be allowed to interfere with by the defendants unlawfully and hence, it is seen that the plaintiff is entitled to obtain the relief of injunction as prayed for.

18. In the First Appellate Court, it is seen that the plaintiff has moved an application seeking the relief of framing an additional issue as regards the plea of re-conveyance made by the defendants. However, the said plea has been negatived by the First Appellate Court. Considering the nature of the relief sought for by the plaintiff in the suit, it is seen that there is no need for framing any subsequent issue in the suit as regards the plea of re-conveyance made by the defendants in the written statement. Therefore, it is found that the second substantial question of law formulated for consideration in the second appeal is unnecessary for the disposal of this second appeal and hence, not answered. In the light of the above discussions, it is found that the first substantial question of law formulated in this second appeal is answered in favour of the plaintiff and against the defendants.

19. In the light of the above discussions, the Judgment and decree dated 16.11.2000 made in A.S.No.39 of 1994 on the file of the Principal Sub Court, Gobichettipalayam, confirming the judgment and decree dated 11.03.1994 made in O.S.No.316 of 1991 on the file of the District Munsif Court, Gobichettipalayam are set aside and the suit laid by the plaintiff is decreed as prayed for with costs. Resultantly, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//
Sub Assistant Registrar

sms

To

- 1.The Principal Sub Court, Gobichettipalayam.
2. The District Munsif Court, Gobichettipalayam.

+ 1 cc to Mr.M. Narayanaswamy, Advocate Sr.75159
+ 1 cc to Mr.P.R. Balasubramanian, Advocate SR.74963

S. A.No.354 of 2001

GJ(CO)
EU(29/12/2017)

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