

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.10.2001
PRONOUNCED ON : 10.11.2017

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.Nos. 755 & 756 of 2001

S. A.No. 755 of 2001

1. K.S.Nanjappa Gounder
2. K.K.Narayanaswamy
3. Subramaniam
4. Nallasamy
5. M.Krishnamoorthy
6. Subbaiyan
7.Narayanan ... Appellants/Plaintiffs

Vs

1. K.P.Kandasamy
2. Radhamani ... Respondents/Defendants

S. A.No. 756 of 2001

1. Rakki Moopan
2. Rangasamy
3. Subramaniam
4. Thangavel
5. Senthil Kumar
6. Sivakumar
7. Chinnamuthan
8. Karuppusamy
9.Chinnapaiyan ... Appellants/Defendants

Vs.

Radhamani ... Respondent/Plaintiff

Second Appeals are filed under Section 100 of Civil Procedure Code, against the Judgment and decree dated 06.04.2000 made in A.S.Nos.50 & 51 of 1999 on the file of the Subordinate Court, Gobichettipalayam, confirming the judgment and decree dated 23.12.1998 made in O.S.No.13 of 1997 & 402 of 1996 on the file of the District Munsif Court, Gobichettipalayam.

For Appellants : Mr.S.Kaithamalai Kumaran
For Respondents : Mr.P.R.Balasubramanian
in both appeals

COMMON JUDGMENT

These second appeals are directed against the Judgment and decree dated 06.04.2000 made in A.S.Nos.50 & 51 of 1999 on the file of the Subordinate Court, Gobichettipalayam, confirming the judgment and decree dated 23.12.1998 made in O.S.No.13 of 1997 & 402 of 1996 on the file of the District Munsif Court, Gobichettipalayam.

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

3. O.S.No.402 of 1996 is laid for permanent injunction

4. O.S.No.13 of 1997 is laid for permanent injunction.

5. The case of the plaintiff, i.e. Respondents in the second appeals, in both suits is that the plaintiff Radhamani is entitled to 30 cents situated in Survey No.588/1 as per the settlement deed dated 24.10.1989 and pursuant to the same, she has erected power loom, godown and residential house in the above said property and enjoying the same and the plaintiff is having Cart Track right over the suit property for reaching the above said property from Karattupalayam road and other than the suit cart track, the plaintiff is having no other way for having access to her property and the plaintiff and her predecessor interest had been enjoying the suit cart track more than 50 years and the defendants are not entitled to prevent the plaintiff from enjoying the suit cart track and on account of the previous enmity, the defendants attempted to interfere with the plaintiff's right and enjoyment of the suit Cart Track and hence, the plaintiff Radhamani has been forced to lay the suit for permanent injunction in O.S.No.402 of 1996 and the same plea was also taken by her and her husband K.P.Kandasamy in the written pleas preferred in O.S.No.13 of 1997.

6. The case of the defendants/appellants in the second appeals, in brief, is that the suit laid by the plaintiff Radhamani is not maintainable either in law or on facts and it is false to state that the suit property has been used as the Cart Track by the plaintiff for having access to her property from Karattupalayam road and the plaintiff has deliberately suppressed the alternative cart track situated to the eastern and northern side of the temple and the above said cart track is only used by the plaintiff for reaching her property and there is no cart track as such in the suit property and the case of the plaintiff that she and her predecessor in title had been

using the suit cart track for more than 50 years is false and that the further case of the plaintiff that the defendants attempted to interfere with her right to use the cart track is also false. According to the defendants, the suit property has been used during the temple festival season for lighting pyre, preparing food, etc., and other than the said purpose, the suit property is not used for any other purpose, particularly, for cart track as pleaded by the plaintiff and the plaintiff, under the guise of her suit, is preventing the defendants from using the suit property during festival occasions and hence, the defendants had been necessitated to lay the suit for claiming the relief of permanent injunction against the plaintiff Radhamani and her husband in O.S.No.13 of 1997 and hence, prayed for the dismissal of the plaintiff's suit and the decreeing of the suit laid by them.

7. Both the suits were jointly tried and accordingly, common evidence has been recorded in O.S.No.402 of 1996.

8. In support of the plaintiff's case, PWS1 and 2 were examined and Exs.A1 to 3 were marked. On the side of the defendants, DWS1 to 3 were examined and no document has been marked. Exs.C1 to 7 were also marked.

9. On a consideration of the oral and documentary evidence adduced by the respective parties, the Courts below were pleased to decree the suit laid by the plaintiff in O.S.No.402/96 and dismiss the suit laid by the defendants in O.S.No.13/1997. Aggrieved over the same, the second appeals have been preferred respectively.

10. At the time of the admission of the second appeals, the following substantial questions of law were formulated for consideration:

" (i) When admittedly the land belonging to the Government is in possession and enjoyment of the temple for over a century, is the lower appellate Court justified in holding that the plaintiff / respondent has got a legal right to use the said land as a cart track, especially when it is not established that the plaintiff/respondent has not prescribed an easementary right?

(ii) Admittedly, when the suit cart track is of recent origin, are the Courts below justified in granting a decree for injunction without giving a finding as to the legal right of the respondent/plaintiff in the suit cart track?"

11. It is not in dispute that the plaintiff has title to the property measuring to an extent of 30 cents in Survey No.588/1 pursuant to the settlement deed dated 24.10.1989 and the copy of the said settlement deed has been marked as Ex.A2. Now, according to the plaintiff, she had put up power loom, godown and residential house in the above said property and enjoying the same and for having access to the above said property, according to the plaintiff, the suit property is the only cart track available from Karattupaylam road and other than the suit Cart track, there is no other cart track for reaching or having access to her property and it is also stated by the plaintiff that she and her predecessor interest had been using the suit property as cart track for more than 50 years and as the defendants attempted to interfere with her right to use the suit property as Cart track, she had been necessitated to lay the suit against the defendants for appropriate reliefs.

12. Per contra, the case of the defendants is that the suit Cart track situated in front of the temple is being used only for the purpose of lighting pyre, cooking food, etc., during the festival occasions and other than that the suit property is not to be used for any other purpose muchless for cart track as pleaded by the plaintiff for having access to her property and further, according to the defendants, there is a cart track available for the plaintiff situated on the eastern and northern side of the temple for having access to her property and it is only the said cart track, which had been used by the plaintiff for reaching her property and she had never used the suit property as cart track at any point of time. According to the defendants, the plaintiff, under the guise of her suit, is attempting to interfere with the rights of the villagers to use the suit property during the festival occasions of the temple and hence, sought for the relief of permanent injunction against the plaintiff in their suit and for the dismissal of the suit laid by the plaintiff.

13. It is found that the plaintiff has been granted permission to run the power loom in the property acquired by her Ex.A2 and the said plan has been marked as Ex.A1 and a perusal of Ex.A1, as rightly determined by the Courts below, it is found that the existence of the suit cart track has been shown to be the only access for the plaintiff to reach her property from Karattupalayam road. It is thus found that inasmuch as the suit cart track had been in existence for the plaintiff to have access to her property, the existence of the same is noted in Ex.A1 also. It is not in dispute that the suit property is situated in Natham Porambokku and hence, the suit property belongs to the Government. In this case, it is seen that as found by the Courts below, we have only the reports of the advocate commissioner and the plan marked in the proceedings, it is found that the commissioner appointed in

O.S.No.402 of 1996 has filed Exs.C1 to C5 and the commissioner appointed in O.S.No.13 of 1997 has filed Exs.C6 and C7 respectively. As rightly determined by the Courts below, on a perusal of the reports of the both commissioners, it is seen that the suit Cart track has been in existence for a long period of time and accordingly, the commissioners have noted down the well laid out cart track in the suit property at several points and further, noted that stones and thorn sticks placed at same points and the commissioners have also noted that the stones and thorn sticks seem to have been recently put up and therefore, as per the reports of the commissioners filed in the cases, it is seen and also well established, as determined by the Courts below also, that the cart track had been in existence for a long period of time and only to prevent the plaintiff from enjoying the same, the defendants have put up stones and thorn sticks in the Cart track. That apart, as seen from the reports and plans of the commissioners marked in the proceedings, the case of the defendants is found to be false as regards the availability of the alternative cart track for the plaintiff to reach her property. According to the defendants, there is a cart track on the eastern and northern side of the temple, through which alone, the plaintiff had been having access to reach her property and according to them, suppressing the same, the plaintiff has come forward with the suit as if only the cart track in the suit property is in existence. However, the reports and plans of the advocate commissioners would only go to show that the alternative cart track pleaded by the defendants is not available and it is also not continuous and stops at a particular place and thereafter, does not extend, particularly, it does not extend upon to the plaintiff's property and in such view of the matter, the case of the defendants that the plaintiff is having alternative cart track situated on the eastern and northern side of the temple for having access to her property cannot be countenanced in any manner. It has not been pointed out by the defendants that the findings of the commissioners as against non-existence of the alternative cart track for the plaintiff to reach her property are unacceptable and unreliable.

14. The specific case of the defendants is that the suit property has been used only during the festival occasions for the purpose of cooking food, lighting pyre etc., and in such view of the matter, the plaintiff cannot be allowed to use the suit property as a cart track for having access to her property. As regards the above defence put forth by the defendants, as seen from the admission of the witness examined on the side of defendants, it is seen that the temple festival had not been conducted recently and it is seen that the temple festival had been conducted several years ago and thereafter, on account of the dispute between the villagers, temple festival had not been

organized in the temple for several years and in such view of the matter, the plea of the defendants that the suit property had been used for the purpose of cooking food, lighting pyre etc., during the festival occasions of the temple as such cannot be countenanced. When it is found from the testimony of the defendants' witness that about 30 years ago, the temple festival had been conducted and their defence that even as of now, the suit property is used only for the temple purpose as such cannot be accepted in any manner. That apart, as seen from the testimony of witness examined on the side of the defendants, there is adequate space within the temple premises itself for cooking food, lighting pyre etc., and therefore, the case of the defendants that only the suit property is being used for the above said purpose during the temple festival occasions as such also cannot be accepted in any manner. It is, therefore, seen that there is no material or proof put forth on the side of the defendants to evidence that the suit property has been used by the villagers during the temple festival as put forth by them and on the other hand, it is seen that as the suit property had been all along used as the cart track by the plaintiff for having access to her property from Kararrupalayam road, accordingly the traces of well laid out cart track has been noted by the Commissioners appointed in the proceedings and they have also noted that the stones and thorn sticks found in the above suit cart track are all of recent origin and it is seen that as rightly argued by the plaintiff's counsel, the defendants, with a view to prevent the plaintiff from using the same as cart track, had obstructed and prevented by putting stones and Thorn sticks and hence, on account of the above factors, the Courts below have rightly held that the suit property has been used as the cart track only by the plaintiff and her predecessor in interest.

15. It is contended by the plaintiff's counsel that the suit property is a porambokku land belonging to the Government and hence, the plaintiff as such is not entitled to claim any right over the same. However, it is seen that it is not the case of the plaintiff that the Government is preventing her to use the suit property as cart track for reaching her property and her case is that only the defendants, on account of the previous enmity, are disturbing her in the usage of the suit property as cart track for reaching her property. The above case of the plaintiff has been established as pointed out above and in such view of the matter, when the defendants themselves have no individual right over the suit property, the same belonging to the Government and when it is found that the suit property has been used as cart track by the plaintiff for having access to her property and when the defendants have no right to interfere with the above said enjoyment of the plaintiff for reaching her property or enjoying her property as such, it is

seen that the plaintiff is entitled to seek the relief of permanent injunction as against the defendants. Therefore, the contention that the plaintiff has no legal right to use the suit property as cart track as such cannot be accepted. Particularly, when the plaintiff is not claiming any title to the suit property as such, on the other hand accepting the title of the government to the same, her plea is only to injunct the defendants from preventing her from enjoying the suit property as cart track for reaching her property. When the above said plea is justified for the reasons aforesaid, it is seen that the Courts below have rightly on proper reasonings and conclusions accepted the plaintiff's case, which do not call for any interference. In such view of the matter, the substantial questions of law formulated for consideration in this second appeal are answered against the defendants/appellants and in favour of the plaintiff/respondents.

16. In conclusion, the second appeals fail and are, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS V)

//True copy//

Sub Assistant Registrar

sms

To

1. The Subordinate Court,
Gobichettipalayam.
2. The District Munsif Court,
Gobichettipalayam.

Copy To

The Section Officer,
VR Section, High Court,
Madras.

+1cc to Mr.P.R.Balasubramaniam, Advocate SR.No.79999

S. A.Nos. 755 & 756 of 2001

RJ (CO)
GN (24/01/2018)