

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 19.09.2018
DELIVERED ON: 03.10.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.1413 of 2002

P.Radhakrishnan Appellant/Plaintiff

Vs.

1. Chennimalai Gounder (died)
 2. Paramasivam
(for himself and on behalf of the residents
of Kathirampatti village)
 3. Lakshmiammal
 4. Dharmalingam
 5. Sadishkumar
 6. Rathinam
- (Respondents 3 to 6 brought on record as legal heirs
of the deceased first respondent vide order dated
08.12.2010 made in CMP No.16362 of 2005).
...Respondents/Defendants

PRAYER : Second Appeal filed under Section 100 of C.P.C.,
against the decree and judgment dated 28.09.2000 passed by the I
Additional District Judge cum Chief Judicial Magistrate, Erode
in the Cross Appeal in A.S.No.159 of 1999 upholding the decree
and judgment dated 09.10.1998 passed by the II Additional
District Munsif, Erode in O.S.No.870 of 1989.

For Appellant : Mr.P.Valliappan
for Mr.C.E.Pratap

Respondents 2 to 6 : Mr.S.Sounthar

First Respondent : Died

JUDGMENT

The appellant is the second plaintiff in O.S.No.870 of 1989
on the file of the II Additional District Munsif, Erode. the
first plaintiff Palanimalai Gounder @ Palaniappa Gounder (since
deceased) is his father.

2. The plaintiffs filed the above suit for a declaration of their title to the suit property and for a permanent injunction restraining the respondents/defendants from interfering with their peaceful possession and enjoyment over the suit property.

3. The case of the plaintiffs is that the entire extent of 0.47.0 hectares comprised in Resurvey number 158/3 (old survey number 127) of Kathirampatti Village and a strip of land (foot path) in R.S.F.No.158/2 running East-West through the middle of Resurvey number 158/3 belong to them absolutely and that the residents of Kathirampatti Village lead by the respondents/defendants wanted the foot path to be converted as a 25 feet wide public road. It is further contended that the respondents/defendants insisted the plaintiffs to convey the suit pathway in R.S.F. No.158/2 in their favour and all the residents of Kathirampatti Village attempted to trespass into the plaintiffs' property.

4. The respondents/defendants have denied the contention of the plaintiffs that they are entitled to 0.47.0 hectares in R.S.F.No.158/3 (Old S.R.No.127) of Kathirampatti Village. They have also contended that their ancestors purchased a land in Survey No.127 for forming a cart track measuring 0.26 cents vide a sale deed dated 27.10.1919 and that the first plaintiff purchased only 1/6th share of remaining extent of 1.03 1/2 acres in Survey Number 127. The respondents specifically denied that the lands on either side of Survey Number 158/2 together with pathway belonged to the plaintiffs. They have infact pleaded ignorance about the resurvey of lands in the suit village.

5. The suit was decreed by the learned II Additional District Munsif, Erode vide decree and judgment dated 22.06.1993 as against which, appeal in A.S.No.179 of 1993 was filed before the Principal District Judge, Erode. The first appellate court set aside the decree and judgment passed by the II Additional District Munsif, Erode and the case was remanded to the trial court vide decree and judgment dated 31.03.1994 for framing necessary issues and for adducing further evidence on both sides. Accordingly, the trial court framed additional issues and after giving opportunity to both sides, dismissed the suit filed by the plaintiffs vide decree and judgment dated 27.07.1994. Aggrieved over the same, the plaintiffs filed first appeal in A.S.No.48 of 1995 before the Principal District Judge, Erode. The learned Principal District Judge once again remanded the suit to the trial court directing the trial court to appoint an advocate commissioner to measure the suit properties in R.S.No.158/2 and 158/3. Accordingly, an advocate commissioner was appointed and he filed his reports and plan as Ex.C1 to Ex.C9. After full contest, the suit was decreed by the II Additional District Munsif, Erode holding thus.

In the result,

1. The plaintiff is entitled for a declaration of his absolute and exclusive title to R.S.No.158/3 of Kathirampatti Village leaving an extent of 0.015 hectares described as pathway in Ex.C7, Ex.C.8, Ex.C.9.

2. The plaintiff is entitled for a perpetual injunction restraining the defendants and other residents of the other hamlet of Kathirampatti Village, who are represented by the defendants in the suit from interfering with the peaceful possession and enjoyment of R.S.No.158/3 of Kathirampatti Village, more fully described in the schedule excluding an extent of 0.015 hectares described as pathway in Ex.C7 and Ex.C8, Ex.C9 by trespassing thereon or by laying a road thereon or in any other manner, whatsoever.

3. Ex.C7, Ex.C8 and Ex.C9 do form part of the decree.

4. No costs.

Aggrieved over the same, the respondents/defendants filed appeal in A.S.No.159 of 1999 before the I Additional District Judge Cum Chief Judicial Magistrate, Erode and the 2nd plaintiff filed cross appeal. The first appellate court after analysing the entire records, upheld the findings of the trial court.

6. Now, the appeal is filed by the second plaintiff on the following substantial questions of law.

1. Whether the lower appellate court erred in dismissing the cross appeal without considering the relevant documents?

2. Whether both the courts below erred in holding that the area of the pathway in S.No.158/3 is 0.01.5 hectares while the area is 0.00.26 hectares.

7. At the outset, it may be observed that the respondents/defendants did not file any cross appeal against the decree and judgment dated 28.09.2000 in A.S.No.159 of 1999 passed by the first appellate court.

8. The suit property is described in the plaint as "Erode Registration District, Perundurai Sub Registration District, Erode Taluk, Kathirampatti Village. RSF.No.158/3 (O.S.No.127 part0 of an extent of 0.47.0 hectares assessed to Rs.1.59." It is pertinent to point out that both the courts below have analysed the evidence adduced on both sides and had concurrently held that the appellant/plaintiff is entitled to the suit property excluding 0.01.5 hectare. It is to be noted that the first appellate court remanded the appeal twice to the Additional District Munsif, Erode and the advocate commissioner had measured the properties in survey numbers 158/2 and 158/3

with the help of a taluk surveyor. Based on the advocate commissioner's reports Ex.C7 and Ex.C8 and the field map Ex.C9, suit was decreed as mentioned above.

9. The learned advocate commissioner in his report Ex.C7 has stated that the property in R.S.No.158/3 measures 0.47.0 hectares and the pathway measures 0.01.05 hectares. The first appellate court has dealt with the rival contentions of both the parties in extenso and all the reasonings of the first appellate court are well founded. Therefore, I do not want to reproduce the same here, as I do not see any reason to interfere with those findings. Further more, the second appeal is restricted to a very narrow point of not considering the advocate commissioner's report (Ex.C7) with regard to measurement of the suit property.

10. Mr.P.Valliappan, learned counsel appearing for Mr.C.E.Pratap, counsel for the appellant drew the attention of the court to the advocate commissioner's report (Ex.C7) and pointed out that the learned advocate commissioner in his report has mentioned that width of the pathway as "2.8, 2.3, 2.0, 2.4, 2.2 links" and both the courts below have erroneously held that the appellant is entitled to the suit property excluding 0.01.5 hectares. According to him, the area of pathway in the suit survey number is only 0.00.26 hectares, even as per the report of the advocate commissioner. Placing reliance on the decisions in 1. Semitta Kounder, 2. Sathi V. Murugesan reported in 2016 (6) CTC 66, V.K.Ramanathan (deceased D3) and three others V. Jayalakshmi and 5 others reported in 2009(4) CTC 272, he prayed the court to once again appoint an advocate commissioner to measure the suit property.

11. Though the advocate commissioner in the first page of his report (Ex.C7) mentioned the measurements in links, in the second page, it is clearly indicated as 0.01.5 hectares. The plan (Ex.C8) filed by him confirms the measurements as 0.01.5 hectares. In fact, this plea was not raised before both the courts below. The evidence adduced on both sides together with the advocate commissioner's report clearly indicates that the pathway measures 0.01.5 hectares and the appellant cannot claim title and permanent injunction to this piece of land in survey number 158/3 of Kathirappati Village. The report and plan Ex.C7 and Ex.C8 clearly shows that the pathway measures 0.01.5 hectares and there is absolutely no ambiguity in this regard. Therefore, the ruling in 1. Semitta Kounder, 2. Sathi V. Murugesan reported in 2016 (6) CTC 66, V.K.Ramanathan (deceased D3) and three others V. Jayalakshmi and 5 others reported in 2009(4) CTC 272 would not apply to the facts of the present case. Inview of the above, the appeal is liable to be dismissed.

12. In the result, the appeal is dismissed. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

mst

To

1.I Additional District cum Chief Judicial Magistrate,
Erode.

2.The II Additional District Munsif, Erode.

+1 CC to Mr.S. Soundhar, Advocate sr 68244.

+1 CC to Mr.C.E. Pratap, Advocate sr 68371.

S.A.No.1413 of 2002

MG(CO)
SP(02/11/2018)



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