

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.04.2018

PRONOUNCED ON : 04.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.1531 of 2004

Periannan

Appellant

...

Vs.

1.Kumaran
2.Chellappan
3.Nallasamy
4.Atthayee
5.Mylavathy

Respondents

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 28.11.2003 passed in A.S.No.49 of 2003 on the file of the Subordinate Court, Bhavani, confirming the Judgment and Decree dated 21.07.2003 passed in O.S.No.124 of 2002 on the file of the Ist Additional District Munsif Court, Bhavani.

For Appellant : Mr.A.K.Kumaraswamy
Senior Counsel
for Mr.S.Kaithamalai Kumaran
For Respondents : Ms.P.Sharmila
for Mr.S.Krishnamoorthy

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 28.11.2003 passed in A.S.No.49 of 2003 on the file of the Subordinate Court, Bhavani, confirming the Judgment and Decree dated 21.07.2003 passed in O.S.No.124 of 2002 on the file of the Ist Additional

District Munsif Court, Bhavani.

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

3. Suit for permanent injunction.

4. The case of the plaintiff, in brief, is that Gopal Reddiar and others owned totally an extent of 14.71 acres of land in various survey numbers and accordingly, they had acquired the right over the ABC cart track as described in the plaint plan for having access to the abovesaid properties by way of a sale deed dated 12.09.1960 and Gopal Reddiar and others, by way of a sale deed dated 20.06.1968, had sold the eastern half in R.S.No.338 to the defendants and accordingly, granted the defendants the way of right over the ABC cart track as abovestated under the said sale deed and Gopal Reddiar had retained the exclusive right to use the abovesaid cart track to reach their lands and also for taking cart, cattle etc., and by way of the sale deed dated 20.06.1968, the defendants had been granted only the right of way over the said cart track and not any exclusive right and therefore, the defendants are not entitled to claim any title over the ABC cart track and subsequently, Gopal Reddiar and others had sold the extent of lands owned by them by way of sale deeds dated 23.08.1974 in favour of the plaintiff and his mother Palaniammal and in turn Palaniammal had settled the properties

acquired by her under the abovesaid sale deed in favour of the plaintiff by way of a settlement deed dated 06.09.1975 and accordingly, the plaintiff had acquired the absolute right over the ABC cart track and in that capacity, the plaintiff had also laid pipe underneath the abovesaid cart track for the purpose of taking water to irrigate the lands from the Well owned by him and the defendants had been granted only easementary right of usage over the ABC cart track and contrary to the said right, the defendants made attempts to lay underneath pipeline under the ABC cart track, to which, they are not entitled to and inasmuch as the defendants, despite the protests made by the plaintiff, are attempting to lay underneath pipeline and thereby, interfere with the plaintiff's possession and enjoyment of the suit cart track, it is stated that the plaintiff has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is true that Gopal Reddiar owned lands in various survey numbers as stated in the plaint. However, it is false to state that Gopal Reddiar had acquired absolute right over the ABC cart track by way of the sale deed dated 12.09.1960 for the purpose of having access to his lands and enjoyed the cart track as the exclusive owner of the same, Gopal Redidar had purchased the right over the suit car track by way of the abovesaid sale deed only to take his men, cart and cattle for the purpose of having access to his

properties and not any exclusive ownership over the same. It is true that Gopal Reddiar had sold the lands to the defendants by way of the sale deed dated 20.06.1968 and it is false to state that only an easementary right of usage of the cart track had been granted to the defendants by way of the said sale deed. It is false to state that Gopal Reddiar had sold the lands to the plaintiff and his mother Palaniammal by way of the sale deeds dated 23.08.1974 inclusive the right over the ABC cart track and it is false to state that Palaniammal, thereafter, settled her property in favour of the plaintiff by way of a settlement deed dated 06.09.1975 and thereby, the plaintiff has become the absolute owner of the ABC cart track. It is false to state that the defendants have no right to lay the pipeline underneath the cart track for the purpose of irrigating their lands and the same had been prevented by the plaintiff. As per the sale deed dated 20.06.1968, Gopal Reddiar had kept the ABC cart track as a common way for having access to their lands and also to the lands of the defendants and accordingly, the defendants had been enjoying the cart track as the absolute owner of the same along with the other lands purchased by them from Gopal Reddiar and others and Gopal Reddiar had purchased only the right to take men, cart and cattle through the ABC cart track under the sale deed dated 12.09.1960 and not any exclusive ownership over the same and therefore, the plaintiff cannot lay any claim of title to the ABC cart track by way of the alleged purchase from Gopal Reddiar and others and the settlement deed executed by his mother

Palaniammal and hence, there is no cause of action for the suit and the suit is liable to be dismissed.

6. In support of the plaintiff's case, PW1 was examined and Exs.A1 to A12 were marked. On the side of the defendants', DW1 was examined and Exs.B1 to B6 were marked. Exs.C1 to C2 were also marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the Courts below were pleased to dismiss the plaintiff's suit. Impugning the same, the present second appeal has been laid.

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

" Whether the recital in Ex.A2 in favour of the defendants that they have a right of easmentary way over the property forming the subject matter of the suit would enable them legally to burden the said property by having the pipeline underneath the land?"

9. The dispute between the parties is in respect of ABC cart track as depicted in the plaint plan. Both the plaintiff as well as the defendants

claim right over the ABC cart track by way of purchase from Gopal Reddiar and others. Materials placed on record go to show that Gopal Reddiar, by way of a sale deed dated 12.09.1960, had acquired right over the ABC cart track and the abovesaid sale deed has come to be marked as Ex.A1. On a perusal of Ex.A1, what is found is that Gopal Reddiar and others had acquired an extent of 35 cents admeasuring 17 links north-south and 2120 links east-west by way of the abovesaid document and a reading of the recitals contained in the said sale deed would go to show that Gopal Reddiar and others had been granted only the limited right to use the abovesaid cart track for having access to their lands as well as for taking their men, cart, cattle etc., through the said cart track and not any exclusive right over the same. In specific, the vendors of Ex.A1 had retained their right to use the cart track for gaining access to their lands inclusive of taking cart, cattle etc., through the said cart track. Though it is averred in Ex.A1 that Gopal Reddiar had been granted absolute right over the property purchased under the said document, the recitals contained thereafter in the sale deed would go to show that what was conveyed is only a limited right to use the cart track as abovestated and not exclusive right and accordingly, it is found that even the vendors had retained their right to use the cart track for gaining access to their own lands and in such matter, it is found that the plaintiff cannot claim that Gopal Reddiar had acquired absolute right over the ABC cart track by way of Ex.A1 sale deed and the interest that had been granted to Gopal

Reddiar under the said document read as a whole would only go to show that he had been granted only the right to use the cart track as abovestated and not any exclusive right in respect of the same. Accordingly, it is found that on a perusal of Section 11 of the Transfer of Property Act read cumulatively, it is found that when the right had been reserved by the vendors to have the right of using the cart track under the said document, it is found that the interest created therein absolutely at the first instance had been restricted later and in such view of the matter, it is found that no absolute right has been granted to Gopal Reddiar in respect of the suit cart track under the said document and thus it is found that along with the neighbouring land owners, Gopal Reddiar was also granted the right to use the suit cart track for having access to his lands as well as for taking men, cattle, cart etc., through the said cart track.

10. It is admitted that some lands had been acquired by the defendants from Gopal Reddiar and others by way of a sale deed dated 20.06.1968, which document has come to be marked as Ex.A2 and similarly, it is also noted that the plaintiff and his mother had acquired some lands from Gopal Reddiar and others by way of the sale deeds dated 23.08.1974, which documents have come to be marked as Exs.A4 and A5 and further, it is also noted that Palaniammal, the plaintiff's mother had settled the property acquired by her in favour of the plaintiff

by way of a settlement deed dated 06.09.1975, which document has come to be marked Ex.A6. Now, according to the plaintiff, what was granted to him and his mother by way of Exs.A4 & A5 is the absolute right over the said cart track and further, according to the plaintiff, what was granted to the defendants by way of Ex.A2 sale deed is only the easementary right to use the said cart track and not any absolute right and therefore, it is the case of the plaintiff that other than using the said cart track for gaining access to their lands, the defendants are not entitled to use the cart track for other purposes and inasmuch as the defendants attempted to lay a pipeline underneath the said cart track for the purpose of irrigating their lands, which right had not been granted to them under Ex.A2 sale deed and inasmuch as the defendants persisted in their attempts to lay the underneath pipeline, despite the protests of the plaintiff, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

11. Per contra, it is the case of the defendants that when Gopal Reddiar himself had not acquired absolute right over the suit cart track under Ex.A1 sale deed, he has no right to convey any absolute or exclusive right in respect of the same in favour of the plaintiff and his mother by way of Exs.A4 & A5 and therefore, according to the defendants, only the right to use the cart track along with the defendants had been granted to the plaintiff and his mother by way of Exs.A4 & A5

and such being the position, according to the defendants, both the plaintiff as well as the defendants have equal right over the suit cart track and accordingly, being common owners of the same, both are entitled to use the same to the maximum benefit and as such, according to the defendants, they are entitled to lay a pipeline underneath the cart track for the purpose of irrigating their lands without in any way detrimental to the usage of the same as the cart track by the plaintiff and others and therefore, according to the defendants, the plaintiff is not entitled to obtain the reliefs sought for.

12. Materials placed on record go to disclose that the plaintiff himself has laid the pipeline underneath the suit cart track for the purpose of irrigating his lands and the same has been admitted by the plaintiff himself. However, according to the plaintiff, inasmuch as he had been granted exclusive right in respect of the suit cart track and the defendants had been granted only the easementary right of the usage of the suit cart track and not any other right, it is contended that the defendants are not entitled to lay underneath pipeline and hence, the need for the suit.

13. In the light of the materials placed, when it is noted that Gopal Reddiar himself had not acquired any absolute and exclusive right over the suit cart track and had been conferred only the right to use the cart

track as above noted and accordingly, when it is further seen that by way of Exs.A4 & A5, the plaintiff and his mother had not acquired any exclusive and absolute right over the suit cart track portion covering an extent of 35 cents under the said documents, as rightly noted by the Courts below, the said extent of the property having not been shown as one of the items sold by Gopal Reddiar and others and such being the position, when under Ex.A2, Gopal Reddiar had only granted the right to the defendants to use the cart track for taking men, cattle, cart etc., through the same and the similar right had also been granted to the plaintiff and his mother by way of Exs.A4 & A5 and when Exs.A4 & A5 do not disclose that the property covered under Ex.A1 as such had been conveyed by Gopal Reddiar and others by way of Exs.A4 & A5 and on the other hand, only the right to use the cart track had been granted under the said documents and only the said right alone could also be granted by Gopal Reddiar and others, accordingly, it is found that the Courts below had properly appreciated the materials placed on record in the right perspective and based upon the right, which had been acquired by Gopal Reddiar by way of Ex.A1, it is found that the Courts below had correctly determined that the plaintiff and his mother as well as the defendants had been granted the equal and common right to use the cart track by Gopal Reddiar and others and not any exclusive right as such and accordingly, it is found that both the plaintiff as well as the defendants being jointly entitled to use the cart track and having common

interest in respect of the same, it is found that without detrimental to the abovesaid usage, the defendants would also be entitled to lay the underground pipeline for the purpose of irrigating their lands. Accordingly, it is rightly found by the Courts below that the plaintiff cannot injunct the defendants from laying the pipeline underneath the suit cart track and accordingly, declined the reliefs sought for by the plaintiff.

14. In this connection, the counsel for the defendants relied upon the decision reported in **1998 – 3-L.W.197 (Basha Reddiar (died) and 4 others Vs. Janarthanam and 5 others)**, whereunder the entitlement of the right of a co-owner to use a common pathway to the maximum benefit has been upheld and it has also been held that such right of the co-owner in respect of the common land cannot be injuncted and the position of law has been elucidated in the abovesaid decision as follows:

**" Co-owners, Injunction –
Underground drainage through common
pathway – Right of a Co-owner to use of
land to the maximum benefit – Not an
"easement" - Scope."**

**Held: The finding of the Courts
below that the plaintiff is not entitled to
have the underground drainage over the**

common pathway cannot be accepted. As a Co-owner, he is entitled to make use of the land to the maximum benefit, subject to only one condition, i.e. his enjoyment should not affect the right of others. To take an underground drainage connection is a right of enjoyment by a co-owner and the other co-owners cannot injunct the plaintiff on the ground that he interferes with their co-ownership rights. If such a relief is granted, it will amount to negating the right of the co-owner to enjoy his co-ownership right. By laying the underground pipeline, there is no interference of the passage or their access to their buildings or their property, except for some minor inconvenience during the time of laying the pipeline. The defendants will not be put to any hardship or injury to their co-ownership rights."

15. In the light of the above position, when it is found that the right in respect of the suit cart track has been acquired by the plaintiff as well as the defendants from the common owner and when the common owner himself has acquired only a limited right in respect of the same and when further it is noted that by way of Exs.A4 & A5, the plaintiff and his mother had not been conveyed any exclusive right over the suit cart track as

such, as determined by the Courts below, accordingly, it is found that the plaintiff as well as the defendants are entitled to use the common cart track jointly and when it is seen that the plaintiff himself has laid the underneath pipeline for the purpose of irrigating his lands, equally, the defendants also would be entitled to lay the underneath pipeline without detrimental to the usage of the suit cart track by the joint owners and in such view of the matter, it is found that the Courts below are justified in not granting the reliefs sought for by the plaintiff and upholding the entitlement of the defendants to lay the underneath pipeline below the suit cart track without causing interference of the usage of the cart track by the plaintiff and others. The substantial question of law formulated in the second appeal is, accordingly, answered in favour of the defendants and against the plaintiff.

16. Further, as rightly putforth by the defendants' counsel, when the defendants have disputed the claim of exclusive right in respect of the suit cart track as putforth by the plaintiff, tooth and nail and despite the same, the plaintiff having not chosen to seek the relief of declaration in respect of the suit cart track for the reasons best known to him and the above factor also would go to show that the plaintiff is not entitled to seek the relief of permanent injunction without claiming the relief of declaration in respect of the suit cart track as belonging to him exclusively. On that ground also, it is found that the reliefs sought for by

the plaintiff cannot be granted.

For the reasons aforesaid, the second appeal fails and is accordingly, dismissed with costs. Consequently, connected miscellaneous petition, is closed.

04.06.2018

Index : Yes / No

Internet : Yes / No

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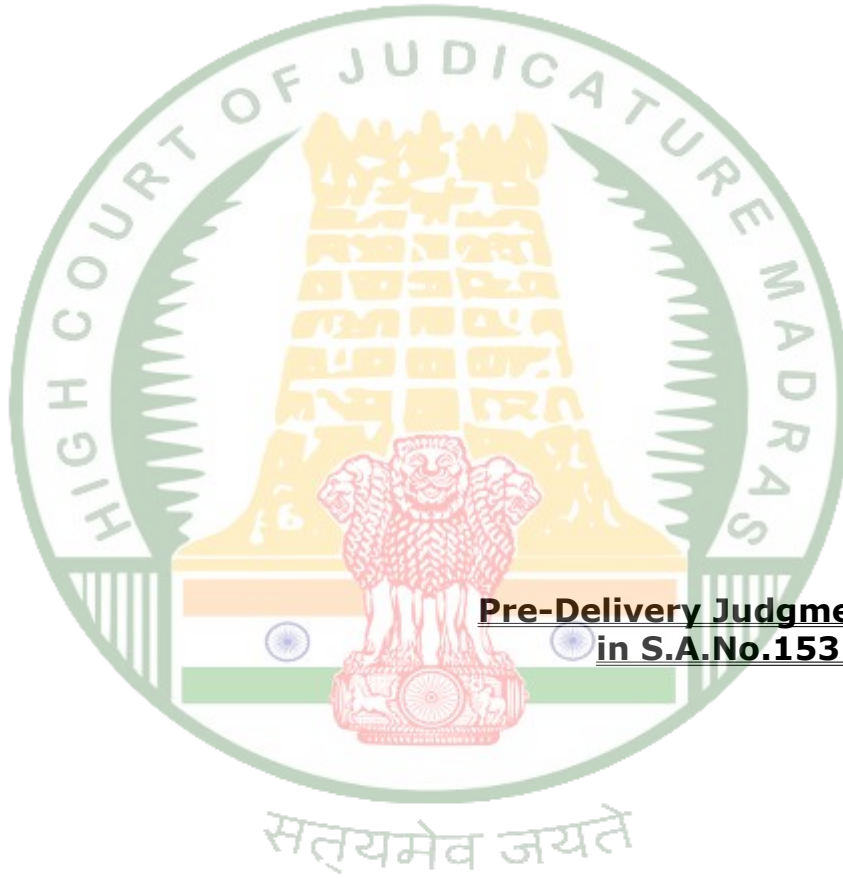
To

1. The Subordinate Court, Bhavani.
2. The Ist Additional District Munsif Court, Bhavani.
3. The Section Officer, V.R. Section, High Court, Madras.

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T.RAVINDRAN, J.

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**Pre-Delivery Judgment made
in S.A.No.1531 of 2004**

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