

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.06.2018

PRONOUNCED ON : 16.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1794 of 2004

1. C.Munian
2. Mannu Ammal

... Appellants/ 2nd 3rd Appellant /
LRS Defendants
Vs.

Perumal ... Respondent/Respondent/Plaintiff
in OS

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree in A.S.No.15 of 1996 on the file of the Subordinate Judge, Arani Thiruvannamalai District dated 18.12.2003 in confirming the judgment and decree in O.S.No.347 of 1988 on the file of the District Munsif Court, Arani dated 29.06.1993.

For Appellants : Mr.V.Raghavachari
For Respondent : Mr.M.Suresh

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 18.12.2003, passed in A.S.No.15 of 1996, on the file of the Subordinate Court, Arani, confirming the judgment and decree dated 29.06.1993, passed in O.S.No.347 of 1988, on the file of the District Munsif Court, Arani.

2. The second appeal has been admitted on the following substantial questions of law:

"a) Whether the courts below are right in entertaining the suit when the government has not been made as a necessary party to enlighten the actual state of affairs as to whether there existed a cart track?

b) Whether the courts below have not erred in presuming that the property to the east of the defendants land is the one used

by the plaintiff as a pathway, when the survey stones separating the lands clearly prove that the plaintiff is claiming a right within the patta lands of the defendants?"

3. The suit has been laid by the respondent/plaintiff for declaration and permanent injunction.

4. The suit property has been described as the poramboke land lying in survey No. 501 at Ariyapadi village, Arani taluk lying to the west of the defendant's land, east of lake ridge in survey No.501, north of plaintiff perumal's land and Yeri channel and karai and south of Arani-Vellore main road. The cart track is about 20 feet east west and 150 feet north south. Thus, it is found that the suit property is shown to be a cart track lying in survey no.501, which is a poramboke land and according to the plaintiff, he being the neighbouring land owner of the abovesaid cart track, has been using the cart track for reaching his land and for other needs and accordingly, seeking the right to enjoy the suit property as a cart track and according to the plaintiff, the defendant without any authority interfered with his right to enjoy the suit cart track and hence, he has been necessitated to lay the suit for appropriate reliefs.

5. The defendant has taken a plea that the plaintiff has not been in the possession and enjoyment of the suit property as such and further, according to the defendant, no cart track lies in the suit property and it is the further case of the defendant that the suit property is in his possession and enjoyment and the plaintiff cannot put forth any claim of right in the suit property as the suit property, even according to the plaintiff, lies in the poramboke land and further, according to the defendant, no common cart track lies in the suit property and it is also put forth by the defendant that the plaintiff should have impleaded the Government as a necessary party and the plaintiff has other access to reach his lands and the frame of the suit is not maintainable and hence, sought for the dismissal of the suit.

6. In support of the plaintiff's case, PW1 has been examined, Exs.A1 to A5 were marked. On the side of the defendant, DWs 1 to 3 were examined, no document has been marked. Exs.C1 and C2 were also marked.

7. As above noted the courts below had accepted the case of the plaintiff and decreed the suit as prayed for. Challenging the same, the present second appeal has been preferred.

8. The plaintiff claims title to the property by way of a sale deed marked as Ex.A4 and the parent title deed has been

marked as Ex.A1 dated 04.12.1931 wherein, as rightly found by the Courts below, the cart track right has been mentioned therein. Accordingly, it is found that the plaintiff and his predecessors in interest had been using the suit cart track for reaching their lands and particularly, when it is found that the suit cart track lies in the poramboke land belonging to the Government. It is thus found that unless restrained by the Government, the neighbouring land owners are entitled to use the access to reach their lands and in such view of the matter, the defendant cannot lay any independent claim over the suit property as it being the poramboke property and on that reasonings, it is found that the Courts below had rightly discountenanced the defendant's version.

9. Though at one place, the defendant would claim that the suit property belong to him absolutely, however with reference to his said claim, there is no material forthcoming on the part of the defendant. On the other hand the defendant's title deed has come to be marked as Ex.A2 and therefrom, it could be seen that there is no reference about the suit property and in such view of the matter, it is found that the defendant's claim of absolute title to the suit property as such cannot be accepted.

10. The defendant also has taken the plea that the suit property lies only in the poramboke land. Further, in the proceedings initiated by the Executive Magistrate, at the instance of the defendant, which could be seen from Ex.A5, the defendant has described the suit property as lying only in the poramboke land and such being the position, it is found that on the strength of Ex.A5 also, the defendant's claim of absolute title to the suit property falls to the ground.

11. That apart, though the defendant has claimed that he has been in the exclusive possession and enjoyment of the suit property, however, with reference to the abovesaid claim of the defendant, there is no material placed on record and accordingly, it is seen that the defendant has been blowing hot and cold to stifle the plaintiff's case one way or the other, i.e., the suit property is his absolute property and on the other hand, claiming that the suit property lies in the poramboke area. As above seen, the defendant as well as the plaintiff owns land adjacent to the suit property and accordingly, it is found that the plaintiff as well as the defendant had been using the suit cart track for having access to their respective lands and accordingly, when the defendant interfered with the plaintiff's possession and enjoyment of the same, it is seen that the plaintiff had been necessitated to lay the suit for appropriate reliefs. Furthermore, as rightly determined by the Courts below, as seen from the commissioner's report and plan, it is found that the cart track is available in

the suit survey number and accordingly, it is seen that the further attempt of the commissioner to measure the suit property with the help of a surveyor had been thwarted by the defendant and accordingly, it is seen that the commissioner was unable to measure the suit property with the assistance of the surveyor. Be that as it may, the defendant has not taken any steps to measure the suit property with the help of the surveyor and project his case in one way or the other. In such view of the matter, the conduct of the defendant, from the inception, goes to show that he has been endeavouring to restrain the plaintiff from using the suit cart track without having any claim of title or right over the same and accordingly, when it is found that the suit cart track lies in the poramboke land, if at all the plaintiff could be restrained from using the same, it would only be the Government which is entitled to the same and when it is the specific case of the plaintiff that he and others had been all along using the suit cart track for having access to their respective lands, it is seen that the same could not be interfered with by the defendant in any manner.

12. However, the defendant would also raise a contention that the plaintiff should have impleaded the Government as a necessary party for sustaining the reliefs. However, when the enjoyment of the suit property as the cart track by the plaintiff has not been interfered with by the Government and when the defendant has not placed any material that the Government had prevented the plaintiff and others from using the cart track as such, in such view of the matter, as rightly determined by the Courts below, the non inclusion of the Government to the proceedings would not be fatal to the plaintiff's case.

13. A plea has also been taken by the defendant that the plaintiff should have laid the suit only in a representative capacity and hence, the suit is liable to be dismissed. However, as rightly held by the Courts below, when the plaintiff asserts his right to use the suit cart track for gaining access to his lands and according to the plaintiff, it is only the defendant, who had obstructed the use of the same by the plaintiff, there is no need for the plaintiff to lay suit in a representative capacity and in such view of the matter, the plaintiff's suit cannot be rejected on the ground of improper framing of the suit as contended by the defendant.

14. In the light of the above discussions, the Courts below are right in holding that on the facts and circumstances of the case, the Government is not a necessary party to the issue involved in the suit as there is no material placed to show that the Government had at any point of time objected the enjoyment of the suit property as a cart track by the plaintiff

and furthermore, when the materials placed on record go to disclose that the suit cart track lies on the ground, the plaintiff is entitled to use the same for gaining access to his lands, the claim of the defendant that the suit property falls within his patta lands not having been established in any manner and the survey stones noted by the Advocate commissioner do not in any manner point out the suit property as forming part of the defendant's land and furthermore, when as per Ex.A2 the defendant has not acquired any right in the suit property and also not shown to be in the exclusive possession and enjoyment of the suit property, it is found that the pleas projected by the defendant for negating the plaintiff's suit are all baseless and rightly rejected by the Courts below. The substantial questions of law formulated in the second appeal are accordingly answered against the defendant and in favour of the plaintiff.

15. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-

Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Subordinate Court,
Arani, Thiruvannamalai District.
2. The District Munsif Court, Arani.
3. The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.V.raghavachari, Advocate SR.No.46319
+1cc to Mr.M.Suresh, Advocate SR.No.46809

S. A.No.1794 of 2004

SKV (CO)
GN (21/08/2018)