

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :26.06.2018

PRONOUNCED ON:13.07.2018

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1930 of 2004

R.Sivakozhundhu ... Appellant

Vs.

1.A.N.Karuppanan

2.A.E.Jagadeesan ... Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 07.10.2003 made in A.S.No.35 of 2003 on the file of the Additional District Court/Fast Track No.II Gobichettipalayam, confirming the judgment and decree dated 05.07.2002 made in O.S.No.431 of 1997 on the file of the District Munsif Court, Gobichettipalayam.

For Appellant : Mr.N.Manokaran

For RR1 and R2 : No appearance
set exparte
vide order dated 26.06.2018

J U D G M E N T

In this Second Appeal, challenge is made to the judgment and decree dated 07.10.2003 passed in A.S.No.35 of 2003 on the file of the Additional District Judge, Fast Track Court No.I, Gopichettipalalyam confirming the judgment and decree dated 05.07.2002 passed in O.S.No.431 of 1997 on the file of the District Munsif Court, Gopichettipalayam.

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

3.Suit for declaration and permanent injunction.

4.The case of the plaintiff in brief is that the suit property described in the plaint originally was owned by A.R.Arun Kumar and A.R.Raj Kumar as their separate properties and they had settled the suit property in favour of the plaintiff by way of the settlement deeds dated 11.06.1992 and 17.06.1992 and thereby the plaintiff has acquired absolute ownership, possession and enjoyment of the suit property and the original settlement deeds would be filed by the plaintiff at the time of the trial and confirming the ownership, possession and enjoyment of the plaintiff in respect of the suit property, patta had been effected in favour of the plaintiff and accordingly, only the plaintiff, has been in possession and enjoyment of the suit property and one Karupanna Gounder is having lands on the eastern side of the suit property and the defendants are having lands to the east of the lands of Karupanna Gounder and the defendants approached the plaintiff and sought her permission to lay underground pipeline through the suit property for their lands and the plaintiff refused to the same and enraged over the same, the defendants are attempting to trespass into the suit property, despite the protests of the plaintiff and hence according to the plaintiff, she 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. The case of the plaintiff that the suit property originally belonged to A.R.Arun Kumar and A.R.Raj Kumar and that they had settled the same in favour of the plaintiff by way of the settlement deeds dated 11.06.1992 and 17.06.1992 and thereby the plaintiff had become the absolute owner of the suit property and enjoying the same etc., are all not admitted and the case of the plaintiff that she has been granted patta in respect of the suit property is incorrect and not admitted and it is false to state that the land belonging to Karupanna Gounder is lying to the east of the suit property and to the east of Karupanna Gounder's land, the lands of the defendants are located and further, the case of the plaintiff that the defendants approached the plaintiff to lay pipe line through the suit property , for taking the same to their lands and the same had been refused by the plaintiff is also false. The first defendant's land is situated immediately on the eastern side of the suit property and hence the case of the plaintiff that the land of Karupanna Gounder is lying to the east of the suit property is false. Neither the plaintiff nor her predecessors in interest are entitled to the entire land in survey no.658A and there is a east-west cart track to a breadth of 12 feet and a length of 600 feet on the northern side of the suit property belonging to the defendants and the plaintiff's land is

surrounded by fence on all the four sides and the northern side of the fence of the plaintiff's land is situated on the southern side of the east-west cart track, which is branching from Puthur Main Road up to the lands of the defendants and the said cart track is the only cart track to the lands of the defendants and the same is in existence for more than 100 years and neither the plaintiff nor her predecessors in interest have any right or interest in respect of the aboveaid east-west cart track and the defendants are entitled to the same by way of easement of necessity, grant and prescription and the plaintiff is not entitled to obstruct the defendants in using the said cart track in any manner and 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, P.Ws.1 to 3 were examined. Exs.A1 to A4 were marked. On the side of defendants' D.Ws.1 and 2 were examined. Exs.B1 to B3 were marked. Exs.C1 to C5 were also marked.

7. On an appreciation of the materials placed on record by the respective parties and the submissions made, the Courts below were pleased to dismiss the plaintiff's suit. Aggrieved over the same, the present Second Appeal has been laid.

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

In the face of the defence taken by the defendants that they have an easement of necessity over the cart track which forms part of the suit property, which means that the title vests with the plaintiff subject of the right to use the cart track, have not the courts below committed an illegality in dismissing the suit for title based on Exs.A1 and A2?

9. The plaintiff claims title to the suit property by way of the settlement deeds dated 11.06.1992 and 17.06.1992 said to have been executed in her favour by A.R.Arun Kumar and A.R.Raj Kumar. The copies of the aboveaid settlement deeds have come to be marked as Exs.A1 and A2. The defendants have in the written statement challenged the alleged claim of title of the plaintiff's predecessors in interest in respect of the suit property and accordingly challenged the validity of the settlement deeds abovementioned projected by the plaintiff for deriving title to the suit property. Though the plaintiff would aver in the plaint that she would produce the original settlement deeds abovementioned during the course of trial, it is found that the plaintiff had only produced the certified copies of the aboveaid documents during the course of the trial and as rightly determined by the Courts below, there is no valid

reason projected by the plaintiff as to why she had not endeavored to produce the original settlement deeds as assured by her in the plaint. In such view of the matter, it is found that when the defendants have thrown a stiff challenge to the alleged title of the plaintiff's predecessors in interest as well as the validity of the settlement deeds basing on which the plaintiff had sought the reliefs prayed for, to establish her valid claim of title to the suit property, the plaintiff should have produced the original settlement deeds and further established that her predecessors in interest had a valid title to the suit property and competent to execute the settlement deeds in her favour as claimed and that she had accepted the aboveaid settlement deeds and thereby she has been in possession and enjoyment of the suit property. However, when there is no endeavor or interest on the part of the plaintiff to produce the original settlement deeds and no valid reason has also been projected as to the non production of the original settlement deeds, the Courts below are justified in disbelieving the plaintiff's case on that score. Further when the plaintiff has failed to offer plausible explanation for the non production of the original settlement deeds, contrary to the assurance given in the plaint, in such view of the matter, the contention projected by the plaintiff's counsel that the plaintiff would be entitled to produce the certified copies of the settlement deeds as such cannot be readily accepted. Only on the plaintiff placing acceptable reason for the non-production of the original settlement deeds, the case of the plaintiff could be accepted on the strength of the certified copies of the documents. That apart, the plaintiff had not examined any person associated with the settlement deeds to establish the authenticity of the same as per law.

10. Furthermore the plaintiff has not established the alleged claim of title to the suit property by her predecessors in interest and as rightly found by the Courts below, when on a perusal of Exs.A1 and A2 documents, the predecessors in interest of the plaintiff are shown to have acquired title to the suit property by way of self acquisition and enjoyment and with reference to the same, there is no material forthcoming on the part of the plaintiff, it is found that the plaintiff having failed to establish the legal entitlement of her predecessors in title to the suit property as such, as rightly determined by the Courts below, merely on the production of Exs.A1 and A2 documents, they being only certified copies, we cannot straightaway accept the plaintiff's case of her claim of title to the suit property.

11. The plaintiff had claimed in the plaint that she had been granted patta in respect of the suit property. However, the said patta has not been produced. Be that as it

may, even if patta had been granted in favour of the plaintiff, the same cannot be construed as a valid document of title. The other documents projected by the plaintiff and marked as Exs.A3 and A4 are found to have come into existence after the institution of the suit and therefore they would not be in any manner useful to sustain the plaintiff's case.

12.The defendants have raised the plea that there is a well laid cart track on the northern side of the plaintiff's land and the plaintiff's land had been fenced on all the four sides and the northern fence is on the southern end of the east-west cart track and according to the defendants, the east-west cart track branches from Puthur Main Road and runs east-west and according to the defendants, the said cart track had been used by them for reaching their lands and accordingly, they had been exercising enjoyment over the said east-west cart track and it is contended that the plaintiff had suppressed the existence of the abovesaid cart track in the plaint. From the Commissioner's report and plan marked as Exs.C3 and C4 in toto, it is found that there is a cart track measuring 14 feet in breadth running on the northern side of the suit property branching from Puthur Main Road and the same runs east-west and reaching the defendants' lands. There is no reason offered by the plaintiff as to why she has suppressed the existence of the above said cart track and from the plaint averments and the description of the suit property contained therein, we are unable to infer as to whether the plaintiff claims the abovesaid cart track also as forming part of her property or the said cart track lies on the northern side of her property. But the position remains that the cart track running east-west on the northern side of the plaintiff's land measures 14 feet in breadth and branching from Puthur Main Road and reaches the defendants' lands and when with reference to the same, there is no clear indication mentioned by the plaintiff either in the plaint averments or while describing the suit property, it is found that as contended by the defendants, the description of the plaint schedule property is itself not correct and in such view of the matter, the Courts below are found to be justified in non-suiting the plaintiff on the above factors also.

13.Further more, the materials placed on record go to show that to the east of the suit property lies the first defendant's land and to the east of the first defendant's land, the land of the second defendant is located. However as per the description of the suit property in the plaint one Karupanna Gounder's land is stated to be located to the east of the suit property and as per the plaint, to the east of Karupanna Gounders's land, the first defendant's land is located and to the east of first defendant's land, the second defendant's land is located. Thus, it is found that as rightly put forth by the

defendants in the written statement, the description of the suit property has not been properly given. Such being the position, it does not stand to reason as to how the plaintiff would be entitled to seek the relief of declaration in particular, with reference to the plaint schedule property, particularly when the plaint schedule property has not been properly described.

14.The plaintiff has not as abovestated described as to how her predecessors in interest derived title to the suit property. As found by the first appellate court, when as per the evidence adduced in the matter, the patta in respect of the suit property comprised in suit survey No.76/1, old survey No.658A stands in the name of Massini ammal, Karuppanna Gounder, Eshwara Gounder jointly and when it is found that the plaintiff's husband is the only son of Massini Ammal and when there is no averment in the plaint that Massini ammal had not died intestate or had made any disposition of her property in favour of others, it does not stand reason as to how the plaintiff claims that her predecessors in interest had derived the title to the suit property. As determined by the Courts below, when with reference to the claim of title of the plaintiff's predecessors in interest there is no clear plea and no proof placed merely on the production of the certified copies of the settlement deeds, we cannot uphold the plaintiff's claim of title, possession and enjoyment of the suit property as projected by her.

15.In the light of the above discussions, the Courts below have not non-suited the plaintiff merely on the defence raised by the defendants that they have eastmentary right in respect of the east-west cart track lying on the northern side of the suit property. As above noted, when the plaintiff has not averred in the plaint as to whether the east-west track tract as abovediscussed forms part of the suit property and when according to the defendants, the said east-west cart track lies to the north of the northern fence of the plaintiff's land and when it is found that the contention putforth by the plaintiff's counsel that the defendants by claiming eastmentary rights in the cart track had accepted the plaintiff's title to the suit property as such cannot be accepted and as above noted, on that footing, the Courts below had not declined the reliefs sought for by the plaintiff, on the other hand, the Courts below had dismissed the plaintiff's suit on her failure to establish her title plus her predecessors' title to the suit property and accordingly it is found that the Court below, for the reasons afore stated, are justified in dismissing the plaintiff's suit. The substantial question of law formulated in the second appeal is accordingly answered against the plaintiff.

16.In support of his contention, the counsel for the appellant placed reliance upon the decision reported in AIR 2014 SC 2906 MANU/SC/0612/2014 [Renikuntla Rajamma Vs. K.Sarwanamma] The principles of law outlined in the above said decision are taken into consideration and followed as applicable to the facts and circumstances of the present case.

17.In conclusion, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
Additional District Court/Fast Track No.II,
Gobichettipalayam.
- 2.The District Munsif,
District Munsif Court,
Gobichettipalayam.

Copy to

The Section Officer,
VR Section,
High Court.

+1cc to Mr.N.Manokaran, Advocate Sr.46346

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srg 5/9/2018