

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.06.2018

PRONOUNCED ON : 12.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.1989 of 2004

K.Murugesan ... Appellant/Plaintiff

Vs.

1. Kandasamy

2. The Government of Tamil Nadu,
Rep. by its District Collector,
Dharmapuri.

3. The Sub-Collector,
Dharmapuri District,
Dharmapuri.

4. The Tahsildar,
Pappireddypatty,
Dharmapuri District.

5. Pappathi Ammal

6. Munusamy

7. Selvam ... Respondents

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 29.06.2004 and made in A.S.No.78 of 2003 on the file of the Sub-Court, Dharmapuri, reversing the judgment and decree dated 28.07.2003 and made in O.S. No.73 of 2000 on the file of District Munsif Court, Harur.

S. A.No.1990 of 2004

K.Murugesan ... Appellant/ 1st Defendant

Vs.

1. Kandasamy ...1st respondent /Plaintiff

2. The Block Development Officer,
Harur Town, Harur Taluk,
Dharmapuri District.
3. The Government of Tamil Nadu,
Rep. by its District Collector,
Dharmapuri District. .. Respondents 2&3/ Defendants 2&3

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 29.06.2004 and made in A.S.No.77 of 2003 on the file of the Sub-Court, Dharmapuri, reversing the judgment and decree dated 28.07.2003 and made in O.S. No.292 of 2001 on the file of District Munsif Court, Harur.
S. A.No.1989 of 2004

For Appellant : Mr. K.Doraisamy, Senior Counsel
for M/s.Muthumani Doraisamy

For R1 : Mr.P.Arivudai Nambi

For R2 to R4 : No appearance/set ex-parte
vide order dated 22.06.2018.

For R5 to R7 : Given up.

S. A.No.1990 of 2004

For Appellant : Mr. K.Doraisamy, Senior Counsel
for M/s.Muthumani Doraisamy

For R1 to R3 : No appearance/set ex-parte
vide order dated 22.06.2018.

COMMON JUDGMENT

S. A.No.1989 of 2004

Challenge in this second appeal is made to the judgment and decree dated 29.06.2004, passed in A.S.No.78 of 2003, on the file of the Subordinate Court, Dharmapuri, reversing the judgment and decree dated 28.07.2003, passed in O.S. No.73 of 2000, on the file of District Munsif Court, Harur.

S. A.No.1990 of 2004

2. Challenge in this second appeal is made to the judgment and decree dated 29.06.2004, passed in A.S.No.77 of 2003, on the file of the Subordinate Court, Dharmapuri, reversing the judgment and decree dated 28.07.2003, passed in O.S. No.292 of 2001, on the file of District Munsif Court, Harur.

3. The appellant K.Murugesan hereinafter referred to as the appellant has laid the suit against the first respondent Kandasamy, hereinafter referred to as the first respondent and the other respondents in O.S.No.73 of 2000 for the reliefs of permanent injunction, mandatory injunction and declaration and permanent injunction in respect of the properties located in Bedhadhampatti village, Pappireddy taluk in survey No.118/1A2 0.03.0 extent and survey No.118/2A2 0.03.5 extent and briefly stated, according to the appellant, with reference to the cart track lying in the abovesaid suit properties, the appellant has right by way of easement of necessity and easement by prescription and inasmuch as according to the appellant, he and his predecessors in interest had enjoying the suit properties as the cart track over a long period of time, it is his case that thereby he had prescribed right by way of easement in respect of the suit property by prescription and further, according to the appellant, other than the cart track lying in the suit properties there is no other cart track for reaching his land and accordingly, it is stated that recognizing his enjoyment of the cart track lying in the suit properties, it is his case that he has been also granted the joint patta along with the first respondent and others and however, the first respondent using his influence had endeavoured to delete his name from the patta and accordingly, it is the case of the appellant that he had been necessitated to lay the suit against the revenue officials also for appropriate reliefs as well as against the first respondent for appropriate reliefs.

4. The first respondent has contested the abovesaid case of the appellant vehemently and according to the first respondent, the suit properties as such belonged to to him absolutely and it is his case that the suit properties and the other adjacent land in survey No.118/1 originally belonged to Palaniappa gounder and Athiappa gounder, the father of the first respondent by way of a sale deed dated 22.11.52 and thereafter, they had effected partition of the properties belonging to them by way of a partition deed dated 17.7.58 and it is the case of the first respondent that as per the partition effected, his father had been allotted the suit properties and accordingly, after his father, he had been enjoying the suit properties and the adjacent lands and it is his further case that he has other lands in survey Nos.119, 120 and 116 and it is the case of the first respondent that he had formed a road in the suit properties for taking the bullock carts, tractors etc., for the convenient enjoyment of his properties and thus, he has title to the suit properties and the road lying in the suit properties is the private road belonging to the appellant and the owners of the remaining land in survey No.118, which lands had been now subdivided as survey No.118/2A2 and according to the first respondent, the appellant

without any authority or entitlement had colluded with the revenue officials and included his name in the revenue records in respect of the suit properties and on that basis, laid a false suit in O.S. No.73 of 2000 and thereby attempted to interfere with his possession and enjoyment of the suit properties. Hence, according to the first respondent, he has been necessitated to lay the suit against the appellant and further, it is also contended by the first respondent that the appellant has no right to gift the suit properties in favour of the Block Development Officer, Harur and hence, sought for appropriate reliefs in his suit laid in O.S.No.292 of 2001.

5. The suits laid by the appellant and the first respondent had been jointly tried and accordingly, common evidence has been recorded in both suits. In support of the appellant's case, PWs 1 to 3 were examined. Exs.A1 to A17 were marked. On the side of the first respondent, DWs 1 and 2 were examined, Exs.B1 to B15 were marked. Exs.C1 and C2 were also marked.

6. The trial Court, on an appreciation of the materials placed on record and the submissions made, was pleased to decree the suit laid by the appellant and dismiss the suit laid by the first respondent. On appeal, the first appellate Court, on an appreciation of the materials placed on record, was pleased to set-aside the judgment and decree of the trial Court and accordingly, by way of allowing the first appeals preferred by the first respondent, decreed the suit laid by the first respondent as prayed and dismissed the suit preferred by the appellant. Aggrieved over the same, the present second appeals have come to be laid by the appellant.

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

a. Whether the suit for permanent injunction and mandatory injunction is maintainable with respect to alteration of revenue records by the revenue authority?

b. Whether the appellant has proved the easement of necessity and prescription in the suit cart track?

c. Whether the first appellate Court is right in holding that the appellant has no right in holding over the suit cart track?

8. The suit properties are located in survey Nos.118/1A2, 118/2A2 and it is found that a cart track/road admittedly is in existence in the suit properties and according to the first respondent, the same is the road formed privately by him and the other owners of the lands located in survey No.118/1 and according to the first respondent, the said road had been formed for taking bullock carts, tractors etc., for the convenient enjoyment of the respondent's land and the adjacent owners and hence, it is stated that the appellant cannot lay any claim of right in respect of the said cart track/road lying in the suit properties and hence, it is his contention that the appellant without any right whatsoever is attempting to disturb the possession and enjoyment of the first respondent in respect of the suit properties and hence, according to the first respondent, he has been necessitated to lay the suit for appropriate reliefs.

9. Per contra, as above pointed out, according to the appellant, he and his forefathers had been in possession and enjoyment of the suit properties and accordingly, the road lying in the suit properties has been used by the appellant and his predecessors in interest for reaching their lands in survey No.129/1 and accordingly, recognizing his entitlement, it is his case that his name is included in the patta in respect of the suit properties and on the other hand, the respondent by using his influence deleted his name from the patta in collusion with the revenue officials and hence, according to the appellant, he had been necessitated to lay the suit for appropriate reliefs.

10. Materials placed on record go to disclose about the nature of the right which the parties seek to enforce in respect of the suit properties. Accordingly, it is found that though the appellant had endeavoured to claim absolute right in respect of the suit properties, however, later, it is found that he had sought only the relief of easement of necessity and easement by prescription in respect of the suit properties. Be that as it may, the appellant has traced his claim of right to the suit properties on the basis of Exs.A1 and A2 and on a perusal of the abovesaid documents, it is found that by way of Ex.A1 sale deed dated 07.02.61, it is found that the appellant's maternal grandfather Kuppanna gounder had purchased the lands comprised in survey No.129/1 by way of the abovesaid sale deed from one Naina gounder and his minor children and on a perusal of the said document, there is a reference about the grant of cart track as well as the pathway to the purchaser i.e., Kuppanna gounder by the vendor Naina gounder in survey Nos.118/1 and 2 as well as survey No.116/1. It is the further case of the appellant that the legal heir of Kuppanna gounder, namely, Periyakka had settled the abovesaid property in his favour by way of

a registered settlement deed dated 06.12.83 marked as Ex.A2 and a perusal of the said document would go to show that there is no reference about any right granted in survey Nos.118/1 and 2 and 116/1. However, it is found that there is a recital that the properties settled is inclusive of the pathway right. Thus, it is found that there is no reference about the right being conveyed in respect of any cart track in the suit properties as such under Ex.A2. However, the fact remains that the appellant now seeks the right in respect of the suit properties only on the basis of the abovesaid two documents. It is his case that accordingly he and his predecessors in interest had been using the cart track/road lying in the suit properties for reaching their lands in survey No.129/1 and accordingly, the appellant seeks to enforce the said right by way of the present litigation. However, as rightly put forth by the first respondent, the appellant's predecessor in interest namely Naina gounder, while acquiring the property in survey No.129/1 from his vendors by way of a sale deed dated 09.03.53 marked as Ex.B2, it is found that there is no recital mentioning about any cart track or pathway right in the suit properties conveyed under the said document in favour of Naina gounder and in such view of the matter, it does not stand to reason as to how Naina gounder while conveying the property by way of Ex.A1 to Kuppanna gounder would be entitled to convey the cart track and pathway right in survey Nos.118/1 and 2 and 116/1 as recited in the said document. In this connection, it is found that there is a reference in Ex.A1, at the bottom that as per the panchayat determination made on 03.01.1960, the pathway right had been conferred in the patta lands belonging to Palaniappa gounder and Athiappa gounder and thereby, it is the case of the appellant that accordingly by way of Ex.A1, the cart track as well as the pathway right had been conveyed to his maternal grandfather by Naina gounder under Ex.A1. However, with reference to the alleged panchayat determination as recited under Ex.A1, no plea has been made by the appellant in his plaint as well as the written statement filed by him in the matters and further more, there is no proof to establish that such a panchayat had been held with reference to the settlement of the cart track/pathway right in the patta lands of Palaniappa gounder and Athiappa gounder and that Palaniappa gounder and Athiappa gounder had agreed to the same and thereby had permitted Naina gounder to exercise the said right of cart track and pathway in respect of their patta lands. Such being the position, when there is no material forthcoming to evidence the alleged panchayat determination as recited under Ex.A1 and accordingly, when it is found that the appellant's predecessor in interest had not acquired the cart track/pathway right in survey Nos.118/1 and 2 and 116/1 under Ex.A1 as such and on the other hand, seeks to enforce the right in respect of the abovesaid lands only by

way of the alleged panchayat determination and when with reference to the same, there is no proof forthcoming and all the more, when it is also noted that neither Palaniappa gounder nor Athiappa gounder are parties to Ex.A1 sale deed, accordingly, it is seen that Naina gounder would not be competent to convey any such right in favour of the appellant's predecessor in interest and therefore, the abovesaid recitals would not in any manner enure to the benefits of the appellant as per law. Accordingly, it is found that when the property comprised in survey No.129/1 had been settled in favour of the appellant by Periyakka, by way of Ex.A2, there is no reference at all about the cart track/pathway right in survey Nos.118/1 and 2 and 116/1, in particular, other than vaguely mentioning that the property settled includes the pathway right simpliciter.

11. In the light of the above position, it is found that the appellant cannot seek any absolute right in respect of the suit properties or the cart track/road lying therein. Accordingly, it is seen that the appellant had chosen to seek only the right of easement in respect of the same and by taking the said plea, impliedly, it is found that the appellant has admitted the ownership of the respondents in respect of the suit properties. Accordingly, it is found that as put forth by the first respondent, the lands comprised in survey No.118/1 originally belonged to Palaniappa gounder and Athiappa gounder by way of a sale deed dated 22.11.52, which document has come to be marked as Ex.B9 and it is further seen that the abovesaid persons had effected partition amongst themselves by way of a partition deed dated 17.7.58, which document has come to be marked as Ex.B5 and thus, it is found that it is only the first respondent and the other land owners of survey No.118, who are entitled to the suit properties in survey No.118/1A2 and 118/2A2 and accordingly, it is found that as put forth by the first respondent, they had formed a private road/cart track for taking their bullock carts, tractors, lorries etc., to their other lands situated thereto and enjoying the same and in such view of the matter, when the road/cart track formed by them is laid in the patta lands as such, the case of the appellant that he has a right in respect of the suit properties as such cannot be accepted in any manner. When admittedly, as of now, the appellant seeks only the easementary right in respect of the suit properties, it does not stand to reason as to how he would have been competent or entitled to for the inclusion of his name in the patta in respect of the suit properties. Accordingly, it is found that as rightly put forth by the first respondent, colluding with the revenue officials, without showing his entitlement to the suit properties as such, it is found that the appellant had endeavoured to include his name in the patta in respect of the suit properties and

accordingly, on coming to know about the same, it is found that the first respondent had taken the initiative to delete his name from the patta and accordingly, the revenue officials also issued necessary orders to delete the name of the appellant which could be evidenced from the document marked as Ex.B10. Though Ex.B10 is found to have come into existence after the institution of the suit preferred by the appellant, however, when the inclusion of the appellant's name in the patta has not shown to be validly effected by the appellant, as above discussed, when he has no right whatsoever in respect of the suit properties and further, he is only seeking the easementary right and thereby recognized the title of the first respondent in respect of the suit properties, the inclusion of the appellant's name in the patta with reference to the suit properties is found to be untenable and could not be countenanced in any manner. That apart, when the appellant has not established his claim of any right over the suit properties by way of Exs.A1 and A2 and his parent title deed Ex.B2 does not confer any right to his predecessor in interest, as rightly put forth by the first respondent, the appellant without any right whatsoever is found to have gifted the suit properties in favour of the Block Development Officer, Harur, by way of a document dated 11.02.00, registered on 28.04.00, marked as Ex.B1 and as rightly put forth by the first respondent, the above said settlement deed would not in any manner confer any right on the Block Development Officer, Harur, as the settlor himself has no right in respect of the properties settled and therefore, it is found that Ex.B1 deed would not confer any right to the settle in respect of the properties comprised therein.

12. Therefore, the question to be determined in this matter is whether the appellant is entitled to use the cart track/road lying in the suit properties for reaching the lands in survey No.129/1. As per the commissioner's report and plan marked as Exs.C1 and C2, it is found that the cart track/road lying in the suit properties branches from D.Pudhur and Chinnanguppam road and it is found to be having a width of 13 feet while passing through the lands belonging to the first respondent and the other lands located in survey No.118 and the 13 feet width cart track/road ends with the lands of the first respondent and thereafter, the said road/cart track is found to be shortened and thereafter, it branches further only as 3 feet pathway and joins the Aathur road. It is found that as per the commissioner's report and plan and it is also not in dispute that the appellant's property is located to the south of Aathur main road. Accordingly, it is found that the cart track/road available in the suit properties does not extend upto the appellant's property. The case thus projected by the appellant that he had been using the

said road/cart track available in the suit properties for reaching his house/lands as such cannot be accepted in any manner, particularly, when the said road/cart track does not extend up to his lands/house as found from the commissioner's report and plan. That apart, as rightly found by the first appellate Court, when as per the commissioner's report and plan and the materials placed on record, when the appellant is having a direct access to his property from the Aathur road, particularly, when it is found that the access branches from Aathur road towards south towards the appellant's house, as rightly determined by the first appellate Court, the appellant having the direct access to the property from Aathur road, cannot seek any right in respect of the cart track/road lying in the suit property by way of necessity and accordingly, it is seen that as rightly found, the easement of necessity claimed by the appellant in respect of the suit properties cannot be countenanced. Similarly, as discussed above, when the appellant and his predecessors in interest as such had not been granted any easementary right in respect of the suit properties and when it is further noted that the cart track/road lying in the suit properties is only a private cart track road of the first respondent formed in the patta lands of the first respondent and when there is no material placed on record to show that the appellant and his predecessors in interest had been using the cart track road lying in the suit properties for more than the period prescribed under law i.e., as provided under section 15 of the Easement Act and when the said road is also found to be not validly reflected in the title deeds of the appellant as above noted and when there is no necessity at all on the part of the appellant and his predecessors in interest to use the cart track/road lying in the suit property for reaching his property in any manner, it is found that accordingly the first appellate Court is justified in declining the reliefs sought for by the appellant as regards the right of easement by prescription in respect of the suit properties sans any material pointing to the same in favour of the appellant.

13. The counsel for the appellant contended that the revenue officials had erred in effecting mutation in the revenue records during the pendency of the civil litigation and hence, according to him, the revenue officials should not have deleted the name of the appellant by way of Ex.B10 proceedings, which is contrary to the position of law outlined in the decisions relied upon by him and reported in 2011 (5) CTC 94 (Vishwas Footwear Company Ltd., Vs. The District Collector, Kancheepuram and four others) and 2014 (3) TLNJ 145 (Civil) L.K.M.A. Mohammed Saleem Vs. The District Revenue Officer, Tirunelveli and eight others and hence, according to him, the judgment and decree of the first appellate Court needs reversal. However, as above

discussed, when the appellant has not established his entitlement to include his name in the patta and furthermore, when the appellant has not placed any material worth acceptance to sustain his claim of title/right, either the absolute right or by way of easement in respect of the suit properties, as above pointed out, it is found that it is only the appellant who had illegally obtained the joint patta in respect of the suit properties in collusion with the revenue officials. Accordingly, it is found that the revenue officials, on the first respondent pointing to the abovesaid mistake committed by them, accordingly, set-aside the same by way of Ex.B10 proceedings and in the present civil litigation, when it is found that the appellant has failed to establish any right whatsoever in respect of the suit properties, it is found that there is no need for interfering with the orders passed by the revenue officials vide Ex.B10. When as per the decisions relied upon by the appellant's counsel, it is only the civil court which is competent to adjudicate the question of title, however, as far as the question of title/right is concerned, the appellant having failed to establish his claim of right in respect of the suit properties as put forth by him and when it is found that the appellant would not be entitled to claim any right whatsoever in respect of the suit properties, it is found that on the facts and circumstances of the present case, the above decisions relied upon by the appellant's counsel would not be helpful to the case of the appellant.

14. In the light of the above discussions, it is noted that the first appellate Court, on the basis of the appreciation of the materials placed on record in the right perspective, has rightly determined that the appellant has not established any easement of necessity and easement by way of prescription in respect of the suit properties as put forth by him. As above pointed out, when the appellant seeks only the easementary right in respect of the cart track lying in the suit properties, the case projected by him that the revenue officials had recognized his enjoyment in respect of the same and granted patta in respect of the suit properties as such cannot be accepted and accordingly, it is seen that the inclusion of the appellant's name in the patta in respect of the suit properties is found to be totally erroneous and accordingly, it is found that the revenue officials on coming to know about their mistake had rectified the same by way of Ex.B10 proceedings and in such view of the matter, the appellant cannot seek any relief against the revenue officials to seek the alteration of the revenue records in respect of the suit properties as put forth by him. Accordingly, it is found that the reliefs sought for by the appellant against the revenue officials vis-a-vis the first respondent and the suit properties is not maintainable. The substantial questions of law

formulated in the second appeals are accordingly answered against the appellants and in favour of the first respondent.

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

Sd/-

Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

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To

1. The Subordinate Court, Dharmapuri.
2. The District Munsif Court, Harur.
3. The Government of Tamil Nadu,
Rep. by its District Collector,
Dharmapuri.
4. The Sub-Collector,
Dharmapuri District,
Dharmapuri.
5. The Tahsildar,
Pappireddypatty,
Dharmapuri District.
6. The Section Officer,
V.R.Section,
High Court, Madras.

+2cc to M/s.Muthumani Doraisamy, Advocate SR.No. 45828
+1cc to Mr.P.Arivudai Nambi, Advocate SR.No. 46384

Judgment in
S. A.Nos.1989 & 1990 of 2004

GP(cO)
ASK(12/09/2018)

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