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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.09.2018

DELIVERED ON: 14.09.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

S.A.No.1808 and 1809 of 2001
amd CMP No.487 of 2012 and
CMP No.16160 of 2018

Siddha Gounder

... Appellant/Appellant/Plaintiff in SA.1808/01
... Appellant/Appellant/Defendant in SA.1809/01

Vs.

1. Muthu Gounder
2. Ilayappan
3. Chinnakannu @ Natesan
4. Saraswathi
5. Nallammal
6. Elayappan

... Respondents/Respondents/Defendants in SA.1808/01
... Sole Respondent/Respondent/Plaintiff in SA.1809/01

COMMON PRAYER : Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 10.08.2001 made in A.S.No.71 A.S.NO.72/01 of 2001 by the II Additional District Judge, Salem upholding the decree and judgment dated 12.01.2001 made in O.S.No.655 of 1997 and OS.863/97 by the Principal District Munsiff, Salem.

For Appellant in both : M/s.Muthumani Doraisami

Respondents 1 to 5 in : Mr.V.Srinivasan
SA.1808/2001
and for the sole respondents
in SA.1809/2001

JUDGMENT

The present appellant is the plaintiff in O.S.No.655 of 1997 and the defendant in O.S.No.863 of 1997, both on the file of the Principal District Munsiff, Salem.

2. The appellant filed a suit is O.S.No.655 of 1997 for a declaration of his right over the cart track described as 'B'



schedule property and restraining the defendant in O.S.No.655 of 1997 from interfering with his peaceful possession and enjoyment over the suit 'A' schedule property.

3. The 2nd defendant in O.S.No.655 of 1997 filed a suit in O.S.No.863 of 1997 before the Principal District Munsif, Salem for a permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property (cart track) mentioned in the plaint.

4. Since both the parties and the suit properties were one and the same, both the suits were tried jointly by the Principal District Munsif, Salem.

5. The case of the appellant/plaintiff in O.S.No.655 of 1997 is that the 'A' schedule property belonged to him through the sale deeds dated 23.03.1981 (Ex.A1) and 19.11.1981 (Ex.A2). According to the plaintiff, he has been using the cart track described as 'B' schedule property to reach his lands. The further contention of the plaintiff is that the defendants 1 to 4 in O.S.No.655 of 1997 attempted to disturb his peaceful enjoyment of his right over the cart track. It is also contended by him that the suit B schedule property is the only way to reach his A schedule property.

6. The 2nd defendant in O.S.No.655 of 1997 filed a suit in O.S.No.863 of 1997 praying for a permanent injunction restraining the plaintiff in O.S.No.655 of 1997 from interfering with his possession and enjoyment of his property, the cart track mentioned as B schedule property in O.S.No.655 of 1997 since the same was purchased by him from one Perumayi Ammal. According to him, the plaintiff, in order to grab the suit property from him, has filed the suit in O.S.No.655 of 1997 and that the plaintiff (defendant in O.S.No.863 of 1997) does not have any right over the suit cart track.

7. Both the suits were tried jointly by the learned Principal District Munsif, Salem, after framing the following issues.

Issues in O.S.No.655 of 1997

1. Whether the plaintiff is entitled for a declaration as prayed for by him?
2. Whether the plaintiff is entitled for a permanent injunction as prayed for by him?
3. To what other relief the plaintiff is entitled?

Issues In O.S.No.863 of 1997

1. Whether the plaintiff is entitled for a permanent injunction as prayed for by him?
2. To what other relief the plaintiff is entitled?



8. In the trial court, the plaintiff examined himself and three other witnesses and marked Ex.A1 to Ex.A13. The first defendant Muthu Gounder examined himself and 4 other witnesses and marked Ex.B1 to Ex.B9. An advocate commissioner was appointed by the trial court and his reports and plan were marked as Ex.C1 to Ex.C4.

9. The learned Principal District Munsif after full contest, dismissed the suit filed by the plaintiff in O.S.No.655 of 1997 and decreed the suit in O.S.No.863 of 1997 filed by the 2nd defendant.

10. Aggrieved over the same, the present appellant filed appeals in A.S.No.71 of 2001 and A.S.No.72 of 2001 before the District Judge, Salem. Both the appeals filed by the plaintiff in O.S.No.655 of 1997 were dismissed and the decrees and judgments passed by the learned Principal District Munsif, Salem in O.S.No.655 of 1997 and O.S.No.863 of 1997 were upheld.

11. Now, the appeals are filed by the plaintiff in O.S.No.655 of 1997 who is the defendant in O.S.No.853 of 1997.

12. The facts of the case of the plaintiff and the defendants are discussed in detail by the first appellate court and therefore, it is not necessary for this court to reproduce the same in the present appeal, except for the purpose of deciding the matter in issue in the present appeal.

13. In the second appeal, the following substantial question of law was raised.

Whether the judgments of the courts below are vitiated in that they have misconstrued the documents Ex.A1 and Ex.A2.?

14. The specific contention of the plaintiff is that A schedule properties belonged to him through the registered sale deeds Ex.A1 and Ex.A2 and that the B schedule property was used by him and his predecessors in title for the convenient enjoyment of A schedule property. On the contrary, the contention of the respondent is that he purchased 10 cents of land from one Perumayi Ammal and formed a private cart track to reach Parappati-Poolavari Road and that the plaintiff cannot claim any right over the said cart track. In order to establish that the suit cart track was used by the plaintiff and his predecessor in title, the plaintiff relied on the sale deeds Ex.A1 and Ex.A2.

15. The learned counsel appearing for the appellant drew the attention of this court to the boundary description of the sale deed Ex.A1 and contended that since the southern boundary is



described as pathway, it has to be construed that the pathway existed even at the time of purchase made by the appellant. Though the southern boundary is mentioned as a pathway, no right is conferred upon the appellant to use the said pathway. Similarly, in the sale deed Ex.A2, the plaintiff was given only usual pathway right and no specific right has been conferred upon him on the pathway described as 'B' schedule property. Ex.A4 and Ex.A5 are the parent documents of Ex.A1 and Ex.A2. Both the lower courts had concurrently held that the description of the properties mentioned in the documents (Ex.A4 and Ex.A5) are not readable. Now in the present appeal, copies of those two documents are filed in CMP No.16160 of 2018. From Ex.A4 and Ex.A5, the existence of cart track as mentioned by the appellant could not be found out. Therefore, these two documents need not be marked as exhibits and the CMP No.16160 of 2018 is liable to be dismissed.

16. The plaintiff has not adduced any documentary evidence to show that the cart track (B schedule property) was in existence from the time immemorial and that his predecessors in title were also in enjoyment of the same for more than the period prescribed under the statute. Curiously enough, the PW2 and PW3 examined on the side of the plaintiff also admitted that the first defendant in O.S.No.655 of 1997 (first respondent in this appeal) purchased 10 cents of land from Perumayi Ammal and formed a cart track to reach the main road. The purchase of 10 cents of land from Perumayi Ammal by Muthu Gounder was not denied by the present appellant. The appellant mainly relies on the boundary description mentioned in Ex.A1 and Ex.A2, in which a pathway is shown as southern boundary of his property. In my view, Ex.A1 to Ex.A4 do not show any right of the appellant over suit 'B' schedule property as claimed by him.

17. The specific case of the second respondent is that he purchased 10 cents of land from one Perumayi Ammal for the purpose of forming a cart track. Both the courts below analysed the evidence on record and had concurrently held that the suit filed by the plaintiff in O.S.No.655 of 1997 cannot be sustained. All the observations made by the trial court as well as the first appellate court are based on the facts and are well founded. I therefore, do not find any reason to interfere with the concurrent findings of the both the courts below.

18. The learned counsel appearing for the appellant contended that he does not have any other pathway to reach his lands and therefore, the appellant should be given an easement of necessity over the suit cart track. In support of his contention, the appellant relied on the report of the Advocate Commissioner, wherein, the Advocate Commissioner has mentioned the existence of cart track.



19. It is pertinent to point out that the clear cut case of the second respondent is that, he purchased 10 cents of land from one Perumayi Ammal, only for the purpose of formation of the cart track and the advocate commissioner had inspected the suit property subsequent to the formation of the cart track by the second respondent/defendant. Therefore, based on the commissioner's report this court cannot held that the cart track was in existence from time immemorial, as alleged by the appellant. It is also to be pointed out that easement of necessity arises only where a transfer, bequathes or partition of single tenement is divided into one or more tenements and any of these tenements is situate in such a manner that it cannot be enjoyed without certain privilege on another tenement. Easement of necessity is also outcome of prior relationship between the two tenements. The plaintiff in the instant case had failed to plead and prove that his property as well as the property of the defendants belonged to a common owner and by virtue of division or transfer, got divided into various tenements. Therefore, the appellant cannot claim any easement of necessity over the property of the first respondent/defendant. Since the appellant has not established any of his contentions, I do not find any reason to allow these appeals.

20. In the result,

- (i) S.A.No.1808 of 2001 is dismissed. No costs.
- (ii) S.A.No.1809 of 2001 is dismissed. No costs.
- (iii) C.M.P.No.16160 of 2018 is dismissed.
- (iv) CMP No.487 of 2012 is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1. The II Additional District Judge, Salem,
- 2. The Principal District Munsif, Salem.

+2cc to Mr.S.Kalyanaraman, Advocate sr.no.64411, 64410
+2cc to M/s.Muthumani Doraisami, Advocate sr.no.63895

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