

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 08.03.2019
PRONOUNCED ON:28.03.2019
CORAM:
THE HON'BLE MR.JUSTICE T.RAVINDRAN
S.A.No. 1657 of 2002
and
C.M.P.No.14018 of 2002

1.Kuppusamy Gounder (deceased)

2.Sakthivel

3.Annalakshmi

4.Indirani

5.K.Nagamanickam

[Appellants 2 to 5 brought on record
as LR's of the deceased sole appellant
viz Kuppusamy vide court order dated
06.02.2018 made in CMP.No.13299 to
13301 of 2016)

.... Appellants /Plaintiffs

Vs.

Arul Jothi

.... Respondent/Defendant

Prayer:

Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree of the Subordinate Judge, Pollachi dated 20.12.2001 made in A.S.No.129 of 2001 confirming the judgment and decree on the file of the court of the District Munsif, Pollachi dated 28.03.2001 made in O.S.No.359 of 1999.

For Appellant : Mr.B.Srinivasan

For Respondent : Mr.R.Venkatachalapathy
for M/s. S.Kadarkarai

J U D G M E N T

In this second appeal, challenge is made to the judgment and decree dated 20.12.2001 passed in A.S.No.129 of 2001 on the file of the Subordinate Court, Pollachi, confirming the judgment and decree dated 28.03.2001 passed in O.S.No.359 of 1999 on the file of the of the District Munsif Court, Pollachi.

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

Whether the lower courts are legally correct in relying on unfiled and unmarked document to arrive at their decisions?

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

4. Suffice to state that the suit has been laid by the plaintiff for the relief of permanent injunction in respect of the cart track described in the plaint B schedule property. The existence of the cart track in the plaint A schedule property is not in dispute between the plaintiff and the defendant as such. The only dispute between the parties as regards the width of the cart track and according to the plaintiff, the width of the cart track is only 7 ft whereas, according to the defendant, the width of the cart track is 17 ft. According to the defendant, he is entitled to use the cart track obtaining in the A schedule property in taking the carts, tractors, lorries etc., for agricultural operations and only with a view to deprive his entitlement to the same, the plaintiff has come forward with the false suit putting forth the case that the cart track is only measuring 7 ft in width and according to him, the plaintiff has laid the suit after erecting or putting stone pillars in the cart track area as if the cart track is lies in between the stone pillars and not beyond that and therefore it is stated that the plaintiff's suit should fail.

5. The plaintiff has come forward with the suit contending that the cart track is measuring only 7 ft in width and the defendant's properties is lying to the south of the plaintiff's properties and in the guise of using the cart track in question, the defendant attempted to cut the coconut tress lying on the edge of the cart track as well as obliterate the ridges on the side of the cart track and in order to prevent the defendant from creating the cart track as desired by him, according to the plaintiff, he has been necessitated to institute the suit for appropriate reliefs.

6. Based on 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 plaintiff has preferred the second appeal.

7. When the plaintiff has instituted the suit claiming the equitable and discretionary relief of permanent injunction against the defendant in respect of the suit cart track alleging that the suit cart track measures only 7ft in width and the defendant in the guise of using the same, not entitled to cut the coconut tress and and destroy or obliterate the ridges lying in the cart track and when the abovesaid case of the plaintiff is being challenged by the defendant putting forth the defence that the cart track in question measures 17 ft in width and not 7 ft and he had not attempted to cut the coconut trees, or destroy or obliterate the ridges of the cart track as put forth by the plaintiff, in such view of the mater, as determined by the Courts below, prima facie the plaintiff should establish that the cart track in question measures 7 ft in width only and not 17ft in width as claimed by the defendant.

8. With reference to the abovesaid case of the plaintiff absolutely there is no material placed on his side other than the copy of the partition deed dated 14.05.1961 marked as Ex.A3. As rightly determined by the Courts below, the abovesaid partition deed does not indicate as to the width of the cart track in question and on a perusal of the partition deed, it only recites as to the existence of a mamool common cart track without giving its measurements in width and length. Therefore Ex.A3 would not in any manner be useful to hold that the cart track in dispute measures only 7 ft in width. The other documents of the plaintiff marked as Exs.A1 and A2 being the settlement extract and the Kist receipt would be of no use to determine the width of the cart track in question. In the light of the abovesaid position, it does not stand to reason as to on what basis the plaintiff has come forward with the suit claiming that the cart track in dispute or in the common usage of the parties concerned measures only 7 ft in width. For sustaining the abovesaid case of the plaintiff, he mainly relies upon the Commissioner's reports and plans marked as Exs.C1 to C4. On a perusal of Exs.C1 to C4 in toto, as rightly determined by the Courts below, the Commissioner had noted the distance between the two wheel marks found in the cart track measures 7 ft and by way of the same alone, we cannot determine that the cart track on ground measures only 7 ft in width. When the Commissioner has noted the existence of the coconut trees in the cart track portion as well as the ridges lying on the further side of the coconut trees and when the plaintiff has not placed any material to hold that the cart track on ground

measures only 7 ft in width and not more that, the Courts below are found to be justified in determining that the case of the defendant is more probable and right in holding that the cart track in question is having more width than projected by the plaintiff. In this connection, the witnesses examined on behalf of the defendant namely D.Ws.2 and 3 had clearly deposed that they had also enjoying the suit cart track and the same measures 17 ft in width and they had also deposed that with a view to prevent the defendant and their enjoyment of the suit cart track, the plaintiff had erected / put up stone pillars and thereby shortened the cart track to deprive them and the defendant from enjoying the same one way or the other and when their testimony is not shown to be unacceptable or untrustworthy, and when they are found to be uninterested witnesses and also using the cart track in common along with the parties to the lis and furthermore when the Commissioner at the time of his second inspection had noted the existence of fencing in the cart track area, the courts below are right in holding that the plaintiff is endeavoring one way or the other to reduce the width of the cart track and accordingly at the first instance, put up stone pillars and subsequently had also erected fencing with the sole aim of preventing the defendant from taking the carts, lorries and tractors through the cart track earmarked for the common enjoyment of the plaintiff and the defendant and others and in such view of the matter, the plaintiff being found to be hell-bent upon to create evidence to suit his case one way or the other without any authority in my considered opinion, the Courts below are found to be wholly justified in refusing the discretionary and equitable reliefs of permanent injunction sought for by the plaintiff against the defendant.

9. No doubt, the Courts below had also relied upon the documents projected in the matter at the time of the determination of the injunction application filed in the suit. It is found that at the time of the enquiry of the injunction application, on the side of the defendant, two documents of the plaintiff's family had come to be marked Exs.R1 and R2 and of the said documents particularly, Ex.R2 denoting that the cart track in question is measuring 150 links in length and 25 links in width, on that footing also, determined that the cart track in question is measuring more than 7 ft in width than putforth by the plaintiff and on that basis also decided the case against the plaintiff. Strictly speaking, the Courts below are not justified in relying upon the abovesaid documents for determining the issues involved in the suit as the abovesaid documents are not marked in the suit proceedings as such. Be that as it may, the plaintiff's counsel during the course of his arguments in the second appeal has not disputed the abovesaid documents relied upon by the Courts below as not effected

amongst his family members by way of partition. As to why the plaintiff had not endeavored to place the abovesaid documents for consideration before the Courts below at the time of the suit, no explanation is forthcoming on the part of the plaintiff. When the plaintiff as the litigant has come forward with the suit seeking for the quitable and discretionary relief, the plaintiff should be fair in projecting the best evidence available with him to shed more light on the controversy as regards the subject matter involved in the lis. When as admitted by the plaintiff's counsel, during the course of arguments, the abovesaid documents also described the suit cart track in question and the same relates to the partition effected amongst his family members, the abovesaid documents throwing more light on the issues in question, in my considered opinion, the plaintiff should have been fair in marking the said documents in the suit, and on the other hand had suppressed the same. The abovesaid documents form part of the records, however they having not been marked the suit proceedings as such, the Courts below before relying upon the said documents, should have put the plaintiff on notice with reference to the same and invited his views as regards the same. The Courts below had not adhered to the abovesaid approach. Be that as it may, when as above pointed out as no document has been placed by the plaintiff evidencing that the cart track only measures 7 ft in width and when the Commissioner's report and plan do not enure to the benefit of the plaintiff as above pointed out, as determined by the Courts below rightly and the plaintiff is also found to have suppressed the material evidence in his possession which would shed more light on the points in issue, in such view of the matter, the Courts below are found to be justified in not extending the equitable and discretionary relief of permanent injunction in favour of the plaintiff.

10. The points in issue between the parties as regards the cart track in question involving appreciation of facts projected in the matter and the Courts below having determining the said issues rightly and finding that the plaintiff has failed to establish his case that the suit cart track only measures 7 ft in width and the Commissioner's report and plan not advancing the case of the plaintiff as such, the determination of the Courts below in declining the relief sought for by the plaintiff, in my considered opinion, do not warrant any interference.

11. For the reasons aforesated, in my considered opinion, no substantial question of law is found to be involved in the second appeal. Be that as it may, the substantial question of law formulated in the second appeal is accordingly answered.

12. Learned counsel for the respondent in support of his contentions, placed reliance upon the decisions reported in

1. 2016 (4) CTC 138 [Selvaraj & Others Vs. Nagarajan & Another]

2. 2015 (14) SCC 450 [State of Madhya Pradesh Vs. Nomi Singh & Another]

The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

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

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Subordinate Judge,
Sub Court,
Pollachi.

2.The District Munsif,
District Munsif Court,
Pollachi.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

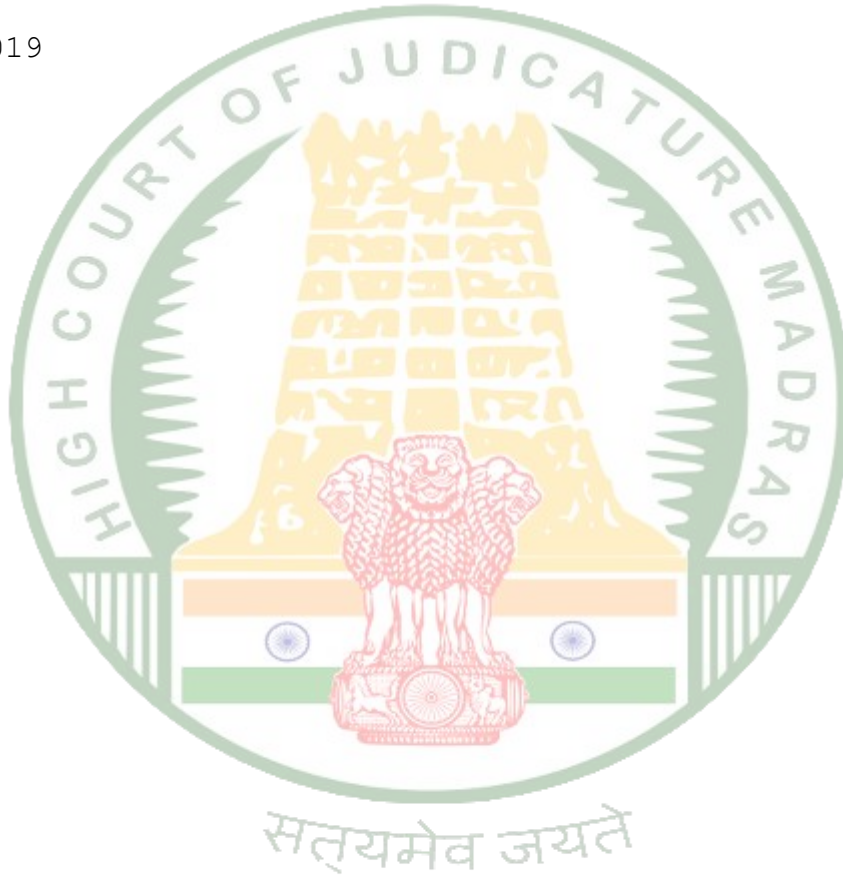
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+1 cc to Mr.B.SoundaraPandian Advocate sr29556
+1 cc to Mr.S.Kadarkarai Advocate sr29643

S.A.No. 1657 of 2002
and
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