

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.04.2019

PRONOUNCED ON : 23.04.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.424 of 2007

and

M.P.NO.2 of 2007

M.S.Ramasamy ...Appellant

Vs.

1.P.Duraisamy

2.V.Subramani

3.M.Ramaswami Gounder

4.Palanisamy ...Respondents

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 25.10.2005 made in A.S.No.54 of 2005 on the file of I Additional Subordinate Court, Erode reversing the judgment and decree dated 28.09.2004 made in O.S.No.2 of 2001 on the file of the I Additional District Munsif Court, Erode.

For Appellant : Ms.K.Indu Priya
for Mr.V.P.Senguttuvel

For Respondents: Mr.A.Sundaravadhanam
for Ms.P.T.Ramadevi for R2 & R4
R3 died - T/E

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 25.10.2005 passed in A.S.No.54 of 2005 on the file of I Additional Subordinate Court, Erode reversing the judgment and decree dated 28.09.2004 passed in O.S.No.2 of 2001 on the file of the I Additional District Munsif Court, Erode.

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

"1.Whether the first appellate court is right in holding that the respondents / defendants have a right of cart track through the appellant / plaintiff's land, while the respondents / defendants have not

produced any documents to claim a right over the patta land of the appellant / plaintiff?

2. Whether the first appellate court is right in holding that the cart track runs in the appellant / plaintiff's land is a common cart track over which the respondent / defendant have a right to use, in the absence of any documentary evidence and especially when the cart track is not extending upto the land of the respondents / defendants, while the respondents / defendants had not raised nay counter claim in the suit?

3. Whether the first appellate court is right in holding that the respondents / defendants have no other access excepting the alleged cart track through the appellant / plaintiff's land while the advocate commissioner's reports and sketch had proved that the jeep road on the L.B.P. Channel is running adjoining the respondents/defendants' land and the above report was not objected by the respondents/defendants?

3. Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

4. For the sake of convenience, the parties are referred to as per their rankings in the trial court.

5. The Suit has been laid by the plaintiff for permanent injunction.

6. Claiming that the suit property belongs to the plaintiff by way of the registered sale deed dated 09.06.1992 marked as Ex.A9, the case has been projected by the plaintiff that the defendants, without any authority or entitlement, interfered with his possession and enjoyment and hence, he has been necessitated to lay the suit for appropriate reliefs.

7. The defendants resisted the suit contending that the plaintiff's predecessor in interest, namely, O.V.Balasubramaniam is not entitled to the extent of 10 cents in the suit survey number and in such view of the matter, the claim of the plaintiff that he has acquired the title to the extent of 10 cents by way of Ex.A9 sale deed is false and further according to the defendants, the plaintiff has never been in the possession and enjoyment of the suit property, as put forth in the plaint, and the description of the suit property has also been not properly given and it is further stated that there is a well formed cart track running north-

south in the suit property on the western side and the plaintiff is attempting to annexe the said cart track by claiming title to the extent of 10 cents and thereby endeavouring to prevent the defendants from gaining access through the said cart track and accordingly prayed for the dismissal of the said suit.

8. Based on the materials placed on record by the respective parties and the submissions made, the trial court was pleased to hold that the plaintiff is not entitled to obtain the relief of permanent injunction and also observed that the defendants are entitled to take appropriate steps for seeking the remedy in the cart track, if available in the suit property and accordingly, disposed of the suit in favour of the plaintiff. The trial court, after having come to the conclusion that the plaintiff is not entitled to the relief of permanent injunction, however, with the abovesaid observation determined that the suit laid by the plaintiff is disposed of and on that basis it is found that the decree had been passed in favour of the plaintiff as if the relief of permanent injunction had been granted in his favour by the trial court. Aggrieved over the same, the defendants preferred the first 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 impugning the same the present second appeal has been laid.

9. As could be seen from the materials placed on record, the plaintiff claims that he has title to an extent of 10 cents in the suit survey number based on the sale deed dated 09.06.1992 marked as Ex.A9. According to the plaintiff, his vendors had acquired title to the above said extent by way of the sale deed dated 09.12.1968, the copy of which has been marked as Ex.B1. The executant of Ex.B1, namely, O.V.Balasubramaniam had acquired the property by way of the partition deed dated 17.01.1962, the copy of which is marked as Ex.B2. On a perusal of Ex.B2, it is found that O.V.Balasubramaniam had only title to the extent of 8 cents of land in the suit survey number and not more than that. In such view of the matter, the claim of the plaintiff that his vendors had acquired the valid title to an extent of 10 cents by way of Ex.B1 and thereby they had conveyed the same to him by way of Ex.A9 sale transaction, as such, cannot be believed and accepted. Therefore, it is found that the plaintiff is claiming title to the more extent of land than what he is legally entitled to. In other words, it is noted that the plaintiff is claiming the title, possession and enjoyment to the extent of 2 cents in the suit survey number, without any basis. Therefore, on the abovesaid score alone, particularly, when the plaintiff has failed to establish that his predecessors in interest are entitled as regards the extent of 10 cents, the first appellate court is justified in negating the relief sought for by the plaintiff on the abovesaid point.

10. Considering the lie of the suit property, as could be seen from the FMB marked as Ex.A11 plus the commissioner's report and plan marked as Exs.C1 to C4 in the matter, in all, it is found that there is a well marked cart track branching from Modakuruchi-Ganapathipalayam Main Road and it ends on the north of the suit property, as could be seen from the commissioner's report and plan. The suit property has been depicted as "A" in the commissioner's plan and accordingly it is found that the defendants' properties are lying to the south-west of the suit property. As rightly found by the first appellate court, a well laid out cart track branches from Modakuruchi-Ganapathipalayam Main Road towards south and reaches upto the northern extremity of the suit property and accordingly it is found that, as put forth by the defendants, the abovesaid cart track further extends southwards for enabling the defendants and the others to gain access to their properties and accordingly, as rightly found by the first appellate court, the cart track runs further south on the western part of the suit property and however, the plaintiff, in the guise of owning more extent of land than what he is entitled to, is found to have annexed the cart track portion lying on the western side of the suit property and had come forward, by way of the present suit by falsely projecting the case as if he has title, possession and enjoyment to the extent of 10 cents. When, as above discussed, the plaintiff's predecessors in interest had no title to the cart track portion lying on the western side of the suit property and he is entitled to only 8 cents, in such view of the matter, the plaintiff having failed to establish his claim of title to the extent of 10 cents as projected in the plaint, obviously, as contended by the defendants, the plaintiff had endeavoured to annex the cart track portion also running on the western side of the suit property and thereby falsely claimed that he is in the possession and enjoyment of 10 cents of land and in such view of the matter, the lie and the physical features obtaining in the suit property belie the case of the plaintiff as well as the plaintiff having failed to establish his entitlement to the extent of 10 cents in the suit survey number and the cart track portion is also found to be extending further south for enabling the defendants and the others to gain access through the same, in such view of the matter, the plaintiff having failed to establish his possession and enjoyment of the extent of 10 cents in the suit property and when the documents projected by him for evidencing the claim of possession and enjoyment of 10 cents of land are all found to have emanated after the institution of the suit, it is evident that, absolutely, there is no proof on the part of the plaintiff establishing his possession and enjoyment of the 10 cents of land. In such view of the matter, the first appellate court is justified in negating the relief of permanent injunction sought for by the plaintiff by setting aside the judgment and decree of the trial court and in my considered opinion, no reason is warranted to

interfere with the judgment and decree of the first appellate court.

11. The plaintiff's counsel in support of his contentions placed reliance upon the decision reported in 2000(I) CTC 719 (G.Kannan and another vs. Kulikambai alias Saroja and two others). The principles of law outlined in the abovesaid decision are taken into consideration and followed as applicable to the case at hand.

12. In the light of the above discussions, it is found that no substantial question of law is involved in this second appeal as such. Be that as it may, the substantial questions of law formulated in this second appeal are accordingly answered against the plaintiff and in favour of the defendants.

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

Sd/-

Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

bga

To

1. I Additional Subordinate Court, Erode.

2. I Additional District Munsif Court, Erode

Copy to

The Section Officer, V.R. Section,
High Court, Madras

+1cc to Mr.V.P.Senguttuvel, Advocate SR.No.39303

+1cc to Mr.A.Sundaravadhanam, Advocate SR.No.38759

S.A.No.424 of 2007

GMV (06/01/2020)