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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.04.2019

PRONOUNCED ON : 27.04.2019

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.565 of 2006

S.N.Aandamuthu ... Appellant/Appellant/Plaintiff

Vs.

1.Palanisamy Gounder

2.Sengottaiyan ... Respondents/Respondents/Defendants

Prayer :- Second Appeal has been filed under Section 100 of the Civil Procedure Code against the Judgement and Decree dated 13.10.2004 passed in A.S.No.54 of 2004 on the file of the Principal District Court, Erode, confirming the judgement and decree dated 22.12.2003 passed in O.S.No.17 of 2002 on the file of the District Munsif cum Judicial Magistrate, Perunthurai.

For Appellant : Mr.T.M.Hariharan

For Respondents : Mr.A.Sundaravadhanan

JUDGMENT

In this second appeal, challenge is made to the Judgement and Decree dated 13.10.2004 passed in A.S.No.54 of 2004 on the file of the Principal District Court, Erode, confirming the judgement and decree dated 22.12.2003 passed in O.S.No.17 of 2002 on the file of the District Munsif cum Judicial Magistrate Court, Perunthurai.

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

"(1).Whether an easement of necessity it not created by operation of law and whether the courts below are right in rejecting the claim of the appellant in this regard on the ground that the right is not referred in Ex.B1 which in any event deals with undivided share?



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(2).Whether the existence of an alternative cart track and channel in which the appellant does not have a right of user can operate against his claim for an easement of necessity?"

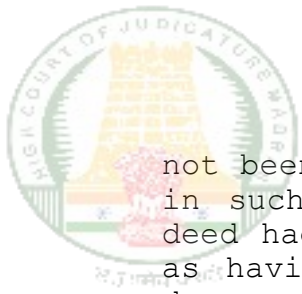
3.Considering the scope of the issues involved between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

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

5.Suffice to state that the suit has been laid by the plaintiff against the defendants for declaration of his right to use the suit channel and to use the suit Cart track as described in the plaint and also prayed for the consequential permanent injunction, restraining the defendants from interfering with his right to use the suit channel as well as the suit cart track and also prayed for the relief of mandatory injunction directing the defendants to restore the suit channel as well as the suit cart track to its original position as according to the plaintiff, the same had been obliterated by the defendants by encroaching into the same.

6.After hearing the counsel for the plaintiff as well as the defendants, it is seen that the issues involved between the parties lies on the appreciation of the factual matrix. The plaintiff claims right to use the suit channel and the suit cart track based on the sale deed dated 25.03.1959 marked as Ex.A1. As rightly analysed and determined by the Courts below, it is found that even though there is a reference about the mamool channel and cart track in the abovesaid sale deed, it is found that the plaintiff is unable to co-relate the same with the suit channel and the suit cart track as set out in the plaint and in such view of the matter, merely from the sale deed Ex.A1, it cannot be held straightaway that the plaintiff and his predecessor in interest had been granted the right to use the suit channel and the suit cart track as put forth by the plaintiff.

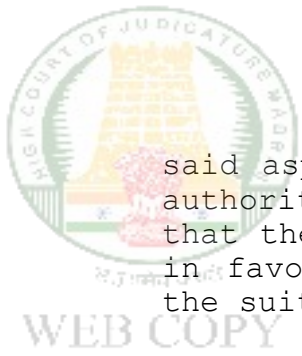
7.The executants of Ex.A1 sale deed who had transferred the right in favour of the plaintiff's father are found to have derived the right in respect of the property comprised in Ex.A1 sale deed by way of Ex.B1 sale deed dated 02.01.1946. It is found that only by way of Ex.B1 sale deed, the executants of Ex.A1 sale deed had acquired the right of the property concerned from one Ramaiah ammal w/o Ramanna Gounder and her daughter Chinnammal. As rightly analysed and found by the Courts below, under Ex.B1 sale deed, the executants of Ex.A1 sale deed have



not been conferred any right over any channel and cart track and in such view of the matter, when the executants of Ex.A1 sale deed had not derived any right to use any channel or cart track as having been conveyed to them by way of Ex.B1 sale deed, it does not stand to reason as to how the plaintiff would be entitled to claim that his father had acquired the right to use the suit channel and the suit cart track based on Ex.A1 sale deed. As abovenoted, the mamool channel and cart track described in Ex.A1 is not shown to be related or having nexus with the suit channel or with the suit cart track as such. Be that as it may, when the executants of Ex.A1 sale deed are found to have not been conveyed any right over any channel or cart track under Ex.B1 deed, hence it is evident that as determined by the Courts below, they would not be competent to grant any such right in favour of the plaintiff's father by way of Ex.A1 sale deed and the abovesaid facts had been analysed by the Courts below in detail and accordingly, held that in the absence of any mention of any cart track or channel in Ex.B1 sale deed, the subsequent inclusion of the right to use the channel or cart track in Ex.A1 sale deed cannot be upheld as the vendors had not the competency to convey the said right in favour of the plaintiff's father.

8.The plaintiff would also put forth the claim of easementary right by way of necessity in respect of the suit channel and the suit cart track. However, as found by the Courts below, the plaintiff has miserably failed to establish that the property belonging to him and the property belonging to the defendants were owned by the common ancestor and thereafter, the properties got divested in favour of the others by way of purchase, partition etc., and accordingly, it is seen that the plaintiff having also admitted that his father's vendors and the defendants had different origin, accordingly, when the common ownership of the properties having not been established, in such view of the matter, the right of easement by way of necessity is found to be legally unsustainable as determined by the Courts below following the various authorities cited before them.

9.In this matter, it is found that advocate commissioner had been appointed and he had inspected the properties and noted the physical features and filed his report and plan marked as Exs.C1 & C2. Considering the same, as determined by the Courts below, when it is found that the plaintiff has alternative pathway to reach his field as disclosed in the commissioner's report and plan and when there is no existence of cart track in the defendants field or bordering the defendants field as such, in such view of the matter, it is found that the plaintiff is having other access to reach his field and thereby, the right of easement put forth by the plaintiff by way of necessity cannot be sustained legally and the Courts below had also analysed the



said aspects of the matter in detail by considering the various authorities projected before them for consideration and held that the right of easement by way of necessity cannot be granted in favour of the plaintiff in respect of the suit channel and the suit cart track.

10. Considering the factual matrix, as could be seen from the materials placed on record in conjunction with the commissioner's report and plan, it is found that the plaintiff has miserably failed to establish the existence of the suit channel and the suit cart track on ground, in such view of the matter, the further case of the plaintiff that the defendants had obliterated or destroyed the suit channel and the suit cart track and therefore, they should be directed to restore the same to the original position does not arise for consideration, particularly when the existence of the suit channel and the suit cart track itself is not proved and as above discussed, when the plaintiff has failed to establish his entitlement to use the same under Exs.A1 sale deed and the plaintiff's right of the usage of the same by way of necessity also not meriting acceptance considering the failure of the plaintiff to establish the common ownership of the properties belonging to the parties and furthermore, when the plaintiff has alternative access to reach his field, in all, it is found that absolutely, no case is made out by the plaintiff and accordingly, it is found that the Courts below had rightly rejected the same.

11. In the light of the abovesaid discussions, the Courts below had analysed the oral and documentary evidence projected by the rival parties in detail and by furnishing acceptable reasons and conclusions and also following the principles of law governing the rights of the parties as put forth by them, rightly determined that the plaintiff is not entitled to seek and obtain the reliefs prayed for and I do not find any valid ground to interfere with the abovesaid determination of the Courts below. In such view of the matter, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are, accordingly, answered against the plaintiff and in favour of the defendants.

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

Sd/-
Assistant Registrar (CS-V)

//True Copy//

sms

Sub Assistant Registrar



To

1. The Principal District Court, Erode.

2. The District Munsif cum Judicial Magistrate, Perunthurai.

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+1 cc to M/s. T.M. Hariharan, Advocate, S.R.No. 41572

+1 cc to M/s. A. Sundaravadhanan, Advocate, S.R.No. 41155

S.A.No. 565 of 2006

PPA (CO)
SSM (17/10/2019)