

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2019

CORAM:

THE HON'BLE MR.JUSTICE N.SESHASAYEE

S.A.NO.1576 OF 2004

N.Rajendran

...Appellant/Plaintiff

Vs.

- 1.Ponnusamy (deceased)
- 2.Chinnapponnal (deceased)
- 3.Muthukrishnan
- 4.Eswaran
- 5.Venkatresan
- 6.Meena

...Respondents/Defendants

[RR4 to 6 brought on record as LRS of the deceased RR1 & 2 Vide order of Court dated 18/12/2018 made in CMP.No.165/2015 in SA.No.1576 of 2004 (Dr.GJJ)]

Prayer:-

Second Appeals filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 31.03.2004 made in A.S.No.88 of 2003 on the file of the Sub Court Bhavani, confirming the judgement and decree dated 17.01.2003 made in O.S.No.274 of 2001 on the file of the Second Additional District Munsif Court, Bhavani.

For Appellant : Mr.N.Manokaran

For Respondents : Ms.Zeenath Begum for R3
Mr.C.Kulanthaivel
for RR4 to 6

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JUDGMENT

The plaintiff who has lost his suit for injunction alleging that his right of way over a cart track is distributed, successively before the Courts below has preferred this appeal. Parties would be referred to by their rank before the trial Court.

2.The brief facts are:

The plaintiff owned a piece of property in Natham Survey Nos.631/29, 631/30 and 631/40, which is correlated to resurvey Nos.319/ 2, 319/4 and 319/6. According to the plaintiff, on the south of his property runs a East-West cart track with an approximate width of about 12 feet. This cart track is the only access to his property from the main road on the far West. The defendants have property to the South of the said cart track and they are trying to obliterate the cart track and disturbed the plaintiff's free use of the same. Hence, the suit.

3.The primary contention of the defendants is that they deny the plaintiff's title to the property to the North of the cart track and also deny the existence of the cart track.

4.1 The dispute went for trial. Both sides adduced oral and documentary evidence and the relevant documents are Exts.A3, A4 and A5, the village record and FMB, and also Ext.C1 to C5, the Commissioner's reports. The trial Court on appreciating the evidence has dismissed the suit on the following grounds:

- Ext.A5, FMB and Commissioner's plan indicate the existence of a certain cart track (should not be confused with the suit cart track) to the immediate West of the plaintiff's property and it serves as an alternative way to the plaintiff.
- Evidence on record indicates that no cart track such as the one described as the suit property actually exists.
- The plaintiff contended that the width of the cart track which was said to have been obstructed by the defendants, is 12 feet, where as, the Commissioner finds the same to be only 10 feet.

4.2 Aggrieved by the Judgment and Decree of the Trial Court, the plaintiff preferred a first appeal, and the First Appellate Court has adopted the very line of reasoning of the trial Court, and dismissed the Appeal. Challenging the same, the plaintiff is now before this Court.

5.The appeal is admitted on the following Substantial Questions of Law;

(a) In the face of the admission made by the defendants that there exists a cart track (which is the subject matter of the suit itself), though it exclusively belongs to the defendants only and in the context of the Commissioner's report, which shows the

existence of a cart track, have not the courts below committed an error of law in holding that there exists no cart track at all?

(b) Have not the Courts below committed an error of law in not deciding the claim of the plaintiff based on easement of necessity on its conclusion that there exists no cart track at all, while in fact, the card track is shown to be in existence?

6.1. The learned counsel for the appellant argued that the Judgment of the Courts below are a product of improper, if not perverse appreciation of evidence. Elaborating his arguments, the learned counsel contended:

- The Revenue records viz. Ext.A3 to A5 and Ext.C4 would indicate that there is a cart track running in Survey No.631/11, 631/18 and 631/34, and proceeds further beyond the suit property to 631/33. And, the Commissioner too reports the existence of this cart track and noted its width at 10 ft. While it is true that both the FMB (Ext.A5), and the Commissioner's plan also indicate the existence of the cart track abutting the plaintiff's property on the West, both the courts below failed to note that this cart track on the west stops with a property in S.No.631/21, and does not travel the entire distance to provide some access to the main road. In other words, this cart track on the west of plaintiff's property serves only as an access up to S.No:631/21 merely. It is hence, inconceivable that the Courts below should enter a finding that the cart track which the plaintiff asserts does not exist. And, the Courts failed to note that the Commissioner's report and plans are not impeached.
- Secondly, nowhere the defendants has challenged any of the official revenue documents.
- Thirdly, in terms of evidence, all the public convenience such as pipeline and over head and electrical lines are going through the suit cart track.

6.2 The learned counsel for the respondents spent valiant efforts to justify the line of reasoning of the Courts below. He submitted that the Commissioner has filed along with his report as many as four plans, of which, Ext.C.4 is the FMB of the old Sy.Nos.465 and 475. This document does not show the existence of any cart-track along the Sy.No.631. The learned Munsif has also indicated that between Natham Survey Nos.475 and 465 there

existed a north-south pathway, which according to P.W.1 was available on lie. When the survey plan under Ext.C.4 does not indicate existence of any pathway, it is inconceivable that plaintiff could seek a decree for injunction on the premise that there existed a pathway.

7.1. On appreciating the rival contentions, this Court considered that the Courts below have concurrently erred in selectively picking up some evidence and focusing them for its appreciation. It would have been appropriate if it had considered all the material evidence on record, which the counsel for the plaintiff/appellant has ably collated and presented before this Court. It may be mentioned here that both the plaintiff and the defendants are not the descendants of the original title holder but, are the purchasers of their respective properties under Ext.A.1, dated 09.07.1980, and Ext.B.1, dated 16.05.1994.

7.2 As has been noted by the Courts below, there runs a cart-track along resurvey no.631/11, 34, 35, 33 and 31. This is seen from Ext.A.5. Now, if Ext.B.1 sale deed under which the defendants have purchased their plot of land is considered, it shows that the defendants have purchased properties under Sy.No.319/6 and 319/5, both of which are described as lying on either side of a cart-track measuring 14 feet x 200 feet. Now, having purchased a property on either side of the cart-track, it is not given to the defendants to ignore the existence of a cart-track by relying on Ext.C.4, F.M.B.

8.The Court is not called upon to explore the history of the property, as it is not required to resolve the dispute between the parties in this case. Here is a case where parties come to litigate on the existence or non-existence, of a certain state of affairs as on the date of litigation. On the date of the suit, admittedly there runs a Cart-track along the resurvey nos.631/11, 34, 35, 33 and 31 and that the defendants have properties on either side of the Cart-track. The Commissioner also indicates existence of this cart-track in his report, and it goes unimpeached. When the state of affairs at that time when the suit was laid is as stated above, then, it necessarily has to be held that the Courts below have blundered in relying on old Survey number under Ext.C.4, ignoring Ext.A.5 resurvey plan and overlooking the sale deed of the defendant.

9. It is necessary to remind the trial Courts and the first appellate Courts, that in our pyramid shaped judicial system,

with more judges at the bottom of the pyramid, it is indispensable for them to realise that, when they get the first opportunity to decide a case, they ought to bestow utmost care in deciding them. After all, law is not any different for the Superior Courts. Why not the Court that gets the first opportunity to decide a case, attempt to decide it as correctly as possible? Greater the care they show, lesser will be the burden on the superior courts to correct them. If their job is done well, then it would be a great filter in assisting the higher Court to entertain the same litigation on their file. After all, notwithstanding the journey a litigation may take through various Courts, it should not be forgotten that ultimately all the courts at all levels and stages deal with the same cause of action between the same parties. As doctor of rights, Courts shall take conscious efforts not to falter.

10. Turning to the case, at hand, the learned counsel for the respondents apprehended that in the guise of seeking a right of way over R.S.No.631/11, 34, 35, 33 and 31, the plaintiff might enter his property. While the anxiety of the learned counsel may or may not be well founded yet, the fact remains that the defendants cannot obstruct the free flow of traffic in the cart-track in resurvey nos.631/11, 34, 35, 33 and 31. If at all the plaintiff attempts to interfere with the possession of the defendants over their property purchased under Ext.B.1, that may give rise to an independent cause of action, and as and when a situation such as that arises, the defendants would be at liberty to workout their remedy in accordance with law.

11. So far as this case is concerned, this Court holds that both the Courts below have selectively addressed the evidences and wrongly appreciated their effect. Necessarily, this Court has to interfere with the decree passed by the Courts below. For the reasons already stated, the substantial questions of law are answered in favour of the plaintiff/appellant.

12.1 In conclusion, this appeal is allowed and the Judgment and Decree, dated 31.03.2004, passed in A.S.No.88 of 2003, on the file of the Sub Court Bhavani, confirming the judgement and decree, dated 17.01.2003, passed in O.S.No.274 of 2001, on the file of the Second Additional District Munsif Court, Bhavani is hereby set aside. No costs.

12.2. Further a decree be passed injuncting the defendants from interfering with the plaintiff's use of cart-track in resurvey no.631/11, 31, 34, 35 and 33 and there will not be any

decree for property in resurvey no.319/5 and 319/6, which belong to the defendants.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

tsg

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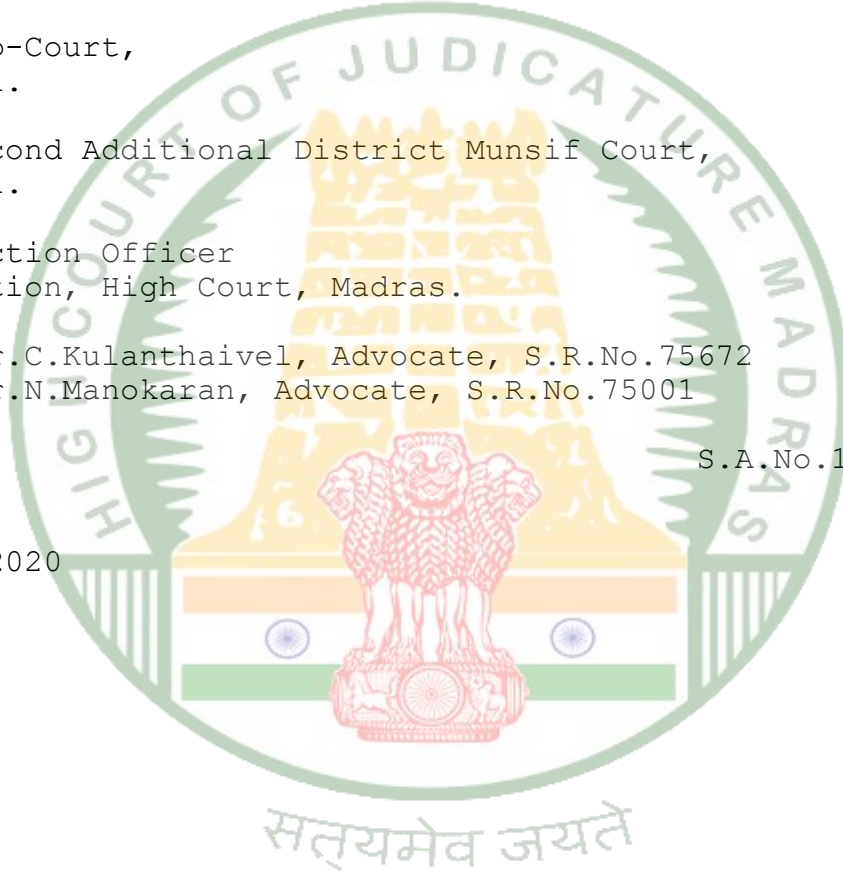
1. The Sub-Court,
Bhavani.
2. The Second Additional District Munsif Court,
Bhavani.
3. The Section Officer
VR Section, High Court, Madras.

+1cc to Mr.C.Kulanthaivel, Advocate, S.R.No.75672

+1cc to Mr.N.Manokaran, Advocate, S.R.No.75001

S.A.No.1576 of 2004

CNR(CO)
CS/11/12/2020



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