

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.07.2019

C O R A M

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

S.A.No.123/2010 and 124 of 2010

S.A.NO.123 OF 2010

Viswanathan ... Appellant/ Appellant/Plaintiff

Vs.

Prakash ... Respondent/Respondent/Defendant

PRAYER IN S.A.123 of 2010: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 29.12.2008 passed in A.S.No.106 of 2008 by the Principal Subordinate Judge, Gobichettipalayam, Erode District upholding the decree and judgment dated 30.10.2007 passed in O.S.No.84 of 2004 by the District Munsif, Sathyamangalam, Erode District.

SA.No. 124 of 2010:

Viswanathan ... Appellant/ Respondent/Defendant

Vs.

Prakash ... Respondent/Appellant/Plaintiff

PRAYER IN S.A.124 of 2010: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 29.12.2008 passed in A.S.No.42 of 2008 by the Principal Subordinate Judge, Gobichettipalayam, Erode District reversing the decree and judgment dated 30.10.2007 passed in O.S.No.178 of 2002 by the District Munsif, Sathyamangalam, Erode District

For Appellant : Mr.V.Nicholas for Mr.Ma.P.Thangavel
(in both the appeals)

For Respondent : Mr.R.T.Doraisamy(in both the appeals)

COMMON JUDGMENT

The appellant in both the appeals is the plaintiff in O.S.No.84/2004 and defendant in O.S.No.178 of 2002 on the file of the District Munsif, Sathyamangalam, Erode District.

2. The appellant/plaintiff filed the suit in O.S.No.84/ 2004 for recovery of a sum of Rs.44,000/- from the defendant with interest at the rate of 9% p.a. from the date of plaint till the date of realization. The respondent/defendant filed the suit in O.S.No.178/2002 against the present appellant for recovery of a sum of Rs.16,170/- together with interest at the rate of 12% p.a. from the date of plaint till the date of realization.

3. The brief averments of the case of the plaintiff in O.S.No. 84/2004 .

The appellant/plaintiff executed a sale deed dated 01.03.2001 (Ex.A1= Ex.B2) in favour of the defendant. On the same date, an agreement was entered into between the appellant and the respondent through which the respondent/defendant agreed to make the cart track running through S.No.1765, 1766 and 1765/2B in an usable condition and as per the agreement, the appellant/ plaintiff withheld a sum of Rs.16,000/- from the total sale consideration. While so, the respondent/defendant without making the cart track ready in an usable condition, issued a notice dated 14.06.2002 to the appellant/plaintiff stating that he has made the cart track ready for the use of the appellant. In fact, the appellant/ plaintiff has been reaching his land by walk from Kadamboor road. More over, the land in S.No.1675/2B through which the cart track passes belongs to one Sadayappan, and he prevented the appellant/plaintiff from using the cart track running through his land. One Renuka purchased the cart track measuring 22 1/2 x 50 feet from Sadayappan and she has been using the same. The appellant/plaintiff paid a sum of Rs.50,000/- to the said Renuka for using the land and in fact both the appellant/plaintiff and Renuka entered into an agreement dated 26.07.2002 (Ex.A5) in this regard. Since the respondent/defendant did not make the cart track ready as promised by him, the plaintiff had to pay a sum of Rs.50,000/- for reaching his land by making an agreement with Renuka, a third party. He also prayed for a sum of Rs.10,000/- for mental agony and thus prayed for passing a decree against the respondent to pay a sum of Rs.44,000/- after deducting a sum of Rs.16,000/- which he has to pay to the defendant towards sale consideration.

4. The respondent/defendant denying all the allegations made by the appellant/plaintiff filed a suit in O.S.No.178 of 2010 claiming a sum of Rs.16,000/- from the appellant/plaintiff. His specific contention in the suit in O.S.N.178 of 2010 is that though he made the cart track ready for usage of the appellant herein to reach his land as per the agreement dated 01.03.2001, the appellant did not pay the balance sale consideration of Rs.16,000/- to him. It is also

contended by him that the repeated requests for payment of balance sale consideration made by him to the appellant through telephone and also in person did not evoke any response. Therefore he filed a suit in O.S.No.178 of 2002 for recovery of a sum of Rs.16,000/- together with interest at the rate of 12% p.a.

5. The present appellant filed his written statement in the said suit in O.S.No.178 of 2002 denying all the allegations of the respondent herein.

6. Since the parties, subject matter and issues involved in both the suits are one and the same, the learned District Munsif, Sathyamangalam tried both the suits jointly and recorded the evidence in common in O.S.No.84 of 2004. After full contest, the learned District Munsif, Sathyamangalam dismissed both the suits in O.S.No.84 of 2004 and O.S.No.178 of 2002 vide her decree and judgment dated 30.10.2007. Aggrieved over the same, the plaintiff/appellant herein filed an appeal in O.S.No.106 of 2008 while the respondent herein filed A.S.No.42 of 2008 before the Principal Subordinate Judge, Gobichettipalayam.

7. The learned Principal Subordinate Judge, Gobichettipalayam after analysing the evidence on record, allowed the appeal in A.S.No.42 of 2008 and dismissed the appeal in A.S.No.106 of 2008 vide his decree and judgment dated 29.12.2008.

8. Now the present second appeals are filed by the plaintiff in O.S.No.84 of 2004 and the defendant in O.S.No.178 of 2002 on the following questions of law.

(i) Whether the courts below are right in dismissing the plea of the plaintiff, though there is an admission of existence of an agreement Ex.A2 by the defendant?

(ii) Whether the courts below has followed Section 101 of Evidence Act while holding that the cart track was made ready by the defendant after the purchase of the property without any piece of evidence, when the burden is heavy on the person who makes such a plea?

(iii) Whether the "Doctrine of Estoppel" come in to play against the plaintiff as observed by the first appellate Court?

9. When the appeals came up for admission on 03.02.2010, a notice regarding admission was issued to the respondent. Subsequently, both the appeals were taken up for admission today.

10. The main contention of the appellant/plaintiff is that since the respondent/defendant did not make ready the cart track as per the agreement dated 01.03.2001 (Ex.A2= Ex.B1), he had to pay a sum of Rs.50,000/- to one Renuka, who purchased a cart track measuring 22 1/2 x 50 feet from one Sadayappan. His further contention is that the cart track in fact is lying in the land in S.No.1765/2B, which belongs to Sadayappan and that the said Sadayappan prevented the appellant/plaintiff from using the cart track.

11. In order to establish that the appellant/plaintiff paid a sum of Rs.50,000/- to one Renuka for using the cart track to reach his land, he relies on a photo copy of an agreement (Ex.A5) dated 26.07.2002 alleged to have been entered into between the plaintiff and Renuka. It is pertinent to point out that the original agreement has not been filed by the appellant/plaintiff. He did not also examine Renuka to prove the agreement dated 26.07.2002. Both the courts below had concurrently held that the appellant/plaintiff did not prove that he paid a sum of Rs.50,000/- as per the agreement Ex.A5. The trial court held that the respondent/ defendant did not prove that he made the cart track ready as per the agreement Ex.A2 and ultimately dismissed the suit in O.S.No.178/2002 filed by him.

12. On the other hand, the first appellate court held that since it is clear from the evidence that the appellant/plaintiff has been using the cart track, it cannot be said that the respondent/defendant did not make the cart track ready. It is further observed by the first appellate court that in the agreement dated 01.03.2001 (Ex.A2 = Ex.B1), as there is no specific condition as to how the cart track should be made ready, the appellant/ plaintiff cannot say that the respondent/defendant did not properly make the cart track ready for his usage. Therefore, the first appellate court dismissed the suit filed by the present appellant herein and allowed the suit filed by the respondent.

13. It is pertinent to point out that the appellant/ plaintiff states that he was not allowed to use the cart track in the land of Sadayappan. He did not file any suit against the said Sadayappan, especially when there is a specific mention about the cart track running through the land of Sadayappan in the sale deed Ex.A1. Further more, he did not adduce any acceptable evidence to show that as per the agreement entered into between him and Renuka, he paid a sum of Rs.50,000/- to Renuka. Therefore, both the courts below had held that in the absence of any acceptable evidence, the suit filed by the appellant/plaintiff cannot be decreed. All the observations made by both the courts below in this regard are based on

evidence on record.

14. As regards the suit in O.S.No.178 of 2002 filed by the respondent herein, it is admitted by the appellant/plaintiff that he withheld a sum of Rs.16,000/- towards the sale consideration. The respondent had also issued a notice dated 12.06.2002 (Ex.A4) stating that the cart track was made ready. The appellant/plaintiff did not adduce any evidence to show that he has been using some other pathway to reach his land and in fact, the evidence on record shows that the plaintiff has been using the pathway mentioned in the sale deed (Ex.A1=Ex.B2).

15. The appellant/plaintiff had contended that he initially reached his land by walk from Kadamboor road and that subsequently, he paid a sum of Rs.50,000/- to one Renuka, who purchased the cart track from Sadayappan. As already observed by this court, the appellant has not established that he paid a sum of Rs.50,000/- to Renuka for usage of the cart track. In the absence of sufficient evidence to show that the plaintiff is using a different pathway, it has to be held that the appellant/plaintiff has been using the pathway indicated in the sale deed (Ex.A1 = Ex.B2). Therefore, the first appellate court was right in holding that the appellant/plaintiff is liable to pay a sum of Rs.16,170/- together with interest at the rate of 9% p.a. from the date of plaint till the date of decree and thereafter at 6% p.a. till the date of realization. All the observations made by the first appellate court are perfectly in order and in fact, there is no substantial question of law in both the second appeals.

16. In the result,

(i) The second appeals in S.A.No.123/2010 and 124/2010 are dismissed. No costs.

(ii) The decree and judgment dated 29.12.2008 passed in A.S.No.106 of 2008 and A.S.No.42 of 2008 on the file of the Principal Subordinate Judge, Gobichettipalayam are upheld.

Sd/-

Assistant Registrar (CCC)

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Sub Assistant Registrar

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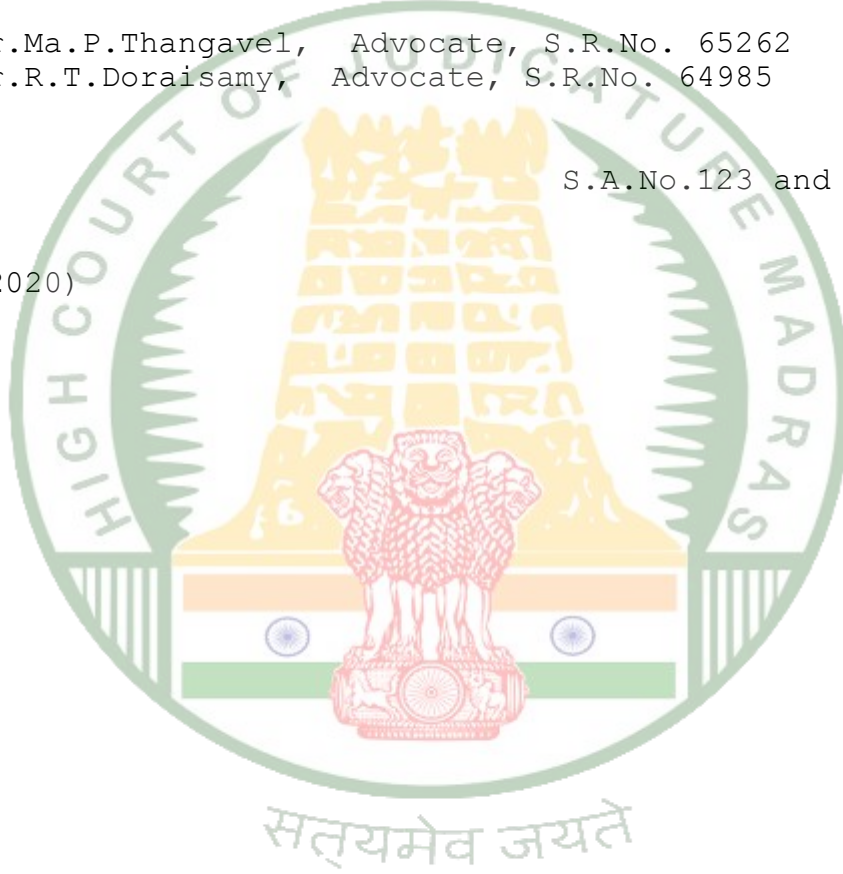
To

1. The Principal Subordinate Judge,
Gobichettipalayam, Erode District.
2. The District Munsif,
Sathyamangalam, Erode District.
3. The Section Officer,
V.R. Section, High Court,
Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No. 65262
+1cc to Mr.R.T.Doraisamy, Advocate, S.R.No. 64985

S.A.No.123 and 124 of 2010

EV (CO)
GN(13/02/2020)



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