

IN THE HIGH COURT OF JUDICATURE AT MADRAS
RESERVED ON : 15.10.2019
PRONOUNCED ON : 25.10.2019
CORAM
THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM
S.A.No.1363 of 2005

Subramani

... Appellant/ 1st Defendant

Vs.

- 1.Kandasamy
2. Easwaran
3. Jayalakshmi
4. Ramasamy
5. Periasamy
6. Muthumani
7. Duraisamy
8. Muthulakshmi
9. Krishnamurthi
10. Andamuthu

...Respondents 1 to 8/Plaintiffs
...Respondents 9 & 10/
Defendants 2 & 3

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 23.06.2004 and made in A.S.No.21 of 2004 on the file of the Principal Sub-Judge, Erode, in reversing the judgment and decree dated 13.02.2004 and made in O.S.No.652 of 2001 on the file of the Additional District Munsif Court, Erode.

For Appellant : Ms. V. Srimathi
for Mr. V.Raghavachari

For Respondents : Mr.N. Manoharan for R1 to R8
R9 and R10 - set exparte as per
order of the Court dated 27/09/19

JUDGMENT

This second appeal has been filed by the first defendant against the judgment and decree passed by the Principal Sub-Judge, Erode, in A.S.No.21 of 2004 dated 23.06.2004 reversing the judgment and decree passed by the I Additional District Munsif, Erode in O.S.No.652 of 2001 dated 13.02.2004.

2. The respondents 1 to 8 herein had filed a suit in O.S.No.652 of 2001 on the file of the I Additional District Munsif, Erode, for the relief of permanent injunction restraining the defendants therein in any manner causing any

damage or interfering with their peaceful possession and enjoyment of the suit cart track. The learned I Additional District Munsif, Erode, by the Judgment dated 13.02.2004 had dismissed the said suit. However, she directed the parties to bear their respective costs. Aggrieved by the same, the plaintiffs had filed an appeal in A.S.No.21 of 2004 on the file of the Principal Sub-Judge, Erode. The learned Sub-Judge, Erode, by the judgment dated 23.06.2004 had allowed the said appeal and set aside the judgment and decree passed by the trial court and decreed the suit as prayed for. However, he directed the parties to bear their respective costs. Feeling aggrieved, the first defendant has filed the present second appeal.

3. For the sake of convenience, the parties are referred to as described before the trial court.

4. The averments made in the plaint are in brief as follows:

The plaintiffs 1 to 5 are having lands ancestrally in R.S.No.314 and 320 of Vilakethi village and the plaintiffs 6 to 8 also having lands in the same survey field by purchase and all the plaintiffs are enjoying their properties. The subject matter of the suit is cart track which runs in R.S.No.365/1A in a north-south direction on the east of the plaintiffs' lands. The defendants' lands are situated on the east of the suit cart track in R.S.No.365. The suit cart track branches off from East-West main road and runs North-South as stated above. The suit cart track has been duly sub-divided and assigned a separate survey number as 365/1A. The plaintiffs are enjoying the suit cart track and considering the rights and enjoyment of the plaintiffs, their names also mentioned in R.S.R. The suit cart track has been mentioned as 'Nilviyal Thadam' in R.S.R extract. In the sale deed obtained by seventh plaintiff also, it is clearly mentioned with regard to the existence of the said cart track and also the right to use the said cart track. That being so, on 29.10.2001, the defendants illegally attempted to cut the western portion of the suit cart track, with a view to annexe the same with their lands. But the said attempt was thwarted by the plaintiffs with the help of neighbours. The defendant proclaimed that they will not allow the plaintiffs to use the suit cart track and hence, the plaintiffs were constrained to file the above suit for the relief of permanent injunction.

5. The averments made in the written statement filed by the first defendant and adopted by the defendants 2 and 3 are in brief as follows:

It is false to state that the suit cart track has been mentioned in the R.S.R as 'Nilviyal Thadam'. Without notice to the defendants, the plaintiffs by influencing the Revenue officials, had tampered the revenue records and included their names. It is false to state that the plaintiffs are using the suit cart track for reaching their lands. The family of the defendants 2 and 3 filed a suit in O.S.No.227 of 1997, on the file of the Sub-Judge, Erode, in which a compromise was entered into and in pursuance of the said compromise, the suit cart track was formed for the convenient enjoyment of the family members of the defendants 2 and 3 only and not anybody else. Therefore, the plaintiffs cannot claim any right over the properties of the defendants 2 and 3. The documents filed by the plaintiffs are self serving and based on the same, they cannot claim any right over the suit cart track. Therefore, the defendants prayed to dismiss the suit.

6. Based on the aforesaid pleadings, the learned District Munsif had framed necessary issues and tried the suit. During trial, on the side of the plaintiffs, the seventh plaintiff was examined as PW1. They also marked Exs.A1 to A16 as exhibits. On the side of the defendants, the first defendant was examined as DW1 and one more witness was examined as DW2. They had marked Exs.B1 to B9 as exhibits. The report and the plan filed by the Advocate Commissioner have been marked as Exs.C1 and C2 respectively.

7. The learned District Munsif, after considering the materials placed before her, found that the plaintiffs failed to prove that they got right to use the suit cart track. Accordingly, she dismissed the suit. Aggrieved by the same, the plaintiffs had filed an appeal in A.S.No.21 of 2004 on the file of the Principal Sub-Judge, Erode. The learned Principal Sub-Judge had allowed the said appeal and set aside the judgment and decree passed by the trial court and decreed the suit as prayed for. However, he directed the parties to bear their respective costs. Aggrieved by the same, the first defendant has filed the present second appeal.

8. This court at the time of admitting the second appeal has formulated the following substantial questions of law:

'1. Whether the lower appellate Court is right in allowing the appeal ignoring the records filed by the defendant?

2. Whether the lower appellate court is right in placing much reliance upon the report of the advocate commissioner, when it had been proved to be unreliable to establish a public cart way?

3. When in pursuance of a compromise in O.S.No.227 of 1997 on the file of the Sub-Court, Erode, a portion of the property had been ear-marked as private pathway as between the defendants 2 and 3, could it attain the character of public pathway in the absence of dedication ?''

9. Heard Ms.V.Srimathi for Mr.V.Raghavachari, learned counsel for the appellant and Mr.N.Manokaran, learned counsel for the respondents 1 to 8.

10. Substantial Questions of Law 1 to 3:

The learned counsel for the appellant/first defendant has submitted that the first appellate court erred in reversing the well considered judgment and decree of the trial court. She further submitted that the first appellate court failed to appreciate that there is no public pathway through the property of the first defendant. She further submitted that the plaintiffs failed to prove by producing the revenue records that they got right to use the suit cart track. She further submitted that only revenue document filed by the plaintiffs is Ex.A14 and the said document was rightly rejected by the trial court as it was not signed by any of the revenue officials. But the first appellate court without considering its authenticity of Ex.A14 has relied on the same and decreed the suit. She further submitted that the first appellate court failed to consider that in pursuance of the compromise decree passed in O.S.No.227 of 1997, the suit cart track was formed only for the benefit of the family members of the defendants 2 and 3, in which, the plaintiffs cannot have any right at all. She further submitted that since the said pathway was formed for the benefit of the family members of the defendants 2 and 3, unless it is dedicated to the Government, it cannot be treated as public pathway, but the first appellate court erroneously held that the said pathway is a public pathway and therefore, she prayed to allow the second appeal and set aside the judgment and decree passed by the first appellate court and dismiss the suit.

11. Per contra, the learned counsel for the respondents 1 to 8 /plaintiffs has submitted that the first defendant is not at all having any land near the suit cart track and the defendants 2 and 3 alone have lands on the east of the suit cart

track, but the defendants 2 and 3 had not filed written statement denying the rights of the plaintiffs, on the contrary, the first defendant alone had filed written statement and the same has been adopted by the defendants 2 and 3. He further submitted that even in the said written statement, the first defendant has not claimed that the suit cart track runs in his land. On the contrary, he has pleaded that the suit cart track was formed for the benefits of the family members of the defendants 2 and 3 in pursuance of the compromise arrived at in O.S.No.227 of 1997 and as such, the said cart track absolutely belongs to the defendants 2 and 3 in which others are not having any right. But the defendants 2 and 3 had not adduced any evidence in support of the aforesaid pleadings. He further submitted that the first defendant alone examined himself as DW1 and in the proof affidavit, he has not stated that he filed proof affidavit on behalf of the defendants 2 and 3 also and as such, it has to be presumed that he adduced evidence on his behalf only and not on behalf of the defendants 2 and 3. He further submitted that the first defendant (DW1) in his cross-examination has categorically admitted that he is not having any land near the suit cart track and he is not having any objection for using the said cart track by the plaintiffs. He further submitted that DW1 also admitted in his cross-examination that during the pendency of the suit, the second defendant had sold the property to the plaintiffs and also he deposed that the defendants 2 and 3 are not conducting the case and as such, the first defendant is not having any right to oppose the plaintiffs' claim. He further submitted that in Ex.B9 and B10 (FMB plans), the suit cart track has been marked and the said cart track has been mentioned in Ex.B5 (Adangal extract) as 'Nilaviyal Pathai'. He further submitted that as per the Revenue standing Order 26(15), a plan marked pathway running in a patta land is a Government land and for using the same, the first defendant cannot raise any objection. He further submitted that the trial court without taking into consideration of the aforesaid facts and evidence in a proper perspective had dismissed the suit, but the first appellate court had properly appreciated the evidence and rightly interfered with the findings of the trial court and set aside the judgment and decree passed by the trial court and decreed the suit as prayed for and in the said factual findings, this court cannot interfere and therefore, he prayed to dismiss the second appeal.

12. The learned counsel for the respondents 1 to 8/plaintiffs in support of the aforesaid contention, has relied upon the decision in:

J.Jagadesh Vs. The Tahsildar, Modakurichi Taluk, Erode District and another (W.P.No.27153 of 2006 on the file of this court dated 25.01.2018)

13. The subject matter of the suit is a cart track which runs in R.S.No.365/1-A in North-South direction. It is an admitted fact that on the west of the suit cart track, the lands of the plaintiffs i.e., in R.S.Nos.314 and 320 are situated and also, it is an admitted fact that on the east of the suit cart track, the lands of the defendants 2 and 3 are situated in R.S.No.365.

14. According to the plaintiffs, the suit cart track has been sub- divided as R.S.No.365/1-A and the same has been marked in the survey plan and also mentioned as 'Nilaviyal Pathai' in revenue records and as such, the said cart track should be treated as Government land and for using the said cart track, the defendants cannot object. The case of the defendants is that as per the compromise arrived at in O.S.No.227 of 1997 on the file of the Sub-Judge Erode, the said cart track was formed only for the benefit of the family members of the defendants 2 and 3 in which others are not having any right. But the defendants have not produced a copy of the compromise decree passed in O.S.No.227 of 1997. Therefore the contention of the defendants that the said cart track was formed exclusively for the benefit of the family members of 2 and 3, cannot be accepted.

15. It is to be pointed out that Exs.A1 and A2 would show that the seventh defendant had purchased the properties on 30.05.1994 and 22.05.1997 respectively. In the said documents, it is clearly stated that the seventh plaintiff is entitled to use the suit cart track. It is also to be pointed out that the first defendant while examining himself as DW1 has categorically admitted in his cross-examination that during pendency of the suit, the second defendant had sold his property to the plaintiffs and also admitted that the defendants 2 and 3 are not conducting the case. He also admitted that he is not having any property near the suit cart track and he is not preventing the plaintiffs from using the suit cart track and he will not prevent them in future also. So it is not known why he has contested the case.

16. It is also to be pointed out that in the written statement itself, the first defendant has stated that the suit cart track was formed only for the benefits of the family members of the defendants 2 and 3 in which others are not having any right. He has not at all claimed any right over the suit property in the written statement, but he only filed the present second appeal.

17. In Ex.B9 and B10 (FMB plans), the suit cart track has been clearly marked and the same has been sub-divided as R.S.No.365/1A. In Ex.B5 (Adangal Extract), it is clearly stated that the said R.S.No.365/1A is a 'Nilaviyal Pathai'. In J.Jagadesh Vs. The Tahsildar, Modakurichi Taluk, Erode District and another (cited supra), a Division Bench of this court, in paragraph Nos.12 and 13, it has been observed as follows:

'12.At this juncture, it would be relevant to refer Revenue Standing Order 26(15) which reads thus:

"15.Encroachments on plan-marked details:-- A plan-marked channel or pathway running in a patta land is a Government land. Eviction of encroachment in such lands need be invoked only in cases where the encroacher has interfered with the plan marked detail so as to close its entrance to and exit from his lands. In the case of pathways and cart tracks which have been used by the public till recently, the ryot should not be allowed to shift the course of the details to suit his own convenience. However, such diversions of plan marked channel from its original course, with a view to consolidate his holding or to facilitate irrigation of the portions which would be otherwise severed need not be treated as encroachment. "

13.A plain reading of the aforesaid provision shows that a plan marked pathway running in a patta land is a Government land and if any encroacher has interfered with the plan marked detail so as to close its entrance to and exit from his lands, an eviction can be ordered. So, in view of the aforesaid Revenue Standing Order even though the subject matter of the cart track is running in a patta land, it should be treated as a Government land. Admittedly, the petitioner has blocked the said cart track by putting iron gate and compound wall and therefore, the first respondent has rightly passed the order to remove the said encroachment. "

18. From the aforesaid decision, it is clear that the plan marked pathway running in a patta land is a Government land. In such a case, the defendants cannot prevent the plaintiffs from using the suit cart track.

19. The trial court without taking into consideration of the aforesaid facts, had mechanically dismissed the suit, but the first appellate court had appreciated the evidence in a proper perspective and rightly set aside the findings of the trial court and decreed the suit as prayed for. In the said factual findings, this court cannot interfere. Accordingly, the substantial questions of law are answered against the appellant/first defendant.

20. In the result, the second appeal is dismissed confirming the judgment and decree passed by the first appellate court. No costs.

-s/d-

Assistant Registrar

True copy

Sub-Assistant Registrar

Gv

To

1. The Principal Sub-Judge, Erode,
2. The Additional District Munsif Court, Erode.
3. The Section Officer,
V.R. Section,
Madras High Court,
Chennai.

+1 cc to M/s.V.Raghavachari Advocate sr89560

+1 cc to M/s.N.Manokaran Advocate sr89768

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