

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.02.2019

PRONOUNCED ON : 15.02.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A.No.145 of 2005

and

C.M.P. NO.2177 OF 2005

1. Marayammal
2. Sengali
3. Vaiyapuri

...Appellants

Vs.

1. Ponnambalam
2. Veerappan
3. R.Govindasami
4. Nalliyanna Gounder
5. Karuppannan
6. Kolandaivel
7. Angammal
8. Sellammal
9. Kalaiselvi
10. Selvaraj

...Respondents

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code, against the decree and judgment in A.S.No.198 of 2002, on 23.06.2004 by the learned Principal District Judge, Namakkal, confirming the decree and judgment passed in O.S.No.405 of 1996 on 14.08.1997 by the Principal District Munsif, Namakkal.

For Appellants : Mr.S.Balasubramanian

For Respondents : No appearance. Set exparte.

JUDGMENT

Challenge in this second appeal is made to the judgment and decree dated 23.06.2004 passed in A.S.No.198 of 2002, on the file of the Principal District Court, Namakkal, confirming the judgment and decree dated 14.08.1997 passed in O.S.No.405 of 1996 on the file of the Principal District Munsif Court, Namakkal.

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

- "a) Whether the judgment and decree of the courts below that the appellants have not proved the pathway over "A B C D" is legally sustainable in view of the recitals in the sale deed exhibits of A1 to A3.
- b) Whether the decree and judgment of the first appellate court is legally sustainable inasmuch as it has rejected the application in I.A.No.120 of 2004 filed to receive additional evidence."

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. The Parties are referred to as per their rankings in the trial Court for the sake of convenience.

5. The plaintiffs have laid the suit against the defendants for the reliefs of declaration and consequential permanent injunction. The relief of declaration is with reference to their enjoyment of easementary right in respect of the pathway shown as "A B C D" in the plaint plan, contending that they are entitled to carry men, cattle and vehicle through the abovesaid pathway and the defendants are not entitled to interfere with their enjoyment of the same in any manner and accordingly prayed for the second relief of permanent injunction against the defendants with reference to the abovesaid pathway. The parties to the lis had purchased the properties covered under various sale deeds projected in the matter and these transactions are not disputed as such. The plaintiffs are claiming easementary right in respect of "A B C D" pathway shown in the plaint plan and on a reading of the plaint averments and the plaint schedule property and the plaint plan, it is found that the "A B C D" pathway is shown as measuring 12 feet in width and running along AB in between survey Nos. 239 and 240 and along BCD in between survey No. 240 on one hand and survey Nos. 241 and 242 on the other hand and furthermore, "A B C D" pathway is shown as commencing from Namakkal to Paramathi main road and running in survey No. 239 along AB towards southern side and takes turn at point B towards east and is running along BCD in survey No. 240 upto the land in survey Nos. 242 and 248 and it is further shown to be running towards south from point B upto Karupannar koil shown as T. With reference to the abovesaid pathway, the plaintiffs claim easementary right by way of prescription on the footing that they had been enjoying the abovesaid pathway openly, continuously and uninterruptedly

beyond the statutory period and thereby the defendants are not entitled to interfere with their possession and enjoyment of the suit path way. As rightly found by the courts below, in the plaint averments, the plaintiffs have stated that the pathway along BC line is running in the lands belonging to the defendants, however, without specifically mentioning the survey numbers through which the pathway is running.

6. The defendants have, in toto, disputed the existence and the course of the pathway as projected by the plaintiffs and contended that the plaintiffs have not been enjoying the suit pathway as putforth by them openly, continuously and uninterruptedly beyond the statutory period and hence not entitled to obtain the relief of declaration of easementary right as prayed for in respect of the same and consequently not entitled to the relief of permanent injunction as prayed for.

7. With reference to the claim of title to the suit pathway as described in the plaint, as rightly found by the courts below, P.W.1, the second plaintiff, during the course of cross examination has admitted that the course of pathway and the particulars of the survey numbers, through which the same is running, is not mentioned in any one of the sale deeds and the width of the pathway has also been not shown in the documents projected as 12 feet wide and the ettari is not shown in the FMB and is not defined as to whether the lands through which the pathway is running are patta lands or poramboke lands and also not sure as to whether the claim is made in respect of the pathway in the patta lands or the poramboke lands and also admitted that it is not stated in the plaint that the pathway is running in survey Nos.239 to 242. The evidence of PW1, as rightly determined by the courts below, therefore, would be of no use to sustain the case of the plaintiffs as regards the existence of pathway and the course of the same as projected to be running in between various survey numbers as described in the plaint and accordingly, the courts below are found to have rightly not placed reliance upon the evidence of P.W.1 to sustain the case of the plaintiffs.

8. Equally, it is also found that the evidence of other witnesses, examined on behalf of the plaintiffs as P.W.2 to P.W.6, are also of no use to uphold the plaintiffs' case, as they are also not able to specifically state as to whether the course of the pathway in respect of which the plaintiffs are claiming easementary right is running in the lands belonging to the first defendant or the other defendants or in the other patta lands and furthermore, they are not able to show any evidence as to whether the pathway is running in the patta lands or poramboke land. In such view of the matter, when they are not able to throw a clear picture as to the existence of the pathway and the course of the same and furthermore, when their

evidence do not substantiate the existence and course of the pathway as described in the plaint, as rightly determined by the courts below, the evidence of the plaintiffs' witnessess would be of no use to accede to the plaintiffs' case.

9. As regards the sale deeds projected in the matter, as determined by the courts below, in the title deed of the plaintiff marked as Ex.A1, the pathway is shown as commencing from Namakkal to Paramathi main road running towards south and then towards east. Similarly, in Ex.A2, another sale deed of plaintiff, the pathway right is mentioned as north south branching off from Paramathi to Namakkal Main road situated on the east of the lands belonging to Ettikkan Vagayara and shown to be running on the northern side of the land belonging to Sriranga Gounder Vagayara. In the light of the abovesaid position, when the sale deeds of the plaintiffs marked as Ex.A1 and Ex.A2, do not portray the existence of the suit pathway and the course of the same as detailed and described in the plaint, as rightly determined by the courts below, the abovesaid sale deeds would serve no purpose to sustain the plaintiffs' case even as regards the existence and course of the pathway as well as their right of easement over the same by way of prescription. Furthermore, when the contesting first defendant and his predecessor in interest are not parties to the abovesaid title deeds of the plaintiffs and furthermore, when the vendors of Ex.A1 and Ex.A2 and the first defendant are not shown to have derived the title to their respective properties from the common owner, it is found that the stray description of the pathway in Exs. A1 and Ex.A2, would not be binding upon the first defendant in particular or the other defendants, and the same cannot be the basis for declaring or holding that the suit pathway is in existence measuring 12 feet in width and running in the course as putforth in the description of the suit property or as described in the plaint plan. Furthermore, as rightly determined by the first appellate court, considering the recitals found in Ex.A2, the plaintiffs are found to have been given alternative pathway for access to their lands and therefore, the case of the plaintiffs that the suit pathway is the only pathway available for reaching their lands, as such, cannot be readily countenanced.

10. As regards the document marked as Ex.A3, there is no clear description of the pathway to correlate the same as pointing to the suit pathway as described in the plaint and in Ex.A3, there is only a reference about the mamool pathway and in such view of the matter, the courts below are totally justified in not placing reliance upon Ex.A3 sale deed for accepting the plaintiffs' case. Furthermore, the document marked as Ex.A4 is also not clear as to whether any right of pathway has been conferred by way of the same and furthermore, when the witness,

through whom the abovesaid document is projected, namely, P.W.6, is unable to testify as to whether the lands covered under the abovesaid document are running along ettari and also unable to identify the said land and also not aware of the recitals containing in the same, in such view of the matter, it is found that Ex.A4 sale deed would be of no use to uphold the plaintiffs' case.

11. Similarly, the documents projected on the side of the defendants also refer to only the mamool pathway and there is no mentioning of any specific pathway in particular, measuring 12 feet width and the course of the same.

12. In the light of the abovesaid materials projected in the matter, considering the oral and documentary evidence as above discussed, when the same are not pointing to the existence and the course of the pathway as described in the plaint and when the plaintiffs have failed to correlate the existence and the course of the path way, particularly, having failed to establish through which lands the pathway runs, whether the pathway runs through both patta lands or poramboke lands, in such view of the matter, the courts below are fully justified in declining the reliefs sought for by the plaintiffs on the footing that neither the oral evidence nor the documentary evidence projected by the plaintiffs are useful to sustain their claim.

13. With reference to the commissioner's report and plan marked as Exs.C1 and C2, the same is not, in any manner, useful to accept the plaintiffs' case wherein, the pathway is shown only as measuring 1 feet in width and the pathway shown in the BCD line is in survey No.241 on the south of survey No.240 and nothing is depicted in Exs.C1 and C2 about the existence and the course of pathway having a width of 12 feet and running through various survey numbers as projected in the plaint. Therefore, as rightly found by the courts below, Exs.C1 and C2 also would serve no purpose to grant the reliefs prayed for by the plaintiffs.

14. It is found that the plaintiffs have sought to project certain documents as additional evidence before the first appellate court and the same had come to be declined by the first appellate court. As rightly determined by the first appellate court, when the documents sought to be projected by the plaintiff do not contain any survey numbers and the lands are described in the local names and when the plaintiffs have prima facie failed to correlate the local names of the lands described in the said documents with the local names of the lands given in the documents projected by the parties in the suit and when the parties to the suit are not involved in the abovesaid document and furthermore, when no acceptable and

convincing reasons have been adduced by the plaintiffs for explaining as to why they have not endeavored to provide the said documents during the course of trial, in such view of the matter, when the application preferred by the plaintiffs for the reception of additional evidence are found to be not in accordance with law as well as on factual matrix, I do not find any infirmity in the first appellate court declining the reception of the additional evidence projected by the plaintiffs. In the light of the aforesaid reasons, in my considered opinion, no substantial question law is found to be involved in the second appeal.

15. Be that as it may, the substantial questions of law formulated in the second appeal, are accordingly answered against the plaintiffs and in favour of the defendants.

16. In conclusion, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

bga
To

1. The Principal District Court, Namakkal,
2. The Principal District Munsif Court, Namakkal.
3. The Section Officer, V.R. Section,
High Court, Madras.

+1 CC to Mr.S.Balasubramanian, Advocate sr 13766.

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and

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