

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	10/12/2019
Delivered on	19/12/2019

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

S.A.No.614 of 2019 &
C.M.P.No.10581 of 2019

1.Kolandai @ Muthugounder
2.Kandammal ... Appellants/Appellants/Defendants

Versus

Ramasamy ... Respondent/Respondent/Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and Decree dated 03.01.2019 in A.S.No.26 of 2013 on the file of the Additional District Judge, Namakkal, confirming the Judgment and Decree dated 18.04.2013 in O.S.No.297 of 2008, on the file of Subordinate Judge, Rasipuram.

For Appellants : Mr.R.Ezhilarasan

JUDGMENT

The defendants in O.S.No.297 of 2008 are the appellants. The respondent, as plaintiff, instituted the suit for declaration to declare that the plaintiff is having cart track right in Survey No.94/6 and for mandatory direction, directing the defendants to restore the cart track to old position.

2. It is the case of the plaintiff that he owns property comprised in Survey No.94/3 of Minnakal Agraharam Village and the defendants are residing in Survey No.94/6. There is a north-south road leading to Sorimalai, which is shown as 'AB' in the rough sketch filed with plaint. The disputed cart track branches from 'AB' road, running towards east on the northern side of the defendants land situated in Survey No.94/6, leading to the plaintiff's property in Survey No. 94/3 and the same is shown as X1 and X2.

3. The plaintiff would state that the property in Survey No.94/3 originally belonged to one Ayya Gounder and others. The plaintiff's father Palani Gounder had taken the property on lease as per the lease deed, dated 24.04.1950 and thereafter on 05.05.1956, he purchased the same and had been in continuous possession and enjoyment of the property, since then.

4. It is further stated that the first defendant's father Arumuga Gounder was owning a property in Survey No.94/2, which is adjacent to the property of the plaintiff in Survey No.94/3. There was an arrangement between the plaintiff's father and the first defendant's father and thereby, the plaintiff's father had relinquished a portion in the western side of his property in Survey No.94/3 and the father of the first defendant had executed a Muchalicka on 27.01.1970, granting cart track right to the plaintiff's father on the northern side of his land in Survey No.94/6 to enable him to reach the property in Survey No.94/3. In a family partition, the property in Survey No.94/3 was allotted to the plaintiff by a deed of partition, dated 15.09.1976 and as such, the plaintiff and his predecessors have been enjoying the property for more than 50 years. However, the defendants, by dumping stones and other agricultural wastes, are preventing the plaintiff from enjoying the right and hence, the suit.

5. A written statement was filed by the defendants denying the allegations made in the plaint. It is stated that the land shown as "X1 and X2" in the rough sketch is the property absolutely belonging to the defendants, in which, the plaintiff has no right at all. The Muchalicka, dated 27.01.1970 is forged and created by the plaintiff. The defendants had never allowed the plaintiff or his predecessors in title to enjoy the property in Survey No.94/6 and therefore, the plaintiff is not entitled for the relief sought for in the suit.

6. To fortify the case of the plaintiff, he examined PWs 1 to 3 and Exs.A1 to A9 were marked and on the side of the defendants, three witnesses were examined, but no document was produced. Reports of the Advocate Commissioner were marked as Exs.C1 and C2 and he was examined as C.W.1.

7. After analyzing the oral and documentary evidence, the trial Court decreed the suit. Aggrieved over the same, the defendants preferred an Appeal. The Appellate Court confirmed the finding of the trial Court. Challenging the same, the present appeal.

8. Mr.R.Ezhilarasan, learned counsel for the appellants would submit that the judgment and decree passed by the Courts below are erroneous, unsustainable in law, perverse, contrary to the facts and law. It is the submission of the learned counsel, the relief sought for by the plaintiff was granted on the basis of Ex.A3-Muchalicka, but it was not proved in accordance with law. According to the learned counsel, Ex.A3 is not a 30 year old document, but the Courts below on wrong presumption, gave a finding, as if, it is a 30 year old document.

9. Heard the learned counsel for the appellants and perused the materials available on record.

10. In the case on hand, the plaintiff has filed the suit, claiming cart track right in the property belongs to the defendants. According to the plaintiff, the property in Survey No.94/3 was originally owned by Ayya Gounder and others and the same was leased out to the plaintiff's father in the year 1950. Subsequently, the plaintiff's father Palani Gounder purchased the property on 05.05.1956. The original lease deed and the sale deed were marked as Exs.A1 and A2. From the perusal of Exs.A1 and A2, it is seen that a pathway right from Minnakal Road through the lands Kalia Gounder and Kandasamy Gounder is mentioned therein.

11. It is not disputed that the defendants property was called as 'Kalia Gounder Thottam'. Ex.A4 partition deed shows that the suit property was acquired by the plaintiff in a family partition on 15.09.1976. Ex.A3- Muchalicka was marked to establish the case of the plaintiff that the first defendant's father Arumuga Gounder has given a cart track right to the plaintiff's father in lieu of a oral relinquishment of a portion of property in Survey No.94/3.

12. It is further seen that the plaintiff claims right on the basis of Ex.A3-Muchalicka, but there is no specific denial in the written statement. One of the attesting witnesses to Ex.A3 was examined as PW2 and he gave evidence in support of the case of the plaintiff. Though the defendants have contended that Ex.A3 is a fabricated document, but no steps were taken to prove their case. That apart the Advocate Commissioner found existence of cart track in northern side of Survey No.94/6 and Ex.C1 is the report of the Advocate Commissioner. Both the Courts below, in my view, rightly, have arrived at finding on proper appreciation of evidence. I find no ground to interfere with the concurrent finding of the Courts below.

13. In fine, the Second Appeal fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Additional District Judge,
Namakkal.

2. The Subordinate Judge,
Rasipuram.

+1cc to Mr.EZhilarasan, Advocate Sr.105911

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