

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.07.2019

PRONOUNCED ON : 27.08.2019

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S.A. No.180 of 2016

C.Velusamy :Appellant/Defendant/Plaintiff

Vs.

1. Ravichandran
2. Velumani
3. Pongianna gounder
- 4.Muthusamy

:Respondents/Appellants/Defendants

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 02.11.2015 made in A.S.No.7 of 2014 on the file of the Second Additional District Court, Erode reversing the judgment and decree dated 16.08.2013 made in O.S. No.185 of 2011 on the file of the Principal Sub Court Erode.

For Appellant : Mr. N.Manoharan

For R1 to R4 : Mr. V.S.Kesavan

JUDGMENT

In this second appeal, challenge is made to the judgment and decree dated 02.11.2015, passed in A.S.No.7 of 2014, on the file of the Second Additional District Court, Erode reversing the judgment and decree dated 16.08.2013, passed in O.S. No.185 of 2011, on the file of the Principal Subordinate Court, Erode.

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

- (a) Whether the first appellate Court is right in dismissing the suit on the ground that the exact measurement of the

cart track has not been mentioned in Ex.A1 to A3, particularly in the absence of any dispute as to its existence of the cart track and the measurement as found in the partition deed of the defendants marked as Ex.A5?

(b) Whether the first appellate Court erred in dismissing the suit for permanent injunction on the mere fact that there is no mention in Ex.A1 to Ex.A3, about the exact measurement of the suit cart track particularly when there is no reason to hold that there is no grant as the grant could be by implication as well?

(c) Whether the first appellate Court being the final court of fact is correct in ignoring the land using pattern and the plaintiff's right of enjoyment over the suit cart track to reach his land which is land locked, in the absence of any other alternative access to his property?

3. Considering the scope of 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. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

5. Suit for permanent injunction.

6. The suit has been laid by the plaintiff against the defendants seeking the relief of permanent injunction restraining them, their men, agents and assigns from any manner interfering with the plaintiff's common right to enjoy the suit cart track by taking cattle, cart, tractors and other vehicles through the suit cart track and taking agricultural products from his lands in RS No.674/2 and 675/2 & 5 of Konthalam village, Erode taluk.

7. The suit property has been described by the plaintiff in the plaint as follows:

ஈரோடு ரிடி, சிவகிரி சப் ரிடி, ஈரோடு தாலுக்கா, கொந்தளம் கிராமம், க.ச.675/1 நெய்தெரு 0.17.0 க்கு தரம் ரூ.0.47 க்கு பு.ஏ.0.42 செண்ட் பட்டா எண் 1026 இதற்கு பழைய க.ச எண்.210 இது நிலவியல் வண்டிப்பாதை இ தில் பொதுவில் 1/8 (எட்டில் ஒரு பாகம்) பாகத்திற்கு பு.ஏ.0.051/4 செண்ட்

(பு.உற.0.02.12) இதன் வழியாக வாதி யூமிக்கு கால் நடை, வண்டி வாகனாதிகள் சகிதம் போக, வரவுள்ள பாதை பாத்தியங்கள் சகிதம் மேற்படி வண்டிப் பாதை தாவா வரைபடத்தில் "ABCDEF" என பச்சை வண்ணமிட்டு காட்டப்பட்டுள்ளது.

8. On a reading of the plaint, it is found that the plaintiff claims absolute right in the suit cart track by virtue of the sale deed dated 11.09.2008 and according to the plaintiff, he had acquired the right in respect of the suit property by way of the abovesaid sale deed from his vendor and further, according to the plaintiff, his vendors had been allotted the properties inclusive of 1/8th share in the suit cart track in their family partition dated 27.06.2003 and accordingly, further put forth the case that his vendors has also acquired their properties and the suit cart track in the year 1975 by way of a registered sale deed dated 28.07.1975 and based on the abovesaid documents, it is found that the plaintiff is claiming only absolute right over the suit property as described in the plaint. According to the plaintiff, due to enmity, the defendants are preventing him from enjoying the suit property and hence, the need for the suit.

9. The defendants contested the plaintiff's case on various grounds and had put forth that the plaintiff is not entitled to any right over the cart track as described in the plaint and according to them, the plaintiff's vendors had not acquired any such right by way of the partition deed dated 27.06.2003 and the sale deed dated 28.05.1975, as put forth by the plaintiff and therefore, according to them, the plaintiff's vendor are not competent to alienate any right over the alleged cart track in favour of the plaintiff by way of the sale deed dated 11.09.2008 and though the defendants would admit that the cart track lies in their property for their own use, would put forth the case that the plaintiff is not entitled to claim any right in their property and accordingly, prayed for the dismissal of the plaintiff's suit and furthermore would also put forth that the plaintiff's suit laid for the relief of bare injunction is not maintainable without the plaintiff seeking the relief of declaration of title to the suit property and also contended that the plaintiff's suit is bad for non-joinder of necessary parties and accordingly, put forth that there is no cause of action for the plaintiff to lay the suit and the suit is liable to be dismissed.

10. The trial Court, on the basis of the materials placed on record, has granted the relief in favour of the plaintiff in respect of the cart track measuring a width of 16 feet. However, the first appellate Court set aside the judgment and decree of the trial Court and resultantly, dismissed the plaintiff's suit. Impugning the same, the present second appeal

has been preferred. At the foremost, it is found that the plaintiff has claimed only absolute right over the suit property stating that he had acquired the same by way of a sale deed dated 11.09.2008, which document has been marked as Ex.A1. It is only on the basis of Ex.A1 sale deed, the plaintiff claims right over the suit property. In this connection, the plaintiff, examined as PW1, during the course of cross examination, has deposed that he had acquired the suit property by way of the sale deed dated 11.09.2008 and also would put forth that he has the right of 1/8th share in the suit property. Furthermore, he has also reiterated that he has laid the suit only claiming that he has 1/8th share in the suit cart track. Therefore, when according to the plaintiff, he has claimed right over the suit property i.e., the cart track portion on the footing that he had acquired absolute right over the same i.e., he has acquired 1/8th share in the same by way of the sale deed dated 11.09.2008, the arguments put forth by the plaintiff's counsel that the plaintiff is having easementary right over the suit property cannot at all be accepted in any manner. The plaintiff having laid the suit claiming proprietary right over the suit property on the footing that he had acquired the same under the sale deed dated 11.09.2008, cannot be allowed to contend that he has also easementary right over the suit property as described in the plaint.

11. When the defendants have disputed the plaintiff's claim of acquisition of the right over the suit property under Ex.A1 sale deed and further when the defendants have disputed the plaintiff's vendors title to the suit property, it is for the plaintiff to establish that his vendors had acquired a valid right to the suit property and competent to convey the same to the plaintiff by way of Ex.A1 sale deed.

12. As rightly found and determined by the first appellate Court, the plaintiff has not described the length and breadth of the cart track in the plaintiff schedule. Only in paragraph 4 of the plaint, the plaintiff would state that the suit property is "L" shape cart track to a breadth of 16 feet running east to west, however, in the plaint schedule, neither the length nor the breadth of the cart track has been furnished. As rightly held by the first appellate Court, inclusive of Ex.A1 sale deed in none of the title deeds that had been projected by the plaintiff for claiming title, there is any reference about the cart track measuring a breadth of 16 feet and even in the FMBs marked as Exs.A6 and A7, the cart track depicted therein are not shown to be measuring a width of 16 feet. In the light of the abovesaid factors, when none of the documents projected by the plaintiff advance his case that the cart track in question measures the width of 16feet, it does not stand to reason as to how the trial Court proceeded to grant the relief of permanent

injunction in favour of the plaintiff in respect of the cart track measuring the width of 16 feet. The existence of the cart track measuring a width of 16 feet in Ex.A5 partition deed pertaining to the defendants and intended for their exclusive use would be not useful to buttress the plaintiff's claim of title to the suit property particularly when the plaintiff is not claiming easementary right over the said cart track. Therefore, as rightly held by the first appellate Court, the trial Court, without any basis or foundation or proof, had suo motu granted the relief in favour of the plaintiff regarding the cart track measuring a width of 16 feet and the abovesaid determination of the trial Court is without any basis and on that score alone, is liable to be set aside.

13. The plaintiff mainly relies upon Ex.A1 sale deed for claiming right over the suit property as described in the plaint. On a reading of the sale deed, marked as Ex.A1, it is found that the plaintiff's vendors are stated to have acquired the right over their properties by virtue of the partition deed dated 27.06.2003, the copy of which document has been marked as Ex.A2.

14. On a perusal of Ex.A2, it is found that the B schedule properties described therein had been allotted to the share of the plaintiff's vendors and the cart track has been shown as only running adjoining to the properties allotted to them and described in the B schedule properties therein. Therefore, it is evident that the plaintiff's vendors had not been granted any right over the cart track, particularly, measuring the width of 16 feet. Similarly, in the sale deed dated 28.05.1975, marked as Ex.A3, there is no reference about the cart track measuring the width of 16 feet and also in the sale deed projected by the plaintiff marked as Ex.A1, there is no reference about the cart track measuring a width of 16 feet and when the same had not been allotted/conveyed to the plaintiff's vendors by way of Exs.A2 and A3, the plaintiff's vendors are found to have not acquired any right over the cart track as described in the plaint schedule and furthermore the plaintiff has also not placed any material to show that the suit property had been enjoyed by his vendors based on Exs.A2 and A3 deeds and to sustain his case, the plaintiff has also not endeavoured to examine his vendors and when the plaintiff has admitted during the course of his cross examination that the cart track portion had been obliterated even prior to his purchase i.e., the same had been obliterated four years prior to the purchase and further admitted that he is not aware as to who had owned the cart track and when as abovenoted, there is no reference about the plaintiff's vendors having acquired the right over the cart track portion by way of Ex.A2 partition deed and Ex.A3 sale deed and when the abovesaid documents do not confer any right over

the suit property as described in the plaint in favour of the plaintiff's vendors, in such view of the matter, the plaintiff's vendors are not competent to convey more right than what they had actually acquired by way of Exs.A2 and A3 and in such view of the matter, merely on the basis of Ex.A1 sale deed, it cannot be inferred or held that the plaintiff had acquired a valid right over the suit property as described in the plaint and in such view of the matter, the first appellate Court is found to be wholly justified in declining the relief sought for by the plaintiff by setting aside the judgment and decree of the trial Court. The plaintiff's counsel, during the course of arguments, would contend that the cart track portion has been depicted in the FMB and on that basis, according to him, the cart track portion having been shown in the FMB's, the same is maintained by the Government. According to him, even if the cart track portion is lying in a patta land, the same could only be construed as the Government land and accordingly, on that basis, according to the plaintiff's counsel, the plaintiff would also be entitled to enjoy the cart track and in this connection, placed reliance upon the decision of this Court reported in 2018 (1) C.W.C 529 (J.Jagadesh Vs. The Tahsildar Modakurichi Taluk, Erode District and Ors.). As rightly put forth by the defendants' counsel, the abovesaid decision would not apply to the case at hand. It is not the case of the plaintiff that the suit property as described in the plaint belongs to the Government and enjoyed as the cart track by one and all and accordingly, on that basis, he is also having the right over the same. On the other hand, when as abovenoted, the plaintiff claims to have acquired right over the suit property by way of Ex.A1 sale deed and when he has miserably failed to establish that his vendors had any right over the suit property by way of Exs.A2 and A3 and merely because the defendants had formed the cart track in their land and the same had been depicted or pointed out in the FMBs maintained by the Government, on that basis alone, the plaintiff cannot claim any right over the same without any foundation. If that be so, the plaintiff should have come forward with a specific case that the suit cart track is a Government land and the plaintiff and his predecessors in interest had been enjoying the right over the same and on the other hand, when as above pointed out, the plaintiff having claimed absolute proprietary right over the suit property by way of Ex.A1 sale deed, however, failing to establish his vendors title to the same and their competency to convey the same to the plaintiff and when the plaintiff is found to be not claiming any easementary right over the same, in such view of the matter, the first appellate Court is found to be wholly justified in non suiting the plaintiff by setting aside the unacceptable reasonings and conclusions of the trial Court for upholding the plaintiff's case.

15. As above pointed out, the plaintiff has laid the suit simplicitor for the relief of permanent injunction. However, he has sought for the relief of permanent injunction based on his acquisition of the right over the suit property based on Ex.A1 sale deed. When the defendants have, in toto, impugned the abovesaid sale deed and also impugned the plaintiff's vendors claim of right over the suit property and their competency to convey the same in favour of the plaintiff under Ex.A1 sale deed and when according to the defendants, the cart track in their land had been formed for their own purpose and the plaintiff is not entitled to seek any right over the same, despite the abovesaid position and when as above noted, there is no document on the part of the plaintiff to hold that the cart track portion claimed by him measures a width of 16 feet, in such view of the matter, the plaintiff should have sought for the relief of declaration of his right over the suit property and on the other hand, the plaintiff having failed to seek the relief of declaration of his alleged right over the suit property, on that ground alone, in my considered opinion, the plaintiff's suit is found to be legally not sustainable. The plaintiff has not even endeavoured to amend the plaint for seeking the relief of declaration to his alleged right over the suit property despite the defence taken by the defendants that the plaintiff's suit is not maintainable without seeking the relief of declaration of his alleged right over the suit property.

16. The plaintiff's counsel, in support of his contentions, placed reliance upon the decisions reported in (2006) 1 M.L.J. 68 (Kandasamy and others Vs. Kolandasamy), (2010) 2 SCC 689 (Sree swayam prakash ashramam and another vs. G.Anandavally amma and others), 2006 (4) CTC 79 (Hero vinoth (minor) Vs. Seshammal) and 2003-3-L.W.16 (Kuldip Chand and Anr. vs. Advocate General to Government of Himachal Pradesh and Ors.). Similarly, the defendants' counsel, in support of his contentions, placed reliance upon the decisions reported in 2018 (2) MEN (Civil) 565 (K.Selvamani and three others Vs. Palani Ammal) and 2019 (1) MWN (Civil) 337 (Mara Naicker and Malla Naicker Vs. Naga Naicker). The principles of law outlined in the abovesaid decisions are taken into consideration and followed as applicable to the case at hand.

17. In the light of the abovesaid discussions, in my considered opinion, no substantial question of law is involved in the second appeal. Be that as it may, the substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff and in favour of the defendants.

18. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar

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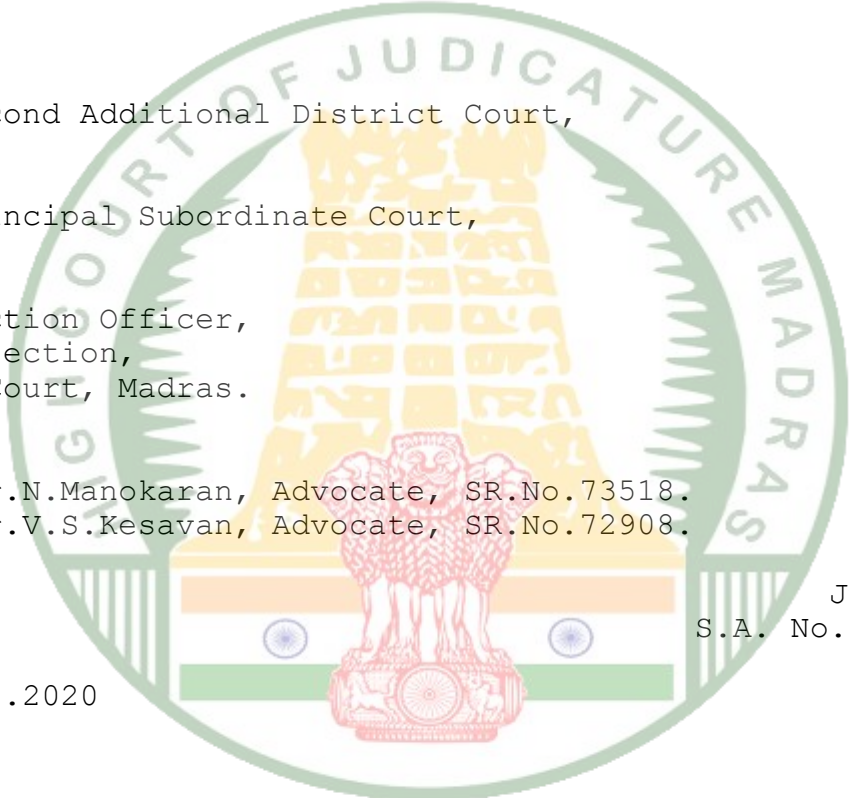
To

1. The Second Additional District Court,
Erode.
2. The Principal Subordinate Court,
Erode.
3. The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate, SR.No.73518.
+1cc to Mr.V.S.Kesavan, Advocate, SR.No.72908.

Judgment in
S.A. No.180 of 2016

RR(CO)
CSR: 17.02.2020

The seal of the Madras High Court is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. The gopuram is set against a green background with a white border. The words "HONORABLE COURT OF JUDICATURE MADRAS" are written in a circular path around the gopuram. Below the gopuram, there is a red lion capital on a base. The entire seal is overlaid with a large, semi-transparent watermark that reads "WEB COPY" in a bold, sans-serif font.

सत्यमेव जयते

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