

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON:11.02.2020

DELIVERED ON: 14.02.2020

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

S.A.No.1000 of 2008

and

M.P.No.1 of 2008

1.Ganeshamurthy
2.Jayalakshmi
3.Karuppayal

..... Appellants/Appellants 2 to 4
LRs of the Plaintiff

vs.

1.Thirumurthy
2.Senthilkumar

..... Respondents /Respondents/
Defendants

Second Appeal is filed against the judgment and decree, dated 29.11.2007, passed by the Principal Sub Court, Gobichettipalayam, in A.S.No.7 of 2006, confirming the judgment and decree, dated 30.08.2005, passed by the District Munsif Court, Gobichettipalayam, in O.S.No.216 of 2003.

For Appellants : Mr.N.Manokaran

For Respondents : Mr.M.Narayanaswamy

JUDGEMENT

This second appeal is filed by the legal heirs of the plaintiff in the suit as against the judgement and decree, dated 29.11.2007, passed by the Principal Sub Court, Gobichettipalayam, in A.S.No.7 of 2006, confirming the judgment and decree, dated 30.08.2005, passed by the District Munsif Court, Gobichettipalayam, in O.S.No.216 of 2003, which was one for declaration and permanent injunction.

2.The appellants herein are the legal heirs of the plaintiff in the suit. The respondents are the defendants. The suit was filed by the plaintiff before the trial Court in O.S.No.216 of 2003, seeking for declaration and permanent injunction. According to the plaintiff, he had right over the

common pathway, viz., cart track, in respect of the property described in the schedule to the plaint, on the basis of various exhibits marked as Exs.A1 to A4. Exs.A1 to A3 are the Sale Deeds and Ex.A4 is the receipt. The suit was resisted by the defendants on the ground that the common pathway right claimed by the plaintiff was unsustainable both in law and on facts for the reason that the documents relied on by the plaintiff did not establish the fact that there was a common cart track road, as claimed by him. Moreover, in the written statement filed on behalf of the defendants it was also contended that the suit was not maintainable in view of the fact that the necessary parties, who were co-sharers of the property in question, were not added as parties to the suit and therefore, the suit was to be dismissed on the ground of non-joinder of necessary parties.

3.The trial Court went into those issues and after appreciating the evidence and pleadings of the parties, had dismissed the suit. The trial Court, in its judgment, dated 30.08.2005, has held that it was an admitted case that the suit schedule property belonged to one Subramaniam, Palanisamy and Arumugham, and yet they were not made parties to the suit. According to the trial Court, the plaintiff himself has given evidence about the above persons' right over the suit schedule property. The trial Court, which relied on the decision of this Court, cited on behalf of the defendants, in the case of Sellambana Gounder and Others vs. Sinnia Gounder and Others [1999(3) MLJ 465], has dismissed the suit on the ground of non-joinder of necessary parties.

4.The trial Court, while dismissing the suit for non-joinder of necessary parties, has also held that the plaintiff did not at all establish that there was a cart track in the suit schedule property and the documents relied on by him did not support his case. The reports filed by the Advocate Commissioner, which were marked as Court documents Ex.C1 etc., and the sketch, viz., Ex.C2 etc., also did not support the case of the plaintiff. In the absence of any evidence to show the existence of cart track in the suit schedule property, which was commonly enjoyed by the parties, the trial Court felt that no relief could be granted to the plaintiff in the suit. As against the said judgment and decree of the trial Court, the plaintiff filed A.S.No.7 of 2006 before the Principal Sub Court, Gobichettipalayam.

5.The first appellate Court, after advertng to various submissions and also materials, which came up for consideration, has concurred with the findings of the trial Court. The lower appellate Court has clearly held that the plaintiff particularly did not establish the existence of cart track as per Exs.A1 and

A2 and when the defendants disputed the document-Ex.A2, the plaintiff did not adduce any further evidence to support his plea. Moreover, the case of the plaintiff was that the cart track was obstructed by the defendants and the plaintiff did not establish his case for grant of permanent injunction. The lower appellate Court has also held that the dismissal of the suit for non-joinder of necessary parties by the trial Court was also in order and the lower appellate Court felt that there was no scope for interference with the judgment and decree passed by the trial Court. On the whole, the lower appellate Court has completely agreed with the findings rendered by the trial Court and ultimately dismissed the appeal, vide its judgment and decree dated 29.11.2007. Aggrieved by the said judgement and decree of the lower appellate Court, the present Second Appeal has been filed by the legal heirs of the plaintiff.

6.While admitting the Second Appeal, the following Substantial Questions of Law were framed by this Court.

"1.Whether the Court below erred in law and misdirected themselves in dismissing the suit merely on the ground of non-joinder of the co-owners as party defendants in the suit, especially either in the absence of any interference or obstruction at the instance of the other co-owners or in the absence of any relief to declare the absolute title over the suit property?

2.Whether the Courts below are right in law in dismissing the suit in its entirety especially when the plaintiff's property is landlocked as per the report and plan marked as Ex.C1 to Ex.C10, more particularly, the existence and the right to use the cart track has been categorically stated in Ex.A2 (07.06.1957) and Ex.A4(28.06.1994)?"

7.The learned counsel appearing for the appellants would strenuously contend that both the Courts below have not appreciated the facts correctly. According to the learned counsel, both the Courts below have overlooked the fact that according to the Advocate Commissioner's reports, which were marked as Ex.C1 series, there was no other path leading to the premises of the plaintiff. The said fact was not appreciated by the Courts below. The learned counsel would, therefore, submit that both the judgements and decrees of the Courts below need to be interfered with.

8.The learned counsel for the appellants, however, did not seriously canvass anything in regard to non-joinder of necessary parties. However, the learned counsel attempted to say that those parties were not necessary or proper parties to the suit proceedings.

9.The learned counsel for the respondents/defendants would submit that despite the averments in the written statement about the non-joinder of parties, the plaintiff had not chosen to implead those parties and therefore, took the risk of conducting the suit without impleadment of necessary parties. According to him, both the trial Court and the appellate Court have correctly appreciated the evidence on record in proper perspective and therefore, dismissed the suit on merits as well as on the ground of non-joinder of necessary parties. Therefore, the learned counsel would submit that the judgments and decrees passed by the Courts below do not call for interference by this Court.

10.Considered the rival submissions of the plaintiff and also perused the materials and pleadings placed on record.

11.As could be seen from the records and the judgments and decrees of the Courts below, it is seen that the plaintiff did not establish the factum of existence of cart track in the property, in which he claims right of use. The documents relied on by the plaintiff, viz., Exs.A1 to A4, as rightly held by the trial Court and confirmed by the lower appellate Court, did not support his plea at all. Moreover, as rightly contended by the learned counsel for the respondents/defendants, when a serious plea was taken in regard to non-joinder of parties, in the written statement, the plaintiff ought to have impleaded those necessary parties in the suit. In the absence of necessary parties before the trial Court, the trial Court has rightly dismissed the suit for non-joinder of necessary parties. In fact, from the evidence it could be seen that the defendants themselves had admitted that the property belonged to those three persons, as indicated in the judgment and decree of the trial Court. In such an event, the plaintiff ought to have made them parties. Failure to add them as parties was fatal to the suit and therefore, the trial Court has rightly dismissed the suit for non-joinder of parties.

12.Even otherwise, both the Courts below have correctly appreciated the evidence against the plaintiff. Both the trial Court and the appellate Court have given a clear finding that none of the documents relied on by the plaintiff did support the plea of the plaintiff that there was existence of cart track in the suit schedule property and the same was commonly enjoyed by the parties. In the absence of any proof to establish the claim of the plaintiff, the suit was rightly dismissed by the trial

Court and the lower appellate Court has also rightly confirmed the same.

13. Therefore, this Court is of the view that there is no merit in the Second Appeal. The judgments and decrees of the Courts below do not warrant interference by this Court. The Substantial Questions of Law are therefore answered against the appellants and the Second Appeal stands dismissed. No costs. Connected miscellaneous petition is dismissed.

-Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

msk

To

1. The Principal Sub Court, Gobichettipalayam

2. The District Munsif Court, Gobichettipalayam

3. The Section Officer

VR Section

High Court, Chennai-104

+1 cc to Mr. N. Manokaran Advocate sr12728

+1 cc to Mr. M. Narayanaswamy Advocate sr12460

S.A.No.1000 of 2008

pvs (co)
aa07/09/2020

WEB COPY