

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.355 of 2020

1.K.Rameshkumar
2.K.Thiyagarajan
3.K.Saraswathi

...Plaintiffs/Appellants/Appellants

Vs.

1.A.Subramania Gounder
2.S.Senthilkumar
3.S.Venkatachalam

...Respondents/Respondents/Respondents

Prayer: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 05.09.2019 in A.S.No.14 of 2017 on the file of the Additional Subordinate Court, Tiruppur, confirming the judgment and decree dated 21.12.2016 in O.S.No.02 of 2009 on the file of the District Munsif Court, Tiruppur.

For Appellants : Mrs.Chitra Maragatham

JUDGMENT

The plaintiffs in O.S.No.2 of 2009 have laid the suit for declaration of a right of way and for consequential injunction. According to the plaintiffs they had purchased the land in S.Nos.495 under the sale deed dated 04.12.1991 along with a right over the suit cart track which runs via S.Nos.479, 480, 455, 481 and 482 to reach their lands in S.Nos.494 and 495. It is also claimed that the plaintiffs' vendors, who were originally the owners of the land in S.Nos. 481 and 482 also enjoyed the said land and also used the cart track till the alienation. The defendants who have purchased the land in S.Nos.481 and 482 from the plaintiffs' vendor under sale deed dated 02.09.1998 prevented the plaintiffs from using the cart track which resulted in filing of the suit.

2. The suit was resisted by the defendants contending that the plaintiffs' vendors themselves had no right over the pathway in S.Nos.481 and 482. It is also contended that the mamool pathway referred to in the sale deed dated 04.12.1991 is a pathway which runs through S.Nos.507 and 508 and reaches the property of the plaintiff in S.Nos.494 and 495. According to the defendants, they are entitled to use the said pathway in

S.Nos.507 and 508 to reach their lands in S.No.495. The plaintiffs' claim is necessarily on the basis of the grant found in their sale deed dated 04.12.1991. The first plaintiff, one Rameshkumar, was examined as PW1 and the second plaintiff was examined as PW2 and one Masan Durai was also examined and Exs.A1 to A11 were marked. On the side of the defendants, the first defendant was examined as DW1 and Exs.B1 to B3 were marked. The Commissioner's report and survey plan were marked as Exs.C1 to C3.

3. Upon a consideration of the evidence on record, the learned Trial Judge concluded that the plaintiffs have not proved their claim of grant. She found that the mamool pathway refereed to in Ex.A1 could only be the pathway which runs through S.Nos.507, 508 and 494 and not the suit pathway. The claim of the plaintiffs based on necessity was also rejected on the ground that there was an alternative pathway. Obviously the plaintiffs could not claim a right by prescription since they have not been in enjoyment of the suit land for a period of 20 years. Upon considering the grant under Ex.A1 and upon the evidence of PW1, the learned trial Judge concluded that the plaintiffs are not entitled to right of way over the suit pathway.

4. Upon such a conclusion, the learned trial Judge dismissed the suit, aggrieved, the plaintiffs preferred an appeal before the Sub-Court, Tiruppur. The learned Sub-Judge, upon a re-consideration of the evidence, concurred with the findings of the trial Court and found that the mamool cart track described in Ex.A1 sale deed is the cart track found in S.Nos.508, 507 and 494 and not the cart track in S.Nos.479, 480, 455, 481 and 482 as claimed by the plaintiffs.

5. The learned Appellate Judge also found that the plaintiffs have not established their claim of easement by grant or necessity. Upon such findings, the learned Appellate Judge dismissed the appeal confirming the judgment and decree. Hence, the plaintiffs have come up with this Second Appeal. Heard, Mrs.Chitra Maragatham, learned counsel appearing for the appellants.

6. The learned counsel for the appellants would vehemently contend that the Courts below should not have rejected their claim on the basis of easement by grant. According to her, the rejection was a result of misconception of the recitals found in Ex.A1. She would also point out that the Commissioner's report shows the existence of the suit pathway along S.Nos.479, 480, 455, 481 and 482 to reach the plaintiffs' land in S.No.495. Therefore, according to her, the Courts below were not right in rejecting their claim on the ground of necessity also. I have considered the submissions of the learned counsel for the appellants.

7. The appellants came to court with a specific case that the mamool pathway referred to under Ex.A1 is the pathway which runs through S.Nos.479, 480, 455, 481 and 482. Both the Courts below, based on the evidence of PW1 and the Commissioner's report, have come to the conclusion that the mamool pathway referred to under Ex.A1 is the pathway which runs through S.Nos.507, 508 and 494 and not the pathway that runs through S.Nos.479, 480, 455, 481 and 482, the claim of the plaintiffs that their vendor had a right over the pathway was also disbelieved by the Appellate Court on the ground that these lands in S.Nos.479, 480 and 455 are classified as Natham and Odai. It is also seen from the judgments of the Courts below that they have on a consideration of Ex.A1, reached a factual conclusion that what has been referred to under Ex.A1 is only a right to use the pathway running through S.Nos.507, 508 and 494 and not the pathway as claimed by the plaintiffs.

8. Despite her best efforts the learned counsel for the appellants, is unable to point out any perversity in the conclusion arrived at by the Appellate Court, which is in fact, based on evidence. I also do not find any question of law much less the substantial questions of law arising in the appeal in order to enable to entertain the appeal. Hence this second appeal fails and it is accordingly dismissed without being admitted. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

dna

To

1.The Additional Subordinate Judge, Tiruppur.

2.The District Munsif, Tiruppur.

Copy To

The Section Officer,
V.R. Section, High Court,
Madras.

S.A.No.355 of 2020

PVS (CO)
GN(06/05/2021)