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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1129 of 2010

AND

M.P.No.1 of 2010

Arunachalam .. Appellant/Appelalnt/Plaintiff
/versus/

1.Govindan

2.Prakasam

3.Prasath

4.Chakravarthy

5.Mani

6. Soundar .. Respondents/Respondents/Defendants

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 05.12.2008 made in A.S.No.115/2007 on the file of the Subordinate Judge, Tirupattur, confirming the judgment and decree dated 16.11.2006 in O.S.No.148 of 1998 on the file of the Principal District Munsif, Tirupattur.

For Appellant :Mr.Prabakaran for
Mr.G.Rajan

For Respondents :No Appearance

J U D G M E N T

(The case has been heard through Video Conferencing)

This Second Appeal is filed against the concurrent findings of the Courts below in a suit for declaration and permanent injunction.



2. Heard the learned counsel for the appellant.

3. According to the plaintiff, the suit property is the ancestral property of the plaintiff and being in its possession and enjoyment, upon which, the plaintiff built a house. The defendants are disturbing the peaceful possession and enjoyment of the suit property. Hence, sought for injunction.

4. The said plaint was contested by the defendants by written statement, wherein it is stated that the suit property in Survey No.164/5 is a cart track on the east running through Survey Nos. 164/10, 164/9, 164/8, 164/6 and reaches Survey No.164/5 and proceeds further towards North. It is a common cart track enjoyed by the plaintiff, defendants and others. Suppressing these facts, the suit has been filed by the plaintiff, as if he has planted tamarind saplings. The earlier suit for the cart track filed by the parties in O.S.No.612 of 1966 was allowed, declaring the existence of the cart track. In the said suit, the father of the plaintiff was the fifth defendant. Knowing about the earlier proceedings, the present suit is filed suppressing those facts.

5. Before the trial court, the plaintiff examined three witnesses and marked three exhibits. On behalf of the defendants, two witnesses and two exhibits were marked. An Advocate Commissioner was appointed and his report and sketch were marked as Exs. C1 and C2.

6. The trial Court, on considering the evidence, held that the land in Survey No.164/5 is an extent of 1.30 acres. East of the said land, cart track running North South is in existence. Earlier suit in O.S.No.612 of 1966, a consent decree was passed regarding the usage of the said cart track and the said consent decree was marked as Ex.D1. Whiles, the suit for declaration and injunction in respect of the cart track portion cannot be granted. Relying upon the Commissioner's Report, the Court has held that there is cart track running on the east of Survey No.164/5 whereas the description of the suit property on the East as per the plaint is land of Govindarajan, which is factually not correct. The suit is filed to declare right over the suit property and right to enjoy the tamarind tree. However, the Court fee is fixed only for land and no additional court fee is fixed for value of the trees and house at the survey land. Pointing out the defect and misdescription of the suit schedule property in the plaint, the trial court dismissed the suit.

7. On appeal, the First Appellate Court has confirmed the decree of the trial Court. Hence, in this appeal, it is contended that when the suit is in respect of the property in



Survey No.164/5, seeking declaration and injunction, the Court below has factually gone wrong in appreciating the facts of the case and has rejected the plea of the plaintiff/appellant in toto.

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8. While the plaintiff has proved the title over the suit property in Survey No.164/5 through patta Exs.A1 and A3, learned counsel for the appellant would submit that the cart track, which runs on the east of the suit property was not the subject matter of the dispute. It is the attempt of the defendants to encroach upon the suit property and attempt to prevent the plaintiff from enjoying the fruits of the tamarind tree, which is the cause of action for filing the suit. Therefore, sought to reverse the findings of the courts below and allow the appeal.

9. On perusal of the judgment passed by the Courts below, this Court finds that the suit for declaration and injunction has been dismissed for the reason that the plaintiff has failed to give the proper description of the suit property and has failed to pay the proper Court fee and his pleading has been so couched that he wants to prevent the defendants from using the cart track running East of the suit property. Further, there is no evidence to show that the plaintiff's enjoyment of the property in Survey No.164/5 an extent of 1 acre 30 cents is disturbed by the defendants in any manner. When there is no cause of action for filing the suit and description of the suit property is not properly given, the dismissal of the suit by the Courts below is legally sustainable.

10. In the result, the second appeal is dismissed as devoid of merrits. No order as to costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(Audit)

//True copy//

Sub Assistant Registrar

Vri

To:

1.The Subordinate Judge, Tirupattur.

2.The Principal District Munsif, Tirupattur..

+lcc to Mr.G.Rajan, Advocate SR.No.36010

S.A.No.1129 of 2010

PVS(CO)

GMV(01/09/2021)