



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.10.2020	Pronounced on: 16.10.2020
-------------------------	---------------------------

Coram::

The HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.No.422 of 2010
& M.P.No.1 of 2010

1. Mr.Karuppusamy,
2. Mrs.Poongodi, ... Appellants/Defendant

/versus/

1. N.P.Angappan,
2. N.P.Subramaniam ... Respondents/Plaintiff

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying to set aside the judgment and decree dated 24.10.2009 made in A.S.No.116 of 2008 on the file of the Principal Sub-Judge, Gobichettipalam, concurring the judgment and decree dated 19.09.2008 in O.S.No.341 of 2005, on the file of the District Munsif, Gobichettipalayam.

For Appellants : Mr.B.Ram Kumar,
for Mr.M.Narayanaswamy

For R1 & R2 : Mr.A.V.Arun

JUDGMENT

(The case has been heard through video conference)

Heard the Learned Counsel for the Appellants and the Learned Counsel for the respondents.

2. This Second Appeal is filed by the defendants aggrieved by the concurrent findings of the Courts below allowing the suit filed by the plaintiffs for permanent injunction restraining the appellants from disturbing the peaceful possession of suit schedule property, which is a cart way of 10 feet width situated in old Survey No.445-C and new Survey No.696 in Olalakoil, Gobichettipalayam, Erode District.

3. According to the plaintiffs, as per the sale deed dated 28.01.2004, the suit mentioned 10 feet cart track owned by them. The predecessor-in-title got the said property through partition deed dated 02.12.1996. Since his vendor refused to sell the property to the defendants for price offered and sold to the plaintiffs for fair value, aggrieved, the defendants are trying to disturb the enjoyment of the cart track and obstructing the plaintiffs. On 24.10.2005, the defendants attempted to ameliorate the cart track which was stopped with great difficulty. Hence, the suit for permanent injunction is filed for peaceful possession and enjoyment of the cart track.

4. The defendants contested the suit on the ground that the parent document of the plaintiffs namely the partition deed of the year 1996 does not refer about the cart track. The reference of cart track in the subsequent sale deed executed in favour of the plaintiff is self serving document. The sketch annexed to the plaint is misleading as if, the old cart track lie in S.No.696. Whereas, the cart track is in new S.No.687/3. The said suit schedule property is absolute property of the defendants, in which, the plaintiffs have no right or interest.

5. The Trial Court, based on the pleadings, framed the issues. Plaintiff examined two witnesses as P.W.1 & P.W.2 and marked 4 Exhibits. One witness and 9 Exhibits were marked in support of the defendants.

6. From the evidence placed before it, the Trial Court held that from the documents, it is clear that in S.No.696/2, a 10 feet cart track on the north running East-West turn to South and reaches S.No.696/1. In the plaintiffs document the said cart track is mentioned as common cart track. Therefore, when the plaintiffs purchased the property in S.No.696/1 and S.No.696/3 got right for enjoyment of common cart track. Accordingly, the suit was decreed in favour of the plaintiffs.

7. Aggrieved by that, the plaintiffs have preferred A.S.No.116 of 2008 on the file of Sub-Judge, Gobichettipalam, Erode District.

8. The Lower Appellate Court, on re-appreciating the evidence, reiterated the findings of the trial Court and held that in S.No.696 was sub-divided into several parts. The existence of Cart track in S.No.696 established through documents. The plaintiffs have purchased the property in S.No.696/1 & S.No.696/3 and the existence of cart track is mentioned in their title deed (Ex.A.1). Further, regarding the cart track, the 1st defendant and his father initiated the suit in O.S.No.341/2005, on the file of the District Munsif, Gobichettipalayam, alleging that the plaintiffs are trying to create a new cart track in the said survey number. The said suit was dismissed.

9. The judgment and decree passed in the said suit and the Commissioner's report filed in the said suit were considered by the Lower Appellate Court and had held that the plaintiffs are entitled for enjoyment of the common cart track in suit property. The defendants cannot prevent them or obstruct their enjoyment.

10. On perusing the records and the findings of the Courts below, this Court finds there is no substantial questions of law involved in this Second Appeal. Accordingly, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

bsm

To:

- 1.The Principal Sub-Judge,
Gobichettipalam,
Erode District.
2. The District Munsif,
Gobichettipalayam, Erode.

Copy To :

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

सत्यमेव जयते

+1cc to Mr.A.V.Arun, Advocate SR.No.34550

+1cc to Mr.M.Narayanaswamy, Advocate SR.No.34580

WEB COPY

S.A.No.422 of 2010
& M.P.No.1 of 2010

RP(CO)
GMY(13/05/2021)