



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 18.11.2020

Pronounced on: 23 .11.2020

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Coram::

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

S.A.No.535 of 2010
& M.P.No.1 of 2010

Chinnanan @ Appachi gounder
S/o Kuppanagounder

.. Appellant/Defendant

/versus/

1.Sivanmalai gounder @ Semalai gounder(died)
S/o Chennimalai gounder

2.Pappammal
W/o Thambana gounder

3.Arukkani
W/o Subramani

4.Thulasimani,
W/o Subramani
(RR2 to 4 brought on record as LRS of the
deceased sole respondent viz., Sivanmalai gounder
@ Semalai gounder vide order of Court dated
08.10.2020 made in M.P.Nos.2 to 4 of 2010
in S.A.No.535 of 2010(Dr.GJJ)) .. Respondents/Plaintiffs

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying against the judgment and decree dated 17.11.2009 made in A.s.No.8 of 2009 on the file of the Sub-Court, Dharapuram confirming the judgment and decree dated 16.04.2008 made in O.S.No.14 of 2005 on the file of the District Munsif Court, Kangayam.

For Appellant : Mr.N.Manokaran

For Respondents: Mr.A.K.Sreedharan for R2 to R4
R1-died

JUDGMENT

(The case has been heard through video conference)

This appeal is directed against the concurrent finding of the Courts below allowing the suit for declaration and injunction in respect of cart track marked as "ABCD" in the sketch attached to the plaint.



2.The brief facts:

The suit schedule property is inherited by the plaintiff and the defendant through their father Chennimalai gounder. It is their ancestral property, which was inherited from Chennimalai gounder, who had two sons by name Sivanmalai gounder and Kuppanagounder. On 27.04.1976 Sivanmalai gounder (plaintiff) and Chinnanan @ Appachi gounder (defendant), who is the son of Kuppanagounder, entered into a partition. As per the partition deed, 'A' schedule property was allotted to Kuppanagounder the father of the defendant and 'B' schedule property was allotted to Sivanmalai gounder (plaintiff). The partition acted upon and the parties are exclusive possession and enjoyment of their respective shares along with common area mentioned in the partition deed. The cart track, which is the subject matter of the suit, is in 'A' schedule comprising S.No.587-C, which is the common cart track for enjoyment of both the sharers. The common well marked as 'W1' in the plaint sketch has to be used commonly by the plaintiff and the defendant. The specific understanding that out of 8 days, the plaintiff has to draw water for 3 ½ days, and the defendant has to draw water 4 ½ days. In the 'B' schedule property, the defendant has no right whatsoever. But, at the instigation of others, the defendant was trying to create a new cart track through 'B' schedule property. Hence, to declare the cart track in 'A' schedule property as a common cart track and injunct the defendant from restraining the plaintiff using the cart track shown as "ABCD" and to declare the 'B' schedule property the exclusive property of the plaintiff and to restrain the defendant and others from interfering the peaceful possession and exclusive enjoyment of the plaintiff in respect of 'B' schedule property.

3.The suit was resisted by the defendant on the ground that the "ABCD" pathway is not a common pathway. It absolutely belongs to the defendant. The well situated in S.No.587-C is also not a common well, but absolute property of the defendant over which, the plaintiff has no right. From East of S.No.587-C, there is a pathway running from North to South, which is used by the defendant to reach his land and take his cattle, cart and vehicles. The suit is against the terms of the partition deed between the sons of Chennimalai gounder. There is no pathway at "AB" point. There is a '8' feet pathway on the east side of the common well W1, there is a way leading to the land on the southern side. The pathway laying on the southern side of the well is exclusively enjoyed by the defendant.

4. The trial Court framed the following issues based on the pleadings:-



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1. Whether with regard to the plaint 'A' schedule property plaintiff is entitled to the relief of declaration and consequential permanent injunction as prayed for?

2. Whether with regard to the plaint 'B' schedule property plaintiff is entitled to the relief of declaration and consequential permanent injunction as prayed for?

3. Whether the contention of the defendant that the plaintiff is estopped by deed and conduct in seeking the relief as prayed by him in this suit is true?

4. To what other relief if any the plaintiff is entitled for?

5. The plaintiff examined PW-1 and PW-2 and marked three exhibits. The defendant examined DW-1 and DW-2 and marked four exhibits. The Advocate Commissioner Report and Sketch were marked as Exs.C1 and C2.

6. The trial Court, on analysing the oral and documentary evidence, particularly, the recital found in the partition deed (Ex.A1) and the Commissioner Report, allowed the suit declaring the cart track "ABCD" in 'A' schedule property is a common cart track and the defendant is restraining from interfering the peaceful common enjoyment of the cart track by the plaintiff. Similarly, in respect of 'B' schedule property, the declaration of title was granted in favour of the plaintiff but the injunction sought against the defendant was negative for want of evidence.

7. The defendant preferred an appeal before the first appellant Court viz., Sub Court at Dharapuram. The first appellate Court dismissed the appeal holding that there is no necessity to interfere with the finding of the trial Court, since the appeal lack material to interfere the judgement of the trial Court.

8. Aggrieved by the concurrent finding of the Courts below, the present second appeal is filed by the defendant/appellant.

9. The learned counsel appearing for the appellant would submit that the Courts below have miserably failed to read the



partition deed properly. Having misread the partition deed, the Courts below erroneously dismissed the suit and the appeal. The learned counsel appearing for the appellant contended that the Courts below based on the Commissioner Report have erroneously concluded that there is a cart track "ABCD" existing, though there is no reference about the cart track in the partition deed beyond the 8 feet cart track running East - West on the Northern end of 'B' schedule property. When the Courts below held that there is no cause of action for granting injunction in respect of 'B' schedule property, it should have dismissed the suit in entirety.

10. Per contra, the learned counsel appearing for the respondent/plaintiff would submit that the partition deed clearly indicates the existence of cart track running from East-West on the Northern direction down towards South till the common well. In the partition deed [Ex.A1], it has been specifically stated that either of the party should allow the other party to use the cart track running through their respective land and specific share in the common well to draw water also mentioned in the partition deed [Ex.A1]. While so, it is inappropriate to say that the plaintiff had no right of cart track to reach the common well. The Courts below having considered the recital found in the partition deed [Ex.A1] and the Commissioner Report, had rightly allowed the prayer except injunction in respect of 'B' schedule property. Since there is no Substantial Question of Law involved in this appeal against the concurrent finding of the Courts below, on facts the learned counsel appearing for the respondent sought for dismissal of the second appeal.

11. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent and perused records.

12. Ex.A1 is dated 27.04.1976. The recital of Ex.A1 clearly shows that the parties have a common right over the well in S.No.587-C. The parties are conferred with right to draw water from the well to irrigate their land through channel on the East-West and right to approach the well. The cart track of 8 feet starting from North of 'B' schedule property running East-West passing through 'A' schedule property upto well joining the existing North-South 8 feet cart track on the East of the well. The Commissioner sketch marked as Ex.C2 precisely matched the description mentioned in Ex.A1.

13. In such circumstances, it is highly preposterous to canvass that the cart track 'ABCD' is not a common cart track. At the time of partition, the intention of the parties is made



very clear and unambiguous in the partition deed that the channel and the cart track passing through their respective lands in A and B schedule shall be enjoyed by the parties as a common cart track, common well and common channel. Neither of the parties can breach the terms found in the partition deed [Ex.A1]. Since it appears that an attempt was made by the defendant to prevent the plaintiff from using the cart track, the suit has been filed. In the plaint, the cause of action for the suit has been mentioned. Since there was an apprehension of disturbing the common enjoyment, the suit has been filed by the plaintiff and succeeded before both the Courts below. The finding of the facts by the Courts below concurrently in favour of the plaintiff and absence of Substantial Question of Law in this appeal for consideration results in dismissal of the second appeal as devoid of merits.

14. Accordingly, this Second Appeal is dismissed. No order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-I)

//True copy//

Sub Assistant Registrar

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To:-

- 1.The Sub Court, Dharapuram.
- 2.The District Munsif Court, Kangayam.
- 3.The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate SR.No.37589

S.A.No.535 of 2010
& M.P.No.1 of 2010

CNR (CO)
GMY (27/08/2021)