



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2021

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

S.A.NO.815 OF 2008

1. M.Melagan
2. M.Jeganathan
3. M.Vasudevan
4. M.Selvan
5. L.Sivaraj

...Defendants/Appellants/
Appellants

Vs.

N.Joghee Gowder

... Plaintiff/Respondent/
Respondent

PRAYER:-

Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 29.11.2004 made in A.S.No.54 of 2004 on the file of the learned Sub Judge, Ooty, confirming the Judgment and Decree dated 21.06.2004 made in O.S.No.89 of 2002 on the file of the learned District Munsif, Coonoor.

For Appellant : Mr.T.Girish

JUDGMENT

The unsuccessful defendants before the Courts below are the appellants before this Court. The parties are referred to in the litigative status in which they had been referred before the learned District Munsif, Coonoor in O.S.No.89 of 2002.

2. The facts in brief which are given rise to this Second Appeal are as follows:

The plaintiff had filed the suit for a bare injunction in respect of the properties measuring an extent of 1.47.91 Hec.



comprised in R.S.No.70/4, T.S.A3/5B in Coonoor Town, The Nilgiris within specified boundaries. It was the case of the plaintiff that under the Sale Deed 16.04.1958, he along with 4 others had become entitled to an extent of 38.74 and 3/4 acres in Survey No.70, Coonoor Town. There was an oral partition between the parties and under these, the plaintiff was allotted an extent of 10.75 acres which is sub divided to R.S.No.70/4. From the date of the oral partition, the plaintiff has been put in physical possession of the same. Thereafter, in the year 1970, the plaintiff and his brother had entered into an oral partition and he had been allotted the suit properties measuring an extent of 3.65 acres. The plaintiff developed the said lands into a Tea Garden and has been in exclusive possession and enjoyment of the same. The lands were later assigned in a new Survey Number consequent to the re-survey and allotted T.S.No.A.3/5B. While so, the defendants, who have no semblance of right over the suit property on 20.08.2002, attempted to trespass into the properties. Their intention appears to be grab the suit properties. Therefore, the plaintiffs have come forward with the instant suit.

3. In defence, the defendants have stated that there was an access to the tea factory and the house. From the forest dale road running East to West measuring 10 feet in width, this road has been in existence of 1985 and was used as an access by the partners of the erstwhile firm, namely, Sri Dhanalakshmi Tea Factory, the defendants herein. This access is sought to be restricted by the plaintiff in the guise of the present suit. Once injunction is granted the plaintiff would effectively cut off the access from the road to the factory and the house. The defendants would submit that the cause of action pleaded is totally false since the pathway which is being used by the defendants and others have been an existence since 1985 without any objection. Therefore, they sought for dismissal of the suit.

4. The Written Statement was filed by the 4th defendant and adopted by the defendants 1, 2 and 5.

5. The learned District Munsif, Coonoor, had framed an issue as to whether the plaintiff was entitled to decree for injunction as prayed for?

6. The learned District Munsif, Coonoor had considered the Commissioner's Report which would show the existence of the pathway. However, considering the fact that the defendants had admitted using the pathway without the permission of the plaintiff, the learned Judge has granted injunction as prayed for. The said Judgment was challenged by the defendants in A.S.No.54 of 2004 on the file of the learned Sub Judge, The Nilgiris. The Appellate Court also confirmed the Judgment and



Decree of the trial Court. Challenging the same, the appellants are before this Court.

7. Though the Second Appeal had been filed as early as in the year 2008 it had been adjourned and has come up for admission only now.

8. Mr.T.Girish, learned counsel arguing on behalf of the appellants would submit that having confirmed the existence of the pathway, the Court below ought to have followed it up by granting an injunction with reference to the suit property barring the extent being used as the pathway. He would further argue that this is the only access available to the defendants and therefore, the Judgment and Decree of the Courts below should be set aside.

9. The only defence put forward by the defendants/appellants is that they are using a portion of the suit property as a pathway and that the Courts below ought to have considered the easement of necessity. However, the defendants have not filed their counter claim with reference to the same. Though in their Written Statement, they would contend that a portion of the suit property is being used as a pathway they have not proved the usage for a continuous period and that it was with the consent of the plaintiff. Considering the fact that the defendants have themselves admitted the right of the plaintiff to the suit property, their usage of the portion of the same without the permission of the plaintiff would definitely amount to be a trespass. That apart, the defendants have themselves admitted that this pathway has been fenced all around and therefore, the defendants are not using the said pathway.

10. In view of the above, I do not find any ground for interfering with the concurrent Judgment and Decree of the Courts below. The appellants have not made out any Substantial Questions of Law warranting interference to the Judgment and Decree of the Courts below.

In fine, the Second Appeal is dismissed, however, there shall be no orders as to costs.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mps



To

1. The Subordinate Judge,
Ooty.

2. The District Munsif,
Coonoor.

Copy To:-

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

+1cc to Mr.Srinath Sridevan, Advocate, S.R.No.28799

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PVS (CO)
PBS/15/11/2021