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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :17.02.2021

PRONOUNCED ON:04.03.2021

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.887 of 2008

and

M.P.No.1 of 2008

Indira Gandhi Wife of Madhiya
Sama goundan,
Valasai Kollai Kottai,
Chinnathallapadi Turaf,
Singarapettai Post,
Uthangarai Taluk.

... Appellant/Plaintiff

Vs.

Lakshmana Gounder,
S/o, Rama gounder,
Sama goundan,
Valasai Kollai Kottai,
Chinnathallapadi Turaf,
Singarapettai Post,
Uthangarai Taluk.

... Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.40 of 2006 on the file of the Principal Sub Judge, Krishnagiri, dated 26.09.2007 in confirming the judgment and decree in O.S.No.48 of 2002 on the file of the District Munsif Court, Uthangarai, dated 30.06.2006.

For Appellant : Mr.V.Raghavachari

For Respondent : Mr.D.Baskar
for M/s.R.Thamarai Selvan

J U D G M E N T

Challenge in this second appeal is made to the judgment and decree dated 26.09.2007 passed in A.S.No.40 of 2006 on the file of the Principal Subordinate Court, Krishnagiri, confirming the judgment and decree dated 30.06.2006 passed in O.S.No.48 of 2002 on the file of the District Munsif Court, Uthangarai.



2. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

3. The plaintiff in O.S.No.48 of 2002 is the appellant in this second appeal.

4. Suit for permanent injunction.

5. The case of the plaintiff in brief is that the first item of the suit properties was purchased when she was minor, on her behalf, by her father by way of a sale deed dated 23.09.1993 from Manickam and his legal heir and enjoying the same and to gain access to the first item, the second item of the suit properties was also purchased in the name of the plaintiff by her father by way of a sale deed dated 19.11.1993 from Manickam and accordingly, the patta, chitta, adangal etc., in respect of the suit properties stand in the name of the plaintiff and the plaintiff is enjoying the same by paying Kists etc., The plaintiff's father spent a lot for improving the suit properties and also laid a stone on the pathway so as to take tractors, lorries through the second item to the first item of the suit properties and other than the plaintiff, no one is having any title, possession and enjoyment over the suit properties. Since some lands had been acquired/obtained from Raji having land on the eastern side, Raji was permitted to enjoy the second item used as the access to reach the first item and other than the plaintiff and Raji, no one is having right of way through the second item. While so, the defendant without any entitlement, cut the common ridge between the plaintiff and the defendant's lands and attempted to lay a path claiming right over the second item and hence the police complaint has been lodged and as the defendant's action persisted, according to the plaintiff, she has been necessitated to lay the suit against the defendant for appropriate relief.

6. The defendant resisted the plaintiff's suit, contending that the suit property and 30 acres around the same originally belonged to the defendant's father Rama Gounder as his ancestral properties and Rama Gounder had six sons and in the oral partition effected between Rama Gounder and his six sons about 45 years back, every sharer were allotted with the lands and it was agreed to have way to their respective shares through their lands by taking carts and vehicles and that usage should not be obstructed by the other sharers and accordingly putforth the case that the 10ft cartrack had been created to take the carts and vehicles from the main road and through the lands allotted to Raji, Manickam, Lakshmanan and Chinnapaiyan, the brothers of the defendant and one Saroja Ammal purchased the land in S.No.77/3 from Manickam about 35 years ago and subsequently,



Saroja Ammal sold the same to one Chellappa Gounder on 24.03.2003 and Chellappa Gounder in turn, sold the same to the plaintiff's vendor Manickam on 04.04.1979 and at that point of time also, the defendant and his brothers were enjoying the carttrack by taking the carts and vehicles over the suit property. Thus, according to the defendant, he has the easement of necessity to pass through suit property particularly, the second item of the suit properties and the easement attached to the land runs with the land and cannot be destroyed or disputed despite the sale transactions of the land from one person to another and the defendant and his brothers were enjoying the suit property as an access to the road through the property and while so, the plaintiff's father attempted to interfere with their possession and enjoyment and the plaintiff is entitled to use the suit property subject to the right of easement of the defendant over the same ie., for gaining access to his land and therefore according to the defendant, the plaintiff is not entitled to secure the relief by contending that the suit properties particularly, the second item is in her exclusive possession and enjoyment and hence sought for the dismissal of the plaintiff's suit.

7. In support of the plaintiff's case, P.Ws.1 and 2 were examined. Exs.A1 to A9 were marked. On the side of the defendant, D.Ws.1 to 3 were examined. Exs.B1 to B5 were marked. Exs.C1 and C2 were also marked.

8. On a consideration of the oral and documentary evidence adduced in the matter and the submissions put forth by the respective parties, the Courts below were pleased to dismiss the plaintiff's suit. Challenging the same, the second appeal has been preferred by the plaintiff.

9. At the time of admission of the second appeal the following substantial question of law was formulated for consideration.

Whether the judgments and decrees of the courts below are perverse on account of its misconception of the documents in Exs.A2, B2 and B3 and non-consideration of the report of the Advocate Commissioner in Exs.C1 and C2?

10. The plaintiff, claiming that the suit properties are in her possession and enjoyment by way of purchase under the sale deeds dated 23.09.1993 and 19.11.1993 marked as Exs.A1 and A2 and putting forth the case that she has been in the possession and enjoyment of the suit properties through her father from the date of Exs.A1 and A2 exclusively and independently by obtaining patta and paying Kists etc., according to the plaintiff, inasmuch as the defendant without any authority or entitlement,



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14. When the defendant claims only easementary right over the second item, as such, it is for the defendant to establish that he is entitled to use the second item as an easement of necessity for gaining access to his land. The second item is found to be cart track over which carts and lorries could pass through and when the said track had been exclusively purchased by the plaintiff under the Ex.A2 sale deed and when over the same, the defendant only claims easementary right by way of necessity, it is for the defendant to sustain his case by placing acceptable and reliable materials. For the same, the defendant would claim that the suit properties and other properties in the vicinity, originally belonged to his father Rama Gounder and in the oral partition effected between Rama Gounder and his six sons about 45 years back, the sharers had agreed that they could pass through the property of other sharers for gaining access to their respective shares and hence according to the defendant, only by way of an oral understanding, the defendant is claiming easementary right over the second item. The defendant has also only pleaded oral partition between Rama Gounder and his six sons. It is thus found that there is no material worth acceptance on the part of the defendant to sustain that the sharers to the alleged oral partition effected about 45 years back agreed to have access through the shares allotted to the respective sharers by way of a cart track for gaining access to their allotted properties. On a perusal of the earliest document projected by the defendant marked as Ex.B3, it is found that there is nothing mentioned therein about the cartrack and on the other hand, only a right of pathway has been mentioned in a general way and therefore to say that the right of cartrack has been referred to Ex.B3 sale deed executed by Ponnusamy in favour of Chinnapaiyan and others, as such, cannot be accepted in any manner.

15. The Courts below had failed to consider the recitals contained in Ex.B3 sale deed in the proper perspective and misconstrued the same as pointing to the usage of the carttrack in the suit lands. Similarly, Ex.B2 sale deed also executed by Chellappa Gounder in favour of Manickam, only the right of way in the form of foot path through the lands of Rama Gounder and others is mentioned and therefore the plea of the defendant that the carttrack had been in existence over the lands allotted to the sons of Rama Gounder from the days of their father and from the date of the alleged oral partition, as such, cannot be countenanced in any manner. When at the foremost, there is no material worth acceptance to sustain the case of the defendant that Rama gounder and his sons had agreed to use the shares allotted to the other sharers for gaining access to their allotted properties and when there is no material to hold that since the date of partition such enjoyment was in vogue and when



the documents projected by the defendant as above discussed, do not point to the same and even in Ex.B1 sale deed, no reference is made about any cart track or even the parth way as disclosed in the other sale deeds, it is evident that Exs.B1 to B3 would not serve the case of the defendant to sustain his plea of easementary right by way of necessity over the suit lands.

16. Considering the lie of the properties belonging to the plaintiff and the defendant as could be seen from the Commissioner's report and plan marked as Exs.C1 and C2, when it is noted that the defendant is not required to pass through the cart track available in the suit lands for reaching his land and house and when it is seen that the defendant could have access to his property independent of the cart track in the suit lands, the Courts below had failed to appreciate the abovesaid aspects in the proper perspective and misconstrued the Commissioner's report and plan projected in the matter, particularly when it is found that the cart track is in existence only upto the plaintiff's land and thereafter only a pathway proceeds on the eastern side of the plaintiff's land to the defendant's property. Therefore to say that the defendant is entitled to use the cart track over the suit lands belonging to the plaintiff particularly when the existence of such a common cart track in the suit lands has not been established and when it is seen that the plaintiff had proceeded to purchase the second item, only for the convenient enjoyment of the first item and as rightly contended by the plaintiff's counsel, if the cart track available in the second item has been used by the defendant and his brothers as alleged in the written statement, she would not have endeavored to purchase the same. Per contra, from the recitals found in Ex.A2 sale deed, it is found that the plaintiff had purchased the second item in various parts exclusively only for the convenient enjoyment of the first item and subsequent to Ex.A2 sale deed, she had formed the cart track for taking the carts and vehicles through the same to reach the first item. Therefore, merely because the plaintiff had developed the cart track in the second item following Ex.A2 sale transaction, it cannot be inferred that the same has been in existence right from the days of Rama Gounder and enjoyed by Rama Gounder and his sons prior to the alleged oral partition and subsequent to the alleged oral partition as putforth by the defendant. If that be so, the title deeds in respect of the respective shares allotted to the brothers would reflect the existence of cartrack over the suit lands and on the other hand, as above discussed, none of the documents projected by the defendant show the existence of the cart track in the suit lands and the right to use the same had been reserved and on the other hand, considering the recitals found in Exs.A1 and A2 and Exs.A6 and A7, it is evident that the second item in particular has



been purchased exclusively by the plaintiff only for the purpose of creating the cart track over the second item for gaining access to the first item.

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17. The Courts below seem to have placed/based reliance upon the oral evidence adduced by D.Ws.1 to 3. When D.Ws.2 and 3 cannot depose contrary to the recitals contained in Exs.A1, A2, A6 and A7 and when their claim that the cart track had been in existence from the days of Ramasamy Gounder and used by various sharers is not buttressed by acceptable and reliable materials and on the other hand, when it is noted that the cart track ends with the land of the plaintiff and thereafter the same is not in existence and only a pathway is in existence and when the defendant is found to be having the alternative pathway to reach his lands and when the plaintiff has been enjoying the suit lands particularly the first item by raising mango groove by protecting the same by laying fence on all the sides, the defendant cannot be allowed to claim the right of cart track over the same for gaining access to his lands when particularly the defendant having failed to establish the existence of such a right from the days of his father as putforth in the written statement. When the defendant is only claiming right over the cart track available in the suit lands as an easementary right by way of necessity and when the defendant has not even pleaded that he has no alternative cart track to reach his land and when the cart track is found to be in existence only up to the plaintiff's land and does not proceed further and when the defendant is found to be having the alternative way to reach his land, all put together and when the evidence of D.Ws.1 to 3 cannot be readily accepted sans documentary evidence supporting their version, resultantly, as rightly contended by the plaintiff's counsel, the Courts below had failed to properly assess the materials placed on record both oral and documentary in the proper perspective as well as the Commissioner's report and plan correctly and misdirected themselves to conclude that the plaintiff's right of enjoyment over the suit lands is subject to the easmentary right of the defendant. In such view of the matter, as putforth by the plaintiff's counsel, the Courts below in particular, had misconstrued the recitals found in Exs.A2, B2 and B3 as well as the Commissioner's report and plan Exs.C1 and C2 erroneously without understanding the same in the proper perspective coupled with the purpose of acquisition of the second item by the plaintiff and when the plaintiff has established her clear title to the suit lands under Exs.A1 and A2 and the exclusive enjoyment of the same by marking the patta, Kists receipts etc., all put together, the Courts below are found to have erred in rejecting the plaintiff's case and the reasonings and conclusions of the Courts below for the same are found to be totally perverse, illogical and irrational and



accordingly the substantial question of law formulated in the second appeal is answered in favour of the plaintiff and against the defendant.

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18. For the reasons aforesaid, the judgment and decree dated 26.09.2007 passed in A.S.No.40 of 2006 on the file of the Principal Subordinate Court, Krishnagiri, confirming the judgment and decree dated 30.06.2006 passed in O.S.No.48 of 2002 on the file of the District Munsif Court, Uthangarai are set aside and resultantly the suit laid by the plaintiff in O.S.No.48 of 2002 is decreed as prayed for with costs. Consequently, the second appeal is allowed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. The Principal Subordinate Judge,
Principal Subordinate Court,
Krishnagiri.

2.The District Munsif,
District Munsif Court,
Uthangarai.

Copy to

The Section Officer,
VR Section,
High Court,
Chennai.

+1cc to Mr.V.Raghavachari, Advocate Sr.13446

S.A.No.887 of 2008
and
M.P.No.1 of 2008

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srg 22/10/2021