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IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 30.11.2021]

[PRONOUNCED ON : 12.01.2022]

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.Nos.112 and 113 of 2012

In S.A.No.112/2012 :

Chinnusamy ... Appellant/4th Defendant

.. Vs ..

1. Kaliammal
2. Arumugham
3. Jayapal
4. Selvi ... Respondents 1 to 4/Plaintiffs
5. State of Tamil Nadu,
Rep. by the District Collector,
Namakkal.
6. The Revenue Divisional Officer,
Revenue Department,
Mohanur Road,
Namakkal.
7. The Tahsildar,
Revenue Department,
Mohanur Road,
Namakkal. ... Respondents 5 to 7/Defendants 1 to 3

In S.A.No.113/2012 :

Chinnusamy ... Appellant/Plaintiff

.. Vs ..

1. Kaliammal
2. Arumugham
3. Jayapal
4. Selvi ... Respondents/Defendants

Prayer in S.A.No.112/2012: Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree made



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in A.S.No.26 of 2011, dated 27.04.2011 on the file of the Additional District Judge-cum-Fast Track Court, Namakkal District, in confirming the judgment and decree made in O.S.No.593 of 2001, dated 28.03.2007 on the file of the Principal District Munsif, Namakkal District.

Prayer in S.A.No.113/2012: Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree made in A.S.No.35 of 2011, dated 27.04.2011 on the file of the Additional District Judge-cum-Fast Track Court, Namakkal District, in confirming the judgment and decree made in O.S.No.450 of 2001, dated 28.06.2007 on the file of the Additional District Munsif, Namakkal District.

For Appellants in both cases	:	Mr.V.Raghavachari for Mr.Ma.P.Thangavel
For RR-1 to 3 in both cases	:	Mr.C.Jagadish
For R-4 in both cases	:	No Appearance
For RR-5 to 7 in S.A.No.112/2012	:	Mr.D.Gopal Government Advocate (Crl.Side)

COMMON JUDGMENT

For the sake of convenience, the parties are referred to as per their ranking in O.S.No.450 of 2001 [S.A.No.113 of 2012].

2. The plaintiff in O.S.No.450 of 2001 is the appellant in both the Second Appeals.

3 (a). The plaintiff/appellants herein had initially filed a suit in O.S.No.450 of 2001, before the learned Additional District Munsif, Namakkal, praying for a declaration to declare the suit property as a common cart track leading to the plaintiff's land.

3 (b). Subsequently, the defendants in the said suit in O.S.No.450 of 2001 have filed a suit in O.S.No.593 of 2001, before the learned Principal District Munsif, Namakkal, to declare the classification made by the Government regarding the Survey No.295/3 as a public cart track and for permanent injunction restraining the Government from using the same as a



common cart track. In the said suit in O.S.No.593 of 2001, the plaintiffs therein have filed an impleading petition and the same was ordered and the plaintiff in O.S.No.450/2001 was impleaded as 4th defendant in O.S.No.593 of 2001.

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3 (c). The suit in O.S.No.450/2001 filed by the plaintiff, which is earlier in point of time, was kept pending and the suit in O.S.No.593 of 2001 filed by the defendants was taken up for trial and the same was decreed on 28.03.2007. After the suit in O.S.No.593 of 2001 was decreed, the learned Additional District Munsif, Namakkal, has taken up the old suit viz., O.S.No. 450 of 2001 and by relying upon the judgment and decree passed in the subsequent suit in O.S.No.593 of 2001, has dismissed the suit in O.S.No. 450 of 2001, filed by the plaintiff, wherein, the reason assigned by the learned Additional District Munsif, Namakkal, is that the plaintiff is seeking the relief of easementary right and long possession is not in terms of the pleadings.

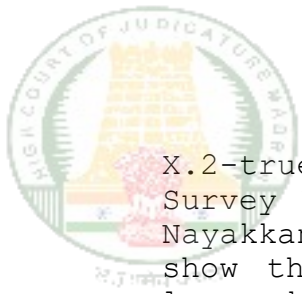
3 (d). Thereafter, the plaintiff has filed appeals in A.S.Nos.26 and 35 of 2011 against both the judgments passed by the trial Court and the same were also dismissed by the learned Additional District Judge, Fast Track Court, Namakkal, on 27.04.2011. As against the same, the above two Second Appeals have been filed before this Court.

4. The above two Second Appeals were admitted on 13.09.2021 and the following substantial questions of law were framed:

(i)Whether the Courts below are permitted to infer against the document when it is shown by the authorities concerned that the suit cart track is in existence for more than 150 years by way of Ex.B4 to Ex.B6?

(ii)Whether the Courts below are right in granting the relief of declaration and mandatory injunction to the plaintiffs when they miserably failed to establish their case as contemplated in Section 101 of the Indian Evidence Act, 1872?

5. Mr.V.Raghavachari, learned counsel appearing for the appellants in both cases would draw my attention to the fact that the existence of the road viz., Survey No.295/3 was admitted by the defendants in O.S.No.450/2001 and Ex.A1-Gift Deed [in O.S.No. 593 of 2001] executed by the party to the Government supports the case of the appellants. The learned counsel for the appellants also draw my attention to the evidence of P.W.6 [In O.S.No.450 of 2001], Village Administrative Officer, through whom Exs.X.1-true copy of "A" Register in the Marappan Nayakkanpatti village Survey No.295/3;



X.2-true copy of Adangal in the Marappan Nayakkanpatti village Survey No.295/3 and X.3-true copy of field map in the Marappan Nayakkanpatti village Survey No.295/3 were marked which goes to show that the disputed property is a common cart track. The learned counsel also draw my attention to the documents filed by the Advocate Commissioner viz., Ex.C.1/Court Commissioner's Report (original) and Exs.C.2 and C.3/Court Commissioner's Map (original).

6.The sum and substance of the arguments of the learned counsel for the appellants is that the oral evidence of the revenue witness viz., P.W.6/Village Administrative Officer and the documentary evidence filed viz., Exs.C.1, C.2 & C.3 were duly corroborated by Exs.X.1, X.2 and X.3. Further, from the recital in the boundary in Ex.A.1 in O.S.No.593 of 2001-Gift Deed executed by the original plaintiff to the Municipality, it is seen that the suit property is the common cart track not only to the plaintiff but also to the public.

7. Additional typed set of documents viz., Exs.X.1, X.2 & X3 and Exs.C.1, C.2 & C.3 were filed. In support of his contention, the learned counsel for the appellants relied upon the decision of the Hon'ble Supreme Court reported in (1993) 4 SCC 69 [M/s.Gobind Pershad Jagdish Pershad Vs. New Delhi Municipal Committee].

8. Further, the leaned counsel for the appellants would contend that the suit filed in O.S.No.593 of 2001 as such is not maintainable, in view of Section 13 of the Tamil Nadu Survey and Boundaries Act 1987 (hereinafter referred to as the Act) and after coming into know about the classification of the suit property as a cart track, the defendants ought to have filed an application before the revenue authorities and only on such condition therefor, they can filed a suit and hence, the suit is not maintainable, in view of the remedy available under Section 13 of the Act. The similar objection raised before the trial Court appears to have been over ruled by relying upon the judgment of this Court reported in 1995 (1) MLJ 426 [Kuppusamy Nainar Vs. District Revenue Officer, Tiruvannamalai and others], wherein, the jurisdiction of the Civil Court has been dealt with.

9.Mr.V.Raghavachari, learned counsel for the appellants would also draw my attention, discussions of the learned Trial Judge, whereby, the learned trial Judge has held that the plaintiff, who is the appellant in S.A.No.112 of 2012 said to have raised the plea of easement right on long enjoyment and easemetary necessity, however, would contend that both in the pleadings as well as in the evidence of P.W.1, he has raised a contention that he is claiming only easementary right and hence,



the discussion made by the learned trial Judge is not as per the pleadings and the evidence adduced before the Court.

10. Mr.D.Gopal, learned Government Advocate (Crl.Side) appearing for the Government/respondents 5 to 7 in S.A.No.112 of 2012 would draw my attention to the written statement filed before the Lower Court by the Tahsildar and also referred the evidence of P.W.6 [In O.S.No.450 of 2001], Village Administrative Officer.

11. Learned counsel for the private respondents 1 to 4 would contend that the State is not pleaded as party in the suit and further contended that the plaintiff in O.S.No.450/2001, has raised the plea of easement by description in the pleadings and according to the private respondents 1 to 4, there is an error crept in the revenue records and the suit property in S.No.295/3 is erroneously classified as a public cart and having come to the knowledge, issued legal notice under Section 80 of CPC. Since nothing was forthcoming from the Government, the defendants have filed the subsequent suit in O.S.No.593/2001 and relied upon the evidence of P.W.1 to that extent.

12. Further contended that the appellants claimed easement right based upon Ex.A.2/sale deed which is of the year 1997 and the suit is of the year 2001. Since the plaintiff is claiming easement by description, he ought to have been in enjoyment of the property for 20+2=22. However, he is running short of the statutory period contemplated under Section 50 of the Easement Right and would contend that both the Courts below have appreciated this point on the factual position and accordingly, rejected the plaint and furthermore, it is the case of the plaintiffs in O.S.No.593/2001 that under Ex.A1/Gift deed, 4 acres of land owned by the ancestors in title have donated the property for primary health centre and balance of the land in S.No.295/3 belongs to them. However, in the revenue records, it has been wrongly classified as village cart track.

13. The suit property was never vested in the Government and as against the judgment and decree granted in O.S.No.593/2001, the State has not filed any appeal and hence, the appellant/plaintiff is not clear on facts on its own right, as pleaded and also addressed the substantial questions of law one to make it a point that since the documents Exs.B.4, B.5 and B.6 filed in O.S.No.593/2001, revenue records, the same cannot confer title upon him.

14. The learned Government Advocate appearing for respondents 5 to 7 in S.A.No.112/2012, would draw my attention to the written statement filed before the lower Court by the Thasildar and also to the evidence of P.W.6/VAO in



O.S.No.450/2001, for appreciation of facts.

15. As stated supra, an Advocate Commissioner was appointed in O.S.No.593 of 2001. The suit filed by the defendants/respondents 1 to 4 herein against the Government, wherein, the plaintiff in O.S.No.450/2001 was subsequently impleaded. P.W.6-Marimuthu, VAO (In O.S.No.450/2001 has marked the documents Exs.X.1, X.2 and X.3 viz., true copies of "A" Register; Adangal and field map in the Marappan Nayakkanpatti village Survey No.295/3 respectively. The Advocate Commissioner appointed by the trial Court has filed his report and sketch and the same were marked as Exs.C.1, C.2 and C.3.

16(a). On an combined reading of the evidence of P.W.3 coupled with the evidence of P.W.6 and the documentary evidence of Exs.C.1, C.2 and C.3 with Ex.B.1, this Court finds that the entire lis between the parties is answered therein.

16(b). The Advocate Commissioner appointed has filed documents Exs.C.1, C.2 and C.3, which clearly noted the suit pathway and the suit pathway is a course from point Exs.X and X.1 and noted the physical features thereon which clearly demonstrated the position that except the suit pathway, there is no other existence of any other pathway on the east or any other direction for the plaintiff's land. On a perusal of the Lower Court records, it reveals that the defendants/respondents 1 to 4 herein have not filed any objection to the Commissioner's report or to the plan disputing the details in his report on the above subject assumes significance. Since in view of the report of the Advocate Commissioner Exs.C.1 to C.3 and the revenue records filed by the Village Administrative Officer-P.W.6, I find that except the suit cart track, there is no access or any pathway for the plaintiff's land assumes significance.

17. Exs.B.1 and B.2 marked in O.S.No.450 of 2001 are the judgment and decree granted in O.S.No.593 of 2001, which is the subject matter of the S.A.No.112 of 2012.

18. On a perusal of the written statement filed by the Tahsildar, Namakkal, who is arrayed as third defendant in O.S.No.593 of 2001 and the pleadings at paragraph Nos.4 and 5 clearly demonstrate the fact that as early as in the year 1987, separate patta has been issued to the respective parties and the suit property, suit cart track is in Survey No.295/3 and the same is recorded as village cart track.

19(a). It is the specific pleading by the revenue authority, the third defendant in O.S.No.593/2001 that as per 'A' register as well as village map, it is classified as cart track being used by the plaintiff as well as by the other



villagers for more than 151 years.

19(b). In this connection, the evidence of P.W.6-VAO (O.S.No.450/2001) is also on the same lines lends support to the case of the plaintiff and hence, in view of the specific statement of the revenue witness P.W.6 as discussed supra coupled with the documentary evidence of Exs.C.1, C.2 and C.3 and Exs.X.1, X.2 and X.3, I find that the plaintiff has made out a case that it is a village cart track and the plaintiff has no other pathway to reach his land except the suit cart track. The statement of P.Ws.1 to 6 are to the same effect. The suit cart track was in existence for the past several decades and it is classified as cart track, in view of the revenue records as discussed in the above referred documents. The report of the Advocate Commissioner appointed by the Court as could be seen from Exs.C.1, C.2 and C.3 also goes to show that even as on the date of inspection, the general public were using the same cart track throughout on the date of the inspection on 08.09.2001 and 29.03.2002. As could be seen from the Advocate Commissioner's report, the measurement of the land is also found to be extended beyond the suit relief sought for by the plaintiff. As could be seen from the Advocate Commissioner's report, the entire people in the village were using the suit cart track and hence, I find that both the Courts below have committed an error in disbelieving the statement of P.Ws.1 to 6, in the absence of any contra evidence and further, both the Courts below have erroneously eschewed the evidence of the Advocate Commissioner and both the Courts below have not properly appreciated the evidence adduced by the plaintiff as well as the revenue witnesses and hence, the substantial questions of law 1 to 3 are answered in favour of the appellant/plaintiff and against the respondents/defendants.

20. It remains to be stated that the continuous enjoyment is a question of fact and the same has to be inferred from the facts culled out from the oral and documentary evidence and the witnesses on the side of the plaintiff have uniformly, clearly and categorically spoken about the appellant's continuous use and enjoyment of the suit property and marking of documents Exs.X and X.1. Mere omission to mention the survey number in the field cannot be put against them or nor be a ground to disbelieve their evidence. In the documents filed by the plaintiff, no reference to the suit pathway is mentioned. P.W.1 also admitted the same that the pathway was not specifically recited therein.

21. As stated supra, larger extent of land belonged to the plaintiff and other lands including the public health department are originally belonged to the ancestor of the defendants and the said facts are not in dispute and hence, merely because



Ex.A.1 and A.2 does not mention about the suit pathway, the same will not deter the right of the plaintiff in O.S.No.450 of 2001 as claimed.

22. On a perusal of the plaint, I have noticed that the plaintiff has not claimed any right of ownership thereto. The plaint prayer is merely to undisturb the use of the suit pathway as a easement. Admittedly, there is no prayer for possession of the land and therefore, declaration of ownership of the land is not a matter for consideration. The question is as to whether the plaintiff can use the suit property as a pathway to reach his land. On a perusal of revenue records viz., Exs.C.1, C.2 and C.3 and Exs.X.1, X.2 and X.3 and cross examination of P.W.1, I find that the suit pathway goes to 12 feet width and 1000 feet length. On a perusal of the evidence of revenue witness-P.W.6 coupled with revenue documents Exs.X.1, X.2 and X.3, it is seen that it demonstrate the same and hence, the second appeals have to be allowed and the contra findings rendered by both the Courts below are liable to be set aside.

23. In the result,

[i] Both the Second Appeals are allowed and the contra findings rendered by both the Courts below are liable to be set aside. The suit in O.S.No.450 of 2001 is decreed and the suit in O.S.No.593 of 2001 is dismissed.

[ii] However, there shall be no order as to costs.

Sd/-
Assistant Registrar(LA)

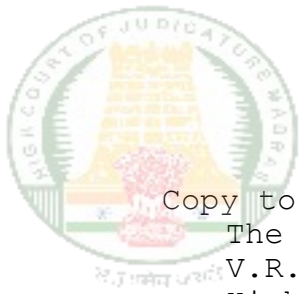
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Sub Assistant Registrar

Jrl

To

1. The Additional District Judge-cum-Fast Track Court,
Namakkal District.
2. The Principal District Munsif,
Namakkal District.
3. The Additional District Munsif,
Namakkal District.



Copy to:
The Section Officer,
V.R.Section,
High Court, Madras.

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+2ccs to Mr.Ma.P.Thangavel, Advocate, S.R.No.2662 & 2663

+2ccs to Mr.C.Jagadish, Advocate, S.R.No.2418 & 2419

+1cc to the Special Government Pleader (C.S), S.R.No.3178

S.A.Nos.112 and 113 of 2012

PA(CO)
SU(24/02/2022)