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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2022

C O R A M :

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

S.A.No.302 of 2020
and C.M.P.Nos.6191 & 6192 of 2020 & 15249 of 2021

(Through Video Conference)

- 1) P.Marimuthu
2) M.Jayakumar ... Appellants/Plaintiffs
Vs.
1) K.Kalaiyaran
2) R.T.Vaithiyalingasamy
3) K.Ezhilarasan ... RR 1 to 3/Defendants 3 to 5
4) Kavibharathi
5) Shanthi ... RR 4 & 5/Defendants 1 & 2

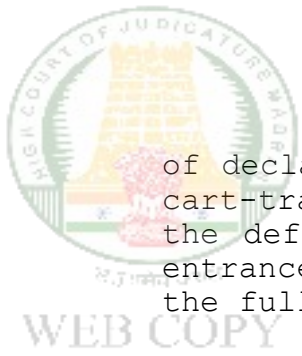
PRAYER: Second Appeal is filed under Section 100 of C.P.C., against the Judgment and Decree passed in A.S.No.57 of 2019 dated 28.11.2019 on the file of the Additional District (Fast Track) Court, Mettur, reversing the Judgment and Decree passed in O.S.No.215 of 2014 dated 14.02.2019 on the file of the Subordinate Court, Mettur and to allow the Second Appeal.

For Appellants	...	Mr.A.Sundara Vadhanan
For RR 1 to 3	...	Ms.S.T.P.Kuilmozhi
For RR 4 & 5	...	No Appearance

J U D G M E N T

This Second Appeal is filed challenging the Judgment and Decree passed in A.S.No.57 of 2019, dated 28.11.2019 on the file of the Additional District (Fast Track Court) Mettur, reversing the Judgment and Decree passed in O.S.No.215 of 2014, dated 14.02.2019 on the file of the Subordinate Court, Mettur.

2. The appellants herein, have filed a suit seeking relief



of declaration of the right of the User/plaintiffs over the suit cart-track, for consequential permanent injunction restraining the defendants 3 to 5 from in any way erecting any gate at the entrance or wire fencing on the sides of the suit cart-track to the full length of the property.

3. The case of the appellants is that they have landed properties at S.Nos.155/2a, 148/3, 147/4b, 145/1a, 145/1b, 145/1c, 146/1b and 146/2a at Pottaneri Village, Mettur Taluk. To reach their agricultural lands, the plaintiffs entered into an agreement with the fourth respondent herein, who is the first defendant in O.S.No.215 of 2014, to use the cart-track from Pooralakuttai Panchayat road to a breadth of 45 links to the entire length of the suit properties. This Agreement was reduced into writing on 23.01.2014 and registered at the Sub Registrar Office, Mecheri as document No.171/2014. As per this Agreement, the fourth respondent herein, granted the 'right of cart-track'. The right to use of cart-track to take cattle and also heavy vehicles through this cart-track was given to the appellants by the fourth respondent herein. It was also agreed that the appellants and the fourth respondent and their respective successors have the right to use this cart-track in continuation. It was also agreed that neither the appellants nor the fourth respondent should disturb or interfere with the use of cart-track by both the parties.

4. On 01.10.2014, the respondents 1 to 3 / defendants 3 to 5 came to the suit cart-track to put up a gate at the entrance. When the appellants/ plaintiffs questioned them, the respondents 1 to 3 / defendants 3 to 5 informed that they had purchased the suit cart-track as well as other properties from the respondents 4 and 5. The appellants / plaintiffs showed the respondents 1 to 3 / defendants 3 to 5, the Agreement dated 23.01.2014 and explained that they have the right to use the suit cart-track. The respondents 1 to 3 denied the appellants'/plaintiffs' right to use the suit cart-track. Again on 07.10.2014, the respondents 1- 3 came with their men to erect a gate at the entrance as well as to erect barbed wire fencing to the full length of the suit cart-track. The respondents 4 & 5, suppressing the cart-track right of the appellants, sold the property to the respondents 1 to 3. Therefore, the suit is filed for the relief as afore-stated.

5. It is seen from the written statement filed by the first respondent/ third defendant, which was also adopted by the other respondents that, they were not aware of the registered Agreement, dated 23.01.2014 existed between the appellants/ plaintiffs and the fourth respondent, which pertains to the right of user over the suit cart-track by both the appellants/ plaintiffs and the fourth respondent. It is false to say that



the appellants/ plaintiffs are using the suit cart-track, without any hindrance or disturbance from 23.01.2014. The respondents 1 to 3/ defendant 3 to 5 had already erected a steel gate at the entrance of the property, after purchasing the suit cart-track and other properties from the respondents 4 and 5 on 19.02.2014 through a registered sale deed in the name of "Sri Ram Educational and Charitable Trust". The suit property is used for running S.R.V. Matriculation Higher Secondary School, in which more than 2500 students are studying in the School. The suit cart-track is a road to reach the School building for the Students, Teachers, Staff, Government officials etc. The appellants /plaintiffs have no right and title over any portion of the suit property at any point of time.

6. Sri Ram Educational and Charitable Trust purchased 11 acres of land including the suit properties from the respondents 4 and 5 on 19.02.2014. The S.R.V. Matriculation and Higher Secondary School is being run with due recognition of the Government. The plaintiffs / appellants and their men are not at all using the suit cart-track. The appellants have allegedly purchased the 'right of way' only from one Kavi Bharathi / fourth respondent herein on 23.01.2014. They have not purchased the lands on which the suit cart-track exists. The suit is not maintainable for non-joinder of necessary parties. If the plaintiffs/appellants are allowed to use the cart-track, it will cause danger to the safety of the children, staff and others. The plaintiffs/appellants have an alternative road to reach their agricultural lands. Therefore, this suit is liable to be dismissed.

7. On the basis of the above pleadings, the Trial Court framed the following issues:-

- (i) Whether there was an agreement between the plaintiffs and the first defendant on 23.01.2014 for right to use the Cart Track to reach the plaintiffs' land?
- (ii) Whether the plaintiffs are using the suit cart track to reach their lands?
- (iii) Whether the plaintiffs purchased the right of user of the cart track for a consideration of Rs.3,00,000/-?
- (iv) Whether the claim of the defendants that the appellants have alternative cart track to reach their land is correct?
- (v) Whether the agreement dated 22.01.2014 will bind the defendants?
- (vi) Whether the suit has cause of action?
- (vii) Whether the appellants is entitled for permanent injunction prayed for?
- (viii) Whether the plaintiffs is entitled for the



permanent injunction prayed for? and
(ix) To what relief the plaintiffs are entitled to?

8. During trial, on the side of the plaintiffs P.W.1 and P.W.2 were examined and Ex.A1 to A3 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Ex.B1 to Ex.B9 were marked. On considering the oral and documentary evidence, the learned trial Judge, found that as per Ex.A1, the plaintiffs/ appellants are entitled to use the suit cart-track to reach their agricultural lands and therefore, decreed the suit. Aggrieved against this Judgment, the defendants 3 to 5 filed an appeal suit in A.S.No.57 of 2019.

9. The Appellate Judge found that the disputed land is a 'gait path track' and it belongs to the plaintiffs and defendants 3 to 5. It is also found that the defendants 3 to 5 / respondents 1 to 3 are entitled for fencing the property owned by the Trust. The appellants are entitled to claim right over the "gait path track" only for a limited purpose and not to use any cart, motor vehicles except bicycles. The respondents 1 to 3 are also having the right to use the "gait path track" only for the purpose of running the School and not for the use of any cart, motor cycles, except bicycles to enter in to the compound. Therefore, it is found that the Court cannot prevent the respondents 1 to 3 from setting up a gate in the gait path track and the use of the same by the appellants, who are having the same right as respondents 1 to 3. Finally, it was found that the appellants are not entitled to get remedy of permanent injunction against the respondents 1 to 3 from setting up the fence in the Trust land.

10. Against this judgment, which is contrary to the Cart track agreement dated 23.01.2014, the appellants have filed this Second Appeal. At the time of admission of the Second Appeal, the following substantial question of law was framed.

Whether the lower Appellate Court was right in concluding that the plaintiff cannot take vehicles in the suit pathway, more so when the appellants have purchased the right of way before the respondent acquired the land in question?

11. The learned counsel for the appellants submitted that the learned trial Judge, on going through the oral and documentary evidence produced in this case, has rightly found that the appellants are entitled to use the suit cart-track to reach his agricultural lands in pursuance of Ex.A1 Agreement, dated 23.01.2014. It is further submitted that the respondents 1 to 3 are the subsequent purchasers of the land, including the land on which the suit cart-track lies. The respondents 4 & 5 after entering into an Agreement with Ex.A.1, giving the right



to use the suit cart track for a valuable consideration of Rs.3,00,000/-, have suppressed this Agreement and sold the properties including the land in which the suit cart track is situated to the respondents 1 to 3. However, the sale will not preclude the appellants from enjoying the suit Cart-track, in terms of Ex.A1 Agreement dated 23.01.2014. However, the learned First Appellate Judge misread and misconstrued Ex.A.1 Agreement and held that there was no cart-track right given but only the right to use the gait path track was given. It means the appellants are entitled to use the suit cart-track only for the purpose of using of bicycles and they cannot take any cart or motor vehicles. Similarly, it is found that the respondents 1 to 3 also have to use this suit Cart Track only for the purpose of using the bicycles to enter into the compound of the Trust property and they cannot use cart or motor vehicles. It is nobody's case that there was no cart-track and only a gait path track is available on ground. There is a cart-track available. The issue is whether the appellants are entitled to use the suit cart-track after the respondents 1 to 3 purchased the land on which the suit cart-track exists. The judgment of the first Appellate Court is unimplementable and therefore, it requires to be set aside by restoring the judgment of the trial Court.

12. In response, the learned counsel for the respondents 1 to 3 submitted that the suit property, including other properties were purchased by "Sri Ram Educational and Charitable Trust". This Trust is not impleaded as a party to the suit. The suit was instituted against the Trustees of this Trust in their individual capacity. Therefore, the suit is liable to be dismissed on the ground of non-joinder of proper and necessary parties.

13. Though this defence was taken up before the trial Court in the written statement, both the Courts have failed to frame the issues in this regard. It is further submitted that the respondents 1 to 3 purchased the suit property including other properties and therefore, they are the exclusive owners of the suit properties. The appellants cannot claim any right of use of the suit cart-track based on Ex.A.1 Agreement. Therefore, the learned counsel for the respondents submitted that the Second Appeal has to be dismissed.

14. It is true that there is a plea in the written statement that the suit is filed bad for non-joinder of necessary party. However, it is not specifically pleaded that Sri Ram Educational and Charitable Trust is the proper and necessary party. The judgment of the Trial Court shows that no issue was framed in this regard. As per Order I Rule 13, objections as to non-joinder of party should have been taken at the earliest possible opportunity and, in all cases where issues



are settled, at or before such settlement. The respondents have not taken any steps to request the Trial Court to frame an issue on non-joinder of necessary party and a finding on that. Except the bold averment in the written statement that the suit is bad for non-joinder of necessary parties, no objections was taken by the respondents 1 to 3 as to non-joinder of "Sri Ram educational and Charitable trust" as a necessary party to the suit. This issue was not raised before the First Appellate Court either. Therefore, it is now not open to the respondents 1 to 3 to raise an issue of non-joinder of necessary party in the Second Appeal.

15. With regard to the merits of the case, the appellants did not claim any exclusive right in the suit cart-track. They pray only for the right of use of suit Cart-track and an injunction against the respondents 1 to 3 from interfering with the right of use of cart-track. This right, they claim on the basis of the registered Agreement, dated 23.01.2014. For the use of this cart-track, they had paid Rupees Three lakhs to the erstwhile owners of the suit cart-track, namely the respondents 4 and 5. Only after they purchased the right to use the suit cart-track, the respondents 4 & 5 sold the suit cart-track's land and other properties to Sri Ram Educational and Charitable Trust through sale dated 19.02.2014.

16. The gist of the Agreement is that the appellants and the respondents 4 and 5 entered into an Agreement with regard to the suit cart-track to reach the lands of the appellants. It is specifically stated in the Agreement that the appellants have no cart-track to reach their lands from Pooralakuttai Panchayat road. Therefore, they requested the respondents 4 & 5 to allow the appellants to use the suit cart track for the ingress and egress of car and heavy vehicles. It was accepted by the respondents 4 & 5 for a consideration of Rs.3,00,000/- (Rupees Three Lakhs only).

17. There are certain conditions enumerated in this Agreement. One of the important conditions is that the land on which the Cart-track is situated belongs to the fourth respondent Kavi Bharathi. Both should not claim any exclusive right in the suit cart-track. Fourth respondent has no right to cancel this right of use of cart-track given to the appellants. It is again reiterated that the appellants, their successors can use this cart-track for their ingress and egress and for taking vehicles, including the heavy vehicles.

18. Thus, this Agreement gives the appellants the right to use this cart-track to reach their lands, take carts, vehicles, including car and heavy vehicles. However, the First Appellate Court has given a different interpretation of this cart-track and treated it as a 'gait path track'. It is also stated that



this gait path track can be used only for the use of bicycles and both the parties cannot take cart and vehicles. It is contrary to the terms of the Agreement and contrary to the right of use of the cart-track between the appellants and fourth respondent. The cart-track Agreement is a registered Agreement. Subsequent purchase of the land in which the cart-track exists, by the respondents 1 to 3 for Sri Ram Educational and Charitable Trust, is subject to the appellants' right of user of the suit Cart-track. The respondents 1 to 3 should not in any way prevent the appellants from using this cart-track either by putting a gate or by fencing the cart-track.

19. In this view of the matter, this Court sets aside the judgment passed in A.S.No.57 of 2019 dated 28.11.2019 on the file of the Additional District (Fast Track) Court, Mettur, reversing the Judgment and Decree passed in O.S.No.215 of 2014 dated 14.02.2019 on the file of the Subordinate Court, Mettur. Thus, the substantial question of law is answered. In the result, the Judgment and Decree made in A.S.No.57 of 2019 on the file of Additional District (Fast Track) Court, Mettur is set aside and the judgment of the Trial Court passed by the Subordinate Judge, Mettur in O.S.No.215 of 2014 is restored. The parties are directed to bear their own costs.

20. Accordingly, the Second Appeal stands Allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

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To:

1. The Additional District Judge,
The Additional District, Fast Track Court, Mettur
2. The Subordinate Judge, Mettur.

Copy To:

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

+1cc to Mrs.S.T.P.Kuilmozhi, Advocate, S.R.No.1352

S.A.No.302 of 2020

CA(CO)
SB(23/05/2022)