



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No.1039 of 2013

V.Anandan

...Appellant

Vs.

V.M.Krishnamoorthy

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 18.10.2012 passed in A.S.No.41 of 2010 on the file of Subordinate Court, Vellore, confirming the Decree and Judgment dated 29.04.2010, passed in OS. No.732/03 on the file of Additional District Munsif Court, Vellore.

For Appellant : Mr.T.N.Rajagopal
for D.Kanagasundaram

For Respondent : Mr.A.Rajendiran
for A.R.Suresh

JUDGMENT

The defendant is the appellant in the present Second Appeal.

2. The respondent/plaintiff filed a suit for permanent injunction against the appellant/defendant.

3. The case of the plaintiff is that the suit property and other properties were allotted in favour of the plaintiff in oral partition effected among the brothers. Originally this property was owned by the father of the plaintiff and according to the plaintiff, even during his lifetime, specific portions were allotted to all the six sons including the plaintiff. Accordingly, each brother is in possession and enjoyment of the portion that was allotted to them and the plaintiff has also mutated his name in the Revenue Records and a separate patta has been issued to the plaintiff with respect to the property that was allotted in favour of the plaintiff.



4. The grievance of the plaintiff is that the defendant attempted to lay a road in the property belonging to the plaintiff and started levelling his property in this regard. Fearing interference by the defendant, the present suit came to be filed.

5. Heard Mr.T.N.Rajagopal, learned counsel appearing for the appellant and carefully perused the materials available on record and the findings rendered by both the Courts below.

6. Both the Courts below on a careful consideration of the oral and documentary evidence came to a categorical conclusion that there was an oral partition among the parties and the specific shares were allotted in favour of all the brothers including the plaintiff. Even the defendant did not seriously dispute this fact. Admittedly, the defendant owns lands in Survey No.2103 which is in the northern side of the property belonging to the plaintiff in Survey No.2105/1. The only plea that was raised by the defendant was that there was a road in existence in Survey No.2105/1 even when the oral partition took place.

7. Both the Courts below took into consideration the Revenue Records and found that the Tahsildar while granting the patta, had surveyed the lands and thereafter issued separate patta for the respective portions. The defendant never produced any material to prove that there was an existing road on the northern side of Survey No.2105/1. In view of the same, both the Courts below found that except the ipse dixit of the defendant, there was no road or common pathway available in Survey No.2105/1. Accordingly the suit filed by the plaintiff was decreed.

8. The learned counsel for the Appellant brought to the notice of this Court the report of the Commissioner, who was appointed by the Trial Court. The learned counsel submitted that the sketch that was submitted along with the report showed that there are four occupants who are living near the property and their only access is through the road, which is the subject matter in the suit.

9. In the considered view of this Court, the four other persons about whom the reference is made, are not parties to the proceedings. That apart, the Court cannot act merely based on a Commissioner's Report more particularly since the plaintiff has failed to establish that there was a road available from the



inception. Hence, the defendant cannot be permitted to ventilate the grievance of some other persons, who are said to be having access through the subject road to their property.

10. In the considered view of this Court, this Court does not find any perversity in the findings rendered by both the Courts below. There are no grounds to interfere with the findings of both the Courts below. No substantial question of law is available in the Second Appeal.

11. In the result, the Second Appeal is dismissed. Considering the facts and circumstances of the case, the parties shall bear their own costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

jv

To

1. The Subordinate Judge, Vellore.

2. The Additional District Munsif, Vellore.

Copy to

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

+1 CC to Mr.A.Rajendiran, Advocate sr 9635

+1 CC to D.Kanagasundaram, Advocate sr 9802.

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NK(CO)

SP(11/03/2022)