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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

S.A.No.1129 of 2013

M.Kaliyan

...Appellant/Appellant/Defendants

Vs.

1.Sundarammal

2.R.Sukumar

3.R.Sureshkumar

... Respondents/Respondents/Plaintiffs

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 20.12.2012 in A.S.No.31 of 2010 on the file of I Additional Subordinate Judge's Court, Coimbatore, confirming the judgment and decree dated 11.2.2010 in O.S.No.107 of 2000 on the file of the District Munsiff's Court, Mettupalayam.

For Appellant : Mr.S.Mukunth for
M/s.Sarvabhauman Asso.

For Respondents : Mr.K.Goviganesan for R1 to R3

JUDGMENT

The defendant is the appellant in the present Second Appeal.

2.The brother of the defendant namely Late.K.M.Ramasamy filed the suit against the appellant seeking for the relief of permanent injunction with respect to the usage of a cart track and footpath which according the deceased Ramasamy was used in common by the plaintiff and the defendant. The said Ramasamy died during the pendency of the suit and his legal heirs were brought on record.

3.It is the admitted case of the defendant that the cart track is a common cart track. But however, it has not been used by the plaintiff for a very long time and therefore, according to the defendant, the plaintiff has lost the right to use the cart track.



4.Both the Courts below after considering the oral and documentary evidence and also the facts and circumstances of the case found that EX. A1 which is the certified copy of the Partition Deed entered into between the plaintiffs and the defendant shows that there is a common cart track. The defence taken by the defendant to the effect that the plaintiff has lost the right to use the common cart track due to non usage for a very long time, was rejected by both the Courts below on the ground that there is no question of easementary right as between the co-owners and therefore, the non usage can never be a ground that can be put against the plaintiff.

5.Both the Courts below have rendered the findings based on the available documents and this Court does not find any ground to interfere with the findings. No substantial questions of law are involved in the present Second Appeal.

6.In the result, the Second Appeal stands dismissed. Considering the facts and circumstances of the case, there will be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssr

To

- 1.The I Additional Subordinate Judge
The I Additional Subordinate Judge's Court, Coimbatore.
- 2.The District Munsiff's Court, Mettupalayam.

Copy to

The Section Officer
VR Section
High Court, Madras 104.

- +1 CC to M/s. Sarvabhuman Associates sr 9706
- +1 CC to Mr.K.Goviganesan, Advocate sr 9688

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SMI (CO)
SP(10/03/2022)