

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 12.04.2022

PRONOUNCING ORDERS ON : 18.04.2022

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

S.A.No.1188 of 2013
and M.P.No.1 of 2013

1.A.Shanmugam

2.Saraswathi

3.Savithri

4.Thulasimani

5.Logeswari (died)

6.Eswaramoorthi

7.Vikas (Minor)

8.Varnika (Minor)

...Appellants 1 to 5/Plaintiffs 2 to 6 in Trial Court

vs.

Elayappan

...Respondent/Defendant in Trial Court

[Appellants 6 to 8 brought on record as legal heirs of the deceased appellant 5 viz. Logeswari vide Court order dated 15.03.2022 made in C.M.P.No.2670 of 2022 in S.A.No.1188 of 2013]

[Appellants 7 and 8 are represented by their father/legal guardian Eswaramoorthi]

PRAYER : Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 28.06.2013 made in A.S.No.1 of 2013 on the file of the Sub Court, Tiruchengode confirming of the Judgment and Decree dated 03.10.2012 made in O.S.No.304 of 2008 on the file of the Additional District Munsif Court, Tiruchengode.

For Appellants : Mr.N.Manokaran

For Respondent : Mr.P.Valliappan

J U D G M E N T

The plaintiffs are the appellants in this Second Appeal.

2.The case of the plaintiffs is that the father of the 1st plaintiff namely Elayappa Gounder was the owner of the property by virtue of a registered Sale Deed dated 07.05.1949, marked as Ex.A1. He had three sons and the 1st plaintiff is one of them. S.No.405 was allotted in favour of the 1st plaintiff in a family arrangement that took place among the family of Elayappa Gounder and patta was also issued in favour of the 1st plaintiff. The 2nd plaintiff is the son of the 1st plaintiff and he was taking care of the cultivation of the land in S.No.405. The further case of the plaintiff is that the defendant is the owner of the portion of the land in S.No.406. According to the plaintiffs, their property lies in the west of the defendant's land and the land belonging to one Kalyani. There is a well laid pathway which was described as Item No.1 in the suit property running North-South to Jedarpalayam main road. According to the plaintiffs, the suit pathway is their only access to the main road on the North and without the suit pathway, their entire agricultural operation will come to a grinding halt. The plaintiffs claimed that they are using the suit pathway for transporting the agricultural products in vehicles.

3.The grievance of the plaintiffs is that when they were taking their tractor through the suit property described as Item No.1, they were prevented by the defendant. The defendant started claiming exclusive right over the suit property. Left with no other option, the suit came to be filed seeking for the relief of permanent injunction restraining the defendant from in any way interfering with the peaceful enjoyment of Item No.1 of the suit property. The plaintiffs also sought for the relief of permanent injunction with respect to Item No.2 of the suit property which is a well used by the plaintiffs to irrigate their agricultural lands.

4.The defendant filed the written statement and took a stand that he is the absolute owner of the land in S.No.406 and there is a pathway running North-South on the western side of the defendant's land. However, the defendant denied the right of the plaintiffs to use the suit pathway. They also took a stand that the plaintiffs was never permitted to use the suit pathway for taking men and other vehicles. The defendant also took a stand that the plaintiffs are using the cart track that is running adjoining a river bund to reach the main road and even Ex.A1 Sale Deed mentioned only about a Mamool thadam and no right of cart track was available to the plaintiffs as claimed by them. Accordingly, he sought for the dismissal of the suit.

5.The defendant also filed an additional written statement and took a stand that the plaintiffs do not have any

right over the property in S.No.406. However, the plaintiffs managed to get a joint patta with respect to the S.No.406/3 without any document to support their right over the property.

6.Both the Courts below on considering the facts and circumstances of the case and after appreciating the oral and documentary evidence, concurrently held against the plaintiffs and dismissed the suit. Aggrieved by the same, the plaintiffs have filed this Second Appeal.

7.Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the respondents.

8.This Court also carefully perused the materials available on record and the findings of both the Courts below.

9.The father of the plaintiffs purchased the property through Ex.A1 from one Sengoda Gounder and Raja Gounder. The description of the property in the Sale Deed pointed out to the existence of a Mamool thadam. According to the plaintiffs, this pathway was always used from time immemorial to reach the main road and also to take the vehicle and agricultural produce from the land belonging to the plaintiffs. The plaintiffs also filed a patta marked as Ex.A4 which was given as a joint patta in S.No.406/3. The plaintiffs also relied upon Ex.A10 which is a Sale Deed dated 07.05.1945 executed by the very same vendors who sold to the father of the plaintiffs under Ex.A1. By pointing out to this Sale Deed, the right of pathway that was given to the adjacent owner Kalyani was also relied upon to substantiate the right of pathway of the plaintiffs.

10.The trial Court found that the "Mamool thadam" that was mentioned in Ex.A1 is referable only to the cart track in S.No.417. To render this finding, the trial Court took into consideration the oral evidence, title deeds and also the Report and Sketch of the Advocate Commissioner. The trial Court came to a conclusion that the plaintiffs have no right over the suit cart track and consequently, they are not entitled for the relief of permanent injunction.

11.The lower Appellate Court specifically dealt with the Ex.A1 and Ex.A10 and on carefully appreciating the description of the property in both these documents, it was found that the Mamool thadam mentioned in Ex.A1 does not relate to the suit property. The lower Appellate Court has assigned sufficient reasons to render this finding. For this purpose, the lower Appellate Court also specifically dealt with Ex.A10 Sale Deed wherein, there is a clear mention about the availability of a specific road measuring 6 Cubit breadth (6 முடி தடம்) and whereas, no such provision was made under Ex.A1.

12.The lower Appellate Court also considered the legality of Ex.A4 patta and found that this patta has been obtained by

the plaintiffs without any supporting documents in their favour and in connivance with the revenue officials. This finding was given by the Appellate Court, since the plaintiffs do not have any right in S.No.406 and in spite of the same, they managed to get Ex.A4 patta.

13.The lower Appellate Court gave a finding to the effect that there is no alternative road available to the plaintiffs to reach their property. However, they were claiming for a right in a property belonging to the defendant and the defendant was denying the right of the plaintiffs. In spite of the same, the plaintiffs did not choose to seek for declaration of their right. Only if such a relief is sought for, the Court will be able to go into the issue of easement by necessity and/or easement by grant. Such an exercise need not to be undertaken in a suit for bare injunction. Therefore, the lower appellate Court found that the availability or otherwise of the alternative cart track in S.No.417 is irrelevant considering the nature of relief sought for by the plaintiffs.

14.The plaintiffs were seeking for the pathway right in S.No.406 which does not belong to them and they were also claiming to an extent of 12 feet width. When such a claim is made, the said right should be available in their title document marked as Ex.A1. The document only mentions about a Mamool thadam. Hence, if really the plaintiffs are claiming for the right of pathway in the property belonging to the defendant, they should have sought for the relief of declaration.

15.The findings rendered by both the Courts below are based on appreciation of oral and documentary evidence. Those findings are not found to be perverse and just because the evidence available on record justifies an alternative finding, that does not vest any jurisdiction for this Court to interfere with the judgment and decree passed by the Courts below in exercise of its jurisdiction under Section 100 of C.P.C. In any event, no substantial question of law is involved in this Second Appeal.

16.In the result, the Second Appeal stands dismissed. Considering the facts and circumstances of the case, there will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

Ssr

To

- 1.The Subordinate Judge,
Tiruchengode.
- 2.The Additional District Munsif,
Tiruchengode.

Copy to:

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

+lcc to Mr.P.Valliappan, Advocate SR. No. 26300
+lcc to Mr.N.Manokaran, Advocate SR. No. 26259

S.A.No.1188 of 2013
and M.P.No.1 of 2013

PMK (CO)
PR (10/05/2022)