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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 15.03.2022
PRONOUNCING ORDERS ON : 17.03.2022

Coram:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Second Appeal No.136 of 2013
and
MP.No.1 of 2013

1.S.N.Subramani
2.N.Senthilkumar
3.S.Thangadurai
4.K.S.Elaichamy
5.M.Selvaraj
6.S.Boopathy
7.K.K.Mani

..Appellants

..Vs..

1.R.Rathnasamy (died)

2.R.Paramasivam

3.The Sub Registrar
Sub Registrar Office
Avaloondurai
Erode Taluk.

4.State of Tamilnadu
Represented by its District Collector
Erode District, Erode.

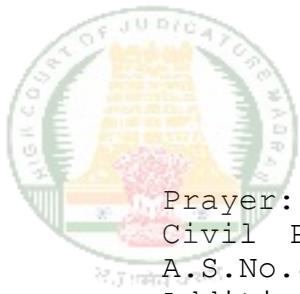
5.Devi
W/o.R.Rathnasamy

6.Abila Muthurangam
D/o.R.Rathnasamy

7.Naveen Thairam

..Respondents

[RR 5 to 7 brought on record as LRS of the deceased
R1 viz., R.Rathnasamy vide order of court dated 15.04.2019
made in CMP.No.5410, 7387&7389/2019 in S.A.No.136/2013 (PRMJ)]



Prayer: Second Appeal filed Under Section 100 of the Code of Civil Procedure against the Judgment and Decree passed in A.S.No.88 of 2011, dated 18.07.2012, on the file of the I Additional Subordinate Judge, Erode, confirming the judgment and decree passed in O.S.No.194 of 2009 dated 20.8.2011 on the file of the II Additional District Munsif Court, Erode.

For Appellants : Mr.S.Saravanan

For Respondents : Mr.K.S.Jeyaganeshan
for R 2, R 5 to R 7

Mrs.E.Indumathi
Government Advocate
for R 3 and R 4

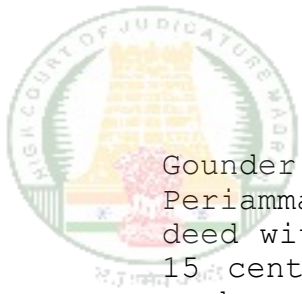
J U D G M E N T

The defendants 1 to 5, 8 and 9 are the appellants in this Second Appeal.

2.The 1st and 2nd respondents along with their father filed a suit seeking for the relief of declaration of title in the suit property and for a declaration that the registration of the new cart track through sale deed dated 25.01.2008 by the 2nd defendant in favour of the 1st defendant is null and void and for the relief of permanent injunction.

3.The case of the plaintiff is that they are the absolute owners of the suit property in R.S.No.519/2 measuring an extent of 15 cents and the entire extent of R.S.No.519/3 and they also claimed to be the joint owners of R.S.No.519/4 along with one Karuppana Gounder. The further case of the plaintiffs is that on the northern side of their properties, there is a cart track with a width of 15 feet which runs East-West in R.S.No.519/1 and part of R.S.No.519/4 adjoining the survey fields from the western side of North-South Erode to Muthur Main Road, towards West and the same turns towards South at the western corner of R.S.No.519/2 where the land belonging to the 1st defendant is situated. According to the plaintiffs, this cart track measuring 15 feet wide is the only passage to reach the lands on the western side from the main road. The plaintiffs had filed a rough plan along with the plaint explaining the entire location of the properties.

4.It is stated that R.S.No.519/2 measuring an extent of 3.22 acres was originally owned by Subbaraya Gounder and Rangasamy



Gounder. It was succeeded by their legal representatives Periammal and others. The plaintiffs entered into an exchange deed with the said Periammal and others and thereby an extent of 15 cents of their western portion of land in R.S.No.519/3 was exchanged with 15 cents of land of Periammal and others in the northern portion adjoining the 15 feet cart track which runs upto the lands of the 1st defendant. The exchange deed dated 15.03.2006 was also marked as Ex.A-4. The plaintiffs claimed that the exchange deed was acted upon and the respective parties took possession and were enjoying the exchanged properties.

5.The plaintiffs also mutated their names in the revenue records subsequent to the execution of the exchange deed. It is stated that defendants 3, 4 and 5 purchased an extent of 1 acre of land in R.S.No.519/2 which is situated on the extreme West of the suit property from Periammal and others. Thereafter, they executed a power of attorney in favour of the 2nd defendant and authorized him to sell the property. While doing so, it is stated that they have mischievously shown a 40 feet wide East-West cart track running from Erode Muthur Road towards West. According to the plaintiffs, this was intentionally done to grab/annex the 15 cents of land that was acquired by the plaintiffs through the exchange deed dated 15.03.2006. This power of attorney was also acted upon and a sale deed was executed in favour of the 1st defendant on 25.01.2008 and this document has been marked as Ex.A-14. Immediately on coming to know of the same, the plaintiffs issued a legal notice dated 29.12.2008, marked as Ex.A-17, to all the defendants. On receipt of the same, defendants 1 to 5 gave a reply notice dated 30.01.2009, marked as Ex.A-18 and they virtually questioned the exchange deed and claimed as if, they have a right over the suit property and denied the right and title of the plaintiffs over the suit property. It is under these circumstances, the suit came to be filed seeking for the reliefs mentioned supra.

6.The 1st defendant filed a written statement and this was adopted by defendants 2, 4 and 5. They took a stand that the rough plan filed by the plaintiffs does not reveal the actual physical features of the suit property. They have also questioned the description of the property in the plaint. They took a further stand that the plaintiffs originally owned lands in R.S.No.519/3 and 518 and in between these two properties, the property purchased by the 1st defendant and the property purchased by the 8th and 9th defendants are situated. According to them, originally the cart track in R.S.No.519/1 was the only access for the properties of both the plaintiffs and the defendants in R.S.No.519. The parties felt that these properties must have a 40 feet pathway connecting the road in order to increase the value of their respective properties and to develop the same. It is under these circumstances, the



owners of R.S.Nos.518 and 519 got together and decided to have a 40 feet width road. They also entered into an agreement on 05.02.2006, marked as Ex.B-1. By virtue of this agreement, they agreed to provide 25 feet in their respective patta lands adjacent to the cart track in R.S.No.519/1.

7.It was further stated that the parties thereafter executed the exchange deed and 15 cents in R.S.No.519/2 was used as a road along with the existing cart track in R.S.No.519/1. This was also put to use by all the parties after exchange deed was executed. The defendants claimed that the plaintiffs are attempting to illegally seek for ownership over the 15 cents of land. If the same is granted, the access to the lands of the 8th and 9th defendants will be totally denied. The defendants therefore sought for the dismissal of the suit.

8.The 6th and 7th defendants also filed a written statement and they more or less questioned the right of the plaintiffs in the suit property and according to them they were not necessary parties in this suit.

9.Both the Court below after considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, concurrently found in favour of the plaintiffs and the suit was decreed. Aggrieved by the same, the Second Appeal has been filed by defendants 1 to 5, 8 and 9.

10.This Court while admitting the Second Appeal, framed the following substantial questions of law:

1.Whether the court below is correct that Ex.B1 agreement cannot be looked into when it is marked as exhibits without any objection and failed to follow the rulings of the Hon'ble Court referred in 1993(2) MLJ 500 and Section 67 Evidence Act?

2.Whether the court below committed an error in wrongly shifting the burden proof on the appellants/defendants instead of respondents/plaintiffs?

3.Whether the court below is failed to consider that new cart track right is conferred for both A schedule property given to plaintiffs and B schedule property given to Periyammal, Arukkani, Muthayeeammal and Periasamy in Exchange Deed in Ex.A4?

4.The Lower court failed to consider Ex.B1 and B3 documents with the result that miscarriage of



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justice was caused and it is perverse and illegal?

5. Whether the courts below are right in law in not formulating proper issues and no findings were rendered thereon regarding the easementary rights?

6. Whether the court below failed to follow the dictum of the Hon'ble Court that sanctity of the registered document Ex.A14 cannot be attacked by fraud unless the cancellation of the document is prayed for and court fees to be paid as per Sec.7 (IV) of C.F. Act 1951 (1) MLJ 441?

7. Whether the courts below are right in without considering the factum of the fact of the 1st plaintiff was a party to Ex.A4 and B1 and Ex.A12 and A13 of sale deed. Hence, the plaintiffs are estopped from claiming the absolute right in the suit property?

8. Whether the courts below are right in decreeing the suit without obtaining the hand writing expert opinion for the document marked Ex.B1 and B3?

11. Heard Mr.S.Saravanan, learned counsel for the appellants, Mr.K.S.Jeyaganeshan, learned counsel for R 2, R 5 to R 7 and Mrs.E.Indumathi, learned Government Advocate for R 3 and R 4.

12. This Court carefully perused the materials available on record and the findings of both the Court below.

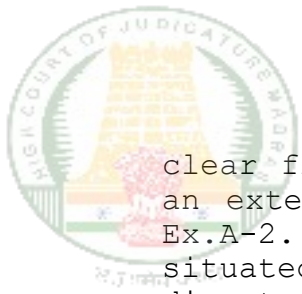
13. For the purpose of answering all the substantial questions of law, this Court will have to basically analyze as to whether both the Courts below dealt with the following issues and rendered their findings in line with the evidence available on record:

a) Whether the plaintiffs had discharged their burden of proof by establishing their title over the suit property?

b) Whether the defendants had discharged their onus of proof by establishing that there was a 40 feet wide cart track in the suit property? and

c) Whether the documents marked in the course of trial gives any indication as to existence of the 40 feet wide cart track in the suit property?

14. There is no dispute with regard to the fact that R.S.No.519/2 originally comprised of 3.22 acres of land which belonged to Subba Gounder and Rangasamy Gounder. The same is



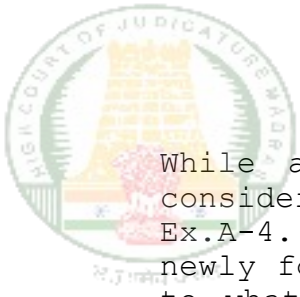
clear from Ex.A-1. Out of the total extent, D3 to D5 purchased an extent of 1 acre in R.S.No.519/2 and this is evident from Ex.A-2. The property that was purchased by D-3 to D-5 is situated on the West of the suit property. There is also no dispute with regard to the fact that the plaintiffs are the owners of the land in R.S.No.519/3 which is situated on the eastern side of R.S.No.519/2. An exchange deed dated 15.03.2006, marked as Ex.A-4 came to be entered into between the plaintiffs and the owners of R.S.No.519/2. No one disputes the existence or contents of Ex.A-4. The defendants in fact admit in their written statement that 15 cents of land in R.S.No.519/2 was transferred in favour of the plaintiffs under the exchange deed. The intention behind the exchange deed can be gathered only from Ex.A-4 and nowhere in this document, there is any indication to show that it was entered into only for the purpose of creating a 40 feet width road. The defendants, who purchased a portion of land in R.S.No.519/2 at a later point of time will not be competent to speak about the intention behind the execution of the document apart from what has been stated in the document. Unfortunately, the defendants did not examine the predecessors in title to substantiate the reason behind the execution of the exchange deed.

15.Since the defendants disputed the rough plan that was filed along with the plaint, both the Courts below analyzed it along with the exchange deed and found it to be correct. Both the Courts also took into consideration the fact that patta was granted for the suit property in the name of the plaintiffs. Exhibits A5 and A7 were relied upon for this purpose. Both the Courts below also relied upon A6, A8, A9, A10 and A11 to arrive at a finding that the plaintiffs are in possession and enjoyment of the suit property pursuant to the exchange deed dated 15.03.2006.

16.Both the Courts below also took into consideration exhibits A-12 and A-13 which are the sale deeds that were executed in favour of D-8 and D-9 and found that in the schedule of property, there is a specific reference to the existence of the suit property belonging to the plaintiffs situated on the northern side of their property.

17.In view of the above findings, both the Courts concurrently held that the plaintiffs have discharged their burden and have proved their title and possession in the suit property.

18.It is the defendants who came up with a specific plea that the suit property was used as a 40 feet width road. Therefore, the onus of proof is upon the defendants to establish this fact and it is not for the plaintiffs to prove the same.



While analyzing this issue, both the Courts below took into consideration exhibits A-12 to A-14 and B-1 read along with Ex.A-4. The Courts found that there is a reference about a newly formed cart track. There was absolutely no indication as to what is the measurement of this cart track and whether the same has come into existence. Even Ex.B-1 only contemplated an agreement to form a new cart track in R.S.No.519 with a width of 40 feet and it was specifically stated therein that on such formation, a document will be executed and the same will be registered. Admittedly, no such document was registered. Ex.A-4 came into force subsequent to Ex.B-1 and this document does not make any reference to Ex.B-1. On a plain reading of Ex.A-4 it is seen that the plaintiffs were given absolute right and title over the suit property. The Courts below also took into consideration, exhibit B-3 which is a sale agreement dated 25.11.2007 which is said to have been executed by the 1st plaintiff in favour of one Loganathan. Both the Courts found that the validity of Ex.B-3 was a subject matter of a suit that was pending in O.S.No.228 of 2010 and admittedly, the 2nd and 3rd plaintiffs were not parties to the said document. It is also reported that the said suit was subsequently dismissed. Therefore, it was found that exhibits B-1 to B-3 does not in anyway prove the existence of the 40 feet width cart track as claimed by the defendants.

19.If the defendants were confident enough that there was a 40 feet width cart track in the suit property, without any hesitation, they should have filed a petition for appointment of an Advocate Commissioner to inspect the suit property and to note down the physical features. The report of the Advocate Commissioner would have clinched the claim made by the defendants. Thereby, the onus of the proof would have been shifted to the shoulders of the plaintiffs. This never happened and the defendants never established the existence of the 40 feet width cart track in the suit property.

20.Insofar as the oral evidence is concerned, DW-1 and DW-2 who were the subsequent purchasers admitted that there is absolutely no recital in their sale deeds with respect to the availability of a cart track in R.S.No.519/2 and R.S.No. 519/3. Insofar as the recital in Ex.A-4 on the newly formed cart track, PW-1 has stated as follows in his evidence:

'பதிதாக வழிநடை பாத்தியம் என்பது என்னவென்றால்
ஆதியில் ஆடு மாடுகள் சென்று வந்ததால் ஏற்கனவே
இருந்த இட்டேரி பதர்மண்டி கிடந்தது என்றும் அதை சுத்தம்
செய்தால் தான் பதிய நடை பாதை என்று எழுதப்பட்டுள்ளது'.

21.On analyzing the oral evidence, Both the Courts below



came to a categorical conclusion that the same does not in any way establish the existence of the 40 feet width cart track as claimed by the defendants.

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22. Both the Courts below found that for the first time in a document that was executed in the year 2008 and which was marked as Ex.A-14, a reference was made about the 40 feet East-West road in the recitals. On coming to know of the same, a legal notice was issued to the Sub Registrar Office on 17.11.2008, which was marked as Ex.A-15 and the plaintiffs questioned as to why the document was registered even without a sketch describing the cart track. Both the Courts below therefore rightly found that the plaintiffs are entitled to question such a recital found in Ex.A-14.

23. In the considered view of this Court, all the findings have been rendered by both the Courts below on appreciation of evidence and this Court does not find any perversity in those findings. The three main issues that were listed supra were answered convincingly by both the Courts below. In view of the same, all the substantial questions of law framed by this Court is answered against the appellants. This Court does not find any ground to interfere with the concurrent judgment and decree of both the Courts below.

24. In the result, this Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

KP

To

1. The I Additional Subordinate Judge,
Erode.
2. The II Additional District Munsif Court,
Erode.



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

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+1cc to Mr.K.S.Jeyaganeshan, Advocate, S.R.No.18504
+1cc to Mr.S.Saravanan, Advocate, S.R.No.18359
+1cc to the Government Pleader, S.R.No.18848

Second Appeal No.136 of 2013

VBM[co]
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