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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2022

CORAM

THE HONOURABLE MR.JUSTICE N. ANAND VENKATESH

S.A.No.856 of 2015

1. Kumaresan

2. Murugesan

Sadasivam

Vs.

...Appellants/Defendants

...Respondent/Plaintiff

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the Judgment and Decree dated 25.06.2013 in A.S.No.15 of 2012 on the file of the SubCourt, Dharapuram, Tiruppur District, confirming the Judgment and Decree dated 09.03.2011 in O.S.No.108 of 2009 on the file of the District Munsif Court, Kangayam.

For Appellants : Mr.S.Saravanan

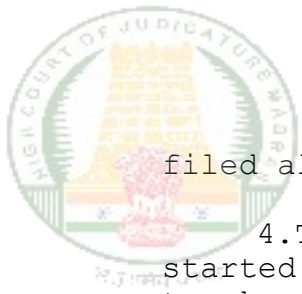
For Respondent : Mr.N.Manokaran

JUDGMENT

The defendants are the appellants in this second appeal.

2.The case of the respondent/plaintiff is that the plaintiff and the first defendant are brothers and the second defendant is the son of the first defendant. Late Govindasamy Gounder is the father of the plaintiff and the first defendant. There were ancestral properties that belonged to the family and the plaintiff along with his brother i.e., the first defendant and their father entered into a partition and divided the ancestral properties through the registered partition deed dated 20.04.1983, marked as Ex.A1. As per the partition deed, the 'A' Schedule property was allotted to Late Govindasamy Gounder, the 'B' Schedule property was allotted to the first defendant and the 'C' Schedule property was allotted to the plaintiff.

3.The further case of the plaintiff is that a 14 feet wide common cart track, with an extent of 6 cents, which goes upto the Thirunamgalam Natham is being used by the plaintiff to reach their cattle shed. This common cart track is the subject matter of the suit and it has been shown as ABCDEF in the rough plan



filed along with the plaint.

4.The grievance of the plaintiff is that the defendants started preventing the plaintiff from using the common cart track and also attempted to destroy the cart track. Aggrieved by the same, the suit came to be filed seeking for the relief of permanent injunction against the defendants.

5.The case of the defendants is that the 14 feet cart track was never used by the plaintiff and it was always under the exclusive usage of the defendants. The defendants thus denied the very right of the plaintiff on the ground of non usage of the property.

6.Both the Courts below, after considering the oral and documentary evidence and after taking into consideration of the facts of the case, held in favour of the plaintiff and granted the relief as sought for in the suit. Aggrieved by the same, the defendants have filed this second appeal.

7.The learned counsel for the appellant submitted that both the Courts below did not properly appreciate the issue regarding ouster of right that was claimed by the defendants. The learned counsel also submitted that the Commissioners report and sketch, which was marked as Exs.C1 and C2, denied the claim made by the plaintiff as if there is a 14 feet pathway available upto Thirumangalam Natham. The learned counsel submitted that the report and the sketch actually supports the case of the defendants. It was further submitted that the plaintiff ought to have sought for the relief of declaration of their right when such a right is specifically denied by the defendants and hence the suit for bare injunction is not maintainable. The learned counsel further submitted that the Lower Appellate Court, even without properly framing the points for determination, mechanically confirmed the Judgment and Decree of the Trial Court. It was therefore submitted that the findings of both the Courts below deserves the interference of this Court.

8.Heard, Mr.S.Saravanan, the learned counsel for the appellants and Mr.N.Manokaran, the learned counsel for the respondent. This Court carefully considered the materials available on record and perused the findings of both the Courts below.

9.It is an admitted case that both the parties are claiming their right over their respective properties only through the partition deed that was marked as Ex.A1. Both the Courts below, on carefully considering the partition deed, found that there was a cart track available in common for access to the respective properties. The main ground that was raised by the



defendants is that the plaintiff never used the said pathway and hence has lost his right over pathway/cart track.

10.Both the Courts below rightly held that when the right has been conferred under the partition deed, marked as Ex.A1, the same cannot be denied based on the ground that the plaintiff was not using the cart track. Both the Courts below found that the plaintiff having been given the right under Ex.A1 to use the common cart track, cannot be deprived to enjoy the cart track on the ipse dixit of the defendants that the cart track was never put to use by the plaintiff.

11.In the considered view of this Court, the findings of both the Courts below is based on the oral and documentary evidence and this Court does not find any perversity in those findings. In any event, no substantial questions of law are involved in the present second appeal.

12.In the result, this second appeal is dismissed. Considering the facts and circumstances of the case, there will be no order as to costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

Lpp

To

1. The Subordinate Judge,
Dharapuram.

2. The District Munsif,
Kangayam.

Copy To

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

+1cc to Mr.N.Manokaran, Advocate, S.R.No.14546
+1cc to Mr.S.Saravanan, Advocate, S.R.No.14860

S.A.No.856 of 2015

BS (CO)
RGA (30/03/2022)