



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 18.03.2022
Judgment pronounced on : 21.03.2022

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Second Appeal No. 41 of 2014
and
M.P. No. 1 of 2014

1. R.Madhavan
2. Ram Chettiar
3. Dasarathi
4. R.Boopalan
5. R.Duraimurugan

... Appellants/ Plaintiffs

Vs.

1. Karunanithi
2. Sekar
3. Anbu
4. Ramamoorthy
5. Veerasamy
6. Singarammal
7. Shanthi
8. Vijai
9. Vani
10. Sakkubai

... Respondents /
Defendant 5 to 7, 2,4 & 8

Prayer :- Second Appeal filed under Section 100 of C.P.C., against the Judgment and decree dated 23.10.2013 made in A.S.No.32 of 2010 on the file of the Subordinate Judge, Tiruppattur, Vellore District, modifying the judgment and decree dated 15.12.2009 made in O.S.No.156 of 1998 on the file of the District Munsif, Tiruppattur, Vellore District.

For Appellants : Mr.T.Dhanasekaran

For Respondents: Mr.A.Sundaravadanan for
Mr. D.Balachandran
for R1 and R2

No appearance for R3 to R10



JUDGMENT

The plaintiffs are the appellants in the Second Appeal.

2. The case of the plaintiffs is that the suit property contains totally 7 items of properties and item Nos.1 to 5 absolutely belong to the 1st plaintiff and item Nos. 6 and 7 absolutely belong to the 2nd plaintiff. The further case of the plaintiffs is that in order to conveniently enjoy their properties and for their proper access from Tirupattur-Salem Highways, they purchased Survey Nos. 494/3 and 494/1C through a registered Sale Deed dated 22.01.1990, marked as Ex.A1, from one Lalithammal, Kalaivani and Santhammal. These two properties have been shown as item Nos.1 and 2 in the suit schedule. It is being used as cart track to access the other properties. Thereby, the plaintiffs are claiming title, ownership and possession of all the suit properties exclusively. They also claimed that the revenue records have been mutated and patta has been granted for all the properties in plaintiffs' names.

3. It is stated that the defendants are the adjacent owners of agricultural lands and they attempted to destroy the crops that have been cultivated by trespassing into the property and that they are also creating a cloud over the title of the plaintiffs. Hence, the suit was filed by the plaintiffs seeking for the relief of declaration of title and for permanent injunction.

4. The case of the defendants is that the properties originally belong to one Lakshmana Chettiar and his wife Dhanakotti Ammal. The properties were bequeathed in favour of their seven daughters through a Will dated 20.01.1973, marked as Ex.B1. Accordingly, the 'A' Schedule property in the Will vested upon the daughter viz., Muthu VEDIAMMAL. Similarly, the property in 'F' schedule in the Will vested upon Sakkubai. The further case of the defendants is that there was a common cart track, that was specifically provided in the Will to enable the respective daughters to have access and to enjoy their respective portions. It is claimed that the 2nd defendant had purchased the share of Nagarathinammal and Indiraniammal and access to those properties are only through the common cart track. The enjoyment over the common cart track was also specifically provided in the sale deed, that was executed in favour of defendants. It is further stated that the plaintiffs were creating problems for the defendants to use the common cart track and hence, a panchayat was convened. In the said panchayat, a decision was taken to the effect that the plaintiffs will not restrain the defendants from using the cart track. Therefore, the defendants have taken a clear stand that the plaintiffs do not have any exclusive right over the cart



track and to that extent, the suit deserves to be dismissed.

5. The trial court on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, decreed the suit through a judgment and decree dated 15.12.2009. Aggrieved over the same, the defendants 5, 6 and 7 filed an appeal in A.S.No.32 of 2010 before the Sub-Court, Tirupattur. The lower appellate court on re-appreciation of oral and documentary evidence and after considering the findings of the trial court, allowed the appeal through a judgment and decree dated 23.10.2013 and thereby, the judgment and decree of the trial court was modified. Aggrieved by the same, the plaintiffs have filed this second appeal.

6. This Court while admitting the Second Appeal, framed the following substantial question of law :-

- a) In the absence of any specific plea as to whether the defendants are claiming any easementary right either by way of grant, prescription or necessary if the lower appellate court correct and justified in assuming that there is a common pathway?
- b) In the absence of any specific or clear evidence to show or prove that the alleged pathway runs the plaintiffs property is the lower appellate court correct and justified in modifying the decree and while confirming decree of the trial court, excluding the alleged pathway?
- c) Is the lower appellate court correct and justified in relying on Ex.B6 a xerox copy of especially when the alleged original is admittedly with the defendants and when admittedly all are not signatories?
- d) In the absence of specific reference to pathway in the plaintiffs property is the lower Appellate Court correct and justified in assuming that there is a common pathway in plaintiffs property/land?

7. Heard Mr.T.Dhanasekaran, learned counsel for the appellant and Mr.A.Sundaravadanan, learned counsel for the respondents 1 and 2. This Court also carefully considered the materials available on record and the findings of both the Courts below.

8. It is not in dispute that the properties were originally owned by one Lakshmana Chettiar. He and his wife Dhanakottiammal had seven daughters. He along with his wife executed a Will dated 20.01.1973, whereby they divided the properties into seven shares and described them as 'A' schedule to 'F' schedule and the respective shares were given to their daughters. Even in the Will, there is a specific mention about the availability of a common cart track to access the properties that were allotted to



each daughter. On their demise, the Will came into force and the respective properties vested in favour of daughters.

9. The defendants 5, 6 and 7 had purchased the properties on 25.10.1988 through Exs. B2 to B4. It is seen from each of the Sale Deeds that the right to use the common cart track has also been specifically provided in the documents.

10. It is further seen from the records that one of the daughters Nagarathinammal had sold her property in favour of one Sampoorammal, who was the 3rd defendant in the suit through Ex.B5. Even in this document, there is a specific mention about the availability of the common cart track in order to access the property.

11. The plaintiffs purchased the suit properties from Muthu VEDIAMMAL, who was allotted 'A' schedule property in the Will, through a registered Sale Deed dated 25.11.1981, marked as Ex.A2. Similarly, the 1st plaintiff had purchased the property in Survey No.507 to an extent of 84 cents through Ex.A3. Similarly, they have purchased the other properties through Sale Deed dated 02.07.1993, marked as Ex.A4. In all the Sale deeds, the plaintiffs had purchased the properties along with right to use the cart track. The actual controversy arises only by virtue of Sale Deed dated 22.01.1990, marked as Ex.A1. This document was executed by Lalithammal, Kalaivani and Santhammal and through this document, an extent of 1 acre was purchased in the name of 1st plaintiff and 33 cents of land, where the cart track is situated, was also exclusively purchased in the name of 1st plaintiff. Thereby, the plaintiffs are claiming to be the exclusive owners of the cart track as well as the other properties.

12. The bone of contention in this case is as to whether the plaintiffs can claim for exclusive title over the cart track by virtue of Ex.A1 and thereby, deny the right of the defendants to use the cart track in order to have access to their properties.

13. The trial court had taken into consideration, the title deeds of the plaintiffs and had come to a conclusion that they have become the exclusive owners of the cart track and accordingly, the suit was decreed as prayed for, for all the suit properties including the cart track.

14. The lower appellate court on re-appreciation of oral and documentary evidence, found that Ex.A1 had come into effect after the defendants had purchased the properties along with the right to use the cart track through Ex.B2 to B5. The lower appellate court took into consideration, the fact that all the properties were originally owned by Lakshmana Chettiar and his wife and when



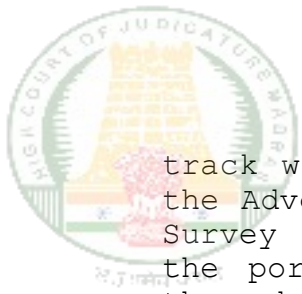
they bequeathed the properties in favour of their seven daughters through the Will Ex.B1, they had specifically provided for the right of usage of the cart track for all the properties. The sale in favour of plaintiffs and the defendants had taken subsequently and was purchased from the daughters, who became entitled to the respective shares under the Will. While being so, no one had the right to exclusively convey the cart track in favour of plaintiffs, since it will run contrary to the intention expressed by the original owner of the property through Ex.B1 Will.

15. The lower appellate court also took into consideration, the panchayat that was held between the parties and the muchalika, that was signed, marked as Ex.B6. This muchalika was signed by the husband of 1st plaintiff and father of 2nd plaintiff, and thereby, they agreed to permit the defendants to use the cart track. The lower appellate court considered this document along with the evidence of P.W.1 and found that the cart track was available for both the plaintiffs and defendants in order to have access to their respective properties.

16. The lower appellate court also took into consideration, the report of the Advocate Commissioner, which was marked as Ex.C1. It was specifically mentioned in the report that there was a cart track, which was available upto Survey No.492/1C and thereafter, it was found that the same is used by the plaintiffs to raise crops. The grievance of the defendants is that they are prevented from using the cart track by the plaintiffs by raising crops in the cart track also, which was purchased by the plaintiffs under Ex.A1. It is an admitted case that the plaintiffs have also purchased the property only from one of the daughters of Lakshmana Chettiar.

17. The lower appellate court by analysing all these facts, came to a categorical conclusion that the plaintiffs cannot claim for exclusive right over the cart track and thereby, deny the right of the defendants to use the cart track. The source of right for both the plaintiffs and the defendants is from the daughters of Lakshmana Chettiar and hence, the plaintiffs cannot get a better right than the defendants and that too through a later document that came to be executed in the year 1990. Accordingly, the lower appellate court modified the judgment and decree of the trial court and in so far as the property, where the cart track is situated, the suit was dismissed and for the other properties, the judgment and decree of the trial court was confirmed.

18. In the present case, the defendants were not claiming any easementary right, since they did not recognise the plaintiffs to be the owners of the property, in which the cart



track was situated. That apart, even according to the report of the Advocate Commissioner, there was a cart track available upto Survey No.492/1C and thereafter, it abruptly stops and this is the portion, which was purchased in the name of 1st plaintiff through Ex.A1. The said purchase has been held to be unsustainable by the lower appellate court, since one of the daughters cannot get a exclusive right over the cart track, which was supposed to be used in common by all of them as per Ex.B1 Will. Even if Ex.B6 Muchalika is not taken into consideration, the evidence of P.W.1 makes it clear that there was availability of the cart track and even if the plaintiffs had not agreed before the panchayat to permit the defendants to use the cart track, that does not make any difference, since the plaintiffs do not have exclusive right and title over the cart track. In view of the same, all the substantial question of law are answered accordingly against the appellants.

19. In view of the above discussion, this Court does not find any ground to interfere with the judgment and decree of the lower appellate court and the same is confirmed. Accordingly, the Second Appeal stands dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. Subordinate Judge,
Tiruppattur, Vellore District.
2. District Munsif,
Tiruppattur, Vellore District.
3. The Section Officer,
V.R Section, High Court,
Madras.

+1cc to Mr.D.Balachandran, Advocate, S.R.No.18635
+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.18855

S.A. No. 41 of 2014

SR(CO)
SB(07/04/2022)