



S.A. No. 1077 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.08.2024

CORAM :

THE HON'BLE MR. JUSTICE K. RAJASEKAR

S.A. No. 1077 of 2012

1. S.S. Chinusamy
2. S.S. Periyasamy
3. S.S. Balasubramanian
4. S.S. Gouthaman ... Plaintiffs/ Appellants/ Appellants

Vs.

1. The State of Tamil Nadu rep. by its,
District Collector, Erode.
2. Assistant Director,
Land Survey, Erode Dt.
3. Tahsildhar, Bhavani
4. The Commissioner,
Panchayat Union,
Bhavani.
5. The Superintendent Engineer,
Tamil Nadu Electricity,
Anthani Town,
Bhavni Taluk, Erode.
6. The Assistant Engineer,
Tamil Nadu Electricity,
Anthani Town,
Bhavani Taluk, Erode ... Defendants/ Respondents/ Respondents



S.A. No. 1077 of 2012

Second Appeal filed Under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 04.07.2012 passed in A.S. No.53 of 2011 by the Subordinate Judge, Bhavani confirming the Judgment and Decree dated 19.11.2011 passed in O.S. No.200 of 2008 by the Principal District Munsiff, Bhavani.

For Appellants : M/s. P. Arul Mathi
For RR 1 to 4 : M/s. T. Arunkumar
(learned Additional Government Pleader)
For RR 5 & 6 : M/s. J. Hemalatha Gajapathy
(learned Standing Counsel for TNEB)

JUDGMENT

This appeal is filed challenging the concurrent finding of the Courts below, dismissing the suit filed for declaration, declaring that, classification of suit land as cart track as void, consequently, injuncting the respondents from interfering the enjoyment and peaceful possession of the cart-track by the plaintiffs.

2. The case of the plaintiff is that there is a common cart-track of about 20 feet situated in R.S. No.95 and 96 at Keezhvani Village in Bhavani



Taluk. This cart-track originally starts from Kootthampoondi main road, run towards southern side and ends at northern side of the Bhavani river. The plaintiffs are having lands at both sides of the said cart-track. Earlier, the said cart-track was used exclusively by the plaintiffs and by their ancestors. This cart-track is being used by some villagers hailing from Chennimalaigounden pudur by laying pipeline to draw water to their lands from the Bhavani river with the permission of the plaintiff. Similarly, this cart-track was used for transporting sugarcane and other agricultural products from the adjacent lands. During the resurvey conducted by the Government, this cart-track has been declared as Sarkar Poramboke cart-track and during the survey, no notice under Section 9(2) of the Tamil Nadu Survey and Boundaries Act was served upon the plaintiffs. Subsequently, in the year 2008, the Revenue Officials have taken steps to construct sewage lines and also to install the street lights and the same was also objected by the plaintiffs. Further, the plaintiffs have been prevented by the Revenue Officials stating that the cart-track is a public cart-track and the plaintiffs have no right over the same. Therefore, the plaintiffs filed a suit seeking declaration that the classification of the cart-track as Government Poramboke cart-track is void and consequently for grant of injunction restraining the respondents from interfering the peaceful possession



and enjoyment of the said cart-track by the plaintiffs.

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3. The defendants contended the suit and pleaded that, suit property is cart track and at the end of the cart track, there is a burial ground and no one has any independent right. Since, the defendants have decided to improve the burial ground and Rs.3,65,000/- is also allotted. With a view to prevent the Officials from carrying out the work, this suit has been filed. Already the plaintiff's father Chennimalai filed suits in O.S.No.677 of 1996 on the file of the Sub Court, Bhavani and in O.S.No.260 of 1992 on the file of the Principle Munsif Court, Bhavani and Courts have declared it as cart track.

4. Based on the evidence placed on record, the Trial Court has concluded that the plaintiffs claim is based on partition deed executed in the year 1954 and in which the land is classified as customary cart track, hence they cannot claim the said cart-track exclusively belongs to them. Based on the Advocate Commissioner report, it is held that the general public also using the said land for various purposes, including to reach the burial ground situated on the corner of the cart-track. Based on these findings, the Trial Court concluded that the plaintiffs are not having any right and also right to



challenge the classification of the suit cart-track.

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5. Aggrieved over the dismissal of the suit, the plaintiffs have filed an appeal before the lower Appellate Court. After considering the submissions and evidence placed on record, the lower Appellate Court had re-appreciated the findings of the Trial Court and dismissed the appeal.

6. Aggrieved over the same, this second appeal has been filed by the plaintiffs against the concurrent finding rendered by the Courts below and during admission of this appeal, this Court after hearing the representation on both sides, framed the following substantial question of law:

1. *When the respondent had failed to discharge the initial proof of burden as to service of notice to the appellants are the Courts below justified in inferring service of notice to the appellants contra version the provision of service under Section 9(2) of the Tamil Nadu Survey and Boundaries Act?*

2. *Are the Courts below justified in inferring the contents of the judgment in O.S. No.677 of 1996 without the same placed being not record by the respondent to dismiss the suit of the appellants?*

6. The Hon'ble Apex Court, while considering the scope and power



of this Court, under Section 100 of Civil Procedure Code in ***Hero Vinoth (Minor) vs. Seshammal [AIR 2006 SC 2234]*** has held in paragraph No.25 as follows:

"25. The principles relating to Section 100 CPC, relevant for this case, may be summarized thus:-

(i) An inference of fact from the recitals or contents of a document is a question of fact. But the legal effect of the terms of a document is a question of law. Construction of a document involving the application of any principle of law, is also a question of law. Therefore, when there is misconstruction of a document or wrong application of a principle of law in construing a document, it gives rise to a question of law.

(ii) The High Court should be satisfied that the case involves a substantial question of law, and not a mere question of law. A question of law having a material bearing on the decision of the case (that is, a question, answer to which affects the rights of parties to the suit) will be a substantial question of law, if it is not covered by any specific provisions of law or settled legal principle emerging from binding precedents, and, involves a debatable legal issue. A substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the court below has decided the matter, either ignoring or acting contrary to such legal principle. In the second type of cases, the substantial question of law arises not because the law is still debatable, but because the decision rendered on a material question, violates the settled position of law.

(iii) The general rule is that High Court will not



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interfere with concurrent findings of the Courts below. But it is not an absolute rule. Some of the well recognized exceptions are where (i) the courts below have ignored material evidence or acted on no evidence; (ii) the courts have drawn wrong inferences from proved facts by applying the law erroneously; or (iii) the courts have wrongly cast the burden of proof. When we refer to 'decision based on no evidence', it not only refers to cases where there is a total dearth of evidence, but also refers to any case, where the evidence, taken as a whole, is not reasonably capable of supporting the finding."

7. Admittedly, in this case, the factual aspects are considered by both the Trial Court and the Appellate Court by appreciating the evidence adduced and concluded that the suit cart-track is a 'Natham Poramboke' and the same has been used by the general public for various purposes and the plaintiffs have no right over the suit cart-track as their own. This Court cannot once again re-appreciate the evidence to find whether the cart-track as a public cart-track or a private cart-track.

8. Though, plaintiffs claim that no notice under Section 9(2) of Tamil Nadu Survey and Boundaries Act was served to him. In the Re-settlement register - Ex.A.15, it has been recorded that the suit property, which is now having Re-survey Nos. 95 and 96 and had old Survey No. 58, this old



survey number itself, classified as cart track - poramboke. In Ex.A.17 - Partition Deed, through which plaintiffs claim title has not contained old Survey No.58. It recites that, plaintiffs are entitled to use the customary cart track situated on the western side of Survey Nos. 56 and 57. The Trial Court further held that, this cart track in old Survey No.58, runs through the western side of old Survey Nos.56 and 57. These exhibits clearly reveals that, already cart track was in existence and classified as poramboke. Hence, there is no change or classification of Survey No.58 into a poramboke - cart track in re-survey and the plaintiff's claim that it was re-classified in the year 1972 has not been rightly accepted by Courts below. Hence, question regarding issuance of notice, at the time of re-classification is misconceived and does not arise in this suit. Similarly, as held by the Courts below, the plaintiffs have not established any right over the cart track, hence, even in the absence of marking of previous judgment in O.S.No.677 of 1996, the judgment and decree passed by both Courts below is based on other evidences placed on record and there is no perversity in judgment of Courts below, this Court finds no reasons to interfere in the above judgment and decree.

9. Accordingly, this second appeal is dismissed. No costs.



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Index: Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To:

1. The Section Officer,
VR Section,
High Court,
Madras.



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K. RAJASEKAR, J.

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