



S.A.No.1093 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Second Appeal No.1093 of 2012
and
Miscellaneous Petition No.1 of 2012

1. T.M.Sakthivel [Died]
2. S. Rajakumar ... Appellant
[2nd appellant brought on record as legal heirs
of the deceased sole appellant vide
order dated 31.01.2024]

Vs.

1. Ramasamy
2. Ponnaya
3. Arunachalam
4. Selvaraj ... Respondents

Prayer: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and the Decree dated 27.04.2011 passed in A.S.No.35 of 2010, on the file of the Sub Court, Tiruchengode, in modifying the Judgment and Decree dated 07.06.2010 passed in O.S.No.55 of 2006 on the file of the District Munsif Court, Tiruchengode.

For Appellant : M/s. K. Megala
For Mr. N. Manokaran

For Respondents : Mr. S. Uma Shankar
For Mr. M. Guruprasad



WEB COPY



S.A.No.1093 of 2012

JUDGMENT

This Second Appeal filed challenging the Judgment and decree of the Lower Appellate Court wherein, the Lower Appellate Court has set aside the Judgment and decree of the Trial Court, and dismissed the suit filed for the relief of permanent injunction.

2. The case of the plaintiff is that the suit property along with other properties owned by the plaintiff's father and he bequeathed the properties under the Will dated 11.09.1961 in favour of the plaintiff. After demise of the plaintiff's father, plaintiff has become the owner of the property and the Revenue Records were also mutated in his favour. The defendants 1 to 4 are the family members and they are having properties on the Southern side of the suit property and attempted to lay pathway in the suit property and thereby, disrupted the possession and enjoyment of the suit properties by the plaintiff. Hence, he had come forward with the permanent injunction against the defendants.



WEB COPY

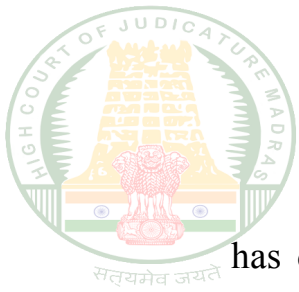
3. The case of the defendants is that the plaintiff's father was entitled to undivided 1/3rd share in Survey Nos.385/2 and 385/4 in Anangoor Village. The said property has been bequeathed in favour of the plaintiff. The plaintiff or his father has no exclusive right over the suit properties and their interest is only undivided 1/3rd share. The defendants herein are having 1/6th share in Survey Nos.381/1, 385/2 and 385/4 and in the remaining shares, the plaintiff and some other persons are having right over the same. The defendant No.1 purchased the undivided 1/6th share as per Sale deed dated 23.01.1967 and there is a cart track running on the Western side of Survey Nos.385/2 & 385/4 and the same is also recorded in the Sale deed dated 23.01.1967. This cart track being used by the defendants commonly along with other co-sharers including the plaintiff and defendants without any partition by metes and bounds. Hence, the plaintiff is not entitled to claim injunction against the defendants.

4. The Trial Court framed the following issues:

“1.Whether the plaintiffs are entitled for the relief of permanent injunction as prayed for?

2.To what other reliefs?”

5. Based on the pleadings and evidence placed on record, the Trial Court



S.A.No.1093 of 2012

WEB COPY

has decreed the suit for injunction as prayed for by the plaintiff. Aggrieved over the same, the defendants had filed the First Appeal, challenging the judgment and decree of the trial Court.

6. The Lower Appellate Court after re-appreciating the evidence and documents has held that the plaintiff is not having any exclusive right over the disputed portion in which, the cart track is running. The defendants are using the cart track from the date of their purchase and even prior to that the cart track was in existence. Accordingly, modified the decree to the extent that the defendants are entitled for using the cart track and the plaintiff has no manner of right seeking injunction, restraining the defendants from using the cart track.

7. Aggrieved over the findings of the Lower Appellate Court, this appeal has been preferred.

8. This Court after admitting the Second Appeal framed the following substantial question of law.

“1. Whether the first Appellate Court has committed an



WEB COPY



S.A.No.1093 of 2012

error in adjudicating the title in an injunction suit, instead of relegating the parties to file a comprehensive suit for declaration of easementary right or for partition particularly in the absence of necessary pleadings and issues?

2. Whether the Judgment of the first Appellate Court is vitiated in view of the adjudication of title in a suit for bare injunction, more so for not following the Law declared in Anathula Sudhakar case reported in 2008 (6) CTC 237 SC?

3. Whether the first Appellate Court is erred in law in holding that the evidence marked as Ex.B1 and Ex.B2 as an admission against the plaintiff even though the plaintiff never admitted the right of the defendants herein who were not parties to the suit in O.S.No.309 of 2007? ”

9. The learned counsel appearing on behalf of the appellant submitted that the plaintiffs are having 2/3rd shares in the suit property and without any claim the defendants claimed 1/6th share in the suit property. The Lower Appellate Court without considering the right of the defendants, granted decree, as if, the cart track in the suit property belongs to the defendants. In the plaint, the defendants have not raised any counter claim seeking right of way and without proper issue in this regard the Lower Appellate Court has modified the decree which is not sustainable and prays to set aside the same.



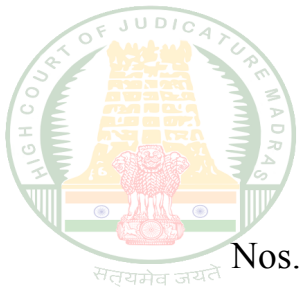
WEB COPY

10. The learned counsel for the respondent though appeared, reported that he has not received any instructions from his client.

11. This Court considered the submissions and perused the records.

12. The Lower Appellate Court mainly relied on the recitals in the Sale deed dated 23.01.1967 executed in favour of the defendant No.1 by the previous owner. It has been specifically recited that the purchaser is having right to use the cart track to reach his other lands, which is situated on the Southern side of the suit property. Similarly, the Title deed of the plaintiff Ex.A1 also shows that the plaintiff's father has purchased only 1/3rd undivided share and the same is also been mentioned in the Will. This shows that the plaintiff is not having exclusive right over the properties comprised in Survey Nos.385/2, 385/4 in Arangoor Village.

13. Before the Trial Court, the plaintiff is able to establish that he is having right over the lands in Survey Nos.385/2 and 385/4. Similarly, the defendants Sale deed also recites that they had purchased 1/6th share in Survey



S.A.No.1093 of 2012

WEB COPY

Nos.385/2 and 385/4 and also 385/1 i.e., in Ex.B3. Admittedly, there was no partition taken place for the above survey numbers by recording metes and bounds. However, there is evidence placed on record to show that they have erected bore wells and they are enjoying certain portions of the land and it is not been used commonly. Similarly, since the plaintiff has acquired only 1/3rd share that too, undivided shares, he is not entitled to seek injunction against other co-owners who are having undivided share in the very same property. This fact has not been properly appreciated by the Trial Court and the Lower Appellate Court has properly considered the same and held that one co-owner cannot seek injunction against the other co-owner. Admittedly, in this case, Advocate Commission was also issued and the Advocate Commission has filed its report - Ex.C1 and Plan marked as Ex.C2. Through the Advocate Commission, the existence of cart track has also been established.

14. Admittedly, what was bequeathed in favour of the plaintiff, which has been extracted in paragraph No.14 of the judgment of the Lower Appellate Court reads as follows:

“ 14. On perusal of records though the plaintiff had

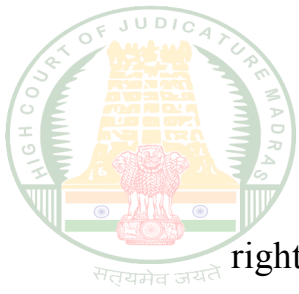


failed to mention that his father had purchased 1/3rd share in the suit property the recitals of Ex.A1, Will executed by plaintiff's father runs as follows:-

“.....க.ச.385/2 நெ.பு.ஏ.6.58க்கு தீ.14.30
க.ச.385/4 நெ.பு.ஏ.0/42க்கு தீ.0.7.0 இந்த தீர்வை பெற்ற
நிலங்களிலும் மர வகைகளிலும் பொதுவில் 3ல் ஒரு பாக
பாத்தியமும்.....“

15. The above recitals extracted by the Lower Appellate Court clearly shows that the plaintiff is not having exclusive possession and he is having undivided 1/3rd share alone in Survey Nos.385/2 and 385/4. The Advocate Commission Report is also been discussed the physical features of land and observed that, there is no demarcation of properties. However, there is no dispute regarding the enjoyment of the above lands i.e., the extent of lands purchased by them.

16. The issue involved in the suit is relating to right of defendants using the cart track in Survey Nos.385/2 and 385/4. Admittedly, the existence of cart track has been established through the Advocate Commission and since the



S.A.No.1093 of 2012

WEB COPY

right of cart track has been granted in favour of the defendants by their vendor and the plaintiff was not purchased the entire extent of Survey Nos.385/2 and 385/4, he cannot claim exclusive right in using the land. The defendants are also having 1/6th share and they are entitled to use the cart track and the plaintiff is not entitled to prevent them from using the cart track. Further in Ex.B3-Sale deed, it has been categorically stated that the cart track which is running on the above survey numbers is a custom cart track which is in existence for long period. That being the case, the plaintiff is not entitled to claim injunction in that portion of the land which is described in the Ex.B3-Sale deed.

17. In view of the same, this Court is of the view that the Lower Appellate Court has rightly appreciated the pleadings and evidence placed on record. The Lower Appellate Court has not decided the title to the cart track, and it has only stated that the plaintiff is not having exclusive right in the cart track and he is not entitled to get injunction as far as the cart track is concerned. Hence, the substantial question of law No.1 is answered that there is no error in adjudicating the right of the plaintiff in the lands situated in



S.A.No.1093 of 2012

WEB COPY

Survey Nos.385/2 and 385/4 in which, the cart track is running. Further, the plaintiff has only filed injunction suit and based on the admitted positions regarding the documents filed, the Lower Appellate Court has rightly considered the rights of the parties in enjoying the properties and it has not made any declaration regarding title to the properties. It has also stated that what was purchased by the plaintiff and the defendants is only undivided share and their respective shares have not been properly partitioned between the plaintiff and defendants and also other co-owners who are not parties to the suit.

18. In the said circumstances, the injunction suit itself is not maintainable. However, the Lower Appellate Court, considering the dispute regarding the cart track, has held that, plaintiff is enjoying the land bequeathed through Will, and he is entitled to possess and enjoy the same but, denied the injunction claimed by the plaintiff only with regard to the cart track and the same is legally sustainable. Accordingly, the Lower Appellate Court has not committed any error to render such finding and the substantial question of law Nos.1 to 3 are answered accordingly.

10/12



S.A.No.1093 of 2012

19. With the above observations, this Second Appeal stands dismissed.

The Judgment and Decree dated 27.04.2011 in A.S.No.35 of 2010, passed by the Sub Judge, Tiruchengode, in modifying the Judgment and Decree dated 07.06.2010 in O.S.No.55 of 2006 passed by the District Munsif Judge, Tiruchengode is hereby confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

01.10.2024

ssi

Index : Yes / No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To

1. The Sub Judge,
Tiruchengode.
2. The District Munsif's Judge,
Tiruchengode.
3. The Section Officer,
VR Section,
High Court of Madras

11/12



WEB COPY



S.A.No.1093 of 2012

K.RAJASEKAR,J.,

ssi

S.A.No.1093 of 2012

01.10.2024