



S.A.No.139 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.03.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.139 of 2012

1.Subramani (died)
2.Saroja
3.Prakash

... Appellants

vs.

1.N.K.Kandasamy (died)
2.Arulmani
...Respondents

(Appellants 2 and 3 brought on record as LR's of the deceased sole appellant vide order dated 02.02.2024 in C.M.P.No.2250 of 2024)

(R2 brought on record as LR of the deceased sole respondent vide order dated 05.08.2021 as per memo submitted before the Court)

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 12.11.2011 in A.S.No.47 of 2011 passed by the learned Principal Sub Judge, Erode, remanding the case to the Trial Court after setting aside the judgment and decree dated 31.03.2011 in O.S.No.322 of 2009 passed by the learned I Additional District Munsif, Erode.



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For appellants : Mr.Jagajothi
for Mr.V.Balamurugan
For R1 : Died
For R2 : Mr.N.Manokaran

J U D G M E N T

The suit has been filed for permanent injunction in respect of the suit cart track. The suit was decreed and the appeal in A.S.No.47 of 2011 was preferred and by judgment and decree dated 12.11.2011, the decree of the Trial Court was set aside and the matter was remanded back to the Trial Court for fresh consideration, after appointing an Advocate Commissioner and receiving report. Against which, the appellants herein instead of preferring C.M.A, have come up with the above Second Appeal.

2. However, be that as it may, the learned counsel for the respondent, when the matter is taken up for hearing submits before this Court an e-mail has been received from his client/2nd respondent, who is settled in abroad.



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3. The relevant portion of the e-mail is extracted hereunder:

“I would like to confirm that my late father N.V.Kandasamy and I, Arulmani.K purchased the above mentioned property on April 17, 1996 as 3 parts (3 sale deeds), 2 in my father N.V.Kandasamy's name and one part was in my name. In 2016, my father transferred the properties in his name to me, through an absolute settlement deed. So, I am the current owner of the property involved in this case.

We built a house and have been living in this property since 2009. In 2009 itself, we fenced the property with barbed wire fence and only as per the boundary line (chekupandhi) stated in our purchase documents (sale deeds) excluding the cart track involved in this case.

My father, myself or anyone from my family have never objected to the appellant family or anyone else from using the mentioned cart track, which is now a part of a common public panchayat road. (The first part of the road shown in google map is now a public panchayat road and 2nd the part is shared by the other land owners) The cart track involved in this case has already been converted to panchayat road for public use several years ago, I believe it was in 2009.



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Currently, the road is being used by my family, the appellant and his family, few others living on the street and the common public. As always I would like to confirm that I do not have any objection to anyone using the road.”

4. The parties, who earlier objected the enjoyment of the cart track by the plaintiff, is now confirming that the cart track has been converted as public road and all the public are using the road, and the defendant/respondent has no objection for the plaintiff/appellants or anyone else to use the suit cart track, which has also been converted as public road.

5. In view of the above, no further orders are required. This Second Appeal is closed. There shall be no order as to costs.

15.03.2024.

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
apd



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To
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1. The Principal Sub Judge, Erode.
2. The I Additional District Munsif, Erode.
3. The Section Officer, V.R.Section, High Court, Madras.



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