



S.A.No.867 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.867 of 2023
and
C.M.P.No.27313 of 2023

Jagannathan

... Appellant

Vs.

1.Kulandaivelu

2.Pachiyappan

3.Saminathan

... Respondents

Prayer:- Second Appeal is filed under Section 100 of C.P.C to set

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aside the judgement and decree dated 20.10.2016 in OS No.163/2013 on the file of the District Munsif Court, Dharmapuri, as confirmed by the judgement and decree dated 30.08.2019 in AS No.33/2017 on the file of the Principal Subordinate Court, Dharmapuri.

For Appellant : M/s.D.Sivakumar

For Respondents : M/s.P.Ganesan [R.1 to R.3]

JUDGEMENT

The plaintiff is the appellant before this Court challenging the judgment and decree passed by the Principal Subordinate Court, Dharmapuri in A.S.No.33 of 2017 in and by which the learned Judge has confirmed the judgment and decree of the District Munsif Court, Dharmapuri in O.S.No.163 of 2013. The facts are set out briefly herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the above suit O.S.No.163 of 2013 on the file of the Additional District Munsif Court, Dharmapuri for a

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permanent injunction restraining the defendants from interfering with the plaintiff's usage of the suit pathway described as the 2nd item in the suit schedule to reach his property described as the 1st Item in the suit schedule.

3. It is the case of the plaintiff that the 1st item of the property was allotted to his share under a registered partition deed dated 11.04.1988. The property has been described as the C schedule property in the partition deed. The plaintiff is in possession and enjoyment of the suit 1st item of the suit property. On 20.03.1991, the plaintiff, the father of the defendant and 10 others owning the neighbouring lands had entered into an agreement for usage of a common cart track. Under this agreement, this pathway has been described as the 2nd Item of property. Under the agreement, this pathway was to be used to reach the plaintiff's lands comprised in S.Nos.28/6, 34/1 and 35/4. The plaintiff has purchased this right by



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paying Rs.5,000/- to the father of the defendants and 10 others. The agreement in question is an unregistered one.

4. After the death of the defendant's father, the defendants are preventing the plaintiff from using the pathway. From 09.06.2013, the interference had been continuing and therefore, the plaintiff had come forward with the suit in question.

5. The 3rd defendant had filed a written statement which was adopted by defendants 1 and 2. They have inter alia contend that they are in no way concerned with the 1st item of the suit property. However, with reference to the 2nd Item of the suit property they would say that all the allegations contained in respect of the 2nd Item of the suit property was absolutely false.

6. The plaintiff has no right to this 2nd Item of the suit property



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which is situate in the defendants' land. The alleged agreement dated 20.03.1991 is a fraudulent document. The said document cannot be received in evidence as it is an unregistered document. Even as per the deed a sum of Rs.5,000/- had been allegedly paid to the defendant's father and others. That apart, the agreement has not been signed by all the persons. The plaintiff has also not impleaded the others who he claims have given him a right of way. The plaintiff has been accessing his lands directly from the main road and has never used the defendants' lands to access his lands. He has an alternate pathway. Therefore, they had sought for the dismissal of the suit.

7. The Trial Court had framed the following issues:-

1. Whether the plaintiff is entitled to the decree for permanent injunction?

2. Whether the plaintiff is in possession and enjoyment of the 2nd Item of the suit property?



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3. Whether the suit is bad for non-joinder of necessary party?

4. To what other relief that the parties are entitled to?

8. The plaintiff had examined himself as P.W.1 and marked Ex.A.1 to A.13. The 3rd defendant had examined herself as D.W.1 and two others as D.W.2 and D.W.3 and marked Ex.B.1 to B.9. The Commissioner's Report and Plan was marked as Ex.C.1 and C.2 and the third party Exhibits were marked as Ex.X.1 to Ex.X.3 which included the letter of the Dharmapuri, Tahsildar dated 17.11.2015, the FMB sketch relating to S.No.28, 30, 34 and 35 and the Chitta in respect of Patta No.415 and 1337.

9. The learned Trial Judge had held that the plaintiff had not proved the enjoyment of the 2nd Item of the property from the year



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1991. The learned Judge had held that the plaintiff had failed to prove Ex.A.1 agreement and had held that the same could not be considered as it is an unregistered document. That apart, the plaintiff had not examined anyone to prove the veracity of Ex.A.1. Since the plaintiff has also not proved his continuous use of the 2nd Item of the suit property from the year 1991, the Trial Court had held that he is not entitled to a decree for injunction and dismissed the suit.

10. The said judgement and decree was taken up on appeal in A.S.No.33 of 2017 on the file of the Principal Subordinate Court, Dharmapuri. The learned Appellate Judge had also confirmed the judgement and decree of the Trial Court. Challenging the said judgement and decree the plaintiff has filed the above Second Appeal which is admitted on the following Substantial Questions of law:-

"1. When materials are available to show the existence of the suit cart track and that the suit cart track is



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the only access to the plaintiff's lands, are the courts below correct in law in refusing to grant a decree for permanent injunction to restrain the defendants from interfering with the plaintiff's usage of the suit B Schedule cart track?

2. When materials are available to show that the suit cart track is used by other persons also to access their properties, are the courts below correct in law in dismissing the suit for permanent injunction, even though the defendants are openly opposing the usage of the suit cart track only so far as the plaintiff alone?

3. When the defendants have not denied the fact that the suit B Schedule cart track is the only access to reach the plaintiff's lands, are the courts below correct in refusing to grant a decree for permanent injunction in favour of the plaintiff and against the defendants restraining them from preventing the usage of suit cart



track by the plaintiff?

4. Are not the judgement and decree of the courts below vitiated for non- construction of the evidence available on record in their perspective?"

11. Heard the counsels on record.

12. The entire case of the plaintiff is based on Ex.A.1, agreement. Admittedly, the value of the said agreement is Rs.5,000/- but however the document has not been registered. That apart, though the plaintiff has stated that the agreement has been entered into between himself, the defendant's father and 10 others, the agreement has not been signed by all the parties. Further, the other persons have not been made a party to the above suit. That apart, the plaintiff has not been able to establish his enjoyment of the 2nd Item of the suit property since the year 1991. It has also been proved that the plaintiff has an access to his property



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through another pathway.

13. Both the Courts below have considered the evidence both oral as well as documentary and have come to the conclusion that the plaintiff has not proved Ex.A.1, agreement in the manner known to law as also the usage of the said pathway. Therefore, the substantial questions of law are answered against the plaintiff and the Second Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Index: Yes/No
Speaking order/non-speaking order
Neutral Citation: Yes/No
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To

1. The District Munsif Court, Dharmapuri.

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2. The Principal Subordinate Court, Dharmapuri.

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

P.T.ASHA, J.,

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