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S.A. No. 1370 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2024

CORAM

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No. 1370 of 2013

Kasi

... Plaintiff/ Appellant

Vs.

T.A.Ramasamy

... Defendant /Respondent

PRAYER: Second Appeal is filed under section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 29.04.2011 made in A.S. No. 148 of 2010 on the file of the I Additional Sub Judge, Salem, confirming the judgment and decree dated 18.06.2010 made in O.S. No. 676 2001 of 2010 on the file of the II Additional District Munsif, Salem.

For Appellant : Mr.R.Jayaprakash

For Respondent : Mr.B.Vasudevan

J U D G M E N T

The Appellant is the Plaintiff, who has filed the suit for declaration in respect of the alleged pathway and consequent permanent injunction, and the lost it before the Trial Court as well as the first Appellate



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2. The Appellant/Plaintiff has raised the following questions alleging that they are the substantial questions of law that would arise in this appeal:-

- “(a) Whether the Lower Appellate Court was right in dismissing the suit in its entirety more so when the existence of a way has been admitted to the defendant?
- (b) Whether the Lower Appellate Court was right in brushing aside the findings relating to existence of a cart track in the earlier proceedings i.e., in O.S. No. 301 /1992 and A.S. No. 46/2005?
- (c) Whether the Lower Appellate Court was right in holding that the other owners of land in S.No. 33 are necessary parties to the suit?”

He further submitted that the Court below has erred and not considered the facts, materials on record in proper perspective by applying the position of law and in a proper manner and dismissed the suit.

3. The first substantial question of law is about the admission of the



Defendant as to the existence of a way, but the Plaintiff specifically claims that there is a cart-track. The Defendant had filed a written statement and pleaded all along in an unequivocal term that there is no cart-track, but there is only a pathway. Even the Defendant in his cross-examination is seen to have admitted that the suit pathway is a bund. Further, the Plaintiff has not chosen to seek the assistance by appointment of a Commission in order to observe the physical features of the suit property and file a report. Hence, the first question does not made out any substantial question of law.

4. The next substantial question is that the Lower Court is not right in appreciating the findings rendered in O.S. No. 501 of 1992 about the existence of a cart-track. The Trial Court has appreciated the judgment passed in O.S. No. 501 of 1992 which was available as Ex.A10 and the Commissioner has filed a report in the very same suit which was available as Ex.A.8. The above suit has been field by the Defendant as being the Plaintiff against one Kathirvelu. Even in that suit and the Commissioner's report, the reference about the pathway has been made, but it has not stated as a 10 feet cart-track. Hence, the Trial Court and the Lower Appellate Court are right in not accepting the contention of the Appellant/Plaintiff that in the earlier



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proceedings there is an observation about the existence of the cart-track.

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5. The third question raised by the Appellant is that the Court below is right in holding that the other owners of the land in Survey No. 33 are necessary parties to the suit. As the Plaintiff claims that the alleged cart-track originates from Survey No. 33/9 and runs across the said Survey Number, it is appropriate on the part of the appellant /plaintiff to implead all the other owners of the said Survey No.33/9. Both the Court belows have rightly observed that the other owners are also necessary parties to the suit, and the suit is hit due to non-joinder of necessary parties. As the Lower Courts had rightly approached and rendered a finding on the issue concerning necessary parties, the question no.3 also does not make out any substantial question of law.

6. As the appeal does not raise any substantial question of law to be dealt as submitted by the appellant, this appeal is dismissed. No costs.

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Index : Yes/No

Speaking order : Yes/No



NCC : Yes/No
Maya

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S.A. No. 1370 of 2010



S.A. No. 1370 of 2019

To

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1. The I Additional Sub Judge
Salem.
2. The II Additional District Munsif
Salem.
3. The Section Officer,
V.R. Section,
High Court, Madras.



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R.N.MANJULA, J.

Maya

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