



S.A.No.900 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 22.02.2024

CORAM:

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.900 of 2013

Goundappan

... Appellant

Vs.

1.Chinnapaiyan

2.Govindhan

3.Raji

4.Ganesan

5.Perumal

6.Raghupathy

7.Mathiyalagan

8.Vediappan

9.Kannayram

10.Ponnuvel

11.Sevathan

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the Judgment and Decree of the Subordinate Judge's Court at Harur dated 07.02.2012 in A.S.No.30 of 2011 confirming the Judgment and Decree of the District Munsif Court at Harur dated 28.10.2011 in



S.A.No.900 of 2013

O.S.No.201 of 2008.

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For Appellant : Mr.K.M.Harish,
for Mr.P.Valliappan

For Respondents : Mr.T.Panchatsaram

JUDGMENT

The present Second Appeal arises against the judgment and decree of the court of Subordinate Judge at Harur in A.S.No.30 of 2011 dated 07.02.2012 in confirming the judgment and decree of the court of learned District Munsif at Harur in O.S.No.201 of 2008 dated 28.02.2011.

2. For the sake of convenience, the parties will be referred to as their ranks in the suit.

3. O.S.No.201 of 2008 is a suit for permanent injunction restraining the defendants, who are 11 in number, from interfering with the right of the



S.A.No.900 of 2013

WEB COPY

plaintiff in using the cart track by way of lorry and other vehicles and for costs.

4. The plaintiff was constrained to present the suit because there was an interference with the right of the cart track, which was set apart by the plaintiff and 22 other persons including the defendants on 03.09.2001. The plaintiff pleaded that under Ex.A1, all the signatories to the document had set apart a portion of their respective properties for the purpose of cart track and on this basis, they have been enjoying the cart track for more than eight years. The parties were enjoying the usage of the said cart track continuously till the right of the plaintiff to use the same was interfered. It is his case that on 07.10.2008 when the plaintiff was driving his tractor on the suit cart track, the defendants prevented him from proceeding further. Hence, he filed the suit.

5. The defendants entered appearance. The sixth defendant alone filed his written statement. This was adopted by the defendants 1, 3, 4 and 7



S.A.No.900 of 2013

WEB COPY

to 11. It is their specific case that there is no cart track in existence. Curiously enough, they admitted that on 03.09.2001, the defendants, the plaintiff and others had entered into an agreement setting apart a portion of their property for the purpose of cart track. It is also their specific case that the defendants had filed a suit in O.S.No.198 of 2008 on the file of the District Munsif at Harur and had obtained temporary injunction in I.A 736 of 2008. According to them, the contract which had been entered into under Ex.A1 was cancelled under Ex.B2 dated 13.01.2008. Further they pleaded that the suit is a counter blast to the suit filed by them and therefore, sought for dismissal.

6. In order to prove the existence of the cart track, an advocate commissioner was appointed by the trial court. He visited the property on 11.11.2008 and submitted a report along with a plan.

7. On the basis of these pleadings, the parties went to trial. The



S.A.No.900 of 2013

WEB COPY

plaintiff examined himself as PW1 and marked Ex.A1 to Ex.A5. In order to substantiate his case, he examined another witness as PW2. The defendants entered the witness box and one of them was deposed as DW1 and two others were examined as DW2 & DW3. On their side, Ex.B1 to Ex.B6 were marked. Apart from that, the Commissioner's reports were also marked as Ex.C1 and Ex.C2.

8. The trial court came to the conclusion that the agreement is true and genuine, but curiously enough, dismissed the suit stating that the agreement is not enforceable. Feeling aggrieved by the same, the plaintiff preferred A.S.No.30 of 2011 before the learned Subordinate Judge at Harur. Learned Subordinate Judge at Harur concurred with the view of the learned District Munsif at Harur and dismissed the appeal. Hence, the present second appeal before this court.

9. This second appeal was admitted on 28.10.2013 on the following



S.A.No.900 of 2013

substantial question of law:

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“When the execution of Exhibit A1 registered agreement dated 03.01.2001 and the formation of cart track on the said date is categorically admitted, are the courts below correct in law in non-suiting the appellant on the basis of Exhibit B2 unilateral notice dated 13.01.2008 when it is well settled in law that a registered document cannot be unilaterally cancelled, that too by way of a legal notice?”

10. I heard Mr.K.M.Hareesh representing Mr.P.Valliappan for the Appellant and Mr.T.Panchatsaram for the respondents.

11. Insofar as the registration of the document under Ex.A1 is concerned, there is no dispute between the parties. The factum that the agreement was entered into is not only admitted in the written statement, but also during the course of examination of the parties. Indeed, this is a curious case where the defendants have admitted to the case of the plaintiff and still



S.A.No.900 of 2013

the courts have proceeded to dismiss the suit.

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12. In order to satisfy myself, whether the road exists as per Ex.A1, I called for Ex.C1 and Ex.C2. The report of the advocate commissioner under Ex.C1, which has not been objected to and the plan which is found under Ex.C2 show that there was a cart track. It runs from A-C-F-H-J-I-G-E-D-B as per the Ex.C2 plan. The report of the advocate commissioner, which has not been objected to is an admissible evidence in terms of Order XXVI Rule 10(2) of the Code of Civil Procedure.

13. The plea of Mr.Panchatcharam is that the document under Ex.A1 was cancelled under Ex.B2 on 13.01.2008 and therefore, no reliance can be placed on the admitted document under Ex.A1. I am afraid, I cannot accept this submission. First, there cannot be an unilateral cancellation, by a few, when nearly 22 parties have entered into a transaction. Secondly, as per the agreement, the cart track was not only laid but was also being enjoyed



S.A.No.900 of 2013

WEB COPY

beneficially to everyone. In other words, the agreement was not only entered into, but also acted upon. By an unilateral act of cancellation, the cart track so laid does not get obliterated.

14. It is not to be understood that a cart track, which is created by an agreement cannot be cancelled. The cart track can be obliterated, if all the owners of the property joined together and decided to restore the land to the position, which existed prior to entering into the agreement. Insofar as Ex.B2 is concerned, it is an unilateral transaction, which has been entered into by the defendants in order to defeat the rights of the persons, who had willingly entered into Ex.A1.

15. It is a settled position of law that there cannot be an unilateral cancellation of a document, which has vested certain rights in the others. This is especially so, since the cart track is in existence from 03.01.2001 till 13.01.2008 for a period of nearly 7 years. In fact, as pointed above, a perusal



S.A.No.900 of 2013

WEB COPY

of the evidence of the plaintiff as well as the defendants shows that both the parties have agreed that the cart track exists over the property.

16. When a cart track is found to be in existence under Ex.A1, Ex.C1 and Ex.C2 and from the oral evidence that has been given by the plaintiff and the defendants, the courts below erred in dismissing the suit. The conclusion of the learned Subordinate Judge that the agreement is not valid as the plaintiff has suppressed Ex.B2, flummoxes me, for a simple reason Ex.B2 is an unilateral document and by no stretch of imagination, can a person who is not a party to the document come to know of its existence.

17. In the light of the above, the question of law is answered in favour of the appellant.

18. In fine, the second appeal stands allowed. The judgment and decree of the learned Subordinate Judge, Harur in A.S.No.30 of 2011 dated



S.A.No.900 of 2013

07.02.2012 in confirming the judgment and decree of the court of District

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Munsif at Harur in O.S.No.201 of 2008 dated 28.02.2011 is set aside. The
suit shall be decreed as prayed for. The plan under Ex.C2 shall form part of
the decree. Costs throughout.

22.02.2024

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Index : Yes/No

Speaking order/Non-speaking order

Neutral Citation : Yes/No



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S.A.No.900 of 2013

To

1.The Subordinate Judge, Harur

2.The District Munsif, Harur



WEB COPY



S.A.No.900 of 2013

V.LAKSHMINARAYANAN, J.

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S.A.No.900 of 2013



WEB COPY



S.A.No.900 of 2013

22.02.2024