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S.A.No.126 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2024

CORAM

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.No.126 of 2024
and
C.M.P.No.3903 of 2024

Seetharaman

... Appellant

vs.

1.Chokkalingam (died)

2.C.Vibudhini

3.C.Senthil

4.C.Kapil Dev

... Respondents

(Respondents 2 to 4 impleaded as a legal heir of the deceased

1st respondent vide Court order dated 08.01.2024 in

C.M.P.Nos.25669, 25670 & 25673 of 2023)

Prayer:- Second Appeal filed under Section 100 of the Civil Procedure Code to set aside the judgment and decree dated 17.07.2019 in A.S.No.29 of 2017 passed by the learned II Additional Sub-ordinate Judge, Cuddalore, confirming the judgment and decree dated 05.01.2017 in O.S.No.46 of 2015 passed by the learned Additional District Munsif, Cuddalore.

For appellant : Mr.N.R.Rajagopalan

For respondent 1 : Died

For respondents 2 to 4 : Mr.D.Ravichandran



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JUDGMENT

The defendant is before this Court in this Second Appeal.

2. This Second Appeal has been filed challenging the judgment and decree dated 17.07.2019 in A.S.No.29 of 2017 on the file of the II Additional Sub Court, Cuddalore, confirming the judgment and decree dated 05.01.2017 in O.S.No.46 of 2015 on the file of the Additional District Munsif Court, Cuddalore.

3. For the sake of convenience, the parties will be referred to according to their ranking as before the Trial Court.

The brief facts, which gave rise to this Second Appeal, are that:

4. According to the plaintiff, 'A' schedule suit property belongs to the plaintiff and 'B' schedule suit property belongs to the defendant. There is no dispute in respect of the suit 'A' and 'B' schedule properties. 'C' schedule suit property is the only passage to reach 'A' schedule suit property.



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5. According to the plaintiff, both 'A' and 'B' schedule suit properties originally belonged to one T.K.Pattabirama Reddiar and he effected partition through a registered partition deed dated 29.03.1972. As per the partition, he retained 'A' schedule suit property for himself and allotted 'B' schedule suit property to his son Ramkumar and 'C' schedule suit property to his another son Ramesh @ Ramachandran and they had taken possession of their respective portions of the properties allotted to them. But, when the plaintiff purchased 'A' schedule suit property from T.K.Pattabirama Reddiar through a registered sale deed dated 23.01.1993 and 'B' schedule suit property by the defendant from Ramesh @ Ramachandran through a registered sale deed dated 29.01.1993, the sale in favour of the defendant specifically provides that the purchaser shall not prevent the plaintiff from using the passage to reach the plaintiff's land on the west, which is the suit 'C' schedule property.

6. According to the plaintiff, even the partition deed specifically provides that so far as the sharers of 'C' and 'B' schedule suit



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properties in the partition deed are concerned, each party shall not prevent other's rights of channel, passage and cart track. It is an easement right not only by grant but also it is easement by necessity, since the plaintiff is not having any other way to reach the 'A' schedule suit property, except through the 'C' schedule suit property. Further, the plaintiff had been using the suit cart track, peacefully, openly and continuously without any interruption for more than the period of 40 years and has also perfected rights of 'C' schedule suit property to ingress and egress to 'A' schedule suit property. All along, there has been no problem and the plaintiff's vendor and the plaintiff had been using the 'C' schedule suit property to reach the 'A' schedule suit property. However, on 28.01.2015, the defendant attempted to obstruct the passage in the 'C' schedule suit property, which resulted in the plaintiff giving a police complaint on 28.01.2015 in C.S.R.No.20 of 2015. However, since the defendant continuously interfered with the usage of the suit cart track in the 'C' schedule suit property, the plaintiff came up with the suit for declaration declaring the plaintiff's rights of easementary in 'C' schedule suit property to ingress and egress to 'A' schedule suit property.



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7. The defendant resisted the suit by filing a written statement, admitting the purchase of 'A' schedule suit property by the plaintiff and 'B' schedule suit property by the defendant. However, the defendant contended that the parties to the suit have no right to choose the easementary right to his advantage. The defendant also denied the claim of the plaintiff for having used 'C' schedule cart track for more than 40 years and thereby, they have perfected rights of easementary in 'A' schedule suit property. The defendant further assumed that the plaintiff has no access to 'A' schedule suit property, through 'B' schedule suit property and the defendant is prepared to earmark a pathway in a breadth of 10 feet on the southern extremity of the 'B' schedule suit property. The defendant also objected the Advocate Commissioner's report filed before the Trial Court. It is the case of the defendant that the plaintiff cannot choose the way of access through 'B' schedule suit property and it is for the defendant to give a way as per the cultivation carried on by him in 'B' schedule suit property.

Evidence and documents:

8. During trial, the plaintiff examined himself as P.W.1 and



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two more witnesses viz., Ramkumar and Sundaramoorthy as P.W.2 and P.W.3, respectively and marked Exs.A1 to A9. On the side of the defendant, the defendant examined himself as D.W.1 and two more witnesses viz., Arumugam and Sudhakar as D.W.2 and D.W.3, respectively and no documents were marked.

9. An Advocate Commissioner was appointed and the report, plan and photographs submitted by him, were marked as Exs.C1 to C3, respectively.

Findings of the Courts below:

10. After appraising the evidence and documents, the Trial Court decreed the suit. The Trial Court found that admittedly, both 'A' and 'B' schedule suit properties originally belonged to T.K.Pattabirama Reddiar and the partition was effected on 29.03.1972, whereby, the suit 'A' schedule property was allotted to the vendor of the plaintiff and the suit 'B' schedule property was allotted to the vendor the defendant. It is also found that both in the partition deed in Ex.A1 and also the sale deed executed in favour of the defendant in Ex.A3, the existence of the suit



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cart track in 'C' schedule is mentioned. Further, as per the recitals in the documents, both the parties shall not dispute or disturb the enjoyment of the suit cart track and another rights in respect of 'A' and 'B' schedule suit properties.

11. Aggrieved by the judgment and decree passed by the Trial Court, the defendant filed appeal in A.S.No.29 of 2017 and the Lower Appellate Court, after re-appraising the evidence and documents, by judgment and decree dated 17.07.2019, dismissed the appeal.

12. Aggrieved by the concurrent finding of fact, the defendant is before this Court in this Second Appeal.

Submissions on both sides:

13. The learned counsel for the defendant/appellant argued that there is no mention of the suit cart track in the sale deed purchased by the plaintiff in Ex.A2 and when the right was not given to the plaintiff, the plaintiff cannot dictate the terms and claim right over the 'C' schedule suit property to have access to his property. The learned counsel further



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argued that even though the existence of suit cart track is mentioned in Ex.A1/partition deed and Ex.A3/sale deed, no specific measurement of the width of the cart track is mentioned and therefore, it is only a pathway, which cannot go beyond the extent of 10 feet.

14. The learned counsel also submitted that in fact even in the written statement, the defendant has deposed that the defendant is ready to leave a portion of 10 feet on the western side of the plaintiff to have ingress and egress to 'A' schedule suit property of the plaintiff. When the mentioned cart track is not found in the documents, the judgment and decree of the Courts below are not based on the materials available on record and therefore, they are perverse and hence, he sought for allowing this Second Appeal.

15. Per contra, the learned counsel for the plaintiff/respondents 2 to 4 contended that admittedly even as per the documents in Exs.A1 and A3, the suit cart track is mentioned and further the vendor of the plaintiff and even the lesser of the vendor of the defendant have admitted that all along had the access to the 'A' schedule property only through 'C'



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schedule. Therefore, the easementary right of the plaintiff cannot be denied by the defendant. The learned counsel further contended that both the Courts below have arrived at a finding of fact based on evidence and needs no interference and also sought for dismissal of the appeal.

Analysis of the submissions:

16. Admittedly, both 'A' and 'B' schedule suit property originally belonged to T.K.Pattabirama Reddiar. Further, there has been a partition among the family members of T.K.Pattabirama Reddiar through the registered partition deed dated 29.03.1972 in Ex.A1. In the partition deed, 'A' schedule suit property was allotted to his son Ramkumar and 'B' schedule property was allotted in favour of his another son Ramesh @ Ramachandran. A perusal of Ex.A1/partition deed shows that it is provided in the documents that each party shall not prevent the other party from the right of usage of channel, passage and cart cart rights. It is also not in dispute that the plaintiff has purchased 'A' schedule suit property from the vendor Ramkumar through sale deed dated 23.01.1993 in Ex.A2 and the defendant has also purchased 'B' schedule suit property from Ramesh @ Ramachandran through sale



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deed dated 29.01.1993 in Ex.A3. Further, a perusal of the documents executed in favour of the defendant, shows that the existence of the cart track is mentioned in that document. Even though the learned counsel for the defendant/appellant contended that the exact measurement is not mentioned in the partition deed in Ex.A1 or the sale deed in Ex.A3, the fact remains that the existence of the cart track in the 'C' schedule suit property for the plaintiff to reach 'A' schedule suit property is borne out by the records. In fact, the recitals in the partition deed itself shows that each party shall not prevent other from the right of the usage of the cart track. When the parent deed in Ex.A1 and even the sale deed in favour of the defendant in Ex.A3 contains the existence of the suit cart track in 'B' schedule suit property, not mentioning the rights in cart track in Ex.A2 alone will prevent control the plaintiff from using the suit cart track in 'C' schedule suit property to have ingress and egress to reach his property in 'A' schedule suit property.

17. Further, in the suit, the Advocate Commissioner was appointed and Exs.C1 to C3 were filed. From the report of the Advocate Commissioner, it is found that the suit cart track is in existence in C



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schedule suit property and that is the only way of access to the plaintiff to reach his property in 'A' schedule suit property.

18. Further, the plaintiff has examined his vendor of the property viz., Ramkumar as P.W.2. He has clearly deposed that apart from the suit cart track, there is no other access to reach 'A' schedule suit property from Vinyagar Koil street and also he has clearly spoken about the existence of the suit cart track and he was in knowledge of the same from the date of partition from the year 1972. Therefore, the evidence of P.W.2 and the documents filed and also the report of the Advocate Commissioner clearly established the existence of the suit cart track.

19. Apart from the same, the evidence of D.W.2 and D.W.3, who had been the lessee under vendor of the plaintiff and defendant further fortified the case of the plaintiff. D.W.2 has admitted the existence of the suit pathway from 'C' schedule suit property and he has stated that he had been a lessee carrying on cultivation of the properties and 'C' schedule suit property was used as the cart track to reach the lands in 'A' schedule suit property and further D.W.2 had given evidence



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that the suit cart track has been in existence of the past over 20 years.

The evidence of D.W.2 and D.W.3, clearly shows that the suit cart track had been in existence in 'C' schedule, through which, the property situated in 'A' schedule can be reached by having ingress and egress in the 'C' schedule suit property. Further, leaving apart these evidence, even the admission of D.W.1 himself that the plaintiff had been using the suit cart track in 'C' schedule suit property to reach the lands in 'A' schedule suit property, clearly established the fact that the plaintiff is not having another access to reach his property and therefore, the plaintiff has the right to use the cart track over 'C' schedule property by easement of necessity.

20. In such circumstances, the Trial Court and the Lower Appellate Court, by taking into consideration the documents filed in Exs.A1 to A3 and the admissions of witnesses P.W.1 to P.W.3, arrived at a finding of fact that the plaintiff is having a right to use the 'C' schedule property to reach his lands in 'A' schedule property, as easement of necessity. The finding of fact arrived at by the Courts below are based on the materials available on record and there is no perversity or illegality in



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the same.

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21. This Court does not find any substantial question of law involved in this Second Appeal. Therefore, this Court is not inclined to admit this Second Appeal.

22. In the result, this Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

21.02.2024.

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order
apd

To

1. The II Additional Sub-ordinate Judge, Cuddalore.
2. The Additional District Munsif, Cuddalore.
3. The Section Officer, V.R. Section, High Court, Madras.



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