



S.A.No.829 of 2018
& C.M.P.No.22705 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 15.02.2024

Pronounced on: 08.03.2024

Coram:

THE HONOURABLE Mr. JUSTICE P.B.BALAJI

S.A.No.829 of 2018
& C.M.P.No.22705 of 2018

1. S.Sithamallappa.
2. G.Jadeswami.
3. Nagamma.

... Appellants/Defendants

/versus/

P.Sivananjappa.

... Respondent/Plaintiff

Prayer: Second Appeal has been filed under Section 100 of C.P.C., to set aside the judgment and decree passed in A.S.No.2 of 2017 dated 14.09.2017 on the file of the Sub Judge, Sathyamangalam confirming the judgment and decree passed in O.S.No.152 of 2015 dated 05.01.2017 on the file of the District Munsif, Sathyamangalam.

For Appellants : Mr.V.S.Kesavan

For Respondent : Mr.M.Roshan Atiq



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JUDGMENT

The Second Appeal is filed at the instance of the defendants who suffered concurrent findings before the trial Court as well as the First Appellate Court, in a suit for declaration of the plaintiff's title to suit cart track and for mandatory injunction against the defendants to remove the offending constructions over the suit cart track and to restore the same to its original stage and also for a relief of permanent injunction against the defendants from cultivating or put up any construction over the suit cart track.

2. The parties are described as per their litigating status before this Court.

3. The case of the plaintiff before the trial Court was that a 9 feet wide cart track runs in S.F.No.255 and 260 with 6 feet wide portion of the said cart track falling within S.F.No.255 and the remaining 3 feet wide cart track falling within S.F.No.260. It is the case of the plaintiff that originally one Mr.Maqbool Jon owned 9.36 acres of land having purchased the same under sale deed 11.04.1978. However, patta was granted in respect of 9.54 acres, 18 cents over and above the extent purchased by him.



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4. According to the plaintiff, the said Mr.Maqbool Jon sold specific extent of his entitlement and retained 22 cents, which according to the plaintiff is the suit cart track. As the defendants have unlawfully put up an asbestos shed in the suit cart track, the plaintiff has filed the suit for the relief of declaration, mandatory injunction and permanent injunction.

5. The suit was resisted by the defendants on the ground that the extent of 22 cents was not available as claimed by the plaintiff and the vendor, Mr.Maqbool Jon had sold over and above his lawful entitlement and the plaintiff cannot take undue advantage of the same.

6. The trial Court decreed the suit as prayed for. The defendant preferred an appeal in A.S.No.2 of 2017 and the First Appellate Court concurred with the judgment and decree of the trial Court and dismissed the appeal.

7. Aggrieved by the concurrent findings, the defendants are on Second Appeal.



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8. The Second Appeal is yet to be admitted. However, I heard Mr.V.S.Kesavan, Learned Counsel for the appellants/defendants and Mr.Roshan Atiq, Learned Counsel for the respondent/plaintiff for final disposal of the Second Appeal.

9. I have also gone through the records namely, pleadings and the judgments of the Trial Court as well as the First Appellate Court, including the report and plan filed by the Advocate Commissioner before the trial court.

10. During the course of arguments, it was brought to my notice that the defendants herein have filed a suit for permanent injunction in O.S.No.106 of 2015 and that an appeal was also preferred against the same by the respondent/plaintiff herein and the said decree in favour of the defendants herein came to be confirmed and became final. In order to ascertain as to whether the said judgment and decree in the suit for permanent injunction filed by the defendants herein would have any bearing on the present Second Appeal, I adjourned the matter for either of the parties to file the judgment and decree in the earlier suit in O.S.No.106 of 2015 which was confirmed in A.S.No.158 of 2016. The same has now been filed by the counsel for the appellant.



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11. Referring to the additional typed set of papers, including the survey plan, the Learned Counsel for the appellants would state that the decree granted in O.S.NO.106 of 2015 was in respect of three items of property. However, I find that the said suit was filed only on the ground that the plaintiff was the owner of the said three items of the suit property, having purchased the same for valuable consideration and while he was in peaceful possession and enjoyment of the same, the defendant, that is the respondent/plaintiff herein enraged by the refusal of the defendant herein, to sell the properties to him started encroaching into the suit property and therefore, the suit was instituted to protect the possession of the suit property. There was no reference to the cart track in the said suit and therefore, the judgment and decree against the respondent herein would have no bearing on the facts of the present case.

12. The Learned Counsel for the appellants would further state that the suit cart track has been shown as a boundary in the plaint in O.S.No.106 of 2015 which is the earlier suit filed by the respondent herein.

13. I have gone through the report of the Advocate Commissioner



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which is made available in the typed set of papers.

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14. The Advocate Commissioner has also given a sketch showing the lay of the properties. It is also seen that the documents exhibited by the plaintiff that there is a clear mention of the cart track in Ex.A.5 & Ex.A.6. Even, in Ex.A.7, Ex.A.8 and Ex.A.9 the cart track is clearly reflected as one of the boundaries. When the defendant purchased the property in the year 2010, his sale deed also indicates that the cart track on the western and northern side of the property. The Courts below have rightly appreciated the oral and documentary evidence adduced by the parties and came to the conclusion that the cart track existed, and the plaintiff was entitled to a decree as prayed for, especially, finding from the Commissioner's report that the defendants have raised construction over a portion of the said cart track.

15. With regard to the Learned Counsel for the appellants' contention that the defendants cannot claim better title than what his vendor possessed or had, the same has been satisfactorily clarified that the mistake has crept in by way of a discrepancy in the extent by showing a lesser extent of 9.36 acres as against 9.54 acres only because of conversion from hectare to acres.



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16. Admittedly, the appellants purchased an extent of only 6.32 acres and the cart track was excluded, especially which is evident from the fact that it has been shown only as boundary. The vendor of the appellants thus retained 22 cents and same has been conveyed in favour of the plaintiff/respondent.

17. Thus, I do not find any illegality or perversity in the findings arrived at by the Courts below concurrently. I do not find any substantial questions of law arising for consideration. Accordingly, the ***Second Appeal is dismissed.*** No costs. Consequently, connected Miscellaneous Petition is closed.

08.03.2024

Index :Yes/No.
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Copy To:-

1. The Sub Judge, Sathyamangalam
2. The District Munsif, Sathyamangalam.

P.B.BALAJI, J.



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Pre-delivery judgment made in
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