



S.A.No. 345 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 06.01.2025

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. No.345 of 2011
and M.P.No.1 of 2011

Siva Shanmugam

... Appellants / 1st Defendant

Vs.

1. Rangasamy

... Respondent / Plaintiff

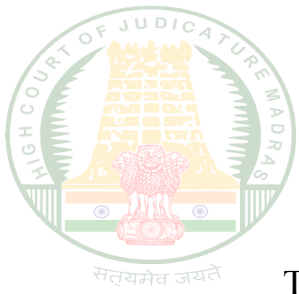
2. K.Duraisamy

... Respondent /second defendant

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree passed in A.S.No.12 of 2008 dated 29.10.2009 on the file of II Additional Sub-Court, Erode confirming the judgment and decree passed in O.S.No.311 of 2004 dated 31.08.2007 on the file of the District Munsif – cum – Judicial Magistrate, Kodumudi.

For Appellants : Mr.A.Sundaravadhanan

For Respondents : Mr.P.Dinesh Kumar



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JUDGMENT

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The Second Appeal against the judgment and decree passed in A.S.No.12 of 2008 dated 29.10.2009 on the file of II Additional Sub-Court, Erode confirming the judgment and decree passed in O.S.No.311 of 2004 dated 31.08.2007 on the file of the District Munsif – cum – Judicial Magistrate, Kodumudi.

2. The appellant is the first defendant and the plaintiff has filed the suit for seeking the relief of declaration and permanent injunction in respect of a suit pathway. The trial Court has decreed the suit as prayed. The first defendant preferred an appeal before the first appellate Court and the same was also dismissed by confirming the judgment and decree of the trial Court. Aggrieved over which the first defendant has preferred this Second Appeal.

3. The facts pleaded in the plaint filed by the plaintiff in brief:

The plaintiff purchased 31 cents of land in R.S.No.170/1 Punjai Kolanalli Village which originally belonged to the second defendant and his brother Chitrambalam through a sale deed dated 19.04.1989. There is a well situated in the western side of the land comprised in R.S.No.170/1 and the plaintiff is having 1/8th share in the same. The second defendant's land is



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situated on the northern side of the plaintiff's land. The common way and the channel is situated between the plaintiff's land and the well on the western side of the second defendant's land. From the date of purchase, the plaintiff and his family members are in possession and enjoyment of the suit pathway and channel. The second defendant is having the right to use the pathway for reaching the well and to take water from the well to irrigate his lands. However, the plaintiff has no objection for the second defendant to use the pathway. On 12.09.2004 the defendants along with their henchmen tried to obliterate the pathway and channel. The unlawful attempt of the defendants was prevented by the plaintiff as the defendant openly proclaim that they will achieve their desire in a short time. Hence the plaintiff has filed the suit for the relief of declaration and permanent injunction in respect of the pathway.

4. The averments made in the written statement filed by the first defendant in brief:

The north – south channel is in existence immediately next to the west of the second defendant's land and on the East there is a cart track and it exclusively belongs to the first defendant, Sadasivam and Ravikrishnan. The plaintiff has got no right over the cart track. No pathway right was given



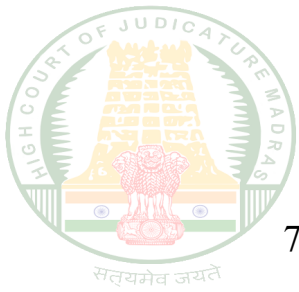
either to the plaintiff or to the second defendant. The cart track situated immediately on the west of the second defendant's land belonged to the first defendant. The alleged cause of action is false.

5. The averments made in the written statement filed by the second defendant in brief:

The plaintiff's claim of the pathway and the suit channel is true. There is no cause of action against the second respondent because the second respondent did not try to obliterate the pathway or the channel. Hence suit has been dismissed as against the second defendant.

6. On the basis of the above pleadings, the trial Court has framed the following issues:

- 1. Whether the suit is bad for joinder of necessary parties ?*
- 2. Whether the plaintiff is entitled to the relief of declaration in respect of the suit pathway and channel ?*
- 3. Whether the plaintiff is entitled to the relief of permanent injunction?*
- 4. To what other relief the plaintiff is entitled to ?”*

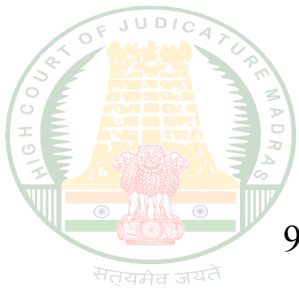


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7. During the course of trial, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A3 were marked. On the side of the first defendant two witnesses were examined as D.W.1 and D.W.2 and Exs.B1 was marked. No oral or documentary evidence was let in by the second defendant. The Commissioner's report along with plan has been marked as Exs.C1 and C2.

8. At the conclusion of the trial and considering the evidence available on record, the trial Court has decreed the suit as prayed and the first appeal preferred by the first defendant was dismissed by confirming the judgment and decree of the trial Court. Aggrieved over the same the first defendant has filed this second appeal.

9. Mr.A.Sundaravadhanan, the learned counsel for the appellant / first defendant, submitted that it is improper on the part of the plaintiff to claim a pathway right without admitting the title of the first defendant. The plaintiff's sale deed Ex.A1 does not state about the pathway right. When the vendor of the plaintiff itself did not have any pathway right, the plaintiff cannot set up any fresh right beyond his sale deed. The Courts below did not take into consideration of non-impleadment of necessary parties to the suit.



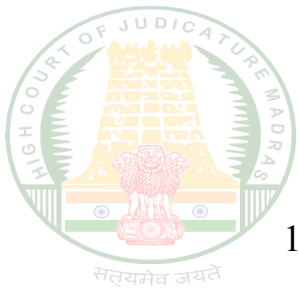
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9.1 The learned counsel for the appellant further submitted that he has certain substantial question of law revolving around Ex.A1-Sale deed of the plaintiff and Ex.B1-partition deed of the plaintiff's vendor and the defendants. He further submitted that he can also raise a substantial question of law on the basis of non-impleadment of necessary parties.

10. On perusal of the records especially the judgment of the trial Court and lower appellate Court, the Courts seems to have made a specific observation that the Commissioner has been appointed to visit the suit property and he had already filed a report.

11. As the parties have stated that the location of the pathway is essential to find out whether the pathway is comprised in R.S.No.170/1 or R.S.No.184 to decide the dispute. The trial Court has reissued the Commissioner's warrant with a direction to measure the suit property with the help of a Surveyor. After getting the second report of the Commissioner along with the sketch and Surveyor's plan, the Court has made a specific observation that the suit pathway is found to be running only in R.S.No.170/1 and not in R.S.No.184. The first defendant's right over his lands would arise only in R.S.No.184 and not in S.No.170/1.



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12. The learned counsel for the appellant submitted that the plaintiff had not claimed any easementary right by admitting the title of the first defendant over the suit pathway. His further submission is that the first defendant does not have any objection to use the channel as he has got joint right in the Well.

13. The question of easementary right would arise only if the first defendant proved to be the dominant owner of the suit cart track by showing that the cart track is running in his land comprised in R.S.No.184. As the trial Court has made a specific observation that the Commissioner's report along with the surveyor's sketch would show that the pathway is located in S.No.170/1 and the first defendant did not raise any objection to the Commissioner's report or Surveyor's plan, there is no necessity for the plaintiff to claim any easementary right. In fact the appellate Court went one step beyond and recorded the evidence of the first defendant who was examined as D.W.1 where he has specifically stated that so far as S.No.170/1 is concerned, those lands belonged to the plaintiff.

14. So the riddle has been resolved with the help of Surveyor's plan and Commissioners' report which would clearly show that the pathway is



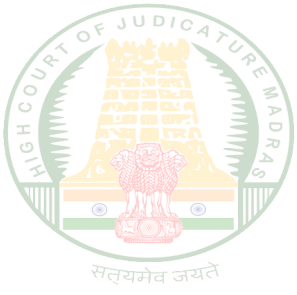
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situated in R.S.No.170/1 and it has been demarcated and shown distinctly in red colour. The first respondent could have grievance only if it is shown that the cart track is situated in his land comprised in S.No.184. Since the cart track is clearly found to be situated in S.No.170/1, the first defendant cannot make any objection for the plaintiff to use the cart track.

15. The learned counsel for the appellant further submitted that the plaintiff's vendor namely one of the parties to Ex.B1- partition deed, himself did not obtain any pathway right and hence the plaintiff who is the subsequent purchaser cannot acquire any pathway right over the suit pathway.

16. Attention of the court was drawn to the recitals in Ex.B1 – Partition deed, especially Schedule 'D' under which the plaintiff's vendor has been allotted with his share. It is claimed that the western boundary of the property allotted to the plaintiff's vendor has been shown as the second defendant's pathway and hence that would prove that the second defendant alone has got the right in the pathway. The schedule of the property reads further stating that the plaintiff has also got the channel and usual pathway in order to take his carts and cattle over the pathway.



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WEB COPY 17. Without mentioning any of survey number and only by mere words, the second defendant is trying to make out a case that he alone got exclusive right over the pathway. In the absence of any evidence to show that the pathway runs over the property belonging to the second defendant especially in S.No.184, the pathway right given to the parties to the partition deed Ex.B1 has to be read comprehensively. The second defendant who is also an another sharer in the very same partition deed does not have any objection for the plaintiff to use the pathway as he is also claiming that the pathway is common and it has been so stated in the schedule of the properties allotted to the sharers.

18. Of all these materials, the admission given by the first defendant in his evidence that he can claim exclusive right over the pathway only if it runs in S.No.184, cannot be ignored. The Courts below have rightly dealt the materials especially the Commissioner's report and Surveyor's plan along with the oral evidence of D.W.1 and arrived at a right conclusion that the plaintiff is having the right over the suit pathway.

19. Coming to the question of non-joinder of necessary parties, the



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plaintiff being the *dominus litis* had chosen to implead only those parties

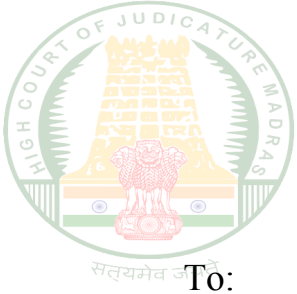
who have raised objection and made attempts to obliterate the pathway and he did not have any issue with the other parties whom the first defendant feels as necessary parties.

20. In the absence of any evidence to show that the pathway exclusively belongs to the first defendant, it is right for the Courts below to decree the suit as prayed on the basis of the materials discussed above. As the appeal does not disclose any question of law much less than a substantial question of law, the appeal is liable to be dismissed.

21. Accordingly, this Second Appeal is dismissed and the judgment and decree passed in A.S.No.12 of 2008 dated 29.10.2009 on the file of II Additional Sub-Court, Erode, is confirmed and the suit in O.S.No.311 of 2004 on the file of the District Munsif – cum – Judicial Magistrate, Kodumudi, is decreed. No costs. Connected miscellaneous petition is closed.

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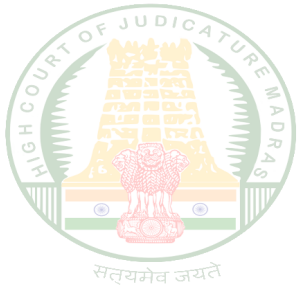
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To:
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1. The II Additional Sub-Court, Erode.
2. The District Munsif – cum – Judicial Magistrate, Kodumudi.



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R.N.MANJULA, J.

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