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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.317 of 2023
and CMP.No.20006 of 2023

1.Perumal

2.Arjunan

... Appellants

VS.

1.Palanimuthu

2.Govindasamy

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 10.11.2022 passed in A.S.No.4 of 2016 on the file of the Subordinate Court, Attur, reversing the Judgment and Decree dated 23.04.2015 passed in O.S.No.27 of 2015 on the file of the District Munsif Court, Attur.



For Appellant : Mr.P.Jagadeesan

For Respondents :Mr.S.Sathia Chandran for R1
No Appearance for R2

J U D G M E N T

The unsuccessful defendants are the appellants.

2. The first respondent herein filed a suit seeking declaration that he was entitled to use suit cart-track for taking men, cattle, carts, etc. to his lands and for his ingress and egress. He also sought for permanent injunction restraining the defendants from interfering with his right of user over the suit cart-track. He further sought for the mandatory injunction directing the defendants 1 and 2 to restore the portion of the cart-track obliterated by them. The suit was dismissed by the trial court. Aggrieved over the same, the plaintiff preferred an appeal. The First Appellate Court reversed the findings of the Trial Court and decreed the suit as prayed for. Aggrieved by the same, the defendants 1 and 2 have come before this Court.

3. According to the plaintiff, he is the absolute owner of the properties bearing survey Nos.344/2, 344/3, 344/4, 344/5, and 344/7. The plaintiff purchased above said land from one Pounambal under registered



sale deed dated 23.04.1984. There is a *mamool* (usual) cart-track 10 feet in breadth branches off from east-west panchayat road on the southern side of the suit property, which passes through the property of the defendants 1 and 2 and then reaches the plaintiff's property. The suit cart-track has been shown as A, B, C, D, E, F in the plaint plan.

4. It is further stated that the plaintiff has been using the same for the past 20 years from the date of purchase and the said cart-track had been in existence for more than 60 years. The vendor of the plaintiff and his predecessor in interest were using the suit cart-track all along. It was also stated that the suit cart-track was the only cart-track leading to the property of the plaintiff and he had no other alternative access for ingress and egress to his land. Thus, according to the plaintiff, he and his predecessor in interest have been using the suit cart-track continuously without any objection from owners of the land through which the suit cart-track passes for more than 60 years.

5. It was also stated that the defendants 1 and 2 obliterated portion of the suit cart-track shown as A,B,C,D in the plaint plan to the length of 80.6 meters south-north and 10 feet east-west and annexed the same along



with their lands. Since the defendants 1 and 2 refused to restore the obliterated portion of the suit cart-track as demanded by the plaintiff, the instant suit has been filed for the above said reliefs.

6. The 1st defendant filed a written statement and the same was adopted by the 2nd defendant. According to the contesting defendants, there was no suit cart-track as alleged by the plaintiff and he never used the suit cart-track for ingress and egress as averred in the plaint. According to the defendants, they are the absolute owners of the properties situated in suit survey numbers and there is no cart-track as alleged by the plaintiff.

7. It was also stated that the plaintiff's vendor Pounammal purchased the property on 03.03.1982 and there was no recital in the said sale deed regarding the so-called cart track passing through the survey numbers of the defendants. It was also stated that the plaintiff wanted to purchase the property which was purchased by the defendants 1 and 2. Since he was not able to purchase the property, he had filed the suit with false allegations in order to cause hardship to the defendants 1 and 2. On these pleadings, they sought for dismissal of the suit.



8. The plaintiff was examined as PW1 and his vendor was examined as PW2. On behalf of the plaintiff, nine documents were marked as Exs.A1 to A9. The 1st defendant was examined as DW1 and five documents were marked as Exs.B1 to B5. The Advocate Commissioner's report and plan have been marked as Exs.C1 and C2.

9. The Trial court on appreciation of oral and documentary evidence available on record came to the conclusion that the plaintiff was not entitled to the relief sought for and dismissal of the suit. Aggrieved by the same, the plaintiff preferred the First Appeal in A.S.No.4 of 2016 on the file of Subordinate Court, Attur. The First Appellate court reversed the findings of the trial court and granted the relief as prayed for by the plaintiff. Aggrieved by the same, the defendants 1 and 2 have come before this court.

10. The learned counsel appearing for the appellants would submit that in the sale deed executed in favour of plaintiff's vendor, there was no reference about the suit cart-track and hence the recital in the sale deed in favour of the plaintiff referring the suit cart-track is only a self serving document and based on the said recitals, the plaintiff cannot claim any right over the alleged suit cart-track. He also submitted that the existence of suit



cart-track and user of the same by the plaintiff for more than statutory period has not been established by him. The learned counsel also submitted that the plaintiff purchased another land under Exs.B4 and B5 for using the same as access to his land on the northern side of the defendants' property and in such circumstances, the plaintiff has got alternative access and hence the plaintiff cannot claim easement by necessity.

11. A perusal of the pleadings of the parties would indicate the plaintiff's claim easement of prescription by long usage by himself and his predecessor in interest for more than 60 years. Though he also pleaded that the suit cart-track is the only access to his lands, there is no pleading in the plaint that both the plaintiff and defendants claimed right under common predecessor in interest and there was splitting of tenements. In such circumstances, the plaintiff cannot lay his claim under easement of necessity, if at all on the basis of the pleadings available in the plaint he can only seek easement by prescription.

12. The plaintiff entered the box and deposed about long usage by him and his predecessor in interest. The plaintiff's vendor Pounammal was also examined as P.W.2. She also deposed about user of the suit cart-track

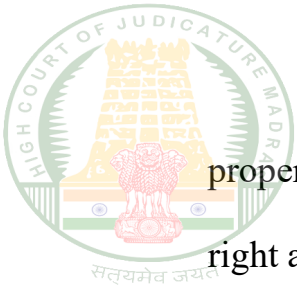


by herself and her predecessor in interest, namely, Marutha Mooppan and his vendors. She also deposed that suit cart-track has been enjoyed by the plaintiff and his predecessor in interest for more than 60 years. On the side of the defendants, the first defendant was examined as D.W.1 and he deposed that there was no suit cart-track as alleged by the plaintiff. However, no independent witnesses have been examined on the side of the defendants to substantiate the case.

13. Ex.A1 is a sale deed in favour of plaintiff dated 23.04.1984. In the said document, there is a clear reference about the suit cart-track. The same reads as follows:

'மேற்படி நிலங்களுக்கு பஞ்சாயத்து ரோடிலிருந்து தென்வடலாக சர் 344/13 ல்
மேல்புறம் சர்வே 344/9, 11, 12, 13 இவைகளில் கீழ்புறமாய் வரும் மாழில் தடத்தில்
ஆட்கள், கால்நடைகள், வண்டி வாகனங்கள் போகவர மாழில் தட பாத்தியமும்
சம்மந்தப்பட்டது.'

14. Ex.A5 is the sale deed in favor of plaintiff's vendor, Pounammal, dated 03.03.1982. In the said document, though, suit cart-track has not been mentioned with reference to the survey numbers, while describing the



property in the sale deed, it was mentioned as "inclusive of usual pathway right and cart track rights."

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15. Ex.A6 is the sale deed executed by one Palanivel Gounder in favour of Pounammal's vendor Marutha Muthu Gounder dated 02.02.1976. In the said document, suit cart-track has been mentioned specifically with reference to the survey numbers and directions. The same reads as follows.

'மேற்படி நிலங்களுக்கு பஞ்சாயத்து ரோடிலிருந்து தென்வடலாய் சர்வே 344/13 ல் மேல்புறமாயும், 344/9, 11, 12 இவைகளில் கீழ்ப்புறமாய் வரும் தடத்தில் ஆட்கள், கால்நடைகள், வண்டி வாகனங்கள் போகவற தட பாத்தியமும்..'

16. Ex.A4 is the sale deed in favour of above mentioned Palanivel Gounder, whereunder, there is a reference about north-south cart-track to the lands of the plaintiff in survey numbers 344/2, 344/3, 344/4 and 344/5, which is branching off from Panchayat road. However, the survey numbers of the cart-track have not been tallying with the survey numbers mentioned in Exs.A1 and A6.

17. Ex.A1 was tendered in evidence only on 04.03.2014. Therefore, when it was tendered in evidence it was nearly 30 years old document. In



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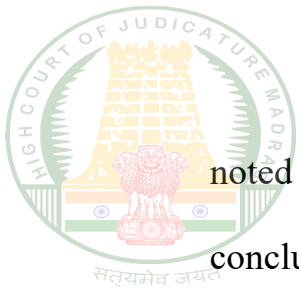
Ex.A1, which came into existence well before the dispute between the plaintiff and defendants, there was a recital about suit cart-track. At that distant point of time, absolutely there was no occasion for the plaintiff to contemplate the dispute and introduce a recital in the title deed concerning the suit cart-track. Further, the reference about the suit cart track in Ex.A1 with survey numbers, directions, etc. are tallying with the reference about the suit cart-track with survey number and directions mentioned in Ex.A6 dated 02.02.1970. The trial court rejected Ex.A6 on the ground that the correction in the sale deed with regard to the directions were not properly initialled in the documents. However, a close scrutiny of Ex.A6 would indicate that in page number 13 of the document there is a reference about the corrections of the documents. The same has been rightly pointed out by the First Appellate Court. In between Exs.A1 and A6, on 03.03.1982, the sale deed in favour of plaintiff's vendor Pounammal came into existence. In that document though suit cart-track has not been referred to with reference to survey numbers and directions, it has been referred to as *mamool* cart-track (usual cart-track rights). In Ex.A4 sale deed in favor of Palanivel also there is a reference about north-south suit cart-track leading to the property of the plaintiffs from the Panchayat road on the southern side. Of course, the reference about the survey numbers are not tallying with the survey numbers mentioned in Exs.A1 and A6. However, it is specifically

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mentioned in 1966 documents, that cart-track branches off from Panchayat road and leading to the property of the plaintiff, which is identifiable with reference to the survey numbers mentioned therein. Therefore, there is no difficulty in coming to the conclusion that the suit cart-track had been referred to in Ex.A4 dated 24.11.1966 also. Therefore, it is clear in the plaintiff's title deed and also in all the three parent title deeds from 1966 to 1982, there is a reference about suit cart-track. The Advocate Commissioner in his report and plan referred about existence of suit cart-track and the said portion was marked as A4. In the remaining places, up to the southern road, he has not noted existence of cart-track . In A1 portion, he noted damaged ridge. In A2 portion, he noted vacant space. In A3 portion, he noted water channel. In A4 portion, he noted existence of pathway. The Advocate Commissioner also said there was no other access to the plaintiff's lands. The physical features noted by the Advocate Commissioner support the case of the plaintiff that suit cart-track has been obliterated in A, B, C, D portion and it is only available in C, D, E, F portion.

18. In the light of the recitals found in Exs.A1, A5, A4, and A6, and also oral evidence of plaintiff's vendor PW2 coupled with physical features



noted by the Advocate Commissioner, the First Appellate Court came to the conclusion that the plaintiff proved his case that he and his predecessor in interest have been using the suit cart-track for several years, right from 1966. The said conclusion reached by the First Appellate court is based on proper appreciation of oral and documentary evidence available on record and the same is not vitiated by any perversity.

19. The learned counsel appearing for the appellants also submitted that under Exs.B4 and B5, the plaintiff purchased some other lands to have access to the suit property and hence the claim of the plaintiff that there is no other access to the suit property cannot be accepted.

20. It is pertinent to note that Exs.B4 and B5 came into existence pending suit, after obliteration of suit cart-track. Therefore, in order to have access to his land, the plaintiff would have purchased some other lands pending suit and the same cannot be pressed into service to non-suit the plaintiff. However, in the case on hand by producing documents from 1966, the plaintiff proved existence of suit cart-track for several years and proved his long usage. In such circumstances, the plaintiff is entitled to declaration of his easementary right by prescription. This court already

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came to the conclusion there is no splitting of tenements and hence plaintiff is not entitled to get easement of necessity. In such circumstances, the submissions made by the learned counsel for the appellants are not appealable to this court.

21. In the light of the discussion made earlier, the second appeal stands dismissed as devoid of any substantial question of law. Consequently, the connected civil miscellaneous petition is closed. No costs.

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Speaking order : Yes / No
Neutral Citation : Yes / No
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To

- 1.The Subordinate Court, Attur.
- 2.The District Munsif Court, Attur.



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