

IN THE COURT OF THE DISTRICT MUNSIF OF SULUR

PRESENT: Tmt.N.Renuga, B.A., B.L.,

District Munsif, Sulur.

Thursday, the 18th day of April 2024

Original Suit No.217/2022

CNR.No.TNCB17-000265-2022

N.Arulprakasham

...Plaintiff

/ Vs /

1. Nachammal

2. Chokkanathan

3. Thirumalaisamy

4. Narayanan

5. Venkathchalam

...Defendants

This suit is coming on 16.04.2024 for final hearing before me in the presence of Tmt.D.Chitra, Advocate for the Plaintiff and Thiru.M.Kanagaraj, Advocate for the Defendants and upon hearing both side arguments and upon perusing the evidence and records and having stood over for consideration till this day this Court delivered the following :

JUDGMENT

This suit is for permanent injunction restraining the defendants, their men not

to disturb the suit B – schedule cart track and for the cost of the suit under section 27(c) of Tamil Nadu Court Fees and Suit Valuation Act.

1. The brief averments of Plaintiff as follows:

1.1. The suit schedule property is absolutely belongs to the plaintiff's father Natarajan through C - schedule to the partition deed dated 26.06.1941 in doc.No.1044/1941. After the partition deed, the plaintiff's father enjoying the same as absolute owner thereof. On 21.06.2007 the another partition taken place between the father Natarajan and the plaintiff and his sister Sarathamani in doc.No.8289/2007, the suit property is allotted to the plaintiff as B - schedule thereunder. The suit property is in S.F.No.40, 43/2, 59/5. The plaintiff have to reach the suit property through the cart track which is emanating towards south from the East west Pacharpalayam to Senjerimalai thar road. The said north south cart track runs on the eastern side of S.F.No.59/4, 59/5 43/1,43/2 and reaches S.F.No.40. The said cart rack is in usage and enjoyment more than 100 years.

1.2. In the partition deed dated 26.02.1941 itself the cart track is mentioned as "பொது ஷராவில் "A, C – பாகஸ்தர்கள் தங்களது பங்கு பூமிக்கு 40 நெ.காலைக்கு போவதற்கு மாமூலாய் போடப்பட்ட 59/3, 4, 5,43/1, 2 இந்த காலைகளில் கிழகோட்டில் தென்வடலாக வண்டி, கால்நடை வகையறாக்கள் தடம் A, C – பாகஸ்தர்கள் நடந்துகொள்ள வேண்டியது. பின்னும் 40 நெ.காலைக்கு C – பாகஸ்தர் தடம் நடந்துகொள்ள மேற்படி காலையில் பெரியநாயகியம்மாள் பங்கு பூமியில் தெற்கு கோட்டில் கிழமேலாகவும்

மேற்படி காலையில் A – பாகஸ்தரின் கிழக்கு கோட்டில் தென்வடலாகவும் C – பாகஸ்தர் வண்டி, கால்நடை வகையறாக்கள் ஓட்டி தடம் நடந்துகொள்ள வேண்டியது. Now the defendants have made disturbance and obstructing the plaintiff from the usage of cart track. Except the suit cart track there is no other alternative pathway available to the plaintiff to reach their lands. On 31.10.2022 while the plaintiff taking agricultural proceeds through the cart track, the defendants with their hoolings have obstructed the plaintiff to use the cart track and the said problem was sought out by the well wishers of the plaintiffs hence to avoid further problem this plaintiff filed this suit to protect his cart track right. Hence, the suit.

2. The brief averments of Written statement filed by the Defendants as follows:-

2.1. The suit is false, frivolous and vexatious. The suit is not maintainable both in law and on facts. As contented by the plaintiff there is no right of cart track is in existence to the plaintiffs to use the cart track running in the defendants S.F.No.59/3, 59/4, 59/5 and 43/2 and to reach the plaintiff's property in S.F.No.40 is all false. The plaintiff can't show the defendants' property as a cart track in their partition deed document No.1044/1991 and 8289/2007 without consent of defendants and the defendants grandmother have purchased the S.F.No.59/3 through doc.No.1480/1936.

2.2. As per the partition deed in doc.No.1044/1991, it is mentioned as "பின்னும் 40 நெ.காலைக்கு C பாகஸ்தர் வாதியின் தந்தை தடம் நடந்து கொள்ள மேற்படி பெரியநாயகியம்மாள் பங்கு பூமியில் தெற்கு கோட்டில்

கிழமேலாகவும் மேற்படி காலையில் A பாகஸ்தர் கிழகோட்டில் தென்வடலாகவும் C பாகஸ்தர் வாதியின் தந்தை வண்டி, கால்நடை வகையறாக்கல் ஓட்டி தடம் நடந்துகொள்ள வேண்டியது". Hence, as per the recitals, there is an another pathway to reached S.F.No.40. Further the plaintiff is having other alternative pathway through the service road of PAP channel maintained by PAP authorities. In addition to that the plaintiff having other pathway adjacent 150 to 200 feet, of Pacharpalayam to Senjerimalai road near by Bank of Baroda to reach their land. Hence, the plaintiff having three other alternative pathways to reach their land. Hence, the plaintiff can't claim the pathway right over the defendants' land. Further the plaintiff stated that on 31.10.2022 the plaintiff have illegally attempted to trespassing to the defendants private property and private pathway.

2.3. The defendants have restrained the said act of the plaintiff. But the plaintiff have attempted to absolute the defendants. Hence, the 2nd defendant gave complaint before Police station. Further on 19.01.2023 at evening 4.00 p.m the Advocate Commissioner have inspected the suit property, after that, the plaintiff have made absolute and given life threat to defendants. The suit is bare for non joinder of necessary party. Hence, the suit to be dismissed.

3. On considering the plaint and written statement the following issues were framed.

4. Issues :-

1. *Whether the plaintiff is entitled to get relief of permanent injunction as*

prayed for?

2. *To what other relief?*

5. On the side of plaintiff, the plaintiff Arul Prakasham examined himself as PW.1 and Ex.A.1 to Ex.A.7 and Ex.C.1 and Ex.C.2 have been marked. While PW.1 cross Ex.B.1 and Ex.B.2 have been marked. The PAP Assistant Engineer, Sulthanpettai has been examined as PW.2 and no documents marked. On the side of the defendants, the 2nd defendant Chokkanathan examined as DW.1 and Ex.B.3 and Ex.B.4 have been marked. While DW.1 cross Ex.B.5 and Ex.B.6 have been marked.

6. Issue No.1 :-

6.1. The both side arguments heard records perused.

6.2. The plaintiff's case is, his property is situated in S.F.No.40/1 in Malaipalayam village and to reach the said S.F.No.40/1 there is a cart track emanating towards south from East West Malaipalayam to Senjery road runs North South and passes through Eastern side of S.F.No.59/3, 59/4, 59/5, 43/1, 43/2 to the width of 15 feet and at the South end it reaches the S.F.No.40/1 of Malaipalayam village.

6.3. The plaintiff claims the said B – schedule cart track is only cart track to reach his land and he is using the said cart track more then 100 years. The defendants have denied the right of the plaintiff. Further the defendants have pleaded there is another cart track through the PAP service road, and as per the cart track mentioned in

the 1941 partition deed and further there is an another cart track through the Bank of Baroda at Malaipalayam village.

6.4. Further the defendants denied the plaintiff right of claim over the cart track, since the S.F.No.59/3 is individual property of defendants which purchased in the year 1936 by their grand mother. Now the plaintiff having initial burden to prove his cart track right to reach the S.F.No.40/1 through the North South cart track stated in the B – schedule to the suit property and their usage over 100 years.

6.5. The plaintiff examined as PW.1 and marked the partition deed dated 05.07.1941 taken between the plaintiff's father Natarajan and other persons as Ex.A.1. On perusal of the same the plaintiff's father Natarajan allotted with the C – schedule property thereunder including the S.F.No.40/1. On perusal of the description of the property to the partition deed in S.F.No.40, it is mentioned as "க.ச.40 நெ.காலையில் ஏக்கர் 12.16 க்கு தென்வடல் பொளியாக கிழப்புறம் 6.50 நீங்கலாக பாக்கி உள்ளது 5.66 கிழமேல் பொளியாக வடப்புறம் ஏக்கர் 2.83 இதுக்கு செக்குபந்தி மேற்படி நெ.காலையில் பெரியநாயகியம்மாள் பங்கு பூமிக்கும் நந்தவனத்திற்கும் மேற்கு, 41 நெ.காலைக்கும் வடக்கு, 43/2, A, C பங்கு பூமிகளுக்கும் கிழக்கு, 37/2 நெ.காலைக்கும் A, C பங்கு பூமிகளுக்கும் தெற்கு இதன் மத்தியில் உள்ள 5.56 ல் சரிபாதி வடப்புறம். Further in the common clause in the partition deed it is stated as "A , C – பாகஸ்தர்கள் தங்களது பங்கு பூமிக்கு 40 நெ.காலைக்கு போவதற்கு மாமூலாய் போடப்பட்ட 59/3, 4, 5,43/1, 2 இந்த காலைகளில் கிழகோட்டில் தென்வடலாக வண்டி, கால்நடை

வகையறாக்கள் தடம் A, C – பாகஸ்தர்கள் நடந்துகொள்ள வேண்டியது. பின்னும் 40 நெ.காலைக்கு C – பாகஸ்தர் தடம் நடந்துகொள்ள மேற்படி காலையில் பெரியநாயகியம்மாள் பங்கு பூமியில் தெற்கு கோட்டில் கிழமேலாகவும் மேற்படி காலையில் A – பாகஸ்தரின் கிழக்கு கோட்டில் தென்வடலாகவும் C – பாகஸ்தர் வண்டி, கால்நடை வகையறாக்கள் ஓட்டி தடம் நடந்துகொள்ள வேண்டியது. On perusal of the said recitals for S.F.No.40 which allotted as C – schedule to the plaintiff's father, it is having two pathways to reach the land i.e., one is through the B – schedule property and another one is through the Eastern side land owner Perianayagiammal property. On perusal of the documents the present Eastern side land owner for S.F.No.40/1 is one Mathivanan. The plaint is silent about the 2nd portion of the common clause in respect of cart track in the S.F.No.40/1. The plaintiff have marked the partition deed dated 21.06.2007 as Ex.A.2, the chitta for suit property and other properties is marked as Ex.A.3, FMB for S.F.No.40, 43 and 59 are respectively marked as Ex.A.4 to A.6. The rough plan for the suit property is marked as Ex.A.7.

6.6. The plaintiff pleaded that the 'B – schedule' cart track is in enjoyment over 100 years, but till today the said cart track has not been separately classified or subdivided by the Revenue authorities as a earmarked cart track or pathway. The plaintiff claims the cart track as Easementary right. But the nature of easement has not been clearly pleaded by the plaintiff side. As per the Ex.A.1, the plaintiff's claims the B – schedule cart track through Easement by grant, but the plaintiff have to prove

the fact that from whom the father or their predecessors have obtained right of Easement by grant to use the said B - schedule cart track. If any party pleaded Easement by grant, there must be a prior grant by the land owner either one party should grant other party for the use of cart track. But here except the Ex.A.1 partition deed, the plaintiff side has not produced any previous documents to establish the fact through which they obtained easement of grant to use the B – schedule cart track before 1941.

6.7. Further the plaintiff pleaded they are using the cart track about 100 years. If the plaintiff's claims easement by prescription he must prove their enjoyment over the cart track under Indian Easement Act, for 22 years before their claim. Here the plaintiff orally stated about the usage and enjoyment of the cart track, but in our case on hand the defendants denies the enjoyment and usage of cart track right by the plaintiff for 100 years. In this circumstances the oral evidence of PW.1 alone will not sufficient to come to the conclusion that the plaintiff enjoyed the suit cart track over the prescribed period. The Easement of prescription and Easement by grant will not come simultaneously. The plaintiff must plead and prove on what basis they are claiming their cart track right through B – schedule.

6.8. In this case, in the absence of grant before 1941 by the land owners of the S.F.No.59/3 to use the Eastern side North South portion as cart track in favour of the plaintiff or their predecessors the plaintiff's predecessors have no right to derive their cart track right through the S.F.No.59/3 in their partition deed in the year 1941.

Hence, now the plaintiff's right over the said B – schedule cart track is under cloud, the plaintiff ought to have filed this suit for declaration of title over the cart track. Without such relief the bare injunction suit is not maintainable. Hence, issue No.1 decided against the plaintiff.

7. Issue No.2 :-

Hence, issues No.1 is answered against the plaintiff. It is not necessary to grant any other relief to the plaintiff. Hence, this issue is answered accordingly.

In the result, this suit is dismissed. No cost.

Dictated to the steno-typist and directly typed by her in computer and corrected and pronounced by me in the open court on this the 18th day of April 2024.

Sd/N.Renuga

District Munsif,

Sulur.

List of witnesses on Plaintiff side:-

PW.1 - Arul Prakasham

PW.2 - Vijay

List of documents on Plaintiff side:-

Ex.A.1	26.06.1941	Partition deed	Certified copy
Ex.A.2	21.06.2007	Partition deed	Certified copy
Ex.A.3	10.11.2022	10(1) chitta for patta No.217 for Malaipalayam village	Online copy

Ex.A.4	11.08.2022	FMB for S.F.No.59 for Malaipalayam village	True copy
Ex.A.5	11.08.2022	FMB for S.F.No.43 for Malaipalayam village	True copy
Ex.A.6	11.08.2022	FMB for S.F.No.40 for Malaipalayam village	True copy
Ex.A.7	---	Rough plan for suit property	---

List of witnesses on Defendants side:-

DW.1 - Chokkanathan

List of documents on Defendants side:-

Ex.B.1	---	Photo	Original
Ex.B.2	---	Photo	Original
Ex.B.3	---	Photos and CD and certificate for section 65(B) Indian Evidence Act	Original
Ex.B.4	---	Police complaint and CSR No.38/2023, Sultanpettai Police Station	Xerox copy
Ex.B.5	---	Police complaint	Xerox copy
Ex.B.6	22.01.2023	CSR.No.38/2023	Xerox copy

List of Court Documents :-

Ex.C.1	Interim Advocate Commissioner Report
Ex.C.2	Final Advocate Commissioner Report

Sd/N.Renuga

District Munsif,

Sulur.

Draft/Fair/Copy of
Judgment
O.S.No.217/2022
Dated: 18.04.2024
DMC, Sulur.