IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.01.2022

PRONOUNCED ON : 25.03.2022

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

S.A.No.302 of 2012
and
M.P.No.1 of 2012 and
C.M.P.No.411 of 2022

1.Nallammal

2.Saraswathi ... Appellants / LRs of the Plaintiff

Vs.

1.Sengoda Gounder

2.Subramania Gounder

3.Ganesan

4.Chandrasekaran ... Respondents / Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the decree and judgment dated 29.07.2011 passed in

A.S. No.25 of 2009 by the Subordinate Judge, Thiruchengode, confirming the decree and judgment dated 29.02.2008 passed in O.S.No.736 of 2004 by the District Munsif Court, Thiruchengode.

For Appellants : Mr.T.R.Rajagopalan
Senior Advocate
for Mr.T.R.Rajaraman

For Respondents 1 to 4 : Mr.P.Valliappan

J U D G M E N T

The LRs of the plaintiffs are the appellants in the second appeal. The unsuccessful plaintiff filed this second appeal and this second appeal is admitted on the following substantial questions of law.

> "a. When none of the documents produced either at the instance of the plaintiffs or by the defendants refer to existence of any cart-track from Survey No.88/3 to Survey No.88/1 to reach the itteri in Survey No.94/1?
>
> b. Onus on the plaintiffs to establish non-existence

of the cart-track when in law it is for the person who claims such right to establish the same?

c.When the defendants having failed to prove not only existence of cart track, but also the user of the alleged cart-track for over a period as contemplated under easement Act?”

2. For the sake of convenience the parties are referred to as per the ranking before the trial Court.

3. The plaintiff filed a suit for permanent injunction restraining the defendants from interfering with the plaintiff’s peaceful possession and enjoyment of the suit property viz., 20 cents in S.No.88/3. The plaintiff is the person in title with the property based upon Exs.A1, A8, A2, A4 and A3 in the following manner:

4. An extent of 38 cents in Survey No.88/3 was allotted to the plaintiff's family in the partition held under Ex.A1 dated 25.10.1918. Subsequently, in the year 1952, under Ex.A8, a partition was effected within plaintiff's family and plaintiff was allotted 13 cents in Survey No.88/3. The plaintiff subsequently, under A2 purchased 7 cents, purchased undivided 2 cents in Survey No.88/3, in all, the plaintiff is entitled to 24 cents in Survey No.88/3.

5. The defendants' present title to an extent of two cents under Ex.B3-sale deed on the footing that they have purchased the undivided two cents under Ex.B3 dated 07.02.1968 in S.No.88/3.

6. With regard to the above factual position, there is no dispute between the plaintiffs and the defendants with regard to the ownership of the properties purchased by them. The lis between the parties is only with regard to the existence of the cart track on the southern side of S.No.88/3 and the defendants right and usage of the same to his S.No.88/3 through the

said cart track.

7. According to the plaintiff, the defendant has a pathway to reach his property, which is running on the western side of S.No.88/1 and they never used the plaintiff’s property to reach S.No.88/1. According to the defendants, they claim easement of necessity grant and prescription viz., all the points available under the Easement Act as a wholesome defence.

8. A 'right' as an 'easement right' means and includes a right to use on the other man’s property either for necessity or by permission or by prolonged use for more number of years as mentioned under the Indian Easement Act, 1882.

9. Heard the learned Senior Advocate Mr.T.R.Rajagopalan appearing for the appellants and Mr.P.Valliappan, learned counsel appearing for the respondents and perused the materials available on record.

10. The trial Court has dismissed the suit also confirmed by the lower Appellate Court and hence the second appeal. The above second appeal was admitted on the Substantial Questions of Law as stated supra.

11.The lower Court reveals that:

(i) The suit property bearing Old S.No.240/2 along with other properties originally belong to one Velappagounder, who had three sons, namely, Subbarayagounder, Muthugounder and Rangaiyagounder who had partitioned their property by virtue of a Partition Deed dated 25.10.1918, which was marked as Ex.A1.

(ii) As per the same out of 7 acres 83 cents in S.No.240/2 the above said 3 sons of Velappa gounder partitioned 2.5 acres each as agricultural land and 7 cents each for house property and plaintiff is the son of Muthu gounder who was allotted with schedule 'B' under Ex.A1-partition deed.

(iii) On 30.10.1952 Muthu gounder had partitioned their property between themselves under partition deed marked Ex.A8. On 02.04.1954 Rangaiya gounder and his son partitioned the property between themselves

by virtue of a partition deed marked as Ex.B1 wherein schedule 'A' property was allotted to Rangaiya gounder, 'B' schedule was allotted to Periyaramasamy gounder 'C' schedule was allotted to Sengoda gounder and Chinna Ramasamy gounder.

(iv) On 15.12.1966, the plaintiff had purchased 2 cents and 2 cents in 2 separate Sale Deeds from Periya Ramasamy and on 24.02.1968 he had purchased 4 cents in common from Chinna Ramasamy gounder by virtue of Exs.A3 and A4 sale deeds. Thus the plaintiff had purchased 13 cents from Rangaiya gounder's family.

(v) One Muthu gounder and his sons had purchased S.No.88/1, 90/1, 90/5 on 27.03.1946 by virtue of a sale deed marked as Ex.A-11 and 11 cents in S.No.90/4 was purchased from one Pavayee under a sale deed marked as Ex.A-12.

(vi) The defendants had purchased their property by virtue of a sale deed marked as Ex.B-8 dated 28.06.2004. The defendant had purchased 2/3 common share in S.No.88/3 from Palani gounder Vagayara under Ex.B-8.

(vii) Thus no dispute between the plaintiff and the defendants with

regard to the ownership over the properties purchased by them.

12. As stated supra, title of the respective portions, by the respective parties are not disputed. The lis between them is the right to use the cart track said to be in existence on the southern side of S.No.88/3.

13. Before the trial Court, the advocate commissioner was examined and he has also filed report in Exs.C1, C2, C3 and C4 and Exs.B1 and B2 were also marked regarding the Tahsildar proceedings and the appeal filed by the defendants which is said to have been dismissed. On behalf of the plaintiff PW1 was examined. On behalf of the defendants DW1 and DW2 were examined.

14(a). The sum and substance of the submissions made by the learned Senior Advocate Mr.T.R.Rajagopalan is that the defendants are invented a novel right of cart track in the suit property to reach the S.No.88/1 through S.No.88/3 but there is so no such cart track, nor they are entitled to. The

lands in S.No.88/3 are not sub-survient to S.No.88/1 at any point of time. Neither the defendants nor their ancestors or predecessors of the title and enjoyed such right over S.No.88/3.

14(b). Per contra, Mr.P.Valliappan, learned counsel appearing for the defendants could contend that the defendants/respondents are owning properties in S.No.88/1 and S.No.88/3 of Kottapalayam Village, in other survey numbers as their ancestor properties. Apart from that, father of the defendants 1 and 2 by name, Ramasamy gounder had purchased the property in S.No.88/3 from Sengoda gounder by virtue of a sale deed Ex.B3, dated 07.02.1969 wherein he has purchased a common right of cart track running on the southern side of S.No.88/3, which runs further through to S.No.88/1 and proceed further on the west.

14(c). In reply, the learned Senior Advocate Mr.T.R.Rajagopalan, could contend that the submission as the cart track is 'proceeds further' on the west is disputed specifically by the plaintiff and relied upon the revenue

records to show that in the revenue records, it is specifically mentioned 'stop' and with a dot. It has been explained that the cart track stops at the 'stop' point and not crossing through the lands of the plaintiff, namely, 13 cents. Thereafter, the lands of the defendants is situated and hence, it is specifically pleaded by the plaintiff that the existence of cart track up to the stop point as mentioned in the revenue proceedings, there is no issue. Thereafter using the land of the plaintiff in 13 cents beyond the point of stop point mentioned in the revenue map is the point of dispute.

15. The Advocate Commissioner's report Exs.C1 to C3 indicates the existence of cart track upto the 'stop' point. Now the dispute is whether the respondents/defendants is using the land of the plaintiff (13 cents) in the said survey number situated on the western side of the cart track and such a right being as a right of easement.

16(a). At the outset, I find that both the Courts below have misunderstood the pleadings. On perusal of the pleadings by the plaintiff

and the defendant and the evidence of PW1 and connected documents, this Court comes to the conclusion that both the Courts have misread the pleadings and the evidence in proper perspective. Up to the point of stop, there is a cart track. It is not disputed by the plaintiff, but both the Courts below have erroneously rendered a finding that as if the cart track also in existence going and cutting across the plaintiff's land leading to the defendants' land without properly understanding the recitals in the respective documents filed by the parties to the proceedings.

16(b). As stated supra, when the defendants claim right of easement over the land of the plaintiff, the burden of proof is on the party, who alleges, he is enjoying the property of another by way of easement right has to establish the existence of such right and usage of the right for the statutory period. Both the Courts below have erroneously cast the burden of proof upon the plaintiff forgetting the fact that the title of the plaintiff in respect of 24 cents in the said survey numbers is admitted by the defendant and hence, this Court finds that both the Courts below has not properly

understood the lis between the parties rather than misunderstood the rudimentary principles of the Easementary right.

17. At the risk of repetition but for the sake of clarity, the plaintiff sought for the permanent injunction restraining the defendants from interfering with his possession. The respondents/defendants came forward with a case of right to cart track alleged to have existed in the southern side of the property as a right of easement and therefore claims entitlement to use the same.

18. On perusal of the partition deed-Ex.A8, during the survey the house portion and the alleged suit cart track portion allotted to the family of Velappa gounder were assigned with new S.No.88/3. Even in the partition deed dated 31.10.1952, the entire S.No.88/3 which consists of house plot and suit schedule was given common patta without any manner of partition by means and bounds. The suit property is specifically mentioned in the partition deed dated 31.10.1952.

19. On perusal of Ex.B3, it is seen that the father of the defendants 1 and 2 had purchased properties in S.No.88/3 from Sengoda gounder and his sons under a sale deed dated 07.02.1968 wherein they were given a right of way through 23 links cart track running on the southern side of S.No.88/3 and also a pathway right branching from the said cart track towards south to reach the well in S.No.90/5.

20. Under Ex.B8, the defendants 1 and 2 have purchased their property from Palanivel and another in S.No.88/3 under the sale deed dated 28.06.2004.

21(a). Under Ex.B7, partition deed dated 10.03.1978, the defendants and their family members have partitioned their property in which the admitted extent of cart track was specifically mentioned and thus from the above documents whether the alleged cart track portion claimed to have running in S.No.88/3 is sub-survient to the lands in S.No.88/1 and the

defendants are using the same to reach the land in S.No.88/1 will decide the lis.

21(b). I have perused Exs.A1, A2, A8 and B1. The learned Senior Advocate Mr.T.R.Rajagopalan has filed the documents set after converting them into pictures based on the recitals of the documents and boundaries with the aid of computer designed output, it is found to be very useful in analysing and comparing of the set of documents with reference to the recitals therein.

22(a). On a close perusal of Exs.A1, A2, A8 and B1, I find that the parties are enjoying the separate portion with respect to the definite boundaries in S.No.88/3. Exs.A1, A2 and A8 are not disputed by the defendants. The defendants purchased the properties admitting that Exs.A8 and B1 are correct and true.

22(b). In Ex.A1, it is clearly mentioned that the appellant is having 13 cents of land and Ex.B1 clearly states as **முத்துக்கவு**ண்டர் வீட்டு நிலத்துக்கும் கிழக்கு, The above said Muthugounder is none other than the father of the plaintiff and the palintiff was a minor at that time. Ex.B1 further reads as follows: கிழபுறம் தென் வடல் புறம்போக்கு இட்டேரியிலிருந்து இந்த வீட்டு நிலத்துக்கு வந்து கொண்டிருக்கிற *23* லிங்ஸ் அகலமுள்ள கிழமேல் வண்டித்தடத்தில் வண்டி, ஆடு, மாடுகள், மனிதர்கள் போகவர வழி பாத்தியம்.... and the above said recitals amply and clearly prove that there is no cart track on the southern side of 13 cents of land shown in yellow colour to reach S.No. 88/1 as claimed by the defendants.

23(a). It remains to be stated that both the parties to Exs.A1, A8 and B1 are not denied any right enjoyed on the south of S.No.88/3 up to S.No. 88/1. As per the pleadings in the written statement and the evidence of DW1 and Ex.B1 is binding upon the defendants and therefore, this Court finds that while Exs.A2, A3 and A8 registered sale deeds, which are original

documents more than 30 years old and it is for the defendants to disprove the same. It is true to say that the contents are proved as per Section 90 of Evidence Act and further the plaintiff is enjoying 20 cents of land with specific boundary and extent as per Exs.A1 to A3 and A8 which are more than 30 years old that were not denied by the defendants assumes significance.

23(b). On the other hand the defendants purchased lands from others by admitting the document of the plaintiff as true and valid, and hence nothing is illegal on the part of the Tahsildar, Tiruchengode in Subdividing the suit property as per Ex.A10. The respondent as per Ex.B11 had filed an appeal before Revenue Divisional Officer which was also dismissed that was brought to the knowledge of the lower Court by way of written argument.

23(c). Hence, from the pleadings of the defendants and their evidence, I find no reason to disbelieve Exs.A11 and A12 are the parent title deeds to

the defendants' ancestral property bearing S.No.88/1 and the trial Court as well as the lower Appellate Court considered that the defendants' vendors are not the pangalis of the plaintiff. Exs.A11 and A12 clearly set out a cart track after the defendants' land to third party. Thus, I find that the defendants' claim of right of cart track in S.No.88/3 is a novel.

24. At this juncture, this Court proposed to deal with the pleadings of the defendants as to their alleged right of easement to use the land of the plaintiff (14 cents) to go through and reach the cart track in existence, it is the crux of the issue.

25. The defendants in the written statement has come forward with the specific case to make out the easement right wherein in paragraph No.5, the defendants have alleged as follows:

> "So, the plaintiff herein is stopped from denying the said cart track, the right of purchase and also perfected by the defendants over the cart track portion

running in S.No.88/3 to reach their lands, houses and Well in S.No.88/1 as well as S.No.90/5. In fact, from the said cart track, running in S.No.88/3 and another pathway with a width of 4 muzham, branches towards south and running again in S.No.88/1 and S.No.88/5 and in S.No.90/5 and the defendants are using the said 4 muzham foot pathway to reach Well and house situated in S.No.88/1 and S.No.90/5 till this date". It is the further case of the defendants in the pleadings that the father of the defendants 1 and 2 purchased the property under the sale deed dated 07.02.1968 from Sengoda gounder and his son in S.No.88/3 with a specific boundaries and father of the defendants 1 and 2 purchased the right in the said 23 links contract running on the southern side of S.No.88/3. Apart from other properties and he also purchased pathway right branching from the said car track towards south to reach

> Well in S.No.90/5. The evidence of DW1 makes it very clear that the purchase was with reference to the already existed cart track to reach the entire survey number and the right of pathway to reach the Well in S.No.90/5 only."

26. At the risk of repetition for the sake of clarity, Ex.A5 is the Village map for the village Survey No.88, which is admittedly a public document in the said document, it is specifically mentioned that the alleged cart track stops at a particular point namely, just before the land of the plaintiff assumes significance.

27. The usage by the plaintiff in his land at no stretch of imagination will lead to the existence of the cart track as an existence of the existing cart track as observed by the Advocate Commissioner's report. Both the Courts have miserably failed to understand the lis between the parties and the objection filed by the plaintiff's side to the Advocate Commissioner's report.

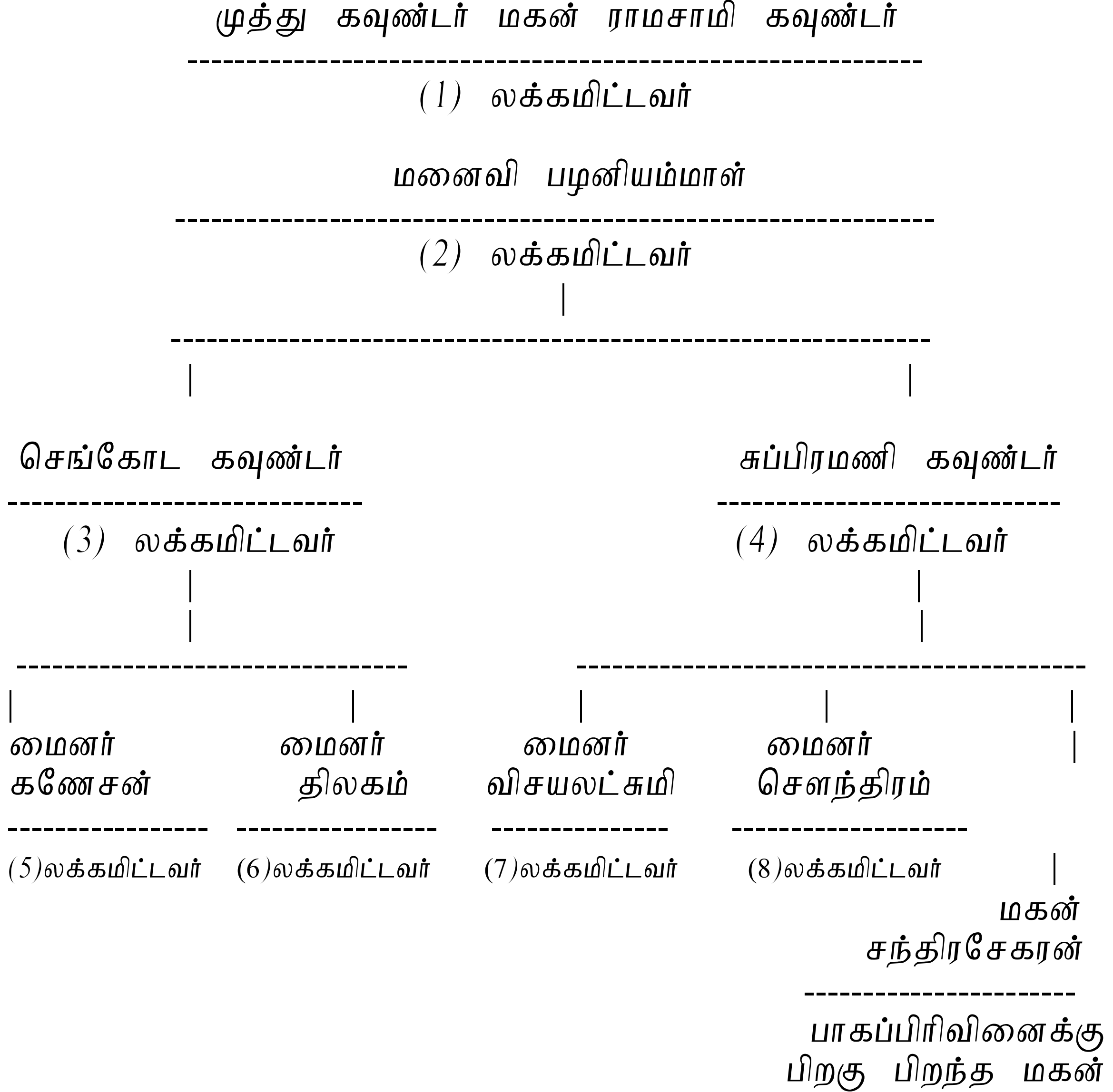
Admittedly, Advocate Commissioner was not examined by the defendants. In view of the presence of Ex.A5, village map which is in existence for more than 60 years. While so, both the Courts below has committed an error in ignoring the pubic document wherein the existing cart track stops at a particular point, namely, before the plaintiff's land and hence, I find that it is for the defendants, viz., the onus is upon the defendants to plead and prove the existence of easement right of using the pathway, which is alleged to have situated in the plaintiff's land, either by the defendants or by the predecessors in title could squarely falls upon the defendants since the land is exclusively private land of the plaintiff.

28. Both in the written statement by way of pleading and the evidence, the defendants have clearly claimed only a right with reference to cart track in existence nor with reference to the disputed cart track assumes significance.

29. As observed earlier, Exs.A2, A3 and A8 that are 30 years old document squarely falls under Section 90 of the Indian Evidence Act. Based upon the Exs.A1, A2 and A8 ancient document, the revenue authorities have passed Ex.A10, which clearly proves the possession of the plaintiff as an exclusive right over the suit property. Even in the appeal filed by the respondents/defendants to Ex.B11 said to have been dismissed which is not in disputed, as I find that Ex.B11 is binding upon the defendants and for the reasons discussed supra, there is no reason to disbelieve Exs.A11 and A12 it is the parent title deed to the defendants' ancestral property in S.No.88/1.

30. Mr.P.Valliappan, learned counsel for the respondents/defendants had relied upon Ex.B7, dated 10.03.1978. The defendants had partition in the property. In the said document recitals of the documents has also been perused as projected by the learned counsel Mr.P.Valliappan learned counsel for the respondents/defendants.

31. On perusal of the recitals of the documents, I find that the following genealogy has been dealt with:



Aபாக சொத்துக்கள் - 4,7,8 லக்கமிட்டவர்கள்
Bபாக சொத்துக்கள் - 3,5,6 லக்கமிட்டவர்கள்
Cபாக சொத்துக்கள் - 1,2 லக்கமிட்டவர்கள்

32(a). On perusal of the boundaries to item No.5 in the said document in S.No.88/1 I find that between the parties to the partition deed 'A' and 'B' was subdivided and allotted in the item No.1 and for the convenient sake of usage of the B portion allotted in item No.1 to one of the parties between themselves. In the said survey numbers, they made a cart track of 20 links in their private land and it is created by the parties to the document for the convenient usage of the B item in item No.1 of the schedule to the property(in that deed) in the 7 cents each.

32(b). Now that the parties, namely, the defendants wanted to extend the said 20 links on the eastern side through the lands of the plaintiff in S.No.88/3 to an extent of 18 cents thereby to reach the admitted existing cart track on the eastern side of the plaintiff's land.

32(c). To go by description from East to West, the common cart track is extended upto the point of stop as mentioned in Ex.A5-village map, thereafter going on to the west the land of the plaintiff in S.No.88/3

measuring 18 cents, which is exclusively title of the plaintiff. Thereafter land of the defendants in S.No.88/1 to be on the west. Thereafter to the west of the defendants' land, there is a admitted cart track.

32(d). Thus I find that the deviation effected under Ex.A7 is between the parties/defendants in the said land only and hence, at no stretch of imagination can be extended to the lands of the plaintiff in S.No.88/3.

32(e). From the documents filed by the parties, this Court is of the considered view that S.No.88/3 was never sub-survient to S.No.88/1 and hence the question of easement right does not arise insofar as the lands of S.No.88/3 being exclusively owned by the plaintiff.

33. On perusal of the recitals of the said documents this Court finds that the recitals mentioned in the said documents Ex.B7 (10.03.1978) entered between the brothers in item No.1, which is divided as 'A' and 'B' among themselves in S.No.88/1. Thus, it is by the act of parties (viz.,

defendants) to divide their property amongst themselves and created a pathway in their private lands of themselves for the easy and convenient enjoyment of their property amongst themselves in their lands. The recitals of the parental documents, namely, 1968 sale deeds does not reflect the alleged cart track. In the absence of any such recital in the parent document under Ex.B3, dated 07.02.1968 (sale deed document No.215/1968), I find that they do not have any right to go through from S.No.88/1 through the land of the plaintiff in S.No.88/3 to use the 23 links but are stopped before the land of the plaintiff.

34. Accordingly, this Court holds that the recitals in Ex.B7 partition deed dated 10.03.1978 does not tally with the own parental document under Ex.B3. With due respect to the parties, they made clandestine attempt to trespass into the land of the plaintiff by making a false plea of easment right. By disturbing the possession of the plaintiff and hence, I find that the plea of easement right projected by the respondents/defendants is false and not supported by the document and oral evidence adduced by the defendants

does not satisfy the test of easement right and does not satisfy the statutory period as contemplated under the Indian Easement Act. Thus the plea of right of easement by presumption falls to ground.

35. Hence, I find that the alleged easement right was not proved either by the defendants 1 and 2 or by their vendors. While things be so, they cannot create by way of deed of partition entered between the defendants themselves in the year 1978, when no such right was existed with the ancestors of the defendants as could be seen from Ex.B3. The defendants are not disputing the title of the plaintiff in S.No.88/3 as their vendors(defendants) were parties to the earlier partition. Thus, as such when there is no reference with regard to the alleged cart track in the plaintiff's property in those parent documents, the defendants herein cannot claim easement right by way of grant.

36. From the pleading of the defendants and their evidence, this Court find that except mere statement of the defendants that there was cart track in

S.No.88/3 I find no positive documents to substantiate the said oral assertion and the oral evidence found to be false plea and also found to be at contrary with village map under Ex.A5. A finding rendered in the Interlocutory Application cannot be a ground of estoppel or *res judicata* when the main suit itself is dismissed for default and further more the circumstances as stated in the pleadings, with reference to the existence of the disputed cart track, is not, referred to any of the document except 1978 partition under Ex.B7 which is found to be at material contradiction with regard to the alleged right with the parent document under Ex.B3 as rightly pointed out by the learned Senior Advocate for the appellants.

37. Hence, from the written statement as well as from the evidence coupled with the contradiction of recitals, this Court finds that the allegations made in the written statement makes it clear that the said alleged right is created by way of 1978 partition deed under Ex.B7 executed between themselves.

38. Hence I find that the decision rendered by Justice Dr.G.JAYACHANDRAN reported in ***2019(5)CTC80 [K.Kalianna Gounder and another v. Sundararaj and another]*** is squarely applicable to the facts and circumstances of this case, wherein it is held that easement right cannot be created by reading a recitals any document by the parties themselves it has to be proved in the manner known to law as prescribed under the Indian Easement Act. It has been further held that easement right is statutory right subject to the conditions and pre-requisite conditions and the burden of prove as stated in the Indian Easement Act and it is "neither can be created nor be destroyed by reading of recital in document to the convenience of the parties". If any such recital has been inserted as to the existence of any such right in the nature of easement right, which are liable to be rejected at the threshold since parties cannot conceive easement right upon themselves on somebodies land, which is the crux and nucleus of the right of easement.

39.Thus on the plea of easement right as pleaded by the defendants and their documents, this Court find that the defendants purchased land in

S.No.88/1, the defendants purchased S.No.88/1 under Ex.A11 and A12. There is no reference to any cart track over S.No.88/3 connecting 88/1 mentioned in those deeds that is, no cart track right over S.No.88/3. When things be so, it is mentioned for the first time, when the family of defendants entered into a partition in the year 1978 under Ex.B7, to which the plaintiff was not a party, a reference is made to the cart track said to be in existence in S.No.88/3 connecting S.No.88/1. The defendants have not produced any document to show the existence of any such right to them under any of the sale transaction entered into by them while purchasing S.No.88/1 or while purchasing 2 cents in S.No.88/3. A commissioner was appointed in the suit, and in his report Ex.C1 and plans Ex.C2, Ex.C3 he has clearly said there is no cart track in the disputed S.No.88/3, viz., 20 cents belonging to the plaintiff, the suit property. What is referred is the right given to the owners of S.No.88/3 on the Eastern side to go to Itteri in S.No.94 through the cart track commencing from S.No.88/3, the length and breadth (103.4 meters x 4.6 meters respectively) are clearly stated in the report and drawn to scale in the plan filed by the Commissioner. Both the Courts below have misread the

documents, misread the oral evidence and misread the Commissioner's report to find that the defendants have a right of cart track over the suit property. The conclusion of the learned Appellate Judge is clearly perverse as the findings are all unsupported by documentary and oral evidence. Infact, the defendants have claimed right of easement over the suit property. When the plaintiff's title not being disputed, it is for the defendants to prove the existence of car track in S.No.88/3 and also show under which document of title such a right was granted to them. So far as defendants' title to 2 cents in S.No.88/3 is concerned, the sale deed Ex.B3 under which the said item was purchased given them a right to use cart track leading to Itteri. It is not establishing any cart track right over S.No.88/3 to reach S.No.88/1. Thus, it is held that Ex.B7 partition deed is a self-serving document and it will not bind the plaintiff. In fact, DW1 admitted in his evidence that in Ex.B1, there is no reference given relating to the cart track over which they are claiming a right. Further, the lower Courts proceed as through defendants have right by easement by necessity. The plans produced by commissioner clearly show that defendants have a clear cart track on the western side and hence

the claim of easement of necessity also falls to the ground.

40. Thus based upon the boundary description of the title deeds of the plaintiff, the appellants have successfully demonstrated the non-existence of the alleged claim of cart track over the plaintiff's property. Similarly under Ex.B3-sale deed in favour of the defendants, there is no reference to the existence of cart track to the suit property and hence I have no hesitation to hold that the plaintiff has successfully proved his case and the defendants have failed to discharge the onus of prove of easement right over the plaintiff's land.

M.P.No.1 of 2012:

41. M.P.No.1 of 2012 is filed to receive the document referred as ' A' in the affidavit, namely, Registration copy of the sale deed dated 27.03.1946 as Document No.792/1946, Mallasamudram Sub-Registrar, as additional evidence in this appeal is hereby allowed.

M.P.No.411 of 2022:

42. The defendants filed M.P.No.411 of 2022 to receive the plaint and written statement in O.S.No.592 of 1982 before the District Munsif Court at Tiruchengode as additional evidence in this second appeal in O.S.No.592 of 1982, after conclusion of the arguments in this second appeal. In the absence of non compliance of Order 47 Rule 1(a) and 1(aa) and (b) of CPC, I have no hesitation to reject the plea to receive the documents. There is no plea of Order 2 Rule CPC raised in the written statement, hence, it is not necessary to consider those documents. Conditions in Order 41 Rule 27 CPC is not complied with and no reason has been assigned for not marking the document till the conclusion of the second appeal and hence, I find that the IA filed by the respondents/defendants is rejected. Accordingly, M.P.No. 411 of 2022 is hereby dismissed.

43. In the result, the plaintiff is entitled to the decree of injunction and contra finding recorded by both the Courts below is hereby set aside and this second appeal stands allowed. No Costs. The suit in O.S.No.736 of 2004 on the file of District Munsif Court, Thiruchengode, stands decreed.

25.03.2022

Index : Yes / No
Speaking order : Yes / No
PJL

To

1.The Subordinate Judge,
Thiruchengode.

2.The District Munsif,
Thiruchengode.

3. The Section Officer,
V.R.Section,
High Court, Madras.

RMT.TEEKAA RAMAN,J.

PJL

Pre-delivery Judgment made in

S.A.No.302 of 2012

25.03.2022