



S.A.(MD).Nos.298 to 300 of 2017

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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.12.2023**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).Nos.298 to 300 of 2017

and

C.M.P.(MD)Nos.6426 and 6427 of 2017

S.A.(MD).Nos.298 and 299 of 2017:

Arunachalam Nadar (Died)

- 1.Jamuna
- 2.A.Ramasamy
- 3.A.Lakshmanan
- 4.A.Kamalakannan
- 5.A.Palaniappan

... Appellants in both cases

/Vs./

1.Chandra Mohan

2.The Commissioner,
Virudhunagar Municipality,
Virudhunagar.

3.R.S.Premraj

...Respondents in both cases

PRAYER in S.A.(MD)No.298 of 2017: Second Appeal filed under
Section 100 of the Civil Procedure Code against the Judgment and



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Decree passed by the Learned Subordinate Judge, Virudhunagar, in A.S.No.1 of 2014, dated 08.06.2015, reversing the Judgment and Decree passed by the Learned District Munsif, Virudhunagar, in counter claim of O.S.No.397 of 2006, dated 07.12.2011.

PRAYER in S.A.(MD)No.299 of 2017: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree passed by the Learned Subordinate Judge, Virudhunagar, in A.S.No.2 of 2014, dated 08.06.2015, reversing the Judgment and Decree passed by the Learned District Munsif, Virudhunagar, O.S.No.397 of 2006, dated 07.12.2011.

In both cases:

For Appellants	: Mr.C.Murugavel
For R1 and 3	: No appearance
For R2	: Mr.M.Muthu Geethayan

S.A.(MD).No.300 of 2017:

Arunachalam Nadar (Died)

1.Jamuna
2.A.Ramasamy
3.A.Lakshmanan
4.A.Kamalakannan
5.A.Palaniappan

... Appellants



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/Vs./

1.The Commissioner,
Virudhunagar Municipality,
Virudhunagar.

2.Chandra Mohan
3.R.S.Premraj

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree passed by the Learned Subordinate Judge, Virudhunagar in A.S.No.3 of 2014, dated 08.06.2015, reversing the Judgment and Decree passed by the Learned District Munsif, Virudhunagar, in counter claim of O.S.No.397 of 2006, dated 07.12.2011.

For Appellants : Mr.C.Murugavel
For R1 : Mr.M.Muthu Geethayan
For R2 and 3 : No appearance

COMMON JUDGMENT

The first defendant in O.S.No.397 of 2006 namely Arunachalam Nadar is the appellant herein who has filed all the three second appeals. The plaintiff in the suit is the 1st respondent in the second appeal. The 2nd defendant municipality is the 2nd respondent in the second appeal. The 3rd



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defendant is the 3rd respondent in the second appeal. For the sake of convenience, the ranking in the suit is followed in the present judgment.

2. The Learned Counsel appearing for the plaintiff / 1st respondent herein submitted that pending the second appeal the plaintiff had sold the property to third party namely Mrs.M.Jeyanthi Chellam wife of Manickam along with the right in the suit property, hence the party had instructed not to appear on behalf on him and proceed with the case anymore. Hence it is necessary to implead the said subsequent purchaser and prayed to implead the necessary party. This Court is rejecting the said plea since as per the principle of lis pendens the plaintiff / 1st respondent rights alone would pass to the subsequent purchaser. Hence the rights of the plaintiff / 1st respondent and the 1st defendant / appellant ought to be determined. Further as per the instructions of the plaintiff, he had sold the property as early as 2016 itself and the second appeal is filed in the year 2017. All these years the plaintiff / 1st respondent had not taken any steps to implead the subsequent purchaser. The second appeal was posted for hearing on 20.10.2023, 21.11.2023, 07.12.2023,



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14.12.2023 and finally on 18.12.2023. On 18.12.2023 the plaintiff / 1st respondent had filed the aforesaid memo which would indicate that the plaintiff / 1st defendant is adapting delay tactics. Hence, this Court proceeds further to hear the second appeal.

3. The suit is filed by the plaintiff for permanent injunction restraining the first defendant from interfering in the peaceful possession and enjoyment of the suit property. The claim of the plaintiff is that the plaintiff has purchased the property in Survey No.392 on 03.05.2006 and enjoying the suit property. The property is having the pathway in Survey No.397/P and the plaintiff is enjoying the pathway. But the first defendant namely Arunachalam Nadar had disturbed the enjoyment of the said pathway and hence the plaintiff had filed the suit for permanent injunction.

4. The first defendant has filed a written statement stating that the said lane exclusively belongs to his property and the same is not a public pathway but a private lane. Apart from filing a written statement, the



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first defendant has also filed a counter claim and has paid separate court fee showing the separate cause of action. In the counter claim the 1st defendant Arunachalam Nadar had stated that the plaintiff had filed a complaint before the municipality claiming that the said lane is public pathway and alleged that the 1st defendant had put up wooden door preventing the plaintiff from using the public pathway. On receipt of the complaint the municipality without issuing any notice had demolished the wooden door and compound wall within five days. Hence based on the said separate cause of action the 1st defendant had filed the counter claim.

5. The Trial Court has considered the evidence cited by the parties and dismissed the suit and has allowed the counter claim of the first defendant. Since the Municipality has removed the wooden door which was erected by the first defendant, the Trial Court has imposed a cost against the Municipality and directed to restore the door. Aggrieved over the said Judgment and Decree, the Municipality has preferred first appeal. Aggrieved over the dismissal of the suit, the plaintiff has filed a



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first appeal and aggrieved over the counter claim of the 1st defendant, the plaintiff has preferred first appeal. Hence, there were three first appeals.

6. While considering the case of the plaintiff, the First Appellate Court has rendered a finding that the counter claim is not maintainable, since under Order VIII Rule 6A counter claim cannot be raised against the co-defendant. The First Appellate Court further held that the document of the first defendant shows it as private lane, but the same cannot be accepted as private lane, because the survey document of the Municipality states the lane as a public pathway. Therefore, the weightage is given to the survey documents of the Municipality. But rejected the sale deed and four boundaries shown in the first defendant document, wherein in the four boundaries on the western side of the 1st defendant document it is shown as “private lane”. Without believing the sale deed, the First Appellate Court had allowed all the three appeals. Aggrieved over the same, the first defendant has filed the present three second appeals.



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7. The second appeal was admitted on substantial questions of law a, b and d. But the first defendant also prayed to consider the substantial question of law e and also canvassed the same before this Court.

8. As far as the first substantial question of law is concerned, the first defendant is claiming the disputed pathway as “private lane” which is exclusively granted to the property situated in S.No.396. When the title over the lane is questioned by the first defendant, then the plaintiff ought to have filed suit for declaration, declaring the said lane as public lane, in such circumstances whether the suit for bare injunction can be maintained.

9. The Hon’ble Supreme Court had rendered a judgment in *Anathula Sudhakar Vs. P.Buchi Reddy* reported in (2008) 4 SCC 594 wherein it has been elaborately dealt when a suit for declaration ought to be filed and when a suit for bare injunction ought to be filed. The relevant portion is extracted hereunder:

“21. To summarise, the position in regard to suits for prohibitory



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injunction relating to immovable property, is as under:

(a) Where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession."

In the present case admittedly the 1st defendant has raised a cloud over the title over the pathway. Infact the 1st defendant not only raised a cloud



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but has filed counter claim after paying court fees. By applying the judgment stated supra, the plaintiff was not in possession of the private lane at all, which is evident from the fact that the plaintiff had purchased the property in S.No.392 on 03.05.2006 and on 08.09.2006 had filed a complaint to the municipality and the municipality had removed the wooden door of the 1st defendant on 13.09.2006, within five days from the date of purchase. It is not the case of the plaintiff that the wooden door was erected recently, that too after his purchase of the property. Admittedly the wooden door was old and was in existence at the time when the plaintiff had purchased of the property. Further the Advocate Commissioner report also states that the wall was constructed by the plaintiff recently. The south western side the plaintiff Chandra Mohan had put new Tin Sheet Door and over the said Tin Sheet Door new two feet concrete sunshade was extended. Therefore, this Court is of the considered opinion that the wooden door was available even prior to the purchase of the property. Hence when the vendor of the plaintiff was not in possession of the lane, then the plaintiff cannot be in possession of the lane. By applying the ratio laid down in *Anathula Sudhakar Vs. P.Buchi*



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Reddy reported in **(2008) 4 SCC 594**, where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Hence the suit filed by the plaintiff for bare injunction is not maintainable and liable to be dismissed. Therefore, the first substantial question of law is answered in favour of the first defendant.

10. The learned Counsel appearing for the first defendant relied on the parent documents which were executed for the Survey No.392. In Exhibit B2 sale deed dated 18.08.1961, wherein four boundaries were stated as under:

“தான செட்டில்மெண்ட்

18.08.1961

ஆவண எண்:1961-ம் வருஷத்திய 2862நிர் பத்திரம்.

ஏழுதிக்கொடுத்தவர்:- ச.தில்லையம்மாள் க /பெ.பெ.ப.சங்கரலிங்க நாடார்.

ஏழுதி வாங்கியவர்கள்:- ராஜம்மாள் என்ற வெள்ளையம்மாள்-1,

பத்மாவதி அம்மாள்-2,

தபசில் சொத்து விபரம்:- 'A' ஷெட்யூள் ராஜம்மாள் (எ)

வெள்ளையம்மாள் பாகம்

இராமநாதபுரம் டி.விருதுநகர் சப்டி விருதுநகர் முனிசிபல்



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டவுண், 12 வது வார்டு உள்தெரு பழைய டோநீர் 9 புது டோநீர் 11 டி.எஸ் 392 நீர் உள்ள வீட்டுக்கு மால்:

வடக்கு டி.எஸ். நீர்391 ல.பெ.பெ க.மைனர் நாகராஜன்

கிழக்கு டி.எஸ். 397 நீர் உள் தெரு, டி.எஸ். நீர்.396 பு.நா.பெ.மாரியப்ப நாடார் கார்டியன் மைனர் பெரியதம்பி, டி.எஸ் நீர் 395 நீர் வி.என்.எம்.ஏ.ரத்தின சபாபதி நாடார்.

தெற்கு டி.எஸ்.நிர்.393 பெ.பெ.ச.தில்லையம்மாள். டி.எஸ்.நிர்394 வி.என்.எம்.ஏ.ரத்தினசபாபதி நாடார்.

மேற்கு டி.எஸ்.நிர்.391 நீர் மைனர் ல.பெ.ப.மைனர் நாகராஜன், டி.எஸ்.391 நீர் பெ.ப.ப.ரத்தினசபாபதி நாடார்.

இந்த மாலுக்குள் 1வது தாக்கு: மேல்புறம் சுவருள்பட கிழமேல் ஜாதியடி 19 வடபுறம் சுவர் பொதுமையில் பாதியுள்பட தென்வடல் ஜாதியடி 6-1/2 அளவுவெளியும் மேல்புறம் வழி பாதையும் உள்ள வீடும், இதுவின் ஈசான்யத்தில் 2வது தாக்கு: வடபுறம் சுவர் பாதியுள்பட தென்வடல் ஜாதியடி 34 மேல்புறம் சுவர் பாதியும் கீழ்புறம் சுவர் சொந்தமுமள்பட கிழமேல் ஜாதியடி 20-1/2 அளவுள்ள மனைநிலமும் அதில் கட்டியிருக்கிற தெற்கு பார்த்த மச்சு, தகரச்சாய்ப்பும், தென்புறம் முத்த வெளியும் பி-ஷெடியூல் பத்மாவதி அம்மாளுடைய வீட்டிலும் இதன் 1வது தாக்கு வீட்டில் உள்ள வழியும் உள்பட வீடும் கதவுநிலை எலக்ட்ரிக் லைட் வகையறா சமஸ்த்தமும்.

2) ஷெடவுண், ஷெசப்டி ஷெடவுண், 12வது வார்டு உள்தெருவில் டி.எஸ்.389 நீர் உள்ள நடை பாதைக்கு மால்:-

T.S.No.391 நிர் ல.பெ.ப.க.மைனர் நாகராஜன் வீட்டுக்கும் தெற்கு,

டி.எஸ்.நிர். 391, 398 நீர் ல.பெ.ப.க மைனர் நாகராஜன்



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வீட்டுக்கும், டி.எஸ்.நிர். 397 நீர் முரக நாடார் வீட்டுக்கும் கிழக்கு.

டி.எஸ்.நிர்.414 நீர் கிழமேல் உள்ளதெருவுக்கும் வடக்கு.

T.S.No.393 நிர் B ஷெட்யூல் பத்மாவதி அம்மாள் வீட்டுக்கும்,

டி.எஸ்.நிர்.392 நீர் இதன் 1வது தாக்கு வீட்டுக்கும் மேற்கு.

இதற்குள் வடபுறம் தாக்கு-1: தென்வடல் ஜாதியடி 7-1/4 கிழமேல் ஜாதியடி 5 அளவுகளுள்ள பொதுமை நடைபாதையும், இதுவின் தெற்கு: வடதலை கிழமேல் ஜாதியடி 6-1/2 தென்தலை கிழமேல் ஜாதியடி 5-3/4 தென்வடல் ஜாதியடி 36-3/4 அளவுள்ள பொதுமை நடைபாதையும் ஆக 2 எடுப்பு பொதுமை நடைபாதையில் ல.பெ.ப.க.மைனர் நாகராஜனுக்குரிய பொதுமை நடைபாதை நீக்கி 1, 2 வது தாக்கு வீடுகளுக்குள்ள பொதுமை நடைபாதையில் எனக்குள்ள 6-ல் 4 பங்கு பாத்தியமும் ஷெ நடை பாதையிலிருக்கிற பொதுமை கதவு நிலை பாத்தியமும் சமஸ்த்தமும்.”

While showing the four boundaries, on the eastern side, it has been clearly shown as “S.No.397 Ulltheru” (உள்தெரு). Further the first defendant has also relied on Exhibit B3 to prove that the 1st defendant’s private lane is shown as boundaries, wherein the eastern boundary is shown as Survey Nos.396, 397, 398. In order to give clear picture, the 1st defendant’s property is in S.No.396, the disputed lane is in S.No.397/P



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and one Deivanaiammal's property is in S.No.398 and the said Deivanaiammal is having another portion of the disputed private lane in the same S.No.397/P.

11. To prove that the plaintiff is not entitled to the disputed lane, a reverse method is also applied. The plaintiff's property is in S.No.392 and in the plaintiff's parent documents which is marked as Ex.B2 and Ex.B3, the eastern boundary is shown as Survey Nos.396, 397 and 398. On the western side and norther side boundaries it is shown as Survey No.391. On the southern side it is shown as S.No.393. Further the property in S.No.392, the pathway to the plaintiff's property is from S.No.389. The said S.No.389 is shown as Item No. 2 in the document and the sale is for the Item No.1 in S.No.392 and Item No.2 in S.No.389. For Item No.2 separate four boundaries are shown in the said document. All these facts would show that the plaintiff has a separate pathway for ingress and egress to his property in Survey No.392. At the same berth the first defendant property is in S.No.396 and is having a separate pathway for his ingress and egress for his property in Survey No.396,



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which is in S.No.397/P. Likewise the property belonging to Deivanaiammal is in S.No.398 and is having a separate pathway for his ingress and egress for her property in Survey No.398, which is in S.No. 397/P. When plaintiff has a separate pathway in S.No.389, likewise the first defendant is having a separate pathway in S.No.397/P and the said Deivanaiammal is having a separate pathway in S.No.397/P, hence the claim of the plaintiff that the S.No.397/P is a public pathway is false. If the plaintiff's case ought to be accepted then the S.No.389 also should be declared as public pathway and the 1st defendant and the said Deivanaiammal also is entitled to the said pathway in S.No.389. Therefore, this Court is of the considered opinion that the plaintiff is absolutely wrong in claiming right in the private lane exclusively belonging to the 1st defendant. Infact the Ex.B2 and Ex.B3, the parent documents of plaintiff's property would clearly indicate that the plaintiff is not entitled to T.S.No.397 pathway, but the plaintiff sale deed in Ex.A2 has granted the pathway. When the plaintiff's vendor is not having any right over the said pathway, then the vendor cannot sell the said pathway to the plaintiff and the mischief is in the plaintiff's sale deed Ex.A2.



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12. The next substantial question of law that was raised is whether the co-defendant can seek a relief of declaration. The Appellate Court has terribly erred in terming the first defendant as co-defendant along Municipality. The first defendant is claiming relief against the plaintiff alone. Incidentally, the second defendant has removed the door which was erected by the first defendant. Hence, the claim was sought against the Municipality to restore the door, which can never be termed as a relief against the co-defendant. Moreover, the issue is whether the disputed lane can be termed as public lane or private lane and this would not make the 1st defendant and municipality as co-owners and co-defendants. The main relief by the first defendant is against the plaintiff and incidental relief is only against the Municipality to restore the wooden gate. Therefore, the second substantial question of law is also in favour of the first defendant / appellant.

13. The next substantial question of law is whether the plaintiff had proved the dispute lane as public lane by placing reliance on the revenue records which is stated in the deposition of the plaintiff. The 1st



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defendant / appellant relied on the judgment rendered by this Court in

S.A.No.658 of 1999 wherein it is held as under:

“11. Though the 9th defendant / Municipality has stated that the suit and schedule property is public street and the same has been maintaining by the Municipality, it has not produced any document to show that either of the vendor of the plaintiffs or the plaintiffs have dedicated/gifted the suit 2nd schedule property in favour of the Municipality. The plaintiffs, who are the owners of the 1st schedule property, have also not made a request to declare the suit 2nd schedule as public pathway as per the District Municipalities Act. When there is no dedication/gift/ requisition by the original owners, the 2nd schedule property cannot be declared as public street. Moreover, the suit 2nd schedule property has not been maintained by the Municipality by laying road, drainage facility, etc. Though by relying on Exs. B6-Town Survey Register and B7-Survey sketch, it is contended by the defendants that the suit 2nd schedule property is a public street, a perusal of Ex. B6 shows that the suit 2nd schedule property has been described as "Boosthathi Sanjeevinathapuram North Street". The word "Boosthathi" refers to Patta land belonging to private individuals. Therefore, even on the basis of Exs. B6 and B7, it cannot be presumed that the suit 2nd schedule property is a public street. Moreover, the entries in the revenue records itself would not confer any title on the 9th defendant.”



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The plaintiff is relying on the revenue records and submitted that the disputed lane is public lane. When the sale is executed along with roads and pathways, then the roads and pathways ought to be gifted to the municipality, then only the said roads and pathways would be vested with the municipality. If not gifted, then the municipality cannot claim any vesting right over the road. This has been confirmed in the judgment referred supra. Any revenue records and survey records should align with the documents of the private parties' properties. The right to hold properties are guaranteed under the constitution. Therefore, the survey records should go along with or align with the private persons documents. Therefore, the First Appellate Court had erred in relying on the survey records without verifying the fact that the lane was not gifted to the municipality. As stated supra when the plaintiff is having a private lane in S.No.389 for the property in S.No.392, likewise the first defendant is having a private lane in S.No.397/P for the property in S.No. 396. Therefore, the survey records of the Municipality are not alignment with the sale deeds of the private parties. Hence, by relying on survey



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records and granted relief to the plaintiff is illegal and the substantial question of law is answered in favour of the 1st defendant.

14. As far as the compensation payable by the Municipality is concerned, the plaintiff had purchased the property in S.No.392 on 03.05.2006 and on 08.09.2006 had filed a complaint to the municipality and the municipality had removed the wooden door of the 1st defendant on 13.09.2006, within five days from the date of purchase. The Municipality has acted on the complaint of the plaintiff and had removed the wooden door and demolished the compound wall without even giving any notice to the first defendant. From cause of action shown in the plaint itself is evident that the plaintiff has not stated that the wooden door and the wall was erected after the purchase of suit property. Therefore, there is no cause of action as such and suit is vexatious. Moreover, at a high speed the Municipality has acted on the complaint of the plaintiff, the bias attitude of the municipality is explicit. In such circumstances, the 1st defendant / appellant is entitled to compensation.



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15. Therefore, all the three substantial questions of law are answered in favour of the first defendant / appellant. The judgment and decree of the First Appellate Court is set aside and the judgment and decree of the Trial Court is upheld. The suit filed by the plaintiff is dismissed. The Counter Claim of the 1st defendant is granted. All the three second appeals are allowed. The Municipality is directed to restore the wooden door and the wall belonging to the first defendant within a period of eight weeks from the date of receipt of the copy of this judgment.

16. With the above said observations, the second appeals are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

18.12.2023

Index : Yes / No
NCC : Yes / No

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TO:

1. Subordinate Judge, Virudhunagar.
2. District Munsif, Virudhunagar.
3. The Commissioner,
Virudhunagar Municipality,
Virudhunagar.
4. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD).Nos.298 to 300 of 2017

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)Nos.298 to 300 of 2017

Dated:
18.12.2023