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S.A.(MD).No.405 of 2017

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2023

CORAM:

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

S.A.(MD).No.405 of 2017

and

C.M.P.(MD)No.8544 of 2017

1.Kannan
2.Pandian
3.Radhakrishnan
4.Chandra

... Appellants

/Vs./

The Panchayat President,
Rosalpatti Panchayat Office,
Pandian Nagar,
Virudhunagar Taluk,
Virudhunagar District.

...Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 14.09.2015, made in A.S.No.13 of 2014 on the file of the Subordinate Judge, Virudhunagar, confirming the Judgment and Decree, dated 29.01.2014, made in O.S.No.154 of 2003, passed by the District Munsif Court, Virudhunagar.

For Appellants : Mr.I.Suthakaran

For Respondent : Mr.A.Baskaran
Additional Government Pleader



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JUDGMENT

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The plaintiffs are the appellants in the present second appeal. For the sake of convenience, the parties shall be referred as Plaintiff and Defendant as per the ranking in the suit.

2. The Panchayat was trying to lay road in the suit private pathway which is shown as cause of action. The contention of the Panchayat is that they are laying the road based on the request of the people of Panchayat. This suit is filed for declaration and injunction to declare the suit property especially the pathway is a private way which exclusively belong to eight row houses (4 houses on either sides) and consequently injunction restraining the defendant from laying road in the private pathway. The suit was dismissed, aggrieved over the same, the first appeal was preferred and the First Appellate Court has confirmed the judgment and decree of the Trial Court and dismissed the first appeal. Aggrieved over the same, the present second appeal is preferred.

3. The second appeal was filed raising the following four substantial questions of law:

“A) Whether the issues framed by the Trial Court in a suit for permanent injunction holds good after the suit was amended as a suit for declaration?”



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B) Whether non-compliance of the order as to the further trial by a lower appellate court can be bypassed by a trial court?

C) Whether the trial court is right in rendering a finding that 'no additional evidence are necessary when there is a specific direction by the Lower Appellate court for further trial?

D) Whether a court can decide the law without permitting a party to let in evidence for relief of declaration, by holding that the evidence let in to prove injunction is sufficient to decide the case?"

The Learned Counsel appearing for the appellants raised an additional substantial question of law and the same is extracted hereunder:

“When the Ex.A2 to A4 clearly proves the suit property as private pathway and when the same is confirmed in Ex.A8, the parent document of the plaintiffs, in such circumstances, whether the disputed pathway can be termed as public pathway?”

4. The facts of the case are that the larger extent of the property was sold after sub-dividing. The plots were sold along with the private pathway which is the exclusive pathway for the row houses consisting of 8 houses, i.e., 4 houses in each row. The plaintiffs are claiming the 8 feet road alone to be the private



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pathway which is ingress and egress to the houses which are situated in the said lane. While the houses were sold, the plaintiffs had purchased the same along with pathway which is shown as private pathway in their sale deeds and it was never ever used as public as pathway. In Ex.A2 while stating the boundaries, it is stated that the plaintiffs' property is on the northern side of 8 feet road attached to the property. Further, it also states that the land is situated on the southern side of Patta Sankaran Vagaira's land and common lane. The relevant portion is extracted hereunder:

“ பட்டச் சங்கரன் வகையா சொத்திற்கும், பொதுச் சந்திற்கும் --- தெற்கு

தாங்கள் ஏற்கனவே கிரையம் பெற்ற கடைக் கட்டிடத்திற்கும்
பொதுச்சுவருக்கும் --- கிழக்கு

தபசில் சொத்திற்கும் பாத்தியப்பட்ட 8 அடி அகல
சொந்தப் பாதைக்கும் --- வடக்கு

என் மேற்பார்வையிலுள்ள நிலத்திற்கும் --- மேற்கு ”

The document speaks of two things, one is “**common lane**” and another is “**exclusive pathway**”. When the document speaks of exclusive pathway then the same ought to be treated as exclusively pathway and it cannot be treated as common pathway. Likewise it is stated in the ExA3 and Ex.A4 also which are the



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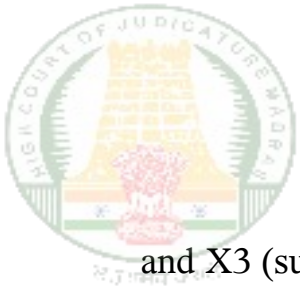
sale deeds belonging to the plaintiffs.

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5. To further substantiate this, the plaintiffs had relied on Ex.A8 which is the parent document for the plaintiffs' sale deeds Ex.A2, Ex.A3 and Ex.A4. In Ex.A8, it is stated that the property is situated on the East of 30 feet road namely P.S.S.Chinnagurusamy Nayakar Road. It is also stated in the Ex.A8 that within the said four boundaries the 10 feet land is left for pathway. The relevant portion is extracted hereunder:

“ரோசல்பட்டி கிராமம் மல்லாங்கிணர் ரோடுக்கு வடபுரம் பாண்டியன் நகரில் ஷை கிராமம் பைமாஷ் நம்பர் 345, 352-க்கு புது சர்வே நம்பர் 9/2 லட்டர் புஞ்சை ஏக்கர் 7 கொண்டு 12-ல் தெற்கில் புஞ்சை ஏக்கர் 2 செண்டு 72ல் கீழ்புரம் செண்டு 88ல் பாண்டியன் நகரில் பிளாட் 12A புஞ்சை செண்டு 6 2/3 க்கு குளி 20க்கு மால் அளவுகள் விபரம் 12B பிளாட் ஆ.ச.ரா.சௌந்திரபாண்டியன் நிலத்திற்கும் வடக்கு ஷை ஆ.ச.ரா.சௌந்திரபாண்டியன் 13-வது பிளாட் நிலத்திற்கும் தெற்கு P.S.S.சின்னக்குருசாமி நாயக்கர் பெயரால் உள்ள 30 அடி அகலமுள்ள ரோட்டிற்கும் கிழக்கு மீனாட்சியம்மாள் நிலத்திற்கும் ஓடைக்கும் மேற்கு. இந்த நான்கு மாலுக்குள் மேல்புரம் பாதைக்காக விடப்பட்டிருக்கிற 10 பத்து அடி நிலம் சேர்த்து வடபுரம் கிழமேல் அடி 101 நூற்றுஒன்று தென்புரம் கிழமேல் அடி 100 நூறும் கீழ்புரம் மேல்புரம் தென்வடல் அடி 29 இருபத்தொன்பதும் ஷை நம்பர் நிலத்திலிருக்கிற குடிதண்ணீர் கிணற்றில் தண்ணீர் எடுத்துக்கொள்ளும் பாத்தியமும்”

6. Both the Courts have relied on Ex.X1 ('A' Register), Ex.X2 (10(1) Patta)



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and X3 (survey sketch) and has come to the conclusion that it is a public pathway and had dismissed the suit. But both the Courts have not considered the contents of the sale deeds Ex.A2 to Ex.A4 and the parent document Ex.A8. It is seen that the parent document was executed on 07.09.1974, wherein it stated that the Nanja land having larger extent of 7 acres 12 cents was subdivided, wherein in southern side 2 acres 72 cents was again sub divided, wherein in eastern side 88 cents was divided into plots and named as Pandian Nagar, wherein Plot No.12B admeasuring 6 2/3rd cents (20 kuli) of land and the said land is surrounded by four boundaries. From the above description, it is evident that the land was used for agricultural purpose and subsequently, the land was sub divided as house plots. In such circumstances, there cannot be any road when the land was used for agricultural activities. It is only after sub division as housing plots, a portion of the land was left for road. Even in the said Ex.A8, it has been stated that 10 feet land is left for pathway, which means the road is left out for granting access to the houses. The said 6 2/3 cents land was used to put up construction, the parties have put up eight row houses (four houses in each row). After putting up construction the houses were sold along with the exclusive pathway to the parties. In the said sale deed, it has been specifically stated that the houses are having exclusive right to the access pathway. The phrase that is used in the sale deed is that “தபசில் சொத்திற்கும் பாத்தியப்பட்ட 8 அடி அகல சொந்தப் பாதைக்கும் --- வடக்கு”. From the



above narration it is evident that the alleged pathway is only the private pathway and not common pathway. This is further substantiated by the deposition of D.W. 3, who is the Village Administrative Officer, wherein he had stated that he is not aware of the nature of the property prior to 1982 and further stated that he is not aware of how the land was converted as road, on what proceedings the land was converted as road. Further in the alleged road there is no common street light, no drainage, no drinking water line. When the Village Administrative Officer had stated that he is not aware how the road was formed, then it can be stated that the road was not formed by the Government or the local bodies. Further when the property was developed as housing plots by private parties who had left a pathway for access to particular houses, then the same cannot be stated as common pathway.

7. The evidence of P.W.2 (independent witness), who lives in nearby V.O.C. Street, states that the suit pathway is not common pathway but in cross examination he had deposed that he has no independent knowledge about the pathway and the Courts below had rightly rejected his witness.

8. However the Courts below had relied on D.W.5 (independent witness) who lives in nearby V.O.C. Street, has stated that the suit pathway is common



pathway. But in cross examination he has stated that he is involved in the sale of suit property to 4th plaintiff. Even though he denied that he had encroached upon the “vari”, which was used as pathway by the common public, hence his witness cannot be taken since he is an interested witness. The Trial Court has taken into consideration of the oral evidence of DW 5 alone and has come to the conclusion that the general public is using the suit pathway as common pathway.

9. As started supra the Trial Court without referring to Ex.A2 to A4 (sale deeds) and Ex.A8 (parent documents) and without noticing the fact how the pathway was formed had come to the conclusion that the suit pathway is common pathway. From Ex.A2 to Ex.A4 and Ex.A8, it is clear that the suit pathway is only a private pathway and it can never be a public pathway. The pathway is granting ingress and egress to the row houses. Therefore, the substantial questions of law and additional substantial question of law are answered in favour of the appellants / plaintiffs.

10. Hence, the second appeal is allowed setting aside the impugned judgment and decree rendered by the Trial Court and the First Appellate Court. The Panchayat (respondent herein) is restrained from laying any road in the suit schedule private pathway.



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11. With the above said observations, the second appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. Subordinate Judge, Virudhunagar.
2. District Munsif Court, Virudhunagar.
3. The Panchayat President,
Rosalpatti Panchayat Office,
Pandian Nagar,
Virudhunagar Taluk,
Virudhunagar District.
4. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.405 of 2017

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