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S.A.No.606 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.606 of 2021

and

C.M.P.No.12690 of 2021

1.M.Rangasamy
2.R.Balakrishnan
3.R.Shanmugam

... Appellants/Defendants

Vs

P.Manikandan

... Respondent / Plaintiff

Prayer: Second Appeal is filed under Section 100 of C.P.C against Common Judgment and Decree dated 21.01.2021 made in A.S.No.12 of 2019 on the file of the Subordinate Judge, Paramathi, reversing the Judgment and Decree dated 13.02.2019 made in O.S.No.141 of 2009 on the file of the District Munsif Court, Paramathi.



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For Appellants : Mr.S.Senthil

For Respondent : Mr.T.L.Thirumalaiaamy

JUDGMENT

The defendants are the appellants before this Court. They seek to challenge the judgment and decree of the learned Subordinate Judge, Paramathi in A.S.No.12 of 2019 in and by which the learned Judge has reversed the judgment and decree of the learned District Munsif, Paramathi in O.S.No.141 of 2009.

2. The brief facts which are required to dispose of the above second appeal are as follows: The parties are referred to in the same ranking as before the trial Court.

3. The plaintiff had filed the above referred suit for declaration in



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respect of the second item of the suit schedule property and for consequential injunction and directing the defendants to handover the vacant possession of the second item of the suit property in which they have been dumping waste articles.

4. It is the case of the plaintiff that the suit properties consist of two items of properties. There is no quarrel with reference to the first item of the suit property and it is only the second item of the suit property which is the subject matter in dispute.

5. The plaintiff's case is that he had purchased the first item of the suit property under a registered sale deed dated 14.05.2008 and the second item of the suit property on 10.08.2009 under a registered sale deed. The plaintiff had annexed plan along with his plaint and the disputed second item of the suit property has been described as P1. The plaintiff would submit that the defendants, with an intent to



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interfere with the plaintiff's possession of the second item of the property, had attempted to walk across the small foot path in the property which is shown as M1 and M2 in the plaint plan. He had also attempted to encroach into the property shown as P1 by dumping cow dung and waste articles. This was successfully prevented by the plaintiff with the help of his neighbours. However, the defendants have been giving out that they would trespass into the suit properties. Therefore, the plaintiff has come forward with the above suit.

6. The written statement filed by the 2nd defendant was adopted by the other respondents. The respondents had, at the outset, denied the allegations contained in the plaint. They would further submit that the plaintiff has not described as to how the patta has been granted to the plaintiff's vendor in respect of the second item of the suit property and the defendants had gone on to state that the suit has been filed in respect of the property over which the plaintiff has no right and in



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respect of which he has managed to obtain patta. It is the case of the defendants that the suit second item of property is a poromboke property and the plaintiff cannot seek a declaration in respect of the same. He would further submit that the pathway which has been described in the second item of the suit property is the pathway through which the defendants have access to his property on the north and his pipeline is also embedded under this pathway. Therefore, he would submit that the property being a poromboke land, the plaintiff cannot seek a right over the same.

7. The trial Court had framed the following issues:

“1. தாவா சொத்துக்களானது வாதியின்

சட்டப்படியான அனுபவத்திலும் உடமையிலும் உள்ளதா?

2. தாவா 2வது அயிட்ட சொத்தானது பிரதிவாதி

எதிர்வழக்குரையில் கூறியுள்ளவாறு புறம்போக்கு நிலமா?

3.பிரதிவாதி தன்னுடைய எதிர்வழக்குரையில்



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கூறியுள்ளவாறுபோல் எதிர்வழக்குரை மாதிரி வரைபட ஒ1இ
ஒ2 பகுதியில் நீடானுபோக உரிமை பிரதிவாதிகளுக்கு
ஏற்பட்டுள்ளதா?

4. தாவா சொத்தை பொறுத்து
வாதிகோரியுள்ள நிரந்தர உறுத்துக்கட்டளை பரிகாரம்
வாதிக்கு கிடைக்கத்தக்கதா?

5. வாதிகளுக்கு கிடைக்கத்தக்க இதர
பரிகாரங்கள் என்ன?

8. On 21.08.2017, the following additional issue was framed.

தாவா 2வது அயிட்ட சொத்தை பொறுத்து வாதி
கோரியுள்ள விளம்புகை மற்றும் சுவாதீன பரிகாரம் வாதிக்கு
கிடைக்கத்தக்கதா?

9. On considering the pleadings, the issues were re-framed as follows:

“1. தாவா 2வது அயிட்ட சொத்தை பொறுத்து



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வாதி கோரியுள்ள விளம்புகை மற்றும் சுவாதீன

பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?

2. தாவா சொத்தை பொறுத்து வாதிக்கோரியுள்ள

நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வாதிக்கு

கிடைக்கத்தக்கதா?”

10. The plaintiff had examined three witnesses and marked Exs.A1 to A6. The defendants had examined four witnesses and marked Exs.B1 to B4. The Commissioner's report and plan has been marked as Exs.C1 and C2.

11. The trial Court held that the second item of the suit property was a poromboke land and the plaintiff has not been able to establish as to how his predecessor-in-title had obtained patta in respect of the second item of the suit property. The learned Judge has held that the plaintiff is not entitled to injunction or recovery of possession. The suit



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was dismissed. Challenging the said judgment and decree, the plaintiff had filed A.S.No.12 of 2019 on the file of the Subordinate Court, Paramathi. The learned Judge, on going through the evidence, held that the plaintiff has produced the Ex.A4-patta to show his possession and right over the second item of the suit property. The lower appellate Court would take note of Ex.A6-patta filed by the plaintiff, which stands in the name of his predecessor-in-title. The plaintiff's vendor in the sale deed-Ex.A2 claimed that the property belongs to him under a patta and the lower appellate Court held that the plaintiff's vendor has the right to convey the second item of the suit property. The defendant has taken out a plea that it is a conditional patta which cannot be transferred and that by selling it, the conditions had been violated. On considering the measurements given in the Commissioner's report-Ex.C1 and C2, the lower appellate Court has come to the conclusion that the plaintiff is entitled to the decree as prayed for. Therefore, the appeal was allowed and the judgment and the decree was set aside.



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Challenging the same, the defendants are before this Court.

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12. Heard the learned counsel on either side and perused the materials available on record.

13. The plaintiff had purchased the suit second item of property under a registered Sale Deed dated 10.08.2009-Ex.A2. The recitals in the sale deed would indicate that the vendor, Vannikoundar had sold the property to the plaintiff stating that the patta has been mutated in his name in patta No.234 which has been marked as Ex.A4. The second item of the suit property consisted of a pathway in which he has fixed his pipeline and he has been using as the pathway for over so many years and therefore acquired a prescriptive title over the same. A perusal of plaint plan and the Advocate Commissioner's plan would clearly show that the defendants have access directly to the road on the western side of his property and there is no necessity for him to walk



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through the property of the plaintiff. The patta, having been granted to the plaintiff's predecessor-in-title, clearly states that that they are in possession and enjoyment of the same. The defendants have not produced any document to show their possession of the property in question. That apart, under Ex.B1, the defendants have been granted the right of access from the poromboke road and there is no reference to this alleged pathway, which the defendants now claim in the second item of property. The Advocate Commissioner's report would show the existence of the road abutting the plaintiff's property. Therefore, there is absolutely no necessity for the defendants to enter the second item of property to reach his property on the north. The defendants have not sought any right by grant on necessity but would only state that he has obtained a right through prescription. However, the defendants have not let in any evidence to prove his right to the pathway in the property as P1 in the plaint plan. It is also informed that pending the suit, the defendants were directed to remove the waste



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articles from the property, which he has also done. The plaintiff has not proved his right to the property through Exs.A1, A2 and A4. The

lower appellate Court was in error in coming to the conclusion that the plaintiff has not proved his right to the second item of the suit property and the plaintiff has not produced any document to show their right to the alleged pathway in the second item of the suit property. The defendants have not produced any document whatsoever to show their usage or right to the second item of the property. The plaintiff, on the other hand, has produced Exs.A2 and A4. Therefore, the substantial questions of law raised are held against the defendants and the second appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

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Index: Yes/No

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Speaking order/non-speaking order
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To

1. The Subordinate Judge, Paramathi,
2. The District Munsif Court, Paramathi.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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P.T.ASHA, J.,

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