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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 30 / 10 / 2024

JUDGMENT PRONOUNCED ON : 05 / 11 / 2024

CORAM

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.2 OF 2021

1.K.Shanmuga Mudaliar

2.V.Mahendaran

...

Appellants / Appellants /
Plaintiffs

Vs.

1.N.Ramalingam (Died)

2.R.Raju @ Saravanan

3.Premalatha

4.Uma Maheswari

(R1 Died – RR3 & 4 are brought
on record as LRs' of the deceased

R1 vide Court order dated 12.02.2024

made in CMP Nos.29339, 29343 &

29344 of 2023 in S.A.No.2/2021)

...

Respondents / Respondents /
Defendants

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908 praying to set aside the Judgment and Decree dated November 4, 2019 passed in A.S.No.26 of 2018 on the file of Additional Subordinate Court, Tiruppur, whereby the Judgment and Decree dated April 20, 2018 passed in O.S.No.326 of 2009 on the file of District Munsif Court, Tiruppur was confirmed.



For Appellants : Ms.D.Chitra Maragatham
For Respondent 1 : Died – Steps taken
For Respondents 2 to 4: Ms.T.Sudha Gandhi

J U D G M E N T

This Second Appeal is directed by the unsuccessful plaintiffs.

Challenge is to the Judgment and Decree dated November 4, 2019 passed in A.S.No.26 of 2018 on the file of ‘Additional Subordinate Court, Tiruppur’ [‘First Appellate Court’ for short], whereby the Judgment and Decree dated April 20, 2018 passed in O.S.No. 326 of 2009 on the file of ‘District Munsif Court, Tiruppur’ [‘Trial Court’ for short] was confirmed.

2. Hereinafter, for the sake of convenience, the parties will be denoted as per their array in the Original Suit.

Plaintiffs’ Case in Brief:

3. In the Plaint it is averred that the plaintiffs are the absolute owners of house properties bearing Door Nos. 405 and 406. The second plaintiff is the son of the first plaintiff’s brother. An open triangular space on the southern side of Door No. 405 serves as the plaintiffs’ front yard



and pathway, and constitutes the Suit Property. The Suit Property is a Natham land bounded by the house of Palanisamy Mudaliar on the west, an East-West Street on the south, and the first plaintiff's property on the north and the east. The plaintiffs have continuously and peacefully been in possession and enjoyment of the Suit Property for over 80 years without any interference.

3.1. The defendants, who are father and son, reside on the east side of the plaintiffs' house properties and the Suit Property. They have no legal rights over the Suit Property. With intent to usurp the Suit Property, one Sivabagiam attempted to obtain a Patta in her favour on January 25, 2006. However, the first plaintiff prevented this attempt by submitting representations to the Tiruppur Tahsildar and the Village Administrative Officer of Veerapandi Village. Over the past two years, the defendants have similarly sought to obtain Patta for the Suit Property multiple times but the attempts were all thwarted by the plaintiffs. On September 25, 2009, the defendants trespassed into the Suit Property and attempted to remove trees planted by the plaintiffs. The plaintiffs resisted this trespass, and then the defendants lodged a complaint with the local police against the plaintiffs. Hence, the Suit for permanent injunction and



costs.

Defendants' Case in Brief:

4. The first defendant filed Written Statement and the same was adopted by second defendant. The defendants admit the relationship between the parties. They aver that the Suit Property does not belong to the plaintiffs. It was originally ancestral property of one Sivathal alias Sivabagiavathy. The second defendant purchased the Suit Property from the said Sivabagiavathy for consideration vide Sale Deed dated July 17, 2006. Since then the defendants have been in actual possession and enjoyment of the Suit Property by putting some wooden articles in the Suit Property.

4.1. It is further averred that the plaintiffs sought to purchase the Suit Property from the said Sivabagiavathy before the said Sale, and the same was unsuccessful. Thereafter, they sought to purchase from the defendants who also declined. Aggrieved plaintiffs set ablaze the wooden articles. Hence, the defendants filed a complaint at Police Station, where during investigation the plaintiffs agreed not to disturb the defendants any more. This Suit filed thereafter is a false, frivolous and a vexatious one.



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Accordingly, they prayed that the Suit shall be dismissed.

Trial Court:

5. At Trial, on the side of the plaintiffs, the first plaintiff examined himself as P.W.1 and marked Ex-A.1 to Ex-A.6; J. Sundarapandiyan, Village Administrative Officer of Veerapandi Village was examined as P.W.2 and Ex-X.1 and Ex-X.2 were marked through him. On the side of the defendants, the first defendant examined himself as D.W.1 and one Kumar, Village Administrative Officer, Veerapandi Village was examined as D.W.2. Ex-B.1 to Ex-B.14 were marked.

5.1. Upon hearing both sides and considering the oral and documentary evidence, the Trial Court concluded that the plaintiffs have not proved their possession and enjoyment of the Suit Property; and that the plaintiffs have not produced any documents to establish their title over the Suit Property. Accordingly, Trial Court dismissed the Suit without costs.

First Appellate Court:

6. Aggrieved by the dismissal, the plaintiffs approached the



First Appellate Court by way of an appeal under Section 96 of the Code of Civil Procedure, 1908. The First Appellate Court upon hearing both sides and analysing the oral and documentary evidence, concluded that the plaintiffs neither proved their title nor pleaded and proved the alleged easementary right of pathway over the Suit Property. Accordingly, it concurred with the findings of the Trial Court and dismissed the appeal.

Substantial Questions of Law:

7. Aggrieved with the Judgment and Decree of the First Appellate Court, the plaintiffs preferred this Second Appeal and the same was admitted on February 15, 2021 on the following Substantial Questions of Law:

“(a) Whether the suit property is Natham pathway as admitted by P.W.2, the Village Administrative Officer, patta not issued to anyone since it is a pathway.

(b) Whether the Additional Subordinate Judge is right in dismissing the suit?

(c) Whether the Judgement of the Lower Appellate Court is perverse and vitiated for failure to consider the oral and documentary evidence in proper perspective?”



Arguments:

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8. Ms.D.Chitra Maragatham, learned Counsel for the appellant / plaintiffs would argue that the Suit Property is comprised in Survey No.697/6 and situated on the southern side of the plaintiffs' house properties which are in Survey No.696/6. The plaintiffs are using the Suit Property as a front yard and as a pathway to access their houses. The defendants have no right or title in the Suit Property. Though the plaintiffs claimed possessory title in the Plaint, they prayed the First Appellate Court to mould the relief and grant permanent injunction restraining the defendants from obstructing the plaintiffs from using the Suit Property as a Pathway. The evidence of P.W.1 and P.W.2 coupled with the documentary evidence of Ex-X.1 and Ex-X.2 would establish that the entire extent of Survey No.697/6, which includes the Suit Property, is a Natham Pathway in which the plaintiffs have right to use pathway. The defendants have no right to restrict the plaintiffs from using the Pathway. Accordingly, she would pray to allow the Second Appeal and grant relief of permanent injunction by moulding the prayer.

9. In response to the above arguments, Ms.T.Sudha Gandhi, learned Counsel for the respondents / defendants would argue that the Suit



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Property was originally owned by one Sivabagiavathy and later sold to the second defendant vide Ex-B.2 - Sale Deed dated July 17, 2006. The defendants are in possession and enjoyment of the Suit Property. The plaintiffs attempt to interfere with the same. The plaintiffs have no right or title over the Suit Property. The Trial Court and the First Appellate Court rightly appreciated the evidence and dismissed the Suit. There is no need to interfere with the said findings. Accordingly, she would pray to dismiss the Second Appeal and confirm the Judgment and Decree of the First Appellate Court.

Discussion:

10. This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

11. In this case, the plaintiffs examined Mr.J.Sundarapandy, Village Administrative Officer of Veerapandi Village as P.W.2 as official witness on November 20, 2013 and through him Ex-X.1 and Ex-X.2 were marked. Ex-X.1 is the Field Measurement Book (FMB) for Survey No.696, and Ex-X.2 is Field Measurement Book for Survey No.697.



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Thereafter, the defendants examined Mr.P.Kumar, Village Administrative Officer of Veerapandi Village on January 27, 2017 as D.W.2.

12. P.W.2 in his evidence has deposed that Survey No.696/6 stands in the name of Plaintiff No.1; and that as per records, entire extent of Survey Nos.697/6 is Natham Pathway. In this regard, D.W.2 has deposed along the lines of P.W.2. This Court has perused Ex-A.1-Natham Chitta, Ex-X.1 & Ex-X.2. Ex-A.1 shows that Survey Nos.696/6, 696/8, 696/9 and 696/4 are Natham Land and Survey No.696/6 stands in tehname of 1st plaintiff. Exs-X.1 and X.2 are FMBs' as stated *supra*. Oral evidence of P.W.2 & D.W.2 are in consonance with Ex-A.1, Ex-X.1 and Ex-X.2 documents. Cumulative reading of the evidence of P.W.2 and D.W.2 along with Ex-A.1, Ex-X.1 and Ex-X.2 documents would show that Survey No.109 was bifurcated into Natham Survey Nos.691 to 708 and Government assessed tax under the Natham Land Tax Scheme in the year 1992. That is to say the Suit Property which is in Survey No.697/6 was originally a Patta Land and later it was converted into a Natham Land. D.W.1 in his evidence has admitted the aforesaid facts. Hence, no doubt that since 1992, Survey No.697/6 (Suit Property) stands as Natham Pathway. Relevant portion of D.W.1's evidence reads thus:



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“ . . .1992ம் ஆண்டே கயித்தமலை முதலியார் மக்களுக்கு பட்டா வழங்கப்பட்ட விவரம் எனக்கு தெரியுமா என்றால் 1992ம் ஆண்டே நத்தம் பட்டா கொடுக்கப்பட்டுவிட்டது கயித்தமலை முதலியார் மகன்கள் பட்டா வாங்கியிருக்க மாட்டார்கள் என்று நான் நினைத்துக் கொண்டேன். 1992ம் ஆண்டு எனக்கு நத்தம் பட்டா வழங்கப்பட்டது என்றால் சரிதான். 1992ம் ஆண்டே இடுவம்பாளையம் கிராமத்திலுள்ள நத்தம் நிலங்களுக்கு பட்டா வழங்கப்பட்டுவிட்டது என்றால் சரிதான். இடுவம்பாளையம் கிராம மக்களுக்கு கொடுக்கப்பட்ட நத்தம் பட்டா முறையாக அரசு தாளில் வெளியிடப்பட்டது என்றால் சரிதான். கயித்தமலை முதலியார் மகன்களுக்கு பட்டா கொடுத்ததை ஆட்சேபனை செய்து நாளது தேதிவரை மனு செய்தேனா என்றால் இல்லை. நத்தம் பட்டா வழங்குவதற்கு முன்பு முறையாக அங்கு அனுபவம் செய்தவர்களுக்கு அரசு அறிவிப்பு கொடுத்தது என்றால் சரிதான். பி.தா.சா.ஆ.2 கிரயப்பத்திரத்தில் தான் கிரயம் பெற்றதாக சொல்லும் க.ச.எண்ணில் உட்பிரிவு குறிப்பிடப்பட்டுள்ளதா என்றால் இல்லை. பி.தா.சா.ஆ.2 சொத்து விவரத்தில் க.ச.எண்.696/6 மற்றும் 697/6 என குறிப்பிட்டு சொல்லப்படவில்லை என்றால் சரிதான். க.ச.எண்.696/6க்கு தென்புரத்தில் க.ச.எண்.697/6 உள்ளது என்றால் சரிதான். க.ச.எண்.696/6க்கு தென்புரம் க.ச.எண்.697/6 வீதி என்றும் அதற்கு யார் பெயரிலும் பட்டா வழங்கப்படவில்லை என்றால் சரிதான். க.ச.எண்.697/6 ஆனது வீதியாக உள்ளதால் அதில் நான் எவ்வித உரிமையும் கோரமுடியாது என்றால் சரியல்ல.”



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13. The defendants claim title to the Suit Property vide Ex-

B.2 - Sale Deed dated July 17, 2006. This Court has perused the same.

Under Ex-B.2, one Sivabagiavathy sold the Suit Property to the second defendant in the year 2006. The twist here is that the Suit Property was sold to the defendants in the year 2006 *i.e.*, after it was converted into a Natham Pathway in the year 1992. The question of validity of Ex-B.2 - Sale Deed cannot be dealt with in this case and is left open.

14. With the evidence available on record, this Court can treat the Suit Property situated in Survey No.697/6 only as a Natham Pathway. The plaintiffs' house properties situated in Survey No.696/6 abut the northern side of Survey No.697/6. P.W.1 in his evidence has deposed that he is using the Suit Property as a front yard. Survey No.697/6 being a Natham Pathway, the plaintiffs are entitled to use the Suit Property, which is comprised in Survey No.697/6, as a pathway but not as a front yard or anything else. Neither the plaintiffs nor the defendants have any right to obstruct the pathway by planting trees, putting wooden articles or stones, or by doing anything of that sort. A Pathway must remain a Pathway. The defendants have no right to restrict the plaintiffs from using the Suit Property as pathway for ingress and egress to his house properties.



15. The plaintiffs claimed injunction based on possessory title as if they are in possession and enjoyment of the Suit Property before the Trial Court and hence, the Trial Court dismissed the Suit. At appeal before the First Appellate Court, the plaintiffs prayed to mould the relief and grant permanent injunction restraining the defendants from obstructing the plaintiffs from using the Suit Property as a Pathway to their house properties. The First Appellate Court did not accept the same and dismissed the appeal. This Court is of the view that the Plaint Prayer can be moulded and there is no impediment to grant limited injunction against the defendants not to obstruct the plaintiffs' usage of the Suit Property as a Pathway for the purpose of accessing their house properties situated in Survey No.696/6, until and unless the defendants establish their title or right, if any, over the Suit Property before the Court of law.

Conclusion:

16. As narrated above, as per the available records, the Suit Property is a Natham Pathway, however subject to the defendants proving their title or right, if any. The First Appellate Court exercised its discretion to conclude that the Plaint Prayer cannot be moulded in the absence of



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sufficient pleadings and evidence. Though it is incorrect, it cannot be termed as perverse or vitiated. Substantial Questions of Law are answered accordingly.

17. Resultantly, the Second Appeal stands partly-allowed in the following terms:

- (a) The plaintiffs are hereby granted the relief of limited injunction restraining the defendants, their agents and men from obstructing the plaintiffs from using the Suit Property as a pathway, till the defendants prove their title or right, if any, over the Suit Property before the competent Court of law;
- (b) Needless to mention, a Pathway has to be maintained as a Pathway. Neither the plaintiffs nor the defendants can obstruct the Pathway by planting trees, putting wooden articles, debris, stones or by doing any act of that nature;



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- (c) The defendants are at liberty to file a Suit for declaration in respect of the Suit Property;
- (d) If any such Civil Suit is filed by the defendants, the same shall be decided on its own merits in accordance with law, untrammelled and uninfluenced by the observations and findings of this Court;
- (e) Considering the facts and circumstances, there shall be no order as to costs;

05 / 11 / 2024

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

To

1.The Additional Subordinate Court
Tiruppur.

2.The District Munsif Court
Tiruppur.



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