



S.A.No.908 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

JUDGMENT RESERVED ON : 19 / 09 / 2024

JUDGMENT PRONOUNCED ON : 20 / 12 / 2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.908 OF 2018

Smt.Subbulakshmi	...	Appellant / Respondent / Plaintiff
Vs.		
1.Saravanan	...	1 st Respondent / 1 st Appellant / 1 st Defendant
2.Jayagandhi	...	2 nd Respondent /2 nd Appellant/ 2 nd Defendant
3.Raja	...	3 rd Respondent/2 nd Respondent / 3 rd Defendant
4.Deivanai	...	4 th Respondent/3 rd Respondent / 4 th Defendant
5.Vadivel	...	5 th Respondent/4 th Respondent / 5 th Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated



S.A.No.908 of 2018

February 2, 2016 made in A.S.No.32 of 2014 on the file of the Sub Court, Dharmapuri, setting aside the Judgment and Decree dated February 28, 2014 made in O.S.No.182 of 2007 on the file of the District Munsif Court, Dharmapuri.

For Appellant : Mr.T.V.Krishnakumar
for M/s.K.Sathiyamurthi
For Respondents : Served – No appearance

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated February 2, 2016 passed in A.S.No.32 of 2014 by the 'Sub Court, Dharmapuri,' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated February 28, 2014 passed in O.S.No.182 of 2007 by the 'District Munsif Court, Dharmapuri' ['Trial Court' for brevity] was reversed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. The plaintiff purchased the entire extent of 2 Acre 10 Cents in Survey No.610 vide Ex-A.1 – Sale Deed dated December 31, 1979. Then she executed Ex-A.2 - Sale Deed dated August 7, 1995 in favour of 6th defendant – Rajammal conveying 1000 sq. ft. of vacant land within



S.A.No.908 of 2018

specific boundaries. The said 1000 sq. ft. vacant land is bounded by Bangalore-Salem Adhiyamaan Bypass Road on the east and the plaintiff's land on all the other three sides. In Ex-A.2, it has been specifically mentioned that, the 1000 sq. ft. vacant land can very well be accessed from Bangalore-Salem Adhiyamaan Bypass Road.

3.1. The defendants 1, 3 and 5 are sons of 6th defendant. 2nd defendant is the wife of 1st defendant. 4th defendant is the wife of 3rd defendant.

3.2. The defendants partitioned the 1000 sq. ft. property. The plaintiff filed Ex-A.5 – Plaint Plan. The portion marked as 'A' therein was allotted to 1st and 2nd defendants in the said partition and 'B' marked portion therein was allotted to 3rd and 4th defendants. Portion marked as 'C' therein was allotted to 5th defendant.

3.3. While so, defendants approached the plaintiff offering her to purchase the Suit Property which is situate on the southern side of the said 1000 sq. ft. property. The plaintiff declined the same, which developed some dispute between plaintiff and defendants.



S.A.No.908 of 2018

3.4. The defendants are having right of pathway through Bangalore-Salem Adhiyamaan Bypass Road. But, in 2007, defendants 1 and 2 constructed a door entrance on the southern side of the portion marked as 'A' in the Complaint Plan, facing the Suit Property, with a view to access their property via the Suit Property. The defendants 1 and 2 have no right to reach their property through the Suit Property. Further defendants 1 and 2 refused to close the door denying plaintiff's title over Suit Property. The defendants 3 and 4 also attempted to open a door, facing Suit Property, in the portion marked as 'B' in the Complaint Plan on May 4, 2007.

3.5. Hence the Suit for declaration of title, mandatory injunction to close the door opened by the defendants 1 and 2 as well as permanent injunction against the defendants from interfering with plaintiff's peaceful possession and enjoyment of the Suit Property.

DEFENDANTS' CASE

4. The defendants filed written statement contending that the Suit Property is a common Cart Track and therefore, the defendants are



S.A.No.908 of 2018

entitled to open a door to access their property using the common Cart Track. In an earlier Suit proceedings between the plaintiff, defendants and a third party, an Advocate Commissioner was appointed, whose Report corroborates the aforesaid facts. The plaintiff with a *mala fide* intention, purposely omitted to give right over the Suit Property under Ex-A.2, claiming defendants have direct access from North-South Highway. Accordingly, they prayed to dismiss the suit.

TRIAL COURT

5. At trial, plaintiff's husband - Radhakrishnan was examined as P.W.1, one Meignanamoorthy was examined as P.W.2, the Village Administrative Officer was examined as P.W.3 and Ex-A.1 to Ex-A.5 and Ex-X.1 to Ex-X.6 were marked on the side of the plaintiff. On the side of the defendants, the 1st defendant – Saravanan was examined as D.W.1, one Sekar was examined as D.W.2 and Ex-B.1 and Ex-B.10 were marked. An Advocate Commissioner was appointed in this case and his Report and Plan were marked as Ex-C.1 and Ex-C.2 respectively.

5.1. After full-fledged trial and upon hearing both sides, the Trial Court concluded that as per Ex-A.2 – Sale Deed, the 6th defendant



S.A.No.908 of 2018

has right of access from each and every point in Bangalore-Salem Adhiyamaan Bypass Road. The revenue records and Ex-A.1 - Sale Deed prove plaintiff's title over the Suit Property and hence he is entitled to the reliefs sought for. Accordingly, it decreed the Suit.

FIRST APPELLATE COURT

6. Feeling aggrieved, defendants 1 and 2 approached the First Appellate Court, which after hearing both sides and perusing the documents available on record, concluded that the plaintiff has sold other properties to third parties referring to the Suit Property as a pathway. Further, based on the Advocate Commissioner's Report and Plan (Ex-C.1 and Ex-C.2), it concluded that the Suit Property is not absolute property of plaintiff. Accordingly, it allowed the Appeal Suit and set aside the Judgment and Decree of the Trial Court.

SECOND APPEAL

7. Feeling aggrieved, the plaintiff has preferred this Second Appeal, which was admitted on January 4, 2019 on the following substantial question of law:

"1. Whether the Lower Appellate Court being the final



Court of fact is correct in law in ignoring vital and important evidence while reversing the well considered Judgment and Decree of the Trial Court?"

ARGUMENTS:

8. Mr.T.V.Krishnakumar, learned Counsel for the appellant/plaintiff would argue that First Appellate Court failed to consider the recitals found in Ex-A.2 – Sale Deed, wherein it is stated that the 6th defendant can access the property covered thereunder from Bangalore-Salem Adhiyamaan Bypass Road. The defendants cannot claim more than what has been conveyed under Ex-A.2. The Suit Property absolutely belongs to the plaintiff. Even while assuming that the plaintiff gave a right of way in Suit Property to third persons, the defendants have no locus to question the same. Advocate Commissioner's Report and Plan filed in the earlier Suit viz., Ex-B.7, helps the case of defendants in no manner. Further, the Advocate Commissioner appointed in this case exceeded his limits and noted that the Suit Property is a Cart Track. The Trial Court rightly appreciated the evidence and decreed the Suit. The First Appellate Court erroneously allowed the appeal and dismissed the Suit. Accordingly, he would pray to allow the Second Appeal, set aside the



S.A.No.908 of 2018

Judgment and Decree of the First Appellate Court, and confirm the

Judgment and Decree of the Trial Court.

9. Despite sufficient service, and name being printed on the cause list, none appeared on behalf of the respondents.

DISCUSSION:

10. This Court has heard the learned Counsel for the appellant and perused the materials available on record in light of the Substantial Question of Law.

11. The entire extent of Survey No.610 was originally owned by one A.G.Rasi Munisha Begum. On December 12, 1979, the plaintiff purchased the entire 2 Acre 10 Cents in Survey No.610 vide Ex-A.1 – Sale Deed. On August 7, 1995, the plaintiff sold an extent of 1000 sq. ft. of vacant land (50 feet East-West and 20 feet North-South) to 6th defendant – Rajammal. The property conveyed in Ex-A.2 is situated abutting the North-South Bangalore-Salem Adhiyamaan Bypass Road. Ex-A.2 specifies that the 6th defendant is given thereby a right of way to access the property covered thereunder from the said Bypass Road. It is relevant to



S.A.No.908 of 2018

extract the description of property under Ex-A.2 hereunder:

WEB COPY

'கிரயச் சொத்து விவரம்

தர்மபுரி டி தர்மபுரி 2 இணை சப்டி தர்மபுரி
தாலுக்கா விருபாட்சிபுரம் கிராமத்தில் எனக்கு கிரய
மூலியமாயும் தனிப்பட்ட மூலியமாயும் பாத்தியப்பட்டு
என்னுடைய தனிமையான சுவாதீன
அனுபவத்திலிருந்து வரும் சர்வே 610 பு.ஹெ.ஏ.
0.85.0க்கு தீ 0.92 இதில் இன்று நான் தங்களுக்கு
கிரயம் செய்யும் காலிமனைக்கு செக்குபந்தி விவரம்

அதியமான் ஐவேஸ் ரோடுக்கு மேற்கு
என்னுடைய இதர நிலங்களுக்கு வடக்கு (தெற்கு)
கிழக்கு இதன் மத்தியில் கிழமேலடி 50 தென்வடலடி
20 இதற்கு கூடிய சதுரடி 1000 உள்ள மனை நிலம்
பூராவும் ஷை காலி மனைக்கு ஷை அதியமான் பை-
பாஸ் ரோடு மூலம் போகவர நடைவழி பாத்தியமும்
மற்றும் சகலவிதமான பாத்தியம் உள்பட தான் ஷை
தொகைக்கு தங்களுக்கு சுத்தக்கிரயமும் இன்றே
சுவாதீனமும் செய்திருப்பது. . . . !

(Emphasis supplied)

12. Hence, the defendants cannot claim any right of way on the southern side of the property conveyed to them, via Suit Property. The defendants contended that the plaintiff does not have any land on the southern side of the property purchased by the defendants and that there is only an East-West Cart Track running from the Adhiyamaan Bypass Road.



S.A.No.908 of 2018

The said contentions are not valid. The reason being that, P.W.3 - Village

Administrative Officer of the Suit village marked Ex-X.1 to Ex-X.6. Ex-X.4 is the copy of 'Field Measurement Book' ['FMB' for short] relating to Suit Survey No.610. Ex-X.4 shows that the total extent of Survey No.610 is 0.85.0 Hectare. The said Survey number was originally sub-divided into Survey Nos.610/1A1, 610/1A2, 610/1A3, 610/1A4, 610/1A5, 610/1A6 and 610/1A7. Thereafter, in 2006, Survey No.610/1A6 was further subdivided into Survey Nos. 610/1A6A, 610/1A6B, and 610/1B.

13. Patta No.1951 issued in respect of Survey Nos.610/1A1, 610/1A3, 610/A5 and 610/A7 stands in the plaintiff's name. An extent of 0.1.5 Hectare in Survey No.610/1A7 is the Suit Property. Southern side of Survey No.610 is a different village by name '29 Thadangal Village'. Ex-X.7, which is a portion of combined village map of the Suit village, fortifies the above facts. Ex-X.2 - 'A' Register as well as Ex-X.3 - Adangal stands in the name of plaintiff. P.W.3 - Village Administrative Officer of the Suit Village has deposed that Survey No.610/1B stands in the name of plaintiff and two others. He has deposed that Survey No.610/1B, which is a house property, can be accessed only through the Suit Property. Further he has deposed that Survey No.610/1A7, as per



revenue records, is a vacant land.

WEB COPY

14. In this case, there nothing available on record to show the presence of any pathway in Suit Survey No.610/1A7 in the revenue records. The Advocate Commissioner in his Report and Plan (Ex-C.1 and Ex-C.2) has noted that Survey No.610/1A, measures North-South 21 meters and East-West 59 meters and that its width reduces to 14 ½ meters and then to 13 ¾ meters as it moves away from the Adhiyamaan Bypass Road. This measurement appears to be wrong in view of Ex-X.4 – FMB of Suit Survey No.610 as per which, Suit Survey No.610's total East-West measurement is itself only 31.2 meters. The plaintiff has rightly filed objection to Ex-C.1 and Ex-C.2 on November 12, 2013 stating that its actual East-West measurement is 50 feet and North-South measurement is 24 feet, and that it is totally an extent of 1200 sq. ft. of vacant land. Advocate Commissioner has stated in his Report that the Suit Property has traces of existence of a Cart Track. He has also noted that on the north side of the alleged Cart Track is the defendants' land; that 3rd defendant has constructed steps in the Suit Property (marked as 'F1' in Ex-C.2) as well as a staircase to reach his 1st floor (marked as F3 in the Ex-C.2). Purpose of Advocate Commissioner's Report is to show the physical



S.A.No.908 of 2018

features of the Suit Property. Hence, merely because the Advocate

Commissioner calls the Suit Property probably a Cart Track, it need not be

construed as such. Even while assuming the moment that the Suit Property

is being used as a Cart Track, the plaintiff is the absolute owner and the

defendants have no right in it, unless the plaintiff has dedicated the

property to the General public or has executed a Gift Deed in favour of

Panchayat or Municipality dedicating it for use as a pathway. The plaintiff

has not done so in this case. Whether the plaintiff conveyed right of

pathway in Suit Property to 3rd parties or not is not relevant to this Suit and

need not be dealt with here. The plaintiff proved that the Suit Property is

within Survey No.610 covered under Ex-A.1 – Sale Deed. The defendants

cannot question the act of the plaintiff allowing or disallowing the Suit

Property to others. The defendants have no right over the Suit Property.

The defendants can very well access their property from each and every

point in the Adhiyamaan Bypass Road. The defendants subsequently

divided the property into three portions. In such a Scenario, if they need

any pathway, it has to be arranged within their land from the Adhiyamaan

Bypass Road. They have no right to enter, or build steps, staircase or

anything for that matter, or use pathway, or encroach upon the Suit



S.A.No.908 of 2018

Property in any manner. The Trial Court rightly appreciated the evidence and decreed the Suit. The First Appellate Court relied on extraneous materials and erroneously dismissed the Suit. The same is liable to be interfered with. Substantial Question of Law is answered accordingly.

CONCLUSION:

15. Resultantly, the Second Appeal is allowed. The Judgment and Decree of the First Appellate Court is hereby set aside. The Judgment and Decree of the Trial Court is hereby restored. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs.

20 / 12 / 2024

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



WEB COPY



S.A.No.908 of 2018

R. SAKTHIVEL, J.

TK

To

1.The Subordinate Court
Dharmapuri.

2.The District Munsif Court
Dharmapuri.

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.908 OF 2018

20 / 12 / 2024