



S.A(MD)No.1459 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.12.2024

Pronounced on : 18.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

S.A(MD)No.1459 of 2004

1.Ponnammal
2.Pandit Motilal
3.John Kennedy
4.Arasumuthu
5.Rathnam Bai Ammal
6.Indira
7.Arumaiyammal

... Defendants /
Respondents /
Appellants

-Vs-

P.Subramania Nadar (Died)

... Plaintiff /
Respondent /
Appellant

2.Jeya

3.Velkani

4.Murugesan

5.Palani

***(R.2 to R.5 are brought on record as
LRs of the deceased sole respondent
vide order of this Court dated 02.04.2024
made in CMP(MD)Nos.1951, 1952 and
1954 of 2024)***

... Respondents



S.A(MD)No.1459 of 2001

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 03.12.2003 made in A.S.No.104 of 2002 on the file of Principal Sub Court, Tenkasi reversing the judgment and decree dated 22.11.2002 made in O.S.No.70 of 1998 on the file of the District Munsif Court, Sengottai (Previously O.S.No.581 of 1995 on the file of District Munsif court, Tenkasi) and dismiss the suit filed by the respondent.

For Appellants : Mr.P.T.S.Narendrarasan

For Respondents : Mr.N.GA.Natraj
for Mr.N.Ganagasabapathy
for R.2 to R.5

R.1 - Died

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree dated 03.12.2003 made in A.S.No.104 of 2002 on the file of Principal Sub Court, Tenkasi reversing the judgment and decree dated 22.11.2002 made in O.S.No.70 of 1998 on the file of the District Munsif Court, Sengottai (Previously O.S.No.581 of 1995 on the file of District Munsif court, Tenkasi) and dismiss the suit filed by the respondent.

2. The defendants in O.S.No.70 of 1998 on the file of District Munsif Court, Sengottai is the appellants herein. The respondent is the plaintiff.



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3. The case of the plaintiff is that the suit property originally belonged to one Madamuthu Nadar. He had purchased the property from one Ponnammal on 12.11.1931. Madamuthu Nadar had two sons, namely, Alagarsamy and Chokkalingam. These two persons got the suit properties from Madamuthu Nadar by sale deed dated 22.11.1963. Alagarsamy had a son, namely, Dinakaran and Chokkalingam had a son, namely, Muthuvijayan. Both of them jointly executed sale deed in favour of plaintiff on 30.12.1991. Thus, the plaintiff purchased the property in Survey No.136/2 to an extent of 3357.75 Sq.ft. Eastwest 33 feet and Southwest 101.75. On southern side, the defendants are enjoying their property. When the vendors of the plaintiff, namely, Dinakaran and Muthuvijayan are out of station, in the month of June 1991, the defendants unauthorisedly trespassed the property on the northern side and put up their northern entrance and thereby occupied on the southern side of the first schedule property which is showed as the second schedule property in the plaint. Therefore, the plaintiff filed the suit. The plaintiff filed rough sketch in these shown as first schedule A, B, C, D, E, F, G, H, J, K. The second item is shown as G, H, J, K and third item is shown as A, B, C, F, G, K and J.



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4. The defendants contested the suit and filed written statement. In the written statement, he denied the plaintiff's contention and disputed his ownership over the plaint schedule properties and further disputed the property in Vallam Village. The property in Survey No.136/2 not belongs to the plaintiff. The rough sketch attached with the plaint is false. The defendants purchased the properties in Survey No.27/2A8 and he explained it with rough sketch along with written statement. Kuthalinga Nadar @ Gunarathna Nadar enjoyed the property and he keep the northern portion as a pathway in Eastwest direction. It is shown in the rough sketch filed by the defendants. Before 31 years, the second schedule properties attached with the written statement had been converted into Panchayat Road and it is classified during resurvey as Survey No.27/2A5 and 27/3H. It is classified as street in the A-Register maintained by the Revenue Department. The defendants and their vendors purchased and enjoyed the properties on the southern side of the panchayat road. They also used the panchayat road in Survey No.27/2A5 and 27/3H for more than 31 years and thereby enjoyed their right to use the road. Patta was also granted in favour of the Tenkasi Panchayat Board for this public road. Through this road, electric connection and water connection have been given to the plaintiff as well as the defendants. Without mentioning the resurvey number, the



plaintiff filed the suit with false description. It is not maintainable. It is liable to be dismissed and thus, pleaded to dismiss the suit.

5. On the basis of the above said pleas set out by the respective parties, the following issues were framed by the Trial Court for consideration:

- “1. பிராது 3 – வது தபசில் சொத்து வாதிக்கும் பாத்தியப்பட்டு அவர் அனுபவத்தில் உள்ளது என்பது சரியா?
2. பிராது 2 – வது தபசில் சொத்து வாதிக்கும் பாத்தியப்பட்டு என்பது சரியா?
3. பிராது 2 – வது தபசில் சொத்தில் வாதி கேட்டுள்ள செயலுற்றுத் துக் கட்டளைப் பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?
4. வாதி கேட்டுள்ள சுவாதீனப்பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?
5. பிராது தபசில் சொத்துக்களுக்கும் இந்தப்பிரதிவாதிகளுக்கும் வழக்குமுலம் போய்யானது என்றும் பிரதிவாதிகளுக்கு வாதி கூடுதல் செலவுத்தொகை கொடுக்கவேண்டும் என்று சொல்வது சரியா?
6. 30.12.91 தேதியிட்ட தாவா சொத்துக்குரிய கிரைய ஆவணத்தில் கண்ட சொத்து விபரம் சரியானதில்லையா? ”

6. Before the trial Court, on the side of the plaintiff, the plaintiff examined himself as PW1 and also examined one Murugan as PW2 and marked 4 documents as Ex.A1 to Ex.A.4. On the side of the defendant, the second defendant examined himself as DW.1 and marked 15 documents as Ex.B1 to Ex.B15. Apart from that, Ex.C1 and Ex.C2.



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7. Upon considering the arguments of the counsel for the parties and based on the material on records, the trial Court dismissed the suit against the plaintiff. Aggrieved by this, the plaintiff filed an appeal in A.S.No.104 of 2002 on the file of Principal Sub Court, Tenkasi. The learned first appellate Judge set aside the judgment and decree of the trial Court and allowed the appeal and granted decree as prayed for in favour of the plaintiff. Aggrieved by this, the defendants preferred this Second Appeal before this Court.

8. This Court while admitting the Second Appeal framed the following substantial questions of law:

“1. Whether the appellants have acquired prescriptive right in relation to the passage shown as CFGD in Ex.A3 and forming part of the plaint III Schedule property?

2. Whether the lower appellate court erred in not properly considering and appreciating documentary evidence adduced viz. Exs.B4, B3, B10, B12 and B15, which according to the appellants would establish that the lane is a public lane owned by the Municipality?

3. Whether the respondent / plaintiff is entitled to maintain the suit when the document of title in favour of the plaintiff viz. Ex.A2 contains wrong description?”



9. The learned counsel appearing for the appellants submitted the judgment and decree of the first appellate Court is against the law and facts of this case. Further contended that first appellate Court failed to see the fact that the plaintiff did not file any document to show his enjoyment over the property which was purchased by him as per his sale deed. Further contended that the first appellate Court not properly considered the documents filed by the defendant particularly not consider the Ex.B3, Ex.B4 and Ex.B5 in which the panchayat road is mentioned in the northern boundaries. The learned counsel further contended that first appellate Court failed to consider the fact and not properly appreciated that the properties were resurveyed and new resurvey number has been assigned. The plaintiff's properties assigned a new Survey Nos.27/4H and 27/3G and the properties in Survey No.27/2A5, resurvey numbered as 27/3H are classified as village road. The learned Judge nor properly considered this document and rejected without assigning reason and further reiterated other grounds raised in the grounds of appeal and thus, pleaded to allow.

10. The learned counsel appearing for the respondent plaintiff supported the judgment of the first appellate Court and further contended that the alleged road in resurvey no.27/2A5 and 27/3H not vested with Panchayat. There is no evidence when the site was entrusted to panchayat



to form the road and the suit properties are private properties and if the road is available it has to be considered as a private road over which the defendant cannot claim any right. The plaintiff proved their title over the plaintiff schedule properties by producing their sale deed Ex.A1 and Ex.A2. There is no ground for interference in the judgment and decree of the first appellate Court. He also relied on by the judgment of this Court made in S.A.No.1490 of 1988 dated 14.06.2000 . It is not helpful to advance this case and there is no merit in the Second Appeal. No substantial questions of law involved in this case and thus, pleaded to dismiss the Second Appeal.

11. I have considered the matter in the light of the submissions made by the learned counsel for the parties and peruse the records.

12. On perusal of the records, the records reveals that on 12.11.1931, Suit 1st schedule of the property was purchased by Madamuthu Nadar from Ponnammal. Madamuthu Nadar sold the 1st schedule of the suit property to Alagarsamy and his brother Chokkalingam Nadar by way of Ex.A1 on 22.11.1963. Alagarsamy and Chokkalingam Nadar sons, namely, Dinakaran and Muthuvijayan sold the suit property to the plaintiff. The defendants property was situated on the southern side of the plaintiff's property. The defendants property was originally purchased by Gunarathina Nadar i.e.,



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father-in-law of D.1 and grandfather of D.2 to D.7 on 12.02.1923. The 2nd schedule pathway showned in rough skeetch became as panchayat road. Panchayat road has been sub-divided as S.No:27/2A5, 27/3H and classified as street in “A” Register and Amicus Curie report filed on 24.10.2024 Sketch as per revenue record red portion & K C E1 L – portion in advocate commissioners sketch. In the western end of the 1st schedule and southern side of 2nd schedule in the rough sketch filed along with the written statement Gunarathina Nadar constructed 2 houses bearing D.No.53 A and 53 C and resided there. On 25.02.1969, Ex.B3 and Ex.B4 (S.No.27/2A) sale deeds executed by the Gunarathina Nadar in favour of one Nataraja Nadar and Annamalai Amman one of the boundary has been showned as East – West Road. The plaintiff failed to prove that the floor was put up by the defendants in his property only in the year 1991 through oral and documentary evidences. For S.Nos:27/4H and 27/3G, the patta stands in the name of the plaintiff and for S.No:27/2A8, the patta stands in the name of defendants as per Advocate Commissioner's report and FMB Sketch. As per Exhibits B3 and C4, sale deeds dated 25.02.1969. The panchayat road was shown as one of the boundaries in the sale deeds and the same is in existence even in the year 1969 and the same has been utilized by the defendants.



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13. This Court after hearing the dispute, directed the Revenue Department, Tenkasi District to inspect the property and report the present status. In pursuance of this direction, the Tahsildar inspected the property and measured with the help of Taluk Surveyor in the presence of Village Administrative Officer and other revenue authorities and in the presence of both parties and their counsel and sent a report to this Court. In the report, it is clearly mentioned that Survey No.27/2A5 and 27/3H are panchayat road besides the properties of the plaintiff and defendant are also measured and found that they are enjoying the property as per sale deed. For best appreciation, the report is re-produced.

புற எண்/ உட்கிரிவு எண்	வகைப்பாடு	பரப்பு	தீர்மான	பட்டா எண் மற்றும் உரிமையாளர் விபரம்	குறிப்பு
27/2A5	ரய்துறை	0.00.50	0.06	3888, கிராம பொது இடம்.	தெரு
27/3H	ரய்துறை	0.00.50	0.06	4, ஆணையாளர் கவுரூபு சி மன்றம்	நிகத்தீர்வை



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தற்போது யூனிடில் இரண்டு புல எண்களும் தெருவாகவே உள்ளது மேலும் புல எண் உட்கிரிவு எண் 27/311ல் சிறிய பீடமும் பழுதடைந்த கட்டை வண்டியும் உள்ளது புல எண் உட்கிரிவு எண் 27/2A5ல் ஆக்கிரமிப்பு ஏதுமில்லை எதிர்மனுதாரர்கள் தர்பரில் கிராம ஆலாங்குளியின் அளவைப்பணி செய்ய கோரிக்கை விடுக்கப்பட்டது அதன்படி எதிர்மனுதாரர் தர்பரில் தென்காசி எஸ்டேட் அலுவலக 03/1097ன் கிராம ஆவணம் மற்றும் அதற்குரிய மூல ஆவணங்கள் சமர்ப்பிக்கப்பட்டது மேற்படி ஆவணத்தின் சொத்து விபரத்தில் ரிஜஸ்டர் கிராமம் என்பதற்கு பதிலாக வல்லம் கிராமம் புல எண் 135 நிர் 2 லட்டர் என்று குறிப்பிடப்பட்டு இருந்தது ஆனால், சாதலத்தில் எதிர்மனுதாரர்கள் கிராம ஆவணத்தின்படி அனுபவம் செய்து வரும் விடு மற்றும் காலிபிடத்திற்கு நான்குமால் எல்லை சரியாக இருந்தது. ரிஜஸ்டர் தொடர்பாக மாவட்ட உரிமையியல் மற்றும் நீதித்துறை நடுவர் நீதிமன்றம், செங்கோட்டை அசல் வழக்கு எண் 002005-ன் தீர்ப்புணரவில் தெளிவுப்படுத்தப்பட்டு உள்ளதாக எதிர்மனுதாரர் தர்பரில் ஆணை வழக்கறிஞர் தெரிவித்தார் மேற்படி கிராம ஆவணத்தின் சொத்து விபரத்தில் குறிப்பிட்டுள்ள அடிப்படைகளான கிழமேல் அடி 33'0" தென்வடல் அடி 101'75" அடிக்கு அளவைப்பணி செய்து யூனிடில் எல்லை காட்டப்பட்டது.

இதேபோல், மேல்முறையிட்டாளர் தர்பரில் புல எண் 27/2A7-க்கு உரிய தென்காசி எஸ்டேட் அலுவலக 854/1097ன் கிராம ஆவணத்தின் நகலை சமர்ப்பித்தார். மேற்படி ஆவணத்தின் சொத்து விபரத்தில் குறிப்பிட்டுள்ள குறிப்பிட்டுள்ள நான்குமால் எல்லைகள் சரியாக இருந்தது மேலும், கிராம ஆவணத்தில் குறிப்பிட்டுள்ள அடிப்படைகளான கிழமேல் அடி 14'0" தென்வடல் அடி 46'0"க்கு அளவைப்பணி செய்து யூனிடில் எல்லை காட்டப்பட்டது கிராம ஆவணத்தின்படி அளவைப்பணி செய்தும், நதும் நிலவரித்திட்ட புலப்படச்சுவடியின்படி அளவைப்பணி செய்தும் தனித்தனியாக தவர செய்த வண்ணமிடப்பட்ட 2 வரைபடங்கள் இத்துடன் இணைக்கப்பட்டு உள்ளது என்பதை தெரிவித்துக் கொள்கிறேன்.

வட்டாட்சியருக்காக,



செங்கோட்டை வட்டம்.

14. In view of the above, it is clear that the First Appellate Court has not properly considered the evidence on record. The First Appellate Court without assigning any valid reason reversed the judgment and decree of the Trial Court, which is erroneous one. The appellants are having right to use



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the panchayat road. The First Appellate Court erred in not properly considered and appreciated the documentary evidence adduced by the defendant in Ex.B3, B4, B10 and B15 and the plaintiff is not entitled to maintain the suit. Thus, the substantial questions of law are answered. Hence, the Judgment and Decree of the First Appellate Court is liable to be set aside.

15. Accordingly, the Judgment and Decree made in A.S.No.104 of 2002 dated 03.12.2003 on the file of the Principal Sub Judge, Tenkasi is set aside and the Judgment and Decree made in O.S.No.70 of 1998 dated 22.12.2002 on the file of the District Munsif Court, Sengottai (Previously O.S.No.581 of 1995 on the file of the District Munsif Court, Tenkasi) is restored. The suit in O.S.No.70 of 1998 is hereby dismissed.

16. In the result, the Second Appeal is allowed. No costs.

18.12.2024

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
MGA



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To

- 1.The Principal Sub Court,
Tenkasi.
- 2.The District Munsif Court,
Sengottai.

Copy To
The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM. J.,

MGA

Pre-delivery Order made in
S.A(MD)No.1459 of 2004

18.12.2024