

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.11.2016

PRONOUNCED ON : 14.11.2016

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.37 of 1996

K.Govindarajan

...Appellant

Vs

1.Velacherry M.G.R.Nagar
Kudiyiruppor Nala Sangam
(Resident's Association)
by its Secretary,
R.Govindarajan.

2.Saradambal
3.K.Veeraraghavan @ K.V.Raghavan
4.Karunamurthy
5.Narayanan
6.Damodaran
7.Arumugham
8.Amutha
9.Vijayalalitha
10.Shanthi
11.Dhanammal @ Dhanalakshmi
12.Parvathi Ammal
13.Vendamirtham @
Vijayalakshmi Ammal

... Respondents

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree of the learned VII Additional Judge, City Civil Court, Madras dated 15.02.1995 passed in A.S.No.139/1994

confirming the judgment and decree dated 30.09.1993 passed in O.S.No.1851/1992 passed by the learned V Assistant Judge, City Civil Court, Madras.

For Appellant : Ms.R.Ramya
for M/s.T.V.Krishnamachari

For RR 1, 2 to 7,
9 to 11 : No Appearance
For RR8, 12 & 13 : Already dismissed vide order
dated 20.03.2013.

JUDGMENT

The first respondent Association representing Velacherry M.G.R.Nagar Kudiyruppor Nala Sangam has filed a suit for declaration regarding the pathway extending 20 x 60 ft and to protect their peaceful possession and enjoyment of the same through a permanent injunction.

2.The gist of the case is that the defendants 2 to 13 were the original owners of large extent of the land in S.No.502 at Velacherry Village. Through their power of attorney Mr.S.P.Parthasarathy, a Real Estate Broker, they promoted the said land as a lay out house sites and sold it to various individuals who have formed a residential welfare association later.

3.The land in dispute which is sought to be declared as path

way was originally part of a vast extent of agricultural land. As in many cases, it has been converted into house sites by the owners and sold to various persons without any approval from the authorities concerned. The disputed portion of the land to an extent of 20 x 60 feet was shown as pathway in the sale deed and sketch annexed to the sale deeds executed in favour of Tmt.Tamilarasi on 25.03.1991 and in favour of Minor Balaji 17.5.1991. Later, their vendors have unilaterally executed a rectification deed dated 17.06.1991 which was marked as Ex B-9, wherein they have substituted the Western boundary and Eastern boundary of the respective sale deeds as **'land of Ms.Saradambal vagaiyara'** in the place of **'path way'**. Thus, without the consent and knowledge of respective owners namely Mr.Balaji and Ms.Tamilarasi one of the boundries of their land shown as pathway had been corrected as "Ms.Saradambal vagaiyara land". On coming to know about the intention of the Ms.Saradambal vagaiara to alienate the portion of the land earmarked as pathway while selling plots to them, now stealthily trying to alienate it to Mr.Govindaraj, the first respondent Association has caused lawyer notice dated 20.6.1991 to the Sub-registrar, Velacheri requesting them not to register the sale deed in respect of the path way. However, Ms.Saradambal vagaiara through their power agent has sold the land to the extent of 20 x 60 feet to the appellant Mr.Govindaraj

vide sale deed dated 26.6.19910 (Ex A-3) .

4. Aggrieved by this, the first respondent Association which is a registered Association with the object of protecting the welfare of its members who are the residents of M.G.R Nagar, Velacherry has filed the suit for declaration, permanent injunction and consequential relief and succeeded before the trial court. The appellate court has confirmed the judgment and decree of the trial court.

5. The first defendant in the suit having lost his case before both the courts have preferred this second appeal questioning the *locus standi* of the first respondent Association to lay the suit and the right of the Association members to seek right of pathway over the suit property which is a private property.

6. While admitting this second appeal, this Court has formulated the following substantial questions of law:-

“a) Whether the plaintiffs have established any legal right in their favour to have *locus standi* to make a claim that the suit property is common/public passage for their

members ?

b)Whether Exhibits A-2, A-3, A-5, A-9 and A-13 create any right in faovur of the plaintiff Association ?

c)Whether the plaintiff is a legal entity and has got any legal right to seek for declaration and injunction as prayed for in the plaint in respect of the suit property?

d)Whether the plaintiffs have got any legal right to claim a right of way over the suit property which is a private property ?

e)Whether the Courts below have properly construed the material evidence in the case particularly the Chitta, patta, urban land tax receipts, rectification deed etc., produced by the the first defendant and marked as exhibits B-4, B-5, B-6, B-7, B-9 and B-10 ?”

7.Ex.A-1 - certificate of registration in respect of the respondent Association; Ex.A-24 to Ex.A-28 and Ex. A.32 are the documents which show that the first respondent Association is a duly registered Association and effectively functioning for the welfare of its members who are the residents of M.G.R. Nagar, Velacherry. Ex. A-3 , Ex.A-9 and Ex A-10 are of the sale deeds in favour of M.G.R Nagar residents.

8.On perusal of the records and evidence of P.W-1 and P.W-2, it is clearly established by the first respondent Association that it is a registered Association and its object is to protect the interest of its members. The suit land which was shown as pathway, in the title deeds of its members and in the sketch of the lay out, connecting the 1st and 3rd main road has been alienated to the appellant by their vendors. Ex.B-9 a self serving document without the consent or knowledge of Ms.Tamilarasi and Ms.Balaji is *non est* in the eye of law and it has no binding effect. The members of the plaintiffs/first respondent Association has been made to believe the existence of pathway while purchasing the land from their vendors. While so, the subsequent alteration in the description of the boundaries of the property sold to Ms.Tamilarasi and Mr.Balaji by the vendors without their knowledge and consent can be termed only as a fraud on the

purchasers. Having sold the plots to various persons showing the disputed portion as pathway in the lay out and sketch, the vendors cannot claim it has their private property.

9.The courts below have rightly held the suit in favour of the plaintiff by declaring the suit schedule land as pathway. The plaintiff/first respondent Association have established their right of pathway through the documents and oral evidence. This Court has no doubt in holding that the plaintiff/first respondent Association being duly registered under law is entitled to seek the relief of declaration and injunction on behalf of its members. Having made to believe the buyers that the portion in dispute is a pathway for the use of the buyer and sold the land showing the disputed portion as pathway, the vendors thereafter cannot claim that portion as private property. They are estopped to claim so.

10.The courts below have properly appreciated the evidence both document and oral and have arrived at right conclusion both on facts and law. The substantial question of law formulated are held unsustainable and the second appeal is bound to fail.

11.In the result, second appeal is dismissed. Since there is no

appearance on behalf of the respondents no order as to costs.

14.11.2016

jbm

Index: Yes/No

To

1.The V Assistant Judge,
City Civil Court, Madras.

2.The VII Additional Judge,
City Civil Court, Madras.

Dr.G.JAYACHANDRAN.J.,

jbm

**Pre Delivery Judgment made in
Second Appeal No.37 of 1996**

**14.11.2016
<http://www.judis.nic.in>**