



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 18.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A(MD)Nos.893 & 894 of 2013

and

C.M.P(MD)No.8777 of 2016

and

M.P(MD)No.2147 of 2016

S.A(MD)Nos.893 of 2013:

- 1.Karmega Nadar
- 2.Sangappan
- 3.Ganesan

... Appellants

Vs.

- 1.Muniyandi
- 2.Rajeswari
- 3.T.Kallupatti Panchayat Union,
Thorough its Executive Officer,
T.Kallupatti, Peraiyur Taluk,
Madurai District.

... Respondents

Prayer : Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 05.01.2011 passed in the appeal in A.S.No.41/2010 on the file of the Subordinate Court, Thirumangalam confirming the judgment and decree dated 10.12.2009 in O.S.No.202/2000 on the file of the District Munsif Court, Thirumangalam and dismiss the suit O.S.No.202/2000 and thus allow the Second Appeal with costs throughout.

For Appellants : Mr.J.Barathan
For Respondents : Mr.M.Saravanan for RR 1 & 2
Mr.K.Mariyappan for R3

S.A(MD)Nos.894 of 2013 :

Karmega Nadar

... Appellant

Vs.

- 1.Perumal Ammal
- 2.Kandasamy
- 3.Karnan

... Respondents



Prayer : Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 05.01.2011 passed in the appeal in A.S.No.42/2010 on the file of the Subordinate Court, Thirumangalam confirming the judgment and decree dated 10.12.2009 passed in the suit and counter claim in O.S.No.237/1998 on the file of the District Munsif Court, Thirumangalam and grant a decree in favour of the appellant/plaintiff in O.S.No.237/1998 as prayed for and thus allow the Second Appeal with costs throughout.

For Appellant : Mr.J.Barathan
For Respondents : Mr.G.Venugopal for RR2 & 3
R1 Died.

COMMON JUDGMENT

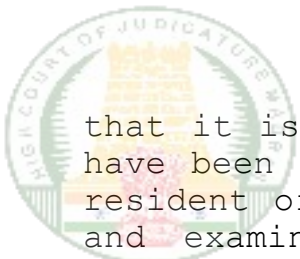
Karmega Nadar is the appellant in both the second appeals. S.A (MD)No.893 of 2013 arises out of A.S.No.41 of 2010 on the file of the Sub Court, Thirumangalam Camp. It in turn arises out of O.S.No.202 of 2000 on the file of the District Munsif Court, Thirumangalam.

2.S.A(MD)No.894 of 2013 arises out of A.S.No.42 of 2010 which was filed against the judgment and decree made in O.S.No.237 of 1998.

3.The appellant herein is the plaintiff in O.S.No.237 of 1998. He is the first defendant in O.S.No.202 of 2002. T.Kallupatti Panchayat Union is figuring as 4th defendant in O.S.No.202 of 2000 filed by Muniyandi and his wife Rajeswari. Defendants 2 and 3 in the said suit are the sons of Karmega Nadar. In the suit filed by the appellant herein, the neighbours of Muniyandi are figuring as defendants.

4.The controversy in both suits is one and same. Therefore, these two second appeals can be disposed of by a common judgment. The learned counsel appearing for the appellant fairly stated that even though there are two suits and consequently two appeals flowing therefrom, a common disposal can be given.

5.The appellant herein filed O.S.No.237 of 1998 seeking permanent injunction against the defendants therein from interfering with his peaceful possession and enjoyment of the suit property, delineate his ABCD portion in the rough sketch. In O.S.No.202/2000, Muniyandi and his wife have sought a relief of declaration and mandatory injunction and permanent injunction in respect of the same property. The suit property is a pathway and lane is not in dispute. The issue is regarding the character of the said lane or pathway. While the appellant herein contends that it is his exclusive lane, the contesting respondents herein claim



that it is a public lane. In O.S.No.202 of 2000, Exs.A1 to A12 have been marked. Muniyandi examined himself as PW1 and another resident of the land is PW2. The appellant marks Exs.B1 to B14 and examined himself as D.W.1 and the employees of the local panchayat union as DW2, DW3. The Trial Court decreed O.S.No.202/2000 by judgment and decree dated 10.12.2009. It dismissed O.S.No.237 of 1998 filed by the appellant herein on the same date. In O.S.No.237 of 1998, the defendants filed counter claim. The counter claim filed by the defendants was allowed and the appellant herein was directed to remove the offending construction made in the suit property.

6.Questioning the judgment and decree made in O.S.No.237 of 1998, the appellant herein filed A.S.No.42 of 2008 before Sub Court, Thirumangalam Camp and the same was also dismissed on 05.01.2011. As against the judgment and decree made in O.S.No.202/2000, the appellant herein filed A.S.No.41 of 2010 and the same was also dismissed on 05.01.2011 by a common judgment. Questioning the said judgments rendered in the first appeals, at the instance of the appellant herein, these second appeals have been filed.

7.The second appeals were admitted and this Court framed the following common substantial questions of law.

a. *When no public document is produced by the Panchayat to show that the suit pathway is the public pathway vested in it under Section 125 of the Tamil Nadu Panchayats Act, 1994, whether the courts below are right in holding that the suit pathway is a public pathway ?*

b. *When the appellant/plaintiff has produced has produced patta under the Patta Passbook Act issued him for the suit private pathway also in his name, whether the courts below are right in holding that the suit pathway is a public pathway ?*

c. *Whether the courts committed an illegality in refusing to consider the official village map (Exhibit B11), which is a public document under Section 74 of the Indian Evidence Act, 1872 and it can be proved as per Section 78 (1) of the said Act and by wrongly observing that "no evidentiary value has to be given to the village map Exhibit XI" (O.S.No.237/1998 = Exhibit B11 in O.S.No.202/2000).*

d. *Whether the lower court committed an illegality in refusing to consider and discuss the rulings cited by appellant/defendant, by simply holding that "2005 (1) LW 622, 2007(2) MLJ, 393, AIR 1983 SC 452, 2010 (4) LW 44 and AIR 1974 Orissa 89 are not at all helpful to the case".*

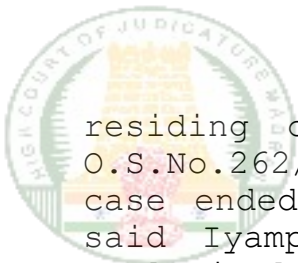


8. Heard the learned counsel for the parties in both the appeals.

9. The appellant had examined himself as a witness. A mere reading of his deposition is sufficient to answer the substantial questions of law framed in this appeal against him. The appellant rests his claim of title over the suit property by virtue of the sale deed dated 31.05.1972 (marked as Exs.A4/B3 in O.S.No.202 of 2000). This Court perused the contents of the said title deed. The property conveyed in favour of the appellant by his vendor is mentioned as lying to the north of the common lane and the house of Sivanandha Pandaram, who is the deceased husband of the first defendant in O.S.No.237 of 1998. When the very title deed of the appellant itself describes the suit property as a common lane, the claim of exclusive right over the same automatically goes. The appellant was examined as PW.1 in O.S.No.237 of 1998, claims in his deposition that he realised the incorrectness of the southern boundary description in his title deed on the same day of execution of the document, but that he had not taken steps to have the misdescription rectified.

10. In Ex.A2, dated 29.01.1988, the title document relied upon by the plaintiffs in O.S.No.202/2000, the suit property is described as "Street", while giving the boundary description. The contesting respondents herein would contend that the suit property is known as Karuppanna Mooppar Street. It is true that in Ex.A2 as well as A4, the name of the pathway or street is not mentioned. But, here, this Court concerned with the character of the property. Therefore, omission to refer the street or pathway by a name is not of any significance. In any event, the appellant himself has admitted in his chief examination that he would refer the suit property only as Karuppanna Mooppar street while giving his house address. The description in the plaint cause title is also fatal to the case of the appellant. Ex.B12 is the xerox copy of the particulars showing the streets in T.Kallupatti Panchayat. Karuppanna Mooppar Street is mentioned in the said list. As already pointed out, the appellant herein admitted in his testimony that the suit property is referred to as Karuppanna Mooppar Street. Therefore, it is not correct content that there is no public record evidencing the character of the suit property. The evidence of the panchayat union clerk examined as P.W.2 in O.S.No. 237/1998 is also not supporting the case of the appellant. During the course of cross examination, the said P.W.2 admitted that between the house of the appellant and that of the contesting respondents herein, Karuppanna Mooppar street runs. He had further affirmed that it is this street that has been referred to in their records.

11. The suit property runs east-west. The house of the appellant lies to the north of the suit property. Already, there was a civil dispute between the appellant and those who were



residing on the west of his house. This led to filing of O.S.No.262/1991 by the appellant against one Iyamperumal. The case ended in a compromise. A joint memo was filed in which the said Iyamperumal had admitted that the suit property belonged exclusively to the appellant. This admission by Iyamperumal cannot affect the claim of the contesting private respondents herein. But, this Court can take notice of the fact that the person who resided to the north of the suit property but to the west of the appellant herein also asserted that the suit property is a common lane. The appellant herein brought quietus to the issue by purchasing Iyamperumal's property.

12.The appellant had constructed a toilet on the suit property and that is why the relief of mandatory injunction was sought. The court below while dismissing O.S.No.237/1998 decreed the counter claim filed by the defendants therein. Both the courts below have concurrently negatived the claim of the appellant. The courts below have considered the entire materials on record. In fact, the courts below have non suited the appellant and held against him only on the strength of his own deposition and document. That apart, the offending construction has been put up without obtaining any approval from local body. It is inherently illegal. Therefore, this Court is inclined to answer the substantial questions of law framed in these appeals against the appellant.

13.The contention of the appellant that no public document has been produced to show that the suit property is a public pathway is not correct. Ex.B12 is a public document. The patta produced by the appellant cannot be said to be decisive of the issue. A declaratory suit has been filed in O.S.No.202/2000 and therefore, reliance on patta of the appellant is misplaced. On the same footing, this Court is inclined to answer the third substantial question of law also against the appellant. While the observation of the court below that no evidentiary value can be given to village map is not correct, that will not advance the case of the appellant. The learned counsel for the appellant rightly did not press the fourth substantial question of law. Thus, this Court answers all the substantial questions of law framed in these appeals against the appellant. In fact, this Court would even observe that no substantial question of law has actually arisen for consideration. The appellant fails on the strength of his own testimony and evidence.

14.The courts below have approached the issue on hand from a correct perspective. The findings rendered by the Trial Court and sustained by the first appellate court are sound and correct. There is absolutely no justification for interfering with the well considered judgments of the court below. In any event, a case for interference under Section 100 of Civil Procedure Code has not at all been made out.



15. In the result, both the appeals are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1. The Subordinate Judge, Thirumangalam.

2. The District Munsif, Thirumangalam.

+ 1 CC TO Mr.T.R.JEYAPALAM, ADVOCATE IN SR No. 79539
+ 1 CC TO Mr.R.SUBRAMANIAN, ADVOCATE IN SR No. 79724
+ 1 CC TO Mr.M.P.SENTHIL, ADVOCATE IN SR No. 80029

SKM

TE/MR-KKR/SAR-IV : 24/10/2017 : 6P/6C

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