

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

S.A.No.419 of 2018
and C.M.P.No.11498 of 2018

R.Vasantha

.. Appellant/Plaintiff

Vs.

K.S.Ranganathan (died)

1.Vijayalakshmi

2.Anantha Padmanabhan

3.Manjula

.. Respondents/Defendants

PRAYER: Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 27.07.2017 made in A.S.No.1 of 2013 on the file of the Sub Court, Tambaram, confirming the judgment and decree dated 31.10.2012 made in O.S.No.48 of 2004 on the file of the Additional District Munsif Court, Alandur.

For Appellant : Mr.M.Ramadoss
for Mr.C.T.Mohan

J U D G M E N T

Second Appeal is filed against the judgment and decree dated 27.07.2017 made in A.S.No.1 of 2013 on the file of the Sub Court, Tambaram, confirming the judgment and decree dated 31.10.2012 made in O.S.No.48 of 2004 on the file of the Additional District Munsif Court, Alandur.

2.The plaintiff who is unsuccessful in both the Courts below have filed the present Second Appeal. The appellant filed O.S.No.48 of 2004 on the file of the Additional District Munsif Court, Alandur against one K.S.Ranganathan for declaration to declare that B Schedule property is the only passage of the appellant for ingress and egress to the suit A Schedule; injunction restraining the defendant from trespassing or making construction in any portion of the B Schedule and thereby interfering with appellant's exclusive enjoyment of access to the A Schedule property. Subsequently, the appellant filed I.A.No.41 of 2008 to include the prayer of mandatory injunction. As per the order passed on 22.01.2008 in I.A.No.41 of 2008, amendment was carried out to include the prayer for a mandatory injunction, directing the defendant to remove construction and all kinds of encroachment made by him over the B Schedule property and on his failure to remove the encroachment on the suit B Schedule property, the same may be removed through process by this Court.

3. According to the appellant, she is absolute owner of A Schedule property. Originally, A Schedule property was owned by V.G.P. Housing (P) Ltd. One Govindasamy purchased A Schedule property from V.G.P Housing (P) Ltd. The said Govindasamy in turn sold A Schedule property to Kalaivani and Geetharani. The appellant purchased the A Schedule property from Kalaivani and Geetharani by deed of sale dated 13.05.1994, bearing document No.1612 of 1994. In the sale deed of the appellant and the sale deeds of her vendors and vendors' vendor, Southern boundary of the A Schedule property is shown as Velachery main road. The appellant, after purchase, constructed a small shop. The appellant is running a Hardware business under the name and style of "Amuda Hardware" on the Eastern side of the A Schedule property facing Velachery main road. The appellant also erected a small shed facing Velachery main road in which appellant's employee is staying.

3(a). B Schedule is the only access to reach A Schedule property from Velachery main road. The appellant is using B Schedule property for ingress and egress to reach the Velachery main road. The said road is in existence for many years. The appellant is regularly paying property tax to the concerned Revenue authority for the A Schedule property and obtained electricity service connection for the shop in the A Schedule property. The appellant is in peaceful possession and enjoyment of the A and B Schedule properties.

3(b). During the year 2000, one Kamaladevi tried to put up illegal construction in front of A Schedule property i.e., in the B Schedule property. The appellant filed O.S.No.402 of 2000 for mandatory and permanent injunction. The said suit was decreed on 31.12.2002. During pendency of the suit, Highways Department removed illegal construction put up by Kamaladevi. Due to typographical error in the Schedule to the plaint in O.S.No.402 of 2000, the Survey Number was mentioned as S.No.300, instead of S.No.399 part. The appellant filed I.A.No.245 of 2004 for amendment.

3(c). While so, the defendant tried to trespass into the B Schedule property and put up construction, obstructing the frontage of A Schedule property. The same was prevented by the appellant. The appellant only has right for B Schedule property. The defendant has no right over the suit property. The defendant is working as Class IV in Food Corporation of India, Chennai. He is powerful by money and muscle. With a view to extract money, he made such illegal attempt and threatened the appellant. Hence, the appellant has come out with the suit for the relief stated above.

4. The defendant filed written statement and denied all the averments in the plaint. According to the defendant, his Principal, Kamaladevi purchased the B Schedule property i.e., Plot No.142 from one C.K.Krishnamoorthy by a sale deed dated

03.12.1991, who in turn purchased the said Plot No.142 from V.G.P Housing (P) Ltd on 26.08.1978. Southern boundary of Plot No.143 purchased by Kamaladevi was shown as Velachery main road. Northern boundary which is the A Schedule described in the plaint belonging to the appellant is Plot No.144. Western boundary is Plot No.141 and Eastern boundary of Plot No.142 is Plot No.143. The S.No.399/2 was sub-divided and patta was given to the defendant's Principal Kamaladevi for S.No.399/2. In the Northern and Eastern side of A Schedule property, there are roads which are used by the appellant to reach Velachery main road. The appellant has not filed approved lay out and has filed only rough sketch. The defendant or his Principal Kamaladevi was not aware of O.S.No.402 of 2000. The appellant played fraud and obtained decree. Kamaladevi did not encroach and put up construction in the property belonging to the Highways Department. Some encroacher's have put up construction in the property belonging to the Highways Department and the same was rightly removed.

4(a).O.S.No.402 of 2000 was filed only for S.No.300 and not for S.No.399. No notice was served on the defendant or his Principal in I.A.No.245 of 2004. The land in Plot Nos.137 to 143 was demarcated by Highways Department to acquire the land. The owner of the Plot No.141 filed W.P.No.30910 of 2002 and as per the order of this Court, land was subdivided and patta was issued to the land owners. Patta No.2350 as per the proceedings TK8A/1414 was issued to the defendant's Principal, Kamaladevi with sub-division No.399/1D. Similarly, new patta was issued to all the land owners bearing Plot Nos.137 to 143. The Revenue records, including chitta and village account stands in the name of Kamaladevi and prayed for dismissal of the suit.

4(b).The defendant also filed additional written statement and contended that appellant played fraud. The appellant did not file suit against the Government officials. For want of issuing notice under Section 80 of C.P.C, the application in I.A.No.815 of 2004, filed by the appellant to include Tahsildar Tambaram, Special Tahsildar Land Acquisition, Assistant Divisional Engineer, Highways, The Chief Engineer, Highways and the District Collector, Kancheepuram was dismissed. The defendant denied that he encroached B Schedule property during pendency of Civil Revision Petition. The defendant is in possession and enjoyment of the B Schedule property and there is no necessity to encroach B Schedule property. The defendant is absolute owner of the B Schedule property.

5.Based on the above pleadings, the learned Trial Judge framed necessary issues. Before the learned Trial Judge, the husband of the appellant was examined as P.W.1 and two other witnesses were examined as P.Ws.2 and 3 and 31 documents were marked as Exs.A1 to A31. The defendant examined himself as D.W.1 and marked 19 documents as Exs.B1 to B19. The Advocate

Commissioner appointed after inspection filed report and plan and the same were marked as Exs.C1 and C2.

6.Pending suit, the defendant died and his legal heirs viz., respondents were impleaded as defendants 2 to 4 in the suit. The learned Trial Judge after considering the pleadings, oral and documentary evidence, dismissed the suit. Against the said judgment and decree dated 31.10.2012, the appellant filed A.S.No.1 of 2013. The learned I Appellate Judge framed necessary points for consideration. Considering the materials on record, judgment of the Trial Court and arguments of the counsel for the parties, dismissed the appeal.

7.Against the said judgment and decree dated 27.07.2017 made in A.S.No.1 of 2013, the appellant has preferred the present Second Appeal.

8.The learned counsel for the appellant contended that the Courts below have not properly appreciated the facts, evidence and judgment relied on by the appellant. The learned I Appellate Judge without properly applying the mind has dismissed the appeal, confirming the judgment of the Trial Court. The appellant has produced Exs.A23 to A25 to show that Highways Department has acquired the land and taken steps to remove encroachment. The patta issued earlier to the acquisition proceeding cannot be relied on by the respondents. The learned I Appellate Judge ought to have rejected Ex.B4, counter filed by the Special Tahsildar, Land Acquisition Inner Ring Road in I.A.No.815 of 2004 which contains false averments and the same was filed in nexus with the respondents. The learned Trial Judge failed to consider that respondents did not take any steps to examine the author of Ex.B4 to prove the contents and erred in relying on the contents of the counter affidavit. Ex.A22 clearly proves that Highways Department has acquired the land for widening of highways and B Schedule property is belonging to the Highways Department. Ex.B18, dated 14.02.2004, the letter from V.G.P Housing (P) Ltd., to the appellant is cooked up by the respondents for the purpose of case and the said letter has been sent belatedly from V.G.P Housing (P) Ltd., the original land owner, which is not at all relevant to decide the issue in the suit.

9.Heard the learned counsel for the appellant and perused the materials available on record.

10.The appellant sought for declaration that B Schedule property is the only ingress and egress to reach his property described as A Schedule property in Schedule to the plaint from Velacherry main road. According to the appellant, B Schedule property belongs to Highways Department and respondents have no right or title over the said property. Earlier, one Kamaladevi, Principal of 1st defendant encroached B Schedule property and put up illegal construction. The appellant filed O.S.No.402 of 2000 for removal of said

construction and suit was decreed exparte. Before the appellant filed Execution Petition, the Highways Department removed encroachment. Again, now the respondents have encroached B Schedule property and is preventing the appellant from using B Schedule property as pathway. To substantiate her case, the appellant has produced sale deeds, which were marked as Exs.A1 to A4, wherein, Southern boundary of A Schedule property is shown as Velachery main road.

10(a).According to the respondents, Southern boundary of A Schedule property is Plot No.143, belonging to them. Southern boundary of Plot No.143 is Velachery main road. B Schedule property belongs absolutely to Kamaladevi, Principal of 1st defendant and after acquiring the portion of B Schedule property by Highways Department, the Revenue Authority has issued patta to Kamaladevi, wherein 4 boundaries were mentioned. Northern boundary of Plot No.143 i.e., B Schedule property is Plot No.144 i.e., A Schedule property. Eastern and Northern boundary of A Schedule property are 20 ft. road and appellant can reach Velachery main road through these roads. The respondents also filed sale deeds, Exs.B11 and B12 to substantiate their contention. The husband of the appellant was examined as P.W.1. In his cross examination, he has admitted that Northern and Eastern boundaries of A Schedule properties are roads. In view of the such admission, the contention of the appellant that B Schedule property is the only passage for ingress and egress to reach A Schedule property from Velachery main road is not correct.

10(b).Further the appellant contended that B Schedule property was acquired by Highways Department for widening of the road. To substantiate this contention, the appellant examined P.W.3, Assistant Revenue Inspector from Highways Department. Even though the said witness deposed that lands in Plot Nos.137 to 143 were acquired entirely, he admitted in cross examination that there are no records in their office to show the extent of land acquired by the Highways Department and Exs.A6 and A23 to A25 were not available in their office and also he further deposed that vide Exs.A23 and 24, the Tahsildar was informed about the acquisition with request to enter into Revenue records that said lands are Highways Department and E.B authority was also informed vide letter dated 29.05.2003, marked as Ex.A25. The Tahsildar did not make necessary entry in the Revenue records.

10(c).The appellant filed I.A.No.815 of 2004 to implead Tahsildar Tambaram, Special Tahsildar Land Acquisition, Assistant Divisional Engineer, Highways, The Chief Engineer, Highways and the District Collector, Kancheepuram as proposed defendants 3 to 7, in which Special Tahsildar, Land Acquisition Inner Ring Road filed counter affidavit, which was marked as Ex.B4. In the counter affidavit, Special Tahsildar, Land Acquisition Inner Ring Road stated that the portion of B Schedule property was acquired and patta was issued to

Kamaladevi, after sub-division. The appellant has not let in contra evidence to show that contents of Ex.B4 are not correct. The application filed by the appellant in I.A.No.815 of 2004 for impleading the Government Officials was dismissed. The respondents produced a letter dated 14.02.2004 which was marked as Ex.B18, written by the original owner, V.G.P Housing (P) Ltd., who formed the layout and got approval. In the said letter, V.G.P Housing (P) Ltd., has stated that by mistake Southern boundary of A Schedule property was mentioned in Ex.A1 as Velachery main road and requested the appellant to get the said mistake rectified. The appellant received Ex.B18, but she has deposed that she has written letter to V.G.P Housing (P) Ltd., that there is no mistake in the Southern boundary of A Schedule property. The appellant has not filed approved layout plan of V.G.P Housing (P) Ltd., Dr.Vimala Nagar of which both A and B Schedule properties are part of the layout, but she has filed only rough sketch, showing Velachery main road as Southern boundary.

10(d).In view of the admission of P.W.3 that no records are available in their office and including Exs.A6, A23 to 26, letters written by the Highways Department, the Courts below have rightly did not accept the evidence of P.Ws.2 and 3. The respondents have produced patta, marked as Ex.B9 dated 01.02.2005, which shows that Kamaladevi, Principal of 1st defendant is owner of B Schedule property. Southern boundary of B Schedule property is Velachery main road and Northern boundary of B Schedule property is A Schedule property. The respondents also proved that there are roads on Northern and Southern side of A Schedule property and appellant is using the said roads to reach Velachery main road. The appellant's husband also as P.W.1 has admitted the same. On such admission, the appellant is not entitled for declaration that B Schedule property is the only ingress and egress for her A Schedule property from Velachery main road. In view of such finding, the appellant is not entitled to other relief of permanent injunction and mandatory injunction as claimed in the suit. The Courts below have considered all the documents in proper perspective and dismissed the suit and appeal rightly. No question of law much less Substantial Questions of Law has arisen in this Second Appeal for consideration.

11.In the result, this Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-Iv)

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Sub Assistant Registrar

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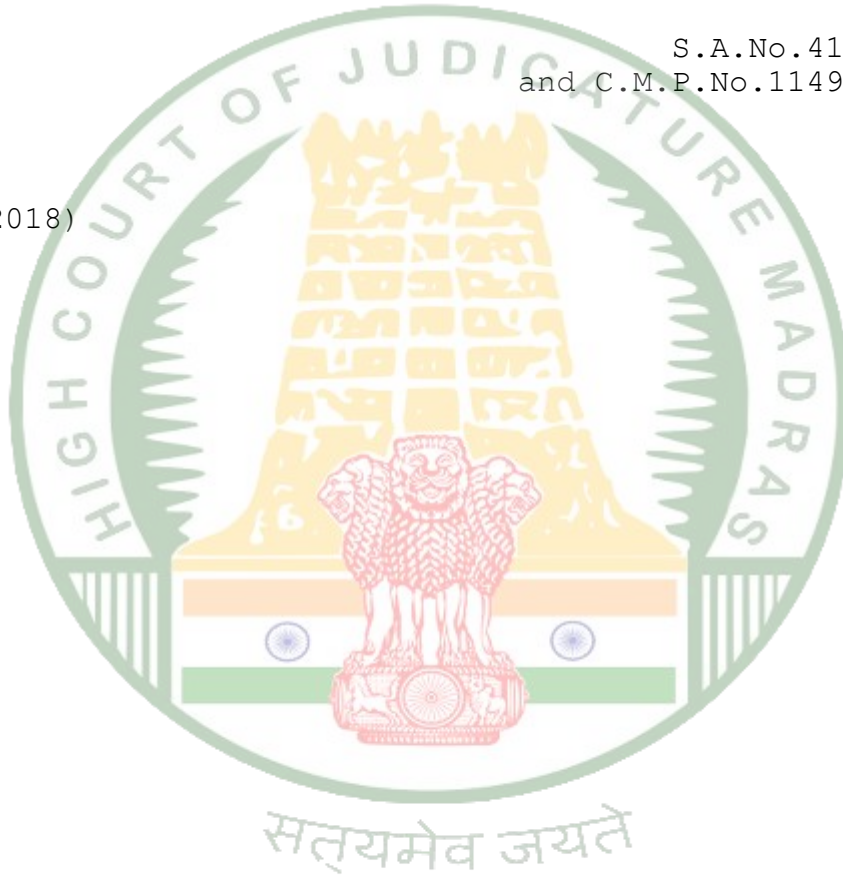
1.The Subordinate Judge, Tambaram.

2.The Additional District Munsif, Alandur.

+ 1 cc to Mr.Mohan, Advocate Sr.56981

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and C.M.P.No.11498 of 2018

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