

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2018

CORAM

THE HONOURABLE Mrs.JUSTICE PUSHPA SATHYANARAYANA

S.A.No.467 of 2017

1. The State of Tamil Nadu
Rep by District Collector,
Nagapattinam

2. The Executive Engineer,
(Building Section),
Public Works Department,
Nagapattinam

... Appellants/Defendants /Appellants

..vs..

1. Krishna Rao
2. Balasubramanian
3. Krishakumar

[All residing at Agraharam-cum
Kumaran Koil North Street,
Maharajapuram Village,
Semabanar Koil Circle,
Tharangampadi Taluk]

... Respondents/Plaintiff/ Respondents

Second Appeal filed under Section 100 C.P.C. against the Judgment and decree dated 16.12.2008 made in A.S.No.78 of 2008 on the file of Additional Subordinate Court, Mayiladuthurai, confriming the judgment and decree dated 07.07.2008 made in O.S.No.132 of 2006 on the file of the Additional District Munsif Court, Mayiladuthurai.

For Appellants : Ms.A.Madhumathi
Additional Government Pleader(CS)

For Respondents : Mr.S.Sounthar

J U D G M E N T

The defendants are the appellants. The suit is filed by the plaintiffs in their representative capacity of the residents

of Agraharam-cum-Kumaran Koil North Street, Aaharajapuram Village, Semabandar Koil Circle. Tharangampadi Taluk. The suit is filed by the plaintiffs for permanent injunction restraining the appellants/defendants, who are the revenue authorities and Public Works Department from interfering with the usage of the suit common pathway by putting up any permanent structure.

2. The case of the plaintiffs is that the suit property is a road. It is called as Pillayar Koil Theru, as there is a Pillayar temple on the West of the said street. The said road or street is used by the agriculturists to reach the river Cauvery and for carrying their agricultural products. There is also a veterinary hospital on the Western side of the said road, to which the villagers nearby bring their cattle for their treatment. The street has been used by the villagers, particularly, the residents of the two streets. While so, blocking the said road, the second defendant attempted to construct a girls hostel. Any such construction would block the free flow of traffic of the street, as it would be detrimental not only to the villagers or pedestrians but also to the cattle and other animals, which are brought to the veterinary hospital.

3. According to the appellants/defendants, the suit Survey No.35 is a Government poramboke land and it was subdivided into Survey Nos.35/1, 35/2, 35/3 and 35/4. It is further stated that when the place was chosen by the Government, the plaintiffs had not objected to the same. Hence, the defendants sought for dismissal of the suit.

4. The Courts below have concurrently found that the construction work had started in the suit property, which is evidenced by the report of the Advocate Commissioner appointed by the Court. Learned counsel for the appellants/defendants contended that the ladies hostel was proposed to be constructed for the girls /students belonging to the backward class as per G.O.Ms.No.976 dated 20.01.1997 and accordingly, the suit property was chosen. The people of the village also never objected to the same. However, after the construction was started, it has now been opposed by the plaintiffs. It is also admitted that earlier there was a Writ Petition filed by the same plaintiffs, wherein, the plaintiffs were directed to file a suit in this regard. The plaintiff had examined P.W.1 to P.W.5, who had categorically stated that they belonged to different streets in the same Village and they have been using the suit pathway for several years. In fact P.W-4, who belonged to Keezhayur Village, has specifically stated that he used to bring the cattle to the veterinary hospital only through this suit street. P.W-5, who belonged to another neighbouring village- Mudikandaiyur Village had also stated that this is the street,

through which he used to go to reach the hospital. It is the specific case of the plaintiffs that they are not against the construction of hostel for the benefit of girls belonging to the backward class community. The only objection of the plaintiffs is not to block the suit street and put up the construction. Excepting the suit pathway being blocked, they have got no objection to get the hostel constructed at any other place. The Courts below have concurrently held that the suit street has been used as Pillayar Koil Street and Pillayar Koil lane by the villagers from the time immemorial and any construction on the same would be detrimental to the interest of the residents of the suit property and other general public. Accordingly, the suit was decreed by the trial Court and confirmed by the lower appellate Court. This Court finds no infirmity in the said findings of the Courts below warranting interference with the same, in the absence of any substantial question of law arising out of the said facts.

5. In the light of the above, the Second Appeal is dismissed and the judgment and decree of the Courts below are confirmed. No costs.

Sd/-

Assistant Registrar (CS VIII)

//True copy//

Sub Assistant Registrar

srn

To

1. The Additional Subordinate judge,
Mayiladuthurai.

2. The Additional District Munsif Court,
Mayiladuthurai.

+1cc to Special Government Pleader SR.No.13455

S.A.No.467 of 2017

SR(CO)
GN(20/03/2018)