



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.12.2018

Coram:

The Honourable Dr.Justice G.Jayachandran

Second Appeal No: 1898 of 2004

1. Arulmigu Ayyappa Seva Sangam
Ariyankuppam, Rep.by President,
Kannan @ Vaithialingam,
S/o.Vinayagam, Hindu, aged about 61,
and residing at No.1, Third Cross,
Indira Nagar, Ariyankuppam,
Pondicherry-7.
2. K.Sivarajan, S/o.Kuppusamy,
Secretary, Arulmigu Ayyappa Seva Sangam,
Hindu, aged about 64 and residing at
Ariyankuppam,
Pondicherry-7. ... Appellants/Respondents/Defendants
/versus/
1. Koodalingam, S/o.Iyyasami Nadar,
Hindu, business, aged about 55 years,
and residing at No.2, Manaveli Road,
Ariyankuppam, Pondicherry-605 007.
2. Jayaraj, S/o.Iyyasami Nadar,
Hindu, business, aged about 50 years and
residing at Trichy Road, Ulundurpettai,
Villupuram District, Tamil Nadu.
3. Ayyasamy Nadar, S/o.Periasamy Nadar,
Hindu, business, aged about 80 years,
and residing at No.46, S.S.Pillai Street,
Pondicherry-605 001.
4. Grahan Durai, S/o.Iyyasamy Nadar,
Hindu, Business, aged about 80 years,
and residing at Trichy Road, Ulundurpettai,
Villupuram District, Tamil Nadu.
5. Kannan, S/o.Iyyasamy Nadar,
Hindu, Business, aged about 40 years,
and residing at No.46, S.S.Pillai Street,
Pondicherry-605 001. ... Respondents/Appellants/Plaintiffs

PRAYER:

This Second Appeal is filed under Section 100 of Civil Procedure Code, praying against the judgment and decree dated 20.04.2004 made in A.S.No.54 of 2003 on the file of the Learned Principal District Judge, Pondicherry reserving the judgment and decree dated 29.09.2003 made in O.S.No.531/2000 on the file of the Learned Additional Subordinate Judge, Pondicherry.

For Appellants : Mr.T.Sathiyamoorthy
for M/s.G.M.Mani Associates

For Respondents : Mr.R.Muralidharan

Heard the Learned Counsel for the Appellants and the Learned Counsel for the Respondents.

2. This Second Appeal is preferred against the judgment of the First Appellate Court reversing the judgment of the Trial Court, wherein the suit filed for permanent injunction and mandatory injunction by the respondents herein was dismissed. On appeal, the First Appellate Court allowed the appeal and decreed the suit. Hence the defendants are before this Court.

3. At the stage of admission, this Court has framed the following substantial questions of law:

"(a) Whether the Court below was right in granting a decree on the assumption that the private layout road is a public road?

(b). Whether the finding of the Court below that the original owner has no right, title and interest in the portion of the layout road gifted to the appellant under Ex.A.16, even though the plaintiffs/respondents themselves have purchased another portion of the same road from the land owner under Ex.A.9. Consequently, would not the plaintiffs estopped in questioning the title and right of the landlord, to gift another portion of the same road to the appellants?

c). Whether the suit was not vitiated for non-joinder of necessary and proper

parties viz., the original owner Sridharan Chettiar and his Power of Attorney Appasamy against whom all the allegations relating to the violation of the plaintiff's right to the layout road and their incapacity and lack of title to gift the suit property are pleaded in the plaint?"

4. The short point involved in this case is that, one Sridharan Chettiar son of Selvaraj Chettiar converted his land in R.S.No.4/8 (part) situated at the west of Cuddalore Road in Ariyankuppam Village, Pondicherry, divided it into 12 plots earmarking a public road as common pathway. The plaintiff and his brothers purchased 9 plots in one block with intend to establish Timber depot business. The remaining 3 plots were purchased by one Mangaleswari they both have right in the common pathway. The suit schedule property is shown as public road in the layout plan for use of ingress and egress of the plot owners. While so, it is contended by the plaintiffs that a portion of public road which is morefully described in the suit schedule property was gifted to the defendants namely "Arulmigu Ayyappa Seva Sangam" Ariyankuppam represented by its President 'Kannan @ Vaithialingam' and Secretary 'K.Sivarajan' to put up the temple. Accordingly, the defendants have constructed the temple and consecrated the idols of "Lord Vinayagar", "Lord Muruga" and "Lord Ayyappan."

5. In the written statement, the defendants have substantially admitted the averments made in the plaint including the original ownership which was vested with Sridharan Chettiar who has promoted the land as plots. In the written statement filed by the defendants it is admitted that the suit schedule property was gifted to "Arulmighu Ayyappa Seva Sangam" represented by the defendants. It is brought to the notice of this Court that the plaintiffs themselves have purchased the western end portion of the land earmarked as public road under the sale deed Ex.A.9. Therefore, a specific plea has been taken by the defendants in the written statement that if the plaintiffs forgo their right over the western end of the public road which they claim right, they are also ready to vacate the suit property.

6. The trial Court, after appreciating the evidence let in by the parties have held that the plaintiffs having purchased a portion of land, marked as a public road, they cannot go against their own conduct and challenge the settlement deed Ex.A.16 given in favour of the first defendant since both the defendants and the plaintiffs stand on the same footing. Having traced title over the property through common vendor which is now alleged to be a public road, the plaintiff cannot

have a better right than the defendants and challenge the title and possession vested with the defendants.

7. On appeal by the plaintiffs, the Appellate Court has viewed the issues on different perspective. Though, the layout was not an approved layout, having sold the properties to different persons, based on the layout plan, in which the disputed land is shown as a public road, even the erstwhile title-holder cannot alienate the property either by sale deed or settlement deed to the third parties.

8. The First Appellate Court had held that though the plaintiffs cannot seek a relief of permanent injunction restraining the defendants and their men from interfering with their peaceful and enjoyment of the suit property earmarked as road, but as a user of the public road, the plaintiff is entitled for the relief of mandatory injunction directing the defendants to remove the superstructure and the idols of Gods placed in the suit property, which is a public road. Having held so, the First Appellate Court has also directed the plaintiff to remove fence and other obstruction put up by him on the western end of the layout road covered under the sale deed-Ex.A.9.

9. In the result, the judgment passed by the First Appellate Court is to ensure that the area earmarked as a public road, in the layout should be retained and there cannot be any encroachment upon it. This Court finds no error in the said conclusion of the First Appellate Court and the decree passed to that effect.

10. As far as, the substantial questions of law framed by this Court, perusal of documents reveal that the First Appellate Court conclusion that the disputed portion of the land is a public road is not on mere assumption, but supported by documents. In fact, in a layout, whether it is approved or not, the buyers of the plots in the layout should have access to their respective plots. Peculiarly in this case, the entire land has been purchased by two groups; one by the plaintiffs and another by one Magaleswari and others. Even they both either by collusion with vendor or with an understanding among themselves, cannot encroach upon the portion earmarked as a public road.

When the entire extent of the land has been divided into several plots and sold under different sale deeds, the Appellate Court was right in holding that even the original owner have no right, title or interest in the portion earmarked as a public road to gift it to the defendants under the sale deed-Ex.A.16 or to sell it to the plaintiffs by the sale deed under Ex.A.9.

11. In the result, the Second Appeal is dismissed. The judgment and decree passed in A.S.No.54 of 2003 dated 20.04.2004

on the file of the Learned Principal District Judge, Pondicherry partly allowing O.S.No.531 of 2000 on the file of the Additional Subordinate Judge, Pondicherry is confirmed. Both the Appellants as well as Respondents are directed to remove the encroachment in the public road, within a period of two months, from the date of receipt of a copy of this judgment and keep it free for access to the public. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

bsm

To

1. The Learned Principal District Judge, Pondicherry.
2. The Learned Additional Subordinate Judge, Pondicherry.
3. The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.R.Muralidharan, Advocate SR.No.84917

+1cc to M/s.G.M.Mani Associates, Advocate SR.No.85527

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RSK (CO)
GMY (29/01/2019)

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