



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.09.2018
PRONOUNCED ON : 23.10.2018

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THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.No.459 of 2015

Godrej & Boyce Manufacturing Co. Ltd.
Represented by its Regional Manager
Having his office at Ambattur Industrial
Estate, Adinistrative Block Building
Ambattur ..Appellant/Plaintiff

Vs.

The Tamil Nadu Small Industries
Development Corporation Ltd.,
Representated by its Branch Manger,
Having its factory and premises at No.1,
SIDCO Industrial Estate, Ambattur
Chennai 600 098 ..Respondent/Defendant

Prayer: Second Appeal filed under Section 100 of Civil
Procedure Code, against the judgment and decree dated 08.10.2014
passed in A.S.No.45 of 2013 on the file of subordinate Judge,
Poonamallee, reversing the judgment and decree dated 11.07.2011
passed in O.S.No.317 of 2002 on the file of District Munsif,
Ambattur.

For Appellant : Mr. Krishna Srinivasau
for M/s.Ramasubramanian Associates

For Respondent : Mr.P.H.Vinod Pandian
for M/s. Abdul Saleem.

JUDGMENT

Challenge in this second appeal is made to the judgment
and decree dated 08.10.2014 passed in A.S.No.45 of 2013 on the
file of the subordinate Court, Poonamallee, reversing the
judgment and decree dated 11.07.2011 passed in O.S.No.317 of
2002 on the file of the District Munsif Court, Ambattur.



2. Parties are referred to as per their rankings in the trial Court.

3. Suit for declaration and permanent injunction.

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4. The case of the plaintiff, in brief, is that it has purchased the properties described in the 'A' schedule by way of a sale deed dated 18.05.1962 and accordingly carrying on the business activities in the plaint 'A' schedule properties with a number of employees working under the plaintiff and the others associated with the plaintiff's business activities and the plaintiff is also paying property tax to Ambattur Municipality regularly and the plaint 'A' schedule properties had been purchased from a private individual and the same are surrounded by various industries, which have come up on SIDCO plots and the property described in the plaint 'B' schedule, a pucca road, which was formed by the defendant SIDCO and on the either side of the road, there are also factories allotted by the defendant and the abovesaid road is a public road. The plaintiff, their customers, agents and the entire public at large, can have access to the plaintiff's factory and accordingly, the plaintiff has been using the abovesaid road for over 30 years and their employees can also come to the factory only through the 'B' schedule property and in any in any event, the plaintiff has also prescribed title to the plaint 'B' schedule property and on the western side of the 'A' schedule property, there is a gate, but the same is adjoining the residential area and further the width of the passage is about 20 feet only and therefore the plaintiff cannot use the said road for transportation of their trucks and the plaintiff and their workers are not using the western gate and are using the 'B' schedule property for entry and exit. While so, the defendant issued a notice dated 14.09.1998 calling upon the plaintiff to pay Rs.4,00,000/- towards the maintenance charges from the year 1998-99 and advance maintenance charges for one more year. The plaintiff paid a sum of Rs.1,00,000/- on 24.10.1998 to the defendant with an intention of getting sales tax benefit from the Government of Tamil Nadu by meeting the eligibility criteria of being part of SIDCO Industrial Estate. On 27.03.2002, a demand notice of Rs.7,00,000/- towards the maintenance for the period 1998-99 to 2001-02 was served on the plaintiff by the defendant and the plaintiff had responded to the same vide their letter dated 29.04.2002 giving reasons for not paying the maintenance charges as demanded by the defendant as they are also paying property tax around Rs.5,00,000/- per annum to Ambattur Municipality and hence the plaintiff need not make double payment to both SIDCO and Ambattur Municipality. On 23.05.2002, the plaintiff again received a letter from the defendant demanding the maintenance charge from the plaintiff and also threatened coercive action in



the event of failure of the payment as demanded and inasmuch as the plaintiff is regularly paying tax to the municipality and as the public uses the road laid by the defendant, the defendant cannot prevent the plaintiff from having access to the road and if the defendant achieve their object, the plaintiff would be put to great loss and hardship and hence according to the plaintiff, it has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendant, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts. It is true that the plaint 'A' schedule properties are surrounded by various industries, which come under the administration and control of SIDCO and it is true that the subject matter of the suit, i.e, the road, was formed by the defendant and there are also factories on both side of the road, which are allotted by the defendant and for the purpose of providing amenities like, street lights, roads, drainage, canals, etc., the defendant is charging its allottees on case to case basis and no third party like the plaintiff, has no right to challenge the entitlement of the defendant to the road in question and it is false to state that the road described in the 'B' schedule property is a public road and on the other hand, the said road was formed and maintained by the defendant in order to have easy access to the defendant's unit holders for the beneficial use. Even assuming that the plaintiff had also used the road, that itself, would not give any right to the plaintiff over the 'B' schedule property. The plaintiff, by way of using the said road, is bound to pay the charges as demanded by the defendant. The road available to the usage of the plaintiff is not a narrow one and could be used for the purpose of transportation. It is for the plaintiff to approach Ambattur Municipality for widening the said road, in case of any difficulty experienced by the plaintiff in effecting the transportation through the same. The defendant had demanded the charges of maintenance from the plaintiff for using the road and accordingly, the plaintiff having accepted the same, also paid a part payment of Rs.1,00,000/- giving assurance to pay the balance amount, but, had come forward with the suit with untenable allegations and it is true that the defendant made a demand of Rs.7,00,000/- as stated in the plaint towards the maintenance charges for various periods and the plaintiff responded to the same with untenable reasonings, as if he is making payment to the municipality amounting to Rs.5,00,000/- towards property tax and the maintenance charges demanded by the defendant is no way connected with the payment of property tax paid by the plaintiff to the municipality. The plaintiff will not come under the classification of public and cannot put forth the contention that inasmuch as the public is having access



through the road in question, the plaintiff is also entitled to use the same for its industrial purposes. It is false to state that there had been threat on the part of the defendant to the plaintiff and on the other hand the plaintiff having failed to pay the maintenance charges to the defendant towards the maintenance of the road, has laid the false suit without any cause of action and hence the suit is liable to be dismissed.

6. In support of the Plaintiff's case, Pw1 was examined and Exs.A1 to A10 were marked. On the side of the defendant Dw1 was examined and EXs.B1 to B9 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial court was pleased to decree the suit as prayed for. On appeal, the first appellate court, on an appreciation of the materials placed on record and the submissions made, was pleased to set aside the judgment and decree of the trial court and by way of allowing the appeal preferred by the defendant, dismissed the suit laid by the plaintiff. Impugning the same, the second appeal has been laid by the defendants.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration.

"1) Whether the learned appellate court committed a fundamental error based on admitted facts that the lands on which the factory was not assigned/conveyed/transferred to the appellant by the respondent or the Government of Tamil Nadu?

2. Whether the lower appellate court was justified in reversing the decree of the trial court without considering the sale deed Ex.A2, in which, it was specifically mentioned that the road was formed by the vendor of the appellant?"

9. The suit has come to be laid by the plaintiff for the declaration of its right to use the 'B' schedule property to have access to the 'A' schedule properties as described in the plaint schedule and also for the consequential relief of permanent injunction. It is not in dispute that the plaintiff had purchased the 'A' schedule properties by way of a sale deed dated 18.05.1962, which document has come to be marked as Ex.A2.



The issue between the parties in this lis is only as regards the 'B' schedule property. As seen from the description of the 'B' schedule property given in the plaint, the same is the road running north to south situated on the southern side of the 'A' schedule properties described as ABCDEFA in the plaint sketch. Now, according to the plaintiff's, it has been using the 'B' schedule property for having access to the 'A' schedule properties, where the plaintiff is running the industrial activities and accordingly it is stated that for the past several years, the workers and the men associated with the plaintiff's industrial activities had been having access to the 'A' schedule properties only through the 'B' schedule property and it is also stated that even the general public is having access through the road described in the 'B' schedule property and in such view of the matter, it is stated by the plaintiff that inasmuch as the defendant had demanded maintenance charges from the plaintiff towards the maintenance of 'B' schedule property and though the plaintiff had made a part payment of Rs.1,00,000/- towards the same and on the other hand, as the defendant made the demand of maintenance charges in a huge sum and as according to the plaintiff, it has been paying the tax to the Ambattur Municipality, there is no need on the part of the plaintiff to pay the maintenance charges to the defendant as demanded and when the same had been made known to the defendant by the plaintiff, it is the case of the plaintiff that the defendant had threatened coercive action against the plaintiff in preventing its usage of the 'B' schedule property and hence according to the plaintiff, it has been necessitated to lay the suit for appropriate reliefs.

10. It is the specific case of the defendant that the road described in the 'B' schedule property had been maintained by it for the industrial units to have access to their respective units situated on either side of the road and accordingly, it is only the defendant who had been providing all the amenities to its allottees and towards the same, demanding and collecting the maintenance charges from the allottees and accordingly it is the case of the defendant that inasmuch as the plaintiff had been using the road for its industrial purposes, the plaintiff is also bound to pay the maintenance charges to the defendant and accordingly, the defendant had made the demand from the plaintiff and though the plaintiff had made the part payment towards the maintenance charges, without paying the balance amount as demanded, had come forward with the suit containing false allegations and hence, according to the defendant, the plaintiff is not entitled to maintain the lis against the defendant as the same is devoid of any cause of action.



11. The plaintiff, in para 4 of the plaint, has clearly admitted that the pucca road described in the 'B' schedule property has been formed by the defendant and also admitted that on either side of the road there are various industries allotted by the defendant and accordingly it is seen that the road in question described in the plaint 'B' schedule belongs to the defendant and the same had been maintained by the defendant for the benefit of various factories situated in and around the road, through which the various factories are gaining access to reach their respective units and accordingly it is seen that the plaintiff, though, had not been allotted the property by the defendant, where the industrial activities of the plaintiff are being carried on, inasmuch as the plaintiff had been using the road in question for its industrial purposes, as rightly put forth, the plaintiff is also bound to pay the maintenance charges to the defendant as demanded. That apart, even in para 8 of the plaint, the plaintiff has admitted that the public has been using the road laid by the defendant. Not only that, as could be seen from the materials placed on record, in continuation of the demand made by the defendant to the plaintiff to pay the maintenance charges, it has been admitted by the plaintiff in the plaint and as well as during the course of evidence that it had paid a sum of Rs.1,00,000/- to the defendant. However, the plaintiff without paying the further sum as demanded, to the defendant, is found to have rushed to the court with the present lis.

12. Though it is the claim of the plaintiff, during the course of arguments, that the road described in the plaint schedule is a public road, with reference to the said contention, there is no material projected worth acceptance on the part of the plaintiff. The plaintiff has not placed any material to show that the road described in the plaint 'B' schedule is vested with the Government or Ambattur Municipality and that only the Government or Ambattur Municipality which has been maintaining the same. On the other hand, even as per the admission of the plaintiff as above noted, it is only the defendant, who had been vested with the road and accordingly maintaining the same and as rightly put forth by the defendant, it is seen that Ambattur Industrial estate comes under the control of the defendant, i.e., SIDCO and accordingly, the amenities like street lights, drainage, water supply, etc., are being provided and maintained by the defendant and not by the Ambattur municipality and accordingly it is seen that various factories in and around the road in question are having access to their respective units only through the road vested with and maintained by the defendant and accordingly for the maintenance of the road and also for the provision of other facilities as above pointed out, the defendant had been periodically demanding necessary charges from various unit holders and accepting the



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said demand, it is seen that the various unit holders have been paying the charges to the defendant. It is admitted by the plaintiff that it has also been using the road in question for its industrial needs. Though it is found that and also admitted by the plaintiff that on the western side, the plaintiff is having access by way of a 20 feet road, even as per the case of the plaintiff, the abovesaid passage or access is not convenient for the plaintiff for transportation of their trucks and accordingly it is seen that the plaintiff, for running its industrial activities, is constantly and regularly using the road described in the plaint 'B' schedule property vested with and maintained by the defendant and in such view of the matter, when the plaintiff and their men, workers, etc., had been all along using the road and admittedly the road is found to be maintained by the defendant having the control of Ambattur Industrial Estate, in such view of the matter, as rightly put forth and found by the first appellate court, the plaintiff is bound to pay the necessary maintenance charges to the defendant for its constant and regular use of the road in question and the plaintiff cannot be allowed to avoid the same by contending that it has been paying huge sum to Ambattur Municipality towards the properties owned by it, in which the plaintiff had been carrying on the industrial activities. As rightly put forth by the defendant's counsel, it is seen that the road or the passage on the western side of the plaintiff's unit is vested with Ambattur municipality and accordingly if the plaintiff is not inclined to pay the maintenance charges to the defendant towards the upkeep of the 'B' schedule property, the plaintiff has to work out its remedy against the Ambattur municipality for widening the road or passage on the western side to have access for its industrial activities. On the other hand, the plaintiff having admitted that the western passage / road is not convenient for transportation of their trucks and on the other hand having admitted of using only the plaint 'B' schedule property for the transportation of trucks and also for the other needs including the usage of the same by its workers and men associated with its activities and when there is no material placed by the plaintiff to show that the plaint 'B' schedule property belongs to the Government or Ambattur municipality and on the other hand, the plaintiff having clearly admitted that the 'B' schedule property had been all along formed and maintained by SIDCO, the defendant, in such view of the matter, the plaintiff is bound to pay the necessary charges to the defendant towards the maintenance of the road described in the 'B' schedule property.

13. It is not the case of the plaintiff that the 'B' schedule property belongs to it absolutely. As above noted, the plaintiff has not placed any proof to show that the 'B' schedule property is vested with the Government or Ambattur Municipality.



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The materials placed on record go to show that various industrial units in and around the road in question had been paying the necessary charges to the defendant for the upkeep of the road in question. Accordingly, when the plaintiff is found to be using the road in question regularly and constantly for its various industrial activities, the plaintiff cannot be allowed to avoid the payment of the maintenance charges on the footing that, as the public are having access through the said road, likewise the plaintiff is also entitled to use the same, that too, without paying the necessary charges towards the same. As rightly found by the first appellate court, the access of the public through the said road as by-passers cannot be taken advantage by the plaintiff to contend that as a matter of right, it has the entitlement to use the said road without paying any charges towards the maintenance of the same. When, even as per the admitted case of the plaintiff, the abovesaid road is essential for its industrial activities, mainly for transporting its trucks, accordingly, the road having been admitted to be vested with and maintained by the defendant, in such view of the matter, there is no impropriety on the part of the defendant in demanding the necessary charges from the plaintiff and the other unit holders for the upkeep of the said road. It is not the case of the plaintiff that the charges demanded by the defendant towards the maintenance is exorbitant or unreasonable. The mere fact that the plaintiff is paying the taxes to Ambattur municipality, as rightly argued, should only be confined to 'A' schedule properties as well the other properties vested with the municipality and therefore the plaintiff cannot be allowed to club both and contend, by making the plaintiff to pay the maintenance charges to the defendant, it has been asked to make double payment. When the maintenance charges demanded by the defendant has no link whatsoever with the tax demanded by Ambattur municipality and both function/ work on different fields, in such view of the matter, it is seen that the plaintiff cannot be allowed to seek the right to use the road on the footing that it is a public road and on the other hand, if the plaintiff is in the need of using the road for its industrial purposes, the plaintiff should pay the necessary charges to the defendant towards the maintenance of the said road and accordingly it is seen that the plaintiff has no cause of action to institute the suit against the defendant.

14. Though the plaintiff would claim that it has perfected the title to the 'B' schedule property on account of its long usage, by taking the said plea, has impliedly admitted the title of the defendant in respect of the suit property. Further, as regards the claim of the plaintiff that it has prescribed right to the 'B' schedule property, there is no material worth acceptance placed on the part of the plaintiff. In such view of



the matter, the abovesaid plea raised by the plaintiff deserves rejection.

15. As above noted the plaintiff has not placed any material to hold that the 'B' schedule property is vested with the Government or Ambattur municipality and on the other hand admitted that the 'B' schedule property is vested with the defendant and being maintained by the defendant. The mere fact that the public are having access through the said road as by-passers, would not confer any valid title to the plaintiff to use the 'B' schedule property for carrying on its industrial activities through the same. Accordingly, it is seen that the plaintiff having admitted that it had been using the 'B' schedule property for carrying on its industrial activities regularly and constantly as detailed in the plaint, the plaintiff is bound to pay the necessary charges of maintenance as called for from the defendant and as rightly put forth by the defendant, if the units like the plaintiff avoid the payment of maintenance charges to the defendant, the defendant would not be able to maintain the road in question and therefore, the plaintiff cannot complain that the defendant is adopting coercive action to prevent it from using the road in connection for its industrial activities. If the plaintiff is not inclined to pay the necessary maintenance charges to the defendant, as rightly put forth, it is always open to the defendant to take appropriate action against the plaintiff and the same cannot be restrained by the plaintiff in any manner.

16. Insofar as this case is concerned, the plaintiff has not clearly made out as to what is the nature of right it seeks to enforce in respect of the 'B' schedule property. Having admitted that the 'B' schedule property is vested with and maintained by the defendant, accordingly it is seen that the plaintiff is bound to pay the necessary maintenance charges to the defendant. The plaintiff has failed to establish that the 'B' schedule property is a public road vested with the Government or Ambattur municipality. If according to the plaintiff the road is vested with the Government or Ambattur municipality and on that footing the plaintiff seeks the necessary reliefs, with reference to the same, as rightly put forth, the plaintiff should have impleaded the Government and Ambattur municipality as the parties to the suit for sustaining its lis. On the other hand, the plaintiff having laid the suit only against the defendant admitting that it is only the defendant who is vested with the road in question and also the same had been maintained only by the defendant, cannot be allowed to put forth the untenable contentions that the road in question is a public road and therefore the plaintiff is not needed to pay the maintenance charges to the defendant. As abovenoted, with reference to the abovesaid case of the



plaintiff, when there is no material forthcoming on the part of the plaintiff, accordingly it is seen that there is absolutely no cause of action for the plaintiff to institute the suit against the defendant and in such view of the matter, the first appellate court is wholly right in rejecting the plaintiff's case and accordingly the substantial questions of law formulated in this second appeal are answered against the plaintiff and in favour of the defendant.

17. In conclusion, the second appeal fails and is accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

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To

1. Subordinate Judge, Poonamallee
2. District Munsif, Ambattur
3. The Section Officer, V.R.Section,
High Court, Madras.

+ 1 cc to Mr. Abdul Saleem, Advocate Sr.72571
+ 1 cc to M/s. Ramsubramaniam, Advocate Sr.71865

A.No.459 of 2015

KJI (CO)
EU(04/12/2018)