

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.07.2018

PRONOUNCED ON : 19.07.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

S. A.Nos.519 & 523 of 2004 and
C.M.P. 706/2013 AND 4273/2004

Nallamuthu ...Appellant/Defendant in SA.519/2004
... Appellant/5th Defendant in S. 523/2004

Vs.

Sigamani ...Respondent/Plaintiff in S.A.No.519 of 2004/
1st Respondent/Plaintiff in S.A.No.523 of 2004

Collector Vellore District
Collectors Office,
Sathuvachari,
Vellore - 9.

The Revenue Divisional Officer,
Katpadi Taluk,
Collectors Office,
Sathuvachari,
Vellore - 9.

The Tahsildar,
Katpadi,
Katpadi Taluk,
Vellore District.

The Executive Officer,
Katpadi Town Panchayat,
Katpadi Taluk,
Vellore District.

सत्यमेव जयते

...Respondents 2 to 5/Defendants 1 to 4 in
S.A.No.523 of 2004

Prayer in S. A.No.519 of 2004: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Principal District Judge, Vellore in A.S.No.102 of 2003 dated 05.01.2004 confirming the judgment and decree of the learned Principal District Munsif, Vellore in O.S. No.616 of

1993 dated 10.07.2003.

Prayer in S. A.No.523 of 2004: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree of the learned Principal District Judge, Vellore in A.S.No.71 of 2003 dated 05.01.2004 confirming the judgment and decree of the learned Principal District Munsif, Vellore in O.S. No.865 of 1997 dated 10.07.2003.

For Appellant : Mr.V.Chandrakanthan (in both second appeals)

For Respondents: Mr.S.N.Amarnath for Respondent in
S.A.No.519 of 2004/1st Respondent in
S.A.No.523 of 2004

: No representation/No appearance/
Set ex-parte vide order dated 03.07.2018
(for R2 to R5) in SA 523 of 2004

COMMON JUDGMENT

Second appeal No.519 of 2004 is directed against the judgment and decree dated 05.01.2004 passed in A.S.No.102 of 2003 on the file of the Principal District Court Vellore confirming the judgment and decree dated 10.07.2003 passed in O.S. No.616 of 1993 on the file of the Principal District Munsif Court, Vellore.

2. Second appeal No.523 of 2004 is directed against the judgment and decree dated 05.01.2004 passed in A.S.No.71 of 2003 on the file of the Principal District Court Vellore confirming the judgment and decree dated 10.07.2003 passed in O.S. No.865 of 1997 on the file of the Principal District Munsif Court, Vellore.

3. Both second appeals have been admitted on the following substantial questions of law:

1. Whether the judgment and decree of the learned Courts is contrary to Ex.A3 settlement deed?

2. Whether the oral evidence can be allowed to let is contrary to registered document Ex.A3?

3. Whether shifting the burden on the defendants to establish his rights over the property is correct without discharging the burden of the plaintiff?

4. Whether Mr.K.Swaminathan who was the original owner of the suit property is not nearby party to decide the title of the suit property?

5. Whether failure to implead the vendor of the suit property is justifiable?

6. Whether the plaintiff who had purchased the property subsequent to the defendant purchase, can claim easementary right?

4. Inasmuch as the scope of controversy between the parties as regards the subject matter lying in a narrow compass, it is unnecessary to dwell into the facts of the case in detail.

5. The respondent Sigamani has laid the suit against the appellant Nallamuthu in O.S. No.616 of 1993 for declaring his easementary right in respect of the B schedule property to enjoy the A schedule property and for permanent injunction restraining the appellant from constructing any building in the B schedule property. O.S.No. 865 of 1997 has been laid by the respondent Sigamani against the appellant Nallamuthu and others for the reliefs of declaration, mandatory injunction and permanent injunction in respect of the abovesaid suit property. It is found that inasmuch as the subject matter in both suits is one and the same, both suits were tried in common and in support of the respondent's case, PW1 has been examined, Exs.A1 to A14 were marked and on the side of the appellant, DW1 was examined and Exs.B1 to B6 were marked. In addition to that, CW1 was examined and Exs.C1 to C4 were marked.

6. On an appreciation of the materials placed on record, the trial Court was pleased to decree both suits laid by the respondent Sigamani as prayed for. In the first appellate Court, in support of the respondent's case, two additional documents have come to be marked as Exs.A15 and A16. The first appellate Court, on an appreciation of the materials placed on record, concurred with the judgment and decree of the trial Court and thereby, dismissed the first appeal preferred by the appellant. Impugning the same, the present second appeals have come to be laid.

7. The main point involved in this second appeal is whether the suit property forms part of Sundarar street as claimed by the respondent or belongs to the appellant exclusively as put forth by the appellant. It is seen that the subject matter i.e., the suit property lies in survey No.314/1X. Materials placed on record go to show that the survey No.314 was

originally owned by one Saminathan and it is found that various plots had been put up therein after approval which could be evidenced from the document marked as Ex.C1. Accordingly, it is found that the appellant's wife had purchased plot no.39 and the respondent had purchased plot no.75. The sale deed of the appellant's wife is marked as Ex.A14 and as determined by the Courts below, as per the description of the property comprised in the said document, the appellant's wife had been given the right to the public pathway under the said sale deed. The respondent's title deed has been marked as Ex.A15 and it is found that his plot is stated to be lying to the south of the common street and Nallamuthu's building. Thus, it is found that, as rightly found, Nallamuthu's plot is not stated to be located in survey No.314/1X i.e., the suit property.

8. While forming the lay out, it is found that Saminathan had executed the settlement deed on 25.01.1974, marked as Ex.A3 settling the roads, park, children playground formed in the approved lay out in favour of Kayhinjur Panchayat and it is found that when by way of Ex.A3, all the roads in the layout had been settled in favour of the Panchayat, thereafter Saminathan would not be entitled to convey the road portion to anyone and therefore, it is seen that even if road portion had been conveyed by him, the same would not be valid.

9. As above seen, the subject matter i.e., the suit property is stated to be located in survey No.314/1X. When survey No.314/1X is found to be forming part of the road i.e., Sundarar street and when it is seen that all the roads of the layout had been settled under Ex.A3, the case of the appellant that his wife had also acquired right in survey No.314/1X, as such, cannot be accepted in any manner. That apart, as rightly found by the Courts below, it is found that Sundarar street had also been settled by way of Ex.A3 by Saminathan and thereby, when the property comprised in survey No.314/1X had been settled and when as per the title deed of the appellant, his property does not lie in survey No.314/1X, it is seen that the Courts below had rightly held that survey No.314/1X only forms part of Sundarar street and not comprised within the property purchased by the appellant's wife.

10. The appellant claims title to the suit property i.e., the subject matter by way of Ex.B2. Ex.B2 is found to be executed in favour of the appellant by Swaminathan on 13.09.79. However, when the property comprised in Ex.B2 had already been settled by Saminathan by way of Ex.A3, it is found that on the date of Ex.B2, Saminathan had no right over the said property and it is thus found that the appellant or his wife cannot lay any claim of title to the property comprised in survey No.314/1X, which forms part of Sundarar street.

11. It is found that based on Ex.B2, the appellant had secured patta/assignment in respect of the property comprised in survey No.314/1X and when his settlor is not shown to be having any legal entitlement to settle the property in favour of the appellant, it is seen that the patta obtained by the appellant on the strength of Ex.B2 will not have any legal effect and therefore, it is seen that the patta document projected by the appellant cannot at all be relied upon and rightly negated by the Courts below.

12. The suit property comprised in survey No.314/1X forming part of Sundarar street and when it is found that Sundarar street and other roads formed at the time of layout had been earmarked only for the plot holders to have access to their respective properties and accordingly, it is seen that every plot holder is entitled to have access to the public street on all sides, it is seen that the appellant would not be entitled to restrain the respondent from enjoying the street earmarked for public purpose and in this connection, the Courts below rightly relied upon the authorities placed before them for holding that the suit property only forms part of Sundarar street and accordingly, the respondent is having entitlement to have access to his property from every point of Sundarar street to reach his property, accordingly granted the respondent the necessary reliefs as prayed for.

13. In the light of the materials placed on record, on factual matrix, it is found that the suit property only forms part of Sundarar street and thereby, the appellant or his wife cannot lay any exclusive claim of title to the same and accordingly, it is seen that the appellant's endeavour to obtain patta/assignment in respect of the suit property by itself would not clothe him any right in respect of the suit property. It is seen that the Courts below are justified in upholding the case of the respondent and granted the relief as prayed for and no interference is called for in these second appeals.

14. In my considered opinion, no substantial question of law is involved in this second appeal as the scope of controversy lies only on the appreciation of the factual matrix. In any event, the substantial questions of law formulated in these second appeals are accordingly answered against the appellant and in favour of the respondent Sigamani.

15. In conclusion, the second appeals fail and are accordingly dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

sli

To

1. The Principal District Judge,
Vellore.

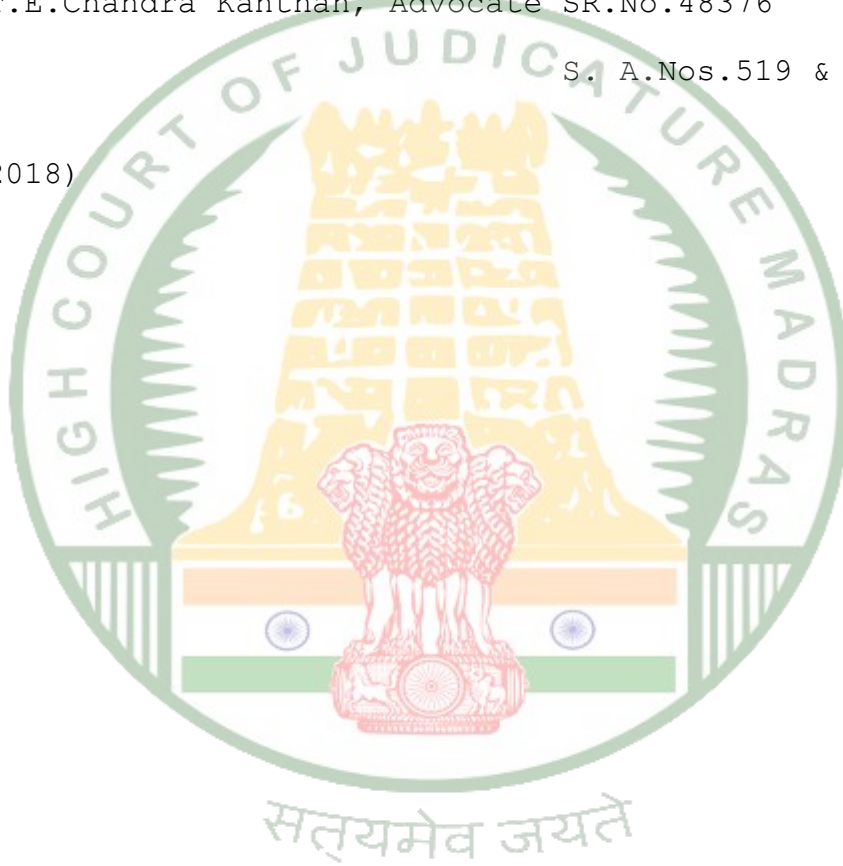
2. The Principal District Munsif,
Vellore.

+1cc to Mr.S.N.Amarnath, Advocate SR.No.48315

+2cc to Mr.E.Chandra Kanthan, Advocate SR.No.48376

S. A.Nos.519 & 523 of 2004

VD(CO)
GN(23/08/2018)



WEB COPY