



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Second Appeal (MD) No.62 of 2018

and

C.M.P. (MD) No.1206 of 2018

1.Kulanthaiammal

2.Vairamuthu

: Appellants/Respondents 1 & 2 /
Defendants 1 & 2

-Vs-.

1.Subbiah

2.Nadarajan

3.Sankaranarayanan (Died)

: Respondents 1 to 3/Appellants/
Plaintiffs

Palanisamy (Died)

4.Mangayarkarasi

5.Kundalakesi

6.Manimegalai

7.Gomathi

8.Arunagirinathan

9.Jayalalitha

10.Arulmozhi

: Respondents 4 to 10/Respondents 4 to 10/LRs of
3rd defendant / Third Parties.

11.Srirangam

12.Muthulakshmi

13.Rajasekaran

14.Palani Ramkumar

15.Balasubramanian

: Respondents 11 to 15

(Respondents 11 to 15 are brought on record as LRs of the deceased R3 vide Court order dated 26.03.2018 made in C.M.P.(MD)No.2782 of 2018 in S.A.(MD)No.62 of 2018)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 23.01.2015 passed in A.S.No.2 of 2011 on the file of the Sub Court, Sankarankovil, reversing the judgment and decree dated 20.10.2010 passed in O.S.No.317 of 2008 on the file of the Additional District Munsif Court, Sankarankovil.

For Appellants

: Mr.V.Meenakshisundaram

<https://hcservices.courts.gov.in/hcservices/>
For Respondents

: Mr.M.Thirunavukkarasu

JUDGMENT

The defendants 1 and 2 in the suit in O.S.No.317 of 2008 on the file of the Additional District Munsif Court, Sankarankovil, are the appellants in this Second Appeal.

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2.The respondents 1 to 3 herein, as plaintiffs, filed a suit in O.S.No.317 of 2008 on the file of the Additional District Munsif Court, Sankarankovil, for a declaration that the suit third schedule is the common pathway of plaintiffs and third defendant exclusively and for a consequential injunction restraining the appellants herein from interfering with the peaceful enjoyment of plaintiff third schedule by the plaintiffs and third defendant either by putting up any doorway facing third schedule or by constructing steps in the property. The suit is also for a mandatory injunction directing the appellants to close the doorway recently opened by the appellants facing the suit property.

3.The case of plaintiffs set out in the plaint is as follows:

3.1.The suit first schedule property is the house of plaintiffs 1 and 2. The suit second schedule belongs to third plaintiff. The suit third schedule is the exclusive pathway belong to plaintiffs and third defendant. In a partition deed among the father of plaintiffs 1 and 2 by name Lakshmana Mudaliyar and the brothers of Lakshmana Mudaliyar, dated 28.12.1960, the properties described in the plaint as first schedule and the path way described in the third schedule were allotted to the father of plaintiffs 1 and 2 namely Lakshmana Mudaliyar. During the life time of Lakshmana Mudaliyar, the suit first schedule and the suit third schedule properties were allotted to the share of plaintiffs 1 and 2 in a oral family arrangement.

3.2.The suit second schedule belong to the third plaintiff and the pathway right in third schedule was also enjoyed by the third plaintiff as an ancestral property having been allotted to the family of third plaintiff in a oral family arrangement. Similarly, the property which is on the eastern side of the second schedule and the pathway right in the suit third schedule was also enjoyed by the mother of third defendant by virtue of a registered sale deed dated 23.08.1952. Thus, the pathway right in third schedule which was enjoyed by the mother of third defendant was allotted to the third defendant in a oral family arrangement held about thirty years back.

3.3.The suit third schedule pathway is therefore the exclusive pathway belongs to plaintiffs and third defendant and defendants 1 and 2 has no right or title over the said property.

3.4.The defendants 1 and 2 are having their houses on the southern side of suit third schedule. The main entrance for their houses is located on the southern side of their house facing south and they never had any door or opening to have access to the suit



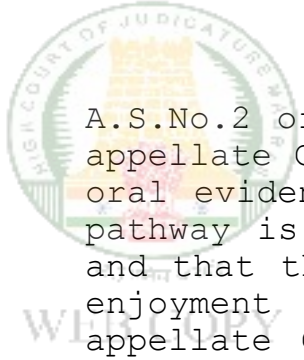
third schedule pathway. Even the neighbours of plaintiffs who have their houses adjacent to the third schedule pathway have put up windows in their houses facing third schedule, that too, after getting permission from the plaintiffs and third defendant.

3.5. On 09.11.2008, the defendants 1 and 2 have demolished a portion of their wall on the northern side of their building for the purpose of putting up of a doorway facing the suit third schedule. The defendants 1 and 2 further made an attempt to construct steps over the plaintiff third schedule so as to have access from their house to the third schedule. Though the plaintiffs approached the police, they were advised to approach the civil court for appropriate remedy. Hence, the plaintiffs were constrained to file a suit for the relief of declaration of title and consequential injunction and also for a mandatory injunction to close the opening that was made by defendants 1 and 2 facing the suit third schedule property.

4. The suit was contested by defendants 1 and 2 by disputing the exclusive right of plaintiffs and third defendant in respect of the suit third schedule pathway. The defendants 1 and 2 in their written statement put the plaintiffs to strict proof of the averments in the plaint. It is the specific case of the appellants that the suit third schedule is a common pathway. It is also stated that the plaintiffs or the third defendant cannot claim exclusive right as they never enjoyed nor possessed such right. It is further stated that the suit third schedule is a common pathway as per the Government records. Since the third schedule pathway is a common pathway for all the residents, it is stated that the neighbours of the plaintiffs have put up their windows facing the third schedule common pathway and that the plaintiffs cannot seek an injunction against the defendants 1 and 2 claiming exclusive ownership. It is further stated that the plaintiff third schedule is being enjoyed as common pathway not only by the plaintiffs but also by the defendants and others from time immemorial.

5. The plaintiffs filed Ex.A1 to Ex.A9 and examined the first plaintiff as P.W.1 and one Rathinasabapathi as P.W.2. On the side of defendants 1 and 2, only one document namely Ex.B1 consisting of some photos showing the suit third schedule is produced. The defendants examined three witnesses. The Town Survey Field Register and FMB Sketch pertaining to the suit property were marked as Ex.X1 and X2 before the trial Court.

6. The trial Court after framing necessary issues held that the suit third schedule is a common pathway relying upon the Town Survey Field Register and FMB Sketch wherein the suit property has been described as a pathway. In view of the position that the suit schedule is described as a pathway presuming that it belongs to the Government and enjoyed in common by the public, the trial Court decided the other issues against the plaintiffs and dismissed the suit. Aggrieved by the judgment and decree of the trial Court, the plaintiffs, namely, respondents 1 to 3 herein preferred an appeal in



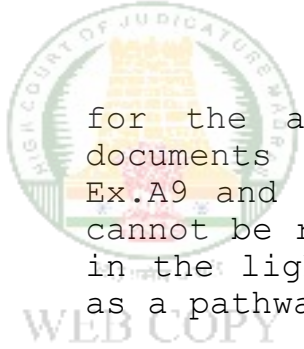
A.S.No.2 of 2011 on the file of the Sub Court, Sankarankovil. The appellate Court, after elaborately considering all the documents and oral evidence, came to the conclusion that the suit third schedule pathway is the exclusive pathway of plaintiffs and third defendant and that the appellants namely defendants 1 and 2 have no right or enjoyment over the suit third schedule property. The lower appellate Court relied upon the documents Ex.A1, Ex.A2, Ex.A8 and Ex.A9 and found that the suit third schedule property belonged to the predecessor-in-interest of the plaintiffs 1 to 3. Since no other document is produced to show that the appellants were in enjoyment of suit third schedule, as a common pathway, the case of the appellants that it is a common pathway belonged to public was rejected. The lower appellate Court further observed that merely because the suit third schedule has been classified as a pathway in Government records, the exclusive right, title of the plaintiffs 1 to 3 and the third defendant cannot be rejected as the plaintiffs have proved by overwhelming documentary evidence that the suit property is their exclusive property. In the absence of any document of conveyance executed by the predecessor in title of the plaintiffs, the lower appellate Court found that the entry in revenue record would not affect the right title and interest of the plaintiffs 1 to 3 to claim exclusive ownership over plaint third schedule pathway. The lower appellate Court therefore, set aside the judgment and decree of the trial Court and decreed the suit in O.S.No.317 of 2008 as prayed for. Aggrieved by the judgment and decree of the lower appellate Court in reversing the judgment and decree of the trial Court the defendants 1 and 2 in the suit filed the above second appeal.

7.The appellants have raised the following substantial questions of law in their memorandum of grounds:

a) When it is very clear from Ex.X1 and X2 that the 3rd schedule property is the common pathway in Government records and the suit was filed without adding the Government as party, whether the First Appellate Court is correct in overlooking the available evidence on record and allow the Appeal Suit and thereby granting a Decree of declaration and mandatory injunction?

b) Whether the First Appellate Court is correct in interpreting the recitals in Ex.A1 and Ex.A2 title deeds of the plaintiffs and 3rd defendants mother regarding the nature of 3rd schedule and its usage as their exclusive pathway and thus the judgment and decree of the first appellate Court warrants interference under Section 100 of C.P.C.?

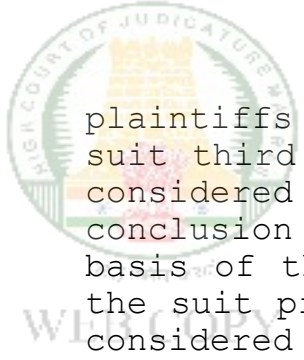
8.The learned counsel appearing for the appellants submitted that the lower appellate Court has not considered the evidence of D.W.2, namely, the Village Administrative Officer. It is his further contention that the lower appellate Court ought not to have ignored the entries in the revenue records in respect of the classification of the suit property. The learned counsel appearing



for the appellants further submitted that the recitals of the documents produced by the plaintiffs under Ex.A1, Ex.A2, Ex.A8, Ex.A9 and other documents are self-serving and that therefore they cannot be relied upon to prove the case of the plaintiffs especially in the light of revenue records describing the suit third schedule as a pathway.

9.The learned counsel appearing for the appellants relied upon the documents Ex.X1 and X2 and submitted that the entries in revenue records cannot be ignored especially in a case where the plaintiffs have not produced any old document to prove their title to the suit third schedule property. The learned counsel appearing for the respondents relied upon the documents Ex.A1, Ex.A2, Ex.A8 and Ex.A9 apart from the evidence of all the witnesses to sustain the judgement of the lower appellate Court.

10.From the plaint plan, it can be seen that the suit pathway is on the southern side of the houses of plaintiffs 1 and 2 and third plaintiff. The owners of houses on the south of the suit property have their main entrance for the houses situated on the southern side of third schedule are located on the south or western side of the buildings. The main door for any of the buildings adjacent to the suit pathway is not located facing the suit pathway. It is stated even in the plaint that the appellants have opened a doorway on the northern side of his building, even though they have a permanent door only on the south of their building. The documents Ex.A1 is the partition deed dated 28.12.1960. Ex.A2 is the sale deed in favour of Bathirakaliammal, dated 23.08.1952. Ex.A8 is another sale deed dated 02.05.1966 executed by one Thankaiyanadar Vagira in favour of Shanmugamudaliar. Similarly, Ex.A9 - the settlement deed dated 16.08.1950 is also an old document. All the documents Ex.A1, Ex.A2, Ex.A8 and Ex.A9 would show that the suit property has been allotted and enjoyed exclusively by the plaintiffs and third defendant. The lower appellate Court has discussed the documents and found that the exclusive right and title over the suit third schedule has been proved by the plaintiffs. Ex.A9 is a document executed by the husband of first defendant in favour of his first wife on 16.08.1950. The settlement deed under Ex.A9 is the parent document to claim title in respect of the property of defendants 1 and 2 which is located on the south side to the suit third schedule. In this document, the suit third schedule common pathway is referred to as Muthaiah Vathiyaar Vagiara pothu nadaipathai, while describing the northern boundary of the property in which the defendants 1 and 2 are residing now. In the suit defendants 1 and 2 have not produced any document to show their right or title in respect of the suit pathway. It is only based on the revenue record where the suit third schedule has been described as pathway, the defendants 1 and 2 claimed that the suit property is a public pathway. Hence, the claim of defendants 1 and 2 is purely on the basis of the revenue entry which is contrary to the document or title pertaining to the property of appellants / defendants 1 and 2. In such circumstances, the findings of the trial Court that the



plaintiffs have proved their exclusive right and title in respect of suit third schedule cannot be faulted. The trial Court elaborately considered the evidence both oral and documentary and came to the conclusion that the plaintiffs cannot be non-suited merely on the basis of the Town Survey Field Register and the FMB Sketch showing the suit property as a pathway. The lower appellate Court has also considered the fact that the revenue entry in respect of the suit third schedule does not support the case of the defendants 1 and 2 as the suit third schedule is not described as a public pathway or common pathway but it is described only as a pathway. Since there was no document to show that the predecessor-in-title of plaintiffs had transferred their title in favour of Government or the local body, the lower appellate Court is perfectly right in upholding the right title and interest of the plaintiffs and third defendant over the suit third schedule. Merely because the suit third schedule has been labelled as pathway, as there is no record to show that the Government or local body ever claimed any right over the suit property as the property of Government or local body as the case may be. It cannot be presumed that the suit property is a public pathway. The lower appellate Court has further found that there is no record to show that the entries as per Ex.X2 regarding the classification of the suit property as a pathway, is not proved to be a legitimate entry made after holding an enquiry, giving an opportunity to the plaintiffs. The position that the findings of the lower appellate Court are supported by documents and reasons cannot be supported and hence, this Court is not inclined to entertain this appeal as there is no substantial questions of law involved in this appeal.

11.As a result, this Court confirms the judgment and decree of the learned Sub Judge, Sankarankovil, in A.S.No.2 of 2011 and this Second Appeal is dismissed. However, there is no order as to costs. Consequently, the connected civil miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

- 1.The Subordinate Judge, Sankarankovil.
- 2.The Additional District Munsif, Sankarankovil.
- 3.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,

<https://hcservices.ecourts.gov.in/hcservices/>
Madurai. **(Two Copies)**



+1cc to M/S.D.Nallathambi, Advocate SR.No. 66778

+1cc to M/S.M.Thirunavukkarasu, Advocate SR.No. 66640

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Judgment made in
Second Appeal (MD) No.62 of 2018
04.06.2018

srm

JM/SV/SAR 4/20.07.2018/7P/7C