

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 24.06.2019	Date of Pronouncing Judgment 12.09.2019
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CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

S.A.No.1207 of 1994

1.Rangammal (died)
2.K.Chinnasamy Gounder
3.C.Muthuswamy
4.C.Kumaraswamy (died)
5.Senthil Kumar
6.Minor Vigneswaran
rep. By his father and next friend C.Arumugham
...Appellants/Plaintiff

(Appellants 2 to 6 brought on record as LRS
of the deceased sole appellant vide order
of Court dated 29.08.2011 made in
C.M.P.No.1124 of 2010 and R6 (Minor) represented
by his father and next friend as his guardian vide
order of Court dated 29.08.2011 made in C.M.P.No.1125 of 2010)

Vs.

1.Radha
2.A.V.Govindarajan
3.P.Sarojini
4.S.R.Ramalakshmi Ammal
5.The Commissioner, Coimbatore,
City Municipal Corporation,
Municipal Buildings, Big Bazaar St.,
Coimbatore.
...Respondents/Defendants

PRAYER: Second Appeal filed under Section 100 of C.P.C.,
against the Common Judgment and Decree dated 18.08.1994 made in
A.S.Nos.106/1992, 114/1992, 117/1992 and 162/1992 on the file
of the II Additional Subordinate Judge of Coimbatore reversing
the Judgment and Decree dated 08.04.1992 made in O.S.No.1661 of
1981 on the file of the Principal District Munsif of Coimbatore.

For Appellants 2, 3, 5, 6 : Mr.S.Mukunth for
M/s.Saravabhavan Associates

For Respondent 1 : Mr.T.R.Rajaraman

For Respondents 2, 3, 5 : No Appearance

For Respondent 4 : Died

JUDGMENT

This Second Appeal is filed against the Common Judgment and Decree dated 18.08.1994 made in A.S.Nos.106/1992, 114/1992, 117/1992 and 162/1992 on the file of the II Additional Subordinate Judge of Coimbatore reversing the Judgment and Decree dated 08.04.1992 made in O.S.No.1661 of 1981 on the file of the Principal District Munsif of Coimbatore.

2.The unsuccessful plaintiff is the appellant herein.

3.For the sake of convenience parties are referred to as per the ranking before the Trial Court.

4.The appellant filed the suit in O.S.No.1661 of 1981 before the District Munsif Court, Coimbatore seeking the relief of declaration of plaintiff's entitlement to the assignment of sanitary lane and for a declaration of assignment of the suit property by the first defendant to the second defendant as arbitrary invalid and not binding of the plaintiff and the suit was decreed, after contest and hence the defeated defendants have preferred A.S.No.106, 114, 117, 162 of 1992 on the file of Sub Court, Coimbatore wherein those appeals were allowed and hence the Second Appeal has been filed by the plaintiff.

5.As stated supra, the plaintiff Smt.Rangammal filed the suit in O.S.No.1661 of 1981 on the file of District Munsif Court, Coimbatore for the above relief of declaration and the plaint proceeds on the basis that the plaintiff is the owner of the building situated in T.S.No.578 bearing Door No.11/14-21, in Sarojini Street, Ramnagar, Coimbatore. On the west of the plaintiff's property there is a Sanitary lane to a width of 10 ½ feet. After the advent of underground drainage system this Sanitary lane originally provided for scavenging became infructuous and out of use and as such the Government and the Municipality decided to assign the existing Sanitary lane in Ramnagar and R.S.Puram, Coimbatore to the respective adjacent owners. This is also evidenced by the Government order No.1394 Rural and Development Administration Department dated 06.09.1979. As per the above decision of the Government and the Municipality, the owner of the property in T.S.No.578 (Plaintiff) is automatically entitled to a width of 5 feet of the Sanitary lane on the west. The remaining 5 feet will go to the owners of the property in T.S.Nos.568 and 569 on the west. The Municipality Authorities also duly sub-divided and planted stones demarcating the 10' width sanitary lane into 2 equal portions to be assigned and allotted to the respective owners on either side of the land.

6.The plaintiff purchased the property in T.S.No.578 on 11.04.1979. The vendor intimated the plaintiff that the assignment of 5 feet width is awaited from the Municipality. The plaintiff, after purchase, made representations to the (Municipality) Corporation as well as the District Collector for the assignment of the lane to an extent of 5' as already demarcated offering to pay the necessary value thereof. The

Collector, by his communication, dated 10.12.1980, intimated the plaintiff that a report has been called. She is always ready and willing to pay the necessary value for the 5 feet width land already in her occupation for which she is also entitled to assignment as a matter of right.

7.As per the Rule and order of the Government and decision taken by the defendant corporation, the plaintiff is entitled to an assignment of 5 feet width land adjoining his property in T.S.No.578 for which she is ready to pay the value to the defendant corporation. As the defendant is trying to overlook the rights of the plaintiff and taking steps to bring in third parties to the property, this suit is filed for a declaration of her rights. The fifth defendant is also asserting a right to the entire width of the sanitary lane east of her property. It is neither valid nor legal. Even in 1981, the plaintiff questioned her claim in her Writ Petition No.3826 of 1981. The High Court by its Judgment dated 25.02.1986 has ordered the question to be decided by a Civil Court on oral and documentary evidence. The fifth defendant has no right on the half portion of the sanitary lane abutting the plaintiff's house, on the west, for which the plaintiff alone is entitled to the assignment as prayed for in the suit.

8.The plaintiff came to know from the written statement filed by the 1st defendant the suit land has been already assigned to the owner of the land situated on the western side of the land i.e., the 2nd defendant. The plaintiff states that the assignment of the suit land to 2nd defendant is not valid and is not binding on the plaintiff. It is arbitrary invalid and ultra vires of the corporation rules.

9.The first defendant Coimbatore Municipal Corporation (who is arrayed as the 5th respondent in the Second Appeal) denied the entitlement of the assignment right in favour of the plaintiff inter alia submitted the history behind resolution passed by the Municipal Corporation stated that there was a place land due to abandonment of sanitary lane and the same has been assigned to the owner who is residing on the western side of the land as per the decision of the Council and also as per the rules. It is incorrect to state that the plaintiff has got 5 feet width of the land (Eastern side of the land as per the rule etc.,). The plaintiff has forgotten to note the principle under which the council has passed a resolution to be followed while assigning the lands. As per the resolution the lands in Ramnagar Area - Brahmin Extension that lane should be assigned only to the purchasers of the sites in the same layout only. So the assignee got the assignment only in accordance with the said principle and resolutions. But the plaintiff's site does not form part of the Ramnagar layout, and as such she is barred to claim any right over the said lane. The plaintiff being a recent purchaser he may not be knowing the history of the locality and also the predecessors in title to his title. This suit land has been already assigned to the owner of the site situated on the western side of the land. The adjacent portion namely north of the suit land has been assigned in the

same manner long back following the same procedure. The claim of the plaintiff is barred by limitation.

10.The 2nd defendant S.R.Ramalakshmi Ammal in whose favour the subject matter of the sanitary lane was assigned, has, filed written statement stating that the width of the sanitary lane is 10' only and not 10 ½ as alleged. There is a suppression of material fact in the plaint i.e., that the Collector of Coimbatore by an order No.L.Dis.27742/54 dated 27.04.1955 had sanctioned the sale of the sanitary lane. 2nd defendant had applied for the sanitary lane in question in the year 1960 to the 1st defendant Municipality. 2nd defendant was asked to remit Rs.112.50 as per Memo of the 1st defendant No.8090/50/A-25 dated 20.11.1960. 2nd Defendant remitted Rs.112.50 under Chalan No.8579 dated 16.12.1960 for the price of the sanitary lane in T.S.No.570/2 of T.S.Ward No.9 for 450 sq.ft., to be assigned to 2nd defendant by the 1st defendant. After remitting the said sum to the 1st defendant, this defendant as per Memo No.8090/50/A-25 dated 12.03.1963 of the 1st defendant has signed the subdivision statement in connection with the proposed assignment of the sanitary lane in the Office of the 1st defendant.

11.In the written statement, it is further averred that admittedly, the plaintiff purchased her house property on 11.04.1979 whereas this defendant had purchased her house property on 02.06.1959 by virtue of a registered sale deed bearing Doc.No.2838 of 1959. 2nd defendant while mortgaged the house property by virtue of registered mortgage deed dated 15.12.1969 and 19.03.1970 to one Smt.N.Meenakshiammal, it was described that the Municipal Sanitary Lane was part and parcel of her house property as the entire sanitary lane in question was in possession and enjoyment of this defendant. As stated above on 16.12.1960 she was in possession of the said lane from the said date. 2nd defendant's right was established duly to 1st defendant regarding the sanitary lane and she got the registered sale deed dated 16.03.1981 from the 1st defendant for Rs.93.50 to an extent of 10' x 37'6'' in T.S.No.570/2 to an extent of 374 sq.ft., out of the contract of sale already entered into between the defendant's regarding the sale of the land and the payment made for the same in 16.12.1960 to a sum of Rs.112.50.

12.The plaintiff is not at all entitled to the sanitary lane. 2nd defendant is in possession of the land from 1960 onwards and the 1st defendant has rightly assigned the land in her favour. 2nd defendant is having right, title and interest over the Municipal Sanitary Lane in T.S.No.570/2 to an area of 374 sq.ft., by virtue of possession and enjoyment of the land from the date of payment of Rs.112.50 dated 16.12.1960 towards cost of the land.

13.The third and fourth defendants have filed common written statement, the essential abstract of the same is the plaintiff's alleged property is not in Brahmin extension and it is also not part of Ramnagar. The plaintiff for the purpose of

claiming a right over the sanitary lane is trying to setup title by locating her house in the Brahmin extension Ramnagar Coimbatore. It is actually located within jail road area. The width of the land is 10 feet and not 10 ½ feet. The plaintiff's son Mr.C.Kumarasamy is employed as Bill Collector in Coimbatore Municipal Corporation and using his influence and position attempting to grab the defendant's right.

14.Further, defendants 3 to 4 stated that there is a valid registered assignment deed dated 09.12.1983 in favour of this defendant and his wife. The assignors have already paid its value as per resolution dated 30.04.1960 which is sanctioned as per G.O.Ms.No.1485/LA dated 15.10.1957. A sum of Rs.136.50 is remitted to Municipality and there is concluded transaction and the site has to be assigned only to this defendant and his wife. The plaintiff cannot re-agitate at this stage taking advantage of the situation. There is no sanitary lane right to plaintiff and there is no basis to seek any relief. There was never an occasion even to use the sanitary lane either by plaintiff or her predecessors in title. It was used only by house owners in Brahmin extension Ramnagar. The plaintiff for the purpose of getting the land cannot plead a right. The alleged G.O.Ms.No.1394 dated 06.09.1979 will not confer any right to plaintiff. There is no Government order or resolution to support the case of the plaintiff. The registered document dated 09.12.1983 is self explanatory. This defendant's predecessors already paid its value whereas the plaintiff's predecessors not even attempted claim any right as there was no scope to claim it. The plaintiff taking advantage of her sons employment in the 1st defendant corporation causing unnecessary obstruction and the defendant reserves his right to claim damages.

15.After the completion of the said pleadings after obtaining necessary permission the third and fourth defendants also filed additional written statement inter alia contended that the defendants herein are owners of the property bearing T.S.No.569 which is within the Ramnagar Brahmin Extension Layout. There is a north-south land immediately on the eastern side of these defendants properties bearing T.S.No.570 which also lies within the Brahmin Extension Layout. The said land is the property of the Corporation which has been used as sanitary lane. The width of the said lane is 10 feet. As per the resolution of the corporation and as per the guidelines of the Government, these defendants are entitled for assignment of the sanitary lane in T.S.No.570 abutting their property in T.S.No.569 to its fullest width. The plaintiff is having her properties on the east of the sanitary lane which does not form part of the Brahmin Extension Layout. The properties of the plaintiff comes within the Jail road area. Therefore, the allegation of the plaintiff that she is entitled for assignment of the sanitary lane to a width of 5 feet is totally incorrect and baseless.

<https://hcservices.ecourts.gov.in/hcservices/>

16.Since the plaintiff is not having her property within the Brahmin Extension Layout, she is not entitled at all for

the assignment of any portion of the sanitary lane in T.S.No.570 which lies within the Brahmin Extension Lane. Only these defendants and the other persons who are having properties on the western side of the sanitary lane are in possession and enjoyment of the same and are entitled for assignment of the sanitary lane to its fullest width which is abutting their respective properties. In fact, the portion of the sanitary lane abutting the site of the 5th defendant had already been assigned to her by the 1st defendant. The vendors of these defendants have also remitted the requisite amount for assignment of the sanitary lane. The High Court proceedings namely W.P.No.3826 of 1981 before the High Court bars the present proceedings as it is barred by resjudicata.

17.Before the Trial Court, plaintiff examined himself as P.W.1 and marked Exs.A1 to A16 on the side of the defendant, Exs.B1 to B23 and D.W.1 to D.W.3 were examined and Exs.C1 and C2 were marked.

18.On consideration of both oral and documentary evidence the learned District Munsif has held that the plaintiff is entitled for the relief as prayed for and accordingly decreed the suit.

19.Aggrieved against the said Judgment and Decree, the contesting defendant has preferred A.S.Nos.106, 114, 117, 162 of 1992 wherein Common argument were heard and an application has been filed under Order 41 Rule 27 to receive the documents namely report of the Advocate Commissioner filed in O.S.No.2509 of 1989 and the same was marked on behalf of the defendant Municipal Corporation Coimbatore, Exs.B24 and B25.

20.The learned Additional Sub Judge on consideration of the fact has held that the resolution passed by the defendant Municipal Corporation of Coimbatore is valid in law and the situs of the suit property does not fall under the area where the scheme is extended to and the right was approved only to the person who is the owner at the time of proclamation of the scheme namely vendor of the plaintiff and the vendor of the plaintiff have not exercised any interest on assignment of house land and further hold that even in the sale deed executed in favour of the plaintiff not coughed any right has been conferred to the plaintiff and the claim now made by the plaintiff is barred by limitation under Article 113. Accordingly, dismissed the suit by allowing the appeal.

21.Aggrieved against the said Judgment and Decree granted in Appeal Suit the unsuccessful plaintiff has filed the above Second Appeal and at the time of the admission following substantial questions of law were framed.

(a) Whether the Lower Appellate Court is correct in law in coming to the conclusion that Ex.B3 which is a Municipal resolution supercedes Exs.A3 and A4 which are Government orders passed pursuant to the powers conferred upon the State Government traceable to Section 164 read with Section 303(2)(d) of the Tamil

Nadu District Municipalities Act?

(b) Whether Lower Appellate Court is correct in law in admitting Exs.B24 and B25 as additional evidence and acting upon the same; overlooking the fact that they are respectively the report and plan filed in O.S.No.2509 of 1989 District Munsif Court, Coimbatore to which the appellant is not a party?

(c) Whether the Lower Appellate Court is correct in law in coming to the conclusion that the suit is barred by limitation as per Article 113 of the Limitation Act when the right to file the suit had accrued to the appellant only on 16.03.1981 and the suit itself had been filed on 23.03.1981?

(d) Whether the Lower Appellate Court is correct in law in coming to the conclusion that the appellant would not be entitled to an assignment as per Ex.A3 having found that in Ex.A3 and A4 the name of the appellants predecessor-in-title is found and also the fact that he is entitled to an assignment?

22.The learned counsel for the appellant / plaintiff made submissions in support of the substantial questions of law and Mr.T.R.Rajaraman, the learned counsel for the respondent made submissions in support of the Judgment of the trial Court, the learned counsel for the Municipal Corporation, Coimbatore made submissions in connection with Ex.A3 and Exs.C1 and C2 and X1 and X2.

23.The sum and substance of the contention of the appellant / plaintiff is that he is the owner of the building situated in T.S.No.578 bearing Door No.11/14, Sarojini Street, Coimbatore. On the west of the said building there is a sanitary lane to the width about 10 ½ feet. Having purchased the same from his vendor Damodaran on 11.04.1979 and he was informed by his vendor that an assignment of 5 feet width in sanitary lane can be availed from the 5th respondent herein Coimbatore Corporation and he was also put in possession of the above said 5 feet width land in anticipation of the assignment from the 5th defendant's Corporation and prior to the plaintiff's possession, his vendor in title was in possession and enjoyment of that extent of land and he relied upon the decision in Government in G.O.Ms.No.1485 dated 15.10.1957 which is marked as Ex.A1.

24.Per contra, the claim of the appellant / plaintiff was resisted by the 5th defendant in the suit that she is entitled to the entire width of the sanitary lane east of her portion and she filed a Writ Petition No.3826 of 1991 and in the final order dated 25.02.1986 the High Court has directed the parties to adjudicate the matter before the Civil Forum. It is to be stated that pending suit plaintiff has filed amendment petition seeking an additional relief of declaration to declare the assignment made by 5th defendant in favour of

defendants 3 and 4 is invalid and not binding upon him.

25.The sum and substance of the submissions made by the learned counsel for the contesting respondent Mr.T.R.Rajaraman is that pursuant to a resolution of the 5th respondent Coimbatore Corporation, the suit land which is sanitary lane adjoining the area of the defendant was decided to be assigned to the purchaser of the site in Ramnagar / Brahmin Extension and to the purchaser of sites in the layout only and it is a specific case of the 5th respondent herein that the suit site does not form part of the Ramnagar layout. The plea of the 4th respondent is that she had purchased the property in the year 1959 and also applied for assignment in the year 1960, after remitting the necessary fees fixed in the land cost she got the assignment in her favour. It is seen that the common plea of the respondents 2 and 3 is that they are the owners in T.S.No.569 it is situated within the Ramnagar / Brahmin Extension layout and as per the Municipal Resolution Ex.B1 they are entitled to get an assignment of entire 10 feet land and accordingly resisted the claim of the plaintiff.

26.As stated supra, the Trial Court has decreed the suit and the Appellate Court has reversed it and allowed the appeal, consequently dismissed the suit.

27.Heard both sides. Records Perused. Based upon the documentary evidence and after hearing the rival contention of the both advocates the entire case is centered around the above document. Ex.A3 is the copy of the G.O in G.O.Ms.No.1485 dated 15.10.1957 issued by the Department of Education of Development. Ex.B2 is the site map drawn and by the Planning Officer of Coimbatore Corporation and Ex.B3 is the copy of the resolution in M.C.R.2053 Municipality of Coimbatore dated 30.04.1960. Ex.B20 is the Rough Sketch regarding T.S.No.570 and Ex.B22 is the letter issued by Damodaran legal notice issued on behalf of the Damodaran to the 5th defendant and his husband and Ex.B23 is the sale deed executed by the Coimbatore Municipal Corporation and one C.S.Sanjeewa Subarao. As stated supra, Exs.C1 and C2 is the report of Advocate Commissioner and the plan, while Exs.B24 and B25 were marked by the lower Appellate Court is the Commissioner's report and plan in O.S.No.2509 of 1989.

28.From the evidence of P.W.1 coupled with Exs.A1, A2, A3, A4 and A5, it is seen that the mother of the P.W.1 has purchased the property from one Damodaran, son of Rangasamy Naidu under Ex.A6 in the land situated in T.S.No.578. The land allotted to the said Damodaran, son of Rangasamy Naidu by the society. Exs.A3 and A4 are relating to the same resolution passed by the Coimbatore Municipality. On perusal of Ex.B22 it is seen that the same is came into force, after Ex.A3 resolution however, it is seen that as per Ex.B22 the Damodaran sold the property to the plaintiff / respondent herein has also issued a notice to the Coimbatore Municipality. However, for the reasons best known, there was no recital into that effect in Ex.B22 (the sale deed executed by the said Damodaran in

favour of the mother of the plaintiff) also assumes significance. It is stated that neither the plaintiff mother nor the vendor of the plaintiff (namely Damodaran) or Damodaran's father Rangasamy Naidu, at any point of time have not applied for any assignment as under Ex.A3 resolution. In other words except for the suit claim neither the vendor of the plaintiff nor his father, (the original allottee of the land) has never made any requisition seeking allotment of the suit land (Sanitary lane) under the Ex.A3 resolution also assumes significance.

29. On a close perusal of Ex.A3 it is seen that the residence adjoined to the sanitary lane namely Sanjeeva Subbarao, Viswanatha Iyer, Thangammal who are in that area have been allotted, the assignments of piece sanitary lane in T.S.No.570 so also residence of New Street namely Rangasamy Naidu and Rajagopal residence in Sivaswamy Street were also allotted assignment of sanitary lane adjacent to the lands in T.S.No.570. However, it is also seen that from the very same resolution under Ex.A3 none of the residence in Sarojini Street were allotted any assignment in T.S.No.570 is also assumes significance and the same is goes against the appellant / plaintiff.

30. On perusal of Ex.A6 sale deed executed by Damodaran, son of Rangasamy Naidu and Ex.A5 partition deed, the residents of Sarojini Street the portion has been allotted however, for the Rangasamy Naidu, the residence of New Street has been allotted a site by way of assignment, thus that this Court finds that on a combined reading of evidence of D.W.1 (the staff from the Coimbatore Municipal Corporation) coupled with Exs.B3 and B7 it is seen that as per District Collector proceedings in Ex.B7 the assignment of sanitary lane has been given for the respective house owners adjacent to the sanitary lane and Ex.A3 came into force as per the notified date even before the same Exs.B3 and B7 proceedings of the Collector has been given effect to on a close perusal of Ex.B3 dated 30.04.1960 the strip lands in Sanitary lane situated in T.S.No.570 the strip of North-South, lands were allotted to the neighbouring residence in Kalinga Naicker Street, while East-West strip of T.S.No.570 has assigned to the resident in T.S.No.574, 575, 576.

31. Thus, this Court finds that as per the Exs.C1 and C2 coupled with the oral evidence of D.W.1 and the resolution Ex.B3 the North-South portion of T.S.No.570 goes to the residents of the Kalinga Naicker Street which is situated adjacent to the said T.S.No.570 and also taking note of it is the specific evidence of the official Witness D.W.1 that Sarojini Street does not fall in the Brahmin Extension Street and the same is also found to be duly corroborated with Ex.B3 and therefore based upon the above oral evidence of D.W.1 coupled with the documentary evidence of Exs.B3, B4, B7, B22 the lower appellate Court has rightly come to the conclusion that goes to show that how the lands of sanitary lane in Survey No.570 and 576 and the North-South portion of the residents of

Kalinga Naicker would become entitled to and also found that the suit site does not come within the original notified area namely Brahmin Extension Area and the said findings sent by the Lower Appellate Court is well-merited, well-considered does not warrant interference at the appellate stage, in the absence of any discrepancy or any error on the face of the record.

32.The next contention of the learned counsel for the respondent / defendant is that though there was a reference of name of Rangasamy Naidu at New Street in Ex.A3 (father of the vendor of the plaintiff) is found however, as per Ex.B3 resolution, the residents of New Street or Sarojini Street are not entitled for any assignment of the sanitary lane.

33.On a cumulative analysis of the oral and documentary evidence, this Court finds that

(i) the suit property is in respect of 5 sq.ft., Sanitary Lane and the appellant / plaintiff seeks entitlement of assignment on the basis of G.O.Ms.No.1485, L.A., dated 15th October 1957.

(ii) the said lane is the property of the Corporation which has been used as sanitary lane. The width of the said lane is 10 feet. As per the resolution of the corporation and as per the guidelines of the Government, the neighbouring residents are entitled for assignment of the sanitary lane in T.S.No.570, abutting their property in T.S.No.569 to its fullest width viz., 5 feet on their sides. As per the resolution the lands on Ramnagar Area - Brahmin Extension that lane should be assigned only to the purchaser of the sites in the same layout only.

(iii) the defendants herein are owners of the property bearing T.S.No.569, which is within the Ramnagar - Brahmin Extension Layout. There is a North - South land immediately on the eastern side of these defendants properties bearing T.S.No.570, which also lies within the Brahmin Extension Layout.

(iv) A piece of land in erstwhile sanitary lane was only allotted to original purchaser of the land in the scheme and owner of the land on the date of the proclamation of the scheme by the then Coimbatore Municipality. On appreciation of the oral and documentary evidence, it is found that neither the original allottee nor his son namely, Damodharan, who are predecessor in title to the mother of the plaintiff, had exercised the option of seeking for assignment under the scheme. Besides, the area does not fall under the notified area. Moreover, neither of the predecessor in title nor his son had conveyed the right of assignment under the Sale Deed to the mother of the plaintiff under Ex.A6 Sale Deed and hence, the right to claim assignment, if any, is only with the land owner on the date of the scheme and not the subsequent purchaser of the purchaser at a later point of time, since by that time, in the absence of any requisition from the original land owner or the subsequent land owner within the stipulated time fixed under the scheme, the Municipality has allotted those lands to the neighbouring owners as envisaged under the scheme and hence, the finding of the Lower Appellate Court that

the claim for the assignment of piece of land in the erstwhile sanitary lane made by the plaintiff, who is the owner of the property, after changing four hands and hence, the claim made beyond the period of three years is barred by limitation does not warrant any interference and accordingly, the substantial question of law Nos.3 and 4 are answered in negative against the plaintiff.

(v) On the point of admissibility of evidence Ex.P25 namely map marked by the Municipal Corporation in the different suit wherein the plaintiff herein is not a party, this Court is of the considered view that since the right of entitlement of assignment itself is negated and the same does not arise for consideration.

34.The lower Appellate Court has rightly concluded that even the vendor of the plaintiff is not entitled for any assignment and the further finding of the lower Appellate Court is that even if there was the entitlement in favour of the Damodaran, (son of Rangasamy Naidu) he has not availed such benefit of the scheme brought by the Coimbatore Municipality under Ex.A3 within a period of 3 years and thus, further, observed, that is the reasons as to why he has not mentioned any such entitlement in the sale deed executed by him in favour of the plaintiff herein also support the case of the respondent / defendant. Thus, in the absence of any whispers by the Damodaran under Ex.B22 letter addressed to the Coimbatore Municipality the lower Appellate Court has rightly comes to the conclusion that Rangasamy Naidu, and his son Damodaran, (the vendor of the plaintiff) has not indicated by any of his right regarding any entitlement for assignment of land in the sanitary lane and in the absence of any clause in the sale deed assigning such right of Assignment in favour of the plaintiff (reciting any alleged entitlement, the lower Appellate Court has rightly concluded that the plaintiff has not accrued any right of entitlement of assignment of the sanitary lane as claimed by him), the Lower Appellate Court is quiet right in its finding and in allowing the Appeal filed by Coimbatore Municipality.

35.In this view of the matter, it is seen that the substantial questions of law as to the competency of the resolution passed by the Municipal Corporation under Ex.A3 and at a combined reading of Exs.A3, A4 coupled with Ex.B3 this Court is of the considered view that the 1st substantial questions of law does not arise any consideration because of the fact that under Ex.B3 the eligibility of the locality people who are entitled for such assignment of land which was approved by the Government under Ex.A3, while Ex.A4 is the certified copy of Ex.A3 and therefore, the question of super ciding one with another does not arise since the Ex.B3 is found to be in consonance Ex.A3. So also this Court finds that merely because the name of the plaintiff's predecessor in title is found in Ex.A3, the claim of assignment cannot be considered since assignment now sought for does not falls under the eligibility area. Therefore, the substantial questions of law 4 does not arise for considerations.

36.In view of above on the factual matrix of the case as Extracted above and also of the fact that neither the vendor of the plaintiff (namely Damodaran) nor his father Rangasamy Naidu is not made any applications for assignment for land in the sanitary lane and after several years, the plaintiff who is a subsequent purchaser wanted to unsettled, the settled issue and rack up the issue after years, by taking advantage of the position of plaintiff's father in the Municipality and hence, the Lower Appellate Court has rightly held that the claim made by the plaintiff is barred by limitation and accordingly, all the substantial questions of law are answered in negative and are held against the appellant and the Second Appeal is devoid of merits and dismissed with cost through out the proceedings.

37.In the result, this Second Appeal is dismissed. With Cost through out.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

rna

To

1.The II Additional Subordinate Judge,
Coimbatore.

2.The Principal District Munsif,
Coimbatore.

3. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.T.R.Rajaraman, Advocate SR.No.79015

+1cc to M/s.Saravabhavan Associates, Advocate SR.No.78374

+2cc to M/s.P.Bagyalakshmi, Advocate SR.No.78683, 78799

S.A.No.1207 of 1994

SR(CO)
GMY(07/02/2020)