

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2019

PRONOUNCED ON: 29.03.2019

CORAM:

THE HON'BLE MR.JUSTICE T.RAVINDRAN

S.A.No.1402 of 2005

S.Ezhumalai

..Appellant/Plaintiff

.Vs.

1.Ammavasai

2.Thanikachalam

..Respondents/Defendants

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and Decree dated 08.01.2005 on the file of the I Additional Subordinate Judge of Cuddalore and passed in A.S.No.59 of 2004 allowing the appeal and setting aside the decree and judgment of the Principal District Munsif of Cuddalore in O.S.No.37 of 2001 dated 30.06.2004.

For Appellant : Mr.R.Gururaj

For Respondents: No representation/ No appearance
Set exparte vide order dated
14.03.2019

J U D G M E N T

In this second appeal, challenge is made to the judgment and decree dated 08.01.2005 passed in A.S.No.59 of 2004 on the file of the First Additional Subordinate Court, Cuddalore reversing the judgment and decree dated 30.06.2004 passed in O.S.No.37 of 2001 on the file of the Principal District Munsif Court, Cuddalore.

2. For the sake of convenience, the parties are referred to as per the rankings in the trial court.

3. Suit for declaration and permanent injunction.

4. The case of the plaintiff in brief is that T.S.No.880 and 881 in Cuddalore town were acquired by the Government from the original owners and they were converted into plots and 32 plots formed therein were assigned to Adhidraavidars and the area had been named as Pudhupakkam Colony and according to the plaintiff, plot No.32 was assigned to his father Subbarayan in 1960 and it is a corner plot with road on its east and south. It is further stated that the road on the east forms

part of Puddhupakkam colony, while the road on the south forms part of MGR nagar lying on the south. By means of a registered sale deed dated 21.11.1977, the plaintiff's father purchased the plot No.31 lying to the north of plot No.32 and in the house in plot No.32 the plaintiff and his mother are residing and after the demise of the plaintiff's father, his legal heirs are entitled to both plot Nos.31 and 32. The plaintiff has levied the suit on behalf of the other members of the family. Both Puddhupakkam colony and MGR Nagar are formed by creating approved layouts and accordingly the plaintiff as the owner of the plot Nos.31 and 32 is entitled to have free access into the said properties by gaining access through the roads adjacent to the same on the east and south of the said plots. Other than the said roads, there is no other way for enabling the plaintiff to have access to his plots and the road on east and south had been in existence for about 40 years and 16 years respectively and nobody has any right to interfere with the usage of the plaintiff qua the abovesaid roads. The plaintiff has lost the original assignment in respect of the plot No.32 and he has filed the latest patta given in respect of the same. The defendants are residing in door No.21 immediately to the west of plot No.32 and they also have the right to use the road on the south and another road on the west. However, the defendants attempted to encroach and enclose the roads adjacent to the plaintiff's plots and thereby started causing obstructions to the plaintiff's right to use the same. Hence, according to the plaintiff, he has been necessitated to lay the suit for appropriate reliefs.

5. The defendants resisted the plaintiff's suit contending that it is true that the lands comprised in survey Nos.880/2, 881/2 and 883/2 in Anaikuppam village, Cuddalore town were acquired by the Government and the plots were allotted to Adhidraavidars and also admitted that the plaintiff and his family members are in the possession of the plot Nos.31 and 32. However, denied that the road has been in existence as described in item 1 of the plaint B schedule and also stated that there is no road measuring 20 feet in breadth in T.S.No.881/2 and according to them, the plaintiff has drawn a plan to suit his own convenience and denied the plan details. According to the defendants, they had been assigned 2 cents in plot No.21 comprised in survey Nos.880/2, 881/2, and 883/2 as per the assignment dated 02.10.1968 and according to them the T.S.No.881/3 lies to the south of T.S.No.881/2 and T.S.No.881/03 originally belong to V.Duraisamy Naidu and he has executed settlement deed in favour of the first defendant by way of a registered deed dated 09.03.1972 in respect of 0.01 $\frac{3}{4}$ cents within specific boundaries and Duraisamy Naidu had executed a registered sale deed in favour of the first defendant in respect of the properties east and west of the property settled on him

under the settlement deed dated 09.03.1972. So according to the defendants, the first defendant is entitled to 118 feet east-west, 20 feet north-south in T.S.No.881/3 and a road runs south of T.S.No.881/3 from west to east of a width of 10 ft and the same runs across T.S.Nos.874 and 872 and further stated that the cement road formed in T.S.No.882 measures a width of 30 feet and therefore denied that the road runs south of plot No.32 and therefore disputed the claim of the plaintiff using the said imaginary road. Further according to the defendants, the boundaries mentioned in items 1 and 2 of the plaintiff A schedule properties are false and also put forth that the description of items 1 and 2 of the plaintiff B schedule are false and according to them, the plaintiff and the others including the defendants are using the road lying south of T.S.No.881/3 and accordingly contended that the plaintiff has no right to claim any right in the plaintiff B schedule properties and also put forth the plea of adverse possession in respect of their properties and prayed for the dismissal of the plaintiff's suit.

6. In support of the plaintiff's case, P.Ws.1 to 3 were examined. Exs.A1 to A6 were marked. On the side of the defendants, D.W.1 was examined. Exs.B1 to B4 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, was pleased to set aside the judgment and decree of the trial court and thereby, by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiff and impugning the same, the present second appeal has been laid.

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

1. Whether a suit could be dismissed even in respect of an undisputed item?
2. Whether village map and approved plan are not public documents?
3. Was the lower appellate court right in rejecting Exs.A5 and A6 which are public documents?
4. Whether the lower appellate court was right in holding against an approved layout promoted by the government itself?
5. Whether the existence of a sub-division could be accepted even in its absence in revenue registers?

9. The plaintiff has laid the suit for the reliefs of

declaration and permanent injunction in respect of the plaint B schedule properties. There is no dispute that plot No.31 and plot No.32 described in the plaint A schedule properties belong to the plaintiff. The dispute is only with reference to the B schedule properties and according to the plaintiff, the roads lying to the east and south of the abovesaid plots are in existence. Further, according to the plaintiff, for gaining access to the plaint A schedule properties, he had been only using the road described in the plaint B schedule and as the defendants attempted to enclose the said roads by committing encroachment unlawfully, he had been necessitated to lay the suit for appropriate reliefs.

10. The defendants disputed the existence of the plaint B schedule properties as put forth in the plaint and according to the defendants, the roads as described in the plaint B schedule are not in existence and not used by the plaintiffs as such and therefore the plaintiff cannot be granted the reliefs as prayed for by projecting the roads in his own imagination without establishing lie of the same on ground and hence the plaintiff is not entitled to seek and obtain the reliefs as prayed for.

11. In the light of the abovesaid defence projected by the defendants, at the foremost, the plaintiff has to establish that the roads as described in the plaint B schedule are in existence and available on ground and that they had been used by the plaintiffs for gaining access to his plots described in the plaint A schedule. With reference to the establishment of the existence of the roads as described in the plaint B schedule, as rightly determined by the first appellate court, if the plaintiff had placed the assignment order issued in favour of his father in respect of the plot No.32, we could have easily assessed and determined whether the said plot lies to the north and west of the roads as described in the plaint B schedule. In this connection, the plaintiff for sustaining his case, has marked 6 documents and out of the same, Ex.A1 is the sale deed dated 21.11.1977 executed in favour of his father in respect of the plot no.31. However the plaintiff has not chosen to file the assignment order issued in favour of his father in respect of the plot no.32. Conveniently the plaintiff would state that the same had been lost and he is able to produce the patta issued in his name and in the name of his mother Veerammal marked as Ex.A2. With reference to the same, the plaintiff has examined himself as P.W.1, and during the course of cross examination, he has deposed that the assignment order issued in respect of plot no.32 had been lost and he does not know whether the plan had been annexed with the said assignment order, the property assigned has been described within specific boundaries and he has not applied to the Tahsildar for issuing a duplicate assignment order in his favour and also stated that he has not

obtained the assignment order issued in favour of the executants of Ex.A1 and admitted that item 2 of the plaint B schedule property is the road formed at the time of the formation of MGR nagar and admitted that he has not filed any document to show that the abovesaid road ie., described in item 2 of the plaint B schedule had been formed at the time when MGR nagar had been formed and furthermore, also admitted that he has not filed any document to show that the said road measures a width of 30 feet and also admitted that he has not filed any document to evidence that to the south of plot no.32, the road lies as described in item 2 of the plaint B schedule. In addition to that, according to the plaintiff, survey No.881/2 lies to the west of survey No.880/2 and further admitted that the survey No.881/3 lies to the south of survey No.881/2 and admitted that survey No.881/3 measures east-west 30 feet and north-south 29 feet and also he would state that he does not know the measurements of the survey No.881/3, furthermore, the plaintiff has also admitted that he has not taken out any commission to identify whether the road reaches to the south of his plot and the suggestion has been put to him that if the assignment order issued in his favour had been produced, the same would have reflected that to the south of the same, only survey No.881/3 lies and no doubt, the plaintiff has denied the said suggestion.

12.In the light of the abovesaid evidence of the plaintiff, when according to him, he is not aware of the description of the plot assigned in favour of his father i.e., as to within which boundaries the said plot lies and when the same could be easily determined if the assignment order issued in favour of his father had been produced, but conveniently the plaintiff would come forward with the case that the same had been lost and accordingly he would state that he is able to produce only the patta issued in his favour marked as Ex.A2. However, the plaintiff has not putforth any case as to when he has lost the assignment order and what steps had been taken by him to retrieve the same and what is the result of the said course of action. With reference to the abovesaid facts, there is nothing pleaded in the plaint nor disclosed in the evidence on the part of the plaintiff. In addition to that, if really the original assignment order has been lost, nothing prevented the plaintiff from obtaining the duplicate copy of the same from the appropriate authorities. The plaintiff would coolly say that he had not obtained the duplicate assignment order from the Tashildar concerned. As to why the plaintiff had not endeavored to obtain the duplicate copy of the assignment order, no reason has been adduced. If really the assignment order or the duplicate copy of the same has been produced or atleast summoned from the concerned office, from the plan attached to the said assignment order, we could have easily understood as to within which boundaries, the property in

respect of which assignment order had been granted, lies. Even with reference to the plot no.31, which had come to be acquired by the plaintiff's father by way of Ex.A1 sale transaction, the original assignment order issued in favour of the executants of Ex.A1 has not been produced. As to why they had not endeavored to obtain the said assignment order from the executants, there is no explanation forthcoming on the part of the plaintiff. If the said assignment order had been produced, we could have easily come to the conclusion, as to where and within which boundaries, the plot no.31 lies. Therefore, the best documents to determine the existence and the lie of the plaint B schedule properties, being the assignment orders of the plot nos.32 and 31 and when according to the plaintiff, to the south and east of plot no.32 and 31, the road lies as described in the plaint B schedule and when the same is challenged by the defendants in toto, in such view of the matter, as rightly determined by the first appellate court, the plaintiff should have endeavored to produce the best evidence with reference to the same and on the other hand, when the plaintiffs had not come forward with the best evidence to substantiate the same, on the basis of the unreliable materials placed on record by the plaintiff, we cannot conclude that the roads as described in the plaint B schedule are in existence and that they are the only access for the plaintiff to reach his plots as claimed in the plaint. Furthermore, the plaintiff has also not endeavored to take out a survey commission to identify and locate the plaint B schedule properties, particularly to point out whether the said roads lie adjacent to his plots on the southern and eastern side as claimed in the plaint. The above said materials/proof are essential inasmuch as, the defendants are denying the existence of the roads as described in the plaint B schedule, in particular, according to the defendants, to the south of their plot lies survey No.881/3 and they had acquired the properties comprised in survey no.881/3 and there is no road lying to the south of their plot and the road lies only to the south of survey No.881/3. Though the plaintiff would argue that survey No.881/3 does not lie on ground and in this connection he had also come forward with the plan issued by the Municipality as Ex.A5 and the layout issued by the Municipality as Ex.A6, however, when as per the plan issued by the Municipality marked as Ex.B1, the existence of survey no.881/3 is noted, as to why the same had not been referred to in Exs.A5 and A6, there is no proper explanation on the part of the plaintiff. In addition to that, the plaintiff has admitted during the course of his evidence that survey No.881/3 lies to the south of survey No.881/2 and that though at the first instance, he would give measurements of the same subsequently would state that he does not know the measurements of the said survey number. Furthermore the plaintiff has also admitted that he has not filed any document evidencing the existence of the roads as described in

the plaint B schedule. When Exs.A5 and A6 are not useful to determine whether the roads as described in the plaint B schedule are available on ground or not and when the other documents projected by the plaintiff marked as Exs.A1 to A4 are also not useful to determine whether the roads as described in the plaint B schedule are in existence and lie adjacent to the plots belonging to the plaintiff, in such view of the matter, it is found that as determined by the first appellate court, when the physical features obtaining in the plan produced by the defendants and the plaintiff as above stated, do not tally with each other and when with reference to the same, there is no acceptable evidence adduced on the part of the plaintiff and as above pointed out, when the plaintiff has failed to establish the lie of the roads as described in the plaint B schedule by producing the best evidence namely the assignment orders issued in respect of the plot nos.32 and 31 as well as the other records and not even endeavored to summon the said records from the appropriate authorities, in such view of the matter, the first appellate court is found to be justified in holding that the plaintiff has failed to establish the existence and lie of the roads as described in the plaint B schedule.

13. P.W.2 examined on behalf of the plaintiff, during the course of cross examination has admitted that in the plan issued by the Municipality marked as Ex.B1, the existence of survey No.881/3 is disclosed and admitted that he has not seen any record as to the acquisition of the properties by the government for the formation of the lay outs and plots and admitted that he does not know the road formed at the time of creating Pudhukuppan colony and also admitted that the records are available with the Municipality to evidence the existence of the lie of the roads and in such view of the matter, when even as per the evidence of P.W.2, the records are available pointing to the existence and lie of the roads described in the plaint B schedule and he is unable to come forward with the clear case as regards the existence or lie of the said roads, despite the abovesaid position, and the plaintiff having not endeavored to summon the requisite records from the Municipality or the Revenue Department for establishing the availability of the roads on ground as described in the plaint B schedule, P.W.2's evidence cannot be relied upon for acceding to the plaintiff's case. Similarly, P.W.3, the employee of Cuddalore Municipality has admitted that Ex.B1 plan has been issued by their office and according to him Ex.A6 is the plan relating to MGR nagar and would state that if the roads had been formed in the survey number, separate subdivisions would be given for the same and would state further that with reference to the road formed in T.S.Nos.881/1, 881/3, no subdivisions had been effected. Such being the evidence of P.W.3, his evidence would be not useful to determine the existence and lie of the roads as described in the

plaint B schedule and in such view of the matter, the case of the plaintiff that the roads described in the plaint B schedule are lying to the east and south of his plots and that they are being used by him for gaining access to his plots cannot be straightaway accepted and at the foremost the plaintiff has failed to establish the existence and lie of the abovesaid roads as described in the plaint and in such view of the matter, the reliefs sought for by the plaintiff cannot be granted . When from the documents projected by the defendants, survey No.881/3 lies to the south of survey No.881/2 and they had acquired certain properties in survey No.881/3 as claimed in the written statement and with reference to the same, the documents had also come to be marked on their side as Exs.B1 to B4, in all, it is found that it is highly doubtful whether the roads as described in the plaint B schedule are lying on ground to the south and east of the plots belonging to the plaintiff and in such view of the matter, the case of the plaintiff that the defendants had been endeavoring to enclose the alleged roads by committing encroachment, as such, cannot be accepted, in the light of the failure of the plaintiff to establish the basic case with reference to the same, i.e., the existence and lie of the roads as described in the plaint B schedule.

14. In the light of the abovesaid discussions, the plaintiff having failed to establish the existence and lie of the roads as described in the plaint B schedule and the plans marked by him as Exs.A5 and A6 do not throw any light with reference to the same and when the existence of survey No.881/3 has been admitted and also found to be reflected in Ex.B1 wherein the defendants claimed to have acquired certain properties and when the plan projected by the plaintiff do not point to the same, in all, it is found that the first appellate court is justified in declining the reliefs sought for by the plaintiff for the reasons stated by it and no interference is called for with reference to the same. The substantial questions of law formulated in the second appeal are accordingly answered against the plaintiff.

15. For the reasons aforesaid, the second appeal fails and is accordingly dismissed. No costs. Consequently, connected miscellaneous petition, if any, is closed.
mfa

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The I Additional Subordinate Judge,
Cuddalore.
- 2.The Principal District Munsif,
Principal District Munsif Court,
Cuddalore.

Copy to

The Section Officer,
VR Section, High Court,
Chennai.

+1cc to Mr.R.Gururaj, Advocate, SR.No.30226

S.A.No.1402 of 2005

Kak(11/11/2019)



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