



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.08.2019

DELIVERED ON : 15.11.2019

WEB COPY

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

S.A.(MD)No.640 of 2009

and

C.M.P.(MD)No.7615 of 2019

Ramasamy Thevar .. Appellant/Respondent/Plaintiff

Vs.

1. Sukumaran

2. Kala .. Respondents /Appellants/Defendants

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 13.12.2004 in A.S.No.87 of 2004 on the file of the Principal District Judge, Ramanathapuram, reversing the judgment and decree of the District Munsif, Paramakudi, dated 30.04.2003 in O.S.No.3 of 2002.

For Appellant	: Mr. A.Arumugam for M/s.Ajmal Associates
For Respondents	: Mr.S.Sivathilakar

J U D G M E N T

This Second Appeal has been filed against the judgment and decree dated 13.12.2004 in A.S.No.87 of 2004 on the file of the Principal District Judge, Ramanathapuram, reversing the judgment and decree of the District Munsif, Paramakudi, dated 30.04.2003 in O.S.No.3 of 2002.

2. The appellant is the plaintiff and the respondents are the defendants in the suit. The plaintiff filed the suit for a prayer of bare injunction. The trial Court decreed the suit. Against which, the defendants preferred an appeal in A.S.No.87 of 2004. The appeal was allowed by the learned Principal District Judge, Ramanathapuram. Against which, the plaintiff preferred this Second Appeal.



3. The case of the plaintiff before the trial Court is as follows:

The suit property mentioned in the rough sketch is a common pathway. The properties situated on the Eastern and Western side of the suit property, were Government poramboke lands. Those properties were enjoyed by the plaintiff's and the defendants's predecessors. They constructed houses and were in enjoyment of the property. The Northern side of the properties was the common pathway. The properties that belong to the plaintiff and the defendants were given Electricity Connection through the common pathway. The drainage water from the Eastern and Western side properties were let in the common pathway. The defendants proposed to put up some construction prohibiting the usage of the common pathway and the plaintiff sought for a relief of permanent injunction against the defendants.

4. The case of the defendants is as follows:-

The plaintiff did not have any right or possession over the suit property. Between the property of the first defendant and the property of the husband of the second defendant, there is a pathway, with a width of 3 feet but, the plaintiff did not have any right over the property and the pathway only belonging to the defendants. The plaintiff is having a path way on the Northern side of his property and the Western side property belongs to the first defendant's father. The Eastern side of the property belong to the husband of the second defendant. He obtained a sale deed on 06.04.2000 and was enjoying the property. Both the defendants got separate pattas. The plaintiff's house had door way only on the Eastern side. The first defendant is having a court yard (திண்ணை) and there is a bath room and toilet and a Well on the Eastern side of the first defendant's house and the second defendant is having sunshade, in the suit property and these areas were never used by the plaintiff and the plaintiffs were not entitled to any reliefs.

5. On the basis of the above pleadings, the trial Court framed the following issues:-

1. Whether the plaintiff is entitled for a permanent injunction?

2. Whether the suit property is a common pathway for both the parties?

3. Whether the defendants are having a right of adverse possession over the suit property?

4. what are the other reliefs available to the plaintiffs?

6. On the side of the plaintiff, three witnesses were examined [P.W.1 to P.W.3] and sixteen documents were marked [Ex.A1 to A16]. On the side of the defendants, one witness [D.W.1] was examined and four documents [Exs.B1 to B4] were marked . The Court documents were marked as Ex.C1 and C2. After considering both sides, the trial Court decreed the suit.



7. Against the decree and judgment of the trial Court, the defendants filed an appeal in A.S.No.87 of 2004 before the learned Principal District Judge, Ramanathapuram. On the basis of the grounds of appeal, the First Appellate Court framed the following issues:

1. Whether the plaintiff is entitled to get the relief of permanent injunction sought for in the complaint and Whether the judgment and decree passed in O.S.No.3 of 2002 on the file of the District Munsif, Paramakudi is to be set aside?

2. What relief if any, the appellants are entitled to?

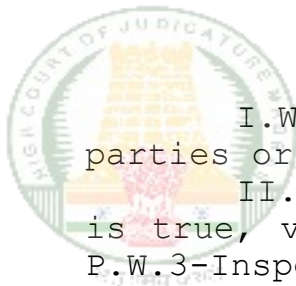
8. After hearing both sides, the First Appellate Court allowed the appeal with costs and set aside the judgment and decree of the trial Court. Against which the appellant / plaintiff preferred this Second Appeal.

9. The brief substance of the grounds of Second Appeal is as follows:-

The lower Appellate Court failed to consider the Commissioner Report Ex.C1, wherein it is stated that the plaintiff can reach Madurai Mandapam National Highways Road through the suit property. The First Appellate Court failed to note that P.W.3/Surveyor, has clearly deposed that the common path way is mentioned in the revenue records and the plaintiff is entitled to use the same. The First Appellate Court failed to consider that the suit property is situated in Survey No.360. The First Appellate Court failed to consider that the defendants admitted the availability of the path way, but, only denied the fact that the plaintiff is entitled to use the common pathway, and that the house of the plaintiff is situated immediately on the Northern side of the first defendant's house and that the plaintiff is having a door way on the Eastern side of the house and he is using that doorway to pass through the common path way to reach Madurai Mandapam National Highways. The First Appellate Court failed to note that there is a drainage channel on the Northern side and that the plaintiff cannot use the pathway on the Northern side of the house and he can use only the suit common pathway. The lower Appellate Court failed to note Ex.A16, agreement between Aranmanai Kulandai and Meenambal regarding the useage of the suit pathway. The said Aranmanai Kulandai is the father of the first defendant and the said agreement clearly proves the existence of the common pathway. The First Appellate Court failed to note that the suit pathway and other portions were Government Poromboke for a long time and subsequently, the Government granted house site pattas to the occupants of the houses. The lower Appellate Court failed to note that electric posts were put up in the suit property since it is a Government Poromboke and that the suit property is a common pathway.

10. This Court admitted the Second Appeal on the following

<https://hcs.judges.org.in/hcs/judges> grounds of law:-



I. Whether the suit property is a common pathway for both the parties or whether it is a private pathway only to the defendants?

II. Whether the entries as public lane in the Revenue Records is true, valid and binding upon the parties as per the evidence of P.W.3-Inspector of Town Survey?

WEB COPY

11. During the pendency of the Second Appeal, the appellant filed a Civil Miscellaneous Petition in C.M.P.(MD)No.7615 of 2019, to raise additional substantial questions of law. Those questions are as follows:

1. When the suit property admittedly belongs to Government, whether the defendants are entitled to prevent the plaintiff from using the said Government property as a pathway?

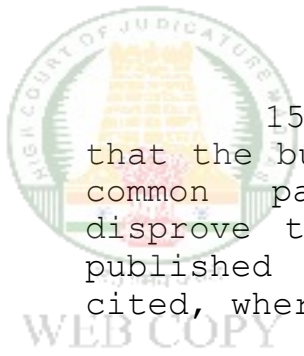
2. Whether the defendants have perfected title to the suit property by adverse possession in the absence of necessary minimum particulars and evidence?

12. The substance of both the additional substantial questions of law raised can be decided by deciding the already framed issues and there is no necessity to frame additional issues and hence, the C.M.P.(MD)No.7615 of 2019 is dismissed.

Issue Nos. I & II:

13. On the side of the appellant, it is stated that the suit property is a common pathway for both the parties. On the side of the appellant, it is stated that the First Appellate Court failed to consider the evidence of P.W.3 and failed to consider the fact that the suit property and other properties are Government Poromboke and subsequently patta was issued in the name of the plaintiff and the defendants and the First Appellate Court failed to consider that the plaintiff is having a door that leads to the common pathway and that the First appellate Court failed to consider the Commissioner's Report and claim that the property is a common pathway for the defendants and the plaintiff and the suit property belong to the Government.

14. On the side of the respondents, it is stated that the property belongs to the defendants and the path way is only the individual pathway for their use and not for the use of the plaintiff or anybody else. On the side of the respondents, it is further stated that the first defendant constructed a toilet and bath room adjoining the Well and the second defendant was having his sunshade in the suit property and that the suit property is not a common pathway and that the plaintiff is having some other pathway and he has no right over the suit property. It is further stated that since the suit property was part of the house of the defendants, no separate patta was issued for the defendants common pathway and that the pattas, which stand in the name of the defendants include their exclusive path way.



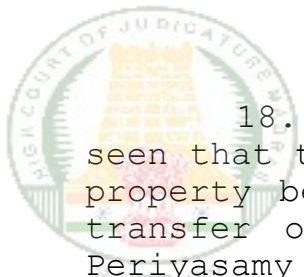
15. On the side of the respondents, it is further stated that the burden is upon the plaintiff to prove the existence of the common pathway and there is no necessity for the defendants to disprove the case of the defendants, A judgment of this Court published in **2003 (1) CTC- 345 (S.Ramesh Babu Vs. R.Bhaskar)** is cited, wherein it is observed as follows:

"15. The learned counsel for the revision petitioner contends that the lease deed has not been produced by the first defendant and as such adverse inference can be drawn against him. The burden is only upon the petitioner to prove his case and he cannot take advantage of the weakness in defence. In fact, the first defendant already filed O.S. No. 2494/99 for permanent injunction relating to the entire property and he could have filed the lease deed in that suit. The learned counsel for the first defendant also relied on 1998 M.L.J Reports 567 (Chellathurai and five others v. Perumal Nadar) that in a suit for injunction, it is the duty of the plaintiff to prove that he continued to be in possession on the date of the suit. Only when evidence on both sides are even title to the property will have some relevance. Merely because the defendant has failed to prove his case, it does not follow that the plaintiff is in possession.

16. On the side of the respondents, it is stated that the onus is upon the plaintiff and the plaintiff cannot prick holes in the case of the defendants. A judgment of this Court published in **2005 (5) CTC - 17 (P.Panneerselvam Vs. A.Baylis)** is cited, wherein it is stated as follows:

"13. We do not think such a contention can be countenanced, more particularly, in a suit for specific performance of a contract. Apart from the general principle of law that the plaintiff must succeed on the strength of his own case and not on the basis of the weakness in the case of the defendant, in a suit for specific performance of contract, the plaintiff is obviously required to prove that there is a definite contract which is capable of being specifically enforced."

17. Since the appeal is against the judgment and decree reversing the judgment and decree of the trial court, issues of facts also are to be considered for deciding the right of the plaintiff. The First Appellate Court, disbelieved the evidence of P.W.3 and on considering the fact that the plaintiff is having some other path way has allowed the appeal. All the documents Exs.A1 to A15 are regarding the property of the plaintiff. The right over the suit property cannot be decided on the basis of Exs.A1 to A15.



18. From the records on the side of the defendants, it is seen that the defendants claim that the suit property and adjoining property belongs to one Periyasamy, son of Ramuthevar. The patta transfer order in the name of Periyasamy was marked as Ex.B4. Periyasamy executed a sale deed in favour of one Subbammal, the sale deed was marked as Ex.B2. Patta in the name of Aranmanai Kulanthai, dated 06.07.1995 was marked as Ex.B3. The gift deed executed by Aranmanai Kulanthai in favour of the defendant, was marked as Ex.B1.

19. It is stated that the property adjacent to the suit property belongs to one Aranmanai Kulanthai, father of the defendants, how this Aranmanai Kulanthai obtained patta or title to the property was not stated by the defendants. Ex.A16 is an agreement between the said Aranmanai Kulanthai and one Meenakshiammal, regarding the usage of a common pathway. In the evidence of P.W.3, it is stated that the suit property and the property that belonged to the defendants were once Government Poromboke lands. In the Commissioner's Report, it is clearly stated that the construction mentioned in the written statement were only new constructions. The Commissioner's Report and Plan Ex.C1 and C2 clearly reveals the existence of a doorway in the plaintiff's house that leads to the common pathway. The availability of the door was not denied by the defendants. Unless the plaintiff used the suit property as pathway there is no necessity for the plaintiff to have a door way facing the common pathway.

20. On the side of the appellant, it is stated that the entries in the Revenue Records as to the availability of the public lane is binding upon the parties. It is stated that P.W.3, who is the Inspector of Town Survey has deposed that in the revenue records, the suit property is mentioned as a common pathway. The trial Court come to the conclusion that the evidence of P.W.3 is admissible and decided that the area was a Government Poromboke and the suit property is a common pathway for both the plaintiff and the defendants.

21. The First Appellate Court brushed aside the evidence of P.W.3 as not reliable, since P.W.3 did not produce any revenue records. It is seen that P.W.3 had not produced any revenue records. The Court Commissioner has made an observation that the construction put up by the defendants are new. From Ex.C1 and C2, it is clear that the construction of the defendants is new and that there is a door way in the house of the plaintiff that leads to the suit property. There is no necessity for the plaintiff to have a doorway, when he has no right over the suit property. Hence, it is decided that the suit property is a common pathway used by both the plaintiff and the defendants. In the above circumstances, the questions raised by the appellant is maintainable.



22. For the above said reasons, it is decided that the judgment and decree of the First Appellate Court is to be set aside and the decree and judgment of the trial Court is to be confirmed.

23. Hence, this Second Appeal is allowed by setting aside the judgment and decree dated 13.12.2004 in A.S.No.87 of 2004 on the file of the Principal District Judge, Ramanathapuram, and by confirming the judgment and decree of the District Munsif, Paramakudi, dated 30.04.2003 in O.S.No.3 of 2002. No costs.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ls

To

1.The Principal District Judge,
Ramanathapuram.

2.The District Munsif,
Paramakudi.

Copy to

The Section Office, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.S.SIVA THILAKAR, Advocate (SR-98582[F]dated
15/11/2019)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-98940[F] dated
18/11/2019)

order made in
S.A. (MD)No.640 of 2009
15.11.2019

VB(08.01.2020) 7P 7C