



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 21.07.2020	Pronounced on: 28.07.2020
-------------------------	---------------------------

Coram::

The Honourable Dr.Justice G.Jayachandran

S.A.No.1168 of 2009
and
M.P.No.1 of 2009

C.M.Natarajan
S/o.Chinna Marian Chettiar .. Appellant/Appellant/1st Defendant

/versus/

1.Subbammal,
W/o.Sennan Chettiar ..1st Respondent/1st Respondent/Plaintiff

2.P.Kandasami
S/o.Perumal Chettiar ..2nd Respondent/2nd Respondent/2nd Defendant

Prayer: Second Appeal is filed under Section 100 of Civil Procedure Code, praying against the judgment and decree dated 14.08.2009 made in A.S.No.76 of 2008 on the file of the Sub Court, Pollachi, modifying the judgment and decree dated 03.10.2007 and made in O.S.No.339 of 2001 on the file of the District Munsif Court, Pollachi.

For Appellant : Mr.B.Ramamoorthy, Senior Counsel

For Respondents: No Appearance

J U D G M E N T

(The case has been heard through video conference)

The appellant is the first defendant. Aggrieved by the concurrent finding of the Courts below, the present Second Appeal is preferred.

2. The facts of the dispute in brief is as under:-

The 1st respondent herein, who is the plaintiff before the trial Court has sought injunction restraining the defendants namely C.M.Natarajan (Appellant herein) and P.Kandasami (2nd Respondent herein) from interfering her peaceful possession and enjoyment of the suit schedule property morefully described schedule "A" property item 1 and 2 and schedule "B" property.

3. According to the plaint averment, the suit "A" schedule property was purchased by the plaintiff vide sale deed dated 27.03.1978 and patta was given by the Government. She has constructed a house in item 1 and cattle shed in item 2 of "A" schedule property. Suit "B" schedule property is a road which is a part of "A" schedule property. A street is running east to west in between the 1 and 2 item of "A" Schedule property. It crosses the 1st defendant's house and the 2nd defendant's house. The drainage running along the street ends at poramboke itteri. The 1st defendant in support of the 2nd defendant attempts to obliterate the drainage and the street. Claiming that the "B" schedule property is the only access to her house, the plaintiff ha laid the suit.

4. In the written statement, the defendant has denied the existence of 'B' schedule property. The description of the suit schedule property disputed.

5. Before the trial Court, the plaintiff succeeded. Relying upon the Commissioner's report and the evidence of PW.2 Surveyor, the trial Court held that the "B" schedule property namely pathway and drainage is in existence and it is used by the plaintiff as well as the other third parties. Therefore, the defendants cannot prevent the plaintiff from using the "B" schedule property.

6. Aggrieved by the judgment and decree of the trial Court, the 1st defendant preferred appeal before the Sub Court, Pollachi in A.S.No.76 of 2008. The First Appellate Court re appreciating the evidence found that there is no serious error in the trial Court judgment for interference except to the extend holding that "B" schedule pathway is a public pathway, which has been used by the general public including the parties in dispute. Therefore clarified the right of the plaintiff as a right in common and not an exclusive right. The lower Appellate Court confirmed the decree of the trial Court restraining the defendants from interfering the right in common enjoyed by the plaintiff over the "B" schedule property.

7. The Second Appeal is preferred against the concurrent finding on the ground that the Courts below has misread the Advocate Commissioner's report regarding the existence of "B" schedule property and further contended that the "B" schedule property is a Government natham, without impleading the Government or local body, the suit is not maintainable in law.

8. Notice was ordered to the respondents. Despite receipt of the notice, they did not engage learned counsel or appeared in persons.

9. In the said background, the appeal was heard by this Court for admission. The learned Senior counsel appearing for the appellant would submit that the suit for permanent injunction without impleading the rightful owner of the property is bad in law. The Courts below without any documentary proof regarding the right of the plaintiff to enjoy the "B" schedule property has passed a decree erroneously.

10. The case of the plaintiff/1st respondent was that her peaceful enjoyment of the pathway and the use of drainage running along the pathway more fully described in "B" schedule property is disturbed by the defendants 1 and 2. The 1st defendant has taken out a specific defence that there is no "B" schedule property in existence as claimed by the plaintiff. However, the Courts below have concurrently held that "B" schedule property, lay in Survey No.361/16. The field map, which is marked as Ex.X.1 and the Adangal which is marked as Ex.X.2 show that the alleged pathway belong to Government and classified as natham veethi. Twice the Advocate Commissioner had inspected the property. The reports and the sketch are marked as Exs.C1 to C4. In the Commissioner's report and the sketch, the pathway and drainage found place. The plaintiff has claimed this portion a part of "A" schedule property. The trial Court has also erroneously accepted the plea and granted injunction against the defendant. Whereas, the First Appellate Court has correctly found that error in the trial Court regarding the title over "B" schedule property and has held that "B" schedule property is a common pathway with drainage and the use of it by plaintiff cannot be disturbed by the defendants and it should be used by the general public. Holding that "B" schedule property is a public pathway. The Lower Appellate Court has restrained the appellant and the 2nd respondent from interfering the peaceful possession of the pathway by the plaintiff/1st respondent.

11. The learned Senior counsel for the appellant would submit that taking advantage of the decree passed by the Courts below the 1st respondent herein is trying to lay a fresh drainage in the "B" schedule property. At the time of admission of the Second Appeal, this Court has granted interim order of status quo which shall be maintained by both parties. This Court finds force in the above said submission, the Surveyor PW.2 indicates the physical status of "B" schedule property namely the pathway and drainage. The 1st respondent herein cannot take advantage of the injunction decree passed against the appellant to alter the said physical future of "B" schedule property which is already in existence and recorded by the Advocate Commissioner.

12.With the above clarification, the Second Appeal is disposed of, thereby confirming the judgment and decree of the first appellate Court. Consequently, the connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

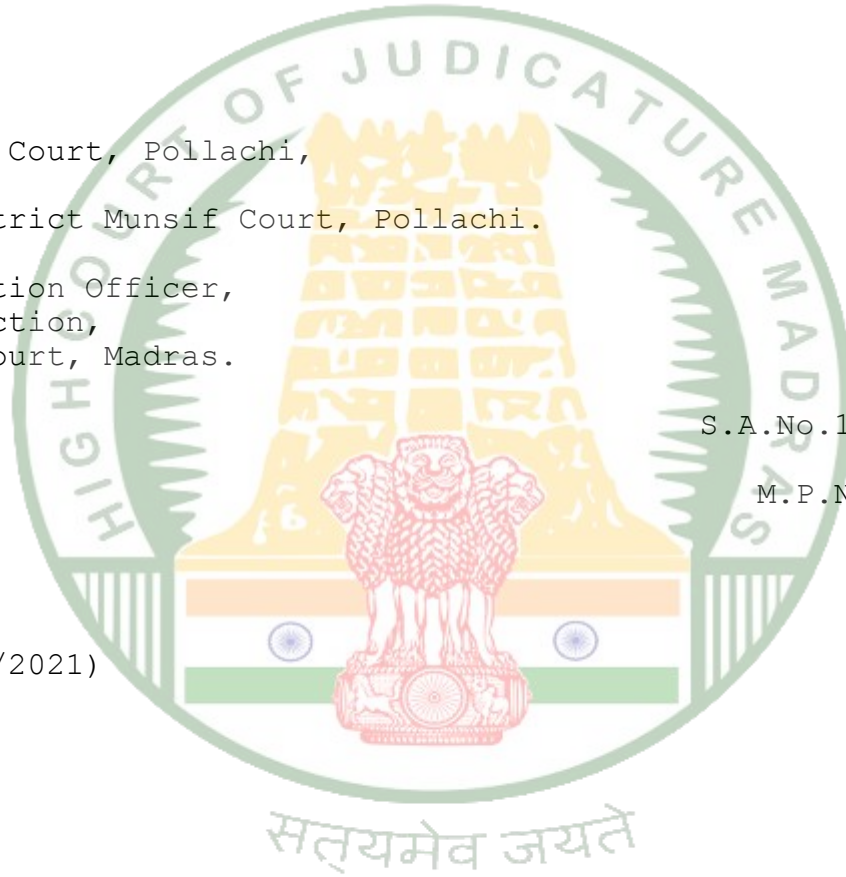
rpl/jbm

To

- 1.The Sub Court, Pollachi,
- 2.The District Munsif Court, Pollachi.
- 3.The Section Officer,
V.R.Section,
High Court, Madras.

S.A.No.1168 of 2009
and
M.P.No.1 of 2009

RLD (CO)
GMY (16/04/2021)



WEB COPY