

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 03.07.2019

Judgment Pronounced on : 21.01.2020

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

S.A.Nos.321 & 322 of 2009  
and MP.Nos.1 & 1 of 2009  
and CMP.No.4475 of 2018 in S.A.No.321 of 2009

S.A.No.321 of 2009 :

1.Periyammal

2.P.Chinnusamy

..... Appellants / Respondents 2,3 /  
Plaintiffs in O.S.305/96  
(Defendants 2,3 in O.S.369/1998)

Vs

1.K.Veeramuthu

2.State Rep by  
The District Collector  
Namakkal.

3.The Panchayat President  
N.Pudupatti Panchayat  
Namakkal.

..... Respondents / Appellant, Respondents 1,4 /  
Sole Defendant in O.S.No.305/1996  
(Plaintiff in in O.S.No.369/1998),  
Defendants 1 & 4 in  
O.S.No.369/1998

S.A.No.322 of 2009 :

1.Periyammal

2.P.Chinnusamy

..... Appellants / Respondents /  
Plaintiffs in O.S.No.305/1996)

Vs

K.Veeramuthu

.....Respondent / Appellant / Defendant  
in O.S.No.305/1996

Common Prayer : Second Appeal filed under Section 100 of CPC against the common judgment and decree 17.11.2008 passed in A.S.No.193 of 2005 and A.S.No.194 of 2005 respectively on the file of Sub Court, Namakkal, whereby allowing the appeal suit in A.S.No.193/2005 and A.S.No.194/2005 by reversing the judgment

passed in O.S.No.369/1998 and O.S.No.305/1996 dated 15.06.2005 on the file of the Principal District Munsif Court, Namakkal.

For Appellants : Mr.C.Prakasam

For Respondents : Mr.T.Dhanyakumar  
[R1 in S.A.No.321 of 2009]  
[Sole respondent in S.A.No.322/2009]

Mr.N.Manikandan, Govt Advocate (CS)  
for R2 & R3 in S.A.No.321 of 2009

#### COMMON JUDGMENT

1.1 The dispute is over a certain pathway. The issue is whether it is a public pathway or a private lane. This controversy has triggered two suits. The first suit is O.S.No.305/1996. This suit was laid for bare injunction, alleging that the disputed lane is a public lane, and that the defendant should be restrained from interfering with plaintiffs' right to use the said lane. The defendant in that suit has laid O.S.No.369/1998 for a declaration that the disputed lane is a private lane and for an injunction that the plaintiffs in O.S.No.305/1996 should not interfere with his exclusive right of use of the pathway. The trial Court has held that the suit pathway is a public lane.

1.2 Both the suits were jointly tried and evidence was recorded in O.S.No.305/1996. Parties would be referred to in this judgment as per their rank in O.S.No.305/1996. It may be stated here that in the suit (O.S.No.369/1998) laid by the defendant, he has also impleaded the Government as the first defendant, which is not a party to O.S.No.305/1996. Hence, the State of Tamil Nadu as a party would be referred to as Government in this judgment.

1.3 The trial Court has held that the disputed lane is a public lane and accordingly, dismissed the prayer for declaration in O.S.No.369/1998, sought by the defendant/private respondent herein. It then proceeded to grant a decree for injunction to both the plaintiffs in the suit in O.S.No.305/1996 and also in the defendant suit in O.S.No.369/1998. Aggrieved by the same, the defendant has preferred two appeals in A.S.No.193/2005 (against the decree in O.S.No.369/1998) and A.S.No.194/2005 (against the decree in O.S.No.305/1996). Vide the impugned judgment of the first Appellate Court, both the appeals came to be allowed. Hence, the plaintiffs have come forward with these present appeals.

2. The controversy may be briefly stated :

- The suit property, a lane, is comprised in Survey No.914/1 and correlated to old S.No.189/1 part. This lane is a east-west lane. On the west, is a major street named Raja Street. On site Raja Veedi along with the lane form a tilted 'P'.
- First plaintiff is the wife of the second plaintiff. Their property is situated to the immediate south of the lane, and abuts Raja Veedhi on the west. The first plaintiff has purchased this property under the sale deed dated 15.7.1983, which came to be marked during trial as Ext.A1. She subsequently applied for a plan and put up a residential building in his property. Ext.A2 is the approved house-site plan from the Panchayat. The plaintiffs allege that in the revenue records, the lane to the north of their property is classified as a public lane, and when they faced resistance from the defendant who apparently raised a dispute that the said lane is his private lane and also attempted to obtain patta for the lane, the suit in O.S.No.305/1996 came to be laid for bare injunction.

3.1 The defendant traces title to his property to a sale deed dated 17.05.1935 (Ext.B4). This sale deed was executed in favour of one Muthusamay Udaiyar by a certain Karuppu Udaiyar. In this sale deed, reference is made to the suit lane as a common lane belonging to his vendor and his brother. Subsequently, on 24.4.1968, under Ext.A9 sale deed, the descendants of the purchaser of the property under Ext.B4, have sold the property to one Veeramuthu Udaiyar. It also refers to the suit lane as a private lane as belonging to the vendors under the sale deed and another Vijayaraju Udaiyar who is another co-sharer belonging to another branch, for whose benefit the common lane was made. After purchase in 1968, on 02.2.1981, under Ext.B5, a partition had taken place among the heirs of Veeramuthu Udaiyar. The present defendant is the grandson of Veeramuthu Udaiyar, and an allottee of the property covered under Ext.A9. Based on these documents, the defendant would claim that since 1935, the suit lane has only been a private lane, over which only two branches of co-sharers/co-owners, as the case may be, have right of use and the plaintiffs are not entitled to any. He further added that the confusion has come about during the UDR proceedings when the suit lane was classified as a public lane.

3.2 It may now be stated that Vide proceedings dated 31.1.1996 (Ext.A4), the Tahsildar has stated that the suit lane is indicated as a street in the Revenue classification. This

order was challenged by the defendant and the Sub-Collector initially passed an order of stay. Subsequent to this, the plaintiffs have laid O.S.No.305/1996, in view of which, the Sub-Collector has vacated the order of stay initially passed. Thereafter, the Tahsildar has sub-divided Survey No. 914/1, assigned Survey No.914/1B to the lane, and granted patta to the defendant. Later, vide proceedings dated 14.09.1996, Vide Ext.A6, the patta granted to the defendant came to be cancelled. The defendant challenged this in W.P.No.1284/2007. This Court has noted that before cancelling the patta under Ext.A6, the defendant was not heard and accordingly quashed the said order. Thereafter, a fresh proceeding was initiated by the Tahsildar and this time, he issued notice to the defendant. This culminated the proceedings of the Tahsildar in Ext.A7 (= Ext.B9) dated 25.09.1997, and cancelled the patta earlier granted yet again. It is in these circumstances, the defendant had instituted O.S.No.369/1998.

4. This suit went to trial. The second plaintiff who is the husband of the first plaintiff, examined himself as P.W1. On the side of the defendant, he was examined as D.W.1. He also examined two independent witnesses as D.W.2 and D.W.3. For the Government, P.W.4, a Village Administrative Officer was examined.

5. As referred to earlier, the trial Court essentially relied on the revenue classification of the lane as a public lane, and dismissed defendant's prayer for declaration, but granted mutual decree of injunction against the plaintiffs and the defendant.

6. When the matter reached the first appellate Court at the instance of the defendant, it reversed the decree of the trial Court and has held that the suit lane indeed is a private lane. Its reasons are :

- (a) Admittedly, the suit property was comprised in Natham Survey No.189/1, and being Natham lands, there cannot be any Poromboke land within it.
- (b) No records has been produced either by the plaintiff or by the Government to indicate that before UDR proceedings the suit lane was treated as a public lane.
- (c) D.W.3, is the son of Vijayaraju, who claims right under Ext.B-4 sale deed. He is the other sharer to the property.
- (d) The Commissioner Report alongside the evidence of D.W.2 & D.W.3 indicate that the suit lane which joins the main street on the west stops with the property of Vijayaraju Udaiyar on the east. (Vijaya Raju Udaiyar's property lie to the east of the plaintiffs property).

(e) When taking these facts alongside Ext.B4, the sale deed of the year 1935, and subsequent sale deed in favour of plaintiffs' ancestors under Ext.A9, in 1968, followed by partition under Ext.B5 in 1981, wherein the suit lane is categorically mentioned as belonging to co-sharers, the most probable conclusion possible is that the suit-lane is a private lane. The plaintiffs in this regard have not outlined how they became entitled to a right of use in the lane.

7. Both these appeals are admitted on the following substantial question of law :

"Whether lower Appellate Court appreciated the evidence of the respondent on assumption and presumption by ignoring the revenue records of exhibits P-1 to P-11?"

8. The arguments for the counsel for the plaintiff revolved around the Revenue classification of the lane. And, the arguments for the defendant (the plaintiff in O.S.369/1998) was along expected, if not predictable lines, more in tune with the line of reasoning of the first appellate Court. Hence, they are not reproduced in detail.

9. This Court noticed that among the reasons of the first appellate court, one aspect showed stronger merit than the rest. This is that, the Government has not produced any records to indicate that the suit lane was a public lane before UDR. In *Kuppuswamy Odayar Vs. Narthangudi Panchayat* [(1971) 1 MLJ 190], this Court has held that a wrong classification in the Revenue Records will not alter the character of the property. The first appellate court's judgement is premised on this fundamental position of law.

10.1 The case of the defendant is that the lane belongs to two branches of co-sharers, and since he claims as a purchaser from one of the branches, the suit lane is now commonly belonged to him, and to the other branch presided over by one Vijayaraju. Therefore, unless the plaintiffs trace their title to Vijayaraju, it is inconceivable for them to establish any right of use over the suit-lane. Their pleadings do not make any such pretensions.

10.2 The first appellate court has decided the fact in issue on a preponderance of probable view, and no material was placed before this court to even remotely indicate that the view of the first appellate court is not even a plausible view on

evidence. This Court therefore finds no reasons to interfere with the judgments of the first appellate court. The substantial question of law fails.

11. In conclusion, this Court does not find any merit in these appeals, and hence, dismissed with costs, and the common judgement of the Sub Court, Namakkal, in A.S.No.193 of 2005 and A.S.No.194 of 2005, now stands confirmed. Consequently, connected miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To:

1.The Sub Judge,  
Namakkal.

2.The Principal District Munsif,  
Namakkal.

3.The Section Officer,  
High Court, Madras.

+1cc to M/s.T.Dhanyakumar, Advocate Sr.4006

S.A.Nos.321 & 322 of 2009

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srg 18/12/2020

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