

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.02.2020

DATE OF VERDICT : 25.02.2020

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

S.A.NO.962 OF 2005

AND

C.M.P.NO.13332 OF 2005

1. Duraisamy
2. D.Jegajothi
3. D.Sundaram
4. Manoharan

...Appellants/Defendants

Vs.

1. Marimuthu
2. P.Senkottian
3. Ponnusamy
4. Periyasamy
5. Rajagopal
6. Rajendran
7. Madheswari

...Respondents/Plaintiffs

Prayer:-

This Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 11.01.2005 made in A.S.No.54 of 2004 on the file of the Additional Sub Court, Erode, reversing the judgment and decree dated 26.02.2004 made in O.S.No.316 of 2002 on the file of the Additional District Munsif Court, Erode.

For Appellants : Mr.R.Kannan  
for Mr.V.Regunathan

For Respondents: Mr.T.M.Hariharan

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JUDGMENT

This second appeal is directed as against the judgment and decree dated 11.01.2005 made in A.S.No.54 of 2004 on the file of the Additional Sub Court, Erode, reversing the judgment and decree dated 26.02.2004 made in O.S.No.316 of 2002 on the file of the Additional District Munsif Court, Erode.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

3. The case of the plaintiffs in brief is as follows :-

3.1. The suit is filed for permanent injunction. The suit pathway is belonged to the plaintiffs, which is running north-south road to a breadth of 20 feet to the property situated in I.A.No.1197, R.S.No.1321/1 to 7, Erode. Originally one Nallappa Gounder owned the land comprised in S.F.No.1197, in which one Lakshmana Printing and Dyeing Factory purchased 1.47 acres. Thereafter, they sold out the property for house sites having a north-south road in the middle to a breadth of 20 feet. The said 20 feet broad north-south road was left in common for the use of the owners of the nineteen house sites situated on the east and west of the said north-south road.

3.2. The plaintiffs have purchased the house sites in site Nos.19, 4, 1 and 2 respectively in R.S.No.1321/1 to 7. The plaintiffs have constructed residential houses in their respective sites and all the houses assessed to the house tax in Kasipalayam Town Panchayat. They also obtained electricity connection with 20 feet breadth north-south road and also using the said road as common to all. In fact all of them on their own cost converted the mud road into thar road. The recital of the sale deed clearly shows about the said road as common to all.

3.3. While being so, the defendants 1 to 4 claimed to be the owners of the site No.18, stated that they have purchased the site in the adjacent survey field and that they have right to extend the road to their site also. They have no right to extend the suit road to another site situated in another survey field and the suit road which is entitled to the nineteen house sites owners situated in S.F.No.1197 as common. Hence the suit.

4. Resisting the same, the defendants filed written statement stating that it is false to state that the 20 feet broad north-south road was left for common use of nineteen house owners only situated on the east and west of the north-south road. The suit road is in existence for more than 30 years and all the defendants are using the same continuously and uninterruptedly. In fact, the predecessors of the plaintiffs never objected to use the suit road as common by the defendants as well as the general public. The ownership of the said road is vested with the Kasipalayam Town Panchayat and in fact the Panchayat formed the metal road and converted the same into a thar road by engaging a contractor. The name of the street is called as Josier Veedu Street, Vendipalayam, Kasipalayam Panchayat.

4.1. The first defendant purchased an extent of 44 cents of land comprised in R.S.No.1321/3 (S.F.No.1197/2) by a registered sale deed dated 14.03.1975 from one Karuppaayammal and ors, who are the legal heirs of the said Nallappa Gounder. The said Nallappa Gounder was the owner of the entire property and thereafter, the entire land were layedout into house sites. The suit road ends in R.S.No.1321/3. The second defendant purchased 20 cents of land comprised in R.S.No.1317/6 (S.F.No.1198/1B) by the registered sale deed dated 25.01.1996, which is adjacent to the property comprised in R.S.No.1321/1 and to reach the said land, all the defendants are using the suit road. The other defendants have purchased the property comprised in R.S.No.1321 part ad measuring 5 cents, where the suit road is in existence under the registered sale deed dated 25.01.1996. Therefore, the plaintiffs are not the absolute owners of the suit road and they are nearly entitled to use the suit road like that of the defendants. More over, it is a public road and maintained by the Kasipalayam Town Panchayat and prayed for dismissal of the suit.

5. On the side of the plaintiffs, they examined P.W.1 & P.W.2 and were marked Ex.A.1 to Ex.A.18. On the side of the defendants, they examined D.W.1 to D.W.3 and were marked Ex.B.1 to Ex.B.7. The Advocate Commissioner's report and rough sketch were marked as Ex.C.1 & Ex.C.2. Based on the material produced on record and considering both the oral and documentary evidence adduced by the respective parties and also the submissions made, the trial Court dismissed the suit filed by the plaintiffs. Aggrieved by the same, the plaintiffs preferred an appeal suit in A.S.No.54 of 2004 and the first appellate Court allowed the appeal and decreed the suit in favour of the plaintiffs. Aggrieved by the same, the defendants preferred this present second appeal.

6. At the time of admission of this second appeal on 12.08.2005, the following substantial question of law was formulated for consideration:-

"Whether the use of a road which stands characterized as a public road, by a citizen can be enjoined by a Court of law?"

7. The learned counsel appearing for the appellants and the respondents are present and they are reiterated the avernments set out in the plaint as well as the written statement.

8. Heard Mr.R.Kannan, learned counsel appearing for the appellants and Mr.T.M.Hariharan, learned counsel appearing for the respondents.

9. According to the plaintiffs, the suit road meant for only 19 house owners and it cannot be extended to other survey number situated on the western side of the said road. The sale deeds, by which the house sites were purchased by the plaintiffs, were marked as Ex.A.7, 15 and 18. After lay-out the entire property, the suit road was formulated and it can be used by all the nineteen house plots owners. Whereas, the suit filed by the plaintiffs as if the suit road only belonged to the nineteen house plots owners and cannot be used by others.

10. The learned counsel appearing for the plaintiffs mainly contended that now the road is intended to extend to the other property was not purchased by the defendants. In this regard, the Advocate Commissioner was appointed and his report and plan were marked as Ex.C.1 and Ex.C.2. According to the Advocate Commissioner, the said road is a common road and maintained by the Kasipalayam town panchayat. The Assistant of Kasipalayam town panchayat was examined as D.W.3 and he categorically deposed that the suit property, which was the metal road and thereafter it was converted into thar road. They also formed open drainage and it is under maintenance of the the panchayat. In fact, to lay the thar road, fund was allotted to the tune of Rs.60,000/- to the contractor to lay thar road. Further the plaintiffs did not prove that they only formed the road and the same is maintained by them. When the suit road is formed by the Kasipalayam town panchayat and maintained by them, the suit road is a public road. Therefore, the plaintiffs cannot restrict anybody including the defendants to use the said road.

11. Further the Advocate Commissioner report revealed that the suit road ends with the land belonged defendants viz., R.S.No.1321/3. Therefore, if the defendants wanted to extend the said road, they have to form road in their land. Therefore, there is no possibility to extend the road in the land belonged to the plaintiffs. Further the road is a public road and used by all. Therefore, trial Court rightly dismissed the suit filed by the plaintiffs. Unfortunately, without considering those facts, the first appellate Court reversed the findings of the trial Court, as such the findings of the first appellate Court is perverse and against the evidence on record. Therefore, this Court has no other option to interfere with the findings of the first appellate Court. Accordingly, the substantial question of law formulated by this Court is answered in favour of the defendants and as against the plaintiffs.

12. In fine, the second appeal stands allowed and the judgment and decree dated 11.01.2005 made in A.S.No.54 of 2004 on the file of the Additional Sub Court, Erode, are hereby set aside and resultantly, the judgment and decree dated 26.02.2004 made in O.S.No.316 of 2002 on the file of the Additional

District Munsif Court, Erode, are restored. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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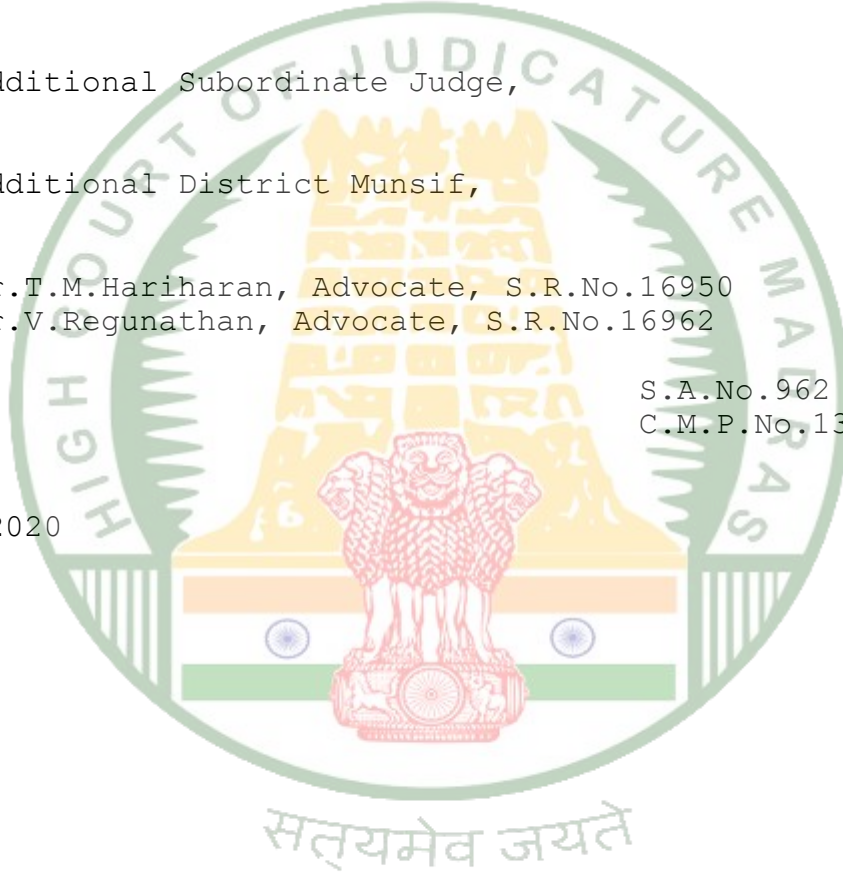
To

1. The Additional Subordinate Judge,  
Erode.
2. The Additional District Munsif,  
Erode.

+1cc to Mr.T.M.Hariharan, Advocate, S.R.No.16950  
+1cc to Mr.V.Regunathan, Advocate, S.R.No.16962

S.A.No.962 of 2005 and  
C.M.P.No.13332 of 2005

SJ(CO)  
CS/11/09/2020



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