



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A. (MD) .Nos.987 & 988 of 2009

S.A. (MD) .No.987 of 2009

G.Ramaswamy ..Appellant / Appellant / Plaintiff

Vs.

R.Dasan ..Respondent / Respondent / Defendant

S.A. (MD) .No.988 of 2009

G.Ramaswamy ..Appellant / Appellant / 2nd Defendant

Vs.

1.The State of Tamil Nadu,
Rep. by its District Collector,
Kanyakumari District at
Nagercoil Village,
Kanyakumari District.

..1st Respondent/1st Respondent /1st Defendant

2.Sudhan Nesaraj

3.S.Yesudhasan Nadar

..Respondents 2 & 3/Respondents 2 & 3 /Plaintiffs

COMMON PRAYER :Second Appeals are filed under Section 100 of Civil Procedure Code, against the Judgment and Decree in A.S. Nos.42 and 51 of 2007 on the file of the First Additional Subordinate Court, Nagercoil, dated 03.04.2009 confirming the Judgment and Decree in O.S.Nos.20 and 67 of 2002 dated 11.04.2005 on the file of the Second Additional District Munsif, Nagercoil.

In both second appeals

For Appellant

: Mrs.P.Jessi Jeeva Priya

For Mr.G.Aravinthan

For Respondent in

S.A. (MD) No.987 of 2009

and Respondents 2 & 3

in S.A. (MD) No.988 of 2009 : Mr.A.Abdul Wahab

For 1st Respondent

in S.A. (MD) No.988 of 2009 : Mr.N.Shanmugaselvan

Additional Government Pleader



COMMON JUDGMENT

Aggrieved over the concurrent findings of the Courts below, dismissing the suit in O.S.No.20 of 2002 and decreeing the suit in O.S.No.67 of 2002, both the second appeals have been filed.

2.The parties are arrayed in these two Second Appeals, as their own ranking before the Trial Court.

3.The brief facts leading to the filing of these two second appeals is as follows:

The suit property originally belonged to the father of the plaintiff Guruswamy Nadar and he was in possession and enjoyment of the property and he died intestate, leaving behind him/ the plaintiff and his three other sons as legal heirs. Out of the extent of 19- $\frac{1}{4}$ cents the plaintiff and his three other brothers left 1- $\frac{3}{4}$ cents on the eastern side for the purpose of pathway and the same is running towards south to north. The other area devolved into the hands of the plaintiff and three brothers. After the life time of the said Guruswamy Nadar, the plaintiff and his three brothers orally partitioned the property of 17 $\frac{1}{2}$ cents equally on 17.07.2000 and the western 4.375 cents allotted to the plaintiff. Upto the plaintiff's western plot, a pathway is provided for the free ingress and egress of the land and in the patta land of the brothers of the plaintiff. Except the plaintiff and the three brothers, others have no right to use the pathway.

4.The property allotted to the brother of the plaintiff Ayyavoo Nadar was sold by his only daughter after the demise of Ayyavoo Nadar to the other sharer Mr.Thiraviam on 09.04.2001. The plaintiff purchased an extent of 3 $\frac{3}{4}$ cents on the northern side of his share from one Swamynathan on 09.11.2000, which is shown as 'B' schedule. Both 'A' and 'B' schedule properties are lying as a single plot and the plaintiff is the owner in possession and enjoyment of the same. On the northern side of the plaint 'B' schedule property, the defendant is having seven cents of property. The defendant with some ulterior malafide intention to grab the plaint 'A' and 'B' schedule properties, started disturbing the plaintiff's peaceful possession. Hence, the suit is filed for permanent injunction.

5.It is the contention of the defendant that the properties described in the plaint schedule is not correct. The boundaries have been wrongly described in the plaint. The property bearing Survey No.685/19 is a pathway having width of 15 links on the east 214 links on the south 17 links on the west 221 links on the north. It is a poramboke land utilizing the pathway by the public at large from time memorial as the only pathway for ingress and egress the tank situated in the west. The defendant is of the



utilizers of the pathway has filed a suit in O.S.No.67 of 2002, on the file of the Principal District Munsif Court, Nagercoil in a representative capacity, Hence, their contention is that the plaintiff has made an un-authorized obstruction in the pathway. The pathway is a public pathway. Hence, prayed for dismissal of the suit.

6.The similar suit in O.S.No.67 of 2002 has filed by one Sudhan Nesaraj and Yesudhasan Nadas as a representative capacity. The plaintiff in O.S.No.20 of 2002 is described as the second defendant in O.S.No.67 of 2002. The suit for a permanent injunction restraining the second defendant to obstruct the using of pathway by the plaintiff contending that the suit property is a pathway. Whereas, the plaintiff in the present suit took a defence that the property is a pathway covered under a sale deed, dated 09.11.2000. The Government has filed a written statement contending that the suit property is a pathway which is described as (நிலவியல் மாடு) "Nilaviyal Pathai" and public pathway.

7.Based on the pleadings, the following issues are framed by the trial Court:

- 1) Whether those 'A' and 'B' schedule properties are separated by the pathway in Re-survey No.685/19 as contended by the defendant ?
- 2) Whether the pathway in Re-survey No.685/19 is a 'Nilavial Pathai' ?
- 3) Whether the plaintiff is entitled for the relief of permanent injunction ?
- 4) To what other reliefs is the plaintiff is entitled to and costs of the suit ?

8. Both suits were tried together by the Trial Court and disposed of both the suits by a common judgment. On the side of the plaintiff, P.W.1 and P.W.2 were examined and Exs.A.1 to A.5 were marked. On the side of the defendants, D.W.1 to D.W.5 were examined and Exs.B.1 to B.16 were marked. Ex.C.1 and Ex.C.2 also marked.

9.Taking note of the evidence, particularly, revenue records the Trial Court has categorically recorded that the suit pathway is a public pathway described as Nilaviyal Pathai and the evidence of D.W.1 to D.W.5 were considered in this aspect and dismissed the suit in O.S.No.20 of 2002 for permanent injunction and allowed the suit in O.S.No.67 of 2002 for permanent injunction and mandatory injunction. The First Appellate Court has also confirmed the findings of the Trial Court. Aggrieved over the same, these two second appeals came to be filed.

10. As against the common judgment of the First Appellate Court, these two second appeals came to be filed. While admitting these two second appeals, the following substantial questions of law



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"1. In the absence of any definition or classification, as Nilaviyal Pathai, in the Board Standing Orders or Revenue Standing Orders, is not the Appellate Court committed an act of illegality in finding that the suit property forms part of Nilaviyal Pathai and used as such ?

2) When a right of usage of a pathway as claimed by a party having no force of law under the provisions of Basements and License Act, whether the grant of right of pathway outside the scope of Easement and License Act is correct and legal ?

11. I have perused the entire records.

12.The learned Counsel appearing for the appellant would submit that the suit pathway has not been described as a 'Nilaviyal Pathai', and in the absence of any definition or classification, in the Board Standing Orders or Revenue Standing Orders, it cannot be termed as a Public Pathway. Hence, both the Courts had not appreciated the evidence properly and hence, he prayed for allowing these two second appeals.

13. It is the contention of the respondent that both the Courts recorded a finding that the pathway in the suit property is classified as a public pathway and used by the Public by time memorial. It is a poramboke land being used as pathway by the Public at large from time memorial as the only pathway for ingress and egress to the tank situated in the western side. Hence, prayed for dismissal of these two second appeals.

14. On perusal of both the judgments and on considering the evidence, the Trial Court has recorded a clear finding that the pathway is classified as a 'Nilaviyal Pathai' in the Revenue records and used by the Public by time memorial. The First Appellate Court has also confirmed the findings of the Trial Court. When the Courts below have found that the suit pathway is classified as a pathway in revenue records namely, 'A' register extract and Adangal which are marked as Exs.B.14 and B.15. This Court is of the view that merely because the same is shown as a pathway in one of the sale deed, dated 09.11.2000. The same would not attain the character of a private land. Ex.B.14 'A' register extract which shows that all along the property is classified as a "Nilaviyal Pathai". Ex.B.15 Adangal shows that the property is a public pathway. In Ex.B.16 Rough sketch also shown as a Public pathway. Therefore, when the Revenue records clearly shows that the property all along treated as a public pathway, merely because there is no definition for such "Nilaviyal Pathai" in the Board Standing Orders, it cannot



be said that it acquired the character of a private property.

15.As per dictionary, the word "Nilaviyal Pathai" means "Geological Pathway" and the Revenue records clearly indicate that the property is a "Nilaviyal Pathai". The judgment of this Court, passed in **S.A.No.1641 of 2011, dated 16.11.2014**, in the case of **N.M.Ganeshan Vs. The Commissioner, Sathyamangalam Municipality**, it is clearly held in paragraph No.6 as follows :

"It is not disputed by the appellant that the land in question is classified in the Revenue records as 'Nilaviyal Chandu' and it meant for General Public for their use as a Public Street. The Respondent-Municipality is one of the wings of the Government and is empowered to protect the Public lands from being encroached."

16. Similarly Division Bench of this Court has reported a judgment in **2018(1) CWC 529** in the case of **J.Jagadesh Vs. Tahsildar, Modakurichi Taluk, Erode District and one another** and has held that 'Nilaviyal Vandi Pathai' - Cart-track formed in Patta land has been described as a 'Nilaviyal Vandi Pathai' in the Revenue records. When the fact is established that the suit pathway is described as a 'Nilaviyal Pathai' and its dictionary meaning is "Geological Path" It is only meant to use by all the Public and not by the appellant only. Accordingly, merely there is no definition in the Board Standing Orders with regard to 'Nilaviyal Pathai' one cannot contend that such pathway cannot be used by Public. The purpose of classifying such pathway in Revenue records for Public usage. Such being the position, this Court do not find any infirmity in the findings of the Courts below. Accordingly, the substantial questions of law are answered.

17.Accordingly, these two second appeals are dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The I Additional Subordinate Court,
Nagercoil.

2.The II Additional District Munsif,
Nagercoil.

Copy to:

The Record Keeper, VR Section, (2 Copies)
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.M.A.ABDUL WAHAB, Advocate (SR-4901 & 4902[F] dated
05/02/2020

+1 CC to M/s.G.ARAVINTHAN, Advocate (SR-4923[F] dated 06/02/2020)

Common Judgment in
S.A. (MD) .Nos.987 & 988 of 2009
05.02.2020

JMN(25.02.2020) 6P : 8C