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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2021
PRONOUNCED ON : 14.07.2021

CORAM

THE HONOURABLE MS. JUSTICE P.T. ASHA

S.A.NO.854 OF 2008
AND
M.P.NO.1 OF 2008

Sasikala

...Appellant / 1st respondent /
Plaintiff

Vs.

1.Ammasi Ammal (deceased)

2.Sivakani

3.K.Kuppusamy Gounder

...Respondents / Appellants /
Defendants

4.The Commissioner,
Tirupur Municipality

...Respondent / 2nd Respondent /
Defendant

5.G.Subramaniam

6.N.Sugantha Devi

7.G.Devarajan

8.G.Murthy

9.J.Dhanalakshmi

10.N.Barath Kumar

11.N.Bhuvanamanohari

...Respondents

(Respondents 5 to 11 were brought on record as the legal representatives of the deceased 1st respondent Ammasi Ammal vide order of this Court dated 17.12.2020 in C.M.P.No.23596 of 2019 in S.A.No.854 of 2008)

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 12.12.2006 in A.S.No.48 of 2005 on the file of the learned Subordinate Judge, Tirupur setting aside the Judgment and Decree dated 14.06.2005 in O.S.No.106 of 1997 on the file of the learned District Munsif, Tirupur.



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For Appellant : Mr.P.B.Sampath Kumar
For Respondents : Mr.M/s.P.Sarathi
for R4 - No appearance
Mr.E.K.Kumaresan
for R5, R7 to R9.
R1 - died
R3 - Given up
Not ready in notice regarding
R2, 6, 10 and 11

JUDGMENT

The unsuccessful plaintiff before the Courts below is the appellant before this Court. The parties are referred to in the same litigative status as before the trial Court.

2.The plaintiff had filed the suit O.S.No.106 of 1997 on the file of the learned District Munsif, Tirupur. In the said suit, the plaintiff had sought for the following reliefs:

"(a)declaring that the sale of portion of suit road by 3rd defendant to defendants 1 and 2 are not valid?

(b)declaring that the plaintiff as a public is entitled to the user of the suit road fully described in the schedule herewith passing orders defendants 1 to 3 remove the small bund put across the suit road as the Western? and

(c)restraining the defendants 1 to 3 or anybody else on their behalf from in any way obstructing the use of the suit road by the plaintiff more particularly and putting up any construction in the road portion?."

3.The suit property has been described as follows:

SCHEDULE OF PROPERTIES

"The East West Road, situated in the Layout formed in T.S.No.887/2 of Tirupur Municipality and approved as L.P./R(CPN) No.298/86 of Deputy Director of Town Planning Coimbatore and running between several plots particularly between the plots of defendants 1and 2"



4.The case of the plaintiff is that the properties comprised in T.S.No.887/2 falling within the Tirupur Municipality limits belonged to the 3rd defendant and his son. They had formed a layout in the suit property and the same has been approved by the Town Planning Authority. A 30 feet wide road is shown in the Plan and considering the fact that the layout has been approved, the road becomes a public road accessible to the general public. She would further contend that the 1st and 2nd defendants had purchased the plots which were situate at the Western end of the layout on either side of the road, i.e., on its North and South.

5.The plaintiff had purchased the plots on the West of the 2nd defendant's plots. A 30 feet road in T.S.No.888 belonging to the third parties could be reached from the suit road. The plaintiff who had put up a construction had arranged to put up a gate facing East - West Road in the layout in T.S.No.888. The defendants 1 to 3 prevented the plaintiff from using this road and with this intention had created documents whereby the road was alienated to the 1st and 2nd defendants with each taking equal portions of the road abutting the respective plots. According to the plaintiff, the sale of the road was not valid as the same was a public road and therefore, not binding on the plaintiff. After the sale in favour of the defendants 1 and 2, they have blocked the access to the road by putting up a small bund with hollow block bricks across the road on the Western end of the road thereby preventing the plaintiff from entering the road.

6.The 1st defendant has filed a Written Statement which was also adopted by the 2nd defendant in which she would inter alia contend that the very purchase of the property by the plaintiff is in doubt as the Sale Deed has been registered in the State of Kerala by showing minuscule extent as being purchased in the State of Kerala. The defendant would submit that the sale in favour of the plaintiff does not confer her with any right in the properties comprised in T.S.No.887. The road that has been formed in the layout in T.S.No.887 is exclusive for the residents of that layout. That apart, the roads and other areas have not been handed over to the Tirupur Municipality and continued to be that of the 3rd defendant and the son.



7.The plaintiff has been given a right of the access to her property situate at T.S.No.888 under the Sale Deed only through an East - West cart track situate at the North of the property which proceeds West to reach KVR Nagar and no right has been given in the road in T.S.No.887. Much prior to the institution of the suit, the 1st defendant has put up a hollow brick wall, a flush out latrine, a pucca septic tank in her portion. There is no road in existence. The suit therefore deserves to be dismissed.

8.The 3rd defendant, the layout owner had filed a Written Statement contending that even according to the plaintiff, she had purchased the properties only in T.S.888 and not in T.S.887. The two survey numbers belonged to two different persons and the owner of one cannot intrude into the properties of the other. The layout had been formed for the purchasers of the site and amenities provided therein are only for the benefits of these site owners. In fact, the Sale Deed under which the plaintiff had purchased the property does not give her any right to any portion of the property in T.S.887. The plaintiff's vendors and their family had never been in enjoyment of any portion of the lands comprised in T.S.887.

9.He would further contend that although the layout was technically approved by the Deputy Director of Town Planning the same had not received the approval of the Municipality and further, the sites and the roads when never handed over to the Tirupur Municipality. The road in the layout was maintained only as a private road and the Municipality has not never maintained it as a public road. He would also contend that the plaintiff did not have any necessity to access this private road in T.S.887 since she had a separate access along the Municipality road leading from Erukkadu Extension 1st Street leading to KVR Nagar. This defendant had every right to sell his property in the manner he chose to. The allegation in the Plaint that a bund was put up only on 22.03.1996 was a false statement since the same had been put up long ago. He would also contend that the plaintiff had originally put up a pucca North - South brick wall in her portion knowing fully well that she had no access beyond that. Thereafter, she demolished the same to create an opening into the defendants' property. Considering the fact that the plaintiff did not have a prima facie case, the defendant had sought for dismissal of the suit.



10. After the Written Statement has been filed by the defendants 1 to 3 the plaintiff had come forward with an amendment in I.A.No.1312 of 2002 seeking to amend the schedule of the property by amending the original T.S.887 to 887/2 and to add the word "Coimbatore" after the Deputy Director of the Town Planning. The suit application was ordered on 31.10.2003. After the filing of the amended copy of the Plaint, the 1st defendant had filed an additional Written Statement which was one again adopted by the 2nd defendant on 24.03.2005, inter alia contending that the plaintiff has no semblance of her right, title or possession to the suit property. From the schedule of the property given both in the original Plaint as well as the amended Plaint, one is unable to locate or identify the same. The suit does not conform to the provisions of the Order 7 of the Code of Civil Procedure. Further, the plaintiff had put up a South - North brick wall running through her property and thereafter, with a view to staking a claim on the defendants' property. The plaintiff had demolished the Wall on both sides. The defendant would further submit that T.S.888 and 887 are separate and distinct properties and the owner of one cannot claim any right in the property of the other. Once again they had reiterated for the dismissal of the suit.

11. The learned District Munsif, Tirupur had framed the following issues:

- "1. தாவா சொத்தை 3ஆம் பிரதிவாதி 1, 2 பிரதிவாதிகளுக்கு கிரயம் செய்தது செல்லத்தக்கதா?
2. தாவா பாதை எல்லோருக்கும் பாத்தியப்பட்ட பொதுவான பாதையா?
3. வாதி கோரும் விளம்பிகை பரிகாரங்கள் வாதிக்கு கிடைக்கத்தக்கதா?
4. வாதி கோரும் நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?
5. வாதிக்கு வேறு என்ன பரிகாரம்?"

12. The plaintiff had examined one Swamiappan, her husband as P.W.1. The plaintiff did not enter the witness box. In support of her case, she had only marked the document under which she had purchased her property. On the side of the defendants, the son of the 1st defendant was examined as D.W.1 and documents Ex.B.1 to Ex.B.4 were marked. The Advocate Commissioner's Report and Plan were marked as Ex.C.1 and Ex.C.2. On a consideration of the evidence on record, the learned District Munsif, Tirupur, had dismissed the suit. Aggrieved by



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the same, the plaintiff had filed A.S.No.48 of 2005 on the file of the learned Subordinate Judge, Tirupur. The learned Subordinate Judge also confirmed the Judgment and Decree of the trial Court and aggrieved by this concurrent Judgment and Decree, the plaintiff is before this Court.

13.The Second Appeal was admitted on the following Substantial Questions of Law by orders of this Court dated 11.07.2008:

"1.Whether on the facts and in the circumstances of the cases the learned Appellate Court was right in holding that the third respondent herein has actionable claim over the passage after the approval of the layout by the fourth respondent/Tirupur Municipality?

2.Whether on the facts and in the circumstances of the cases the learned Appellate Court was right in rejecting the plea of the appellant herein that the suit passage has been vested with the public once the layout is approved and it is not necessary that the said passage has to be physically handed over to the Tirupur Municipality?

3.Whether on the facts and in the circumstances of the case the learned Appellate Court was right in holding that the Doctrine of Estoppel shall not apply to the third respondent after divesting of his rights in the suit passage to the Tirupur Municipality?"

14.Mr.P.B.Sampath Kumar, learned counsel appearing on behalf of the appellant would submit that D.W.1 in her evidence had admitted that the property in question was a common layout which was the access to the common road. He would further argue that the plaintiff had discharged her duty by pleading about the layout details and the 3rd defendant who had promoted the layout has deliberately not filed the same into Court. He would further submit that there is no dispute between the parties that the road in question, namely, the suit property was a layout road. It is the argument of the learned counsel for the appellant that once a layout has been approved then all the roads situate therein would become a public road and the general public would have access to the same. He would further draw the



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attention of this Court to the Written Statement of the 1st defendant wherein the 1st defendant has sought to argue that if a road is formed in the layout it would only be for the benefits of the owners of the layout. He would also highlight the statement of the 3rd defendant wherein the 3rd defendant had admitted that the layout had been approved by the Deputy Director of the Town Planning Authority, but had very ingeniously contended that since the road had not been gifted to the Tirupur Municipality the roads would remain a private road not accessible to the general public but only to the owners of the layout.

15.The learned counsel would highlight the answers given by the son of the 1st defendant who has examined as DW1 to certain suggestions put forth by the learned counsel for the plaintiff which according to the learned counsel clearly proves the case of the plaintiff that the road in question is a public road.

16.The learned counsel would rely upon the Judgment of the Hon'ble Supreme Court in 1995 SCC (1) 47 [Pt.Chet Ram Vashist vs Municipal Corporation Of Delhi]. He would also argue that the plaintiff being one of the members of the public was well within his right to question the conversion of the road into private property. He would submit that both the Courts below has failed to appreciate that once the layout has been approved then all the roads in the layout automatically stand vested with the Municipality and as a consequence become accessible to the general public. Once the right of the third parties got attached to the road in question the 3rd defendant had no right to sell the same to the defendants 1 and 2, particularly, when the right has been divested. He would therefore submit that the Courts below have grossly erred in dismissing the suit and would therefore pray that the same should be allowed.

17.Per contra, Mr.E.K.Kumaresan, learned counsel appearing on behalf of the respondents 5, 7 to 9 would submit that the layouts comprised in T.S.Nos.887/2 and 888 are distinct and independent layouts. The plaintiff who has come forward with the case that he is entitled to usage of the pathway, has not filed any document to prove her right over the same except



for marking Ex.A.1 - Sale Deed in her favour. The defendants 1 and 2 have purchased the properties under Ex.B.1 to Ex.B.4 which are of the years 1995 and 1996. The plaintiff has come forward with the case for a declaration that the East - West road described in the Layout Plan is a public road and for a consequential injunction. The property as described in the suit schedule is incapable of being identified. The plaintiff who has described the property as East - West Road in the layout approved as L.P./R(CPN) No.298/86 has not chosen to file the said Layout Plan. The learned counsel would submit that the plaintiff has not proved her locus standi to file the suit. The plaintiff already has an other access through a 30 feet road. The learned counsel would submit that even under the Sale Deed Ex.A.1 under which the plaintiff had purchased her property, the property on the East is shown as that of the 2nd defendant's property. Further, the plaintiff's property opens out to the road on the North. He would also draw the Court's attention to the cross examination of P.W.1 wherein he had admitted that under the Sale Deed, no access has been given to the lands in T.S.No.887/2. He would also point out the admission of P.W.1 that without touching the lands in T.S.No.887, she has access to Mangalam Salai through her road.

18.Apart from the property purchased by the plaintiff, her husband, who deposed as P.W.1, had purchased another property in T.S.No.888. Even in this document, no access is given in T.S.No.887. The witness has also admitted that from a reading of the schedule, the identity of the property cannot be made out. He would further submit that the Appellate Court has considered the evidence on record and come to the conclusion that plaintiff has not based her claim on an easementary right or on the basis that both the parties claim title to a common owner. The Appellate Court has also considered the fact that the plaintiff has not been able to establish that the roads have been gifted or taken over by the 4th respondent Municipality and without there being the vesting the same cannot be considered as a public road and consequently, the Appeal had failed. He therefore sought for dismissal of the Second Appeal.

19.Heard the learned counsels appearing on either side and perused the papers.

20.The plaintiff would seek the relief of declaration



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that the plaintiff as a public is entitled to use the suit property described in the schedule and for a direction to the defendants 1 to 3 to remove bund put up on the suit road at the Western end and consequently, restraining the defendants 1 to 3 from obstructing the plaintiff from using the suit road.

21.The suit road has been described as an East - West road situate in the layout formed in T.S.No.887/2 approved in L.P./R(CPN) No.298/86 of Deputy Director of Town Planning Coimbatore and running between several plots of the plaintiff and the defendants 1 and 2. A perusal of the schedule would indicate that the plaintiff is seeking a right to access the East - West Road which is running through the layout with particular reference to the same lying between the 1st and the 2nd defendant's plots. The plaintiff would base this right on the premise that since the layout in T.S.No.887 has been approved and layout formed as per the Municipalities Act all roads and the common places would vest with the Municipality and the entire public has got a right to use such a road. The suit is not filed in a representative capacity. That apart, there is no plea of an easementary right. This may be on account of the fact that on the Northern Side of the plaintiff's property there lies a 30 feet toad and therefore, an easement of necessity would not arise. The document under which the plaintiff has purchased the properties would show the property of the 2nd defendant on the East. Even under the Sale Deed Ex.A.1 the boundary is not the road.

22.A perusal of the Plaint schedule would clearly prove that the claim of access to the general public to the alleged road if in existence would stop with the property of the plaintiff. The Eastern boundary of the plaintiff's property is the 2nd defendants' property. Therefore, the contention that it will open out access to the general public is absolutely incorrect, particularly, when the property to the South of the property covered under Ex.A.1, does not belong to the plaintiff. The only argument of the plaintiff/appellant is that once the layout has been formed these roads would automatically stand vested with the Municipality and would partake the character of a public road. The pleadings would clearly demonstrate that the plaintiff is seeking to espouse a private right in the guise of a public right. This is clear from a perusal of the following statement in Paragraph 5 of the Plaint. "The plaintiff is



putting up construction and in such course arranged to put up a gate facing the Est West road."

23. In these circumstances, it is therefore necessary to examine the provisions of the Tamil Nadu District Municipalities Act, 1920 (hereinafter referred to as the Act). Section 3(20) of the Act defines a Private Street and 3(21) of the Act defines a Public Street. The definitions are extracted hereinbelow:

"Section 3(20) 'Private street' means any street, road, square, court, alley, passage or riding-path, which is not a 'public street' but does not include a pathway made by the owner of premises on his own land to secure access to or the convenient use of such premises ;

Section 3(21) 'Public street' means any street, road, square, court, alley, passage or riding-path 3 [over which the public have a right of way] whether a thoroughfare or not, and include –

(a) the roadway over any public bridge or causeway;
(b) the footway attached to any such street, public bridge or causeway; and

(c) the drains attached to any such street, public bridge or causeway and the land, whether covered or not by any pavement, verandah, or other structure, which lies on either side of the roadway upto the boundaries of the adjacent property whether that property is private property or property belonging to 4 [the Government] ;"

24. Chapter IX deals with Streets. Sections 175 to 179 deals with Private Street. Section 179 clearly provides that where a street has been formed as detailed under the provisions of Section 178, such street shall, on the requisition of not less than three-fourths of the owners thereof, be declared a public street. Therefore, a private street should be declared as a public street only if not less than three-fourths of the owners request the Municipality to so convert. The plaintiff has not been able to establish that the provisions of Section 179 have been followed in the instant case. That apart, it is only public streets that are open to all as provided under Section 180A of the Act. It is only when the streets are vested in the Municipality that it is open to the general public. Therefore, by reason of the above provisions, it is clear that the suit



property which was never vested with the Municipality and which was never asked to be converted into a public street continued to be a private road.

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25. The plaintiff has filed the suit styling himself as one of the Members of the public but has however not examined any third person to show that the suit property was to be used by such persons before the alleged blocking by the defendants. Further, the plaintiff has not been able to prove that there is a road in existence to the East of her property. The only document filed by the plaintiff is the Sale Deed in her favour and even this document does not advance the case of the plaintiff since the property on the East is only shown as the property of the 2nd respondent and not as a road. That apart, the plaintiff has not filed the Layout Plan though in the suit schedule the plaintiff would describe the East - West portion as indicated in L.P./R(CPN) No.298/86 of Deputy Director of Town Planning Coimbatore. The plaintiff has not proved any easementary right over the suit property either in the form of prescription or through grant. The Judgment of the Hon'ble Supreme Court in 1995 SCC (1) 47 [Pt.Chet Ram Vashist vs Municipal Corporation Of Delhi], would not advance the case of the plaintiff since in the instant case the very existence of the road has not been proved by the plaintiff. Further, considering the fact that the plaintiff has failed to prove the existence of the so called East - West of the road, the Substantial Questions of Law are answered against the plaintiff.

In fine, the Second Appeal stands dismissed with costs throughout. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-IV)

// True Copy //

Sub Assistant Registrar

mps

To

1. The Subordinate Judge,
Tirupur.



2.The District Munsif,
Tirupur.

Copy To

The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.P.B.Sampathkumar, Advocate SR.No.33340

+1cc to Mr.E.K.Kumaresan, Advocate SR.No.33066

S.A.No.854 of 2008
and M.P.No.1 of 2008

LN(CO)
RVM(14/09/2021)