



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A. (MD)No.1225 of 2005

and

C.M.P. (MD) No.8474 of 2005 &

M.P. (MD) No.1 of 2009

WEB COPY

Shanmugam

... Appellant/Appellant/Plaintiff

Vs.

1.Kamalam
2.Nagaraj
3.Muthusamy
4.Narayanan

... Respondents/Respondents/Defendants

PRAYER:- Second Appeal filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 10.06.2005 rendered in A.S.No.77 of 2004 by the Subordinate Court, Sivagangai, confirming the decree and Judgment dated 29.04.2004 made in O.S.No.40 of 2002 by the District Munsif Court, Tiruppathur.

For Appellant : Mr.R.Sundar

For Respondents : No Appearance

J U D G M E N T

The plaintiff in O.S.No.40 of 2002, whose suit for declaration and injunction was dismissed by the trial Court, upon confirmation of the same by the Appellate Court, have come up with this Second Appeal.

2.This second appeal is a follow up of judgment in O.S.No.40 of 2002 dated 29.04.2004 on the file of the District Munsif Court, Thiruppathur, Sivagangai District. The said judgment was on the basis of an order passed by the District Revenue Officer of Sivagangai, who refused to grant patta in favour of the petitioner herein.

3.In the said suit which had been filed with respect to a property which has been classified as public pathway was for a declaration that the property should be declared to be the own property of the plaintiff. A finding had been given by the learned District Munsif, on the basis of evidence adduced that the property is actually a public pathway. This finding had been affirmed in A.S.No.77 of 2004 by judgment, dated 10.06.2005 by the Subordinate Court, Sivagangai. As against the concurrent findings of both the Munsif Court and Sub Court, the appellant has filed the present second appeal.



4.The second appeal has been pending from the year 2006. It had been directed to be heard along with the aforesaid writ petition, in which orders have been passed dismissing the writ petition holding that a finding of fact that the land in question is a common pathway cannot be interfered with by this Court.

WEB COPY

5.In view of that particular fact, it would be highly inconsistent if a different view is taken by me in this second appeal.

6.However, an application has been filed under Section 23 Rule 1 and Section 151 of the Code of Civil Procedure in MP.No.1 of 2009 seeking permission to withdraw the suit in O.S.No.40 of 2002 on the file of District Munsif Court, Thiruppathur, with liberty to file a fresh suit on the same cause of action.

7.A fresh suits on the same cause of action shall be maintainable only on impleading the appropriate Government authority as a defendant in the said suit.

8.There is a finding on fact that the property for which the patta had been sought by the appellant is a common pathway.

9.It is the contention of Mr.Madhavan, learned counsel that the parties would once again be engaged in a long term litigation, if the present petition is allowed. However, it is seen that the appellant has been non-suited both by the trial court and by the first appellate Court only because the Government or the appropriate authorities were not impleaded as parties.

10.The issue of non-joinder had been put against the appellant herein. I would therefore, rather, grant a permission to institute a fresh suit, since the right on the petitioner will have to be tested only in the manner known to law and only in the presence of all the parties, who would be interested either directly or indirectly in the subject matter of the suit. Therefore, without entering into a discussion whether the finding of the District Munsif Court, Thiruppathur, a confirmed in the first appeal are right or wrong, the Second Appeal is dismissed.

11. However, liberty is granted to the petitioner to institute a fresh suit in the same cause of action, by impleading the appropriate Government authorities. The respondent herein the defendant in the suit, may take up the defence of re-agitation of the same issues, if the petitioner does not plead any further facts in the plaint quiet apart from what had already been pleaded. If the same stand is taken by the plaintiff, then the respondent herein, if shown as a defendant can seek interference with the plaint on the ground of re-agitation. However, if the plaintiff pleads further as to why the property should not be categorized as a public pathway then, the issue would have to be examined only during the course of



12. With the above said observation, though the Miscellaneous Petition in M.P(MD) No.1 of 2009 is allowed, the Second Appeal is dismissed. No costs. Consequently, C.M.P.(MD) No.8474 of 2005 is also dismissed.

WEB COPY

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rm

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

- 1.The Subordinate Judge,
Sivagangai.
- 2.The District Munsif,
Tiruppathur.
- 3.The Section Officer, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

Judgment made in
S.A. (MD)No.1225 of 2005

(2/2)

Dated 15.11.2021

SJ(CO)
GC(21.12.2021) 3P 5C