



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2021

CORAM

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

SA(MD)Nos.280, 656 of 2005 & CONT P(MD)No.474 of 2011
and
MP(MD) No.2427 of 2005 & Sub A(MD)No.1 of 2011 &
MP(MD)No.1, 2 of 2010 & 7 of 2011

in SA(MD)No.280 of 2005 :

1.Punnaivanam Chettiar (died)

2.Raj Chettiyar (died)

3.P.Mahalakshmi

4.S.P.Ramamoorthy

5.P.Karthigaiselvi

(Appellants 3 to 5 are Brought On Record as LR's of the Deceased 1st Appellant Vide Order Dated 10/01/2011 & made in Mp.Nos.4 to 6 of 10 in Sa.No.280 of 05)

6.R.Radhakrishnan

7.R.Theivasigamani

8.R.Sankaranarayanan

(Appellants 6 to 8 are Brought On Record as LR's of the Deceased 2nd Appellant V.O.Dated 10/01/2011 & made in Mp.Nos.4 to 6 of 10 in Sa.No.280 of 05)

... Appellants / Appellants /
Defendants

Vs.

1.Paramasivam Chettiar (died)

2.Sournambigai

... 1st to 3rd Respondents / 1st & 3rd
Respondents / 1st & 3rd

Plaintiffs

3.The Commissioner,

Aruppukottai Municipality,

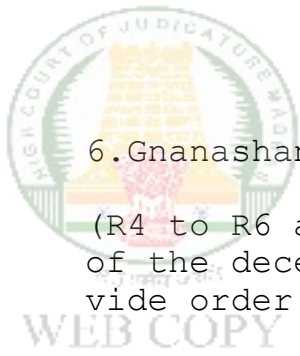
Aruppukottai, Virudhunagar District.

... 3rd Respondent / 4th
Respondent / 4th Defendant

4.Ponnuthai

5.Velkamatchi

<https://hcservices.ecourts.gov.in/hcservices/>



6.Gnanashankar

... Respondents

(R4 to R6 are brought on record as LR's of the deceased 1st respondent vide order dated 22.07.2020)

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 04.02.2005 made in A.S No.158 of 2001 on the file of the Sub Court, Aruppukkottai confirming the judgment and decree dated 18.04.2000 made in O.S No.371 of 1994 on the file of the District Munsif Court, Aruppukkottai.

in SA(MD)No.656 of 2005 :

The Aruppukkottai Municipality,
Rep.by its Commissioner,
Virudhunagar District.

... Appellant / 4th Respondent
/ 3rd Defendant

Vs.

1.Punnaivanam Chettiar (died)

2.Raj Chettiar (died)

... 1st & 2nd Respondent / 1st &
2nd Appellant / 1st & 2nd
Defendants

3.Paramasivam Chettiar

4.Swarnampigai

... Respondent 3 & 4 / 1st & 3rd
Respondent\Plaintiff 1 & 3

5.P.Mahalakshmi

6.S.P.Ramamoorthy

7. P.Karthigaiselvi,

(Appellants 3 to 5 are Brought On Record as LR's of the Deceased 1st Appellant Vide Order Dated 10/01/2011 & made in Mp.Nos.4 to 6 of 10 in Sa.No.280 of 05)

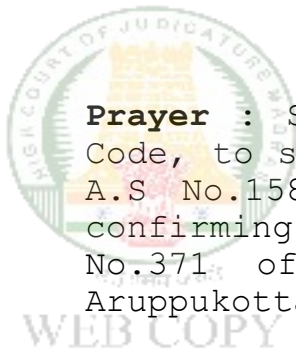
8.R.Radhakrishnan

9.R.Theivasigamani

10.R.Sankaranarayanan

... Respondents

(R5 to R7 were brought on record as LR's of the deceased R1 and R8 to R10 were brought on record as LR's of the deceased R2)



Prayer : Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree dated 04.02.2005 made in A.S No.158 of 2001 on the file of the Sub Court, Aruppukottai confirming the judgment and decree dated 18.04.2000 made in O.S No.371 of 1994 on the file of the District Munsif Court, Aruppukottai.

in CONT P(MD)No.474 of 2011 :

P.Mahalakshmi

. . . Petitioner

Vs.

1.Paramasivam Chettiar

2.Swarnampigai

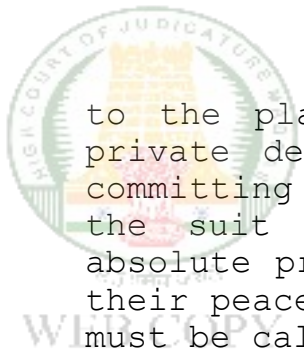
... Respondents

Prayer : Contempt Petition filed under Section 11 of the Contempt of Courts Act, to punish the respondents for willfully disobeying the order of this Court dated 29.11.20006 made in CMP(MD)No.4599 of 2005 in SA No.656 of 2005.

SA (MD) No.280 of 2005	For Appellants	Mr.S.Parthasarathy
	For Respondents	Mr.P.T.S.Narendravasan for R2, R4 to R6
		Mr.N.Dilipkumar for R3
SA (MD) No.656 of 2005	For Appellants	Mr.N.Dilipkumar
	For Respondents	Mr.S.Parthasarathy for R5 to R10
Cont P (MD) 474 of 2011	For Petitioner	Mr.S.Parthasarathy

JUDGEMENT

Both these second appeals arise out of the judgment and decree dated 18.04.2000 made in O.S No.371 of 1994 on the file of the District Munsif Court, Aruppukottai. The said suit was filed by one Paramasivam Chettiar seeking the reliefs of declaration, permanent injunction and mandatory injunction in respect of the suit property. The suit property has been described in the plaint schedule as a vacant site measuring 6 feet east western side and 62 feet south northern side. The above said site is situated in S.No.165 in Aruppukottai Town. The case of the plaintiff is that the suit property is located in between the plaintiffs's house and the house of the defendants 1 and 2. Aruppukottai Municipality issued notice



to the plaintiffs treating the property as a public lane. The private defendants also complained that the plaintiffs have been committing encroachment therein. Therefore, the plaintiffs filed the suit seeking declaration that the suit property is their absolute property and that the defendants should not interfere with their peaceful possession and enjoyment and that the first defendant must be called upon to remove the encroachment committed by him.

2.The defendants 1 and 2 filed written statement controverting the plaint averments. The stand of the defendants 1 and 2 was that the suit property is actually a public lane and that it had been dedicated to the use of the general public more than 70 years ago. The local body also filed its written statement contending that the suit property is actually comprised in Survey No.169 and that it is known as Ganapathi Street and that the suit has been instituted to prevent the local body from carrying out its statutory obligation of removal of encroachment. Based on the divergent pleadings, the trial court framed the necessary issues. An advocate commissioner was appointed and he submitted his report and plan. The first plaintiff was examined as PW.1. Exs.A1 to A24 were marked through him. The first defendant examined himself as DW.1 and one Periyasamy was examined as DW.2. On behalf of the local body, Town Surveyor Sadhuragiri was examined as DW.3. The report and sketch prepared by the advocate commissioner were marked as court exhibits 1 and 2. After consideration of the evidence on record, the trial court by the judgment and decree dated 18.04.2000 granted the relief of declaration as well as permanent injunction. However, the relief of mandatory injunction was denied on the ground that the steps put up by the first defendant were more than six years old even at the time of the filing of the suit. The defendants 1 and 2 filed A.S No.158 of 2001 before the Sub Court, Aruppukottai. The plaintiffs as well as the local body filed cross appeals. The first appellate court by judgment and decree dated 04.02.2005 dismissed the appeal as well as the cross appeals. The plaintiffs did not file any second appeal challenging the dismissal of his cross appeal. SA(MD)No.280 of 2005 was admitted on the following substantial questions of law :

"1.Whether Exs.B2, B11 and B12 have not been considered by both the courts below in proper way ?

2.Whether the courts below erred in not considering the question that dedication can be made even without any documents?

3.Whether both the courts below were correct in accepting the recitals in Exs.A1 to A7 without proper appreciation ?"

SA(MD)No.656 of 2005 was admitted on the following substantial questions of law :

<https://hcservices.ecourts.gov.in/hcservices/Vices> Whether the courts below have erred in law in



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not drawing presumption under Section 114 of the Evidence Act that Ex.B1, B2, B3, B6, B7, B10, B11 and B12 are genuine and correct as the same are public documents ?

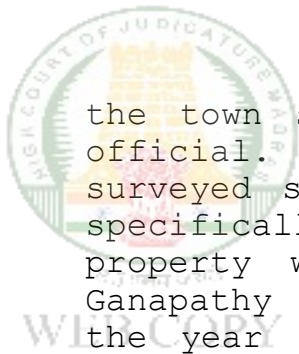
2. Have not the courts below erred in law in wrongly placing the burden on the appellant to prove that the suit property was classified after issuing notice as public street ignoring the fact that classification of the suit property as the public street is the official duty of the appellant which has to be presumed to have been done properly under Section 35 of the Evidence Act ?”

3. The learned counsel for the appellants in both the appeals reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and allow these appeals and dismiss the suit filed by the plaintiffs. Per contra, the learned counsel appearing for the respondents submitted that the earliest title documents of the plaintiffs clearly show the eastern boundary of their property as bounded by the property of one Punnaivanam Chettiar. In other words, there was no reference to the existence of the suit lane in the earliest document that was marked as Ex.A1 dated 4th December 1936. Therefore, the learned counsel for the plaintiffs contended that the suit lane should be considered as a part of their property. He would also point out that when both the courts below after appreciation of the evidence on record have given a factual finding that the suit property is a part of their private property, it may not be open to this Court to interfere with the said finding of fact in exercise of jurisdiction under Section 100 of CPC.

4. I carefully considered the rival contentions and went through the evidence on record. The learned counsel appearing for the private appellants and the learned standing counsel for the Arupukkottai Municipality pointed out that the suit property is actually comprised in T.S No.169. My attention is drawn to the report of the Advocate Commissioner dated 17.08.1998. In several places in the Commissioner's report, it is categorically mentioned that the suit property is comprised in Arupukkottai Town Ward "C" Block in T.S No.169. The description given in the plaint schedule that the suit property comprised in Survey No.155 is obviously incorrect. In the plaint schedule, the suit property was mentioned as comprised in Survey No.155. The counsel for the appellants informed that when the first appellate court pointed this out, the plaintiffs filed a petition for amendment and got the survey number corrected. This amendment made before the first appellate court may not really advance the case of the plaintiff.

5. The learned counsel for the appellants drew my attention to Ex.B1, Ex.B2, Ex.B3, Ex.B6, Ex.B7, Ex.B10, Ex.B11 and Ex.B12. These are extracts of

<https://hccases.courts.gov.in/lscs/>



the town survey records. They were marked through DW.3/Municipal official. It can be seen therefrom that the suit property was surveyed some 40 years even prior to the filing of the suit and specifically demarcated as a public lane. In fact, the suit property was known as Vathiyar Street. It is now called as Ganapathy Street. The latest survey exercise was undertaken in the year 1988. If really the plaintiffs felt aggrieved by the survey exercise, they ought to have instituted a suit within three years. Section 14 of the Tamil Nadu Survey and Boundaries Act, 1923 reads as follows :

"14.Institution of a suit in Civil Court within three years to establish rights claimed in respect of the boundary of the property surveyed.- Any person deeming himself aggrieved by the determination of any boundary under Sections 9,10,11,12-A or 12-B may, subject to the provisions of Parts II and III of the Limitation Act, 1963 (Central Act 36 of 1963) institute a suit within three years from the date of the notification under Section 13 to set aside or modify the said determination and survey shall, if necessary, be altered in accordance with the final decree in the suit and the alteration, if any, shall be noted in the record.

The plaintiff in such suit shall join as parties to it all persons whom he has reason to believe to be interested in the boundary which is the subject of the suit."

Of course, if the survey exercise had taken place behind the back of the plaintiff, then, the limitation period of three years would start running only from the date when the plaintiff acquired knowledge. But, in the case on hand, one can easily infer that the plaintiffs always knew the character of the property as a public lane. Ex.A3 and Ex.A4 dated 14.09.1972 are documents that were executed among the members of the plaintiffs's family. In those documents, the suit property has been mentioned as a lane. The suit in question was instituted only in the year 1994, ie., six years after the survey exercise had already taken place. Therefore, the suit is barred by limitation and hit under Section 14 of the Act.

6.The learned counsel for the appellants has raised another formidable contention. The property purchased by the plaintiffs on the northern side can only measure 35 feet and 9 inches. Therefore, on the very face of it, the judgment of the courts below suffer from an apparent error. The learned counsel for the appellants drew my attention to the decision of the Madras High Court reported in **2011-1-LW.149 (Samsudeen vs. S.Appannan)**. It is also relevant to note here that this decision also arises from Aruppukottai. After referring to Tamil Lexicon published by University of Madras, the learned Judge observed as follows :

<https://hcservices.ecourts.gov.in/hcservices/>



"Reference has been made in Tamil Lexicon published by University of Madras-1982 Edition-Volume III-Part I at Page 1712, wherein the word thatchumulam has been described as follows :

"தச்சுக்கோல் taca-k-kol, n. jr;rd; Carpenter's or mason's cubit = 33 in; 33-அங்குலமுள்ள தச்சுமுழம் (C.G)."

The above said fact would render ample assistance to this Court to hold that one thatchumulam ie., one carpenter's cubit is equal to 33 inches viz., 2 feet and 9 inches."

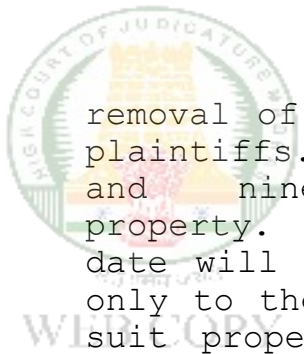
7.In the light of the advocate commissioner's sketch and plan, I come to the conclusion that one feet and nine inches alone immediately abutting the suit property will belongs to the plaintiffs herein. The learned counsel for the appellants pointed out that the courts below have misconstrued the nature of version projected in the written statement. The stand of the private defendants that the suit property has been dedicated to the use of the general public for over 70 years ago. The stand of the Arupukottai Municipality is that the suit property is a public lane. The courts below have proceeded on the premise that dedication means divestment of a right of an individual in favour of larger cause. This approach is patently incorrect. In P.Ramanatha Aiyar's Advanced Law Lexicon, 5th Edition, the expression "dedication" has been defined as follows :

"An appropriation of land to some public use, made by the owner and accepted for such use by or on behalf of the public"....

The Hon'ble Supreme Court in **U.P.Sunni Central Board of Wakf vs. Mazhar Hasan and Ors. (2001) 6 SCC 289** held that if a property is set apart for a definite purpose, such property would become 'dedicated' for that purpose.

8.The courts below have thus misdirected themselves and misconstrued the nature of pleadings projected by the defendants. It is true that in Ex.A1, the eastern boundary of the plaintiffs' property has been mentioned as the property belonging to the forefather of the defendants. Merely because the forefather of the plaintiffs have described as their eastern boundary as that of the plaintiffs, that does not mean that the suit property is a part and parcel of the plaintiffs property. As already pointed out, in the official records, the suit property has been referred to only as a lane. In fact, in some of the documents, namely, Ex.A12 and Ex.A21, the residential address of the plaintiffs has been given with reference only to the suit lane. The courts below have failed to take note of these aspects. Hence, the findings of the courts below will have to be necessarily characterized as perverse. Therefore, I answer the substantial questions of law in favour of the appellants. The judgments and decrees passed by the courts below are set aside. These second appeals are allowed. The suit is

dismissed. However, the local body will not take any step for



removal of the steps and pial that has already been put up by the plaintiffs. I am of the view that this is falling within one feet and nine inches immediately abutting the plaintiffs' house property. In other words, the status quo that is obtaining as on date will continue. I make it clear that this benefit will extend only to the steps and pial already put up by both the parties. The suit property is vested in Arupukottai Municipality and will be maintained as a public lane.

9.The second appeals stand allowed. Contempt Petition stands closed and other connected miscellaneous petitions are also closed. No costs.

Sd/-

Assistant Registrar (CS-II)

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/ /2022

Sub Assistant Registrar(CS)

skm

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 Sub Judge, Aruppukkottai.
- 2.The District Munsif, Aruppukkottai.
- 3.The Commissioner,
Aruppukkottai Municipality,
Virudhunagar District.

Copy to :

The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+4 CC to M/s.S.PARTHASARATHY, Advocate (SR-23806[F] dated 26/07/2021)

+2 CC to M/s.N.DILIP KUMAR, Advocate (SR-23904[F] dated 26/07/2021)

<https://hcservices.ecourts.gov.in/hcservices/>



+1CC to
26.07.2021

Mr.P.T.S.Narendravasan, Advocate SR.No.23822 dated

SA (MD) Nos.280, 656 of 2005 &
CONT P (MD) No.474 of 2011
23.07.2021

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KB (10.03.2022) 9P 13C