



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.09.2022

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

Second Appeal No.558 of 2007

1.R.Ganesan(died)
2.R.Elumalai
3.R.Kandasamy
4.G.Mani
5.S.Santhi
6.G.Nadesan
7.G.Thenmozhi
8.P.Malliga
(appellants 4 to 8 brought on record
as Lrs of the deceased 1st appellant
viz., Ganesan vide order of this Court
dated 20.11.2019 made in
CMP Nos.24541 to 24543 of 2019
in S.A No.558 of 2007)

.. Appellants

Vs.

1.The President,
Veeranam Panchayat,
Salem Taluk.

2.The Block Development Officer,
Ayodhyapattinam Union,
Salem Taluk.



3.The Assistant Engineer(Rural),
Ayodhyapattinam Union,
Salem Taluk.

... Respondents

Prayer:- This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 29.08.2005 made in A.S.No.70 of 2005 on the file of the learned Additional Subordinate Judge, Salem reversing the judgment and decree dated 13.09.2004 made in O.S.No.219 of 1999 on the file of the learned Additional District Munsif, Salem.

For Appellants : Mr.S.Kalyanaraman

For Respondents : Mr.S.Suriya, AGP(CS) for R1 to 3

JUDGEMENT

This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 29.08.2005 made in A.S.No.70 of 2005 on the file of the learned Additional Subordinate Judge, Salem reversing the judgment and decree dated 13.09.2004 made in O.S.No.219 of 1999 on the file of the learned Additional District Munsif, Salem.



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2.The appellants are the plaintiffs. They filed the suit for permanent injunction restraining the respondents/defendants and their subordinates from trespassing into the suit property under the guise of widening the panchayat road and for costs.

3.The case of the plaintiffs is that initially they purchased the suit schedule mentioned property by virtue of Sale deeds viz., Exs.A1, A2 & A3 to an extent of 5.44 acres in S.No.121 of Veeranam village in the years 1950, 1964 and 1967 respectively. While so, in the year 1999, the respondents herein made an attempt to lay the road under the pretext that they want to widen the road, which is situated in re-survey no.106 of Vanmanur village. The plaintiffs objected to the respondents' proposal for widening the road without resorting to acquisition of land and paying compensation to the plaintiffs. According to the plaintiffs, panchayat road is actually situated on eastern boundary of the suit property. Since the defendants proclaimed that they were taking steps to



widen the road in the patta land of the plaintiffs, the plaintiffs, finding no other option, have approached the trial Court seeking for permanent injunction relief.

4.The defendants admitted the fact that the plaintiffs purchased the property by virtue of sale deeds viz., Exs.A1 & A2 during the years 1964 and 1967. The case of the defendants is that the plaintiffs' lands are situated on the west of the panchayat road and this road facility is taken up for the welfare of the public including the plaintiffs. As per the revenue records, panchayat road is situated in S.No.106 Beemanoor village and the width of the road is 22 feet and not 15 feet as contended by the plaintiffs. The plaintiffs encroached upon the panchayat road to a width of 7 feet. The proposed width of the road is 18 feet extending for the welfare of the public under the scheme of Marumalarchi Thittam for the year 1999-2000.

5.Based on the pleadings, the trial Court framed the following



issues for consideration:

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- i) Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for?
- ii) To what other reliefs are they entitled to?

6. On behalf of the plaintiffs, 2nd plaintiff was examined as PW.1 and Exs.A1 to A7 were marked, while on behalf of the defendants, 1st defendant was examined as DW1 and Exs.B1 to B4 were marked. The Report of the Advocate-Commissioner was marked as Ex.C1 and plans (5 in numbers) were marked as Ex.C2 series.

7. On consideration of both oral and documentary evidence, the trial Court arrived at the conclusion that the plaintiffs are entitled to equitable remedy of permanent injunction and accordingly, decreed the suit. Aggrieved by the same, the defendants preferred an appeal in A.S.No.70 of 2005 before the lower Appellate Court, which came to be allowed reversing the judgment and decree of the trial Court. Hence, the appeal.



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8. When the matter was taken up for hearing before this Court on 14.06.2007, the Second Appeal was admitted on the following substantial questions of law:

(i) Whether the lower appellate Court erred in law in holding that the plaintiffs are entitled to the lands comprised in S.No.100 alone measuring about 4.86 acres when the plaintiffs have established that they are entitled to 5.44 acres in S.No.121 before its sub division as S.Nos.100 and 106 and that through Exs.A1 to A3, only on the basis of the revenue records produced by the defendants.

(ii) Whether the lower appellate Court misdirected itself in dismissing the suit on the basis of the revenue records produced by the defendant when it is settled law, patta and the other revenue records produced could not be regarded as evidence of title.

(iii) Whether the lower appellate Court misdirected itself in reversing the findings of the



trial Court by overlooking the fact that the plaintiffs had no notice of the resurvey done by the revenue authorities, that the grant of patta on the basis of the resurvey to the plaintiffs for a lesser extent though they have purchased the larger extent which had been proved through Exs.A1 to A3, is invalid and not binding on the plaintiffs, that the possession follows title in regard to the suit property in as much as the title had been established not only through Exs.A1 to A3 but also by the admission of DW.1 that the plaintiffs are entitled to 5.44 acres as per the sale deeds.

9. Heard the learned counsel appearing for both sides and perused the entire materials available on record.

10. The learned counsel appearing for the appellants/plaintiffs would contend that the plaintiffs have proved their title by virtue of sale deeds viz., Exs.A1 to A3, which aspect was not considered by the first Appellate Court. The main contention raised on behalf of the



appellants/plaintiffs is that though the plaintiffs clearly established that they are having title and in possession of 5.44 acres by virtue of Exs.A1 to A3 sale deeds, wherein, eastern boundary was shown as 'road' and also the survey number has been mentioned as S.No.121 and the total extent of the property owned by the plaintiff has been mentioned as 5.44 acres, however, the lower Appellate Court has erroneously held that the S.No.121 was later subdivided as S.Nos.100 and 106 and grant of patta to the plaintiffs was only in respect of 4.86 acres in S.No.100 and thereby reversed the well considered findings of the trial Court, which cannot be sustained and liable to be set aside. The learned counsel also contended that the lower Appellate Court has not considered the fact that the before resorting to resurvey of the Survey No.121, no notice was served on the plaintiffs by the revenue authorities and further, based on such resurvey, the revenue authorities had wrongly issued patta for lesser extent, i.e. 4.86 acres while the plaintiffs proved their title to the extent of 5.44 acres by Exs.A1 to A3 sale deeds, which was also admitted by DW.1. Therefore, the learned counsel would urge this



Court to set aside the judgment and decree passed by the lower Appellate Court while confirming the judgment and decree passed by the trial Court.

11. On the other hand, the learned counsel appearing for the respondents/defendants would contend that prior to the filing of the suit, S.No.121 was sub-divided as S.Nos.100 and 106 and the total extent of S.No.100 is that 4.86 acres of land, which is belonging to the plaintiffs and again S.No.106, which consists 55 ½ cents wherein, on eastern side, it has been mentioned as "road". At the time of re-survey, and the sub-division, the plaintiffs have not made any objections, but on the other hand, when the defendants made an attempt to extend the road, they have made objections and approached the Court below for permanent injunction against the defendants. That apart, in order to prove their case, the plaintiffs did not file any documents with regard to the patta, chitta and adangal and also "A" register, which are the vital documents to prove the plaintiffs' title and possession over the suit property. That



apart, no title deed of the vendor of the plaintiffs has been filed with regard to how the plaintiffs' vendor had obtained title to the entire extent of 5.44 acres. Hence, the learned counsel for the defendants submitted that the lower Appellate Court has rightly reversed the findings of the trial Court, which requires no interference by this Court.

12. It is not in dispute that the survey No.121 was subsequently divided as S.Nos.100 and 106 and that the plaintiffs were issued patta after effecting re-survey. It is the specific case of the respondents/defendants that the disputed road is lying in S.No.106 in Veeranam Pannchayat Union, Salem District and it is a Government poramboke land categorized as 'Pathai' with area of 0.22.50 hectares (551/2) cents) and it is under public usage for the past 25 years and at the time of formation of road long back, the appellants/plaintiffs have not opposed. Only at the time of widening the road, the appellants/plaintiffs opposed and filed the suit. In order to prove their case, the respondents/defendants produced Ex.B1 & B4 Survey plans



regarding S.Nos.100 and 106, Ex.B2 true copy of 'A' register and Ex.B3 true copy of Adangal issued by the Head Quarters Deputy Tasildar, Salem, which clearly established the existence of panchayat road in S.No.106 with a width of 22 feet. Admittedly, the appellants/plaintiffs have not objected the resurvey and further P.W.1 has admitted that he has not questioned the resurvey and also that the patta was issued after the resurvey, wherein, the measurements of the property was shown only 4.86 acres and not 5.44 acres as contended by the appellants/plaintiffs by virtue of Exs.A1 to A3 sale deeds. Further, the appellants/plaintiffs have not established their title to the extent of 5.44 acres even prior to resurvey or after resurvey of S.No.121. The lower Appellate Court has rightly held that the vendor of Exs.A1 to A3 did not have any tile over the property measuring to the extent of 5.44 acres. When such being the situation, the appellants/plaintiffs cannot claim title or possession that what was they got by virtue of sale deeds. Further, admittedly, the plaintiffs have not produced any patta, chitta, adangal and "A" register to prove their possession over the suit property.



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13. A reading of the judgment of the the first Appellate Court reveals that with regard to the plaintiffs' possession and extent of the property, deliberately insisted to file "A" register, since "A" register mentions the extent of the property. Further, the lower Appellate Court has observed that when the original S.No.121 was sub-divided into S.Nos.100 and 106, the plaintiffs have not made any objections and that such being the case, now the appellants/plaintiffs came forward with the suit before the trial Court, claiming that the suit property was in their exclusive possession and they got title to an extent of 5.44 acres, which the lower Appellate Court has rightly rejected the case of the appellants/plaintiffs. In fact, a reading of the judgment of the trial Court, it appears that even though the appellants/plaintiffs have not proved their case based on any supporting both oral and documentary evidence, while the trial Court having observed the lacunae in the version of DW.1 and based on surmises, came to the conclusion in favour of the appellants/plaintiffs as if they proved title and possession



over the suit property. In fact, a perusal of Exs.C1 and C2, viz., Report and Plans submitted by the Advocate Commissioner, it is revealed that the S.No.121 was divided into S.No.100 and 106 and he noted down Thar road in S.No.106 and he did not identify any property belonging to the appellants/plaintiffs in S.No.106. Therefore, on the side of said thar road, as there is a mud road and only in that area, the respondents/defendants proposed to extend the same, over which, the appellants/plaintiffs have no right nor they were in possession of the same. Accordingly, this Court answered the substantial questions of law Nos.1 and 2 against the appellants/plaintiffs, holding that the lower Appellate Court has rightly held that the appellants/plaintiffs are entitled to lands measuring about 4.86 acres in S.No.100 and they had not established that they are entitled to 5.44 acres and rightly dismissed the suit.

14. As already discussed above, the appellants/plaintiffs have not produced patta, chitta, adangul and "A" Register to prove their



possession over the suit property to the extent of 5.44 acres of land and in fact, after conducting re-survey only, patta was issued in favour of the appellants/plaintiffs, wherein, the extent of the property was shown as 4.86 acres. Apart from this, the appellants/plaintiffs have not proved that their vendor had title to an extent of 5.44 acres so as to convey the same to the appellants/plaintiffs by way of Exs.A1 to A3 sale deeds. Therefore, virtually, the appellants/plaintiffs have not proved through Exs.A1 to A3 sale deeds that they got title to an extent of 5.44 acres and they are in possession of the same. On the other hand, the respondents/defendants have produced "A" register and also chitta and adangal viz., Exs.B1 to B4 respectively which would clearly prove the existence of the Thar road to an extent of 55 ½ cents in re-survey no.106 which is in exclusive possession of the respondents/defendants. As already observed by this Court, the appellants/plaintiffs have not opposed to the resurvey or issuance of patta to the extent of 4.86 acres. These aspects have been considered and dealt with by the first Appellate Court in proper perspective, which in the opinion of this Court, requires



no interference by this Court. Accordingly, the third substantial question of law is also answered against the appellants/plaintiffs.

15. In the light of the above discussion, the Second Appeal fails and it is dismissed. No costs.

19.09.2022

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To

- 1.The learned Additional Subordinate Judge, Salem
- 2.The learned Additional District Munsif, Salem



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KRISHNAN RAMASAMY.J.,

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