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S.A.No.1908 of 2003

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.1908 of 2003

Munusamy @ Kutti Gounder (died)

2.Kalyani

3.Kalpana

4.Santhosh Kumar

... Appellants

Vs.

1.Kasthuri

2.Murali

3.Murugesan

... Respondents

[Appellants 2 to 4 brought on record as Lrs of the deceased sole appellant vide Court order dated 30.01.2019 made in CMP.No.23066, 23067 and 23073 of 2018 in SA.No.1908 of 2003]

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree passed in A.S.No.13 of 2003, on the file of the Principal District Judge, Vellore dated 24.04.2003 in reversing the judgment and decree passed by the Principal District Musif Court at Vellore in OS.No.261 of 1996 dated 23.01.2003.



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S.A.No.1908 of 2005

For Appellants : M/s.R.T.Sundari

For Respondents : Mr.A.S.Narasimhan [R.1 to R.4]

JUDGMENT

The plaintiff has challenged the Judgment and Decree passed in A.S.No.13 of 2003 by the learned District Court, Vellore, reversing the Judgment and Decree in OS.No.261 of 1996 of the Principal District Munsif, Vellore. The facts in brief are set out herein below and the parties are referred to in the same ranking as before the Trial Court.

2. The plaintiff had filed the suit for declaration and permanent injunction in respect of the property comprised in Survey No.295/10 (old No.194/A) Anaicut Village, Vellore Taluk, measuring an extent of 123 Sq.Mt. Measuring north to south 10.6 metre, east to west 11.6 metre. Bounded on the west by Gandhi Raod, on the east by vacant site of the defendant, on the north by the house of Ramasamy Chetty and on the south by Margabandhu Chettiar.



Plaintiff's Case:-

3. It is the case of the plaintiff that the suit schedule property is a Battai Poramboke which the plaintiff has been enjoying for over 30 years. He would submit that the Panchayat Union, Anaicut had passed resolutions in the years 1967 and 1972 to assign the said property in his name. He would further contend that in the year 1975, he had put up a thatched house and was paying house tax for the same. Over a period of time the house became damaged and dilapidated. Even after the damage the plaintiff has been enjoying the suit property continuously without any interference. On 23.09.1991, he has been granted a patta for the suit property by the Revenue Officials. It is his further case that the defendant who is the adjacent owner started interfering with his possession and on 12.04.1996 had attempted to encroach the suit property. Therefore, the plaintiff was constrained to file the suit in question.

Defendant's case:-

4. The defense to the above suit was that the property in question is a road poramboke for which the Panchayat cannot pass any resolution granting patta. The defendant would further submit that the plaintiff neither



has the title nor is he in possession of the suit property. The property in question is situate between the defendant property and Gandhi Road. In fact, the Anaicut Pachayat had attempted to put a toilet in the said property against which the defendants had filed a suit OS.No.618 of 1990 on the file of the District Munsif, Vellore and had obtained an order of injunction against the Panchayat from putting up any construction. The plaintiff has attempted to put up the house between the road and the house site of the defendant. The said conduct of the plaintiff was illegal. Hence, the defendant has prayed for the dismissal of the suit.

5. The learned Principal District Munsif, Vellore had framed the following issues which when translated into English would read as follows:-

- 1. Whether the plaintiff is entitled to a decree for declaration?*
- 2. Whether the plaintiff is entitled to a decree for injunction?*
- 3. To what relief the plaintiff was entitled to ?*

On 14.03.2002 an additional issue was framed “*As to whether it is correct to say that the plaintiff has no right to put up constructions in the*



suit property ? ”

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6. The learned District Munsif on considering the evidence on record proceeded to decree the suit as prayed for.

7. Challenging the same the appellant had filed AS.No.13 of 2002 on the file of the Principal District Court, Vellore. The learned District Judge on considering the evidence on record and the findings of the Trial Court had proceeded to allow the appeal and set aside the decree passed by the Principal District Munsif, Vellore. Challenging the same the plaintiff is before this Court.

8. The above Second Appeal has been admitted on the following Substantial Questions of law:-

"1. Whether the patta granted by the Government in respect of Government and is not a document of title?

2. Whether after assignment by the Government in favour of the appellant, can the defendant claim any easementary right over the property of another without any



express grant of easementary right over the property assigned ?"

9. Heard the counsels on either side.

10. Admittedly, the suit property is a Battai Poramboke meaning Road Poramboke and the property is situate between the defendant's property and the Main Road. The access of the plaintiff to the main road is through this property. The case of the plaintiff rests upon Ex.A.1, which the plaintiff claims is a resolution that has been passed by the Anaicut Panchayat. The Panchayat has no authority to make such a recommendation for grant of patta. Further, the plaintiff has not chosen to examine any person to prove the authenticity of the resolution. The next documents that are relied upon by the plaintiff is Ex.A.2 and Ex.A.3. However, these documents do not contain the Door Number and the plaintiff is not able to explain as to how these documents relate to the suit property. The patta which has been marked as Ex.A.4, would contain a statement that an inquiry was held on 15.09.1991, which P.W.1 in his cross examination has admitted had not been conducted. Therefore, no reliance can be placed on the said



document and further the patta is not a document of title.

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11. The Appellate Court has extracted the cross examination of the plaintiff as PW.1 with reference to his claim of possession of the suit property for 30 to 35 years, wherein he has admitted that the suit is situate between the defendant's property and the main road and that the suit property cuts off the defendant's access to the road. It is an established principle of law that where a person owned lands adjoining the highway he has a right to enter the highway from any point from his land. That apart, the very description of the property would show that it is a Road Poramboke over which the plaintiff cannot claim any title. The Appellate Court has extensively considered the evidence on record and the law on this point and thereafter allowed the appeal.

12. Considering the fact that the grant of patta has not been proved properly, the Substantial Question of law No.1 is answered against the plaintiff and consequently Substantial question of law No.2 is also answered against the plaintiff particularly when the plaintiff has himself admitted that no inquiry has been held before the grant of Ex.A.4, patta especially when



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the suit property is classified as a Road Poramboke. Further, the defendant had filed the suit OS.No.618 of 1990 against the Panchayat when they had attempted to put up construction in the suit property and obtained an order of injunction. The fact that the plaintiff has not protested this move of the Panchayat would clearly prove that the plaintiff is not in possession of the suit property. Further, the alleged patta Ex.A.4 has been granted after the suit OS.618 of 1990 had been filed by the plaintiff. Viewed from any angle, I see no reason to interfere with the Judgement and Decree of the Appellate Court and consequently, the Second Appeal stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed, if any.

15.12.2022

Index : Yes/No
Internet : Yes/No
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To

- 1.The Principal District Judge, Vellore.
- 2.The Principal District Musif Court at Vellore.

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P.T. ASHA, J,

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