



S.A.No.650 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09.11.2022

CORAM

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

S.A.No.650 of 2009

and M.P.No.1 of 2009

- 1.Karuppanna Udayar
- 2.Kamaraj
- 3.Pachayammal
- 4.Vellaiammal
- 5.Annadurai
- 6.Kodeeshwaran

(Appellants 3 to 6 are brought on record as per Lrs
of the deceased 1st appellant viz., Karuppanna Udayar
vide Court order dated 31.08.2021 made in CMP.No.8006,
8008 and 8009/2021 in S.A.No.650/2009) ...Appellants

Versus

- 1.Azhagammal
- 2.Kandasamy
- 3.Kadirvel

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the decree and judgment dated 13.11.2008 passed in A.S.No.2 of 2008 on the file of the Subordinate Judge, Perambalur, reversing the judgment and decree dated 10.10.2003 passed in O.S.No.73 of 2000 on the file of the District Munsif, Perambalur.



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For Appellants : Mr.G.Ilamurugan
For R2 and R3 : Mr.R.Selvakumar
For R1 : Notice served, No Appearance

JUDGMENT

This appeal has been filed against the decree and judgment dated 13.11.2008 passed in A.S.No.2 of 2008 on the file of the Subordinate Judge, Perambalur, reversing the judgment and decree dated 10.10.2003 passed in O.S.No.73 of 2000 on the file of the District Munsif, Perambalur.

2. The appellants are the plaintiffs and the respondents are the defendants in the suit. The parties are, hereinafter, referred to as per their ranking before the Trial Court.

3. The case of the plaintiff is that the 1st plaintiff and the 2nd plaintiff are father and son. The 1st plaintiff purchased items 1 and 2 of the plaint schedule mentioned properties. The 2nd plaintiff, who is the son of the 1st plaintiff, purchased item 3 of the plaint schedule mentioned property. In between item 1, 2, and 3, there is a lane to the extent of 10 feet width. In the middle of the lane, it is found that the stones are laid to the entire length of



the lane. When the 1st item of the property was purchased, it has been mentioned in the sale deed that on the northern side, there is a stone wall.

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4. According to the plaintiff, there is appearance of the stones in the middle of the lane i.e., on the boundaries for the items 1, 2 and 3. Initially, the vendors of the item 1, 2 and 3 were different persons. Therefore, the case of the plaintiff was that in order to separate the lands, the wall was built by putting the stones, that is the reason why in the middle of the lane, stones appeared to have been laid throughout the entire stage of the said lane. The said lane is exclusively meant for the use of the plaintiffs and there was a dispute between the plaintiffs and the defendants with regard to the encroachment of the plaintiffs property and due to the said difference of opinion, the defendants made an attempt to use the lane situated in the plaintiffs property as a cart track, stating that this is a common pathway. Therefore, the present suit was filed for permanent injunction.

5. The case of the defendant was that the said lane in between the properties of the plaintiffs is a common lane, that the general public has been using the said lane for a very long period of time. Therefore, the defendants



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also entitled to use the same along with common public. The plaintiffs have no right to stop the defendants from using the said lane to reach the cement road which is situated in the opposite side. In order to establish the case, he has also filed FMB sketch. He relied all the FMBs which were issued subsequent to the UDR scheme and by referring the same the defendant contended that it is a public lane.

6. Therefore, he submitted that the present suit is not maintainable and is liable to be dismissed.

7. Before the Trial Court, on behalf of the plaintiffs, the 1st plaintiff was examined as P.W.1 and the 2nd plaintiff was examined as P.W.2 and Exs.A1 to A20 were marked. On behalf of the defendants, D.Ws.1 to 5 were examined and Exs.B1 to B3 were marked. The Commissioner's Report and Plan were marked as Court Documents as Exs.C1 to C4.

8. The Trial Court, after considering the oral and documentary evidence, had come to the conclusion that the subject lane under dispute is a private lane and the same is situated under the patta land of the plaintiffs and for the purpose of convenience of the plaintiffs to take the cattles and to reach



the cement road, this has been laid. Therefore, the suit was decreed as prayed for.

9. Aggrieved over the said judgment and decree, the defendants preferred the appeal in A.S.No.2 of 2008 before the Sub-Court, Perambalur. The appellate Court reversed the judgment and decree passed by the Trial Court by virtue of the judgment and decree dated 13.11.2008 holding that Ex.A20 which is the FMB filed in support of the plaintiffs case was not proved in the manner known to law. The 1st appellate Court relied upon Exs.B2 and B3-FMB wherein it has been stated about the marking of this lane and further in Ex.A8 document it has been stated that there is a lane in the southern side, which the appellate Court has stated that it is the lane under the dispute. Therefore, it has come to the conclusion that the lane is meant for public to reach the cement road on both side and hence it has reversed the judgment and decree passed by the Trial Court.

10. Aggrieved over the said judgment and decree passed by the 1st appellate Court, the appellant/plaintiff has filed the present appeal before this Court and this Court admitted the Second Appeal on 22.07.2009 and framed the following substantial questions of law.



(i) Was it correct for the lower appellate Court to hold that the land is a common lane only relying upon the oral evidence of D.W.2 and the subsequent revenue records-Exs.D-2 and D-3, without considering the facts that the oldest available records produced by the appellant in Exs.A-1 to A-4 and A-20?

(ii) Was it correct for the lower appellate Court to upset the well considered judgment and decree passed by the trial Court, on the basis of the reported judgments to arrive at the area possessed by the appellants on the basis of Exs.A-1 to A-4 and the decision arrived at by the trial Court that the lane was form part of the property owned and possessed by the appellant on the basis of Exs.A-1 to A-4?

11. The learned counsel for the plaintiffs/appellants would submit that the Trial Court, after considering all the aspects, decreed the suit as prayed for. Exs.A1 to A4 and A20 clearly proved that there is no lane. Ex.A20 is the old FMB sketch. The said sketch was not relied by the 1st appellate Court though the truthfulness of the said FMB was proved by virtue of examining the Head Surveyor as D.W.5. The 1st appellate Court wrongly construed the contention of Ex.A18 as if the southern side mentioned in the said item is with reference to the 3rd item of the property. On the other hand, it is totally different item of the properties. Exs.B2 and B3 are FMB's, which were relied on by the defendants were also not proved however, the 1st appellate Court came to the conclusion that Ex.A20 was not proved in the



manner known to law. In a similar way, B2 and B3 were not proved in the manner known to law whereas the 1st appellate Court has not given any weightage to the documents filed by the plaintiff as Ex.A20. Further, the learned counsel submitted that in the middle of the lane, there is a stone lane throughout the entire length which refers to nothing but the boundaries of both the plaintiffs to reach the cement road on both side and to take the cattles, a small way has been provided, that is the lane under dispute, that is only meant for the plaintiffs use and not for the public use. It is a patta, which was not considered by the 1st appellate Court. Therefore, he would submit that without appreciating all these facts the 1st appellate Court has reversed the Trial Court's decree and judgement which is liable to be set aside on the aspect of perversity.

12. On the other hand, learned counsel for the respondents 2 and 3 would submit that in Exs.A1 to A3, nothing has been mentioned about the present lane under dispute and further it has not been mentioned anywhere that the property is a private pathway and in between the land of the plaintiffs, this lane is proceeded and this lane is not in the patta land. Ex.A20 was not proved in the manner known to law whereas, the defendants proved



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Exs.B2 & B3-FMB sketch. Therefore, the 1st appellate Court accepted their evidence. The learned counsel for the respondents would admit the fact that there were stones laid in the middle of the lane to the entire length. The learned counsel was not able to answer the reason for laying the stones in the middle of the lane but he fairly admitted that the stone laid in the middle of the road to the entire extent. Therefore, he would submit that there is no error in the judgment and decree passed by the 1st appellate Court and hence he prayed for dismissal of the Second Appeal.

13. Heard the learned counsel for the appellants as well as the learned counsel for the respondents 2 and 3 and perused the materials available on record.

14. Now, the dispute surrounding in the present appeal is about the 10 feet width lane situated in between the properties in item 1, 2 and 3. Item 1, 2 and 3 properties were purchased by virtue of the Exs.A1 to A3 documents by the 1st plaintiff, who is the father of the 2nd plaintiff. Subsequently, the 2nd plaintiff, who is the son of the 1st plaintiff, purchased the item 3 properties through Ex.A3 document. A perusal of Ex.A1 document, shows that the



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boundary on the northern side has been mentioned as stone wall. The Head Surveyor was examined as D.W.5 and the VAO was examined as D.W.4. Both the Head Surveyor and VAO have admitted the fact that in the FMB sketch, prior to the UDR, which was marked as Ex.A20, did not contain anything about the situation of the lane whereas in Exs.B2 and B3, they have submitted that there is a small lane, according to them it is a lane, which is situated only in the properties of the plaintiffs and the defendants property is situated far away from the lane. There is no necessity for the defendants to claim even on the basis of the necessity or on the basis of the land situated by his land but their claim is that the present lane is meant for the use of public.

15. D.W.1, in his cross examination, admitted that there was an enmity between the plaintiffs and the defendants and by virtue of the said enmity, it is clear that the defendants made an attempt to use the lane for the purpose of cart track. Under these circumstances only the plaintiffs laid the suit claiming that the lane is situated in the patta land and except the plaintiffs no other persons are entitled to use the same. The Courts below appointed an Advocate Commissioner and he filed his Report along with the Sketch, which were marked as Exs.C1 to C4, which clearly show that this lane is situated in



the patta land and he has also found that there is a stone laid in the middle of the lane. The Courts below have not given any findings with regard to the stones laid on the middle of the lane though all the materials have been placed and are available before them for coming to the conclusion. Prior to the purchase of items 1 to 3 of the suit properties by the plaintiffs, those properties were with different people and that is the person why it has been stated that there is a stone wall on the northern side and subsequent to the purchase of the properties by the father and son by virtue of Exs.A1 to A3 on both sides, it appears that they have removed the stones on the top but not on the ground level, viz., the stone laid by the previous owners. It can be seen and it is also observed by the Commissioner's report about this boundary in Exs.A1, A2 and A3 properties. The Commissioner categorically stated that the present lane is situated in the patta land. The FMB sketch, which was marked as Ex.A20, also makes it clear that there is no indication of any lane in the properties and this was confirmed by the VAO and also Head Surveyor, who are all examined as D.Ws.4 and 5 and all these aspects have not been considered by the first appellate Court in a proper perspective. On the other hand, the Trial Court went through these aspect in a proper perspective and rendered well reasoned judgment.



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16. In view of the above, this Court is of the considered view that the stones laid in the middle of the pathway is nothing but the boundaries of the Exs.A1 to A3 lands and this lane is situated in the patta land of the plaintiffs and a perusal of the old FMB sketch-Ex.A20 makes it clear that there is nothing stated about this lane and Exs.B2 and B3-FMB though it has been observed by the first appellate Court that there is a lane marked and it was stated by the D.Ws.4 and 5 as the same has been entered wrongly. Further more, this lane appears only for better usage of the property and taking the cattle and it has been used as boundary for the lands situated on two sides, the Commissioner also found the cattle site and noted that to take the cattle from plaintiffs land to other side etc., this small way i.e., the cart track has been earmarked by the plaintiffs on their own land. Hence, it is clear that it is only meant for the private purpose. No stretch of imagination, one can assume that this is a public lane meant for public usage particularly when both sides of the lane belongs to the plaintiffs/appellants and the stone had also been laid in the middle of the lane as boundary for the land. Therefore, this Court is of the considered view that the present lane is not a common lane, but, a private lane meant for the plaintiffs in their own patta



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land but non consideration of Exs.A1 to A4 and A20 by the appellate Court in a proper perspective, it has rendered in an unreasoned judgment and the same is liable to be set aside. Accordingly, the substantial questions of law are answered in favour of the appellants and against the respondents.

17. In the result, this Second Appeal is allowed and the judgment and decree passed by the first appellate Court in A.S.No.2 of 2008, dated 13.11.2008 are set aside and consequently, the judgment and decree passed by the trial Court in O.S.No.73 of 2000, dated 10.10.2003 are restored. No Costs. Consequently, connected Miscellaneous Petition is closed.

09.11.2022

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S.A.No.650 of 2000

To

- 1.The Subordinate Judge,
Perambalur.
- 2.The District Munsif,
Perambalur.



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KRISHNAN RAMASAMY, J.,

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