



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

SA.No.618 of 2012
and
MP No.1 & 2 of 2012

V. Revathi ..Appellant/3rd defendant
Vs.
1. R.Kalyanasundaram
Rep. By his Power of Attorney Agent,
R.Natarajan ..1st respondent/ Plaintiff
2. Tahsildhar
Nagapattinam Taluk,
Nagapattinam.
3. The District Collector,
Nagapattinam District,
Nagapattinam
Respondents 2 and 3 / Respondents 2 and 3/
Defendants 1 & 2
4. Safia @ Saraswathi .. 4th respondent/4th defendant

Prayer: Second Appeal filed under section 100 of the Code of Civil Procedure against the judgment and decree dated 26.03.2007 passed in A.S.No.2 of 2007 by the learned Subordinate Judge, Nagapattinam confirming the Judgment and decree dated 24.11.2006 passed in O.S.No.286 of 2000 by the learned District Munsif, Nagapattinam.

For Appellant : Mr.J.Kamaraj

For Respondents: Mr.Srinath Sridevan for R1
Mrs.E.Indhumathi for
R2 and R3

JUDGMENT

The 3rd defendant is the appellant in this second appeal.

2. The 1st respondent / Plaintiff filed the suit seeking



for the relief of declaration to declare the patta granted in favour of the defendants 3 and 4 for the B schedule property as null and void and for a mandatory injunction directing the removal of the two huts put up in the B schedule property.

WEB COPY

3. The case of the plaintiff is that the A schedule property belongs to him and the B schedule property is used as an access road to reach the A schedule property. While so, the 1st and 2nd defendants gave patta to the 3rd and 4th respondents for the B schedule property and using the same, the 3rd and 4th defendants have put up a hut and thereby, prevented the plaintiff from using the approach road. Accordingly, the plaintiff sought for the reliefs stated supra.

4. The 1st and 2nd defendants filed a written statement and took a stand that the suit property was categorized as a poramboke and it was encroached upon by many persons. Hence, it was converted as a natham and patta was issued to the occupiers of the property. It was further pleaded that the plaintiff can access his property through the property in Survey No.132/1 and the general public were permitted to use the pathway in survey no.133/3 and it is only for the property in Survey No.132/2, which was in the occupation of the encroaches, patta was issued in their favour based on their possession. Hence, the 1st and 2nd defendants took a stand that the plaintiff has sufficient space to approach his property and he cannot question the patta issued to the occupiers in Survey No.132/2.

5. Both the Courts below on appreciation of oral and documentary evidence, came to a conclusion that the plaintiff can have access to his property only through the land available in Survey No.133/2. A further finding was given to the effect that the defendants 3 and 4 were never in possession of the B schedule property and it is only after the patta was issued, they had put up a hut. They were residing in the nearby property. This was clearly established by the report and the sketch filed by the Advocate Commissioner which was marked as Ex.C1 and C2. Hence, the very basis on which the defendants 3 and 4 were claiming for patta was found to be false. That apart, the plaintiff was also able to establish that the 3rd defendant is living elsewhere and it was substantiated through Ex.A11 document. The 3rd and 4th defendant also did not file any document to show that they were in possession of the B Schedule property for more than 30 years. In view of the same, both the Courts applied the principle that the owner of a land adjoining the public street has got a right to access at every point where his or her land adjoins public street. Accordingly, the relief sought for by the plaintiff was granted.

6. In the considered view of this Court, the findings of



both the Courts below does not suffer from any perversity and does not warrant any interference of this Court. No substantial question of law is involved in this second appeal.

7. In the result, this Second Appeal is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

rka

To

1. The Subordinate Judge,
Nagapattinam
2. The District Munsif,
Nagapattinam

Copy To:-

The Section Officer
VR Section, High Court
Madras.

+1cc to M/s.Srinath Sridevan, Advocate, S.R.No.28533

+1cc to Mr.J.Kamaraj, Advocate, S.R.No.28043

+1cc to the Special Government Pleader, S.R.No.28699

SA.No.618 of 2012

GPL (CO)
SU (17/05/2022)