



S.A.No.1025 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

S.A.No.1025 of 2022
and C.M.P.No.21996 of 2022

Alpha Matriculation Higher Secondary School
(Run under the Auspices of Alpha Education Society)
Rep. by its Correspondent,
V.Bashingam,
No.4, Kandappa Muthali Street,
Pondicherry.

... Appellant

Vs.

1. The Commissioner
Pondicherry Municipality,
Having its Office at
Goubert Avenue,
Puducherry.
2. The Managing Director,
Pondicherry Road Transport Corporation,
Having its office at Iyyanar Nagar,
Kosapalayam,
Pondicherry – 13.

... Respondents



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Prayer :- Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree in A.S.No.48 of 2019 dated 08.09.2022 on the file of the Additional Subordinate Judge at Puducherry in confirming the judgment and decree in O.S.No.1428 of 2007 dated 27.02.2019 on the file of the II Additional District Munsif at Puducherry.

For Appellant : Mr.V.Raghavachari

For Respondents : Mr.A.Tamilvanan

JUDGMENT

This Second Appeal has been filed as against the judgment and decree dated 08.09.2022 passed by the learned Additional Subordinate Judge, Puducherry, in A.S.No.48 of 2019, confirming the judgment and decree dated 27.02.2019 passed by the learned II Additional District Munsif, Puducherry, in O.S.No.1428 of 2007, thereby dismissing the suit filed by the appellants for permanent injunction.

2. The appellant is the plaintiff and the respondents are the defendants in the suit. The appellant filed suit in O.S.No.1428 of 2007 for permanent injunction restraining the respondents from interfering the peaceful possession and enjoyment of the suit property. Thereafter, it was



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amended and included the prayer of mandatory injunction not to evict the appellant without due process of law and also for direction directing the second respondent herein to have his approach road in wider roads of Mangalakshmi Nagar and Sanjay Gandhi Nagar touching his compound wall and for costs.

3. The case of the appellant is that Alpha Matriculation Higher Secondary School is recognized by the Government of Puducherry and it is having student strength of 1200 and it is run by a private society. The second respondent is having his workshop, shed and office on the western side of the school. The second respondent also having a wide entrance in the western side of the compound in Iyyanar Kovil Street. A water canal is running from the lake has become useless and the first respondent reconstructed the canal as drainage canal from the compound wall of the second defendant to Thennajalai Street. The said drainage canal is in possession and enjoyment of the appellant school.



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4. While being so, the second respondent by opening the gate in his compound wall on the canal and making it as an approach road to their office and it is dangerous to the safety of the students. Further they are no right over the canal and attempted to interfere with the possession and enjoyment of the appellant. The second respondent trespassed into the suit property and covered the same with cement slab and used the same as road. Hence the appellant filed the present suit.

5. The first respondent filed written statement and stated that the appellant himself admits that they have put up a gate on the eastern side of the suit property for the purpose of safety over the canal. They have encroached the canal as private property. They have no right to put up a gate on the canal and they can raise compound walls only to the extent of the property purchased by them. The appellant has no right to raise compound wall over the property belonged to the first respondent and obstruct the way and movements of the second respondent with ulterior motive to grab the canal and road area.



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6. The second respondent also resisted by the written statement and stated that the officials are working at the administrative block and they have free access through the road situated on the eastern side which has been encroached by the appellant. Therefore, on 04.12.2003, they approached the Director of Survey to survey the land. Immediately, the appellant caused legal notice and filed Writ Petition in W.P.No.38412 of 2003 before this Court. However, the Director of Survey measured the property and found that the appellant has encroached the land which is a public road. Therefore, the appellant was issued notice to remove the encroachment under Section 415 of the Pondicherry Municipalities Act. If at all any grievances over the said action, the appellant ought to have preferred an appeal before the authority concerned. Therefore, the suit itself is not maintainable and liable to be dismissed.

7. In order to prove the case, the appellant had examined P.W.1 and marked documents in Ex.A.1 to Ex.A.11. On the side of the respondents, they examined D.W.1 and marked documents in Ex.B.1 & Ex.B2. On a perusal of the oral and documentary evidences, the trial Court



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dismissed the suit and the same was confirmed by the first appellate Court.

Aggrieved by the same, the appellant filed this present Second Appeal.

8. In the present Second Appeal, the appellants raised the following substantially question of law:-

“(i) Whether the Courts below are right in dismissing the suits overlooking the fact that a live irrigation channel cannot be used as a public street when a single slab has been laid over the channel for the movement of the residents in and around the area, is the claim of the second defendant for using it as a street for plying heavy vehicles is not outrages and leally impermissible?

(ii) Whether the Courts below ought not to have appreciated that the evidence of D.W.1 as assistant in the office of the second respondent is not a competent witnesses to represent the corporation and on the facts and circumstances of the case, whether the evidence of D.W.1 is not dangerous to public safety and interest.

(iii) Are the Courts below justified in not preventing an illegal endeavour by the second defendant by not granting an order as prayed for?



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(iv) *When the user of a public channel is sought to be converted as a regular public street, should not the Courts below issue an injunction as sought for?*

(v) *When the 2nd defendant had circumscribed its holdings by erection of a compound wall on the eastern side and also admits the fact that it operates its vehicle on the western side of its property, should not the Courts below reject its case of breaking down the compound wall to access through the channel for reaching the highway on the eastern side?"*

9. The learned counsel appearing for the appellant submitted that the irrigation channel cannot be used as a public street when a single slab has been laid over the channel for the movement of the residents in and around the area and to ply heavy vehicles. It is not legally permissible and the respondents have no right whatsoever to obstruct the use of the channel existing between the properties of the appellant. It is an educational institution and the safety of the students and their well being is of primary importance in comparison to a non-existing claim of the respondents. In the matters of public pathway, a recognized user of the pathway, if there is



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possibility of the cover in and over the channel getting obliterated or posing a danger to the occupants, the same may not be permissible and tantamount to a reasonable use. Therefore, without considering the above facts, the Courts below dismissed the suit. Hence, he prayed to allow this Second Appeal.

10. Heard Mr.V.Raghavachari, learned counsel appearing for the appellant and Mr.A.Tamilvanan, learned counsel appearing for the respondents.

11. On a perusal of records revealed that the suit property is situated in T.S.No.51, R.S.No.81/1, 92/1 to the extent of 12 acres 45 centiras and classified as Government Poramboke in the form of canal. According to the appellant in both the north and southern side of the canal school building is available and the western end is the second defendant's compound wall. Further the case of the appellant is that for the safety of the school children, they have closed the canal with cement slabs and put up a gate to prevent the antisocial elements from entering into the school



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premises.

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12. It is also seen that in the appeal suit, an Advocate Commissioner was appointed to note down the physical features and availability of alternative roads. On a perusal of report and the photographs submitted by the Advocate Commissioner, it is clear that as on date the canal is not available because, the appellant put up cement slabs in certain portion and on the remaining portion converted the canal as a road. Therefore, the appellant has no right whatsoever for the canal and they had put up some slabs without any right over the property and without any permission from the Government. The property is belonged to Pondicherry Municipalities.

13. Further, the appellant also put up gate with watchman without any permission from the government in the land classified as water canal. Therefore, the first respondent herein had taken steps to remove the encroachment under Section 415 of the Pondicherry Municipalities Act as against the appellant. In order to escape from the clutches of law, the appellant filed the present suit. Hence both the Courts below rightly



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dismissed the suit and this Court finds no infirmity or illegality in the order passed by the Courts below.

14. This Court finds no substantial question of law involved in the present appeal and this Second Appeal is dismissed without being admitted. Consequently, connected Civil Miscellaneous Petition is closed. There shall be no order as to costs.

20.12.2022

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To
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1. The Additional Subordinate Judge,
Puducherry.
2. The II Additional District Munsif,
Puducherry.
3. The Commissioner
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