



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.881 of 2010 &

S.A.(MD)No.1061 of 2011

S.A.(MD)No.881 of 2010

1. K.S.Ramaraj

2. S.Gandhi

... Appellants / Appellants /
Defendants

Vs.

1. V.Mahendrapandian (Died) ... Respondent / Respondent /
Plaintiff

2. P.Radhika

3. P.V.Vellaipandian

4. V.Rajamani

(Respondents 2 to 4 were brought on record as
LRs. of the deceased sole respondent vide Order
dated 06.03.2018 made in M.P.(MD)No.1 of 2015)

... Respondents/ Respondents/ Plaintiff

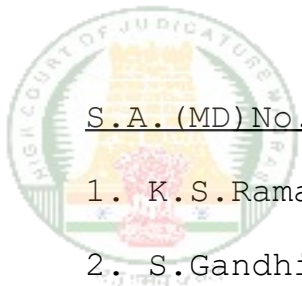
Prayer: Second appeal filed under Section 100 of C.P.C.,
against the judgment and decree in A.S.No.32 of 2009 dated
26.11.2009 on the file of the learned Subordinate Judge, Theni,
confirming the Judgment and Decree passed in O.S. No.55 of 2006
dated 23.12.2008 on the file of the learned District Munsif cum
Judicial Magistrate, Bodinaickanur.

For Appellants : Mr.S.Madhavan

For R-3 & R-4 : Mr.A.Arumugam,
for M/s.Ajmal Associates.

For R-2 : No appearance.

* * *



S.A. (MD)No.1061 of 2011

1. K.S.Ramaraj

2. S.Gandhi

... Appellants / Appellants /
Plaintiffs

WEB COPY

Vs.

1. The District Collector,
Collector's Office,
Madurai Road,
Theni, Theni District.

2. The Revenue Divisional Officer,
Uthamapalayam,
Theni District.

3. The Commissioner,
Bodinayakkanur Municipality,
Bodinayakkanur,
Theni District.

... Respondents / Respondents /
Defendants

Prayer: Second appeal filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.33 of 2009 dated 26.11.2009 on the file of the learned Subordinate Judge, Theni, confirming the Judgment and Decree passed in O.S. No.13 of 2006 dated 23.12.2008 on the file of the learned District Munsif cum Judicial Magistrate, Bodinaickanur.

For Appellants : Mr.S.Madhavan

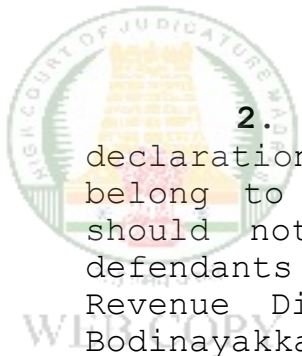
For R-1 & R-2 : Mr.N.Muthuvijayan,
Special Government Pleader.

For R-3 : No appearance.

* * *

C O M M O N J U D G M E N T

Both the second appeals relate to the property comprised in Survey No.214/3 Bodinayakkanur. S.A.(MD) No.1061 of 2011 arises out of O.S.No.13 of 2006 on the file of the District Munsif-cum-Judicial Magistrate, Bodinayakkanur. S.A.(MD)No.881 of 2010 arises out O.S.No.55 of 2006 on the file of the District Munsif-cum-Judicial Magistrate, Bodinayakkanur.



2. O.S.No.13 of 2006 was filed by the appellants for declaration that the suit second and third schedule properties belong to them and for permanent injunction that the defendants should not interfere with their possession and enjoyment. The defendants are none other than the District Collector, Theni, the Revenue Divisional Officer, Uthamapalayam and the Commissioner, Bodinayakkanur Panchayat. The defendants filed written statement controverting the plaint averments. Based on the divergent pleadings, the trial Court framed the necessary issues. The first plaintiff examined himself as P.W.1. One Mahalingam was examined as P.W.2. Ex.A.1 to Ex.A.22 were marked. On the side of the defendants, two witnesses were examined. Ex.B.1 to Ex.B.5 were marked. After consideration of the evidence on record, the trial Court by judgment and decree dated 23.12.2008 decreed that the plaintiffs have title over the second item of the property and granted permanent injunction. However the suit was dismissed as regards the third item of the suit property. The third item is comprised in Survey No.214/3. Aggrieved by the same, the plaintiffs filed A.S.No.33 of 2009 before the Sub Court, Theni. The first Appellate Court by the impugned judgment and decree dated 26.11.2009 confirmed the decision of the trial Court and dismissed the appeal. Challenging the same, S.A. (MD)No.1061 of 2011 was filed.

3. Though the second appeals were filed way back in the year 2010, only notice was ordered and they were not admitted till date.

4. One Mahendra Pandian was having a piece of land lying to the west of Survey No.214/3. He filed O.S.No.55 of 2006 before the District Munsif-cum-Judicial Magistrate, Bodinaickanur, for declaration that the suit properties comprised in Survey No.214/3 is a common pathway and prayed for permanent injunction restraining the appellants from interfering with his right up to use the same as a common path way. The appellants herein who were the defendants in O.S.No.55 of 2006 filed written statement asserting that the properties comprised in Survey No.214/3 is their exclusive path way and not a common path way. Based on the divergent pleadings, the trial Court framed the necessary issues. The plaintiff Mahendra Pandian examined himself as P.W.1 and one Subramani was examined as P.W.2. Ex.A.1 to Ex.A.12 were marked. The first appellant examined himself as D.W.1. One Seeninaicker was examined as D.W.2. Ex.B.1 to Ex.B.9 were marked. After consideration of the evidence on record, by judgment and decree dated 23.12.2008, the trial Court decreed the suit in O.S.No.55 of 2006 as prayed for. Aggrieved by the same, the appellants herein filed A.S.No.32 of 2009 before the Subordinate Judge, Theni. By the impugned judgment and decree dated 26.11.2009, the first Appellate Court confirmed the decision of the trial Court and dismissed the appeal. Challenging the same, S.A. (MD)No.881 of 2010 came to be filed.



5. During the pendency of the appeal, the sole respondent herein / plaintiff passed away and his wife and children came on record.

6. Since both the appeals pertain to the very same property, they were heard together. The learned counsel appearing for the appellants reiterated all the contentions set out in the memoranda of grounds and called upon this Court to frame substantial questions of law and admit the appeals and taken them up for disposal later.

7. Per contra the learned counsel appearing for the respondents in S.A.(MD)No.881 of 2010 and the learned Special Government Pleader appearing for the respondents in S.A.(MD)No.1061 of 2011 submitted that no substantial question of law arises for consideration and prayed for dismissal of the second appeal.

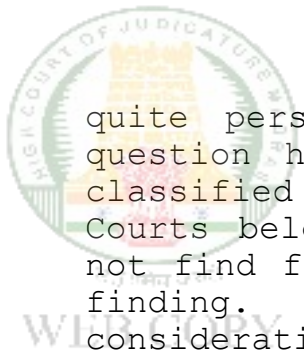
8. I carefully considered the rival contentions and went through the evidence on record.

9. The appellants herein are the purchasers under the sale deed dated 24.03.1972. It is true that under Ex.A.10, the appellants herein had purchased the property comprised in Survey No.214/3 from their vendor. On this, there is no dispute. Survey No.214/3 has been described in the sale deed marked under Ex.A.10 in O.S.No.13 of 2006 only as a pathway. Mahendra Pandian had purchased the land belonged to the west of Survey No.214/3 under the sale deed dated 30.01.1995 (Ex.A.2). The eastern boundary of the property purchased by Mahendra Pandian has been described as a north-south road.

10. It is now stated by the learned Special Government Pleader that apart from Mahendra Pandian, two other persons have purchased the properties to the west of Survey No.214/3. It is true that Survey No.214/3 was classified as a public road only from the year 1995. I would sustain the contention of the learned counsel appearing for the appellants that the jurisdiction of the civil Court to go into the issue of title cannot be taken away by any classification made in the revenue records. But the fact remains that Survey No.214/3 was a path way. The only question is whether it can be treated as a common pathway or pathway exclusive to some private individuals. The plaintiff in O.S.No.55 of 2006 has the property abutting the pathway. He therefore has every right to access the same at any point.

11. The Courts below rightly decreed O.S.No.55 of 2006. No substantial question of law arises for consideration. S.A.(MD)No.881 of 2010 is dismissed. No costs.

12. Coming to S.A.(MD)No.1061 of 2011, though I find the contention of the learned counsel appearing for the appellants to be



quite persuasive, since for a very long time, the property in question has been used only as a pathway and also it was also classified as a public pathway in the revenue record, both the Courts below have concurrently found against the appellants. I do not find fit and appropriate to interfere with the said concurrent finding. No substantial question of law arises for the consideration. S.A.(MD)No.1061 of 2011 is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Subordinate Judge,
Theni.
2. The District Munsif cum Judicial Magistrate,
Bodinaickanur.
3. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-14472[F] dated 25/03/2022)

S.A.(MD)No.881 of 2010 &
S.A.(MD)No.1061 of 2011
24.03.2022

_RD(08.04.2022) 5P 6C