



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 22.02.2022

JUDGMENT PRONOUNDED ON : 28.02.2022

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A. (MD) .No.465 of 2021

and

CMP (MD) .No.6274 of 2021

Malaiyandi Naicker

...Appellant/Appellant  
/Plaintiff

Vs

1.Janakiraman

2.Rathinasamy

3.The President  
Pappireddiyapatti Village  
Kamuthi Taluk

4.The State of TamilNadu  
Represented by The District Collector  
Ramanathapuram

...Respondents/Respondents  
/Defendants

**PRAYER** : Second Appeal is filed under Section 100 of C.P.C, to set aside the judgment and decree passed in A.S.No.129 of 2017 on the file of the Subordinate Court, Mudukulathur dated 24.09.2020 confirming the judgment and decree passed in O.S.No.38 of 2015 on the file of the District Munsif Cum Judicial Magistrate Court, Kamuthi, dated 31.10.2017.

For Appellant : Mr.D.Senthil

For R1 & R2 : Mr.J.Barathan

For R4 : Mr.G.Sivaraja  
Government Advocate



**JUDGMENT**

The plaintiff is the appellant.

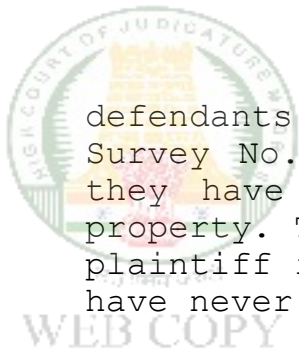
2.The plaintiff filed O.S.No.38 of 2015 before the Principal District Munsif Cum Judicial Magistrate Court, Kamuthi, Ramanathapuram District for declaration of title and consequential injunction. The suit was dismissed by the trial Court. The plaintiff filed A.S.No.129 of 2017 before the Subordinate Court, Muthukulathur. The appeal was also dismissed. As against the same, the present second appeal has been filed by the plaintiff.

3.The plaintiff had contended that the suit schedule property is located in Survey No.432/18. Immediately, on the north of the suit schedule property, the plaintiff's house property is located in Survey No.432/19. According to the plaintiff, in the south of the suit schedule property, the plaintiff has left out 1 ½ feet and the defendants on their northern side has left out 1 ½ feet so as to create a 3 feet common pathway. The said pathway is also reflected in Exhibit A1 partition deed entered into between the first defendant's grandfather and his brother. According to the plaintiff, the boundary recital in the said document would reflect that the northern boundary is the plaintiff's property.

4.The plaintiff further contended that the Government of Tamil Nadu recently conducted a natham survey in which the southern portion of the property belonging to the plaintiff has been carved out and a new Survey No.432/18 has been created. The suit Survey No.432/18 has been classified as a road. The said classification will not affect or take away the property rights of the plaintiff.

5.The plaintiff further contended that in the year 2014, the defendants opened a doorway facing northwards into the suit schedule property. Only thereafter, the plaintiff came to know that the plaintiff has been issued with a reduced extent of patta during resurvey proceedings. Since the suit schedule property is an occupied natham, the Government ought to have granted patta for the entire property in occupation of the plaintiff including Survey No.432/18. The plaintiff further contended that none of the public are using the suit property as a pathway. Hence, the plaintiff prayed for declaration of title and permanent injunction.

6.The defendants 1 and 2 filed a written statement disputing the averments in the plaint. According to the defendant, their house property is more than 100 years old with madras terrace building. The main door was facing northwards road from the date of construction. Hence, the allegation that suddenly main door was created in the year 2014 is not factually correct. The defendants further contended that the alleged suit schedule property belongs to the defendants. Since general public are using it as a road, the

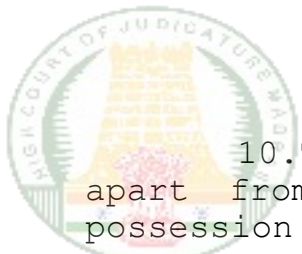


defendants have not raised any objection for re-classification of Survey No.432/18 as a road. The defendants further contended that they have drawn electricity line only through the suit schedule property. The defendants further contended that the main door of the plaintiff is facing northwards projecting into another road and they have never used the suit schedule property.

7. Based upon the oral and documentary evidence, the trial Court arrived at a finding that the plaintiff has not established his title over the suit schedule properties. Though the plaintiff relied upon Exhibit A1 partition deed which took place among the defendants' family, there is no clarity whether the property of the plaintiff was constructed up to the southern boundary or some vacant space was left by the plaintiff. The trial Court further held that the suit Survey No.432/18 has been classified as a road and it connects another road on the western side. Based upon the commissioner's report, the trial Court arrived at a finding that now the suit schedule property is a cement road being utilised by the general public along with the defendants.

8. The trial Court also found that the plaintiff's property is facing northwards into another road. The defendants' property is also facing northwards into the suit schedule property. As per the commissioner's report, the defendants' house is very old and the contention of the plaintiff that a new doorway has been created in the year 2014 is not factually correct. The trial Court also relied upon the Advocate Commissioner's report to the effect that there is no other alternative access or pathway for the defendants to reach their house property other than the suit schedule property. The trial Court also found that the plaintiff has been granted patta during the survey proceedings in the year 1994 under Exhibit A2 for an extent of 145 sq.metre excluding the suit schedule property. Though the plaintiff was granted patta for a reduced extent, he has not questioned the same till the filing of the suit in the year 2015. Based upon the said findings, the trial Court dismissed the suit.

9. The First Appellate Court after independent analysis of oral and documentary evidence concurred with the findings of the trial court. The First Appellate Court held that the plaintiff has not established whether the house property of the plaintiff is upto his southern boundary or he has left some vacant site on the southern side. The plaintiff has not produced any title deeds and he relied upon the partition deed within the family of the defendants. The First Appellate Court arrived at a finding that the boundary recital in Exhibit A1 cannot be relied upon by the plaintiff. Though the plaintiff was granted patta for Survey No.432/19 excluding Survey No.432/18 in the year 1994, he has not chosen to question the same at any point of time. Based upon the said findings, the First Appellate Court dismissed the appeal. As against the concurrent findings of the trial court, the present second appeal has been filed.



10.The learned counsel for the appellant contended that apart from Survey No.432/19, the plaintiff has got title and possession over the survey No.432/18 which is the suit schedule property. When the suit survey number is an occupied natham, patta ought to have been granted for the entire extent which is in occupation of the plaintiff covering both the survey numbers namely 432/18 and 432/19. He further contended that without any notice or enquiry the property in occupation was carved out as house property in Survey No.432/19 and vacant area in Survey No.432/18. Thereafter, the Government has chosen to classify Survey No.432/18 as a road. He further contended that Exhibit A1 is a partition deed among the family of the defendants. In the said partition deed, the northern boundary is shown as plaintiff's property. Hence, whatever that is immediately north of defendants' property should be considered only to be the plaintiff's property including the suit schedule property.

11.The learned counsel for the appellant further contended that mere re-classification carried out by the revenue authorities without any notice to the plaintiff, will not convert survey No.432/18 into a road and take away a title of the plaintiff. He further contended that the Courts below have erred in dismissing the suit without properly appreciating Exhibits A1 and A2. Hence, he prayed for allowing the second appeal.

12.Per contra, the learned counsel for the respondents contended that the plaintiff has not established his title over the suit schedule property. The suit schedule property has been classified as a road in the year 1994 itself. Exhibit A2 patta was granted in favour of the plaintiff for Survey No.432/19 in the year 1994 itself. However, the plaintiff has not chosen to challenge the said extent of patta till filing of the suit in the year 2015. He further contended that the defendants' property is more than 100 years old with Madras terrace. The main door of the defendants' property is facing northwards into the suit schedule property. Hence, the contention of the plaintiff that the defendants do not have any right over the suit schedule property is not correct. He further contended that the Courts below have arrived at a finding that the plaintiff has not established his title or possession over the suit schedule property. The said concurrent findings of the facts may not be reversed in the second appeal. Hence, he prayed for dismissal of the second appeal.

13.I have considered the submissions made on either side.

14.The plaintiff has contended that the suit schedule property in Survey No.432/18 is the absolute property forming part and parcel of Survey No.432/19 in which his house property is located. According to the plaintiff, his property has been shown as the northern boundary under Exhibit A1 partition deed entered into between plaintiffs and defendants' family. Hence, according to the plaintiff,



he has established his title and possession over the plaint schedule property.

15. In paragraph No.4 of the plaint, the plaintiff has admitted that there a 3 feet width pathway to the south of the suit schedule property. According to the plaintiff, this 3 feet pathway was created by the plaintiff and the defendants' ancestor by giving up 1 ½ feet by each one of the parties. But according to the plaintiff, this pathway is just south of the suit schedule property. But the revenue authorities have classified the suit schedule property as a road. Though the plaintiff has contended that there is a 3 feet survey pathway to the south of the suit schedule property, no memo of instruction has been given to the Advocate Commissioner to note down the same. The Advocate Commissioner's report also does not reflect any such common pathway to the south of the suit schedule property. In fact, the commissioner's report points out that the plaintiff has identified only Survey No.432/18 as a suit schedule property. The plaintiff has not chosen to identify the alleged 3 feet width pathway to the south of the suit schedule property.

16. The plaintiff has relied upon Exhibit A1 partition deed which is said to have taken place among the defendants' family. The northern boundary in the said partition deed refers to one Malayandi Naicker. Hence, according to the plaintiff, his property is located just north of the defendants' property which means including the suit schedule property. The boundary recital in a document should be utilised only for the purpose of finding out the lie and location of the property, but the same cannot be utilised to confer title upon the plaintiff. That apart, it is not clear whether the plaintiff has put up construction upto his southern boundary or left out some vacant place on his southern side.

17. On the other hand, the defendants have established through a commissioner's report that their house property is more than 100 years old and the main door is facing northwards into the suit schedule property. The Advocate Commissioner has also found that the defendants have no other access other than the suit schedule property.

18. A combined reading of the plaintiff's pleading regarding 3 feet pathway in the plaint and classification of survey No.432/18 as a road and the nature of construction of the defendants will clearly indicate that the Survey No.432/18 is a public road. The plaintiff has miserably failed to establish that the Survey No.432/18 is a private property.

19. The trial Court as well as the Appellate Court after careful consideration of Exhibits A1 and A2 have arrived at a concurrent finding that the plaintiff has not established his title and possession over the suit schedule property. This Court does not



find any question of law to interfere in the said judgment. The second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

WEB COPY

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

msa

To

1.The Subordinate Judge, Muthukulathur

2.The Principal District Munsif  
Cum Judicial Magistrate Kamuthi

3.The Section Officer  
V.R.Section  
Madurai Bench of Madras High Court  
Madurai

+1 CC to M/s.T.R.JEYAPALAM, Advocate ( SR-9265[F] dated 01/03/2022 )

+1 CC to M/s.D.SENTHIL, Advocate ( SR-9106[F] dated 01/03/2022 )

+1 CC to M/s.SPL GP ( SR-9169[F] dated 01/03/2022 )

S.A. (MD) .No.465 of 2021  
and

CMP (MD) .No.6274 of 2021

28.02.2022

MGJ(11.03.2022) 6P 8C