



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE. S. SOUNTHAR

S.A.No.1829 of 1997

1.A.Rangarajan (Died)

2.R.Thiyagarajan

3.R.Ananthi

4.R.Jayalakshmi

...Appellants

(Appellants 2 to 4 are brought on record as legal heirs of the deceased sole appellant vide Order of this Court dated 08.01.2015 made in MP.No. 1 to 3 of 2013)

/Vs./

1.D.Gopal

2.D.Dhanapal (Died)

3.Thiruchirapalli Municipality,
Represented by its Executive Authority,
The Commissioner,
Promenade Road,
Contonment,
Trichy.

4.D.Akila

5.D.Muthukumar

6.D.Saroja

7.D.Arumugam



8.D.Renuka

9.D.Shanthi

10.D.Venkatesh

11.D.Rajesh Kanna

12.D.Karthikeyan

...Respondents

(R4 to R12 are impleaded as legal heirs of the deceased second respondent vide order of this Court dated 27.10.2017 made in MP(MD)Nos.4 to 6 of 2013)

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the Judgment and decree dated 30.04.1997 made in A.S.No.69 of 1996 on the file of the Subordinate Judge, Thiruchirapalli in confirming the decree and Judgment dated 26.07.1995 made in O.S.No.1074 of 1983 on the file of the II Additional District Munsif, Trichirapalli.

For Appellants : Mr.R.Govindaraj

For R3 : Mr.R.Baskaran

Standing Counsel

For R1, R4, R6

R8 to R12 : No appearance



JUDGMENT

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The first defendant in the suit is the appellant. The respondents 1 and 2 filed a suit for declaration that the suit property is a Municipal Public Lane and for a consequential mandatory injunction directing the appellant and his brother (who is not a party to the second appeal) to remove the offending construction. The suit was decreed by the trial Court and confirmed in the First Appeal. Being unsuccessful, the first defendant is before this Court. Pending Second Appeal, the appellant, Rangarajan passed away and the appellants 2 to 4 were brought on record as his legal heirs. Likewise, the second respondent / third plaintiff also passed away pending Second Appeal and the respondents 4 to 12 were impleaded as legal representatives of the deceased second respondent.

2. According to the respondents 1 and 2 / plaintiffs 2 and 3 (First plaintiff, mother of the respondents 1 and 2 passed away pending suit), they are the owners of the building with Door No.14A and 10A at Kajapet situated in T.S.Nos.2063 and 2070 relevant to the new S.Nos.90 and 97. It is stated by the respondents 1 and 2 in the plaint that the suit property comprised in T.S.No.2066 (New S.No.93) is a Municipal Public Lane. It acts as an access to the plaintiffs to reach the main road, namely,



Kajapet Bazaar Road. It was also stated in the plaint that the appellant / first defendant and his brother were owners of T.S.Nos.2074, 2073 and 2072 now comprised in T.S.No.199 abutting the suit property. It was specifically averred by the respondents 1 and 2 that the appellant had put up construction in the Municipal Public Lane situated in T.S.No.2066 obstructing the right of access available to the respondents 1 and 2 through the said lane. It was also stated that the construction put up by the appellant was unauthorized one. In spite of notice to the public authorities, namely, the third respondent Municipality, no action was taken against the offending construction put up by the appellant and hence, the respondents 1 and 2 were constrained to file the suit for the above said relief.

3. The appellant herein along with his brother, who is not a party to this second appeal, filed a written statement and resisted the suit by denying the plea raised by the respondents 1 and 2 that the suit property was a public lane. It was also stated by the appellant that when the third respondent Municipality tried to take action against the construction put up by the appellant, a civil suit was filed against the third respondent, wherein it was found that the construction put up by the appellant was



within his own property. The right of access claimed by the respondents 1 and 2 over the suit property was also denied by the appellant in his written statement.

4. The third respondent Municipality filed written statement and had taken a stand that the suit property is a public lane vested with the Municipality.

5. On these pleadings, the parties went to the trial. The first respondent was examined as PW1 and Exs.A1 to A17 were marked on the side of the respondents / plaintiffs. The deceased first appellant was examined as DW1 and Exs.B1 to B6 were marked on the side of the contesting defendant. Pending suit, a Commissioner was appointed for local inspection along with Surveyor. The Commissioner's report, plan and survey sketch were marked as Exs.C1 to C3.

6. The trial Court, on consideration of oral and documentary evidences, came to the conclusion that the suit property was a public lane and consequently decreed the suit as prayed for and aggrieved by the same, the appellant / first defendant in the suit filed an appeal in A.S.No.



69 of 1996 on the file of the Subordinate Court, Thiruchirapalli, and the same was dismissed by confirming the Court findings of the trial Court.

Challenging the said Judgment, the appellant is before this Court.

7. This Court, at the time of admission framed the following Substantial Questions of Law:

1. Whether the third respondent is estopped from claiming any legal right over the suit property as public lane when under Exhibit B1 dated 8.9.55, it has categorically admitted that the suit property belongs to various third parties?
2. Whether the findings of the courts below that continuous use of an alley make it a public street is justifiable, in the absence of necessary pleadings, evidence to that effect to establish the long and continuous use of the suit property as an alley?

8. The learned counsel appearing for the appellant elaborating the Substantial Questions of Law, submitted that in an official communication sent by the third respondent Municipality under Ex.B1, they admitted that 108 private persons were entitled to the suit property



and hence, the finding rendered by the Courts below that it is a public lane is not correct. The learned counsel also by relying on the Judgment of this Court in S.A.(MD)No.70 of 2017, dated 11.11.2019, in the case of **Thiyagarajan @ Karunanithi and another vs. Malarkantham and Others** submitted that the suit for declaration that the suit property is a public lane is not maintainable without impleading the public, who are using the said property. Further, the learned counsel submitted that the respondents 1 and 2 / plaintiffs failed to lead any evidence to prove the long user of the suit property by public and hence, the finding rendered by the Courts below that the suit property is a public lane is liable to be interfered with.

9. Though the contesting respondents 1 and 2 entered appearance through their counsel, there is no representation for the respondents 1 and 2.

10. The learned counsel appearing for the third respondent Municipality submits that as per the Municipal Survey Documents, namely, Ex.A1, A15 and A16, the suit property is recorded as a government poramboke and it is also specifically mentioned that the suit



property is used as a lane. Therefore, it is the submission of the learned counsel appearing for the third respondent that as per the records available with the Municipality, the suit property is a lane meant for user of general public and consequently, the finding rendered by the Courts below requires no interference from this Court.

11. Heard the arguments of the learned counsel appearing for the appellants and the learned counsel appearing for the third respondent. Perused the records and typed set of papers.

12. A perusal of Ex.A16, Town Survey Field Register would suggest that the suit property with New Survey No.93 is classified as a Government poramboke. In the remarks column, it is clearly mentioned that the suit property is used as a lane. Once in the Town Survey Field Register, a property is mentioned as a lane, it implies that the property is used as an access by the general public. It is the specific case of the plaintiffs that the suit property is used an access to reach the main road from their property. The deceased first appellant herein, who was examined as DW1 clearly admitted that the property of the respondents 1 and 2 / plaintiffs is situated abutting the lane portion. It is settled law



that the owners of the plot adjoining the lane are entitled to use the lane portion as an access. Therefore, the finding reached by the Courts below that the suit property is a public lane based on Ex.A16 cannot be said to be incorrect.

13. The learned counsel appearing for the appellants, by relying on Ex.B1, Communication issued by the Commissioner of 3rd respondent Municipality to one Kavery Ammal, forcefully submitted that as per the Official Communication of the third respondent Municipality, the suit property with Old S.No.2066, originally stood in the name of 180 persons and therefore, it cannot be treated as a lane. Ex.B1 is only a Communication issued by the Commissioner to one Kavery Ammal. In the light of the documentary evidence available under Ex.A16, the Communication of the third respondent under Ex.B1 cannot be given any weightage. The deceased first appellant has not examined any persons to prove Ex.B1. DW1 is not a competent witness to prove Ex.B1 and he is not a party to Ex.B1. On the other hand, Ex.A16 is a public document maintained by the Municipality certified by the Officials under their seal. Therefore, the permanent document, namely, Town Survey Field Register would outweigh any communication under Ex.B1. Therefore, this Court



finds no reason to interfere with the finding of the Courts below that the suit property is a public lane.

14. The learned counsel appearing for the appellant, relied on the Judgment of this Court in S.A.(MD)No.70 of 2017, dated 11.11.2019, in the case of **Thiyagarajan @ Karunanithi and another vs. Malarkantham and Others** for the proposition that while seeking a declaration that the suit property is a public lane of the general public and public authority shall be made as a party to the suit. Admittedly, in this case, the public authority namely, Trichy Municipality is impleaded as one of the defendants in the suit. Therefore, the judgment relied on by the learned counsel appearing for the appellant may not be helpful to advance his case.

15. It is pertinent to mention that the appellant himself as DW1 admitted that suit property with Old S.No.2066 is a lane. Further he also admitted that portion of his building stands in T.S.No.2066. DW1 also admitted that the Advocate Commissioner in his report mentioned that portion of his property lies in the suit property. During the course of cross examination, the appellant as DW1 also admitted that due to his



construction, the width of the suit lane got reduced from 20 feet to 12 feet. He also specifically admitted that T.S.No.2066 namely the suit property is a Municipal street. Further, there is also clear admission on the part of the appellant that he has not obtained any approval from local body for the construction which he had put up in the suit property.

16. In view of the fatal admissions made by the appellant as DW1, the Courts below correctly came to the conclusion that the suit property is a public lane and the appellant had put up construction in the portion of the suit property and thereby reduced its width. I do not find any reason to interfere with the findings rendered by the Courts below and consequently, both the questions of law are answered against the appellants. Consequently, this Second Appeal stands dismissed. However, in the circumstances of the case, there will be no order as to costs.

16.12.2022

Index: Yes / No
Internet: Yes / No
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S. SOUNTHAR, J.

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TO:

- 1.The Subordinate Judge, Thiruchirapalli.
- 2.II Additional District Munsif, Trichirapalli.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

Judgment made in
S.A.No.1829 of 1997

Dated:
16.12.2022