



W.P.(MD)No.16625 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 08.11.2022

CORAM: **JUSTICE N.SESHASAYEE**

S.A.No.45 of 2003

1.Sethuraj
S.Athiappa Naicker(died)
...Appellants/Respondents 1&2/Plaintiffs
3.Subulakshmi
4.Narayanasamy
5.Saraswathi ... Appellants
(R3 to R5 are brought on record as LR's of deceased A2
vide Court order dated 16.10.2020 made in
CMP(MD).Nos.9098 to 9100 of 2018 in SA.No.45 of
2003)

Vs

1.Chinnasamy Naicker
2.Rengasamy Naicker
Narayanasamy Naicker(died)
4.Ayyasamy Naicker
5.Ramasubbu
... Respondents 1 to 5/Appellants/Defendants 1
to 5

6.The Tamil Nadu Electricity Board,
Palayamkottai, Tirunelveli District.
Through its Superintending Engineer
Maharaja Nagar, Palayamkottai.

7.Assistant Electrical Engineer (Distribution)
Tamil Nadu Electricity Board,
Thiruvengadam.

... Respondents 6&7/Respondents 3 &4/ Defendants
6&7



W.P.(MD)No.16625 of 2019

8.Venkateswari

... Respondent

(R8 is brought on record as LR of the deceased third Respondent vide Court order dated 15.12.2021 made in CMP(MD).Nos.9101 to 9103 of 2018 in SA.No.45 of 2003)

Prayer : Second Appeal is filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree passed in A.S.No.52 of 2000 dated 06.02.2001 on the file of the Sub Court, Sankarankoil, reversing the judgment and decree in O.S.No.394 of 1995 on the file of the Principal District Munsif Court, Sankarankoil dated 30.08.1999.

For Appellant : Mr.F.X.Eugene
For Respondents : Mr.B.Ramanathan (for R6 & R7)
No appearance (for R1 to R5)

JUDGMENT

1. The plaintiffs in O.S.No.394 of 1995 are the appellants herein. The dispute presently before this Court is right over a pathway. The plaintiffs had laid a suit for declaration of right over item 3, which is the pathway in question, for a decree of prohibitory injunction to restrain defendants 1 to 5 should from obstructing the same, and also for a mandatory injunction directing defendants 6 and 7 to provide electricity service



W.P.(MD)No.16625 of 2019

connection to the properties of the plaintiffs through the said pathway.

During the pendency of the suit, electricity department had provided the electricity connection to the plaintiffs' house and the need for considering the prayer for mandatory injunction had thus become infructuous. Turning to other two reliefs, the trial Court decreed the suit and this judgment and decree came to be reversed by the First Appellate Court in A.S.No.52 of 2000 filed at the instance of the defendants 1 to 5. Hence, the plaintiffs are before this Court. For narrative convenience, the parties are referred to by their rank before the trial court.

2. The facts on which the plaintiffs found their cause of action for the suit may be briefly stated:

- The plaintiffs are entitled to a property covered in Survey No. 78/9A and 78/9B respectively, which they had purchased under Ext.A.2 and Ext.A5 sale deeds, both dated 21.08.1989. The property of the defendants is in Survey No.78/10, and it forms the eastern boundary of the property of both the plaintiffs. To the south of the property of the plaintiffs and the defendants, lies a water body. To the further east of the defendants property is Grahma Natham property, through which, parties have to access



W.P.(MD)No.16625 of 2019

WEB COPY

their respective pathway. The disputed pathway, according to the plaintiffs, lies to the south of the defendants property and to the north of the water body. This appears more like a bund of the water body. The plaintiffs' property according to the Commissioner report and plan is landlocked on all sides. The only access to the Grahma Natham property that lies to the further east of the suit property is item 3.

- When the defendants obstructed the plaintiffs from using item 3, they came before the Court with the suit.

3. The case of the defendants is straight forward:

- The defendants have purchased their property under Ext.B.1, sale deed, dated 29.01.1945 and that under the said sale deed they have obtained 63 cents, whereas on ground they have only 62 cents, and claim item 3 property is part of their property.

4. The dispute went to trial and both sides adduced oral and documentary evidence. The trial Court has also appointed a Commissioner, who had inspected the property along with Taluk Surveyor and filed his report. There was no objection by the defendants.



W.P.(MD)No.16625 of 2019

WEB COPY

5. On appreciating the evidence, the trial Court decreed the suit, whereas the First Appellate Court reversed it. The line of the reasoning of the First Appellate Court is essentially founded on the boundary description of item 3 as given by the plaintiffs. The plaintiffs had stated that to the east of the property lies the property in Survey No.78/10 belonging to the defendants 1 to 5 and to the south of both the plaintiffs property and the defendants property, lies the property in Survey No.79/5 which is classified as a water body. Item 3 is a narrow strip of land shown in the plan appended to the plaint as lying to the immediate south of Survey No. 78/10. The Appellate Court has taken a view that since the plaintiffs have given a boundary description as above, they have not adequately identified the property, for, in terms of their description the property that lies to the north of the Survey No.79/5, can only be the property in Survey No.78/10 which belonged to the defendants 1 to 5 and hence there is no pathway as may fit in with the contention of the plaintiffs. This is now under challenge in this appeal.

6. The Second Appeal is admitted for considering the following substantial questions of law:



WEB COPY



W.P.(MD)No.16625 of 2019

“1. Whether the Lower Appellate Court failed to appreciate the oral and documentary evidence adduced by the appellants and Ext.A.1 produced to show the encroachment made by the respondents?

2. Whether the Lower Appellate Court failed to consider that there is no need to seek for declaration or possession when the third schedule property is public pathway?

3. Whether the Lower Appellate Court failed to consider the evidence of P.W.2 who is the predecessor in title of the appellants who speaks about the usage of third schedule property for the past 63 years?

4. Whether the Lower Appellate Court is correct in not giving valid reasons and finding while reversing the well-considered judgment and decree of the trial Court?

5. Whether the Lower Appellate Court failed to consider the fact that as per Ext.B.3 the total extent of S.No.78/10 is entitled to more extent in the said survey number?”

7. The records of the case, except the pleadings, judgment, decree and Commissioner report, have been destroyed by the District Court, as per report received by this Court dated 07.12.2009. They included the sale



W.P.(MD)No.16625 of 2019

deeds of both the plaintiffs, dated 21.08.1989.

WEB COPY

8. Heard the learned counsel for the appellants. For deciding the case, this Court considers that it is not necessary to refer to all the documents, and the Taluk Surveyor plan, Ext.C3, along with the report of the Commissioner are adequate enough for resolving the issue before the Court. Ext.C.3 plan of the Taluk Surveyor read along with the Commissioner report, show that the property of the plaintiffs is landlocked on all sides. As has been referred to couple of times, the defendants' property lies on the east of the plaintiffs' property. There is a water body that forms the south boundary of the substantial portion of the property of the second plaintiff and the defendants. This apart the report and the plan show the bund of the water body, a cart track, etc., Ext.C.3 also denotes that the property was encroached by the defendants. The First Appellate Court apparently has allowed itself to be misled in a wrong conclusion as it omitted to refer to Ext.C.3, and focused entirely on the boundary description given by the plaintiffs. After all, the water body, which forms southern boundary of the defendants property and part of second plaintiff's property lies at a lower level and this water body necessarily has its bund. Merely because the plaintiffs have denoted the



W.P.(MD)No.16625 of 2019

defendants' property as lying to the north of the water body, that does not imply the defendants property lies to the edge of the water body. This precisely is noted in Ext.C.3, and the Commissioner Report has not been challenged by the defendants.

9. This Court therefore finds that it is the case where the First Appellate Court has misunderstood the whole issue without even referring to Ext.C. 3 and this would imply the plaintiffs right to access through item 3 property that lies to the south of defendants property has to be recognised.

10. Accordingly, this Court considers it necessary to interfere with the judgment and decree of the First Appellate Court made in A.S.No.52 of 2000 on the file of the Subordinate Court, Sankarankovil, allows this appeal, sets aside the judgement and decree of the first appellate court, and restores the decree and judgment made in O.S.No.394 of 1995 on the file of the Additional District Munsif Court, Sankarankovil. No costs.

08.11.2022

Index : Yes/No



W.P.(MD)No.16625 of 2019

Internet: Yes/No
Rmk

WEB COPY

To

- 1.The Sub Judge, Sub Court, Sankarankovil.
- 2.The Principal District Munsif, Sankarankoil.
- 3.The Section Officer,
VR Section, Madurai Bench of Madras High Court, Madurai.



WEB COPY



W.P.(MD)No.16625 of 2019

N.SESHASAYEE, J.,

Rmk

S.A.No.45 of 2003

08.11.2022