



S.A No.364 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2023

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A No.364 of 2015

P.Ramamoorthy

... Appellant

Vs.

1.M/s Karpagam Packaging Industries,
By it's Proprietor Amal Raj
S/o D.Jeyaraj, No.3/418, Kuppam Road,
Neelangarai, Chennai – 600 041.

(Name of R1 substituted vide order of the Court dated 12.03.2020 made in
CMP No. 20322/18 in S.A No. 364 of 2015)

2.M/s.Manipal Utility Packaging Solutions Pvt. Ltd.,
Rep by its. Authorized signatory Mr.R.Sivakumar
No.3/415, Singaravelan Salai, Neelangarai, Chennai – 600 041.

(Cause title of R2 amended vide order of Court dated 28/02/2020 made in
CMP 4456/20 in S.A No. 364 of 2015)

...Respondents

PRAYER: This Second appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and decree in A.S No. 51 of 2013, dated 05.09.2014 on the file of Sub Court, Tambaram, Confirming the decree and



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judgment in O.S No. 173 of 2011 on the file of District Munsif Court, Tambaram,(Earlier O.S No. 924 of 2004 on the file of D.M.C Alandur) dated 30.04.2013.

For Appellant : Mr.C.S.K.Sathish
for Mr.A.Sivaji
For Respondents: Mr. G.Masilamani, Senior Consel,
for M/s. M.S.Mani

JUDGMENT

The appellant herein is the defendant in suit O.S No. 173 of 2011, on the file of the District Munsif Court, Tambaram, filed by the plaintiffs/respondents herein for the relief of permanent injunction in respect of C schedule suit property as described in the plaint schedule restraining the defendant not to cause any interference of the peaceful possession of the plaintiff (which is private common path way to an extent of 18 feet East to West and from 330 feet North to South) belonged to the plaintiff concern that only for the place and plots and properties comprised in A and B schedule property as described in the plaint schedule. The contention of the plaintiff is that suit property is part of the property comprised in survey No. 82/2, and Palmash No. 163 - A in Neelangarai Village and extent of 1 acre 90 cents along with factory shed was purchased by the plaintiff. While selling the land the plaintiff's vendor set apart the suit property as a path way



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for the exclusive use and enjoyment of the plaintiffs. Subsequently, the first plaintiff sold an extent of 5 ½ grounds to the second plaintiff in the year 1985. The second plaintiff also purchased 6 grounds of land from M/s Harts Coco Products Pvt Ltd., and thus the second plaintiff is entitled to 11 ½ grounds in the said survey number. In the year 2000, the first plaintiff has sold 9 grounds of land under six separate sale deeds to various purchasers. Thereafter, entire land in survey No. 82/2 was sub divided as 82-8, 82-9 and 82-10. The suit property is comprised in Survey No. 82/10, measuring to an extent of 18 feet east to west and 130 feet North to South. It is a strip of land lying on the North Eastern portion of the Original Survey No. 82/2. The suit property is set apart and demarcated as a private pathway for the convenient enjoyment of the owners of the survey No. 82/8 and 82/9. Thus in the suit property no other persons except the plaintiff have got any right, title and interest. Moreover, the classification of the suit property is private pathway by the plaintiffs and their vendors as their exclusive private pathway to use their properties. The ingress and egress to their property is only through the suit path way by the purchasers of the land from the plaintiff. Further the plaintiffs submitted that at no point of time the suit property was dedicated to the Panchayat to claim it as a public pathway or a public lane and the suit



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land ends with the survey No. 82/8. Hence it is the dead end lane and beyond that that there is no pathway for others so as to use it or claim it as a public lane. Even the revenue records did not show that the suit property is a public pathway. While being so, the defendant purchased the property comprised in door No.3/409 -A from his vendor and access to his property is through a lane in the Singaravelar Street, which is running parallel to the suit property on the eastern side. Neither the defendant nor his vendor enjoyed the suit property as a pathway to reach their property and it also not concerned with survey numbers purchased by the defendant but the defendant attempted to make the suit pathway as a public pathway and the same was thwarted by the plaintiffs. Thereafter the defendant trespassed into the suit property. Hence the plaintiffs' filed the suit.

2. The contention of the defendant before the Trial Court is that disputed passage is a common pathway meant for all the purchasers in survey No. 82/2, which forms part of land owned by one Santhanalakshmi Ammal and the same is existing for a long time as per the Village map and in fact the said passage is the only way to all the land owners in the said layout, which is originally belonged to one Santhanalakshmi Ammal. She sold entire area by small pieces of land to various purchasers by providing



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access roads to each land owners purchased from her. It is false to state that the plaintiffs vendor has set apart the suit property for the exclusive use and enjoyment of the plaintiffs alone and the earlier document dated 13.03.1985 will prove the same. He denied the suit properties is comprised in survey No. 82/10 and is the part of survey NO. 82 and 82/2. Even as per the documents pertaining to the plaintiffs and the defendant's previous owners in title have purchased the land from the common owner Santhanalakshmi Ammal and in all the documents the suit passage is shown as private passage meant for all the said purchasers, therefore the suit passage is not exclusively meant for the plaintiffs and their vendors. But defendant's admits that plaintiffs' may purchase the land measuring 1.90 acres along with factory shed through registered sale deed but it is not correct to state that the suit property is set apart as pathway for the exclusive use of the plaintiffs' only. Further the defendant stated that he purchased the land in S.No. 82/2A/1-1B3D, Paimash No.160/A, ,as patta S.No.82/15, along with his wife R.Mahalakshmi from Anil shaw through sale deed dated 23.02.2004 and there is no way on the eastern side of his land and the passage on the Western side alone is meant for the defendant and the suit pathway (suit property) is to reach the Singaravelar Salai. But the plaintiff



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blocked the passage and he approached revenue authorities and report dated 05.11.2004 clearly established the plaintiffs have no any exclusive right or title over the suit passage. Thereafter, the plaintiff filed vexatious suit with no cause of action. Hence he prays to dismiss the suit.

3. On considering the oral and documentary evidence the Trial Court held that disputed passage (C Schedule property is private pathway) is not a public road as claimed by the defendant and granted relief in favour of the plaintiffs and decreed the suit.

4. Aggrieved over the same the defendant preferred an appeal in A.S No.51 of 2013 on the file of the Subordinate Court, Tambaram, it independently analysed the facts and evidence confirmed the findings of the Trial Court and dismissed the appeal.

5. For the sake of convenience the parties are denoted as per the suit.

6. Challenging the same the defendant preferred this second appeals and this Court admitted the appeal with the following substantial questions of law:

i. Whether the suit laid by the plaintiffs simplicitor for the relief of permanent injunction without seeking the relief of declaration is legally maintainable?



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ii. Whether the judgment and decree of the Courts below in granting the reliefs in favour of the plaintiffs is based upon the proper appreciation of the pleadings, materials placed on record, both oral and documentary evidence and the principles of law governing the same?

7. The learned counsel appearing for the defendant submitted that the Court below ought to have dismissed the suit by holding that the plaintiffs have no exclusive right over the suit property on the ground of the fact that in the sale deed marked as Ex.A1 and Ex.A2 the suit property already shown as private road so there is no restriction or bar for the defendant from using the same since because originally the property purchased by the plaintiff and the defendant from one common ancestor. The existence of E.B poles on the suit property out of which one E.B pole the electricity connection was given to the defendant which proves that suit property meant for defendant also and not exclusively belongs to the plaintiffs the same was not appreciated by the Court below. Further he submitted that the Court below not decided independently all the issue, on the other hand had mainly relied upon writ proceedings as such is improper and findings of the Court below is liable to be set aside. Further he pointed out that in the document Ex.B3 sale deed executed by first plaintiff to six purchasers, it was mentioned as suit property as public road. Ex.B9 also



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shows that suit property is public property not private as claimed by the plaintiffs the Court below failed to appreciate the documents and objection filed by the plaintiff. Furthermore, earlier title deed of plaintiffs' vendor has not been placed before the Court without which the Trial Court held that the suit property is meant for plaintiffs exclusive right as such is unjust and liable to be set aside. Furthermore, the Trial Court erroneously gave the findings with regard to title of the property in respect of suit property when the plaintiff have not chose to file suit for declaration as such is improper appreciation of the law it is liable to be set aside.

8. The learned counsel for the plaintiffs submitted that both the Court below rightly appreciated the facts and gave the independent findings which needs no interference. Hence he prayed to dismiss the second appeal.

9. Heard Mr.C.S.k.Sathish, the learned counsel for the appellant/defendant and Mr.G.Masilamani, Senior Counsel, the learned counsel for the respondents/plaintiffs.



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10. The suit filed for dispute with regard to the pathway to an extent of 18 X 330 square feet in the C schedule property in S.No.82/10.

According to the plaintiff the suit pathway is private pathway exclusively for the purchasers of S.No.82/8 and S.No. 82/9. The suit C schedule property is comprised in S.No. 82/10. An extent of 1.90 acres in the A schedule property and B schedule property is the forming part of the A schedule property with four boundaries and the defendant also admitted the same and not disputed with regard to that. The dispute is only with regard to C schedule property Pathway. The contention of the plaintiff is that the suit pathway is exclusively meant for the use and enjoyment of the plaintiffs' only not for the public but the contention of the defendant is that plaintiff's previous vendors and his previous vendors were purchased the property from common owner therefore suit pathway is common so he is entitled to use the said pathway. So after his purchase in the year of 2004 he used the suit pathway which is on the western side of the defendant's land to reach the Singaravelar Salai. Hence burden is on the plaintiff to prove their exclusive right over the pathway which exclusively meant for the plaintiffs not for the Public.

11. To prove their claim Initially, the plaintiff provided



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Ex.A1/Sale deed stands in the name of the first plaintiff and Ex.A2/ sale deed stands in the name of the second plaintiff. On perusal of the sale deeds except northern boundary which is mentioned as road lead from East coast road to Kuvum and other three boundaries are surrounded with lane belongs to the individuals. As per Ex.A2, four boundaries surrounded by the individuals. Admittedly lane(pathway) purchased through Ex.A1 and A2 is not disputed by the defendant their only objection is as per the Ex.B3/Blue shore avenue plan in suit survey No. 82/8 the suit property (18 X 330 square feet) is branch out from the Neelangarai Kuppam road to plaintiffs property as well as other purchasers of the lane in new S.No.82/8. On perusal of Ex.B3, plan the disputed pathway is shown as existing road 18 X 330 feet on the north eastern side of the lane belongs to the plaintiff. So as per the said plan existing road is for the properties belongs to the Mr.Karpagam Packaging Ltd., and the property is sub divided in that plan shown as Ex.B3. Subsequently the defendant's property is situated on the western side of the disputed road but as per the plan no pathway right was given to other purchasers holding property on the western side of the said pathway. But at the time of the argument the learned counsel for the appellant submitted that plaintiff not produced parent document of the Ex.A1 and Ex.A2 hence the



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findings rendered by the Court below is liable to be set aside. By way of reply, the learned counsel for the respondent submitted that they are having the mother document inadvertently failed to produced before the Court below accordingly he prayed to frame Additional issue with regard to parent document and to remit the matter to the Trial Court and also directed to receive the additional document and to give findings with regard to the said aspect. This Court by an order dated 26.04.2022 framed two additional issues with regard to Ex.22 and remit the matter to the Trial Court.

12. Pursuant to the order of this Court dated 26.04.2022, the Subordinate Court, Tambaram, received Ex.A22/parent deed dated 13.03.1985 and recorded as Ex.A22 and given its findings with regard to the Two Additional issues framed by this Court, wherein it held that in Ex.A22 it was mentioned as out of 1.90 acres excluding 6 grounds, 24 ground land was sold in favour of M/s karpagama packaging Industries, J.Pushparaj and S.Gurumurthy, while calculating the 24 grounds (1 ground = 5.5 cents) (24 grounds X 5.5 cents= 1.32 acres) therefore it is seen that the said Ex.A22 is not meant for 1.92 acres instead it is for 1.32 acres. Further, in Ex.A22 neither the measurement of boundaries nor length and breadth of path way is described. Moreover, in the description there is mentioning about



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common way to the purchasers and also to Harts CoCo Products Private Limited. Accordingly the Trial Court held that the pathway is not exclusively for the plaintiffs and as per the description in Ex.A22/sale deed the said path way is a common pathway.

13. About the said findings the learned counsel for the plaintiffs submitted that the findings of Trial Court with regard to Ex.A22 as such is totally erroneous and the Trial Court not properly interpreted the descriptions of the properties in Ex.A22. On the other side the learned counsel for the defendant submitted that as per Ex.A22 in boundaries description it was mentioned that boundaries and right of way to the purchasers therefore it includes defendant's vendor. Hence the findings given by the Trial Judge with regard to additional issues is maintainable.

14. Considering the oral and documentary evidence, on perusal of parent document/Ex.A22 dated 13.03.1985, in which, the boundaries description of the property is described as stated below:

Kuppam
NORTH BY : the road leading from east Coast road to road
EAST BY : Nambiar Group plots
SOUTH BY: land belonging to Krishnamani of M/s Southern Electronics and
West By : lands Belonging to M/s Premchand and



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15. By mentioning common right of way, the Trial Court held that it is meant for all the purchasers not exclusively belong to the plaintiffs. But on clear reading of the said boundaries descriptions it is clearly indicated that the common right of way is assigned to the purchasers of the remaining extent comprised in that lane and also to Hurt CoCo Products Private Ltd., as per the boundaries descriptions of the said property excluding six grounds on southern end near about 24 grounds have conveyed to the purchasers namely (K.P packaging industries) and tendered it to Harts CoCo Products Private Ltd., it is admitted fact. Hence while conveying the property to the first plaintiff dated 13.03.1985 the previous vendor meant common right of way to the purchasers which is meant for the purchasers of that (k.P.Packaging industries) property and also to Harts CoCo Products Private Ltd., and to the purchasers of remaining extent of six grounds it does not include the persons other than this properties. Furthermore, based on this document Ex.A1 and Ex.A2, Ex. A22 which meant common right for the plaintiffs one and two and not to any third parties who are not parties to the said documents therefore the said common



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right is only private road exclusively belongs to the first and second plaintiffs. Therefore, trial Court failed to interpret description of the property in Ex.A22/ parent document per contra it held that common pathway meant for all purchasers and not exclusively for the plaintiffs. Hence, findings of the Trial Court in respect of Ex.A22 is liable to be set aside.

16.Moreover, with the help of Advocate commissioner report Ex.C1 and Ex.C2 the plaintiffs established the physical features of C schedule property that it is private road meant exclusively for the plaintiffs. But the counsel for the appellant/defendant raised objection with regard to commissioner report. On perusal of commissioner report it clearly established that C schedule property is situated on the western side of the defendant's property which is only on the back side of the defendant's house, the compound wall is demolished clearly denotes that the defendant's attempted to create the pathway. Moreover C schedule pathway is dead end of company belongs to the second plaintiff. So the physical feature of the suit property also clearly established that suit pathway is private road meant for the plaintiffs alone and it is not a public road because the features does not shown that it is public road, and as per the commissioner report pathway end at the second plaintiffs' property. Furthermore in earlier writ



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proceedings this Court also held in favour of the plaintiffs. Therefore, extent of the property meant to the plaintiffs is not under dispute. The Court below rightly appreciated this aspect. Later, while deciding the matter related to Additional issue the Trial Court failed to take note of this fact therefore the findings of the Trial Court in respect of Ex.A22 and the findings with regard to additional issue is liable to be set aside as improper on law and facts. Therefore, the plaintiffs clearly established that C schedule property is private pathway which exclusively belongs to the plaintiff through Ex.A1 and A2 and Ex.A22.

17. Now, the burden is on the defendant to prove his vendor as well as he enjoyed and used the C schedule passage to reach their property. Admittedly, as a purchaser of the property the defendant is having house plot on the Eastern side of disputed suit lane however before the Trial Court defendant produced his sale deeds which was marked as Ex.A.5 and A.6 and on perusal of the description of the property in Ex.A6 dated 27.07.2122 the defendant purchased the property comprised in old survey No. 82/2A/1-1B3A new Survey No. 82/45 o1-B3-B with an extent of 2400 square feet with four boundaries in for said purchased property the



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Western boundaries was shown as road another three boundaries shown as individual lane. By relying said boundaries description defendant's claiming right over the suit passage contended that it is meant for all the purchasers of the survey number comprised in S.No. 82. Admittedly for the plots comprised in the defendant's property the pathway was given at the Eastern side of his property. Furthermore, through Ex.A5 defendant through his wife purchased pathway right. As per the Ex.A.18/ Village lay out the house site belongs to the defendant and other purchasers of the Western part of the Paimas No. 163 /A the road is allotted on the Eastern side on their house plots. From layout plan/Ex.A19 it is seen that on the eastern side of the defendant's property there is passage hence the defendant also having access to his house from that road. Admittedly C schedule property is surrounded with the compound wall however only at the back side of the defendant's house the wall was damaged and other neighbours of the defendant's are using their eastern passage and they are not claimed any right in suit C schedule property. Therefore the conduct of the defendant's clearly reveals that he attempted to make passage by demolishing the compound wall and also wrongly interpreted western boundary shown as



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public road. It is clear that C schedule property is private road and it meant for the plaintiffs and not for the public, nor the defendant.

18. Moreover, the defendant has not produced any evidence to show that his vendor enjoyed the suit c schedule property as public road and there is no evidence on the side of the defendant's to prove that suit property is public road. Further it clearly reveals that defendant has not disputed plaintiffs' purchase in respect of Ex.A1 and title of the defendant, the only dispute is with regard to usage of suit C schedule property since title of the plaintiffs is admitted there is no necessity to claim declaration of title hence the findings rendered by the Trial Court is justifiable. Hence, the plaintiff filed suit for permanent injunction as such is maintainable. Furthermore the plaintiffs' clearly proved their title over the suit property through documentary evidence as well as it clearly reveals that suit pathway is private road exclusively for the owners of the lane A and B schedule property. Accordingly, questions of law are answered. The findings of the Court below are confirmed.



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19. In the result, the second appeal is dismissed as No merits.

Thus the suit is decreed as prayed for. There shall be no order as to costs.

Consequentially connected miscellaneous petition, is closed.

27.01.2023

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To

1. The Sub Court, Tambaram.
2. The District Munsif Court, Tambaram.
3. The Section Officer,
V.R Section.



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T.V.THAMILSELVI,J.

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