



S.A.No.779 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.779 of 2023

V.Ravi

... Appellant / Plaintiff

Vs

D.Venkatesan

. . . Respondent / Defendant

Prayer: Second Appeal is filed under Section 100 of C.P.C against the Decree and Judgment passed in A.S.No.58 of 2018 on the file of the Sub-Court, Poonamallee dated 24.06.2022 confirming the Decree and Judgment dated 26.04.2018 in O.S.No.174 of 2015 on the file of the Additional District Munsif Court, Poonamallee.

For Appellant : Mr.P.M.Bakthavatsalam

For Respondent : Mr.R.Rajamani



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JUDGMENT

The dispute in the instant suit is with reference to the “B” Schedule property, which has been described as an extent measuring on the North and South 47 feet and East and West 57 feet in all measuring 799 sq.ft comprised in S.No.366/3 and S.No.366/5 lying between Plot Nos.29 and 24 bounded on the North by Plot No.24, South by “A” schedule, East by Defendant's property and West by 2nd Cross Street. “A” schedule property is the plot bearing No.29, measuring 2679 sq.ft in the same survey Number. “B” schedule property as the portion lying to the east of the “A” schedule.

2. It is the case of the plaintiff that “A” schedule property exclusively belongs to him by virtue of a registered Sale Deed dated 01.11.1996. The plaintiff has been in possession and enjoyment of the land since he purchased it. The plaintiff would submit that on the



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north, it is bounded by Nagarathinam Naidu street second cross, which is a cul-de-sac. It is the case of the plaintiff that there is a compound wall on the eastern side of the suit “A” and “B” schedule properties and this compound wall not only covers “A” and “B” schedule properties but also the first street and the plots that fall between the first street and second street (suit “B” schedule). The plaintiff has described the compound wall as “C” schedule in the suit schedule properties. It is the case of the plaintiff that the “B” schedule property was being exclusively enjoyed by him and the plot owner of Plot No. 24.

3. While so, the defendant, who is a stranger to the second street and who resides on the east of the compound wall, having direct access to reach other parts of the village, made an illegal attempt to demolish the “C” schedule wall on 14.04.2015 and to put a gate thereon to have an excess into the “B” schedule (second cross street). This attempt was prevented by the plaintiff as well as the other plot owners. Once



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again on 15.04.2015, another attempt was made. The plaintiff had lodged a complaint with the police authorities with photographs. The police authorities, who initially agreed to take action, later retracted and directed the plaintiff to approach the civil court and hence, the suit in question.

4.The defendant had filed the written statement *inter-alia* denying the contents of the plaint with reference to “B” schedule property being the exclusive property of the plaintiff and the owner of plot No.24. It is the case of the defendant that to the east of the “B” schedule (second cross) the defendant's wife Mahalakshmi has property as also his sister Rose. They have not been made as parties to the suit. Hence, the suit is bad for non joinder and misjoinder. The defendant had also denied the existence of the “C” schedule property as there is no compound wall, as contended by the plaintiff. The defendant would further submit that even if the “B” schedule is a dead end, the



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plaintiff has no right to deny access to the public as it is a public road.

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The defendant had also relied upon the Advocate Commissioner's report, which shows the existence of public tap, electric pole and street light on the “B” schedule road. The defendant would submit that he is not claiming any individual right to the property but has only contended that it is a common public road. The plaintiff has himself admitted that his plot is an unapproved plot and he is attempting to obstruct the defendant and his family members from using the public road. The defendant would further submit that the Advocate Commissioner's report would reveal that there is no compound wall as alleged by the plaintiff, which has been described as “C” schedule. The specific case of the defendant is that the second cross street, which is the “B” schedule property under the maintenance of Avadi Municipality, has not only laid metro water pipe lines but has also put up drainage pipelines, Municipality Water Tap Connection, electric poles, street lights, etc. Therefore, the defendant would submit that the



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plaintiff is not entitled to the relief as claimed for and that the suit deserves to be dismissed.

5. The learned Additional District Munsif, Poonamallee, by his judgment and decree in O.S.No.174 of 2015, dismissed the suit in O.S.No.174 of 2015. The defendant had filed a counter claim seeking an injunction restraining the plaintiff from any manner obstructing the use of the “B” schedule property by the defendant, his family members, his men, agents and servants and also from having free and unobstructed access to the defendant's wife, Mahalakshmi's property through the “B” schedule property. The trial Court had dismissed the suit and decreed the counter claim. Challenging the same, the plaintiff had filed A.S.No.58 of 2018 on the file of the Subordinate Court, Poonamallee and the learned Subordinate Judge had confirmed the judgment and decree of the trial Court.



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6. Heard the learned counsel on either side and perused the materials available on record.

7. Both the Courts below have relied on the Advocate Commissioner's report, which had been marked as Ex.C1 and the sketch-Ex.C2. A perusal of Exs.C1 and C2 would show that “B” schedule has been formed with pieces of black rock and cement. In this street, the Advocate Commissioner, during his inspection, had found a public tap, electric poles and street lights. He has also reported that during his inspection, he has found debris at the end of the second cross, indicating the demolition of the wall. The sketch-Ex.C2 would indicate that besides the plaintiff's property and house No.24 there are three sites on the northern side and two sides on the southern side of the “ B” schedule. This clearly indicates that the property in question is a public road and does not exclusively belong to the plaintiff and therefore, the plaintiff cannot claim an exclusive right in the “B”



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schedule property beyond the extent that has been conveyed to him under Ex.A1. P.W1 has admitted that the others have the same right as him in the public road. The Court below has noted that the plaintiff has not chosen to enter the witness box and substantiate the allegations made by him but has chosen to examine his wife as P.W1. I see no reason to interfere with this concurrent judgment. Challenge to the judgment and decree does not display not display any substantial question of law. Consequently, the second appeal is dismissed. No costs.

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Index: Yes/No
Speaking order/non-speaking order
srn

To

1. The Sub-Court, Poonamallee.
2. The Additional District Munsif Court, Poonamallee.
3. The Section Officer, V.R.Section, High Court, Madras.

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P.T.ASHA, J.,

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