



S.A.(MD).No.395 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2023

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.395 of 2018

and

C.M.P.(MD)No.14929 of 2023

1.P.Pitchai

2.P.Nagarajan (Died)

3.P.Thangamani (Died)

4.P.Ramachandran

5.P.Paramasivam

6.Padmavathy

7.N.Revathi

8.N.Ponnaiya

9.Priya Natchiyar

10.Arunkumar

.....Appellants

(Appellants 6 to 8 are brought on record as
LRs of the deceased 2nd appellant vide Court
order dated 10.08.2023 made in C.M.P.(MD)
No.6799 of 2021 in S.A.(MD).No.395 of 2018)

(Appellants 9 to 10 are brought on record as
LRs of the deceased 3rd appellant vide Court
order dated 10.08.2023 made in C.M.P.(MD)
No.3894 of 2022 in S.A.(MD).No.395 of 2018)

--Vs--



S.A.(MD).No.395 of 2018

1.A.Panchamirtham (Died)

A.Durairaj (Deceased)

2.A.Sundaramahalingam

3.The District Collector,

Virudhunagar District,

Virudhunagar.

4.The Tahsildar,

Kariappatti Taluk,

Kariappatti, Virudhunagar District.

5.Janaki

6.Ponni

7.Pandimeena

8.Kathirvel

9.Girija

10.Uma

11.Kumar

12.Sundari

13.Selvi

14.Lakshmi

15.Durga

.....Respondents

(Respondents 9 to 15 are brought on record as
LRs of the deceased 1st Respondent vide Court
order dated 10.08.2023 made in C.MP.(MD).
No.3897 of 2022 in S.A.(MD).No.395 of 2018).

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code
against judgment and decree dated 20.07.2018 in A.S.No.1 of 2016 on the file of



S.A.(MD).No.395 of 2018

Sub Court, Aruppukottai, confirming the judgment and decree dated 17.06.2015 in O.S.No.312 of 2003 on the file of Principal District Munsif, Aruppukottai.

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For Appellants : Mr. V.Muniasamy
For R3 & 4 : Mr.A.Kannan
For R2, 5 to 15 : Mr. S.Parthasarathy

JUDGMENT

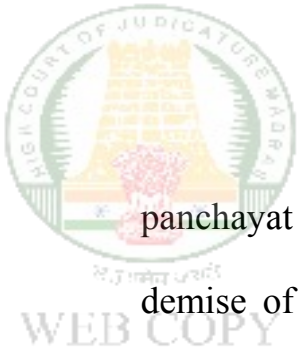
The Second Appeal is filed by the plaintiff against judgment and decree, dated 20.07.2018 passed in A.S.No.1 of 2016 on the file of Sub Court, Aruppukottai confirming the judgment and decree dated 17.06.2015 passed in O.S.No.312 of 2003 of the file of Principal District Munsif Court, Aruppukottai.

2. The plaintiffs in the suit is the appellant herein and the defendants in the suit are respondents herein. For the sake of convenience, the parties are referred as plaintiffs and defendants as per the ranking in the suit.

3. The brief facts are that the plaintiffs are the brothers and are sons of Ponniah Asari. The defendants 1 to 3 are brothers and are sons of Athankarai Asari. The defendants 1 to 3 are now denying the title, interest and right of the plaintiffs over the suit "C" schedule of property on the basis of joint patta, which was erroneously given by the revenue authorities. Originally all the properties mentioned in A, B and C suit schedule properties were purchased by the



grandmother of the plaintiffs namely Bagyathammal and she was in possession and enjoyment continuously without any break and also without any let or hindrance. The said Bagyathammal had purchased the suit A schedule property from the erstwhile owner Irulandi Asari for a valuable consideration under a registered sale deed dated 17.07.1941. At the time of purchase there was thatched house admeasuring east west 14 meter (42 feet) north south 6 meter (18 feet). Likewise she had purchased the suit B schedule property from the erstwhile owner Sonai Asari for a valuable consideration under a registered sale deed dated 07.11.1932. At the time of purchase there was thatched house admeasuring east west 4 meter (12 feet) north south 8 meter (24 feet), but subsequently she had put up tiled roofing and used as welding workshop till today. And she had purchased the suit C schedule property from the erstwhile owner Sonai Asari for a valuable consideration under a registered sale deed dated 17.07.1941. At the time of purchase there was tiled house admeasuring east west 5 meter (15 feet) north south 8 meter (24 feet). The suit A schedule property is situated on the northern side and the suit B and C schedule properties are situate on the southern side of the suit A schedule property. The B and C schedule properties are a contiguous and they are situate under the same titled roof and they are divided by a middle wall. Thereafter the said Bagyathammal paid house tax for suit A schedule property bearing Door No: 13/1/405, the suit B schedule property bearing Door No: 13/3/52 and suit C schedule property bearing Door No:13/3/53 to Kariyapatti



panchayat till her death and the said property tax stands in her name. After the demise of the grandmother on 15.06.1993, the plaintiffs are jointly paying the property tax and other taxes to Kariyapatti panchayat continuously till this date in the name of their grandmother Bagyathammal, since the father of the plaintiff's predeceased on 27.05.1983. The plaintiff's mother died on 18.07.1996. In the village map of Kariyapatti the suit properties are mentioned as S.No.27/50-A, S.No.27/50-B and S.No.27/50-C with buildings on all the survey number with measurements, which was prepared eighty years ago, hence it is clear that all the suit properties were purchased by the plaintiff's grandmother. The plaintiff's further submitted that the suit properties were surveyed by the revenue authorities at the time of UDR Scheme in the year 1985, the entire suit properties then covered under S.No.27/50 admeasuring east west 9.6 meter (28.6 feet) on northern side, 9 meter (27 feet) on the southern side and north south 15 meter (45 feet) on western side, 15.6 meter (45.6 feet) on eastern side. And the Special Tahsildar, UDR Scheme had issued separate patta for the entire suit properties then covering in the total S.No:27/50 (which is now separately described as A,B and C suit schedule of properties) in the name of 1st plaintiff namely Pitchai (who is the elder son of the deceased Ponniah and grandson of Bagyathammal) in Patta No.118 dated 31.08.1985. Thereafter the plaintiffs were in enjoyment of suit properties by paying taxes to the aforesaid door numbers.



4. The plaintiffs submitted that the suit A, B and C schedule of properties are situated on the extreme eastern side and thereafter there was no property to any third party on their eastern side. In fact on the eastern side of the entire suit properties, the Highways Madurai-Aruppukottai Main Road alone is running on north south and the same is revealed in the Kariyapatti village map wherein it is specifically shown that beyond the suit properties, no patta land or any other vacant site land is available. In other words, the suit properties A, B and C belonging to the plaintiffs herein, are the last properties lying on the western side of the Highways Road and in between them there is no other lane or vacant site land belonging to any third party. The 2nd defendant is aware of the above facts, but knowingly had put up a tiled shop on the eastern side of the C schedule suit property and had encroached the Highways vacant site property without any title or right or interest over the same, and the said constructions were also objected by the plaintiffs and their predecessors-in-title but the 2nd defendant had not ignored the objections. When the actual possession and enjoyment of the A,B and C schedule of properties are with the plaintiffs, in the year 2000, in order to extend the breadth of the Madurai-Aruppukottai Main Road, the Highways Department had demolished the defendant's titled shop situated on the eastern side of the suit C schedule of property and also demolished a small portion which is extended in excess in the A schedule of suit property stating that were situated in the Highways Road Poromboke land. Thus it is very clear that the Highways



Department has demolished the constructions entire tiled shop of the defendants 1 to 3 as unauthorized constructions put up in the Highways Road Poromboke. After the said demolition in the year 2001 the defendant again have put up other three small shops immediately adjoining the eastern wall of the suit C schedule property in the highways vacant site by touching the said wall and also without raising a separate wall on their side. In the month of November 2002 the 5th defendant issued joint patta in the name of the 1st plaintiff and 2nd defendant in respect of suit schedule property. The 1st plaintiff had immediately submitted several objections from December, 2002 till date to the defendants 4 and 5 continuously narrating the above facts that the C schedule property belong to the plaintiffs absolutely and the defendants 1 to 3 have no right or title or interest over this C schedule property. It was learnt that the defendants had also submitted petitions for issuing patta and b on petitions submitted both by the plaintiffs and the defendants 1 to 3 to the defendants 4 and 5, the land surveyor and other revenue authorities and officers of the Highways Department came to the suit schedule properties and surveyed the C schedule property and submitted a report to the 5th defendant. On the basis the of the report the 5th defendant had passed order dated 21.02.2003 stating that the suit C schedule property is having 0.0043 square meter and the 2nd defendant is having right to an extend of 0.6 meter on the eastern side and therefore the patta for the entire property namely the C schedule property can be given in the names of the 1st plaintiff and the 2nd defendant jointly. The contention of the plaintiffs is that



they are having entrance facing the southern side lead to the small street. The plaintiffs could not put up a stationary shop in the suit C schedule property facing eastern side leading to Madurai-Aruppukottai Main Road and the same is necessary for their livelihood. Hence the suit is filed for cancelling the joint patta, declaration the plaintiff is entitled to separate patta and permanent injunction restraining the defendants from interfering in plaintiffs peaceful possession and enjoyment, declaration the plaintiffs alone entitled to A schedule property and permanent injunction, declaration the plaintiffs alone entitled to B schedule property and permanent injunction and declaration the defendants have no right to put up the existing three small shops or other superstructures immediately on the eastern side of the C schedule property and thereby obstructing the plaintiffs right to enjoy the C schedule property by putting up the stationary shop facing Madurai-Aruppukottai Main Road for their livelihood.

5. The defendants 1 to 3 had filed the written statement stating that the plaintiffs failed to appoint advocate commissioner and locate the suit properties and in future if they file they would reserve their right to file additional written statement. The contention of the defendants is that in Kariyapatti village along the west side of Madurai-Aruppukottai Highways one Sonai Asari son of Chinnan Asari was having house and land. Along the north side of this property, Irulandi Asari's was having property. The said Sonai Asari retained the land which was



near to the road and sold the northern portion through two deeds for valuable consideration under a registered sale deed to plaintiff's grandmother Bagyathammal. The said Sonai Asari had sold the retained portion of the property along with a mud house which was lying near to the road to the defendant's father named Kathirvel @ Athankarai Asari, through a valuable sale consideration under a registered sale deed dated 11.05.1950 was in existence and thereafter the defendant's father was in possession and enjoyment of the property by paying property tax. After the demise of the defendant's father, through partition deed dated 29.12.1975 the properties were divided among the brothers and sisters of the defendant's. In the said partition the property purchased from Sonai Asari was shown as 2nd item in C schedule property which was allotted to the defendant's. After that the tax has been paid in the name of 2nd Defendant. Then on 23.11.1978 the suit property has been let on Oothi to one Yesudas and subsequently closed. During the said transaction the original deed was lost and hence certified copy of the deed is filed. This property is situated on the eastern side to plaintiff's C schedule property and western side to Madurai-Aruppukottai Highways, to be precise in between the C schedule property and the highway road. Further west of C schedule property is B schedule property, further west is A schedule property and then other residential properties of the village. Hence apart from individual owners other have no right over the properties. Further when the defendant's was putting up fresh construction in the portion of the property belonging to the



defendants, there were some issues between the plaintiffs and the defendants.

Hence an agreement dated 17.04.1995 was entered between the plaintiffs and the defendants to put up a common wall, for which the plaintiffs had paid Rs.2,750/- to defendants. Hence the plaintiffs are estopped by conduct from claiming right over that portion of the defendants next to C schedule property and the Main Road. The defendants has constructed three small shops and the same is in possession of the defendants. In such situation, due to extension of Madurai-Tuticorin Highways, the Government has demolished the buildings in 10½ feet of land belonging to the defendants without any prior notice. Only 3½ feet is left in the defendants property. Since small portion of 3½ feet is left, the plaintiffs with bad intention to have opening from their C schedule property to the main road the plaintiff is trying to occupy the 3½ feet land belonging to the defendants. There is no cause of action for the A and B schedule properties. Hence the defendants prayed to dismiss the suit.

6. The 5th defendant had filed counter and submitted that the schedule property is situated in Kariyapatti village in S.No:27/50 over the extension 0.15 acres. In the year 1985, the said schedule property has been in the name of P.Pitchai in patta No: 118. During Natham Settlement Scheme in the year 1992, the schedule property has been divided into 27/50A, 27/50B and 27/50C and S.No:27/50A and 27/50B has been in the name of P.Pitchai and S.No:27/50C has



been in the name of defendant A.Durairaj. Further submitted that in the year 2002, 1st plaintiff submitted several petitions to 5th defendant in ordered to change the name in the register. Based on the said petition the C Schedule property i.e. 27/50C was surveyed and it was found that the eastern portion of 0.6 meter belongs to 2nd defendant Durairaj and the remaining portion of property belongs to P.Pitchai. After ascertaining the aforesaid fact the 5th defendant had issued a joint patta in the name of A.Durairaj and P.Pitchai regarding the property situated in S.No:27/50C having measurement about 0.00.43 square meter and the changes were made in the register based on the documents of both parties. Hence prayed to dismiss the suit.

7. After perusing the pleadings, documentary evidence and depositions of the plaintiffs and the defendants, the suit was dismissed. Aggrieved over the plaintiffs had filed First Appeal and the same was dismissed. Aggrieved over the same, the present Second Appeal is filed.

8. The second appeal was admitted on the following substantial questions of law:

“(i) Whether the Courts below are correct in law in failing to appreciate Ex.A1 to Ex.A3 from the correct perspective, which would clearly show that the plaintiffs had proved their title to the suit A and B schedule property?”



(ii) *Whether the First Appellate Court is correct in not admitting the relevant documents 1. Kariapatti Village Map, 2.District Surveyor's Certificate being public documents as additional evidences under Order 41, Rule 27(1)(a) of CPC?*

(iii) *Whether the First Appellate Court is correct in not framing the issue under Order 41, Rule 25 of CPC to decide the suit upon merits?*

(iv) *Whether the Courts below are right in ignoring the position of law that the person owning the land appurtenant on the main road, is entitled to access the main road at every point from his property?*

(v) *Whether the findings of both the Courts are correct in not proving the fact of the vacant site situated between the 'C' schedule property and the National Highways by adducing evidences to determine the enjoyment of parties by applying appropriate law?"*

9. As far as the substantial question of law (i), (iv), (v) are concerned there is no dispute between the parties regarding the Ex.A-1 to Ex.A-3 sale deeds. The plaintiffs had purchased the A, B and C schedule of properties. At the same time there is also no dispute that the defendants' father had purchased the disputed portion which is situated in between the C Schedule of property and the Main Road admeasuring east west 14 feet and north south 28 feet (392 square feet). Infact both the plaintiffs and the defendants had purchased from the same vendor Sonai Asari. The plaintiffs has access to the Main Road from A schedule property



which was purchased through Ex.A2. But he is seeking the same access from the B and C schedule properties. But in between the said B and C schedule properties, the defendants properties are situated. The following sketch would be beneficial to understand:

“A” schedule of property Property sold by Irulandi Asari to Bagyathammal Ex.A2 dated 17.07.1941 admeasuring Plaintiffs			Main Road
“B” schedule of property Property sold by Sonai Asarai to Bagyathammal Ex.A1 Plaintiffs	“C” schedule of property Property sold by Sonai Asarai to Bagyathammal Ex.A1 Plaintiffs	“disputed site” Property sold by Sonai Asarai to Aathangarai Asari Ex.B1 Defendants	
Street			

The plaintiffs claim that they are entitled to access the main road from “B” and “C” schedule of properties through the place marked as **“disputed site”** in the aforesaid sketch. The plaintiffs claim can be considered, if the alleged **“disputed site”** is a lane or pathway, thereafter the main road lies continuously. But in the present case the defendants property is lying, in such circumstances the plaintiffs is **“not entitled”** to access the main road through defendants property. Infact the contention of the plaintiffs that they are entitled to access to the main road through the defendants property is atrocious, illegal and absurd.



10. The claim of the plaintiffs further intensified after the proceedings of the Highways authorities. The Highway Authorities in order to expand the main road had declared a portion of the defendants properties as encroachment. As per the sale deed Ex.B1 the defendants are entitled to east west 14 feet, but the Highways Authorities had taken 10 ½ feet from the said 14 feet. Hence the defendants are entitled to only 3 ½ feet of land on the east west. Likewise, the Highways Authorities had taken the 10 ½ feet land from the plaintiff's land from "A" schedule property declaring the same as encroachment. After such expansion of main road, the properties of the plaintiffs and the defendants may be explained through the following sketch:

“A” schedule of property Property sold by Irulandi Asari to Bagyathammal Ex.A2 dated 17.07.1941 admeasuring Plaintiffs			The land now formed as main road after expansion	Main Road
“B” schedule of property Property sold by Sonai Asarai to Bagyathammal Ex.A1 Plaintiffs	“C” schedule of property Property sold by Sonai Asarai to Bagyathammal Ex.A1 Plaintiffs	“dispute d site” Property sold by Sonai Asarai to Aathanga rai Asari Ex.B1 Defenda nts	The land now formed as main road after expansion	
Street				



When the portion of the land was taken by the Highways, the portion belonging to the defendants further diminished. Even then in the available 3½ feet on east west side, 28 feet on the north south (roughly 98 square feet of land) the defendants had put up three shops in the said place. The contention of the plaintiffs such space ought to be granted to the plaintiffs to access their shops situated in B and C schedule properties from Madurai-Aruppukottai Main Road is atrocious, illegal and absurd and the said claim cannot be entertained at all. Hence the substantial questions of law (i), (iv) and (v) are held against the plaintiffs / appellant.

11. The substantial questions of law raised (ii) and (iii) is that the Kariapatti Village Map and District Surveyor's Certificate were produced as records and the same was not marked and no issue was framed regarding the said two documents. The said Village Map and the District Surveyor Certificate would indicate the extent of the land in S.No.27/50. It also would indicate if the lands are sub divided as per the sale deeds. The said documents would not prove the case of the plaintiffs beyond their sale deeds. Infact the written statement filed by the Revenue Authorities is not supporting the case of the plaintiffs. Hence the said Village Map and the District Surveyor Certificate can never ever support the case of the plaintiffs. Therefore, the Courts below had rightly rejected the said documents and this Court concur with the said findings of the Court below.



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Therefore the substantial questions of law (ii) and (iii) are held against the plaintiffs / appellant.

12. For the reasons stated above, the second appeal is dismissed, confirming the judgment and decree dated 20.07.2018 passed in A.S.No.01 of 2016 on the file of Sub Court, Aruppukottai and the judgment and decree dated 17.06.2015 passed in O.S.No.312 of 2003 on the file of Principal District Munsif, Aruppukottai. No costs. Consequently, connected miscellaneous petition is closed.

12.12.2023

Index : Yes / No

NCC : Yes / No

Tmg



S.A.(MD).No.395 of 2018

TO:

1. Sub Court, Aruppukottai
2. Principal District Munsif,
Aruppukottai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD).No.395 of 2018

S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD).No.395 of 2018

Dated:
12.12.2023