



S.A.No.776 & 777 of 2007

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.01.2024

Pronounced on : 02.02.2024

CORAM

THE HON'BLE MR. JUSTICE **G.ARUL MURUGAN**

S.A.Nos.776 & 777 of 2007

S.A. No.776 of 2007:

1. M.Seeranga gounder (Deceased)
2. S.Thangavel
3. K.Vasu
- S.Subramani (Died)
4. S.Muthusamy (Died)
5. S.Marappan
6. S.Pavayammal
7. Sarojini
8. Dhamayanthi
9. Jayalakshmi
10. Vijayalakshmi
11. S.Ravi

... Appellants

(Appellants 6 to 8 are brought on record as Legal heirs of the deceased 1st appellant vide order of Court dated 24.07.2015 made in MP.Nos.1 & 1 of 2015 in S.A.No.776 and 777 of 2007)

(Appellants 9 to 11 are brought on record as Legal heirs of the deceased 4th appellant vide order of Court dated 03.01.2022 made in CMP.Nos.14357, 14359, 14360/2021 in S.A.No.776 of 2007 and CMP.Nos.14373, 14376 and 14378/2021 in S.A.No.777 of 2007 JNB)).



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Vs.

1.Ponnusamy
2.The Executive Officer,
Surampatti Town Panchayat,
Surampatti, Erode District.

... Respondents

S.A. No.777 of 2007:

1. M.Seeranga gounder (Deceased)
2. S.Thangavel
3. K.Vasu
S.Subramani (Died)
4. S.Muthusamy (Died)
5. S.Marappan
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Vs.

Ponnusamy

... Respondent



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Prayer in S.A.No.776 of 2007: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 23.01.2007 made in AS.No.89 of 2004 on the file of the Principal Sub Court, Erode reversing the judgment and decree dated 17.09.2004 made in O.S.No.698 of 2000 on the file of the first Additional District Munsif Court, Erode, by allowing this Second Appeal before this Hon'ble Court.

Prayer in S.A.No.777 of 2007: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree dated 23.01.2007 made in AS.No.3 of 2005 on the file of the Principal Sub Court, Erode reversing the judgment and decree dated 17.09.2004 made in O.S.No.713 of 2000 on the file of the first Additional District Munsif Court, Erode, by allowing this Second Appeal before this Hon'ble Court.

For Appellant : Mr.N.Manokaran
(in both the petitions)

For R1 : Mr.K.S.Jeya Ganesan
in S.A.No.776/ & 777/2007

For R2 : Mr.Rajamathivanan
in S.A. No.776/2007.



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COMMON JUDGMENT

The plaintiff in OS. No.698 of 2000 filed the suit on 10.11.2000 as against the sole defendant, Executive Officer, Surampatti Town panchayat for bare injunction. Defendants 2 to 7 got themselves impleaded in the suit on 03.01.2003. Defendants 2 to 7 filed the separate suit in OS. No.713 of 2000 on 22.11.2000 as against the plaintiff alone in OS. No.698 of 2000, for bare injunction.

2. Since OS. No.698 of 2000 is the comprehensive suit, for the sake of convenience, the parties in both the cases will be referred to as per the rankings before the trial court.

3. According to the plaintiff, his ancestor one Marappa gounder had purchased the suit property in the court auction sale on 19.09.1938 and he inherited the property and is in possession and enjoyment of the suit property measuring 0.88 acres in old survey no.55, resurvey no.135/2, presently sub divided as resurvey no.257/1A and 257/2. In the year 1996, the defendant Town panchayat attempted to form a road at the southern side of suit property and objection dated 18.06.1996 was submitted by the



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plaintiff, as they do not have any authority to form a road in the patta land and therefore the first defendant dropped their action of forming the road. According to the plaintiff on the west of the suit property there is 30 feet Mohan Kumaramangalam road and on both sides it is commercial area. The plaintiff wanted to construct the house for his own and also shops. At this juncture, the first defendant on the east of the suit property started to form a drainage by making cement construction and while doing so, the first defendant attempted to encroach into the property by increasing the width of the drainage, for which the plaintiff submitted the objection on 03.11.2000. The plaintiff has no objection to lay the drainage channel in the same measurement as available, but since they encroached into the patta lands by increasing the width, he submitted the objection.

4. According to the plaintiff, defendants 2 to 7 are no way interested or connected with the suit property but they have unnecessarily impleaded themselves in the suit property.

5. The first defendant filed written statement, categorically stating that they do not have any intention in encroaching into the property of



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plaintiff and stated that the suit property is situated in Kumaran street.

The plaintiff and the other public are using the road to reach the Mohan Kumaramangalam road. Since the road was not handed over to the first defendant, they have not undertaken any development works in the road. It is further stated that the Town panchayat has undertaken the construction of drainage channels, but however they have not undertaken any work by encroaching into the suit property of the plaintiff. Further, the first defendant do not have any intention to encroach upon the suit property. Further, they denied that the first defendant is intending to construct any bridge or building as stated in the plaint. The impleaded defendants 2 to 7 filed the written statement stating that the 13 feet cart track is in existence in the suit property and there is also a bridge to connect the cart track with the Mohan Kumaramangalam road which is in existence for long time. The 13 feet road has been named as Kumaran street and the houses of the defendants 2 to 7 are situated in the Kumaran street. There is no other way of access for the houses except through the 13 feet kumaran street.

6. It is further stated by the defendants 2 to 7 that in order to



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enhance the width of the road, they have left 10 feet of their property on the northern side of Kumaran street and therefore now there is a total width of 23 feet.



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7. In the suit in O.S. No.713 of 2000 filed by the defendants 2 to 7, according to the plaintiff, the suit property is 13 feet in width branching from the Mohan Kumaramangalam road on the west and running towards east. The street is named as kumaran street and is existence for more than 100 years. Formerly, the said street has been mentioned as itteri in some documents. The plaintiff's property is situated on the south of the suit property which is covered with thorny bush. As the defendants 2 to 7 wanted to have a wider road in front of their house, in February 1997 they handed over 10 feet width of an east-west strip of land abutting the north of suit property through its entire length. The panchayat board has also taken over the same. As there is a shed on the north western side of the suit property, the panchayat board was not able to develop the road as the shed is a hindrance. According to the defendants 2 to 7, due to misunderstanding the plaintiff is now trying to encroach into the suit property and obliterate the existing suit street and annex the same along with the southern property. They have filed the suit property praying to restrain the plaintiff by permanent injunction from encroaching into and annexing the street with the southern property.



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8. The plaintiff who is the sole defendant in that suit, has resisted the suit by filing the written statement stating that there is no such public road maintain by the Surampatti panchayat board and no such road existence in any records.

9. According to the plaintiff, the defendants 2 to 7 have filed vexatious suit even without mentioning the survey number where the suit property is situated. The defendants 2 to 7 in order to suppress the facts, has filed the commissioner application to note down the physical features alone but has not taken any steps to measure the property. The plaintiff further stated that he is the absolute owner of the property in re-survey no.257/1A and 257/2 measuring total extent of 0.33.75 hectare in Surampatti village in which the defendants 2 to 7 has no manner of right or enjoyment over the same. Further, the Panchayat board also no manner of right, interest over the properties.

10. In the joint trial of both the suits, the plaintiff examined himself as PW1 and marked Exs.A1 to A4. On the side of the defendants DW1, DW2 were examined and Exs.B.1 to B.12 were marked. The



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Advocate commissioner report and the plan are marked as Ex.C1 and Ex.C2 and the report of the surveyor is marked as Ex.C3.

11. The trial court after considering the documents and evidences, by a common judgment, dismissed the suit in OS.No.698 of 2000 and decreed the suit in OS.No.713 of 2000. Aggrieved by the judgment and decree, the plaintiff filed separate appeals in AS.No.89 of 2004 and AS.No.3 of 2005. The lower appellate court after reappraising the evidences allowed both the appeals. Aggrieved by the same, the defendants 2 to 7 are before this court by way of two separate appeals. Since the issue in both the suits are the same and the suits have been disposed of with a common judgment, by consent of both the parties the appeals are taken up together and disposed of with a common judgment.

12. This Court by order dated 07.08.2007 was pleased to formulate the following substantial questions of law in S.A.No.s776 & 777 of 2007:

“(1) Whether the first appellate Court is correct in law in holding that the suit property (Kumaran Street) is not in existence especially when



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the documentary evidence marked as Exs.B1 to B8 and B12, the report and plan marked as Exs.C1 to C3 and the oral evidence of D.W.1 and D.W.2 manifestly proves the existence of the suit property as public street.

(2) Whether the first appellate Court is right in law in reversing the well considered findings of the trial Court by extracting some stray sentences from the evidence of D.W.1 and D.W.2 particularly when the implication of the entire reading of their evidence would falsify the case of the first respondent herein.

(3) Whether the first appellate Court is correct in law in allowing the appeal on the ground that the suit property has been described as 'itteri' in the earlier documents, more particularly the usage of 'itteri' has now been widened for the convenience of the parties in the course of time and it is being used as public road as evident from the second respondent records”.

13. Mr.N.Manokaran, learned counsel appearing for the appellant submitted that the plaintiff has not filed any document to establish the title and the plaintiff in his evidence has taken inconsistent stands. First the



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plaintiff disputed the existence of itteri and later admitted that itteri measuring 3 feet is available. The learned counsel contended that defendants 2 to 7 has taken steps for appointment of Advocate Commissioner and the Advocate Commissioner has visited the property and filed the report in Ex.C.1, clearly stating that the Kumaran street runs from west to east and measures an extent of 13 feet and the plaintiff has not filed any objection to the specific report of the commissioner.

14. The learned counsel further contended that the plaintiff has not taken any steps to measure or survey the property and further from the evidence of PW.1, the suit schedule property and the plaintiff's own document, it could be seen that the itteri is in existence. Further, defendants 2 to 7 have filed documents viz. partition deed in Ex.B.12 dated 20.05.1930 and the sale deed in Ex.B.6 dated 31.01.1942 which establishes the existence of itteri next to their property and further the learned counsel contended that normally itteri means it is a cart track which has width of more than 10 feet. The learned counsel contended that the trial court has rightly arrived at a finding about the existence of the road but the lower appellate court has erroneously allowed the appeal



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without any evidences or materials on record which is perverse and therefore sought for allowing the appeals.

15. Mr.K.S.Jai Ganesan, learned counsel appearing for the respondent/plaintiff argued that the plaintiff has filed the suit by providing the complete details of the survey number, extent and boundaries and also they have filed the documents along with the plaint. Since the plaintiff had grievance only against the Panchayat board, the suit was filed against them and the first defendant has categorically admitted the ownership of the plaintiff and further had stated that they are not intending to encroach into the suit property. In such circumstances, nothing was required for the plaintiff to prove and therefore the suit is ought to be decreed. After the plaintiff filed the suit, the defendants 2 to 7 as counter blast filed a suit in respect of the 13 feet road. When the defendants 2 to 7 have filed the suit in respect of the road which according to them belongs to panchayat board, they ought to have made the panchayat board as a party to the suit. Further no survey number or any details is furnished as to where the road is located. The learned counsel for the respondent contended that when the Advocate commissioner report did not show that the 13 feet road is in



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existence within the patta lands of the plaintiff, there was nothing for them to object.

16. The learned counsel for the respondent further contended that the lower appellate court has taken into the account the evidence of D.W.2 and the written statement filed by the panchayat board and arrived at a finding of fact that the suit property is the patta lands of the plaintiff and therefore he sought for dismissal of the second appeals.

17. Mr.M.Rajamathivanan, Government Pleader, appearing for the 2nd respondent in S.A. No.776 of 2007, submitted that the Kumaran street measuring an extent of 13 feet is in existence and that as far as the suit property measuring 88 cents of plaintiff is concerned, the Town panchayat has not encroached into the property or intending to do any development by entering into the property of the plaintiff.

18. Mr. N.Manokaran, learned counsel for the appellant by way of reply submitted that panchayat board is not a necessary party as no relief is sought against them. Further as per the Order VII Rule 3 of CPC, when



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the boundaries are correctly given and the properties are identified, no further details are required. The learned counsel also contended that



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since the defendants 2 to 7 are using the road for a long time, it can be taken as implied grant of easement.

19. In support of his submission, the learned counsel for the appellant relied on the decision in **Sree Swayam Prakash Ashramam and Another Vs. G.Anandavally Amma and Others** reported in **2010 (2) SCC 689**.

20. Heard the learned counsels on either side and perused the material available on record.

21. It is not in dispute that the plaintiff owns an extent of 0.88 cents in old survey no.55, re-survey no.135/2, present survey no.257/1A and 257/2 of Surampatti Village. Even from the plaint filed by the defendants 2 to 7 describing one of the boundaries as lands belonging to the plaintiff and the statement of first defendant/panchayat board it is clear that they all admit the title of the plaintiff in respect of the suit property.



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22. On perusal of the documents filed in Ex.B.6 and Ex.B.12, it could be seen that the existence of itteri is mentioned in those documents and further the plaintiff himself in his evidence has admitted that 3 feet itteri is available in between his property and the property of defendants 2 to 7. The width of the itteri has not been mentioned in any of the documents and no material has been produced to show the exact width of the itteri.

23. From the report of the Advocate Commissioner in Ex.C.1, it is clear that 13 feet road named Kumaran street is available in the field which is a mud road that joints the Mohan Kumaramangalam road. The entire dispute between the parties is that whether the 13 feet road runs in the patta lands of the plaintiff.

24. When the title of the plaintiff for the suit property is admitted and the first defendant while undertaking the construction of the drainage channel attempted to increase the width, the plaintiff after making objection has come up with the suit as against the town panchayat for permanent injunction and the town panchayat has categorically admitted



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the title of the plaintiff and also they have stated that they have not undertaken any development works in the itteri, as it has not been handed over to the panchayat and further submitted that they do not have any intention to trespass into the patta lands of the plaintiff and carry out any activities. The plaintiff has given the entire details of the suit property with the survey numbers and the boundaries and have identified the suit property. On the other hand, the defendants 2 to 7 has come up with the suit contending that the plaintiff is trying to encroach into the 13 feet kumaran street and it is their case that if the plaintiff succeeds in his attempt, they will not have any access to the property. When the defendants 2 to 7 claim that 13 feet street belongs to the town panchayat neither they have made them as a party nor they have given the correct description of the property, where the 13 feet road is situated. It is also the specific case of defendants 2 to 7 that this 13 feet road runs in the patta lands of the plaintiff but they have not chosen to furnish the survey numbers or the details of the property to identify the same.

25. It is also the case of defendants 2 to 7 that they have given an extent of 10 feet of their property to the panchayat board for the purpose



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of widening the road in the year 1997, for which the possession has already been handed over and the land given by them is used as the road.

At this juncture, it is pertinent to note that the suit has been filed in the year 2000 and the advocate commissioner has visited the property and filed the report in Ex.C1 in the year 2001. The advocate commissioner report in Ex.C.1 reveals that the Kumaran Street is in existence, which is a mud road and it has width of 13 feet. When already the defendants 2 to 7 has given an extent of 10 feet of their property to be annexed to the itteri and is admittedly used as a road, but however, the report of the advocate commissioner reveals that there is only an extent of 13 feet available in the Kumaran street. For which the defendants 2 to 7 have not filed any objections or made any attempt to establish that apart from 13 feet road, there is further extent of 10 feet road available to take the total width to 23 feet. When the defendants 2 to 7 have failed to establish the same, it could be seen that itteri measuring an extent of 3 feet as admitted by the plaintiff was available and as it was not enough for their access, the defendants 2 to 7 have given an extent of 10 feet of their property to the town panchayat and therefore the total extent of 13 feet road is available in the field, which is used as a road named Kumaran street.



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26. Further DW.2 in his evidence admits the title of the plaintiff in respect of the suit property measuring 88 cents of lands in resurvey no.257/1A and 257/2 and further the second defendant has clearly admitted that they do not make any claim in the lands belonging to the plaintiff Ponnusamy. Further, he categorically admitted that 13 feet road is available in the field but only since the plaintiff attempted to encroach upon the 13 feet road, they have filed the suit. The evidence of DW2 makes it candidly clear that they have no claim in the patta lands of the plaintiff but only since they apprehended that the plaintiff may encroach in the 13 feet road which includes the 3 feet itteri, which the plaintiff earlier disputed, the defendants have come up with the suit. Further, the perusal of the surveyor report in Ex.C3 shows that the surveyor has stated that the suit property of the plaintiff is containing full of thorny bushes and therefore he was not able to survey the land which establishes the fact that the 13 feet road is not in existence in the patta lands of the plaintiff. Apart from the same, the plaintiff has filed the application before the lower appellate court for appointment of advocate commissioner to note down the physical features with the help of surveyor. In fact the report and the



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survey plan have been filed after measuring the suit property of the plaintiff, which clearly shows that there is no encroachment or road that runs in the suit property in survey no.257/1A and 257/2.

27. The defendants 2 to 7 have failed to establish that there is an extent of 23 feet road available and that any portion of the road falls within the patta lands of the plaintiff. From the evidence and materials available on record it has been found that only 13 feet road is in existence and no portion of the lands of the plaintiff is used as road. While so, the judgment relied on by the appellant is not relevant for the facts of the present case, as no portion of the patta lands of the plaintiff has been used as road. Therefore, the question of implied grant does not arise. If at all some portion of the patta lands of the plaintiff is required for expansion of the road for the betterment of the public, it is always open to the authorities to take proceedings in accordance to law.

28. As referred earlier, it is the admitted case of the defendants 2 to 7 that they do not claim any right over the lands of the plaintiff and that an extent of 13 feet road is available and they have approached the court to



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restrain the plaintiff only from encroaching upon this 13 feet road. The lower appellate court has rightly come to the conclusion that the 10 feet of property given by the defendants 2 to 7 along with the itteri which is 3 feet is now in existence as a road named Kumaran street, measuring 13 feet and the defendants 2 to 7 have access to their property through the 13 feet road in Kumaran street to reach Mohan Kumaramangalam road and therefore the finding of fact is based on the materials available on record.

29. Under such circumstances, there is no perversity or illegality in the finding of the lower appellate court which needs interference in the second appeal. Therefore, the substantial questions of law are answered against the appellants and in favour of the respondent. As such, both the second appeal fails and are dismissed. However, there is no order as to costs.

02.02.2024

drl

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No



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To

- 1.The Principal Sub Court, Erode.
- 2.The I Additional District Munsif Court, Erode,

G.ARUL MURUGAN.,J.

drl

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