



S.A. Nos. 431 & 432 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2024

CORAM:

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

S.A. Nos. 431 & 432 of 2010

and

M.P.Nos. 1 & 1 of 2010

S.A.No.431 of 2010

B.Vasudevan,
S/o. late Balaram Naidu

... Appellant

Vs.

1. Devarajan
S/o. K.A.Chakravarthy Aiyengar

2. Civil Engineering Corporation,
Partnership firm,
rep. by its Partner L.Bhaskaran

Ethirajulu Naidu (died)

3. Mrs.Ethirajulu
4. E.Bharath
5. Uma
6. Vimala



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7. M.M.D.A. is a public authority,
rep. by its Managing Director
having office at
Gandhi Irwin Road,
Egmore, Chennai-600 008.

8. Corporation of Madras,
rep.by its Commissioner,
having office at
Ripon Buildings, Park Town,
Chennai-600 003.

B.Bhoopathi (deceased)

10. B.Lakshmi

11. B.Prakash

(Respondents 10 and 11 are brought
on record as LRs of deceased 9th
Respondent vide order dated
20.06.2016 made in C.M.P. No.
6534 to 6536 of 2016)

.. Respondents

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1. Alagu,
2. Madavan

Shanmugam (deceased)

4. Nalini
5. Vignesh
6. Shevani
7. Parvathi

... Appellants



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vs.

1. Civil Engineering Corporation,
Partnership firm,
rep. by its Partner L.Bhaskaran
2. Devarajan
S/o. K.A.Chakravarthy Aiyengar
3. Sekar
4. Madras Metropolitan Development
Authority,
having office at
Gandhi Irwin Road,
Egmore, Chennai-600 008.
5. Corporation of Madras,
having office at
Ripon Buildings, Park Town,
Chennai-600 003.

... Respondents

PRAYER in S.A.No.431 of 2010 : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 04.11.2009 and made in A.S.No.162 of 1998 on the file of Addl. District and Sessions Judge, Fast Track Court No.1, Chennai reversing the judgment and decree dated 29.03.1996 and made in O.S.No.3501 of 1989 on the file of IV Asst. Judge, City Civil Court, Chennai.



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PRAYER in S.A.No.432 of 2010 : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 04.11.2009 and made in A.S.No.168 of 1998 on the file of Addl. District and Sessions Judge, Fast Track Court No.1, Chennai reversing the judgment and decree dated 29.03.1996 and made in O.S.No.10881 of 1989 on the file of IV Asst. Judge, City Civil Court, Chennai.

For Appellants

in S.A.No.431 of 2010 : Mr. N.Ishtiaq Ahmed

For Respondents in

S.A.No.431 of 2010 : Mr.T.T.Ravhichandran for
Mr.M.Balasubramanian for R1

Mr.B.Christdas for R2

Mrs.V.Srimathi for R5 & R6

Mr.P.Veena Suresh for R7

Mr.R.Arunmozhi for R8

Mr.R.T.Doraisamy for R10
& R11

R3 & R9 – died

R4 – No appearance



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For Appellants
in S.A.No.432 of 2010 : Mr. N.Ishtiaq Ahmed

For Respondents in
S.A.No.432 of 2010 : Mr.B.Christdas for R1

Mr.T.T.Ravhichandran for
Mr.M.Balasubramanian for R2

Mr.P.Veena Suresh for R4

Mr.R.Arunmozhi for R5

R3 – Person not found

COMMON JUDGMENT

Both the Second Appeals have been filed against the common judgment and decree dated 04.11.2009 and made in A.S.Nos.162 and 168 of 1998 on the file of Addl. District and Sessions Judge, Fast Track Court No.1, Chennai reversing the common judgment and decree dated 29.03.1996 and made in O.S.Nos.3501 and 10881 of 1989 on the file of IV Asst. Judge, City Civil Court, Chennai respectively.

2. For sake of convenience, the parties are denoted as per the ranking in O.S.No. 3501 of 1989 before the trial court.



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3. In both suits, the plaintiffs are praying the relief of declaration to declare that the Shenoy road (lane) comprised in R.S.No.473/1 with four boundaries as prescribed in 'C' schedule in both suits respectively with the measurements of 20 ft. on the north and 225 ft. on the south, which connects Shenoy road (lane) and Jayalakshmipuram II Street used by the plaintiffs and their neighbours. It is the only pathway for the plaintiffs to reach their houses from the said Shenoy lane and the same was used, to the knowledge of plaintiffs, since 1959 and subsequently, while they have purchased the property, in the schedule of sale deed, the said lane is prescribed as Shenoy lane, besides in the town survey plan also, the said lane is also marked as Shenoy lane.

4. The defendants/respondents are doing business as flat promoters and the property on the eastern side of the said lane belong to one Devarajan, 3rd defendant, with whom, the defendants 1 and 2 have entered into agreement on 18.03.1987 for sale of that property for the purpose of constructing flats and based on that, 1st defendant started to put up construction and sought permission to close the northern entrance of 4th

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schedule property, which is a lane with a promise to reopen after the construction was over. But, they have put up pucca hall dividing the 4th schedule property and the property belonging to the said Devarajan, wherein the 1st defendant is constructing flats. But, inspite of the request made on the side of plaintiffs to remove building materials and leave the property as a lane, so as to enable the plaintiffs to use the said lane as a passage and they have not only refused and also claimed that the said lane is a patta land belong to 3rd defendant Devarajan, In fact, the said Shenoy lane is the only lane being used for more than 30 years and the 1st defendant also knew the same. In which, the defendants neither have exclusive right nor they are entitled to close the said land with the help of corporation officials. Therefore, the present suit was filed for the relief of declaration as well as other consequential relief, more particularly, the Shenoy Road in R.S.No.473/1 as a lane.

5. Before the trial court, Defendants 1 and 3 have contested the suit. The defendants 2 and 4 are officials of C.M.D.A. have endorsed that they have no objection and the 3rd defendant viz., Devarajan only has contested the suit. Before the trial court, issues were framed and both parties



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adduced their oral and documentary evidence. On relying the sale deeds and the copy of land register extract, the trial court concludes that the land in R.S.No.473/1 is the lane, in which the defendants have no exclusive right nor they proved that the said lane is belong to father of 3rd defendant Chakaravarthy Aiyengar nor the defendants have proved their title, but on the other hand, the plaintiffs have proved it as a lane through the extract from land register marked as Ex.B6. Accordingly, the suit was decreed in favour of plaintiffs.

6. Challenging the said findings, the defendants have preferred appeal suits in A.S.Nos.162 and 168 of 1998 before the Addl. District and Sessions Judge, Fast Track Court No.1, Chennai. The 1st appellate judge independently analysed the facts and evidence and finally concludes that there is no such lane as claimed by the plaintiffs and held that the revenue records shall not confer any title in the declaration suit, thereby, the trial court erroneously concludes that based on the Ex.B6 land register extract, the trial court declared that the land in R.S.No.473/1 is the lane without considering the encroachment made by the plaintiffs. Therefore, they are not entitled for any relief and also held that as per Ex.B1 and B2, Sale



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deeds, there is mentioning of only 12 ft. land in Survey No.474 as a pathway. Even the oldest document Ex.A1 relied on their side also not proved the easementary right by way of possession, thereby the plaintiffs are not entitled to the relief of declaration as there is no document submitted in support of their case. Accordingly, both appeal suits were allowed.

7. Aggrieved over the said findings of appellate judge, the plaintiffs preferred these Second Appeals. The learned counsel for appellants/plaintiffs would argue that without considering the documents relied on the side of plaintiffs viz., Ex.A4, Ex.B3 and Ex.B6, erroneously the first appellate judge held that the plaintiffs have not proved their claim that the land in Survey No.473/1 is the lane or passage. He would also submit that the lower appellate court had erred in law in holding that the suit lane is comprised in S.No.474 without any basis. He would submit that the lower appellate court had erred in law in not considering that the defendants 1 and 3 had not filed any title deeds to prove that they are the owners of entire extent in S.No.473. He would also submit that the lower appellate court erred in law in deciding the issue relating to lane based on

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Ex.B3, which is only a town survey land register extract and failed to consider that revenue records shall not confer title in a declaratory suit. He would submit that the lower appellate court had erred in law in not considering that Ex.A8, A9 and A13 under which the 3rd defendant's property are dealt with, shows that the western boundary as S.No.473/1 and it does not state that S.No.473/1 belongs to the 3rd defendant. He would submit that the lower appellate court had erred in law in holding that non-production of Ex.B1 and B2 against the plaintiffs while from Ex.B1 and B2, it is seen that there is 12 ft. passage on the east of plaintiff's property and the plaintiff's property is comprised in S.No.474/4. He would submit that when Ex.B1 and B2 does not state that the 12 ft. passage is comprised in S.No.474, the lower appellate court had erred in law in holding that 12 ft. passage is comprised in S.No.474. He would submit that the lower appellate court had erred in law in not considering the factual aspect that for the ingress and egress to the plaintiffs property except lane, there are no other ways and based on commissioners report ought to have dismissed the appeal confirming the judgment and decree of the trial court. He would submit that the lower appellate court had erred in

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law in holding that the plaintiffs had not proved that the suit lane lies in S.No.473/1 when a conjoint reading of Ex.B3, B6 and A4 will clinchingly prove that the land comprised in S.No.473/1 is a lane or passage. He would also submit that the lower appellate court had erred in law in allowing the appeal on surmises and conjunctures and in not taking into consideration Ex.A4, A8, A9, A13, B3 and B6, which establishes the case of the plaintiffs.

8. By way of reply, the learned counsel for respondents/contesting defendants would submit that the trial court has erred in holding that the passage in R.S.No.473/1 is the lane, on the other hand, the first appellate judge has rightly concludes that there is no such lane is in existence and the 12 ft. width passage as per plaintiffs document is within the limit of Survey No.474, thereby, the lower appellate judge had rightly held that the revenue records would not confer any title, on the other hand, the defendants rightly established that the 3rd defendant's father Chakaravarthy Aiyengar was the owner of 7 grounds and 1925 sq.ft. of land comprised in Survey Nos.473/1, 473/3 and 473/4 and it is a patta land, for which corporation authority also sanctioned the plan for the construction of multi



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storied flat. The 1st defendant as a flat promoter and power agent of 3rd defendant put up the construction as per the sanctioned plan. So, there is no such lane as Shenoy lane as alleged by the plaintiffs and that place was allotted for car parking as per the plan approved by C.M.D.A. Officials and the same was rightly appreciated by the first appellate judge, which needs no interference. Hence, he prayed to dismiss both the second appeals.

9. Accordingly, to set aside the said findings, these Second Appeals have been filed and the same were admitted on the following substantial question of law :-

“1) Whether the lower appellate court had rendered a perverse finding that the existence of common passage in Survey No.473/1 has not been established?

2) Whether the lower appellate court has erred in law not properly considering the exclusion of area claimed as common passage in Exs.A8, A9 and 10 under which the third defendant has dealt with the land comprised in Survey No.473/3?

3) Whether the lower appellate court has committed an error in law in not considering the legal effect of the Town



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Survey Land Register extract designating Survey No.473/1 as street?

10. In both Appeal Suits, a dispute between the parties is with regard to the property in Survey No.473/1, in which according to plaintiffs, it is a common pathway, but on the other hand, the 3rd defendant claimed that it is his exclusive property and also the 3rd defendant content that the plaintiffs are in occupation of more extent of their respective property purchased from the vendor than what was conveyed under sale. Therefore, the defendants totally denied as there is no lane as claimed by the plaintiffs and also claimed absolute right that it is their absolute property in Survey No.473/1.

11. The point for consideration is that whether the land comprised in R.S.No.473/1 is a lane, in which the plaintiffs are entitled for egress and ingress from Shenoy road to Jayalakshmipuram first street or it is exclusive property of 3rd defendant's father Chakarappa Aiyengar and subsequently, it belongs to the present 1st defendant/purchaser absolutely.

12. The contention of plaintiffs is that originally, the land at Door No.2/1-A belongs to Sri Agastheeswarar and Prasanna Venkatesa Perumal



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Devasthanam, Nungambakkam and in the year of 1957, one Krishnasamy naidu took the property on lease and subsequently the plaintiffs' father became the owner of that property and leased out the same through lease deed and subsequently, 2nd plaintiff purchased the said property from the vendors of the said Krishnasamy. Therefore, from the year of 1957 onwards, the plaintiffs enjoyed the said lane. To support their contentions, the plaintiffs relied the lease deed dated 07.10.1957 marked as Ex.B1 on the side of defendants as well as sale deeds Ex.A1, A3 and B2. On the other hand, the 3rd defendant Devarajan claimed that his father Chakaravarthy Aiyengar owned nearly about 7 grounds and 1925 sq.ft. comprised in R.S.Nos.473/1, 473/3 and 473/4 as a patta land. Having approached the court for the relief of declaration, the plaintiffs are bound to establish the land in survey No.473/1 is the lane. Though the plaintiff relied the lease deed, but it was produced on the side of defendants marked as Ex.B1, which is related to the year of 1957, Sri Agastheeswarar and Prasanna Venkatesa Perumal Devasthanam, Nungambakkam have entered into a lease agreement with one Krishnamurthy in respect of Survey No.473/4 and the property in R.S.No.474 through which nearly about 1



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ground 1200 ½ sq.ft. was leased out. In that, there is boundary, which is mentioned as follows :-

“Schedule of property:-

All that piece and parcel of land shown hatched in red in the accompanying sketch situate in Nungambakkam Madras within the Registration Sub-District of Thiagarayanagar and the Registration District of Madras Chingleput bearing R.S.No.474 of Jayalakshmipuram road, East by common passage 12 feet breadth running through along temple land and Chakravarthy Aiyengar cultivable land South by Shenoy road, West by land owned by PK.Ranganayakam R.S.No. 474/Part and measuring North to South 78 ft. on the Eastern side and 37 ft. on the Western side and East to West 86 ft., on the Northern side and 55 and 22 ft. on the southern side. Extent 1 ground 1200 and ½ sq.ft.”

Therefore, the eastern boundary was shown as common passage 12 ft. breadth running through along temple land (474) and Chakaravarthy Aiyengar's cultivable land. Hence, the said boundary description clearly



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establish the fact that on lease of property, common passage of 12 ft. breadth running through along temple land in R.S.No.474/part, and Chakravarthy Aiyengar's cultivable land (3rd defendant's father). Therefore, on the eastern side, 3rd defendant's father Chakravarthy Aiyengar cultivable land and there is a common passage of 12 ft. But, the first appellate court failed to appreciate the boundary description in Ex.B1 properly and erroneously concludes that only a common passage of 12 ft. alone is mentioned, which is not correlating suit lane as claimed in the plaint schedule. But, though there is a difference in the extent, there is a common passage in existence in the year 1957 along with Chakravarthy Aiyengar cultivable land (3rd defendant's father), both are two different identities i.e. passage and land. Thereafter, in the year 1962, land in Survey No.474 was purchased by the plaintiffs, wherein in the boundary description on the eastern boundary, it is mentioned as 12 ft. lane allotted by Devasthanam in R.S.No.474. Subsequently, in the year 1992, the property was purchased by father of plaintiffs through Ex.A3, wherein in the boundary description of property, it is mentioned as Shenoy road (lane).



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13. Per contra, the 3rd defendant claimed that his father has owned 7 grounds comprised in Survey Nos. 473/1, 473/3 and 473/4 absolutely, but in the agreement of sale marked as Ex.A13 executed by Devarajan, 3rd defendant, son of Chakravarthy Aiyengar, he claimed that he is the absolute owner of extent of about 5 grounds and 2225 sq.ft., in which the 3rd defendant took half of 'A' schedule property and retained half of the property himself. Therefore, out of 5 grounds, 2225 sq.ft., he retained half portion and entered into agreement for half share. But, subsequently, sale deed executed in the year of 1988 marked as Ex.A8, the 3rd defendant claimed himself as absolute owner of property measuring 6 grounds contrary to the sale agreement as discussed above. Even then, he has not produced any document to show that he is absolute owner of 7 ground including the suit lane comprised in Survey No.473/1.

14. Furthermore, as per Ex.B3, the land in Survey No.473/1 is shown as lane existed in between Survey Nos.474 and 472, starts from Shenoy lane and ends with Jayalakshmipuram I Street. As per Ex.B2 Land Register Extract, it reveals that Survey No.473/1 is registered as a Street.



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Though it was named as Devarajan, it is described only as a Street and the name of the street is also mentioned as Village Road. Furthermore, as per Ex.B4, Survey No.474/4, father of appellant viz., Balarama Naidu is mentioned and name of street is mentioned as Shenoy road (lane). Therefore, the existence of Shenoy lane having width 20 ft. connects Shenoy road and Jayalakshmipuram II Street and it is stood as pathway used by the persons, who are residing in Jayalakshmipuram II Street as well as his neighbour, which itself established through the revenue records as well as title deeds by the plaintiffs as discussed above. So, the trial court has rightly held that from the inception of lease deed, 1957 onwards, the existence of lane is proved by the plaintiffs, though there is mentioning of 12 ft., on the other hand, as per the Town Land register extract, the extent of road is mentioned as 21 ft.

15. Moreover, during the pendency of the Appeals, a Commissioner was appointed and he measured the property through Surveyor, wherein as on date, as per the survey report, in R.S.No.473/1, 473/3 and 473/4 Part, there is a lane and it reads as a road. As per the said land register, the existence of lane in R.S.No.473/1 is proved. But, the 3rd defendant without



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showing the lane in R.S.No.473/1, had obtained a plan from the C.M.D.A. officials, who are defendants 2 and 4, but they remained exparte inspite of notice, there might be collusion with contesting defendants. Though they were absent during the appeal proceedings, as per the surveyor report as well as extract from permanent land register, it shows the name of street as Shenoy road and the land in Survey No.473/1 is described as Shenoy road and the description of field also shown as a street.

16. Furthermore, even though it stands in the name of 3rd defendant as a owner, he has not produced any title deed to show that he is owner of land in Survey No.473/1, which is under dispute. On the other hand, in the earliest document of the year 1957, 12 ft. lane was mentioned in the boundary description in the lease deed, eastern boundary denotes, that would show that on the east 12 ft. pathway and cultivable land owned by the 3rd defendant's father Chakrappa Aiyengar. Thus, there was a 12 ft. lane was in existence. The documents of Sale deeds as well as agreement relied on by the defendants stood that father of 3rd defendant Devarajan is the absolute owner of 5 grounds 2225 sq.ft. and not 7 grounds including the suit lane in existence of Survey No.473/1. Therefore, the defendants failed



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to establish that Survey No.473/1 was belonging to father of 3rd defendant absolutely. On the other hand, the plaintiffs established that in Survey No.473/1, there is a lane was in existence from the year of 1957 onwards. Though the extent varies, but in the surveyor plan submitted by Advocate Commissioner, who was appointed during the Second Appeal proceedings clearly established that Survey No.473/1 named as Shenoy road, in which defendants have no exclusive right. Therefore, the claim of defendants that Survey No.473/1 is a patta land as such it has not been proved, on the other hand, the plaintiffs proved that Survey No.473/1 is the lane, which is in existence, through which they came from Shenoy Road to Jayalakshmipuram II Street. Therefore, the findings given by the first appellate judge is the perverse finding, thereby the question of law (1) is answered.

17. As discussed above, the lower appellate judge has not properly considered the existence of the common passage in Ex.A5, A8 and A13 and also committed error in not appreciating Town Land register extract, wherein Survey No.473/1 is described as a street. Therefore, the findings given by first appellate judge is liable to be set aside. Accordingly, both the



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Second Appeals are allowed. Both suits are decreed as prayed for. Time is granted to remove the obstruction made by defendants 1 and 3 within a period of eight weeks from the date of receipt of copy of this judgment. No costs. Consequently, the connected Miscellaneous Petitions are closed.

22.07.2024

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

Addl. District and Sessions Judge,
Fast Track Court No.1,
Chennai



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