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S.A. No. 1119 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2024

CORAM

THE HON'BLE MR. JUSTICE V. LAKSHMINARAYANAN

SECOND APPEAL No. 1119 of 2013

&

M.P. No. 1 of 2013

S. Palaneswari

..Appellant

Vs.

1. The Chairman,
Valapady Town Panchayat,
Valapady, Salem District.
2. The Executive Officer,
Valapdy Town Panchayat,
Valapady, Salem District.
3. The Assistant Director of Town
Panchayat,
Salem.

..Respondents

Prayer: Second Appeal as against the judgment and decree dated 30.01.2013 passed in A.S. No. 76 of 2012 by the learned II Additional Subordinate Judge, Salem reversing the judgment and decree dated 04.11.2011 passed in O.S.No. 900 of 2010 by the learned I Additional District Munsif, Salem.



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For Appellants	::	Mr.Rooban Chakravarthy for Mr.A. K. Kumarasamy
For Respondents	::	Mr. V. Ramesh for R1 and R2 Mr.B. Tamizh Nidhi for R3

J U D G M E N T

The appellant is the plaintiff in O.S. No. 900 of 2010, which was filed before the I Additional District Munsif Court at Salem for the relief of permanent injunction restraining the defendants, who were three in number, from laying any road or pathway over the plaintiff's property.

2. The case of the plaintiff is that the suit schedule mentioned property belongs to her father Mahalingam and her brothers Senthilkumar, Kumaresan and Kumaran. The original owners of the property had settled in Bombay handing over the property to her for the purpose of being in possession and enjoyment of the same. The property came to the plaintiff's father by virtue of settlement deed dated 10.01.2007 executed in favour of plaintiff's father Mahalingam and registered sale deed dated 11.03.1987 in favour of plaintiff's father and mother. She would state that the family had created a small passage on the northern side of the suit property for transporting men, material and cattle. According to her, apart from family members, no other person had any right over the said passage. The defendants



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attempted to lay a road over the passage without acquiring the land. Hence, the plaintiff came forward with the present suit.

3. After service of summons, the defendants entered appearance and pleaded that there is an existing mud road running through Survey No. 12/1A and Survey No.12/2 and a tar road was laid in Survey No.12/1C. According to them, they are only laying tar road over the existing mud road and the plaintiff cannot object to the same.

4. On the basis of these pleadings, learned Trial Judge framed the following issues:

"1. Whether the plaintiff is entitled permanent injunction as prayed for?

2. To what other reliefs?"

5. On the side of the plaintiff, the plaintiff examined herself as P.W.1 and one Annadurai as P.W.2 and Exs. A1 to A7 were marked. On the side of the defendants, one Jagannathan entered the witness box as D.W.1 and marked Exs. B1 to B5.



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6.

The learned Trial Judge came to the conclusion that the property belongs to the plaintiff and the mud road had been laid over her property and the same cannot be converted into a tar road by the State/defendants without resorting to the process of acquisition and therefore, granted a limited order of permanent injunction restraining the defendants from interfering with the possession of the plaintiff except otherwise in accordance with law.

7.

Feeling aggrieved over the said judgment and decree, the respondents before me, who are defendants in the suit, filed A.S. No. 76 of 2012. The learned Appellate Judge came to the conclusion that it is the practice of the Government to replace mud roads into tar roads at regular intervals and therefore, allowed the appeal suit and dismissed the suit. Against the said judgment and decree, the present second appeal has been filed before this Court.

8.

This Court ordered notice regarding admission on 11.11.2013. The respondents, though served, did not enter appearance. Therefore, this Court requested Mr.B. TamizhNidhi, learned Additional Government Pleader to get instructions and appear on behalf of the 3rd respondent and Mr.Ramesh, learned Government Advocate appears on behalf of respondents 1 and 2.



9. The second appeal is admitted on the following substantial questions of law:

"1. Is the Lower Appellate Court justified in holding that the defendants are entitled to lay a tar road on the existing mud road without proof of defendants' title to the suit property?

2. In the absence of the denial of plaintiff's title to the suit property, either in the written statement or in the evidence, is the Lower Appellate Court justified in holding that defendants are entitled to lay a tar road in the suit property?"

As both the substantial questions of law are inextricably connected, they are heard together and disposed of by this judgment.

10. It is not in dispute that there is an existing mud road as found in the Advocate Commissioner's plan. The Advocate Commissioner had been appointed pursuant to the order of the Trial Court in I.A. No. 1320 of 2010 in O.S. No. 900 of 2010. The Commissioner's report shows that the defendants laid a tar road over the pathway marked as IHEC as shown in the plan. This is clear because blue gravel had been dumped over the portion marked as IHFG. It was at that stage that the plaintiff came forward with the suit for permanent injunction and therefore, the tar road could not be laid.



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11. Mr.B. TamizhNidhi, learned Additional Government Pleader, requested time for survey of the property and to submit a report. The Surveyor's Report shows that the property of the plaintiff is situated in Survey Nos. 12/1A, 12/1B and 12/1C of Pudupalayam Village, Vazhapadi Taluk, Salem District. The records produced by the respondents show that the said land has not been acquired by the Government for any public purpose including laying of road. It is settled position of law, by virtue of Article 300A of the Constitution of India, that a person, who is an owner of a property can be dispossessed of the same only in accordance with law. Insofar as laying of road is concerned, prior to the same, the property must vest with the Government and only thereafter, the road can be laid. The defendants have not produced any records to show that the property marked as IHEC or ABCD is the subject matter of any acquisition proceedings. Therefore, without adhering to the procedure contemplated, the defendants do not have a right to enter a private property for the purpose of laying road.

12. The finding of the Lower Appellate Court that it is the practice of the Government to convert a mud road into a tar road and the same has been adopted in this case is perverse. Law does not prevent an owner of a property to lay a private lane over his land. However, it certainly prevents persons like the defendants from



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entering upon a private lane and converting it into a public road. They are entitled to do so only after the land is taken over by them by means of acquisition or by surrender of the land by the owner or by such other means by which the title stands transferred to them from the owner of the property. In the absence of the same, in this case, the plaintiff would be entitled to an order of injunction as granted by the Trial Court.

13. When the title of the property vests with the plaintiff's father and brothers and the plaintiff is in possession of the property, she is entitled to prevent any unauthorised intrusion into the property . The substantial questions of law framed are therefore answered in favour of the appellant/plaintiff and against the respondents/defendants.

14. In fine, the second appeal stands allowed. The judgment and decree dated 30.01.2013 passed by the learned II Additional Subordinate Judge, Salem in A.S. No. 76 of 2012 reversing the judgment and decree dated 04.11.2011 passed by the learned I Additional District Munsif, Salem, in O.S. No. 900 of 2010 are set aside. The judgment dated 04.11.2011 rendered in O.S. No. 900 of 2010 by the learned I Additional District Munsif, Salem, stands restored. The suit in O.S. No.900 of 2010 is decreed restraining the defendants, their men, agents and others



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nv

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from interfering with the peaceful possession of the plaintiff with respect to the suit schedule mentioned property, except otherwise in accordance with law.

15. It is made clear that this judgment will not stand in the way of the defendants/respondents from acquiring the land if it is required for a public purpose and laying a road thereafter. As the respondents have acted in public interest, this Court is not inclined to impose costs.

16. This Court places on record the fair submissions made by Mr.B. TamizhNidhi, learned Additional Government Pleader, pursuant to the notice that had been given to him in this appeal. Connected M.P. is closed.

26.03.2024

nv

To

1. The II Addl. Sub Court, Salem.
2. The I Addl. District Munsif Court, Salem.

Second Appeal No. 1119 of 2013