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S.A.No.504 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08..02..2024

Coram

THE HON'BLE MR JUSTICE V. LAKSHMINARAYANAN

Second Appeal No.504 of 2013

and

M.P.No.1 of 2013

N.Murugavel

..... Appellant

-versus-

1.Tamilnadu Telugu Educational Academy

Rep. By its Secretary

Ms.Anusha P.Sarathy\*

Office at No.6, VOC 2<sup>nd</sup> Street,

Arumbakkam, Chennai 600 106.

[\*Cause Title amended. Memo recorded as present Secretary M/s.Anusha p.Sarathy instead of Mr.G.P.Sarathy vide Court order dated 08.01.2024 made in C.M.P.No.4832 of 2022]

2.Thirumalai Fine Arts,

Housing Welfare Society,

Rep. By its Secretary,

S.V. Arangeesa Mudhaliar,

10-A, (Old No.280),

Near Poonamallee High Road,

Amaravathy Nagar,

Arumbakkam, Chennai 600 106.

..... Respondents

Appeal filed under Section 100 of C.P.C. against the judgement and decree dated against the judgement and decree dated 06.11.2012 made in A.S.No.83 of 2009 by the learned VII Additional Judge, City Civil Court,



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Chennai, confirming the judgement and decree dated 12.08.2008 made in O.S.No.7380 of 2006 by the learned VI Assistant Judge, City Civil Court, Chennai.

*For Appellant : Mr.R.Subramanian*

*For Respondents : Mr.S.Mukunth, Senior Counsel  
for Mr.V.Babu for R1*

*R2-Given up vide order of the  
court dated 27.03.2019 in SA*

### **JUDGEMENT**

The present second appeal arises out of the judgement and decree of the VII Additional Judge (Full Additional Charge) [VI Additional Judge] in A.S.No.83 of 2009 dated 06.11.2012 in confirming the judgement and decree of the court of the learned VI Assistant Judge, City Civil Court, Chennai in O.S.No.7380 of 2006 dated 12.08.2008.

2. The parties will be referred to as the plaintiff and the defendants for the sake of convenience.

3. It is the case of the plaintiff that he is the owner of the A-Schedule mentioned property. The suit property was laid-out by the 2nd respondent/2<sup>nd</sup> defendant and as the previous owner he had granted a 15 feet passage which has been described as B-Schedule. Therefore, the plea of the plaintiff is that he is



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not only the owner of the A-Schedule property but also the B-Schedule property. The 1<sup>st</sup> defendant claims to be running a school under the name and style of 'Tamilnadu Telugu Educational Trust'. It was represented by its Secretary one Mr.G.P.Sarathy. Pending litigation G.P.Sarathy passed away and a memo was filed seeking to accept the cause title by impleading the name of the present Secretary viz., Mrs.Anusha P. Sarathy. The claim of the 1<sup>st</sup> defendant is that there is no cause of action for the suit and that the plaintiff had slept over his rights after filing of the police complaint on 01.07.2003. He denied the allegation that on 02.03.2006, the 1<sup>st</sup> defendant tried to block the passage and he further pleaded that no disturbance had been caused after 2003 to the plaintiff. He also pleaded that the suit B-Schedule property is vague and there is no mention about the extent of the property. He alleged that there is a collusion between the plaintiff and the 2<sup>nd</sup> defendant and curiously took a defence that there had been no Plot No.70 as developed by the 2<sup>nd</sup> defendant.

4. The 2<sup>nd</sup> defendant though served remained *ex parte*. The parties went to trial and the plaintiff examined himself as P.W.1 and marked Ex.A.1 to Ex.A.11. On the side of the defendants, the 1<sup>st</sup> defendant, the Secretary of the institution examined himself as D.W.1 and one Nataraja Iyer was examined as D.W.2. They marked Ex.B.1 to Ex.B.11. The trial court on the basis of the evidence came to a conclusion that the plaintiff has not proved that he is the



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owner of suit A-Schedule property and dismissed the suit. As against the dismissal of the suit, a regular appeal was preferred before the appellate court in A.S.No.83 of 2009. The learned appellate Judge set aside the finding with respect to the suit A-Schedule mentioned property but dismissed the suit with respect to B-Schedule property. Hence, the present second appeal.

5. Originally when the matter came up for admission before this court on 17.06.2013, notice regarding admission was ordered. Thereafter, the matter was taken up for hearing on 08.04.2019 and the second appeal was admitted on the following substantial questions of law:-

1) Whereas the plaintiff has claimed right of pathway as Easement of Necessity which has also been proved by Ex.A6 and Commissioner's report, is not the lower appellate court wrong in thinking that the plaintiff has claimed title?

2) Whether in law is not the lower appellate court wrong in relying on Ex.B2, Ex.B10 and Ex.B11 overlooking the Commissioner's Report with sketch of the surveyor?"

6. Since both the questions of law are inextricably mixed, they were heard together and answered accordingly.



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7. I heard Mr.R.Subramanian, learned counsel for the appellant/plaintiff and Mr.S.Mukunth, Senior Counsel appearing on behalf of Mr.V.Babu, learned counsel on record for the 1<sup>st</sup> respondent/1<sup>st</sup> defendant.

8. In order to satisfy myself as to whether layout had been approved, I called for the original of the document. On going through Ex.A.1, I find that plan has been annexed to it. The plan relates to various survey numbers and a larger portion of the property including suit A-Schedule property was purchased by the 2<sup>nd</sup> defendant from one Mr.M.V.Janakirama Naidu and others on 15.07.1983. After having obtained the suit property, the same was developed into a layout and a plan was also laidout for the property. The suit A-Schedule property was given Plot No.70 and from the plan it is clear that 15 feet road running from the plot of the plaintiff to 24 feet road had been made available.

9. Apart from this fact, a perusal of the plan shows that Plot No.70 is landlocked and if not for the road that had been given in the plan annexed to the property, it is absolutely inaccessible. I have to necessarily point out that the defendant is not the owner of the property and he is only a lessee of the property belonging to one Thiruvaduthurai Adeenam. A perusal of the plan annexed to Ex.A.1 makes it very clear that the temple land is situated to the north of the suit B-Schedule property.



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10. The Town Survey Land Register (TSLR) obtained for the suit A-Schedule property is under Ex.A.3. I find that TSLR specifically speaks about Plot No.70 and, therefore, the doubt raised by the learned trial judge on the non existence of this plot number vanishes in the light of Ex.A.1 read with Ex.A.3.

11. Now turning to the cause of action, as early as on 01.07.2003 the plaintiff had given a police complaint that G.P.Sarathy the Secretary of the 1st defendant institution had obstructed the pathway of the plaintiff.

12. Mr.S.Mukunth would argue that the temple is a proper and necessary party to the litigation and since the temple which is the owner of the land had not been made as a party, the present suit is not maintainable. Ex.A.4 would make it clear that it was not the Thiruvaduthurai Adeenam or any of its officers who came and obstructed the plaintiff from usage of B-Schedule property but it was Mr.G.P.Sarathy. It is not the business of the plaintiff to implead persons who have not threatened his usage but he can present the suit only as against the persons who have interfered with his right.

13. A perusal of Ex.A.4 and CSR annexed therewith shows that the grievance of the plaintiff was only against the 1<sup>st</sup> defendant and not against Thiruvaduthurai Adeenam. Had the Thiruvaduthurai Adeenam been impleaded it could have easily filed an application under Order 6 Rule 16 of CPC to strike itself out of the proceedings as there is no cause of action against



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Thiruvaduthurai Adeenam. Hence, the argument of Mr.S.Mukunth that

Thiruvaduthurai Adeenam is proper and necessary party is rejected.

14. Furthermore, it is necessary to point out that the 1<sup>st</sup> defendant had taken a specific plea in his written statement that he is not proposing to interfere nor he did ever interfere with the usage of the plaintiff over the B-Schedule mentioned property. In the light of this categorical statement, an Advocate Commissioner was appointed by the first appellate court in C.M.P.No.832 of 2010. The Advocate Commissioner filed a report as under:-

"5.The property runs to an extent of 0.01.30.5 square meter (learnt from the surveyor and his report). The schedule property is a vacant land with one Punga tree. On the southern end of the property, dry leaves were dumped. Adjacent to the south north border line, there is an underground tank (grounded) and concrete pillar floored with 15 cms (approx) were situated in the schedule property. Remaining portion of the property is vacant land and respondent school bus was halted there at the time of inspect of the property.

6. As per the report furnished by the surveyor and inspection of the property, I state that the schedule property is a vacant



land, marked as blue colour in the map furnished by the surveyor. The copy of the surveyor report with block map is filed herewith this report and the same may be considered as part and parcel of this report.”

15. This report had not been objected to either by the plaintiff or the 1<sup>st</sup> defendant. However, when I took up the second appeal for hearing, I was not satisfied with the report and therefore, by consent of either side the warrant was reissued to the Advocate Commissioner with a specific direction to find out the following:

(i) whether there is any lane running between 70/25, 70/15 and 70/19 to the plaintiff's property is in 70/59; and

(ii) he shall also see if there is an alternate access to the plaintiff's property running through the lane shown by the Surveyor on 22.02.2012 running between 70/18 and 70/43 having an access to the plaintiff's property

16. The learned Advocate Commissioner has also filed a report before this court. According to the learned Advocate Commissioner suit B-Schedule property is situated East-West abutting the property bearing D.No.70/19 and D.No.70/59. It is pertinent to point out that the suit A-Schedule mentioned



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property is D.NO.70/59. The report of the Advocate Commissioner further shows that the persons in occupation of the property in D.No.70/19 which is the neighbouring plot of the plaintiff are enjoying an access from their property to the 24 feet street that is situated due west. Whereas the owners of D.No. 70/19 are in a position to enjoy the lane. Curiously enough the very same lane has been denied for the access to the plaintiff who is the owner of the property situated on the eastern side at D.No.70/59.

17. It is here I have to take note of the objections filed by the learned counsel for the respondents to the Advocate Commissioner's report. Nowhere in the objection, the sketch that has been filed by the Advocate Commissioner has been denied. When the case is that of usage of road by grant, the objection seems to be one on alternate pathway being available to the plaintiff. If a property is capable of having more than one access, it is the entitlement of a person to have an access from all sides of the property if it is so situated.

18. In the particular case, comparing Ex.A.1 with the sketch that has been filed by the Advocate Commissioner, it becomes very clear that the suit B-Schedule mentioned property available to the plaintiff has been physically prevented by the 1<sup>st</sup> defendant by placing a gate in and over the passage. When the property does not belong to the lessor himself and it belongs only to the 2<sup>nd</sup> defendant who has plotted out the property and sold the same, I find it



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surprising that the 1<sup>st</sup> defendant should lay a gate across the lane over which he has no right.

19. The reason is not too far to see that the 1<sup>st</sup> defendant has annexed the land along with the access that he has and has converted the same for the usage of children's playground. The report of the Advocate Commissioner further states that the construction of pillar is new. At the time of first inspection by the Advocate Commissioner before the first appellate court no such pillar was available. It is settled position of law that if a person takes law into his own hands pending litigation then, he is duty bound to answer to the court for the same.

20. The first appellate court came to a conclusion that Ex.A.1 layout plan Ex.B.3 layout plan and Ex.B.9 layout plan have several discrepancies. The claim of the plaintiff is based on Ex.A.1 layout plan which had been laid out by the 2<sup>nd</sup> defendant. It erroneously came to a conclusion that in Ex.A.1 plan there is no pathway. Ex.A.1 plan specifically denotes a pathway running from the property of the plaintiff till 24 feet road as situated to the west of the property in D.No.70/59 and & 70 /19.

21. Furthermore, had the learned Judge looked into Ex.A.1 B-Schedule , he could have made it clear that what had been transferred to the plaintiff by the 2<sup>nd</sup> defendant was right of usage of 15 feet passage starting from East by 26 feet



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road behind Thiruvaduthurai Adeenam Temple property. It is this temple property which is now being occupied by the 1<sup>st</sup> defendant. Therefore, the finding of the lower appellate court that no specific right had been given to the plaintiff under Ex.A.1 sale deed and layout plan is erroneous as it is misreading of the document that had been placed before it.

22. Let me now turn to the documents on the basis of which the court below had come to the conclusion that there is no pathway. These are three documents namely, Ex.B.9, Ex.B.10 & Ex.B.11. Ex.B.9 is the layout plan produced by the 1<sup>st</sup> defendant to plea that there is no plot No.70. On a perusal of the same, it is clear that it is only “a proposed layout plan” and not the final plan. The author of the document has not been examined. It has been marked through D.W.1 who can have knowledge about the same. Immediately the counsel would invite my attention to Ex.B.10 whereunder Plot No.69 has been sold by the 2<sup>nd</sup> defendant in favour of one R.Palani. The trial court Judge came to the conclusion that only Survey No.199 was mentioned and there was no area left apart for the road.

23. Comparing Ex.B.9 with the schedule of Ex.B.10, I am able to discern that the proposed layout had been changed. This is because insofar as Plot No.69 is concerned under Ex.B.10 what had been sold was only 1932 square feet, however, when compared to sale deed under Ex.B.10, what had been sold



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was 2277 square feet. Therefore, Ex.B.9 does not tally with Ex.B.10.

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24. I will now have to look into Ex.A6, the sale made by one Moorthi in favour of one Radhakrishnan on 21.09.1992. The said vendor had purchased the property on 19.12.1985. After having been in enjoyment of the property for 7 years he sold it on 21.09.1992. In this document the southern boundary has been shown as road and the eastern boundary as temple land. If there was no road in existence as pleaded, then the question of the second sale having the road would not have arisen at all.

25. Both the courts below have failed to appreciate that under Ex.A.6, the sale in favour of the adjacent owner shows the road as one of its boundaries. Reliance can also be placed on Ex.B.12 which says that it is bounded on North by S.No.199 vacant land and to the East by Plot No.69. This vacant land as seen from the Commisisoner's report refers to the pathway that runs between Plot No.70/59 and Plot No.70/19. If there were no lane as argued by Mr.S.Mukunth, there will be absolutely no access for the persons residing in Plot No.70/19 on which there is a constructed house. Therefore, there has been a non-application of mind on the part of the courts below to the records filed in the case. The trial court did not look into the title deed and came to the conclusion that Plot No.70 itself does not exist. The first appellate court set aside that finding but placed reliance upon the proposed layout plan to dismiss the suit. Both these findings



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in my view are perverse.

26. I now turn to the report of the Advocate Commissioner who has come up with the following observation:-

“Overall, the B Schedule property is running in northern side to Plot No.70/19. Now, the land owners in Plot No.70/19 had renovated their compound wall in a part of the B schedule property. There is another security booth, constructed recently/temporarily, in the B schedule property. The road point of the lane was recently demolished and its part is available in the road. (Photograph enclosed).

h. If the temporary security booth is removed, there is full access to the plaintiff's property.

i. Over all there is a lane running in between 70/25, 70/15 and 70/15 to the plaintiff's property in 70/59, though not specified in surveyor map specifically, such lane is available in the field, which had been blocked and used by the School now.”

27. I adjourned the matter to enable the respondent to file objection. The aforesaid paragraphs have not been denied.

28. In the light of the above discussion, insofar as the first substantial question of law is concerned, the appellant wants the pathway by necessity. Having taken a plea of pathway by grant, there is no question of granting a decree on necessity and therefore, this question of law is answered against the



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appellant and in favour of the 1<sup>st</sup> respondent.

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29. Insofar as the second question of law is concerned, the first appellate court having failed to read Ex.A.1 properly under which the plaintiff had been given a right which is in prior point of time namely, 19.09.2001, it should have granted a decree in terms of the plan annexed to the commissioner's report. The 2<sup>nd</sup> question of law is answered in favour of the appellant.

**In the result,** the second appeal is allowed. The judgement and decree of the VII Additional Judge, City Civil Court, Chennai, dated 06.11.2012 made in A.S.No.83 of 2009 in confirming the judgement and decree of the learned VI Assistant Judge, City Civil Court, Chennai, dated 12.08.2008 made in O.S.No.7380 of 2006 are set aside. The plaintiff will be entitled to the access to the suit B-Schedule property. The plan filed by the Advocate Commissioner before this court shall form part and parcel of the decree. Suit in O.S.No.7380 of 2006 on the file of the VI Assistant Judge, City Civil Court, Chennai is decreed to the above extent. Since the parties are neighbours, they are directed to bear their respective costs throughout. Consequently, connected MP is closed.

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Index : yes / no  
Neutral Citation : yes / no



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Speaking / Non Speaking Order  
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To

- 1.The VII Additional Judge, City Civil Court, Chennai.
- 2.The VI Assistant Judge, City Civil Court, Chennai.



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V.LAKSHMINARAYANAN, J.

*kmk*

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