



S.A. No.554 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2024

CORAM:

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

S.A. No.554 of 2024
and
C.M.P.No. 17776 of 2024

P.Abmedkutty
S/o. Moinkutty

... Appellant

Vs.

1. Forest Range Officer,
Kargudi, Mudumalai,
The Nilgiris.
2. Field/Director Tiger Reserve,
Mudumalai,
The Nilgiris.
3. State of Tamil Nadu,
rep. by District Collector of
the Nilgiris,
Udhagamandalam.

.. Respondents

PRAYER : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 12.10.2022 in A.S.No. 02 of 2018 on the file of Subordinate Judge, Gudalur, The Nilgiris reversing the judgment and decree dated 22.12.2017 in



S.A. No.554 of 2024

O.S.No.36 of 2010 on the file of Principal District cum Judicial Magistrate, Gudalur, The Nilgiris.

For Appellant : Mr. Thangavadhana Balakrishnan

For Respondents : Dr.S.Suriya
Addl. Govt. Pleader

JUDGMENT

The appellant herein is the plaintiff, who had filed a suit in O.S. No. 36 of 2010 on the file of Subordinate Court, Gudalur, The Nilgiris, praying for the relief of permanent injunction against the defendants, who are forest officials restraining them from entering, trespassing or damaging the suit property of plaintiff by erecting juntas or any other wall constructions by ston, bricks or R.C.C. works (reinforced cement concrete) in front of eastern boundary side of suit property as described in the plaint schedule, an extent of 4.83 acres of land with four boundaries.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. According to the plaintiff, he purchased the suit property in the year of 2009 and patta also stands in his name and he possessed and



S.A. No.554 of 2024

enjoyed the property from the eastern boundary side of suit property, there is average 120 meters open immediate vicinity to the Ooty-Mysore National Highway Road margin. In that open space, the plaintiff is using a mud road as a pathway for ingress and access to the suit property from the margin of National Highway road, but in the year of 2010, he was informed by the 2nd defendant that they are going to erect juntas across and in front of the eastern side of the suit property. If they closed the access on the eastern side of suit property, he will be put into much hardship and it is only immediate vicinity to Ooty-Mysore National Highway Road on the eastern side of the property for him. Hence, he filed a suit for permanent injunction against the District Collector of Nilgiris and other forest officials.

4. The written statement was filed by the 1st defendant and the same was adopted by 2nd defendant and as per their written objections, at no point of time, they have not disturbed the plaintiff's enjoyment of patta land an extent of 4.83 acres in Survey No. 825/2, but they denied the plaintiff's claim of right of pathway on the eastern boundary of the suit property to reach Ooty-Mysore National Highway Road. They would



S.A. No.554 of 2024

further submit that on the eastern boundary of suit property, there is 1.20 meter open immediate vicinity to Ooty-Mysore National Highway Road margin, which belongs to the Government comes under Mudumalai Tiger Reserve. They would also submit that as per the Reserve Forest Notification, the Ooty-Mysore Main Road, which enters the Reserve near Thorapalli and passes through the reserve to end at Kakkanalla, the State border and the said Road is permitted to use for public transport only. Therefore, the said road is in Reserve Forest Area and the plaintiff has no access from the main Road through Reserve Forest. Further, the original access to the suit property should be on the southern side, but the plaintiff made false allegations against the defendants and came forward with improper description of suit property. Accordingly, they prayed to dismiss the suit.

5. Considering both side submissions, the trial court framed three issues and both parties adduced their evidence. On the side of plaintiff, the documents Ex.A1 to Ex.A12 were marked and P.W.1 and P.W.2 were examined. On the side of defendants, Ex.B1 to Ex.B3 were marked and D.W.1 was examined.



S.A. No.554 of 2024

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6. On considering Ex.A6 and A7, the trial court held that mud pathway shown in the photos have been used by the plaintiff for ingress and egress from his property and also by relying the ratio laid down by this court in **1997 (2) CTC 461** holding that if a person owns a property adjoining a Highway belonging to the Government abutting the Highway road is entitled to have access to the Highway from each and every point of his property. Accordingly, the suit was partly decreed. Challenging the said findings, the Forest Officials preferred an appeal in A.S.No.2 of 2018 before the Sub-Court Gudalur, The Nilgiris.

7. The first appellate judge independently analysed all the facts and evidence and framed the foremost issue as to whether the vacant land existing between the eastern side of the suit property and western side of the Ooty-Mysore main road is reserve forest or not and another issue is whether the plaintiff is entitled to claim the right of way through the vacant land existing between the eastern side of suit property and Ooty-Mysore main road. Considering the evidence as well as documents, the first appellate judge held that vacant land is belong to reserve forest, in which the plaintiff is not entitled to any claim in respect of way through



S.A. No.554 of 2024

civil court, he should have approached the Forest Settlement Officer for his remedy under the Forest Act not before the ordinary civil jurisdiction. Therefore, the relief granted by the trial court as such is not maintainable. Accordingly, the relief granted against the forest officials was set aside by allowing the Appeal. Challenging the said findings, now, the plaintiff preferred this Second Appeal.

8. The learned counsel for plaintiff prayed to set aside the findings of the first appellate court on the following grounds :-

(i) The judgment and decree of first appellate court are vitiated by misconception of law and entire facts. The decision is against all principles of Rule of law of the land and a violation of denying the fundamental right of way from the immediate vicinity from the National Highway and is liable to be set aside.

(ii) The first appellate court has seriously erred while considering the case of appellant herein and also was failed to take note of the pleadings and documents of the appellant.

(iii) The first appellate court failed to note that the blocking of appellant's pathway by the respondents would fetch them nothing but



S.A. No.554 of 2024

only to trouble the appellant's peaceful way to ingress and egress to his patta land. The appellant is neither an encroacher nor an offender, he is a law abiding citizen and has all rights to peaceful possession of his hard earned property.

(iv) The first appellate court miserably failed to analyse that there is no other alternative direct way to enter into the suit property of appellant/plaintiff from Ooty-Gudalur-Mysore Main road real facts and mechanically passed the impugned decree and judgment without applying the correct proposition of fundamental rights guaranteed to each citizen of our nation.

(v) The first appellate court failed to consider the reasonable contentions of appellant that the order of right of way granted by the trial court was only a smaller relief in order to meet the ends of justice.

9. By submitting all the aforesaid grounds, the learned counsel for plaintiff would also submit that the substantial question of law involved in this case is as follows :-

(a) As per the findings of the first appellate court, whether the appellant has to approach the Forest Settlement Officer to allow the



S.A. No.554 of 2024

pathway, which is already existing and been used as time immemorial at the eastern boundary side of Appellant's plaint property of patta land from the immediate open vicinity of Ooty-Gudalur-Mysore National Highway?

(b) Whether the respondents are having any legal right to create obstacle or hinder a pedestrian or those who are using the outer tarred portion of National Highway on the left or right side margin portion of the same, while the NH Road is also laid in the Forest land and the same is merged with one side boundary of Patta land?

(c) Whether the respondent can compel the appellant to go in search of other alternative way to the ingress egress to the plaint property while the Ooty-Gudalur-Mysore National Highway is very much existing as time immemorial with clear and immediate vicinity delivering on the eastern side of plaint property?

10. Notice was given to the respondents. Before submitting his arguments, in order to see the physical features, this Court directed both parties to produce photographs of the landed property and the existence of road. To that effect, the learned Addl. Government Pleader submitted a report. By submitting the status report, learned Addl. Government Pleader



S.A. No.554 of 2024

would submit that the alleged pathway is belong to forest reserve and in order to increase the land value of the property, the plaintiff attempted to form a pathway through reserve forest land from his property and approached this court as if it is the only pathway to reach his property from the Highway road, on the other hand, there is a concrete road is available to reach his patta land from the Highway road and the same was rightly appreciated by the first appellate judge, which needs no interference. Accordingly, she prayed to dismiss this Second Appeal as there is no substantial question of law involved.

11. Heard and considered the rival submissions made by the learned counsel for appellant as well as learned Addl. Government Pleader and perused the materials available on record.

12. Considering both side submissions, it reveals that the alleged land belongs to the appellant in Survey No. 825/2, an extent of 4.83 acres is adjacent to Reserve Forest land. Now, he claimed right through Reserve forest to reach his patta land from the National Highways, but as per the photographs as well as status report of forest officials, it reveals



S.A. No.554 of 2024

that in between plaintiff's land and from the national highway, there is a land belong to Reserve Forest and already there is a concrete road available for the plaintiff to reach his property from the Highway road. The photographs filed by the respondents would establish the said physical features. Therefore, though the pathway is available to him, without giving proper perspective, he approached the court as if he is having a only pathway, an average of 1.20 meters on the eastern side boundary of suit property open immediate vicinity to Ooty-Mysore National Highway Road margin. In fact, the said bid of land is belong to Government comes under Mudumalai Tiger Reserve. Considering all those facts, the first appellate judge rightly dismissed the suit, which needs no interference. But, there is an observation made by the first appellate judge that if the plaintiff needs any right of way, he has to approach the Forest Settlement Officer under the Tamil Nadu Forest Act. When the plaintiff is having the pathway on the southern side of suit property to reach his property from National Highways, the observation made by the first appellate judge is unwarranted one. However, there is no question of law involved for the claim made by the plaintiff through



S.A. No.554 of 2024

Reserve Forest land as such is not maintainable one.

13. In the result, this Second Appeal is dismissed as no merits and the findings of 1st appellate judge in A.S.No. 02 of 2018 is upheld and consequently, the suit filed by the plaintiff in O.S.No.36 of 2010 is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

28.08.2024

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

The Sub-Judge, Gudalur.

T.V.THAMILSELVI, J.

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S.A. No.554 of 2024

S.A. No.554 of 2024

28.08.2024