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S.A.No.706 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2024

**CORAM:
THE HONOURABLE Ms.JUSTICE R.N.MANJULA**

S.A.No.706 of 2014

and

MP.No.2 of 2014 & CMP.No.11626 of 2024

1 M.Allimuthu
S/o Munusamy Veeramathi Kovil Street,
Muyalampatti Thevour Village and Post,
Sankari Taluk, Salem District. ... Appellant

Vs.

1 A.Mariappan
S/o Arumugam,
Veeramathi Kovil Street,
Muyalampatti Thevour Village and Post,
Sankari Taluk, Salem District.

2 The Executive Officer
Special Selection Grade Town
Panchayat Thevour Town,
Sankari Taluk, Salem District. ... Respondents

PRAYER: Second Appeal is filed under Section 100 of C.P.C against to set aside the Judgement and Decree in A.S.No.27 of 2012 passed by the learned Subordinate Judge at Sankari on 25.03.2014 reversing the appeal on setting aside the judgement and decree passed in O.S.No.23/2009 on 21.06.2012 on the



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file of the Principal District Munsif Court at Sankari.

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For Appellant : Mr.T.Krishnappan, senior counsel
for M/S.R.Swarnalatha
For Respondents : Mr.S.V.Duraisolaimalai for R2
: No appearance for R1

JUDGEMENT

The appellant is the plaintiff who has filed the suit for a mandatory injunction against the defendants to remove the pipeline laid in the suit property, which is marked as 'X' , 'Y' in the suit rough plan. The Trial Court decreed the suit and on the First Appeal preferred by the 1st defendant, the first Appellate Court allowed the first appeal by reversing the judgment and decree of the lower Court and the suit was dismissed. Aggrieved over that, the plaintiff has preferred this second Appeal.

2.The short facts leading to the case of the plaintiff as pleaded in the plaint are as under:

The portion shown as ABCD in the rough plan is a North-South lane over which the plaintiff and his brothers and one Suriyanarayanan alone have got rights, as they have houses on the Western side of the lane. But the said fact has



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been stated in the family partition deed of the plaintiffs dated 10.07.1996 and the lane has been used by the brothers without any hindrance. On the south of the North-South lane, there is a panchayat road. The 1st defendant is claiming rights over the suit lane and he has got a pipeline connection which has been given through the suit lane, which is shown as 'X' , 'Y' in the plaint rough plan and the 2nd respondent panchayat has given a pipeline through the private property; the plaintiffs raised objections to the 2nd respondent to remove the same. As the 2nd respondent did not remove the same, the plaintiff has filed the suit for a mandatory injunction to remove the above pipeline.

3. The written statement filed by the 1st defendant in brief is as follows:

The suit lane is a public lane and it belongs to the panchayat. Only in the panchayat lane, the water connection has been given and that cannot be obstructed by the plaintiffs. The said panchayat lane is situated in Survey No.628/14. Similar connections have been given by the panchayat through the said lane to the neighbour of the defendant by name Ayyavu. As the plaintiff has claimed exclusive rights over the common public pathway, the suit should be dismissed.



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4. The brief averments of the 2nd respondent's written statement:

The suit has been filed without impleading proper parties and the suit claim itself has become infructuous.

5. On the basis of the above pleadings the trial Court has framed the following issues:

'1.வாதியால் கோரப்பட்டுள்ளவாறு செயலறுத்துக்கட்டளை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?

2.விசாரணை நீதிமன்றத்தின் தீர்ப்பு மற்றும் தீர்ப்பாணை நிலைநிற்கத்தக்கதா?'

6. During the course of the trial, on the side of the plaintiffs, two witnesses have been examined as PW.1 and PW.2 and Ex.A1 to Ex.A10 were marked. On the side of the 1st defendant, one witness has been examined as D.W.1 and Ex.B1 to Ex.B9 were marked. On the side of the 2nd defendant, he examined himself as D.W.2 and Ex.B10 to Ex.19 were marked. The court documents i.e., commissioners report and plan have been marked as Ex.C1 and Ex.C2.

7. After the conclusion of the trial and on considering the materials available on records, the Trial Court has decreed the suit as prayed and on



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appeal preferred by the 1st respondent, the First Appellate Court allowed the first appeal by reversing the judgment and decree of the trial Court by setting it aside. Now the plaintiff has filed this second appeal by raising the following substantial questions of law:

"a) Whether the judgment and decree of the First Appellate Court is maintainable, as the appellant before the First Appellate Court is not aggrieved on the judgment and decree of the trial court and as the second respondent/defendant Municipality having accepted the judgment and decree of the trial court on removing the pipe line laid in the suit land to the appellant house before the First Appellate Court?

b) Whether the trial Court is right in reversing the judgment and decree of the trial Court without framing issue, as the suit land belongs to second respondent/defendant Town Panchayat or Government and render a finding that the suit land is belongs to public pathway which is of no evidence?

c) Whether the First Appellate Court right in rendering a decision that the appellant has not proved the suit land belongs to the appellant herein? Even after rendering a decision that suit land neither belongs to appellant herein nor belongs to first respondent/appellant before the First Appellate court without rendering a decision that the suit land belongs to the second



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respondent/second defendant Town Panchayat or framing a issue to that effect?

d) Whether the First Appellate Court right in rendering a decision that the suit itself is not maintainable, as the sit is filed for the relief of injunction and mandatory injunction without seeking the prayer of declaration? After proving the suit land belongs to the appellant herein, after admission of the first respondent/appellant that the same is not belong to the first respondent and his brothers and alleging that the suit land belongs to the second respondent/second defendant Municipality? "

8. The learned counsel for the 1st respondent reported no instructions and withdrew his vakalat and a memo has been filed in this regard and the same is recorded.

9. The learned counsel for the appellant and the second respondent submitted that subsequent to the decree passed by the trial Court, the 2nd respondent Municipality has removed the pipeline connection in compliance with the decree and in fact, the 1st respondent himself has sold the suit property in favour of one Kandhan during the pendency of the suit and the person interested in the suit has not been impleaded as a party.



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10. So far as the 2nd respondent is concerned, the categorical claim of the 2nd respondent is that the suit lane is a public lane, belonging to the panchayat and the 2nd respondent has got the obligation to give a water connection to whoever applies for a water connection through the public lane.

11. As of now, there is no other interested and contesting party available on record except the 2nd respondent panchayat. Even though the 2nd respondent has stated that he had executed the decree passed by the trial Court even when the 1st appeal was pending, the fact remains that the plaintiff has got the obligation to prove that the suit lane is private lane as claimed by him in the plaint. The said contention was not accepted by the First Appellate Court, as the suit lane is said to be belonging to the panchayat and the panchayat is very much a party to the suit. The substantial questions of law that would arise in the change of circumstances can be restricted as under:

"Whether in law, it is right for the First Appellate Court to hold that the suit lane is a public lane and it belongs to the 2nd respondent panchayat?"

12. The First Appellate Court had placed reliance on Ex.A10, which had been marked by the plaintiff during the cross-examination of the 1st defendant.



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In the said Ex.A10 itself, the suit lane has been shown as a common lane.

Though in the document, it is shown that the lane is a common lane, the private parties, who are the plaintiffs claim exclusive right over the lane but did not produce any document to show that the lane has ever been standing in their name. On the contrary, the lane which has been seen in Survey No.628/2014 has been shown in the revenue records as a lane without mentioning any private person's name. Had it been the lane belonging to the private parties, the revenue records would have shown the persons who have rights over the alleged private lane. The nature of the entries which has been shown in respect of Survey No.628/2014, which is a lane, would only show that it is a common lane.

13. In fact, the plaintiff themselves have admitted that in the defendants' title deed Ex.B10, it is shown as a common lane. The plaintiff has also admitted that in Ex.B10, Survey No.628/14 has been shown just as a common lane without mentioning the names of any individuals. But these facts have been omitted to be looked into by the trial Court. The Trial Court has proceeded to go only on the basis of the details shown in the partition deed of the plaintiff. When the trial Court has discussed Survey No. 628/14, it ought to have read it along with Ex. B10 and made discussion in this regard. The First Appellate Court had rectified the mistake during the first appeal in its judgment and has held that the



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suit lane has not been proved as a private lane belonging to the plaintiffs. Even though the 2nd respondent has executed the trial Court decree by removing the pipeline, that will not preclude the 2nd respondent from putting up any pipeline in favour of any third parties at any future point in time, considering the nature of the lane as a public lane.

14. The learned counsel for the appellant submitted that the 1st plaintiff has settled the suit property in favour of his son and his son has sold the property in favour of some third parties. The transactions made by the parties in respect of their properties cannot have any implication on the suit lane, which is rightly held to be a public lane.

15. In the result, the Second Appeal stands **dismissed**. The judgment of the First Appellate Court in A.S.No.27 of 2012 passed by the learned Subordinate Judge at Sankari, setting aside the judgement and decree passed by the Principal District Munsif Court at Sankari in O.S.No.23/2009 dated 21.06.2012, is confirmed. No costs. Consequently, the connected miscellaneous petitions are closed.

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jrs



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Index : Yes/No
Speaking/ Non-Speaking
Internet: Yes/No
Neutral: Yes/No

To

- 1.The Principal District Munsif Court at Sankari.
2. The Subordinate Judge at Sankari.
- 3.The Executive Officer,
Special Selection Grade Town
Panchayat Thevour Town,
Sankari Taluk, Salem District.
4. The Section Officer, V.R.Section,
High Court, Madras.



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