



S.A.No.809 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T.ASHA

S.A.No.809 of 2021
and
C.M.P.No.15586 of 2021

K.Munisamy

... Appellant

-Vs-

A.Jayaraman

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure Code, 1908, to set aside the judgement and decree dated 10.02.2021 made in A.S.No.6 of 2020 on the file of the Court of the Additional Subordinate Judge, Vellore, by confirming the judgement and decree dated 29.11.2019 made in O.S.No.236 of 2001 on the file of the Court of the Additional District Munsif, Vellore.

For appellant : Mr.A.Gowthaman

For respondent : Mr.G.Lokeshwaran



S.A.No.809 of 2021

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JUDGMENT

The plaintiff is the appellant before this Court, challenging the judgment and decree passed by the learned Additional District Munsif, Vellore, in O.S.No.236 of 2001 and the counter claim filed by the defendant which has been confirmed in the appeal by the learned Additional Subordinate Judge, Vellore, in A.S.No.6 of 2020.

2. The facts of the case are briefly set out hereinbelow and the parties are referred to in the same ranking as before the Trial Court.

FACTS OF THE CASE:

2.1. The plaintiff has filed the above referred suit for injunction restraining the defendant, his men, relatives, agents or any other person from interfering with his peaceful possession and enjoyment of the suit schedule property.



S.A.No.809 of 2021

WEB COPY

2.2. The suit schedule property is a vacant land (pathway) measuring 13 ft. in breadth and 60 ft. in length running from Mandaveli Street on the east and proceeding northwards till the rivulet (odai). The four boundaries have been given as follows:-

On the west by the defendant's house;

On the south by one Machammal's house and the main road;

On the north by the rivulet;

On the east by Mandaiveli Street.

2.3. It is the case of the plaintiff that his property and the suit property are all poramboke lands and the pathway has been in his exclusive possession and enjoyment for over 20 years. This is the only access to reach his house. The plaintiff would submit that he has been paying penalty for enjoying the suit property.

2.4. The defendant, who is the plaintiff's neighbour and who owns a house on the western side of the suit property, has been



S.A.No.809 of 2021

giving trouble to the plaintiff by interfering with his peaceful possession and enjoyment of the suit pathway. The defendant had attempted to shift the low tension electric cables from his side to the plaintiff's side and after the plaintiff's protest, the Electricity Board had dropped the move. However, he would submit that the defendant is continuing to interfere with his possession. Therefore, left with no other option, the plaintiff has come forward with the suit in question.

2.5. The defendant had filed a written statement *inter alia* denying the contents in the plaint. He would submit that the suit property, even as per the description in the plaint, would clearly show that the suit pathway is lying between the house of the defendant and the plaintiff and this is a poramboke land. The defendant, however, claims an exclusive right to the pathway.

2.6. The defendant would submit that the plaintiff's house is



S.A.No.809 of 2021

situate in Mandaveli Street and on the north of his house, there is another street called Yadava Street. He would submit that the entrance of the plaintiff's property is only on the northern side viz., in the Yadava Street. He also has an opening to the Mandaveli Street on the eastern side (the suit property). The defendant would go on to concede that the suit property is the passage which connects the Main Road on the south to Yadava Street on the north and therefore, it is not an exclusive property of the plaintiff.

2.7. He would also submit that one Machammal is a necessary party to the proceedings and she has not been impleaded. Therefore, the suit is not maintainable. However, the plaintiff has not been able to produce any document to show the exclusive enjoyment of the common passage by him. Therefore, the defendant sought to have the suit dismissed.

2.8. Pending the suit, it appears that the plaintiff had put up a



S.A.No.809 of 2021

wall. Therefore, an additional written statement in the form of the counter claim, came to be filed by the defendant. In the additional written statement, the defendant would contend that the suit property is the common pathway and a public pathway, not exclusively owned by the plaintiff. He would submit that there are other persons living in the vicinity who have been using this pathway. The defendant would further submit that pending the suit, the plaintiff had put up a wall on two points, thereby, preventing the access to the other co-users. The plaintiff had fixed a door at the front wall enabling him to go to his house and preventing others from using the pathway. The defendant, therefore, came forward with the counter claim seeking mandatory injunction directing the plaintiff to remove the wall that has been illegally constructed by him pending the suit.

TRIAL COURT:

3. The learned Additional District Munsif, Vellore, on



S.A.No.809 of 2021

considering the pleadings, had framed the following issues in the suit and in the counter claim.

“ISSUES IN THE SUIT:

- 1) *Whether the plaintiff is entitled for permanent injunction against the defendant?*
- 2) *Whether the schedule of property is incorrect?*
- 3) *Whether the suit has no cause of action?*
- 4) *To what other reliefs?*

ISSUES IN THE COUNTER CLAIM:

- 1) *Whether the plaintiff erected two walls in the suit property during the pendency of lis?*
- 2) *Whether the suit is bad for non-joinder of necessary parties?*
- 3) *Whether the defendant is entitled for the relief of mandatory injunction as prayed in the counter claim?”*

4. The plaintiff had examined himself as P.W.1 and marked Exs.A1 to A15. The defendant had examined himself as D.W.1 and two other witnesses as D.W.2 and D.W.3 and marked Exs.B1 to B4.



S.A.No.809 of 2021

WEB COPY

The Advocate Commissioner was examined as C.W.1 and Exs.C1 to C4 were marked through him.

5. The learned Judge, on perusing the evidence on record, had observed that the entire land measuring 3.00 acres in S.No.289/1 was a Government poramboke property. However, patta had been granted by the Government to the wife of the plaintiff as well as the defendant to a limited extent and also to other persons in the locality. The suit property continues to remain as a poramboke land and has not been allotted to anyone. This property is situate between the property of the plaintiff and the defendant and the same was being used as a pathway not only by the plaintiff and the defendant, but, also by others. Pending the suit, the plaintiff has blocked the access to this pathway by putting up a wall to the north of the property which has been allotted to Machammal and another wall on the northern extreme to the end of the property of the plaintiff and the defendant, thereby, effectively blocking the 13 ft. pathway. The



S.A.No.809 of 2021

Advocate Commissioner has also reported about the same in Ex.C4.

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6. The plaintiff has admitted the fact that pending the suit, he had put up a wall and he has also given an opening in the same. The defendant had examined D.W.2 and D.W.3 who have deposed that Exs.A4, A5 and A6 are all documents which have been created by the plaintiff and they have opined that the said documents have been obtained fraudulently by the plaintiff. The Trial Court has also returned a finding that Exs.A5 and A6 had not been issued by the respective officers. With reference to the issue as to whether the pathway belongs exclusively to the plaintiff, the Trial Court had returned a finding that the pathway is not in the exclusive enjoyment of the plaintiff and the defendant would also use the same. The learned Judge, therefore, allowed the counter claim and dismissed the suit by observing that neither oral nor documentary evidence has been produced by the plaintiff to show that the suit property is in his exclusive occupation.



S.A.No.809 of 2021

LOWER APPELLATE COURT:

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7. Challenging the said judgment in the suit as well as the counter claim, the plaintiff has filed an appeal in A.S.No.6 of 2020 on the file of the Court of the Additional Subordinate Judge, Vellore.

8. The learned Judge also confirmed the judgment and decree passed by the Trial Court and dismissed the appeal.

9. Challenging the same, the plaintiff is before this Court.

10. Heard the learned counsel on either side and perused the materials available on record.

11. After hearing the arguments, the substantial questions of law that arise for consideration of this Court are as follows:-

“1)Whether the Courts below are correct in law in not granting the decree for injunction especially



S.A.No.809 of 2021

when the plaintiff has proved the disturbance by the defendant?

2)Whether the Courts below are correct in law in dismissing the suit only on the ground that prayer for declaration has not been sought for?”

DISCUSSION:

12. Admittedly, the property in question is a poramboke land though in respect of the properties in and around the suit property patta has been granted to the plaintiff's wife as well as the defendant. As stated earlier, the total extent in the suit Survey Number is about 3.00 acres, it is within this 3.00 acres that the plaintiff, the defendant and Machammal had constructed their houses. The suit pathway is being used by the plaintiff to reach his property to the east. Though the defendant had contended that there is a pathway to the north of the suit property abutting the plaintiff's property, the same has not been proved by the defendant.

13. The defendant and Machammal have property abutting



S.A.No.809 of 2021

the main road and they have direct access to the main road on the south. The evidence indicates that there is a rivulet running on the north of the plaintiff's property. The plaintiff cannot claim an exclusive right to the property which belongs to the Government. Though in his plaint, he has contended that he is paying penalty charges for the suit property, no document has been filed to substantiate the same. The fact that the wall has been put up by the plaintiff pending the suit and that effectively cuts the access of any other persons to the rivulet is evident, on the face of it, and the wall is liable to be pulled down.

14. The defendant, in his additional written statement, has clearly admitted that this pathway is the access to the plaintiff's property, which reads as follows:-

“In between the two houses of the plaintiff and defendant there is a vacant land in breadth of 13ft. to a length of more than 100 ft. which has been shown as a pathway by the plaintiff. The said pathway is a public



S.A.No.809 of 2021

way and it is not exclusively owned by the plaintiff. The length of the pathway is not 60 ft. as mentioned in the plaint. On the north of the channel which forms the northern boundary of the house of the plaintiff and defendant, Murugan, Settu, Ayyavu, Nirmala and Balan are owning houses which are their separate properties.”

15. Therefore, the defendant has clearly accepted the fact that the property in question is being used by the plaintiff as the pathway. The defendant, in his original written statement, has claimed title to the suit property and in his additional written statement, has stated that the pathway is being used by the public. However, no evidence has been produced to confirm the same. Therefore, considering the fact that the defendant after admitting the usage of the property by the plaintiff has claimed exclusive right to the suit pathway, the Courts below ought to have held that there has been interference by the defendant in the enjoyment of the pathway by the plaintiff. Therefore, the Courts below ought to have granted decree for injunction.



S.A.No.809 of 2021

WEB COPY

16. Accordingly, this second appeal is allowed insofar as it relates to the relief of injunction sought by the plaintiff and the judgments and decrees in A.S.No.6 of 2020 on the file of the Additional Subordinate Court, Vellore, and in O.S.No.236 of 2001 passed by the learned Additional District Munsif, Vellore, regarding this relief are set aside. Accordingly, the substantial question of law no.1 is answered in favour of the plaintiff.

17. As already stated, the property in question is admittedly a poramboke land, over which, the plaintiff cannot seek a declaration. Therefore, the suit filed without seeking a declaration and only seeking for injunction is very much maintainable and therefore, the substantial question of law no.2 is answered in favour of the plaintiff and the findings of the Courts below in this regard are set aside.

18. As regards the counter claim filed by the defendant,



S.A.No.809 of 2021

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considering the fact that the plaintiff himself has admitted that the wall has been constructed by him over the suit property pending suit and the same effectively prevents the access from the south of the plaintiff's land till the rivulet on the north and taking note of the fact that the property in question is a poramboke land, over which, no right has been granted to the plaintiff exclusively, the decree for mandatory injunction granted by the Courts below has to be necessarily confirmed.

Accordingly, this second appeal stands partly allowed.
Consequently, connected C.M.P. stands closed. No costs.

18.03.2024

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

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To

1.The Additional Sub Judge, Vellore.

2.The Additional District Munsif, Civil Judge (Junior Division), Vellore.

3.The Section Officer, V.R.Section, High Court, Madras.



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S.A.No.809 of 2021

P.T.ASHA, J.,

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S.A.No.809 of 2021

18.03.2024