



S.A. Nos.668 & 669 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :14.10.2024

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

S.A.Nos.668 & 669 of 2024

and

C.M.P.No.21415 of 2024

V.Mani

... Appellant in both S.As

Vs

- 1.The Commissioner,
Corporation of Chennai,
Rippon Building, Chennai-600 003.
- 2.The Assistant Engineer,
Corporation of Chennai,
Division No.65, at No.77, Kamarajar Salai,
Virugambakkam, Chennai 600 092.

3.T.Saraswathi

... Respondents in both S.As

PRAYER in S.A.No.668 of 2024: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 23.07.2024 passed in A.S.No.152 of 2011 by the learned II Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated



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30.06.2010 passed in O.S.No.4423 of 2001 passed by the learned XII Assistant Judge, City Civil Court, Chennai.

PRAYER in S.A.No.669 of 2024: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 23.07.2024 passed in A.S.No.493 of 2010 by the learned II Additional Judge, City Civil Court, Chennai, which reversed the judgment and decree dated 30.06.2010 passed in O.S.No.5950 of 2005 passed by the learned XII Assistant Judge, City Civil Court, Chennai.

For Appellants	:	Mr.C.Umashankar
For R1 & R2	:	Ms.P.T.Ramadevi
For R3	:	Mr.S.K.Chandrakumar

COMMON JUDGMENT

The appellant has filed these Second Appeals against the judgment and decree dated 23.07.2024, passed in A.S.No.152 of 2011 by the learned II Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 30.06.2010 passed in O.S.No.4423 of 2001 by the learned XII Assistant Judge, City Civil Court, Chennai. The appellant also challenges the judgment and decree dated 23.07.2024 passed in A.S.No.493 of 2010 by the learned II Additional Judge, City Civil Court, Chennai,



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which reversed the judgment and decree dated 30.06.2010 passed in O.S.No.5950 of 2005 by the learned XII Assistant Judge, City Civil Court, Chennai.

2. Challenging the findings rendered in the common judgement made by the Courts below, the appellant has preferred these second appeals.

3. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

4. Before the trial court, the appellant filed a suit in O.S.No.4423 of 2001 for a declaration that he is the absolute owner of the B-Schedule property and sought an injunction restraining the defendants from interfering with the erection of a gate in the B-Schedule property, which has an extent of 8 x 20 sq.ft. = 160 sq.ft. The 3rd respondent, Saraswathi, also filed O.S.No.5950 of 2005 for a declaration that the B-Schedule property is a common pathway, and that she has a right of access to her A-Schedule property. She also sought a mandatory injunction directing the appellant to



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remove the gate structure in the B-Schedule property and a permanent injunction to prevent interference with her possession of the B-Schedule property.

5. Since the property and the parties were the same in both cases, the Court jointly considered the oral and documentary evidence presented by both parties. The Commissioner of Corporation, Chennai, was also one of the defendants in both suits, along with the Assistant Engineer, Division No.65.

6. The common issues in both suits were whether the B-Schedule property, with an extent of 160 sq.ft., is a common pathway or whether the appellant/Mani is entitled to title over the B-Schedule property. Another issue was whether the appellant/Mani had encroached upon the property.

7. The appellant/Mani contended that he had purchased 3,220 sq.ft.



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through Ex.A1, a sale deed, and that the B-Schedule property (160 sq.ft.)

was part of the A-Schedule property, thus entitling him to construct on it.

However, the Corporation objected, stating that the B-Schedule property was not an individual property but a common pathway. According to the Corporation, the property was part of an approved layout plan for Iyyappan Nagar, formed in 1969, and served as a common passage for Plot Nos.11, 12, and 13. They argued that the appellant had wrongly been granted patta for this area and had encroached on the road to construct illegally.

8. The Corporation also submitted that a wrong patta had been granted by the Thasildar in favor of the appellant/Mani for an extent of 3,400 sq.ft., though he had only purchased 3,220 sq.ft. The road portion was erroneously included in the patta, which was later dismissed by the District Revenue Officer (DRO) on 03.07.2007 (Ex.A6). An appeal was filed, and it was also dismissed by the Revenue Department. Therefore, as of now, no title stands in the appellant's name with respect to the 160 sq.ft., which is demarcated as public road for Plot Nos.11, 12, and 13.



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9. After considering all the evidence on record, the Courts below found that Plot No.12 belongs to the appellant/Mani, and Plot No.13 belongs to Saraswathi, the plaintiff in the other suit. They also found that the 160 sq.ft. in the B-Schedule property is at the dead end of a public road and is a common passage for Plot Nos.11, 12, and 13. Therefore, the appellant/Mani is not entitled to the relief of declaration as prayed for. The Court concluded that the encroachment made by him was proven by Saraswathi, and that she is entitled to a declaration that the 160 sq.ft. B-Schedule property is a common pathway, and the appellant must remove his encroachment.

10. As a result, the suit filed by the appellant/Mani in O.S.No.4423 of 2001 was dismissed, and the suit filed by Saraswathi in O.S.No.5950 of 2005 was decreed.

11. Challenging these findings, the appellant/Mani preferred A.S.No.493 of 2010 and A.S.No.152 of 2011. Both appeals were jointly heard by the learned Appellate Judge, who independently analyzed the facts



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and evidence. The Court observed that the appellant/Mani was entitled to only 3,220 sq.ft. as per the sale deed, and that the remaining 160 sq.ft. belonged to the common pathway, to which he had no right. Accordingly, both appeals were dismissed, holding that the appellant had encroached on the property and was not entitled to any relief. The court also noted that the appellant had made a similar encroachment in 1996, which was removed following objections by the Corporation. He subsequently obtained an ex-parte decree in O.S.No.4423 of 2001 and rebuilt the construction. The court dismissed the appeals as being devoid of merit, concluding that the appellant was an encroacher.

12. Challenging these findings, the appellant has preferred these second appeals.

13. The learned counsel for the appellant submitted that the construction made by the appellant/Mani would not cause any hindrance to the public or to the respondent, as the area is a dead end of the plot. The counsel argued that the 3rd respondent, Saraswathi, had also made some



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form of encroachment, and therefore she was not entitled to the relief of declaration. However, the Courts below had granted the relief in her favor in O.S.No.5950 of 2005. The appellant had been enjoying the B-Schedule property for many years by constructing a sump for his house, which did not cause any inconvenience to the public. The counsel contended that the Courts below failed to appreciate these facts and erred in dismissing the appellant's suit while granting relief to the respondent. Therefore, the appellant prayed that the findings of the Courts below be set aside.

14. The learned counsel for the respondent submitted that it is an undisputed fact that Plot Nos.12 and 13 belong to the appellant/Mani and the 3rd respondent/Saraswathi, respectively. The only disputed issue is the 160 sq.ft. B-Schedule property. According to the appellant, it is a dead end adjacent to his Plot No.12, and he enjoyed it by constructing without causing interference to others. However, the adjacent owner, Saraswathi (Plot No.13), filed a suit, O.S.No.5950 of 2005, against this appellant not to cause hindrance and obtained a decree to remove him from the B-Schedule property.



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15. The counsel for the respondent strongly denied the appellant's claim, stating that as per the layout, the B-Schedule property is a common passage for Plot Nos.10, 11, and 12. The appellant had encroached upon it and constructed a structure, thereby interfering with others' rights. Thus, Saraswathi filed O.S.No.5950 of 2005. The Corporation also filed a written statement, confirming that the B-Schedule property is a common public road for Plot Nos.11, 12, and 13. Earlier, a patta granted in favor of the appellant was canceled by officials, as the Thasildar had erroneously included the common pathway in the appellant's patta. Appeals against this cancellation were dismissed (Ex.A6 and A7). Therefore, the 160 sq.ft. B-Schedule property is a common pathway, and the appellant has no exclusive right to it. The Courts below rightly observed this, and there is no need for interference by this Court.

16. The findings rendered by the Courts below are confirmed. Accordingly, these second appeals are dismissed as no substantive question of law involved. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs. Time to remove encroachment 2



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Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

1. The II Additional Judge, City Civil Court, Chennai.
- 2.The XII Assistant Judge, City Civil Court, Chennai.
- 3.The Section Officer, VR Section, High Court of Madras.

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