



S.A.No.1128 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

S.A.No.1128 of 2019

and

C.M.P.No.24524 of 2019

1.The Head Master,
Government Higher Secondary School,
Kadiripuram,
Krishnagiri Taluk & District.

2.The Chief Educational Officer,
Krishnagiri

3.The Block Development Officer,
Kaveripattinam

4.The District Collector,
Collectorate,
Krishnagiri

... Appellants

Vs.

1.Paanjali @ Nagammal (Deceased)

2.Karunakaran

3.K.Raja

4.Saratha



S.A.No.1128 of 2019

5.Poongodi

6.Karunakaran

7.Gandhi

8.Nagarani

... Respondents

(1st respondent died.
Respondent Nos.4 to 8
are brought on record
as the legal
representatives of the
deceased 1st respondent
vide Court order,
dated 26.06.2024 in
C.M.P.No.11974 of
2024 in S.A.No.1128 of
2019 by VLNJ)

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree passed by the learned Subordinate Judge at Krishnagiri in A.S.No.5 of 2018, dated 15.07.2019, in partly allowing the judgment and decree passed by the learned District Munsif at Krishnagiri in O.S.No.202 of 2013 dated 07.02.2017.

For Appellants : Mr.R.Ramanlal,
Additional Advocate General - IV
for Mr.M.Muthusamy
Government Advocate

For R1 & R2 : Mr.C.Jagadish

For R3 : Mr.M.S.Swathish Kumar



S.A.No.1128 of 2019

JUDGMENT

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Defendant Nos.2 to 5 in O.S.No.202 of 2013 on the file of the learned District Munsif at Krishnagiri are the appellants before me.

2. For the sake of convenience, the parties will be referred to as per their ranks in the suit.

3. The 1st and 2nd respondents had presented the suit for the relief of declaration that they have easementary right over the cart track in the plaint pathway marked as 'A D E F' and for permanent injunction restraining the defendants from interfering with their mamool rights over the suit cart track. Pending the suit, as the pathway was closed, the plaintiffs amended the suit by seeking one more relief of mandatory injunction.

4. The plaintiffs are the owner of the suit 'A' schedule mentioned property. According to them, the access to their suit property from the main road is through a pathway marked as 'A D E F' in the suit plan. 'A D E F' pathway runs over the Government poramboke land. To be specific, the pathway runs over the Survey No.664 of Mittahalli Village, Krishnagiri



S.A.No.1128 of 2019

Taluk and District. This pathway was sandwiched on either sides by the land belonging to the Government.

5. The plaintiffs claimed that the access from the main road to their property situated to the southern side is only through this pathway. They were constrained to approach the Court because defendant Nos.2 to 4, on the basis of the order passed by the 5th defendant, attempted to obliterate the pathway by digging a pit to put up a compound wall and closing the old cart track.

6. Pending the suit, as the cart track was closed, an application for amendment of plaint had been moved seeking to add the relief of mandatory injunction directing the removal of the wall so constructed. The amendment application was taken on file in I.A.No.427 of 2014 and was allowed on 21.07.2014.

7. On service of summons, the 1st defendant, who is the President of the Parents Teachers Association, filed a detailed written statement. He would state that as per the order of the District Collector, the Patta for an



S.A.No.1128 of 2019

extent of 0.88 Hectares in Survey No.664 had been granted in favour of the 3rd defendant and that the plaintiffs have an alternate pathway on the northern side of Kathiripuram Village, and it is that passage which has been used by the plaintiffs. He would state that since the Government Higher Secondary School has been constructed by the Government, in order to protect the property of the Institution, a compound wall is essential. He would further plead that since one Saraswathy was allotted the land in Survey No.665 of the said village, she is a proper and necessary party to the suit.

8. The 2nd defendant filed a written statement and it was adopted by defendant Nos.3 to 5. In the written statement, they pleaded that the Survey No.664 of Mittahalli Village belongs to the Government and the 5th defendant/District Collector had transferred the said property in favour of the 3rd defendant, namely the Chief Educational Officer, Krishnagiri. They would state that there is no pathway over the property and even the revenue records do not reflect the existence of the pathway. They would also file an additional detailed written statement, after the prayer was amended by the plaintiffs, in which they would plead that the plaintiffs did not get any



S.A.No.1128 of 2019

interim order in their favour but had made a false plea as if an order had been obtained and on that basis, they amended the plaint.

9. On the basis of these pleadings, the learned District Munsif at Krishnagiri framed the following issues :

“ 1. Whether the Plaintiffs are entitled to get mandatory injunction as prayed for?

2. Whether the Plaintiffs are entitled to get declaration and permanent injunction as prayed for?

3. What other reliefs? ”

10. With these pleadings on record, the parties went to trial. On behalf of the plaintiffs, Ex.A1 to Ex.A7 were marked. On the side of the defendants, Ex.B1 to Ex.B5 were marked. Ex.C1 and Ex.C2 are the report of the Advocate Commissioner and Ex.C3 is the official records maintained by the District Collector which was marked through the Village Administrative Officer. On the side of the plaintiffs, the 1st plaintiff examined herself as P.W.1 and two other witnesses in support of her case. The 1st defendant/K.Raja examined himself as D.W.1 and four other



S.A.No.1128 of 2019

witnesses were examined on the defendants' side. This includes the Village Administrative Officer of Mittahalli Village as D.W.4 and the Block Development Officer of the Area as D.W.5.

11. On the basis of the oral and documentary evidence tendered before the Court, the learned District Munsif came to the following conclusions :

(a) there exists the pathway for over the statutory period in Survey No.664.

(b) The pathway was in existence on the date of the visit of the Advocate Commissioner on 28.09.2013.

(c) The defendants, though are entitled only to 0.88 Hectares out of the total extent of 1.03 Hectares, had encroached on the remaining extent over which they have no entitlement;

(d) In violation of the orders of *status quo* granted by the Court, they put up the construction of compound wall.

(e) The plaintiffs have no other pathway to reach their land on the southern side of the property, and by virtue of Section 15 of the Indian Easement Act of 1882, they have fructified the right of the easement over the



S.A.No.1128 of 2019

same.

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12. On the basis of these principal findings, he decreed the suit as prayed for, and granted the relief of mandatory injunction also.

13. Aggrieved by the same, a regular appeal was presented by defendants. This appeal was taken on file by the learned Principal Subordinate Judge at Krishnagiri in A.S.No.5 of 2018.

14. The learned Appellate Judge concurred with the finding of the trial Court on the existence of the pathway and the non-existence of an alternate pathway for the plaintiffs. However, in order to balance the interest of the appellants and the contesting respondents, he directed that the compound wall which had already been constructed be removed and by way of a mandatory injunction ordered the construction of a fresh compound wall at the cost of the plaintiffs, two and a half feet away from the existing Government Higher Secondary School.

15. Feeling aggrieved by the judgments of the Courts below, the



S.A.No.1128 of 2019

present Second Appeal has been presented before this Court.

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16. The following substantial questions of law had been framed on 06.12.2019 :

“ (a) Whether both the Courts are correct in directing the pathway to be provided in the absence of any evidence?

(b) Whether the First Appellate Court is correct in invoking easementary right of necessity for providing a new pathway when there in another pathway in existence and being used? ”

17. I heard Mr.R.Ramanlal, learned Additional Advocate General for Mr.M.Muthusamy, appearing on behalf of the appellants, Mr.C.Jagadish, appearing on behalf of the 1st and 2nd respondents and Mr.M.S.Swathish Kumar, appearing on behalf of the 3rd respondent.

18. As both the questions of law relate to the existence of the pathway, I heard this appeal taking both the questions of law together.



S.A.No.1128 of 2019

19. There is no dispute that Survey Nos.664 and 665 of Mittahalli Village in Krishnagiri Taluk and District belonged to the State of Tamil Nadu. Finding a need to put up a School, the Chief Educational Officer of Krishnagiri approached the District Collector in and by way of his representation, dated 21.12.2010. Thereafter, the District Revenue Officer of Krishnagiri conducted a survey and submitted a report on 24.02.2011 to the District Collector recommending the case of the Chief Educational Officer of Krishnagiri. The total extent of the land available in Survey No.664 is about 1.03.0 Hectare. Out of this total extent, the District Collector in and by way of his proceedings in ந.க.5642/2011/எச்3, dated 01.03.2011, transferred an extent of 0.88.0 Hectare in favour of the Chief Educational Officer.

20. Survey No.664 was then subdivided into four sub divisions. Survey Nos.664/1 and 664/3 which together come to about an extent of 0.88.0 Hectares were allotted in the name of the Chief Educational Officer, Krishnagiri and Survey No.664/2 which comes to about an extent of 0.09 Hectare was classified as அனாதினம் ரோடு. The last sub division, namely Survey No.664/4 which come to about an extent of 0.07 Hectare was classified as அனாதினம் மயாணம் or burial ground.



S.A.No.1128 of 2019

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21. On the basis of the proceeding of the District Collector, the sub divisions were carried out by the Tahsildhar on 18.01.2011. This is clear from the file produced under Ex.C3 by the Village Administrative Officer/D.W.4. With the order of the District Collector and Tahsildhar having been carried out in the revenue records, the Taluk Deputy Inspector of Survey had carried out the amendments in the Field Measurement Book (FMB). The FMB had also been produced before the Court by the Village Administrative Officer. A careful perusal of the FMB would show that the Survey No.664/2 has been depicted in the Book as a pathway.

22. The other official records produced by the Village Administrative Officer, namely Patta, Chitta, Adangal, etc. would show that the order of the District Collector, dated 01.03.2011, had been scrupulously adhered to leaving the Survey Nos.664/2 and 664/4 as pathway and அனாதினம் மயாணம் respectively. The problem arose when instead of confining their constructions to 0.88 Hectare, the appellants had encroached upon the Survey No.664/2 also. This was the cause of action for the suit. In the said survey number as seen from above, there exists a pathway running North to



S.A.No.1128 of 2019

South from the main road.

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23. It was submitted by the learned Additional Advocate General that the plaintiffs are not entitled to the relief of easement by necessity because they had an alternate pathway in Survey No.618. Unfortunately for him, the evidence of D.W.4 would go against this plea. Furthermore, the Advocate Commissioner, who submitted a report under Ex.C1 and Ex.C2, has made a clear and categorical statement that there is no other access to the 'A' schedule mentioned property of which the plaintiffs are admittedly the owners other than the 'B' schedule pathway. I have to add here that the report of the Advocate Commissioner had been submitted on 04.11.2013 to the Court and yet the appellants did not take any steps objecting to the same. In fact, the Advocate Commissioner was examined as the witness on the side of the plaintiffs as P.W.3.

24. Going through his cross examination, I am not able to see that the appellants/defendant Nos.2 to 5 were in a position to shake the same. A combined reading of the Advocate Commissioner's report and the evidence of D.W.4 convinces me that the access of plaintiffs to their lands admittedly



S.A.No.1128 of 2019

situated in 'A' schedule mentioned property is only through the 'B' schedule mentioned pathway.

25. P.W.1, in a witness box, has stated that she had settled in the Mittahalli Village after her marriage to one Dhanapal, who is her husband and the father of the 2nd plaintiff. She was aged about 74 years at the time of her deposition. She had pleaded that the pathway had been enjoyed by her for over a period of 55 years.

26. In terms of Section 15 of the Indian Easement Act, when a property over which easementary right is claimed by the plaintiff against the Government, he/she would have to prove that they had enjoyed the said property peacefully for over a period of 30 years. As against the clear and categorical plea of P.W.1 that she had enjoyed the property situated in 'A' schedule by using the access through 'B' schedule from the main road for over a period of 55 years, no evidence much less any evidence worth its name was produced by the defendants to dispel the case of the plaintiffs.

27. At this stage, learned Additional Advocate General would rely



S.A.No.1128 of 2019

upon the case of ***Ravinder Kaur Grewal and Others vs. Manjit Kaur and Others [(2019) 8 SCC 729]*** to argue that such a right, if granted, would be contrary to the judgment referred to above.

28. A careful perusal of the said judgment would show, that case arose out of a reference whether the plaintiffs can present a suit claiming title by virtue of adverse possession and on that basis, seek declaration of title and permanent injunction. The issue involved in the present case is whether the plaintiffs had fructified the right of pathway over the Survey No.664 as she had enjoyed the same over the period of 55 years. As stated above, the provision which is applicable to the easements of this nature is found under Section 15 of the Indian Easement Act. The Act itself contemplates where a right is enjoyed over the land belonging to the Government for over the period of 30 years, he/she would be entitled for an easementary right over the same. The judgment of the Supreme Court did not deal with Section 15 of the Indian Easement Act and therefore, it is inapplicable to the facts of the present case.

29. Furthermore, I have to take note of the fact that when the



S.A.No.1128 of 2019

appellants themselves had only been given 0.88 Hectare out of 1.03 Hectare, they cannot claim any right over the remaining extent of 0.15 Hectare. In order to decide as to what is the mode of enjoyment of the remaining extent, I have to see into the appropriate revenue records.

30. As discussed above, Ex.C3 specifically shows that Survey No.664/2 was set apart as a pathway. D.W.4 in his cross examination had admitted as follows :

“ மேற்படி சர்வே எண்.664/2ல் 8 ஏர்ஸ் நிலம் அந்தபுறம்போக்கு நிலத்தியில் பாதையாக உட்பிரிவு உத்தரவின் நீ.ம.சா.ஆ.3னில் சொல்லப்பட்டுள்ளது என்றால் சரிதான். ”

31. D.W.4 is the Village Administrative Officer, who is in the possession of the relevant revenue records, and he had made this admission during the course of his cross examination. In fact, he re-confirmed the statement at a later stage of the cross examination as follows :

“ ச.எண்.664 சம்மந்தமான புல வரைப்படத்திலும் வாதிகள் பயன்படுத்தி



S.A.No.1128 of 2019

வரும் பாதை காண்பிக்கப்பட்டுள்ளது என்றால் சரிதான். ”

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32. In re-examination, an attempt was made to confuse the admitted stance by stating that Survey No.664 refers to the main road which runs from Kaveripattinam to Kathiripuram Village. On a perusal of the Advocate Commissioner's report and the plaint plan together with the evidence of the plaintiffs, I am able to see that this is a vain attempt by D.W.4 to withdraw the admission made by him during the course of cross examination.

33. It is nobody's case that the main road bearing Survey No.664 was allotted by the District Collector on 01.03.2011. Kaveripattinam to Kathiripuram Village road runs East to West, whereas, the pathway in Survey No.664/2 runs North to South. Hence, there cannot be a confusion as to the identity of the pathway. Apart from that, if Survey No.664 were to be treated as the main road, by no stretch of imagination, can a District Collector grant permission for construction of the School obstructing a High way.



S.A.No.1128 of 2019

34. Therefore, the plea of the learned Additional Advocate General that the Survey No.664 is the main road and not the pathway does not stand a moment's scrutiny.

35. In the light of the above discussion, I have to conclude as follows

:

(a) the plaintiffs have proved their right over the pathway running in Survey No.664/2.

(b) The defendants/appellants do not have any right over an inch beyond what has been assigned to them on 01.03.2011.

(c) The plea of alternate pathway, not having been proved by the defendants/appellants, the plaintiffs will be entitled for a decree as prayed for.

36. A perusal of the records would show that two Interlocutory Applications had been filed by the plaintiffs. I.A.No.767 of 2013 was taken out for the purpose of appointment of an Advocate Commissioner to note down the physical features of the property together with a Surveyor. This application was ordered on 20.09.2013. The inspection, as seen from the



S.A.No.1128 of 2019

report under Ex.C1, had taken place on 28.09.2013 and the report was filed on 04.11.2013. As no objections were filed by either side, the application stood closed in November 2013.

37. The Advocate Commissioner had clearly and categorically stated that the pathway has been in existence for a long period. On receipt of the Advocate Commissioner's report, I.A.No.768 of 2013 was taken up for enquiry. This was an application for an *ad interim* injunction restraining the appellants/defendant Nos.2 to 5 from putting up any construction over the suit 'B' schedule pathway. The learned District Munsif had granted an order of *status quo*. In utter disobedience of the order of *status quo*, the appellants herein had proceeded to put up a compound wall. In terms of Section 39 of the Specific Relief Act, where a party owes duty to another, the said duty becomes enforceable through an order of mandatory injunction. No party, let alone the Government, which ought to be a model litigant can take law into its hand and proceed with the construction when the same has been enjoined against by the Court.



S.A.No.1128 of 2019

38. Article 261 of the Constitution of India demands that the State give full faith and credit to the orders passed by the Civil Courts. Despite the same, appellant Nos.2 and 3 had proceeded to put up a construction in disobedience of the order of injunction. In fact, I wonder why an application for mandatory injunction had been filed by the respondents. When any steps are taken contrary to the orders passed by the Courts, the Court which granted the order and the appellate Courts retain the power to direct the restoration of the position that prevailed on the date of grant of an *interim order*. If this basic proposition requires an authority, it is in ***Century Flour Mills Limited vs. S.Suppiah and Others [AIR 1975 MAD 270]***.

39. In the present case, as the construction has been put up despite the order of the learned District Munsif at Krishnagiri in I.A.No.768 of 2013, it certainly deserves to be pulled down. Therefore, I do not find any illegality in the order of the Courts below granting a decree as prayed for.

40. At this juncture, the learned Additional Advocate General would draw my attention to the finding of the lower appellate Court that the compound wall constructed by the appellants has fallen down and therefore,



S.A.No.1128 of 2019

it has to be reconstructed. The lower appellate Court in its judgment has recorded that for considerable cost of nearly Rs.8,50,000/- had been spent by the appellants in constructing the compound wall, the cost of the reconstruction of the compound wall shall be borne by the plaintiffs.

41. Mr.C.Jagadish submits that an undertaking has been given by his clients that they will reconstruct the compound wall within the premises of the defendants as directed by the lower appellate Court continues to hold good even before this Court. The statement is recorded.

42. In fine, the judgment and decree of the learned Subordinate Judge at Krishnagiri in A.S.No.5 of 2018, dated 15.07.2019, in partly allowing the judgment and decree passed in O.S.No.202 of 2013, dated 07.02.2017, by the learned District Munsif at Krishnagiri stands confirmed.

43. The plan annexed to the Advocate Commissioner's report shall form a part of the decree. The construction of the compound wall on the Eastern side of the cart track shall be completed within a period of eight weeks from the date of receipt of a copy of this order. In case, the plaintiffs



S.A.No.1128 of 2019

are obstructed by the defendant Nos.2 to 5 while executing the Clause No.3 of the lower appellate Court decree, the plaintiffs are at liberty to approach the executing Court to get appropriate orders for reconstruction.

44. Accordingly, the Second Appeal stands dismissed. Costs through out. The connected Civil Miscellaneous Petition is closed.

26.06.2024
(2/2)

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Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.



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S.A.No.1128 of 2019

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To

- 1.The learned Subordinate Judge,
Krishnagiri
- 2.The learned District Munsif,
Krishnagiri

S.A.No.1128 of 2019
and
C.M.P.No.24524 of 2019

26.06.2024
(2/2)