



S.A.No.818 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 20.11.2024

CORAM:

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

S.A.No.818 of 2024
and
CMP.Nos.26137 & 26138 of 2024

Muthusamy (Died)

- 1.Kamatchi
- 2.Ramachandran
- 3.Jagannathan
- 4.Sellammal
- 5.Annammal
- 6.Rengasamy

.. Appellants

Vs.

1.Thangaraj

Ramasamy (Died)

- 2.The Superintending Engineer,
Tamil Nadu Electricity Board,
Operation and Maintenance,
Perambalur Town and Taluk,
Perambalur District.
- 3.The Divisional Executive Engineer,
Tamil Nadu Electricity Board,
Operation and Maintenance,
Perambalur Town and Taluk,



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Perambalur District.

4.The Assistant Engineer,
Tamil Nadu Electricity Board,
Operation and Maintenance,
Veppanthattai Town and Taluk,
Perambalur District.

5.The Tahsildar,
Veppanthattai Town and Taluk,
Perambalur District.

6.The District Collector,
Collector Office,
Perambalur Town and Taluk,
Perambalur District.

7.Periyammal

8.Annalakshmi

9.Dhanalakshmi

10.Anusha Devi

11.Devaraj

.. Respondents

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, prayed to set aside the Judgment and Decree dated 31.07.2023 made in A.S.No.5 of 2021 on the file of the Subordinate Court, Perambalur, confirming the judgment and decree dated 18.11.2008 made in O.S.No.215 of 2003 on the file of the District Munsif Court, Perambalur.

For Appellants : M/s.D.Sathya
For R5 & R6 : Mr.R.Siddharth



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J U D G M E N T

WEB COPY The appellant has filed this Second Appeal against the Judgment and Decree dated 31.07.2023 in A.S. No.5 of 2021 on the file of the Subordinate Court, Perambalur, confirming the Judgment and Decree dated 18.11.2008 in O.S. No.215 of 2003 on the file of the District Munsif Court, Perambalur.

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

3. Challenging the concurrent findings of the courts below, the plaintiff has preferred this appeal. Before the trial court, he filed a suit for declaration, permanent injunction, and mandatory injunction.

4. The case of the plaintiff is that he purchased the property on 09.08.1979 and constructed a thatched house on an extent of 8 cents in Survey No. 467/17. The defendants, who are the adjacent owners, attempted to take an electric line across the suit property with the help of EB officials. Therefore, the suit was filed. Pending the suit, the plaintiff amended the prayer to include a declaration and mandatory injunction.



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WEB COPY 5. The contention of the defendant is that there is no such suit property.

In fact, Survey No. 468/17 was subdivided, and Survey No. 468/17-E was classified as a public pathway. The electricity line was provided through that pathway, without causing any interference with the plaintiff's property.

6. Before the trial court, both parties adduced evidence. On the side of the plaintiff P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P7 documents were marked. On the side of the defendants D.W.1 and D.W.2 were examined and Ex.D1 to Ex.D10 were marked.

7. According to the plaintiff, he relied on the sale deed and a field map that is more than 100 years old. However, the defendant relied on Ex.B-10, a field map that proves Survey No. 468 was subdivided, and as of now, Survey No. 468/17E has been classified as a common pathway, through which the electric line was laid.

8. The trial court found that the plaintiff had not approached the court with correct particulars, and the suit property described in the plaint schedule



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was not in existence. Aggrieved by this, the plaintiff filed an appeal in A.S.No. 5 of 2021. The learned first appellate judge confirmed the findings of the trial court. Challenging the same, the present second appeal has been filed.

9. The learned counsel for the appellant challenging the findings of the Court below on following grounds:

i) The Courts below ought to have allowed the suit on the sole ground, that, the plaintiff is in actual possession and enjoyment of the suit properties over an extent of 0.08.cents, on the basis of sale deed dated 09.08.1979, then he has a right to claim declaration of his title over the entire extent which he purchased.

ii. The Courts below ought to have seen, that, where there is no path way as per field map prior to UDR survey, then the pathway mentioned as S.No. 468/17E, it is an absolute mistake done by the Government authorities by wrongly included plaintiff's land as ' public path way'.



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iii. The Courts below ought to have seen that, when a person holding a land by virtue of valid title of document, he cannot be denied for claiming his right and title over the same.

iv. The Courts below failed to see that, the subject matter of the suit property is elusively belongs to the Appellant, also he specifically denies that in S.No.468/17E is not a public path way, then the Courts below ought to have decide the issue whether it is a public path way or not? Without deciding the same, cannot dismiss the suit by holding that there is no cause of action.

v. The Courts below failed to see that, Appellant specifically prayed for the relief of declaration of title to the suit property and it is not necessary to institute a fresh suit to claim title over the property in S.No. 468/17.

vi. The Courts below failed to consider that, oral and documentary evidence adduced by the parties and failed to see that, defendants 6 and 7 reduced the extent of suit property with the help of defendants 1 and 2 wrongly classified land in S.No.468/17E as a “Public Path Way”.



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10. Upon perusal of the records, it is revealed that the plaintiff sought a declaration and permanent injunction in respect of Survey No. 468/17, measuring an extent of 4 cents, which he claimed to have purchased through a sale deed dated 09.08.1979. He contended that the defendants interfered with his property by attempting to take an electric line across it, causing him great hardship.

11. However, the defendants, as well as the EB officials, contended that Survey No. 468/17 had already been subdivided, and Survey No. 468/17-E was classified as a public pathway, through which the electricity line was laid. They asserted that no interference was caused to the plaintiff. Ex.B-10, the field map produced by the defendants, showed that Survey No. 468/17-E was classified as a pathway and that an electric connection was already provided to one Segar through the said pathway.

12. It was found that the plaintiff had not approached the court with a specific and correct identity of the suit property. Accordingly, the suit was dismissed by the trial court, and the appellate court confirmed the same, holding that no interference was required. Even after the written statement was filed, the plaintiff did not amend the description of the property, despite



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the defendants' specific defense that the suit survey number was already subdivided. Since no substantial question of law is involved.

13. Accordingly this second appeal is dismissed as devoid of merits. Consequently, the connected miscellaneous petitions are closed. There shall be no order as to costs.

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

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To

- 1.The Subordinate Judge, Perambalur.
- 2.The District Munsif, Perambalur.
- 3.The Section Officer, VR Section,
High Court of Madras.



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T.V.THAMILSELVI, J.

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