



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.10.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

S.A.(MD)No. 1241 of 2008

1. Sudalai

2. Balasubramanian

3. Murugan

... Appellants

/Vs./

1. Eswaran

2. Sethu

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and decree of the Principal Subordinate Court, Tirunelveli, in A.S.No.225 of 2006 dated 02.12.2006 and upheld the Judgment and decree of the suit in O.S.No.618 of 2003 dated 10.03.2006 on the file of the II Additional District Munsif Court, Tirunelveli by allowing this Second Appeal.

For Appellants : Mr.Ananth C.Rajesh

For Respondents : Mr.D.Srinivasa Raghavan



WEB COPY

JUDGMENT

This Second Appeal is filed to set aside the Judgment and Decree passed by the Principal Subordinate Court, Tirunelveli in A.S.No.225 of 2006 dated 02.12.2006 and upheld the Judgment and Decree of the suit in O.S.No.618 of 2003 dated 10.03.2006 on the file of the II Additional District Munsif Court.

2. The plaintiffs are the appellants and the defendants are the respondents herein. For the sake of convenience, the parties shall be referred to as plaintiffs and defendants.

3. The suit in O.S.No.618 of 2003 was filed for declaration to declare the 2nd schedule common pathway marked as B G G I N O P Q R are in the plan is an exclusive property of the plaintiffs and also seeking consequential injunction restraining the defendants from interfering in the peaceful possession and enjoyment of the plaintiffs' and also seeking permanent injunction restraining the defendants from interfering in the 1st schedule properties as well. The suit was decreed against the defendants. Aggrieved over the same, the defendants have



WEB COPY

preferred an appeal in A.S.No.225 of 2006 and the same was also allowed. Aggrieved over the same, the plaintiffs have preferred this Second Appeal.

4. The fact stated by the plaintiffs is that the 1st schedule property is belonging to the plaintiffs which is shown as A B C D in the rough plan. Originally, the properties are belonging to one Mundan through a registered sale deed dated 17.04.1958. He was in possession until his life time and after his demise, his legal heirs sold the property as ABCD to the 3rd plaintiff for valid consideration through a registered sale deed dated 20.04.2021. Thereafter, they are in possession and enjoyment of the property. The suit property has its corresponding vacant backyard shown as HGJI in the plan and a north south pathway lead to the lands to the south shown as BGGI, NOPQR which were also purchased by means of the same deeds. The pathway is part and parcel of the 1st schedule property.

5. The next southern property with D.No.158 is 2nd item of the I schedule of properties is described as CDEF which belongs to the 1st plaintiff



WEB COPY

through registered sale deed dated 17.04.1958, the house was originally was thatched roof, later was altered with tiled roof. It has its corresponding backyard shown as IJKL with common pathway to have access to the backyard from the house and the street shown as BGGINOPQRP in the plan.

6. One Arumugam was entitled to Door No.159 through registered sale deed dated 17.04.1958 from one Avudaiyappan which is shown as item 2 of the I schedule shown as EFGH with correspondent backyard on the south described as KLVN with common pathway on its east from the house and the street on the north shown as BGGINOPQRP. During course of time he had altered the house and sold to one Kakkalamudayar by a registered sale deed dated 17.11.1975, then he had executed a Will on 21.05.1992 in favour of his brother's sons, the plaintiffs 2 and 3 since he has no issues and died on 01.01.2000 and the Will came into operation. The plaintiffs 2 and 3 have reconstructed the house and enjoying the backyard and common pathway.



WEB COPY

7. The houses were shown along with corresponding backyard which was also shown in the rough sketch. The backyard of the respective houses on the north and the common pathway on the east are integral parts of the houses without which the properties cannot be enjoyed. Therefore, the plaintiffs are entitled to 1st schedule properties and have been in active continuous possession of the properties for over 45 years. The old survey number was S.No.62/1 and now it is 959. The plaintiffs were given Patta for the properties and House tax was being paid and the common pathway is exclusive to the plaintiffs. Further, in the backyard the plaintiffs had raised drumstick trees, Pomegranates plants, Nelli and Narthai and also coconut trees and other trees. But the defendants had disturbed their peaceful possession and enjoyment of the exclusive common pathway. The defendants have piled thorny bushes across the pathway, thereby preventing from entering the backyards. Hence the suit.

8. The defendants had filed written statement and denied the averments stated in the plaint. The contention of the defendants is that the S.No. 959/23 is shown in the village map and they vary with the map shown in the



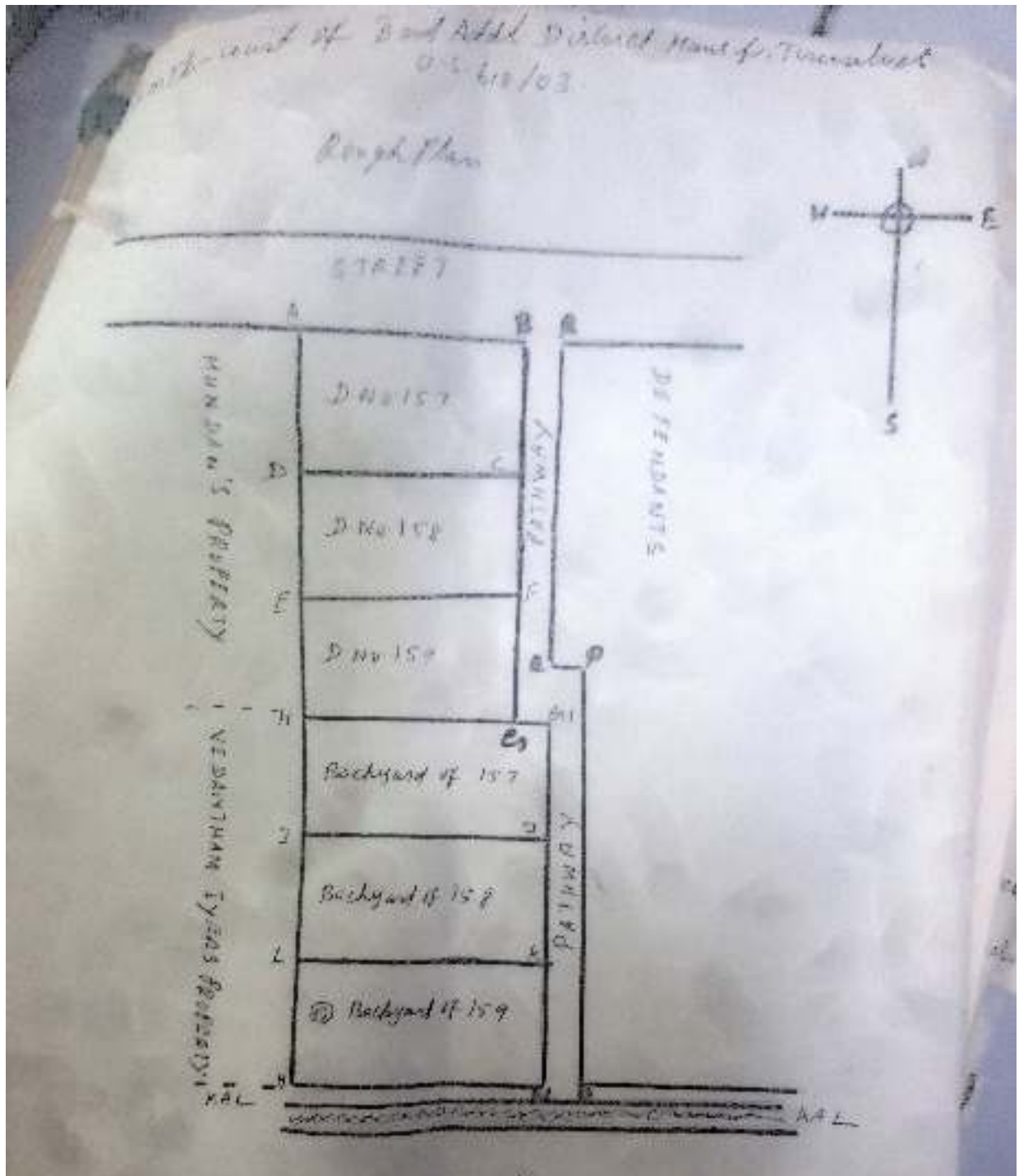
WEB COPY

schedule of properties. The pathway shown in the map is a compound, however in the village map shown as street pathway. The 2nd schedule of property originally belongs to the 1st defendant's grandfather and the 2nd defendant 's father namely, Sudalaimuthu. It is an ancestral property of the family, who acquired the same through his father-in-law, namely Paradsi on 25.09.1959 as a Inam land in the said sale deed. After his demise, his legal heirs, namely the 1st defendant was in enjoyment of the property based on the cancellation deed, dated 13.12.1971, wherein the earlier deed dated 25.09.1959 was cancelled. Thereafter, they were in possession of the property. Therefore, the plaintiffs cannot claim any rights over the property. Whey they had acquired the property through their ancestors and also based on the release deed dated 13.12.1991, the defendants are having right over the property.

9. After considering the evidence and pleadings the Trial Court has come to the conclusion that when the backyard is available for each and every property, then the same is available to the Door No.157, 158, 159. To explain the same, the following diagram is extracted hereunder:



WEB COPY





WEB COPY

10. The map was produced by the Learned Counsel before the Trial Court. Based on the same, the suit was allowed. However, the Appellate Court has reversed the Judgment stating that the entire area is the Government puromboke and the government is the necessary party. When the government was not arrayed as party, the suit itself is bad for non-joinder of parties. However, the Appellate Court has failed to take the fact into consideration that the issue whether the Government is necessary party was considered in I.A.No.497 of 2005 and the I.A. was dismissed by holding that the government is not necessary party. Further the Court has come to the conclusion that this is a dispute between the two parties and the land does not belong to the government. The alleged road is not entered in the revenue records also. When the said fact was not considered by the Appellate Court, the plaintiff had preferred this Second Appeal.

11. The second appeal was admitted on the following questions of law:

1. Whether the Lower Appellate Court was wrong in dismissing the suit on the ground of non-joinder of Government as a necessary



WEB COPY

party when the plaintiffs have proved their title to the scheduled property by way of title deeds dating back to the year 1958?

2. Whether the Lower Appellate Court was wrong in dismissing the suit on the ground of non-joinder of government as a necessary party as the scheduled property was classified as Grama Natham ignoring the trite principle of law that ownership of Grama Natham does not vest with the government?

3. Whether the Lower Appellate Court was right in reversing the well considered judgment of trial Court ignoring the title deeds produced by the plaintiffs which are ancient documents?

4. Whether the Lower Appellate Court was right in not considering the real intention of the executant who executed 3 sale deeds to 3 different persons and assigning 1/3rd share in the suit scheduled pathway to each of the vendees on the same day?

12. The contention of the plaintiffs is that the classification of the suit land is Grama Natham for which he had relied on the revenue records. Further the issue whether the Government is necessary party was considered in I.A.No.497 of



WEB COPY

2005 and the I.A. was dismissed by holding that the government is not necessary party and further held that it is a dispute between the two parties and the land does not belong to the government. It is a settled principles of law for Natham property, the government cannot claim right over the property. In such circumstances, the Government is not a necessary party in the suit. Therefore, the 1st and 2nd substantial questions of law are answered in favour of the plaintiffs.

13. The 3rd and 4th substantial questions of law are that whether the plaintiffs ought to prove the title deeds, when the said documents are ancient / old documents. Admittedly the sale was in the year 1958. Further the Patta were also issued and it stands in the name of the plaintiffs. Moreover, the sketch would clearly establish that the backyard is available for each house and the pathway is necessary and the only approach road to the backyard. The plaintiffs have created the said pathway to approach the backyard, therefore it can never be a common pathway. The plaintiffs have proved their case that the said pathway is forming part of backyard. On the other hand, the sketch clearly states that the said pathway is not necessary for the defendants. Even according to their sale deeds



WEB COPY

and Patta which states that there is no pathway for the defendants, hence the same cannot belong to the defendants. Therefore, the 3rd and 4th substantial questions of law is answered in favour of the plaintiffs.

14. With the aforesaid reasons, the Second appeal is allowed. The Judgment and decree of the Principal Subordinate Court, Tirunelveli, in A.S. No.225 of 2006 dated 02.12.2006 is hereby set aside and the Judgment and decree of the suit in O.S.No.618 of 2003 dated 10.03.2006 on the file of the II Additional District Munsif Court, Tirunelveli, is hereby confirmed. No Costs.

24.10.2024

Index : Yes / No
NCC : Yes / No

KSA



WEB COPY



TO:

1. The Principal Subordinate Court, Tirunelveli.
2. The II Additional District Munsif Court,
Tirunelveli.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.SRIMATHY, J.

KSA

Judgment made in
S.A.(MD)No. 1241 of 2008

24.10.2024