



SA(MD)No.183 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

SA(MD)No.183 of 2021

and

CMP(MD)No.2732 of 2021

C.Ramakrishnan (Died) : Appellant/1st Respondent/
Plaintiff

A2.R.Parameshwari

A3.Roopu Devi

A4.Venkatashalapathy

(Appellants 2 to 4 are brought
on record as LRs of the deceased
Sole Appellant, vide Court order,
dated 14/03/2022 made in
CMP(MD)No.2053 of 2022 in
SA(MD)No.183 of 2021)

: Appellants 2 to 4

Vs.

1.The State of Tamil Nadu,
Represented by its
District Collector, Ramanathapuram.

2.The Sub Collector, Paramakudi.

3.The Tashildhar, Paramakudi.

4.The Division Engineer,
State Highways,Paramakudi,
Ramanathapuram.

5.The Assistant Divisional Engineer,
State Highways, Paramakudi.: Respondents 1 to 5/
Defendants 1 to 5

6.The Commissioner of Municipality,
Paramakudi. :6th Respondent/2nd Respondent
6th Defendant

PRAYER:-Second Appeal is filed under Section 100 of
the Civil Procedure Code, against the judgment and
decree, dated 17/10/2019 passed in AS No.03 of 2009 on



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the file of the Principal District Court, Ramanathapuram, in reversing the judgment and decree, dated 16/11/2006 passed in OS No.39 of 2005 on the file of the Sub Court, Paramakudi.

For Appellants : Mr.S.Ramesh
For R1 to R5 : Mr.D.S.Nedunchezian
Government Advocate
For 6th Respondent : Mr.A.prasanna Rajadurai

JUDGMENT

This Appeal is filed against the judgment and decree, dated 17/10/2019 passed in AS No.03 of 2009 by the Principal District Court, Ramanathapuram, in reversing the judgment and decree, dated 16/11/2006 passed in OS No.39 of 2005 by the Sub Court, Paramakudi.

2.The averments in the plaint in brief:-

The suit property and the adjoining property of the eastern and western side originally belonged to one Kannaiya Naidu. The plaintiff's father purchased the entire property from Kannaiya Naidu through a registered sale deed dated 26/06/1946 measuring about 86 feet east-west. He redeemed the prior mortgage. After purchase, he constructed a titled shop and houses. At that time, the Government requested him to donate or gift a portion on the west for constructing bridge over Vaigai River. So, the father of the plaintiff gifted 30 feet on the western portion for carrying out the construction work. The



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Government put up a temporary shed in the second schedule for storing construction materials. After completion of the work, that shed was also removed by the Government. After the death of the father, the plaintiff became the absolute owner of the property, since their sister married and went away.

3. Some 10 years prior to the suit, he constructed 12 shops on the eastern portion. Western portion measuring about 20 feet lying vacant. It is used by the tenants in the shop portions. During the survey, the property was classified as 'Road Poromboke'. To re-classify the land, the plaintiff took several steps. Taking advantage of the wrong classification of the land, the defendants 4 and 5 attempted to demolish the shops in respect of the property. On 04/05/2005 that was prevented. He filed WP(MD)No.4447 of 2005 against the Government. An order was passed by the writ court directing the Government to verify whether it is a Road Poromboke. After verification only, they must take further steps. Even after the order passed by the writ court, the officials are taking steps to demolish the shops. Hence, the suit is filed seeking a decree of declaration that the first item of the property absolutely belongs to him and for consequential injunction and in respect of the second item, permanent injunction is sought for.



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4. Written statement was filed by the Government with the following averments:-

Even before the town survey, the suit property was classified as 'Road Poramboke' in Survey No.23/2. The plaintiff owned the property in Old survey No.220 on the eastern portion. Survey Nos.23/2 and 22 are separate fields. A Government poramboke property cannot be purchased or sold.

5.It is denied that the father of the plaintiff gifted 30 feet on the western for constructing bridge over the Vaigai River. The property is in enjoyment of the public. The plaintiff has encroached the right portion measuring about 0.0063.8 sq. meter and sunshade portion is also under encroachment measuring about 0.0038.0 sq. meter. The plaintiff being the trespasser of the property is not entitled for any relief. The sale deed relied on by the Government is not denied by the plaintiff. In pursuance of the order passed in WP No.4447 of 2005, proper steps were taken by the Highways Department to remove the encroachment. To over come the removal, this suit is filed.



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6.The trial court framed four issues. On side of the plaintiff, 3 witnesses were examined and 4 documents were marked. On the side of the defendants, no oral and documentary evidence was adduced. Commissioner's report and plans were marked as Exs.C1 to C4.

7.At the conclusion of the trial process, the trial court came to the finding and conclusion that the plaintiff is entitled for decree as prayed for in the plaint.

8.Against which, appeal was preferred before the first appellate court by the Government in AS No.3 of 2009. The Principal District Judge, Ramanathapuram set aside the decree and judgment of the trial court and allowed the appeal filed by the Government, dismissing the suit.

9.Against which, this second appeal is preferred.

10.Heard both sides.

11.At the time of admission, the following substantial questions of law are framed:-



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(a)Whether the first appellate court was right in not considering the registered sale deed (Ex.A1) conferring title to the plaintiff's father and in turn, the plaintiff inheriting the title?

(b)Whether the first appellate court was right in not considering Exs.C1 to C4 and properly appreciating the evidentiary value?

(c)Whether the first appellate Court was right in not considering Ex.A4 acknowledging possession and enjoyment over the title of the suit property?

12.The plaintiff traces title to the disputed portion on the basis of Ex.A1.

13.Since it is a reversal finding, let us go the findings recorded by the trial court on that aspect.

14.Commissioner was appointed. Commissioner visited the property twice. The commissioner's reports and plants were marked as Exs.C1 to C4.



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15.In the first Commissioner report, the Commissioner has pointed out that the breadth of the road in survey No.14 is measuring about 101 feet. In that portion, the plaintiff appears to have encroached 2 feet that too the upstairs portion. So far as the ground floor is concerned, there is no encroachment in survey No.14.

16.In the second Commissioner report, it is pointed out that as per FMB, first floor in the first item and the balcony area measuring about 7.6 feet on the southern and 8 feet on the north was found in Survey No.14. So far as the second item is concerned, it is shown as F G D13. The measurement is noted as 10 feet east-west, 170 north-south. No encroachment was found. The second item is situated in Town Survey No.14. This is the finding of the trial court with reference to the Commissioner's reports.

17.As mentioned in the pleading portion, the plaintiff claims that his father gifted 30 feet on the west to the Government. But absolutely, no record was produced by the plaintiff to show that his father gifted 30 feet on the western side. In the sale deed, the measurement is noted as east-west 86 feet, north-south



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175 feet. If it is so, the balance portion comes around 46 feet east-west.

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18.Further the finding of the trial court is that the document under Ex.A1 is in the year 1946. Town Survey was conducted in the year 1978. In Ex.A1, there is no reference to the road on the west. So probably, the road came into existence only in 1946. There is no possibility that the father of the plaintiff to gift 30 feet on the west.

19.The finding of the trial court on this aspect further confirmed by referring to Ex.A4, the letter written by the 4th defendant to the legal heirs of the plaintiff's father. So, this letter is with reference to the Land Acquisition Proceedings and reserving the remaining portion to the owners.

20.It is further noted by the trial court that no document was produced by the defendants to show the correct portion of the land acquired for the road. So, according to the trial court, simply because wrong entry is made in the town survey register with regard to the east-west measurement of the pathway or road as the case may be, the plaintiff is entitled for the decree.



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21.Now we will see the appellate court judgement on that finding.

22.Let us keep in mind the case of the defendants. The defendants says that right from the beginning, the old survey No.23/2 was classified as 'road'. New survey Number is 14. Only in that portion, the plaintiff had made encroachment.

23.Now the appellate court has recorded a different finding from the findings of the trial court on the ground that in the plaint, the first item is mentioned as 6 feet east-west, 30 feet north-south. In survey No.14, the second item is noted as east-west on the south 18 feet. 26 feet east-west on the northern side and north-south 220 feet in survey No.14. Further, it is stated that it is a vacant land. In respect of the second item of the property, the appellate court has recorded a finding that as per the Commissioner report, the measurement mentioned in Ex.A1 did not tally with that of the measurement on ground. As per Ex.A1, the north-south measurement of the property purchased by the father of the plaintiff is only 86 cents. But how it is mentioned as 220 feet, which is not explained by the plaintiff. In the second item, the plaintiff is not in possession. A



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portion of the property which belongs to the plaintiff's father was acquired by the Government, either for laying road or for extending the same. The remaining portion, which is un-utilized by the Government is sought to be restored to the legal heirs of the plaintiff's father. When that is being so, seeking permanent injunction in respect of the second item also is not at all legal. No finding is recorded by the trial court with regard to this important aspect. The second item is not in possession of the plaintiff. The trial court has committed an error in granting permanent injunction in respect of the second item also. So this has been rightly pointed out by the appellate court. The appellate court has also recorded a finding that when there is no evidence on record to show the correct measurement in Ex.A1 with reference to the measurement available on ground even with regard to the first item of the property, the plaintiff is not entitled for the decree of permanent injunction, since now it is even admitted by him that survey No.14 is classified as 'Road poramboke. Survey was done as early as on 19/07/1978. Even at the time of survey, it appears that no steps were taken, either by the appellants or his father to make objection to classify that portion as 'Road Poramboke.'



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24.It is an evident to the effect that the father of the plaintiff made alternation by altering the old building and put up a new construction in 1993, which is much after the town survey. No document was produced by the appellants to show that reconstruction was made with the permission of the Town Planning Authorities. In the absence of any such direct documentary evidence to show the title of the first item, the plaintiff is not entitled for a decree of declaration and permanent injunction.

25.Steps were taken by the respondents herein to remove the encroachment. Challenging that proceedings, the appellant/plaintiff filed a writ petition in WP No.4447 of 2005. This court ordered the authorities to make enquiry properly as per the Land Encroachment Act and proceed in accordance with law. It appears that without facing the enquiry process, the suit is filed seeking for declaration and permanent injunction.

26.No doubt that the plaintiff got every right to vindicate his grievance. But he ought to have waited, participate in the enquiry to be undertaken by the competent authority under the provisions of the Land Encroachment Act,1905. If aggrieved, he would have



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challenge the same, but preventing the authorities from making enquiry, it appears that the suit was filed hurriedly. This was also pointed out by the appellate court.

27.Now whatever it may be, absolutely no evidence was produced by the plaintiff to show that his father gifted 30 feet on the west to the Government for laying the road. No evidence was produced by the appellants to show that at the time of making reconstruction in the property, proper permission was obtained from the Town Planning Authorities. In the absence of any such direct evidence on the side of the plaintiff, the reversal finding recorded by the appellate court that too on proper appreciation of facts, cannot be interfered.

28.In the result, the substantial questions of law (a) is answered that the plaintiff has not proved that the disputed property Item No.1 belongs to him.

29.Substantial question of law (b) is answered that the appellate court rightly appreciated the evidence based upon the commissioners report and documents produced.



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30.The substantial question of law (c) is answered that Ex.A1 doe not relate to the possession and enjoyment and title over the properties.

31.For all the reasons stated above, this court is of the considered view that the judgment and decree passed by the first appellate court requires no interference at the hands of this court. In the result, this appeal is dismissed.

32.In the result, this second appeal is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

12/06/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Principal District Judge,
Paramakudi,
Ramanathapuram District.
- 2.The Sub Judge,
Paramakudi,
Ramanathapuram District.
- 3.The Section Officers,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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