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S.A.(MD)No.459 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

S.A.(MD)No.459 of 2016

and

C.M.P(MD)Nos.785 of 2017, 197 of 2018
& 11486 of 2024

Ramachandran (died)

1.NK.Ananthalakshmi

2.R.Raja Vaidyanathan

3.R.Sridhar @ Krishnan

4.R.Vijaya Janaki

5.R.Saradha Devi Girija

6.R.Meenatchi

7.R.Padmalalitha

... Appellants /
Legal heirs of deceased
appellant Ramachandran

-Vs-

1.Palanisamy

... 1st Respondent /
Appellant /
1st Defendant



S.A.(MD)No.459 of 2015

2.The Administrative Officer,
Nilakkottai Town Panchayat,
Nilakkottai Taluk,
Dindigul District.

... 2nd Respondent /
2nd Respondent /
2nd Defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to call for the records and set aside the judgment and decree dated 17.08.2015 in A.S.No.18 of 2012 on the file of the Additional Sub Court, Dindigul confirming the judgment and decree dated 30.08.2011 in O.S.No. 160 of 2006 on the file of District Munsif Court, Nilakkottai, and allow this Second Appeal with costs throughout.

For Appellants : Mr.H.Lakshmi Shankar
For Respondent : Mr.R.Santhanam for R.1
No Appearance for R.2

JUDGMENT

The legal heirs of the plaintiff in O.S.No.160 of 2006 on the file of District Munsif Court, Nilakottai are the appellants in this second appeal. The suit was filed for declaration that the plaintiff is entitled to have free and unobstructed access from each and every point of item-1 of the suit properties from the main bazar road on its east and in consequence thereof directing the first defendant to remove the super structure of the item-2 of the suit properties. The defendants filed written statement. Based on the same, issues were framed. The trial Court vide judgment and decree dated



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30.08.2011 decreed the suit as prayed for. Aggrieved by the same, the first defendant filed A.S.No.18 of 2012 before the Additional Sub Court, Dindigul. The first appellate Court vide judgment and decree dated 17.08.2015 reversed the decision of the trial Court, dismissed the suit and allowed the appeal. Challenging the same, this Second Appeal came to be filed.

2.Before the second appeal was filed, the plaintiff was passed away. His legal heirs have filed the second appeal. The second appeal was admitted on 19.03.2021 by framing the following substantial question of law.

*“(i) Whether the conclusion of the lower Appellate Court that the plaintiff is not entitled to the relief of declaration and mandatory injunction, inasmuch as the plaintiff has access to his house from the main road is not obstructed by the offending construction put up by the defendant, is against the right of a owner of the land abutting a public street to have access to his land from every point of his land that abuts the public street as held in **Bharathamath Desiya Sangam, Madhavaram, rep. By its Secretary, M.Subramania Naicker and Sarangapani Naicker vs. Roja Sundaram and two others, reported in 1999 L.W. 833?**”*



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3.The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds of second appeal and called upon this Court to answer the substantial questions of law in appellants' favour, set aside the impugned judgment and decree passed by the first appellate Court and restore the decision of the trial Court.

4.The learned counsel appearing for the contesting respondent / D1 submitted that the impugned judgment of the first appellate Court does not warrant interference. His prime contention is that the plaintiff lacked *locus standi* to even maintain the suit. He went to the extent of characterizing the plaintiff's possession as one of encroachment. When the plaintiff's title has not been proved, the appellants cannot maintain the present appeal. He also would point out that the first defendant has been in possession and enjoyment of the second item of the suit property even when the plaintiff filed RCOP.No.2 of 2002. The learned counsel would also contend that it is not as if the plaintiff's rights of access have been obstructed. He drew my attention to the relevant portions of the plaintiff's testimony to show that he is very much having as many as three different access points to reach the main road. The first defendant also filed C.M.P(MD)No.11486 of 2024 under Order 41 Rule 27 of CPC for reception of additional evidence. He

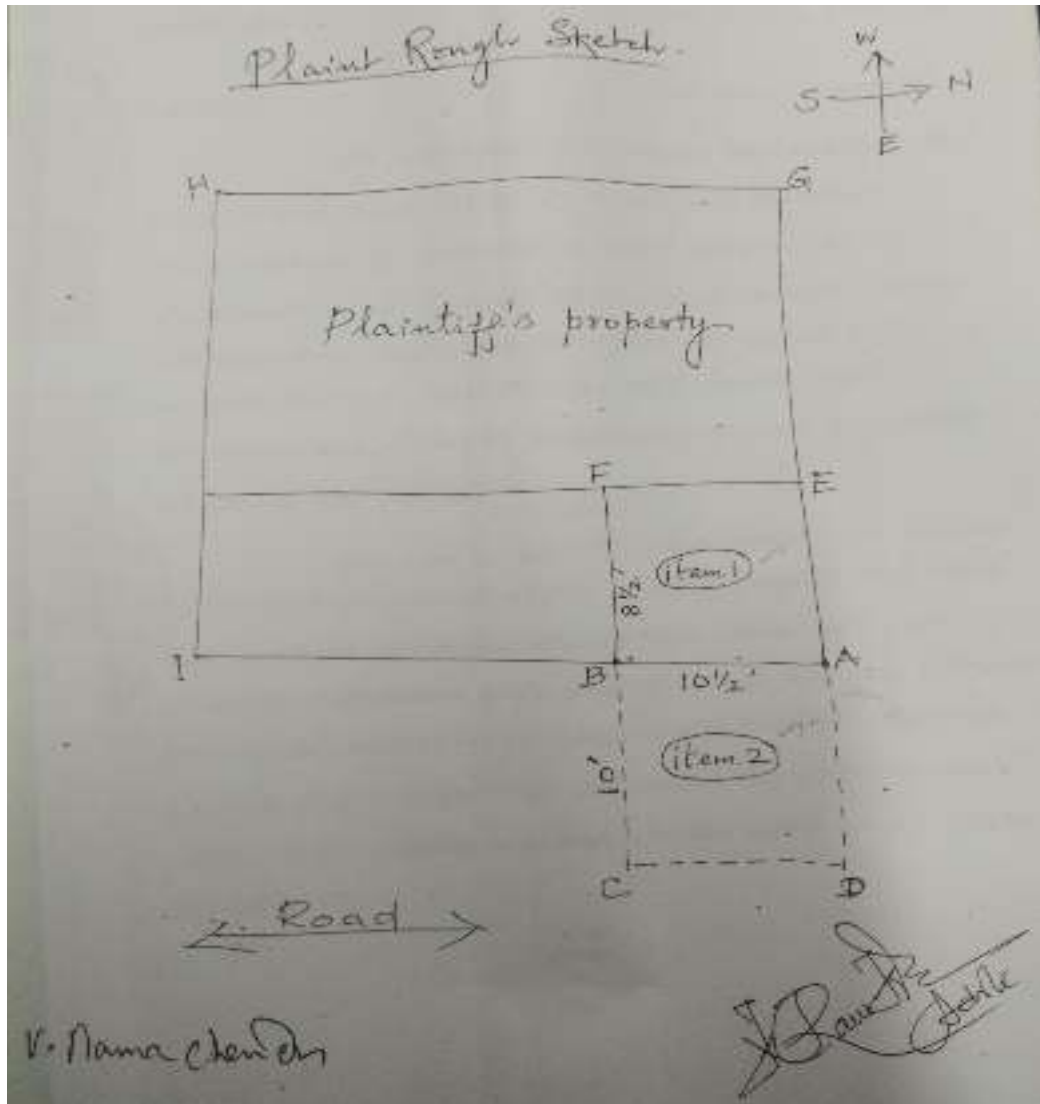


called upon this Court to sustain the impugned judgment and decree and dismiss the second appeal.

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5.I carefully considered the rival contentions and went through the materials on record.

6.The plaintiff has enclosed a rough sketch along with the plaint. It is as follows:





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7.The first defendant was inducted as a tenant by the plaintiff in respect of suit item no. 1 which measures 8 ½ X 10 ½ feet. The first defendant was running a tailoring shop therein. The first defendant filed O.S.No.138 of 1998 on the file District Munsif Court, Nilakottai seeking permanent injunction against the original plaintiff herein from dispossessing him except by due process of law. The said suit was dismissed for non-prosecution on 18.10.2000. The first defendant herein did not feel the need to pursue the suit since the original plaintiff Ramachandran filed R.C.O.P.No.2 of 2002 before the Rent Controller, Nilakottai. The said RCOP was allowed on 28.08.2003. The case of the plaintiff is that after vacating item no.1, the first defendant moved to item no 2. Item no.2 is located right in front of item no.1 on the eastern side. The first defendant is presently running a juice shop in item no.2. It is true that the plaintiff can reach its property through the main road through quite a few access points. But that is beside the issue. It is beyond dispute that item no.1 has been utilised as a commercial site all these years. If the shop is run at item no.2, obviously item no.1 cannot be used as a shop any further. It is for this reason, the plaintiff filed O.S.No.160 of 2006 seeking the relief of declaration as well as the consequential direction. The Hon'ble High Court in the decision reported in **1986 Vol 99-LW833**



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(Bharathamatha Desiya Sangam, Madhavaram & Others Vs. Roja Sundaram & Others) had held that whether there is a public highway, the owners of land adjoining the highway have right to go upon the highway from any point on their land and if that right is obstructed by any one, the owner of the land abutting the highway would be entitled to maintain an action for removal of obstruction. This was followed in decision reported in **(1998) II MLJ 62 (K.Mani Vs. L.Indhumathi)**.

8.The first appellate Court completely misdirected itself both in fact as well as in law. The question was not the plaintiff's right to access item no.1. On the other hand, the question was whether the plaintiff was entitled to freely access the adjoining public road on the eastern side from his property at all points of contact. It is too obvious that the first defendant after being evicted from item no.1 had conveniently shifted to item no.2 thereby preventing the plaintiff from utilising item no.1 as a shop.

9.It is true that the first defendant herein filed W.P(MD)No.506 of 2006 and obtained a restraint order against the local body from evicting him except by due process of law. This direction obtained by the first defendant in the writ petition would be of no avail against the plaintiff.



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10.The learned counsel appearing for the first defendant strongly asserted that the appellants themselves are encroachers and that they cannot maintain the present proceedings for evicting him.

11.I carefully went through the averments set out in the written statement. Nowhere there is any pleading questioning the title of the plaintiff. Therefore, the trial Court could not have been expected to frame an issue in this regard. The first defendant had locked the plaintiff in litigation right since 1998. The first appellate Court had erroneously interfered with the well considered decision of the trial Court. The substantial question of law is answered in favour of the appellant. The decision of the first appellate Court is set aside. The decision of the trial Court is restored.

12.This Second Appeal is allowed accordingly. Consequently, connected miscellaneous petitions are closed. No costs.

23.08.2024

Internet : Yes/No
Index : Yes/No
NCC : Yes/No
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To
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1. The Additional Sub Court, Dindigul.
2. The District Munsif Court, Nilakkottai.

Copy To
The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN.J.,

MGA

Judgment made in
S.A.(MD)No.459 of 2016

23.08.2024