



S.A.(MD)No.197 of 2005

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.06.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.(MD)No.197 of 2005

Adidraavidar Uravinmurai Makkal
through its present President P.Muthu,
S/o.Periyapandi

... Appellant

*(Cause title accepted vide order dated 24.02.2005
made in C.M.P.(MD)No.1570/2005)*

*(Name of the appellant is substituted vide Court
order dated 10.12.2021 made in C.M.P.(MD)No.
10166 of 2021 in S.A.(MD)No.197 of 2005)*

Vs

1.Marimuthu Thevar (Died)

2.Aruppukkottai Municipality,
Through its Commissioner,
Aruppukkottai Town.

3.Mahendran

4.Karuppasamy Pandiyan

5.Janaki Ramachandran

... Respondents

*(R3 to R5 are brought on record as LR's of the
deceased R1, vide Court order dated 06.04.2022
made in C.M.P.(MD)No.1 of 2022)*



S.A.(MD)No.197 of 2005

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree passed in A.S.No.214 of 2001 dated 26.04.2001 on the file of the Subordinate Judge, Aruppukkottai, confirming the judgment and decree passed in O.S.No.186 of 1998 dated 15.12.2000 on the file of the District Munsif Court, Aruppukkottai.

For Appellant : Mr.D.Rajkumar for
Mr.K.Kothimani

For Respondents : No Appearance for R2 to R5
R1 – Died

JUDGMENT

The first defendant in the suit is the appellant. The first respondent filed a suit for declaration declaring that the suit property is a street and for consequential injunction restraining the first defendant from interfering with his right to use the same. The first respondent also sought for a mandatory injunction for removal of certain constructions put up by the first defendant in the suit property. The suit was decreed by the trial Court and the findings of the trial Court were affirmed by the first appellate Court. Aggrieved by the concurrent findings, the first defendant has come by way of this Second Appeal.

2. According to the first respondent plaintiff, the suit property



S.A.(MD)No.197 of 2005

belonged to second defendant Municipality and the same has been used as a public street by the general public. The plaintiff's property situated on the South of suit property and he has been using the suit property as an access to reach his property. The first defendant, who is an association of persons, started construction in the suit property, obstructing the right available to the plaintiff and other general public. Therefore, the plaintiff was constrained to file a suit for the above said reliefs.

3. The first defendant filed a written statement and raised a technical objection that the suit filed by the plaintiff against the first defendant association viz., Adidraavidar Uravinmurai Makkal is not a juristic personality and therefore, the suit filed against it was not maintainable. The first defendant also claimed that the suit property was never used as a street by the general public and a Madam has been constructed in the suit property for the benefits of members of the first defendant. Thus, claiming that the suit property is a property of the first defendant sought for dismissal of the suit.

4. The second defendant filed a written statement claiming that the



S.A.(MD)No.197 of 2005

suit property is a public street belonged to the second defendant and the first defendant had put up a building in the suit property without the permission of the second defendant and hence, necessary proceedings were initiated against the first defendant. On these pleadings, second defendant sought for dismissal of the suit.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the suit property was used as a public street on ground and granted decree as prayed for. Aggrieved by the same, the first defendant preferred an appeal in A.S.No.214 of 2001 on the file of Sub Court, Aruppukkottai. The first appellate Court confirmed the findings of the trial Court and dismissed the suit. Challenging the concurrent findings, the first defendant has come by way of this Second Appeal.

6. This Court at the time of admission formulated the following substantial questions of law by an order dated 17.09.2005:

“1. When the plaintiff has failed to prove that there is no other pathway to his land and that the pathway is required is easement of necessity, is the claim of the plaintiff justified?

2. Whether Courts below are right in relying on Ex.A3, which is not a document interparties and not binding on the



S.A.(MD)No.197 of 2005

defendants and inadmissible in evidence?

3. Whether the finding of the Courts below that the suit framed as against the first defendant who is not a juridic person and not a registered body is maintainable, is sustainable under law?

4. Whether the judgment and decree of the Lower Appellate Court is liable to be set aside for not following the procedure under Order 41 Rule 31 of C.P.C. and the principle settled in 1997 (1) CTC 559?

5. When the claim of plaintiff that the disputed street vested with Municipality under Section 61 of the Tamil Nadu District Municipalities Act, is disproved by Ex.B3, (Municipal Street Map), are the Courts below right in holding that the same as public street?"

7. The learned counsel appearing for the appellant vehemently contended that the appellant/first defendant is not a juristic personality. Therefore, the suit filed by the first defendant is not maintainable against the first defendant without obtaining leave to sue in representative capacity as per the provision of Order I Rule 8 of C.P.C. The learned counsel further submitted that when the leave under relevant provision of law is not obtained, the suit filed against a non-juristic person ought not to have been entertained. The learned counsel further submitted that the plaintiff has not produced any revenue document to show that the suit



S.A.(MD)No.197 of 2005

property classified as a public street in the revenue records. Therefore, the Courts below ought not to have granted a declaration that the suit property is a public street.

8. As far as the first contention raised by the learned counsel with regard to the maintainability of the suit is concerned, the trial Court as well as the first appellate Court in the judgment clearly recorded that the plaintiff filed an application under Order I Rule 8 of C.P.C in I.A.No.837 of 1998 seeking leave of the Court to file a suit against the first defendant in representative capacity and the same has been allowed. The first defendant has not questioned the same by filing any appeal. Therefore, the contention raised by the learned counsel for the appellant that the plaintiff failed to obtain leave under Order I Rule 8 of C.P.C and therefore, the suit filed by him against the first defendant, a non-juristic personality, is not maintainable is rejected in the light of the recordings by the Courts below in the judgments.

9. The learned counsel for the appellant further submitted that there is no evidence available on record to come to the conclusion that the suit property is a public pathway and therefore, the Courts below have committed an error in granting declaration to that effect. The



S.A.(MD)No.197 of 2005

Courts below by taking into consideration the evidence available on record and Ex.C4-lay out plan, came to the conclusion that the suit property originally belonged to an individual and the same was acquired by the Government for providing house sites to the poor and a layout was prepared under Ex.C4 and in Ex.C4-lay out the suit property was shown as a street in between the plots formed for providing house sites to the poor. The Advocate Commissioner, who conducted physical inspection of the suit property, has also found that the street is available on ground with municipal lightings and road facilities. The Courts below by taking into consideration the Advocate Commissioner's report and layout plan and other evidence available on record came to a factual conclusion that the suit property is available on ground as a public street with municipal lightings and road facilities. The said conclusion reached by the Courts below is based on proper appreciation of evidence available on record and the same is not vitiated by any perversity.

10. The learned counsel for the appellant further submitted that the suit prayer for mandatory injunction is not properly valued. A perusal of the plaint would suggest that suit prayer for mandatory injunction has been valued under Section 27(c) of “the Tamil Nadu Court-Fees and Suit



S.A.(MD)No.197 of 2005

Valuation Act, 1955” [hereinafter referred to as the “said Act”] and proper Court fee has been paid. The learned counsel for the appellant submitted that Section 27(c) of the said Act is relating to prohibitory injunction only and the same is not applicable to the mandatory injunction. The submission made by the learned counsel for the appellant is not acceptable to the Court in the light of the wordings in Section 27(c) of the said Act. The said Section only refers to the suit for injunction and it does not say Section 27 of the said Act is restricted to prohibitory injunction alone. When general nomenclature of injunction is used in Section 27(c) of the said Act, the same is applicable to all kinds of injunction prayers including the prayer for mandatory injunction. Further, the learned counsel for the appellant unable to point out any other provision in the Tamil Nadu Court Fees Act specifically relating to suit for mandatory injunction. In such circumstances, the valuation made by the plaintiff under Section 27(c) of the said Act is correct and the submission made by the learned counsel for the appellant in this regard is also rejected.

11. The plaintiff only sought for a declaration that suit property is a street and he has not sought for declaration of his easement right by



S.A.(MD)No.197 of 2005

necessity. Hence, there is no need for plaintiff to establish that suit property is only access for him. Hence, the submission of the learned counsel that the plaintiff failed to prove that suit property is only access available to him is not attractive to this Court. The learned counsel for the appellant also submitted that the first appellate Court failed to frame proper points for determination as required under Order 41 Rule 31 of C.P.C. Even though, the points for determination framed at para 6 of first appellate Court's judgment is vague one, the core question is whether the suit property is a street or not and the same has been considered and decided by the first appellate Court on proper appreciation of evidence. The technical objection of appellant regarding maintainability of suit was also considered and answered. Hence, the provision of Order 41 Rule 31 of C.P.C has been substantially complied by the first appellate Court.

12. In view of the discussion made earlier, all the substantial questions of law framed at the time of admission are answered against the appellant and the Second Appeal stands dismissed. There shall be no order as to costs.

21.06.2024

NCC : Yes / No



S.A.(MD)No.197 of 2005

Index : Yes / No

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To

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



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S.A.(MD)No.197 of 2005

S.SOUNTHAR, J.

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S.A.(MD)No.197 of 2005

21.06.2024