



S.A.(MD).No.151 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.03.2024

Pronounced on : 22.05.2024

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.151 of 2024

and

C.M.P.(MD)No.3523 of 2024

1.The Block Development Officer,
Madhukkur,
Having Office at Panchayat Union,
Madhukkur, Pattukkottai Taluk and Munsif,
Thanjavur District.

2.State of Tamil Nadu,
represented by its District Collector,
Thanjavur,
Having Office at Collectorate,
Trichy Road, Thanjavur Town and Munsif.

... Appellants

Vs.

Veerasamy

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 17.10.2022 in A.S.No.26 of 2018 on the file of the III Additional District Judge, Pattukkottai, modifying the judgment and decree dated 27.11.2017 made in O.S.No.26 of 2010 on the file of Subordinate Court, Pattukkottai.



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For Appellants : Mr.S.Jeya Priya
Government Advocate
For Respondent : Mr.A.Senthil Kumar

JUDGMENT

The present second appeal is filed against the concurrent judgments passed by Trial Court and First Appellate Court.

2.The plaintiff in the suit is the respondent here in and the defendant in the suit are the appellants herein. For the sake of convenience the parties are referred as per the ranking in the suit.

3.The plaintiff had filed the suit for declaration in respect of “A” schedule property and mandatory injunction to remove the encroachment and for permanent injunction, restraining the defendant not to lay tar road in plaintiff property. After considering the plaint, written statement, documentary evidence and depositions the Courts below had allowed the suit. Aggrieved over the same the defendants in the suit had preferred this present second appeal.



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4.The brief facts as stated by the plaintiff is that the schedule property originally belong to the plaintiff's grandfather, namely Veeraswamy. The said Veeraswamy had three sons, including the plaintiff's father namely, Athiyappa Kalingarayar. There was a partition deed executed by them on 07.02.1947 which was registered as Document No.518 of 1947. In the said partition deed "A" schedule property was allotted to the plaintiff's father. After his demise, the plaintiff being the sole legal heir had become the absolute owner of the "A" schedule property. The "B" schedule property is the pathway passing through parts of lands in R.S.No.123A/16, 123A/13, 123A/14B/2 as described in the plaint "A" schedule property. The "C" schedule is another small portion of the property in which a road has been formed unauthorisedly. The "B" schedule property lies in between Panchayat Road on the southern side and patta land of the plaintiff.

5.The contention of the defendants are that 50 years ago, the plaintiff's father had granted oral consent for laying road in the "C" schedule property. Based on the oral consent, the villagers are using the road as their pathway. Moreover, the road was expanded under Namakku Naame scheme. Therefore, the



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plaintiff cannot pray for removing the said road. Further, the defendant submitted that the plaintiff had accepted and signed the resolution passed by the village to lay road in the schedule of properties. Therefore, the plaintiff cannot go against the said acceptance and the resolution of the village. Since the road is in usage for the past 50 years, the plaintiff has lost his right over the said land. Therefore, the defendant prayed to allow the second appeal and dismiss the suit.

6.After scrutinising the plaint, written statement and the evidences put forth by the parties, the Trial Court has allowed the suit declaring that the land belongs to the plaintiff and also granted injunction against the defendants. Aggrieved over the same,the defendants had preferred first appeal and the same was dismissed, confirming the judgment of the Trial Court. Aggrieved over the same, the present second appeal is preferred.

7.The defendants raised the following Substantial Questions of Law:

“1. When the subject suit properties admittedly are already used as pathway by the public / local villagers for more than 50 years, can it be termed as encroachment and that to when such usage had not been



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objected to by the plaintiff or his predecessors in title?

2. Whether both the courts are right in granting reliefs to the plaintiff, when the plaintiff has accepted and signed the resolution passed by the village to lay road in the schedule properties?

3. Whether both the courts have accepted that already there was road, can the courts decree the suit against the defendants?

4. Whether both the courts are right in disbelieving the revenue records as well as Commissioner report marked as Ex.C2 and Ex.C3, when the same shows that there was existing road in the schedule properties?"

8.The contention of the defendants / appellants herein is that since the general public and the villagers are using the said pathway for the past 50 years as road, the same cannot be termed as encroachment. Moreover, the plaintiff had accepted and signed the resolution passed by the villages to lay road in the schedule of properties, hence, the plaintiff cannot go against the resolution passed by the villagers. These two contentions cannot be accepted since the defendants have accepted that the said land belongs to the plaintiff and the plaintiff is having patta in his name. In such circumstances, long usage as a pathway in a patta land will not give right to the defendants to claim the plaintiff's land. If at all, the defendants are having any intention to lay road, then the defendants are



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having every right to acquire the land and lay road. Without doing so, straightaway claiming right over the plaintiff's land is illegal. The contention that the plaintiff had accepted to lay road and the villagers have passed resolution cannot be a ground to take the plaintiff's land. Acceptance ought to be in written. The defendants have not produced any such document to substantiate the acceptance of the plaintiff. If any land is developed as plots, the roads ought to be gifted to the local body. In the present case, no such gift was executed by the plaintiff in favour of the defendants and under such circumstances, the claim of the defendants cannot be accepted. Under the guise that the villagers are using the land as pathway and the villagers have passed a resolution to lay road, cannot be a ground to entertain the defendants' plea. Therefore, 1st and 2nd substantial questions of law are answered against the defendants.

9. It is an admitted fact that the land belongs to the plaintiff and there is a pathway. But without acquiring and without compensating the plaintiff, the defendants cannot lay road in the plaintiff's patta land. The defendants are not having any right to claim the plaintiff's land, under the guise of the pathway which was converted as a road and the public is using the said road. Any amount of



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Commissioner's report will not help the defendants to claim the plaintiff's land. Even though the revenue records show that the same is used as pathway, the fact remains that the pathway is in plaintiff's patta land. The other two substantial questions of law are questions of fact and they cannot be termed as questions of law, much less those cannot be termed as substantial questions of law at all. Therefore, 3rd and 4th substantial questions of law are also answered against the defendants.

10. The further contention of the learned Government Advocate appearing for appellants herein is that the pathway was converted as a road and tar road was laid and the public is using the road. Further, the road is laid from Madhukur to Pattukkottai, which is the main road. The said fact cannot be a ground to grant any relief to the defendants.

11. The learned Government Advocate appearing for appellants herein further submitted that the findings of the Courts below that there are Government poramboke lands and the same can be used for laying road is incorrect. To some extent, Government poramboke lands are available, but for the remaining portion,



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Governmentporamboku lands are not available. After hearing this submission, this Court is the considered opinion if land is not available, the only option available to the defendants is to acquire the land of the plaintiff. Without acquiring the land, the defendants cannot claim any right over the property. Therefore, both the Courts have rightly held that the property belongs to the plaintiff and have granted declaration and injunction against the defendants.

12.For the reasons stated supra, the judgments of both the Trial Court and the First Appellate Court are confirmed. Therefore, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

22.05.2024

Index : Yes / No
NCC : Yes / No

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TO:

1. III Additional District Judge, Pattukkottai.
2. Subordinate Court, Pattukkottai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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Judgment made in
S.A.(MD)No.151 of 2024

Dated:
22.05.2024