



S.A.No.233 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2024

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

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- 1.S.Rajaram
- 2.C.Suseela
- 3.C.Thirumalaikumaradev (Died)
- 4.R.Rajanbabu
- 5.R.Ramasubramanian
- 6.R.Sridhar
- 7.S.Alagarsamy
- 8.A.Sumathi
- 9.A.Thiurmalai Subbiah
- 10.A.Sivakumar
- 11.S.Rajagopal
- 12.S.Chellam
- 13.T.Rathika
- 14.T.Shirish

... Appellants

(Minor appellants 9 and 10 are declared as majors & guardianship of their next friend & grandmother (Gomathi Ammal) for A9 and father (Arunachalam) for A10 respectively is discharged vide Court dated 08.02.2022 made in C.M.P.(MD)Nos.784 & 786/2022)

(Appellants 13 and 14 are brought on record as LRs of the deceased 3rd appellant vide Court order dated 03.04.2024 made in C.M.P.(MD)Nos.1251, 1252 & 1254 of 2024)



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Vs

1. Wild Life Giant Squirrel Sanctuary,
Wild Life Warden, Srivilliputhur.
2. The Principal Chief Conservator of Forests,
Madras.
3. The District Collector,
Virudhunagar.

... Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.10 of 2000 dated 25.01.2001 on the file of Sub Court, Srivilliputhur, confirming the judgment and decree in O.S.No.558 of 1996, dated 03.12.1998 on the file of Additional District Munsif Court, Srivilliputhur.

For Appellants : Mr.S.Venkatesan for
Mr.A.Sivaji

For Respondents : Mr.SRA.Ramachandran,
Addl. Government Pleader.

JUDGMENT

The plaintiffs in the suit are the appellants. The suit was filed for mandatory injunction directing the defendants to maintain the pathway leading to Deviyaru Estate from the foothills of Sethur Village. The suit was dismissed by the trial Court. The appeal filed by the plaintiffs was



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also dismissed. Aggrieved by the concurrent findings, the plaintiffs have come by way of this Second Appeal.

2. According to the plaintiffs/appellants, Deviyaru Estate originally belonged to Sethur Zameen and the same was purchased by the plaintiffs. According to the plaintiffs, there is a pathway from Devathanam Village to Deviyaru Estate via Sethur foothills through the forest area. The pathway has been in existence from the time of Zameenthur. The same was originally maintained by the Zameenthur and after purchase by the plaintiffs, the pathway was maintained by the plaintiffs. The Tamil Nadu Government and the Forest Department also maintained the pathway. In the year 1971, the Tamil Nadu Government had given financial sanction for conversion of the pathway into a motor way. Subsequently, in the forest settlement proceedings, the appellate authority passed an order in R.O.C.A.23-191192/82, dated 10.12.1982, stating that the Forest Department shall maintain the pathway leading to their District. It was also observed in the said order that if the plaintiffs wanted to maintain the same, they can do so by getting permission from the District Conservator of Forest. The Forest Department failed to maintain the pathway as per the said order and all the request made by the plaintiffs to



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Forest Department and Government for maintenance of the road went in vain. The suit pathway had become damaged due to absence of maintenance and hence, access through the same had become difficult. In these circumstances, the plaintiffs were constrained to file a suit for mandatory injunction to defendants to maintain the suit pathway.

3. The first defendant filed a written statement and the same was adopted by the defendants 2 and 3. In the written statement, it was contended by the defendants that 1982 order referred to by the plaintiffs was passed, when the pathway was forest area. Subsequently, as per the Government Gazette Notification, dated 30.03.1989, the suit pathway has become part of reserved forest. In the Government notification, it was clearly mentioned that the plaintiffs were entitled to maintain the pathway after getting prior consent from District Forest Officer. It was also contended by the defendants that subject to the availability of financial resources, the Forsest Department could maintain the pathway and on the other hand, the plaintiffs can maintain the same with the prior consent of the Department. The pathway damaged by rain and severe cyclone in the year 1993 was repaired and made available for use. When the department was not sanctioned with sufficient finance, it is open to



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the plaintiffs to maintain the pathway with the prior consent of the competent authority. The plaintiff was not entitled to demand maintenance of the pathway as a matter of right in a notified reserved forest area and consequently, the defendants sought for dismissal of the suit.

4. Before the trial Court, 12th plaintiff was examined as P.W.1 and 19 documents were marked as Ex.A1 to Ex.A19. On behalf of the defendants, one witness was examined as D.W.1 and the Gazette Notification issued under Section 16 of “the Tamil Nadu Forest Act, 1882” (hereinafter referred to as “the Act”), dated 26.09.1989 was marked as Ex.B1.

5. The trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs were not entitled to the relief as prayed for and dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.10 of 2000 on the file of Sub Court, Srivilliputhur. The first appellate Court, affirmed the findings of the trial Court. Aggrieved by the concurrent findings, the plaintiffs have come by way of this Second Appeal.



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6. At the time of admission, this Court formulated the following substantial questions of law by an order dated 20.02.2003:

“Whether the suit is barred under Section 9 of Civil Procedure Code and under the provisions of Tamil Nadu Preservation of Private Forests Act, 1949?”

7. The learned counsel appearing for the plaintiffs contended that the Government issued notification under Section 4 of the Act about its proposal to declare the area, in which the suit pathway is situated, as a reserved forest. In response to the same, the plaintiffs raised their objections and the Settlement Officer passed an order conceding the easementary right of the plaintiffs and stipulated certain conditions regarding the exercise of the right. Aggrieved by the stipulation of certain conditions, the plaintiffs preferred an appeal before the appellate authority and he passed an order under Ex.A3 dated 10.12.1982, stating that it should be the endeavour of the Forest Department to maintain the pathway as such through out its entire length. Therefore, as per the order passed by the appellate authority, in an appeal filed by the plaintiffs under Section 14 of the Act, the defendants are bound to maintain the suit pathway.



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8. The learned counsel further submitted that bar under Section 5 of the Act is applicable only in cases where the suit is filed in between the date of notification under Section 4 and a notification under Section 16 of the Act. However, in the case on hand, notification under Section 16 of the Act had already been issued as exhibited by Ex.B1. In such circumstances, the Courts below committed an error in assuming bar of jurisdiction and non-suiting the plaintiffs.

9. Per contra, the learned counsel appearing for the respondent relying on Gazette Notification issued by Government dated 26.09.1989, marked as Ex.B1, submitted that the plaintiffs are at liberty to maintain the suit pathway with the prior permission of District Forest Officer and therefore, the plaintiffs are not entitled to seek a mandatory injunction as a matter of right.

10. A perusal of Ex.A3 order passed by the appellate authority in an appeal filed by the deceased first plaintiff under Section 14 of Act would indicate that the right of the plaintiffs to use the suit pathway as an access to Deviyaru Estate was upheld. In the said order, it was also



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mentioned that it shall be the endeavour of the Forest Department to maintain the suit pathway. After the said order passed by the appellate authority, in an appeal filed by the first plaintiff, a final notification was issued by the Government under Section 16 of the Act, declaring the area in which the suit pathway is situated as a reserved forest. A perusal of the same would suggest that the lie of the suit pathway has been clearly defined with minute details in the notification. The last paragraph of the notification contains various conditions imposed by the Government with regard to the manner of enjoyment of the suit pathway. The condition No.2 clearly stipulates that suit pathway can be maintained with the prior consent of the District Forest Officer. Condition No.3 stipulates that in case the suit pathway is not properly maintained, the Forest Department will maintain the same and recover the cost of maintenance from the estate owners viz., the plaintiffs. It is also stipulated that if the pathway is not properly maintained, the Government was also entitled to cancel the right conferred on the plaintiffs with regard to the user. Now the rights and liabilities of the parties are governed by the conditions stipulated in the final notification issued under Section 16 of the Act declaring the area as reserved forest.



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11. The learned counsel for the appellants tried to argue that the notification issued under Section 16 of the Act failed to incorporate the right of the plaintiffs upheld in the order passed by the appellate authority under Section 14 of Act. If it is the grievance of the plaintiffs that the right recognized by the appellate authority in the order passed under Section 14 of the Act was not given effect to or incorporated in the final notification issued by the Government, it is for the plaintiffs to challenge the final notification issued by the Government under Section 16 of the Act in the manner known to law. The final Gazette Notification was issued by the Government in the year 1989. Till date, the final notification issued under Section 16 of the Act stipulating conditions have not been challenged by the plaintiffs in the manner known to law and the same has become final. The final notification as exhibited by Ex.B1 was issued by the Government of Tamil Nadu in the name of Governor in exercise of power under Section 16 of the Act. The notification issued under Section 16 of the Act in the name of Governor would certainly prevail over any order passed under Section 14 of the Act by the Additional Personal Assistant to the District Collector in his capacity as appellate authority under Section 14 of the Act. Therefore, the plaintiff is not entitled to take advantage of Ex.A3 order passed by



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the Additional Personal Assistant to the the District Collector when the conditions mentioned in that order is not incorporated in the final notification issued in the name of Governor of Tamil Nadu under Ex.B1. So long as final notification issued under Section 16 is not challenged by the plaintiffs in the manner known to law, they are not entitled to compel the defendants to maintain the suit pathway as a matter of right in view of the condition Nos.2 and 3 mentioned above.

12. The plaintiffs who are seeking mandatory injunction must prove that the defendants are under legal obligation to perform or not to perform an act. Final notification as exhibited by Ex.B1 does not impose any obligation on the part of the Forest Department to maintain the suit pathway. On the other hand, it is for the plaintiffs to maintain the suit pathway. If the plaintiffs fail to maintain the suit pathway, the Forest Department can maintain the same and recover the cost from the plaintiffs. In such circumstances, the plaintiffs have not made out any case for granting mandatory injunction in their favour.

13. As rightly pointed out by the learned counsel for the appellants,



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the bar under Section 5 of the Act is not applicable for the suits filed after notification under Section 16 of the Act. Therefore, the present suit filed by the plaintiff is not barred by virtue of Section 5 of the Act. Hence, the substantial question of law framed is answered in negative in favour of the appellants. However, the plaintiffs have not made a case for granting mandatory injunction by virtue of conditions mentioned in final notification issued under Section 16 of Act. In view of the discussion made earlier, based on the conditions mentioned under final notification, this Court agrees with the final conclusion of Courts below negating the relief sought for by the plaintiffs on different reasoning. Hence, in spite of answer to the substantial questions of law as stated above, the Second Appeal deserves to be dismissed. Accordingly, the second appeal stands dismissed by confirming the judgment and decree passed by the Courts below. There shall be no order as to costs.

11.07.2024

NCC : Yes / No
Index : Yes / No

vsm

To

1.The Subordinate Judge, Srivilliputhur.



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2.The Additional District Munsif, Srivilliputhur.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SOUNTHAR, J.

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