



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2025

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.1414 of 2011

1.S.K.Sellappa Gounder

2.S.Subramanyan

... Appellants / Plaintiffs

Vs.

1.Gobichettipalayam Municipal Council,
Rep. by its Commissioner,
Municipal Office,
Sathy Erode Main Road,
Gobichettipalayam,
Gobi Taluk, Erode District.

2.The State of Tamil Nadu,
Rep. by the District Collector,
Erode District, Erode.

... Respondents / Defendants

Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree of the learned Subordinate Judge, Gobichettipalayam in A.S.No.58 of 2010 dated 12.04.2011 confirming the judgment and decree of the learned District Munsif, Gobichettipalayam in O.S.No.153 of 2008 dated 06.07.2010.



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For Appellants : Mr.A.K.Kumarasamy, Senior Counsel for
Mr.R.P.Rubanchakravarthy

For Respondents : Mr.B.Anand for R1
Mr.M.Murali, GA for R2
Ms.D.Sophia Selvi,
Advocate Commissioner

JUDGMENT

This Second Appeal has been filed the judgment and decree of the learned Subordinate Judge, Gobichettipalayam in A.S.No.58 of 2010 dated 12.04.2011 confirming the judgment and decree of the learned District Munsif, Gobichettipalayam in O.S.No.153 of 2008 dated 06.07.2010.

2. Heard Mr.A.K.Kumarasamy, learned senior counsel for the appellants and Mr.B.Anand, learned counsel for the first respondent and Mr.M.Murali, learned Government Advocate for the second respondent.

3. The appellants are the plaintiffs. The plaintiffs who have filed a suit against the defendants for the relief of mandatory injunction, have lost the suit in the Trial Court. The First Appeal preferred by the plaintiffs was also dismissed by confirming the judgment of the Trial Court. Aggrieved over that, the plaintiffs have preferred this Second Appeal.



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4. The short facts as pleaded in the plaint are as follows:

The second plaintiff is the son of the first plaintiff. The Plots in T.S.Nos.8,9,10 and 11 in Ward No.C Block No.6 as well as T.S.No.25 in Ward No.C Block No.3, Gobichettipalayam Town belongs to the plaintiffs and they have built buildings over the same. The said property in the above Survey Numbers is located on the east of T.S.No.25 and the west of other Survey Numbers. A slaughter house street is running from north to south. and that is the approach street for the above plots. The slaughter house streets branches off from east to west Sathy-Erode Main Road. The street measures 6.9 meters at the northern most end where it branches off from Sathy-Erode Main Road. The old S.F.No. for the above T.S.Nos. and the area surrounding them was S.F.148 measuring 11.43 acres. The plaintiffs have purchased the property under various sale deeds individually. The slaughter house street at the time of the sale was only 6.9 meters at the entrance from the Sathy - Erode Main Road. The width was same till it reaches T.S.No.25 and also further south.



4.1. The street survey in Gobichettipalayam town was made in the year 1957. At the place where slaughter house street branches from Erode - Sathy Main Road, there were buildings on both sides of the street and the walls touching the street. The width of the street was 6.9 meters. The buildings in those places were facing Sathy - Erode Main Road and not slaughter house street. While coming down towards south in the street, the houses have to face the slaughter house street. Some of the portions of the houses adjoining the street were vaals (open space) and the vaals were also part of the houses and in patta land.

4.2. However, during the street survey in 1957, a part of vasals to the east of slaughter house street to width ranging from 1.9 meters to 3.5 meters was included in the street. That is the width of the slaughter house street which was 6.9 meters on the northern most point was suddenly increased to 8.8 meters by adding 1.9 meters. This widening was made at a point 6.7 meters south from Sathy - Erode Main Road. The width further got increased to 10.4 meters at a point 4.03 meters from Sathy-Erode Main Road. Though the street is with an uniform width of 6.9 meters, it has a



bulge at 33.6 meters. The bulged portion is inclusive of patta land and it is without the knowledge and notice of the pattadars / owners.

4.3. A rough sketch is enclosed showing the slaughter house street with buildings on both sides. The bulged up portion is shown in red colour and marked as ABCD is the suit property and it is fully described. During town re-survey, the slaughter house street was given in T.S.No.105. The plaintiffs came to know about the mistakes committed in the survey only at the end of 1998, when he obtained the town survey field map for T.S.Nos.7,8,9,10 and 11. The measurements given in the field map did not tally with the measurements of houses in possession and enjoyment of the plaintiffs. The plaintiffs only hereafter noted that the suit property which was in their possession has been wrongly classified as street. They made representations to various authorities to rectify the mistake. The matter was delayed without any action being taken and finally, the first plaintiff applied to the District Revenue Officer, Erode. The District Revenue Officer did not dispute that the suit property was originally a patta land. But he contended that the patta land has been converted into a street long ago in 1957 during



street survey. The re-survey of the town was made later in accordance with the street survey already made.

4.4. A reply was sent to that effect to the first plaintiff on 01.06.2000. Mistake made during survey proceedings and that too, without notice to the persons affected will not in any way affect the right, title and interest of the persons concerned regarding the property. Moreover, the plaintiffs were in possession of the suit property irrespective of the fact that it was classified as street in survey records. The plaintiffs interest was in no way affected adversely. Hence, they did not pursue the matter to rectify the mistake. The plaintiffs understood that the defendants are taking emergent steps to evict the plaintiffs from the suit property. The defendants have no right to do so. They have no title or possession over the suit property. The root cause of the trouble has arisen due to the shifting of the "F" line of the slaughter house street from the western boundary of the suit property 'AD' in the plaint plan to its eastern boundary 'BC'. That mistake has to be rectified and for which the defendants are not agreeable. Hence, this suit has been filed to direct the defendants to shift the 'F' line of T.S.No.105, Gobichettipalayam Town from



'BC' in the plaint plan to 'AD' and restrain the defendants from evicting the plaintiffs from the suit property and award cost.

5. The averments made the written statement filed by the first defendant are as follows:

The suit is not maintainable. It is false that the defendants had taken emergent steps to evict the plaintiffs from the suit property. Plaintiffs have no right to sue against the defendants. The plaintiffs have no right to seek mandatory injunction against the defendants. There is no cause of action against the defendants. Hence, this suit has to be dismissed.

6. On basis of the above pleadings, the learned Trial Court has framed the following issues:

"1.Are the plaintiffs entitled to the relief of mandatory injunction as prayed for?

2. Are the plaintiffs entitled to the relief of permanent injunction as prayed for?

3.Is the first defendant a necessary party to the suit?

4. To what other reliefs?"



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7. The learned senior counsel for the appellants / plaintiffs submitted that neither the plaintiffs nor their predecessors have been given with notice when the re-survey was done. The Trial Court and the First Appellate Court had convinced themselves about the period of limitation and on that ground, the suit and the appeal have been dismissed. The plaintiffs could calculate the limitation only from the date on which they came to know about the mistake and hence, the suit is not barred by limitation.

8. The learned counsel for the first respondent submitted that the plaintiffs came to know about the town survey even in the year 1998 but have chosen to file the suit only in the year 2008. Neither the plaintiffs nor their predecessors have preferred a suit by objecting the town survey within three years. The Courts below have rightly dismissed the suit and the first appeal.

9. The crux of the matter lies only on the point of limitation. The fact that the suit property shown as ABCD in the rough sketch has been included in the street during the town survey carried out in the year 1957. The



contention of the appellants / plaintiffs is that neither themselves nor their predecessors came to know about the inclusion of patta land in slaughter house streets and the continuing violation would not make the suit barred by limitation. The defendants did not make out any specific contentions as to whether even in 1957, patta lands belonging to pattadars have been mistakenly included while making measurements for slaughter house streets. The written statement filed by the defendants are very shallow and they did not give any details as to the contentions made by the plaintiffs.

10. No doubt, for the town survey which has been carried out in the year 1957, the persons affected ought to have raised their objections within three years time. So far as the dispute in this regard in respect of two private persons, the objections ought to have been raised within three years because the private persons would have erected their buildings and started to enjoy the same as though they are the owners of the absolute properties in accordance with the town survey. But, here is the discrepancy alleged to have been shown in the measurement of the slaughter house streets and it is the claim of the plaintiffs that the part of the patta land has been included while taking measurement for street and this trouble had arisen only due to



the shifting of the 'F' line of the slaughter house street from the western boundary of the suit property 'AD' in the plan to its eastern boundary 'BC'.

11. The defendants have made a specific contention that neither the plaintiffs nor their predecessor have given any objection and no records have been produced to show that the predecessor of the plaintiffs at any point of time have been served with notice. Had it been the case, it would have been possible for the predecessor of the plaintiffs to make any objection as to the inclusion of the private land into public street. Had any public construction been made in any of the properties taken up for public purpose, then also the private parties cannot claim any right in view of the changed circumstances occurred to the knowledge of the plaintiffs. But the slaughter house street has been demarcated as a pathway and it is not the property demarcated for raising any buildings for public purpose.

12. Naturally, the portion demarcated as street can only be used as street and not otherwise. The contention of the plaintiffs is that they have been under the impression that the property sold to them under the sale deed is very much available on the ground and that they have owned the property



for which their predecessor had title. The plaintiffs would have been a better purchasers, had they got the town survey map before the purchase and made measurement and confirmed whether the measurement shown in the sale deed of their predecessor tallied with the actual measurement on the ground. Had they done the above exercise, they could have known that the portion of the patta land has been annexed with the public street. If the patta land has been mistakenly included in the street, the mistake would be a continuous mistake.

13. Irrespective of any objection raised by the parties concerned, the street lying on the ground would have been an encroachment upon the private patta land. Even in the written statement, the defendants had not made any specific plea that the suit property shown in 'ABCD' in the rough sketch was very much a patta land and the mistake has been caused in the town certificate and however, it has been barred by limitation. The indifferent written statement filed by the defendants would also probabalise the fact that the portion of the patta land could have been included in the street.



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14. The Courts below have observed that the plaintiffs have come to know about the discrepancy in the year 1998 itself, but they have chosen to file a suit only in the year 2008 and hence the suit is barred by limitation.

15. As stated already, there is a difference in the town survey and a discrepancy was found between the properties owned by the private persons and the local administration. Though the plaintiffs have been making sincere efforts to prevail upon the defendants to rectify the mistake, they were not able to resolve the same. Only when they finally came to know that their efforts will not yield any result and that the defendants will not come forward to rectify the mistake, they have filed the suit.

16. In view of the extraneous circumstance involved in the suit and in view of the continuing cause of action, it is not correct to state that the plaintiffs ought to have filed the suit within three years from 1957 and it is not barred by limitation. On the other hand, the defendants would derive the point of limitation at the time when they denied to rectify the mistake and the mistake continued to exist on the ground as a continuing violation. However, the plaintiffs have not taken the help of an Advocate



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Commissioner to measure the suit property and confirm whether the portion shown as 'ABCD' was encroached as alleged by the plaintiffs. The defendants themselves could have done the above exercise on the basis of the sale deeds, if any produced by the plaintiffs and the survey records, and take the ground measurements and rectify the mistakes, if any. But that was not done.

17. In the above circumstances, I felt it is appropriate to appoint an Advocate Commissioner to measure the suit property in order to find out whether the portion shown as 'ABCD' has been encroached by the defendants and file a report. Accordingly, an Advocate Commissioner was appointed *vide* order dated 03.12.2024 and the Commissioner had inspected the suit property and filed a report along with sketch and the surveyor's plan.

18. The first respondent does not have any objection to the report filed by the Advocate Commissioner. In the report of the Advocate Commissioner, it is categorically stated that the disputed portion 'ABCD' has been encroached by the defendants and it does not form part of the road.



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In such case, it is obligatory on the part of the first defendant to remove the encroachment and mark the road by correcting the mistake on the ground and also in the town survey maps appropriately.

19. As the Commissioner's report and plan submitted before the Court have reduced the risk of oral evidence being taken in this regard by remitting the matter back to the Trial Court, I feel it is appropriate to take the entire Commissioner's report and plan as Exs.C1 and C2 and decide the matter accordingly. As the Commissioner's report is basing on the survey taken in the presence of the Commissioner and both sides, I feel the appellants / plaintiffs are entitled to the relief of mandatory injunction as prayed.

20. In the result, this Second Appeal is allowed and the judgment and decree of the learned Subordinate Judge, Gobichettipalayam, passed in A.S.No.58 of 2010 dated 12.04.2011 is set aside and the suit is decreed in favour of the plaintiffs. The first defendant is directed to remove the encroachment within a period of one month from the date of receipt of a copy of this order. No costs.



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21. In view of the memo dated 03.01.2025 filed by the Advocate Commissioner seeking additional remuneration, Rs.20,000/- is fixed as an additional remuneration for the Advocate Commissioner and the same shall be borne by the appellants.

24.01.2025

Speaking order / Non Speaking Order

Index : Yes / No

Neutral Citation : Yes / No

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To

- 1.The Subordinate Judge,
Gobichettipalayam.
- 2.The District Munsif,
Gobichettipalayam.
- 3.The Commissioner,
Gobichettipalayam Municipal Council,
Sathy Erode Main Road,
Gobichettipalayam,
Gobi Taluk, Erode District.
4. The District Collector,
The State of Tamil Nadu,
Erode District, Erode.



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R.N.MANJULA, J.

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