



S.A.No.1119 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.05.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

S.A.No.1119 of 2012

Sathish Kumar

... Plaintiff/Respondent/Appellant

Vs.

The Director

Christian Medical College and Hospital,

Ida Scudder Road, Vellore-1

..Defendant/Appellant/Respondent

Prayer: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 11.06.2012 made in A.S.No.108 of 2011 on the file of the Sub-Court, Vellore in reversing the Judgment and Decree dated 18.10.2011 made in O.S.NO.555 of 2005 on the file of the II Additional District Munsif Court, Vellore.

For Appellant : Mr.V.Pavithran

for Mrs.V.Srimathi

For Respondents : Mr.Hemanth Ragu

for M/s.Ramasubramanian Associates



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This Second Appeal has been preferred by the plaintiff against the judgment and decree dated 11.06.2012 passed in A.S.No.108 of 2011 by the Sub-Court, Vellore.

2.Parties are indicated herein as per their litigative status on ranking before the trial Court.

3.According to the plaintiff Sathish Kumar, S/o.late Natarajan, Kaniyambadi, Vellore Taluk, his father Natarajan is the owner of the schedule mentioned property. The said property is ancestral property and joint patta has been issued by the Headquarters Deputy Tahsildar, Vellore Taluk would go to show that 1/3rd of R.S.No.140/4 was being in possession and enjoyment of Natarajan and family. Natarajan died leaving behind his wife Vatsala, son Sathish Kumar, Damodharan and daughters (name of the daughters not mentioned in the plaint. The plaintiff has filed the suit on behalf of the legal heirs of late Natarajan. The plaintiff along with his mother and siblings are in joint possession and enjoyment of the suit property without any let or hindrance.



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3.1.The total extent of Acre 6.40 cents was divided between Natarajan, Vijayaraghavan and Krishnakumari and all of them have separated by taking Acre 2.10 cents of land. A common well is situated in the schedule of property in 0.10 cents. After separation, Krishnakumari (paternal aunt of the plaintiff) constructed a Rice Mill named as 'KRT Rice Mill'. The defendant has purchased the Rice Mill which is adjacent to the plaint property from Krishnakumari. The defendant has no access to the main road from their property and their right of way exists through different property. Land to an extent of 0.10 cents of the plaintiff is in between Vellore-Arani main road.

3.2.The said 0.10 cents of land is in exclusive possession and enjoyment of the plaintiff and other legal heirs of the plaintiff. Neither the defendant nor from whom the Rice Mill was purchased, have right of way exists from Vellore, Kaniyambadi main road to their property. The vendor did not divulge any thing about the access details to the defendant [Christian Medical College] at the time of sale. The defendant, without verifying the right of way has purchased the property.

3.3.The defendant has sunk bore well in the property purchased by them and taking the water in lorries to the C.M.C. Hospital premises. The

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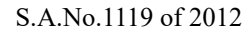


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passage which is used by the defendant is the property belongs to the plaintiff and parking of lorries and taking water in the suit property of the plaintiff causes loss and hardship to the plaintiff. The plaintiff is planning to construct building abutting the main road. The plaintiff, under the constrained situation, filed the present suit not to trespass into the plaintiff's possession and enjoyment of the suit property in any manner whatsoever. The plaintiff has no objection for the right of way if pre-existed. Just because the defendant has purchased some property, they cannot create way of their own and cannot say that they have right of way to in the property. Hence, the suit for permanent injunction.

4.Contending Contra, the defendant, the Director of Christian Medical College and Hospital, Ida Scudder Road, Vellore-1, would contend that the suit property is the ancestral property of Natarajan and after his death, his legal heirs enjoyed the suit property is not admitted. The property purchased by the defendant as detailed in the schedule below: belonged to Mrs.Krishna Kumari W/o.late.Narayanasamy. She sold the property to T.R.Sivananda Mudaliar by a registered sale deed dated 03.03.1994. In the said deed, the Survey Number is shown as R.S.No.140/4, which is not correct. Then she executed the rectification deed dated 27.01.1995 as Survey No.140/2. T.R.Sivananda Mudaliar constructed a building upon the

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4.1. The plaintiff is well aware of all these details. The property lies abutting the Vellore-Arani main road in between the main road and the property detailed below, there is a space of about 15 feet East-West. The entrance gate of the defendant's property runs North-South. The defendant has been using the connecting passage and there is a well within the defendant's property, where from the water is drawn. The plaintiff has no iota of right, title or interest in this passage connecting the building and the main road. From the main road, there is no other way to enter into the building. The stretch of land abutting the main road which lies in between the building of the defendant and the main road does not belong to the plaintiff. Even otherwise there will be easement of necessity available for the defendant and his predecessors in title. The suit is vexatious and there is no cause of action against the defendant and sought for dismissal of the suit.

5. Based on the divergent pleadings, the trial Court framed the following issues:

1. Whether the plaintiff is entitled to injunction as sought for?



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2. Whether there is no cause of action for this suit?

3. To what other relief the plaintiff is entitled?

6. At trial, to substantiate the plaint details, on the plaintiff's side, three witnesses were examined and seventeen documents were marked. On the defendant's side, one witness was examined and eight documents were marked.

7. The trial Court upon consideration of oral and documentary evidence and after hearing the arguments advanced on either side, held that the plaintiff has proved that based upon Ex.A1-patta book in the name of Vatsala, Ex.A4-the legal heir certificate of Natarajan and Ex.A7-the patta in the name of the plaintiff dated 31.08.2005 coupled with the evidence of P.W.1 to P.W.3., the property is in possession and enjoyment of the plaintiff and his family and granted the relief of permanent injunction as prayed for by decreeing the suit.

8. Aggrieved, the defendant preferred Appeal before the Sub-Court, Vellore, dated 11.06.2012 made in A.S.No.108 of 2011. The 1st Appellate Court, upon consideration of the entire records and after hearing the arguments advanced on either side has observed that as regards the 2nd



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item of the property, comes within the road and therefore, the plaintiff cannot seek any relief and the land owner abutting the road has got every right to use the land in front of his property to reach the road and as regards the R.S.No.141/2 property, the plaintiff has failed to explain about how the property came to the plaintiff and his predecessors and allowed the appeal by setting aside the judgment and decree dated 18.10.2011 in O.S.No.555 of 2005 by the II Additional District Munsif Court, Vellore.

9. Aggrieved by this finding of the 1st appellate Court, the plaintiff herein has preferred this Second Appeal.

10. The learned counsel for the appellant/plaintiff would strenuously argue that the first appellate Court has erred in deciding the issue contrary to the documents placed before the trial Court. The evidence of P.W.3-Revenue Official clearly highlights the fact the defendant property is demarcated by a fence and has a separate way. Ex.B2 and Ex.B5 would explicate that the suit 2nd item of the property situated to the East of the Vellore-Arani main road, was not properly taken note of by the 1st Appellate Court which is perverse. The field maps Ex.A2 and Ex.A5 were not given due consideration by the 1st appellate Court.



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11.Per contra, the learned counsel for the respondent/defendant

would vehemently contend that the suit 2nd item of the property situate between the main road and the defendant's property and breadth of the property is 15 feet East-West and old Palmyra tree is there in the 2nd item of the property and the 2nd item of suit property does not belong to the plaintiff. He would vehemently argue that there is no cause of action for the suit property and the 1st appellate Court, in a right perspective, set aside the judgment and decree of the trial Court.

12.In consideration of the same, the following Substantial Questions of Law arise for consideration:-

- a) Whether the first Appellate Court has not appreciated the boundary recitals found in Exs.B2 and B5, which clearly establishes the fact that the property of the defendant is abutting the Vellore Arni main road and their claim of easement through the property of the plaintiff is not conceivable in law?
- b) Whether the easement of necessity is available when the defendant is shown to have access to the public highway through its own land?
- c) Whether the order of the first Appellate Court is not against the admission of DW1 and clear evidence of PW3,



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a revenue official?

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13.The plaintiff Sathish Kumar S/o.Natarajan has laid the suit on behalf of the legal heirs of Natarajan (his father) in respect of the below mentioned properties for the relief of permanent injunction. As per the schedule of property given in the plaint, first item: Vellore District, Vellore Taluk, Kaniyambadi, R.S.No.140/4, extent acre 2.10 cents. Second item 0.10 cents of lands abutting Vellore-Arani main road.

14.As regards the 1st item of property P.W.1 / plaintiff would state that his father got the property through partition that took place between his brother Vijaya ragavan and sister Krishnaveni. The total extent is 6.40 cents and each got 2.10 cents (1st item of suit property). As regards the 1st item of suit property on a careful perusal of evidence of P.W.1, there is no serious dispute as regards the title and location of the property.

15.The 2nd item of the suit property is 0.10 cents of land abutting Vellore-Arani main road. 0.10 cents of land of the plaintiff is situated between the defendant's property and the main road. P.W.1 would further state that the said property belongs to the plaintiff as patta for the same sands in the name of his mother Vatsala W/o.Natarajan.



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16.It is pertinent to note that as regards the 2nd item of the suit property (10 cents of land), either in the plaint or in the proof affidavit of P.W.1, nowhere survey number of the said property is mentioned. The location of the property is also not stated in the plaint.

17.P.W.2, who is the Revenue Inspector, during cross examination would state that the connected documents are with the Village Adminstrating Officer. It is the evidence of P.W.3 – the VAO Kaniyambadi, that Vellore-Thiruvannamali, Arani Road is maintained by the Tamil Nadu Highway Department. He would further state that the land measuring an extent of 5 cents in R.S.No.141/2 is in the name of Vatchala wife of Natarajan, 2 ares of land in R.S.No.141/2. The total extent of 140/2 is 2 acre 10 cents. Ex.A7 patta is marked through him.

18. Ex.A1 is the patta pass book issued in the name of Vatsala, W/o.Natarajan (mother of the plaintiff) wherein for the 1st item of the suit property R.S.No.140/4 for hectare 1.24.0 Ares and for the 2nd item of the property R.S.No.141/2 it was entered in the said patta pass book on 26.09.1977. As regards the 1st item, there is no issue at all and the plaintiff's father got the property through partition that took place between his brother

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and sister.

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19.As regards the 2nd item of the property, how come the 0.10 cents of land came to the hands of the plaintiff's family is nowhere mentioned in the plaint. However, patta for the 2nd item of the property is granted on 26.02.1997. Ex.A2 and Ex.A6 are FMB in respect of R.S.No.140 of Kaniyambadi Village. In Ex.A6-FMB, 2nd item of suit property is earmarked in a triangle shape and a mention is made as R.S.No.141/2. Ex.A3 is the FMB in respect of R.S.No.141, R.S.No.141/2 is the Highway. Ex.A7 is the patta dated 31.08.2005 granted in the name of Vatsala, Dhamodharan, Sathish Kumar and Varadharajan son Vijayaraghavan in respect of 0.02 ares in R.S.No.141/2 the joint patta in the above said names have been granted.

20.It is very pertinent to note that nowhere the plaintiff has stated either in the plaint or in his proof affidavit that the defendant was disrupting his enjoyment in respect of the 1st item of the suit property.

21.As per Ex.A6-FMB, the 2nd item of the suit property is shown as triangle (R.S.No.141/2) and to the East of 2nd item of the suit property defendant land is situate. It is the case of the plaintiff that the defendant

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caused disruption in enjoyment of 1st item of suit property. Therefore, there is absolutely no cause of action in respect of the 1st item of the suit property.

22.2nd item of the suit property is 0.02 Ares in R.S.No.141/2. Patta has been granted is only for 5 cents $0.05 = 0.02$ ares (Ex.A7/R.S.No.141/2). It is relevant to refer to the provisions of Order 7 Rule 3 of CPC, in order to have a proper understanding the said provision is extracted hereunder:-

Order VII Rule 3 CPC – Where the subject matter of the Suit is immovable property:-

Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it, and, in case such property can be identified by boundaries or numbers in a record of settlement or survey, the plaint shall specify such boundaries or numbers.

23. What the law requires is that description of the property in the plaint must be sufficient to identify the property. Moreover a conjoint reading of Order 7 Rule 3 and Order 20 Rule 9 of CPC makes it clear that in a suit relating to immovable property, the plaint must disclose the identity of the suit property without any ambiguity. The identification may either be by

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boundaries or by numbers of revenue records or survey records or settlement etc.

24.As regards the 2nd item of the suit property as mentioned supra, the plaint reads that 0.10 cents of land abutting the Vellore-Arani main road. No other particulars are given but without giving any particulars either in the plaint or in the schedule of property of the plaint, the plaintiff has made an attempt to explain about the 2nd item of the suit property.

25.Based on Ex.A1 and Ex.A7 patta, in view of the above said discussions, the plaintiff cannot claim that 2nd item of suit property that it belongs to him as it forms part of the road.

26.To put it in a nutshell, as regards the 1st item of the property, absolutely no case is made out by the plaintiff for grant of permanent injunction. Though the 1st item absolutely belongs to the plaintiff family, as regards the 2nd item of the suit property the property forms part of the road and therefore the plaintiff cannot lay a claim in the 2nd item of the suit property. Therefore, this Court is of the considered view that the judgment of the 1st appellate Court does not warrant for any interference and stands confirmed. In such view of the matter, the substantial questions of law are answered in favour of the respondent/defendant.



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27. Based on the above said observations and discussions, this Second Appeal stands dismissed. Sequel to this, the judgment and decree dated 11.06.2012 made in A.S.No.108 of 2011 on the file of the Sub-Court, Vellore stands confirmed. There is no order as to costs.

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To

- 1.The Sub-Court, Vellore.
- 2.The II Additional District Munsif Court, Vellore.
3. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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