



A.S.No. 379 of 2018

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

A.S.No. 379 of 2018

O.Shakeela

... Appellant

Vs.

1. Biju Thomas
2. K.Annadurai
3. Chandran

4. The District Collector,
Thiruvallur Dt.,
Thiruvallur.

5. The Tahsildar,
Ambattur Taluk,
Ambattur, Chennai.

6. The Surveyor,
Mugappair Village,
Ambattur Taluk.

7. The Assistant Revenue Officer,
Corporation of Chennai,
Zone-VII, Ambattur,
Chennai-600 053.

.. Respondents



A.S.No. 379 of 2018

WEB COPY

PRAYER : Appeal Suit filed under Section 96 r/w Order 41 Rule 1 of Code of Civil Procedure, praying to set aside the judgment and decree dated 17.01.2018 made in O.S.No.24 of 2015 on the file of III Addl. District Judge, Thiruvallur at Poonamallee.

For Appellant : Mr.M.V.Seshadri

For Respondents : Mr. A.C.Abraham Kingsley for R1

Ms.P.T.Ramadevi,
Standing Counsel for R7

No appearance – R3, R4, R5 & R6

JUDGMENT

The appellant, who is 7th defendant in the suit, against whom, the 1st respondent/plaintiff filed a suit O.S.No. 24 of 2015 on the file of III Addl. District Judge, Thiruvallur at Poonamlee for the relief of declaration to declare the 'B' schedule property, an extent of 576 sq.ft in S.No.355 (Part) and consequential relief of mandatory injunction to remove the encroachment made by defendants 2 to 6 made in the 'B' schedule. The said suit originally filed against defendants 1 to 6. The defendants 1 and 2 are individuals and defendants 3 to 6 are the Collector and Revenue authorities.

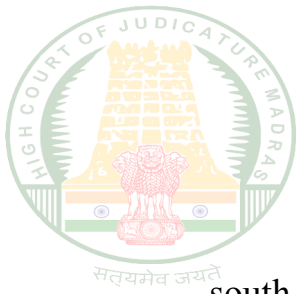


A.S.No. 379 of 2018

By way of amendment, the 7th defendant Shakeela was added as a party to the proceedings.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. The contention of 1st respondent/plaintiff is that 'B' schedule property is forming part of 'A' schedule, which belongs to her by way of purchase through the sale deed dated 20.04.2011, an extent of 2291 sq.ft. with plot No.53. Thereafter, she changed the revenue records in her name, but the 7th defendant, who is her neighbour having claimed that she purchased plot No.52 and encroached the western side of plaintiff's property, a total extent of 576 sq.ft. is shown as 'B' schedule. Hence, the plaintiff approached the court for the relief of declaration as well as mandatory injunction. The defendants 1 and 2 and 7th defendant have contested the case. The other defendants 3 to 6 remained exparte. The defendants 1 and 2 contended that plot No.52 eastern side as well as southern side, there is a road, more particularly, on the eastern side of the said plot, there is 16 ft. road and not encroached plaintiff's property. The 7th defendant contended that 'B' schedule property is 16 ft. road running north-



A.S.No. 379 of 2018

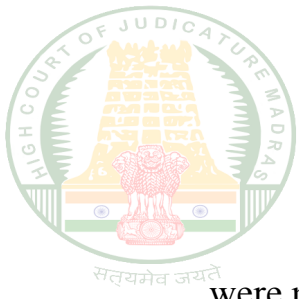
WEB COPY

south and to the east of her plot No.52, the said road is in existence even before the purchase of plot No.52 from this defendant's vendor M.M.Elayamma Joseph through the sale deed dated 23.10.2000 from her vendor M/s. Golden Bricks and Tiles Company in the year 1995. For that, the parent document, eastern portion of Plot No.52, is shown as 16 ft. road and the said road is known as Alex Leo Street and not Annai Therasa Street. She also denied the fact that the plaintiff is having absolute right over 'B' schedule property.

4. Considering both side submissions, the trial court framed two issues. The foremost issues framed is as follows :-

- (i) Whether the plaintiff has proved that he is the absolute owner of suit 'B' schedule property?
- (ii) Whether the plaintiff is entitled for the relief as prayed for?

5. Before the trial court, on the side of plaintiff, she was examined as P.W.1 and Exs.A1 to A11 were marked and on the side of defendants 1 and 2, no oral or documentary evidence was adduced and on the side of 7th defendant, D.W.1 was examined and Ex.B1 to B3 were marked. On the consent of both parties, C.W.1 and C.W.2 were examined and Exs.C1 to C4



A.S.No. 379 of 2018

were marked.

WEB COPY

6. Considering the evidence on record, trial judge held that as per the sale deed relied on by the plaintiff, Ex.A1 dated 20.04.2011 and her vendor sale deed Ex.A2 and Ex.A3, it reveals that M/s. Gold Bricks and Tiles company have converted adjacent lands in Survey Nos. 347, 349, 355, 367 into plots. In that, plot No. 53 an extent of 2291 sq.ft. was originally sold to Geetha Vasan, plaintiff's Vendor's vendor with four boundaries. In all the three documents, the western boundary of suit 'A' schedule is shown as plot No.52. Contrary to that, the 7th defendant claimed that on the eastern side of her plot No.52, there is a road, to that effect, she relied her sale deed, wherein the eastern boundary of her plot is shown as 16 ft. road. Furthermore, to prove her claim, the plaintiff appointed an Advocate Commissioner and measured the property with the help of surveyor and they were examined as C.W.1 and C.W.2 and the commissioner's report was marked as Ex.C1 to C4.

7. On considering the Ex.C1 to Ex.C4 and on perusal of the sketch



A.S.No. 379 of 2018

WEB COPY

preferred by the Commissioner C3, the trial judge included both 'A' and 'B' schedule, calculated total measurements and made an observation that there is disparity in measurement sketch and report preferred by the Commissioner marked as Ex.C2 and Ex.C3. Furthermore, the trial judge relied oral evidence of Surveyor C.W.2, who deposed that northern and southern extent includes both 'A' and 'B' schedule properties, thereby concluded that report of surveyor as well as sketch Ex.C1 and Ex.C2 tallies with the measurement of suit 'A' and 'B' schedule properties. Accordingly, decreed the suit by granting the relief of plaintiff as prayed for.

8. Challenging the said findings, now the present Appeal Suit preferred by the 7th defendant by raising the following grounds :-

- i. The trial court ought to have held that the B schedule property is a road.
- ii. The trial court ought to have seen that the appellant had purchased the property bearing Plot No.52 situate to the west of the suit B schedule road from Mrs.M.M.Alyamma Joseph as per Ex.B3 – Registered deed of sale dated 23.10.2000 and prior to that, the appellant's vendor



WEB COPY



A.S.No. 379 of 2018

Mrs.M.M.Alyamma Joseph had purchased the said plot No.52 from M/s.Golden Bricks and Tiles Company as per Ex.B2 – Registered sale deed dated 24.11.1995. In Ex.B2 – registered sale deed dated 24.11.1995 a layout plan was also annexed.

- iii. The trial court ought to have seen that in Ex.B2 – registered sale deed dated 24.11.1995, Plan annexed to the said document and subsequently Ex.B3 – sale deed dated 23.10.2000 in favour of the appellant, the eastern boundary of Plot No.52 is shown as 16 ft. road only.
- iv. The trial court ought to have seen that after conveying Plot No.52 in the manner stated above as per Ex.B2 – sale deed dated 24.11.1995, the original promoter of layout M/s.Golden Bricks and Tiles Company had conveyed Plot No.53 to one Mrs. Geetha Vasan as per Ex.A3 – registered sale deed dated 29.04.1996. In the said sale deed Ex.A3 – the original layout promoter instead of showing the western boundary of Plot No.53 as 16 ft. road, had illegally shown



WEB COPY



A.S.No. 379 of 2018

the western boundary to be of Plot No.52 and conveyed the same.

- v. The trial judge erred in relying upon Ex.A4 and A5 – regularisation order in respect of plot No.53. The said order of regularisation is dated 16.05.2005 is in favour of Mrs.Geetha Vasan, who had already sold her interest in the suit property as per Ex.A2 – sale deed dated 15.12.2004. Therefore, the said Ex.A4 and A5 – regularisation orders issued in favour of Mrs.Geetha Vasan, after she had sold the property, is not at all a true and genuine document. Further, the said regularisation order has been issued subsequent to the sale deed in favour of the appellant and without conducting any enquiry or calling for objections from the appellant. Therefore, the said orders in Ex.A4 and A5 are all invalid.

- vi. The trial judge had failed to appreciate the report of the learned Advocate Commissioner and Surveyor in Ex.C1 to



WEB COPY



A.S.No. 379 of 2018

C4 in proper perspective. From the sketch of learned Advocate Commissioner and as well as admission made by the parties, it is well established that there are public syntex water tank, electric transformer and flag post which are all situated to the north of the suit B schedule road. Barring the suit B schedule road, there is no other access to reach the said EB transformer or syntex water tank either for the public or officials. Further, pucca thar road has been laid over the suit B schedule property and the same has been named as Alex Leo Street. The said clearly establishes that suit B schedule property has been treated as road all along. The first respondent/plaintiff and his predecessors-in-title are well aware that the suit B schedule property is a road and that is the reason why they have not raised any objection for the erection of transformer or public syntex water tank to the north of suit B schedule property. The first respondent/plaintiff is estopped by his conduct from disputing the road in the suit B schedule property.



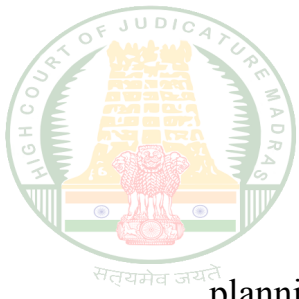
WEB COPY



A.S.No. 379 of 2018

vii. The trial judge failed to see that in Ex.A1 to A3 – sale deeds in favour of respondent/plaintiff and his predecessors-in-title the property in Plot No.52 stated to have been purchased by them is situate in T.S.No.8 of Mugappair village. However, it is found by the surveyor at the time of his inspection and stated in report and sketch in Ex.C1 and C2 – that the suit B schedule property is situate in T.S.No.7 of Mugappair village.

9. By way of reply, the learned counsel appearing for 1st respondent/plaintiff submits that the relief claimed by the plaintiff in respect of 'B' schedule property has been established by her through her sale deed as well as Commissioner's report and Surveyor report. Based on that, the trial judge rightly held that 'B' schedule property is forming part of 'A' schedule property absolutely belong to the plaintiff needs no interference of this court. The learned counsel for appellant would also submit that purchase made by the plaintiff is earliest one than the appellant/7th defendant and after the purchase, she obtained permission from the



A.S.No. 379 of 2018

planning authority showing 16 ft. road as one of boundary. But the 7th defendant failed to establish that there is existence of 16 ft. road in the eastern side of her plot and plaintiff's plot. Considering material evidence on record adduced on the side of plaintiff, the trial judge rightly granted the relief in favour of plaintiff. Hence, he prayed to dismiss the appeal suit as no merit.

10. Heard and considered rival submissions made by learned counsel for appellant as well as respondents 1 and 7 and perused the materials available on record.

11. Considering both side submissions, the point for consideration is whether 'B' schedule property as prescribed in the suit schedule viz., 16 ft. tar road is in existence on the ground or 'B' schedule property is forming part of 'A' schedule as claimed by the plaintiff. At the time of argument, the learned counsel for appellant pointed out that 'A' schedule property is pertaining to T.S.No.8 and 'B' schedule property is pertaining T.S.No.7, but the plaintiff falsely mentioned that in suit 'B' schedule property, 16 ft. road is in T.S.No. 8. On perusal of plaint schedule, the plaintiff had mentioned that both 'A' and 'B' schedule properties situated in T.S.No.8 Mugappair



A.S.No. 379 of 2018

WEB COPY

village, Ambattur Taluk. On perusal of title deeds relied on by the plaintiff marked as Ex.A1 to A3, plot No.53 with an extent of 2291 sq.ft. was originally purchased by Geetha Vasan and as per Ex.A1, sale deed, the plaintiff purchased the property from her vendor's power agent Dhanalakshmi, who derived title through Ex.A2 sale deed of the year 2004. On perusal of both documents Ex.A1 and Ex.A2, plot no.53 with an extent of 2291 sq.ft. with four boundaries was conveyed to this plaintiff. In the boundary description, old S. No.355 (part), R.S.No.355/4 and new T.S.No.8 and the original parent deed of plot No.53 derived title through Ex.A3 sale deed was devolved as per Ex.A6 sale deed dated 29.04.1996, wherein plot No.53 was shown as Survey No.355 (part) with four boundaries. Subsequently, T.S.No.8 was assigned for plot No.53.

12. Admittedly, 'A' schedule property as prescribed in plaint schedule, an extent of 2291 sq.ft. as per sale deeds Ex.A1 to A3, the extent mentioned in the suit schedule is totally tallied with. The dispute pertaining to 'B' schedule property as per contention of plaintiff, 'B' schedule is forming part of 'A' schedule, because at the time of purchase made by her, her western boundary was shown as plot No.52 now belongs to 7th defendant. But, in

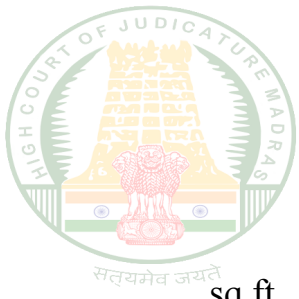


A.S.No. 379 of 2018

WEB COPY

plot No.52, there is no existence of 16 ft. pathway as alleged by 7th defendant, who is owner of Plot No.52. As per the boundary description found in Ex.A1 to A3 relied on by the plaintiff, admittedly, her western boundary was shown as Plot No.52, but the extent available within the four boundaries is 2291 sq.ft. But, as per the Commissioner's report, Ex.C4, western boundary of 'A' schedule property is shown as 16 ft. thar road, however, the measurement pertaining 'A' schedule is mentioned as 2291 sq.ft. in T.S.No. 8. Therefore, as per commissioner's report, on the western boundary of suit plot, there is a thar road within the said four boundaries, the property purchased by the plaintiff an extent of 2291 sq.ft. is in existence. Therefore, even though as per the sale deed, the plaintiff's western boundary was shown as plot no.52, but on ground reality western boundary is a thar road and within the said boundary, the land purchased by the plaintiff is available, besides 'A' schedule property is pertaining to T.S.No.7 (part).

13. Furthermore, on considering report of commissioner, it would clearly reveals that 'B' schedule property is 16 x 36 ft. equivalent to 576



A.S.No. 379 of 2018

WEB COPY

sq.ft. is a public lane pertaining to T.S.No. 7 (part). As per the revenue records, 'B' schedule property is known as thar salai, public road. Moreover, on the dead end of road, there is E.B. Transformer as well as syntex drinking water tank No.7849 belongs to corporation and on the northern side of compound wall known as Alex Leo Street. Therefore, in the 'B' schedule property, it is pucca thar road, is the dead end, wherein E.B. Transformer is also present. Therefore, the report of commissioner as well as sketch with town survey extract clearly proves that T.S.No.7 is pertaining to public lane and it is not related with 'A' schedule property. But, the trial judge ignoring all the oral evidence erroneously concluded that 'B' schedule is forming part of 'A' schedule based on the evidence of surveyor. Furthermore, 'B' schedule property, the plaintiff described the property situate to the west of T.S.No.8 and as per the town survey extract, 'B' schedule property is a public lane created in T.S.No.7. The physical feature of lane also clearly proves that it is under the public usage. Hence, 'B' Schedule is not forming part of 'A' schedule wrongly decided by the trial judge. Therefore, the findings of trial judge is totally erroneous one and the same is rendered without appreciation of the evidence on record.



A.S.No. 379 of 2018

WEB COPY

Accordingly, the findings rendered by the trial judge is liable to be set aside.

The plaintiff is failed to establish that 'B' schedule property is belongs to her and forming part of 'A' schedule. On the other hand, the appellant/7th defendant established that 'B' schedule is public thar road, in which the plaintiff has no absolute right, thereby, both points are answered.

Accordingly, the Appeal suit is allowed and the findings rendered by the trial judge in O.S.No. 24 of 2015 is set aside. Consequently, Suit is dismissed as no merit. No costs.

06.02.2025

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
rpp

To

III Addl. District Judge,
Thiruvallur at Poonamallee.

T.V.THAMILSELVI, J.



WEB COPY



A.S.No. 379 of 2018

rpp

A.S.No. 379 of 2018

06.02.2025