



S.A.No.786 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

JUDGMENT RESERVED ON : 30 / 10 / 2024

JUDGMENT PRONOUNCED ON : 25 / 06 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.786 OF 2021
AND
CMP NO.15240 OF 2021

Ranganayaki

... Appellant / Appellant /
Plaintiff

Vs.

1.State of Tamil Nadu

Rep. By District Collector
Cuddalore.

2.Special Tahsildar

Adi Dravidar Welfare Department
Virudhachalam.

... Respondents / Respondents
Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated August 19, 2019 made in A.S.No.27 of 2018 on the file of the Sub Court, Tittakudi, confirming the Judgment and Decree dated March 28, 2018

Page No.1 of 18



S.A.No.786 of 2021

made in O.S.No.82 of 2012 on the file of the Additional District Munsif's Court, Tittakudi.

WEB COPY

For Appellant : Ms.Nilaphar
for M/s.R.Meenal

For Respondents : Ms.R.Anitha
Special Government Pleader

JUDGMENT

This Second Appeal is directed against the Judgment and Decree dated August 19, 2019 passed in A.S.No.27 of 2018 by the 'Sub Court, Tittakudi' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated March 28, 2018 passed in O.S.No.82 of 2012 by the 'Additional District Munsif, Tittakudi' ['Trial Court' for brevity] was confirmed.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

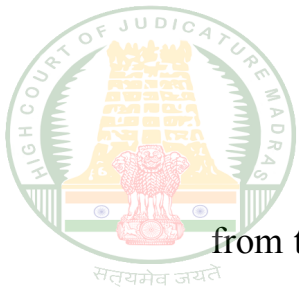
3. The plaintiff has filed the Original Suit seeking easementary rights for a pathway. Suit first schedule comprises of two



S.A.No.786 of 2021

WEB COPY

items, which are strips of land. The first item thereof is an extent of 0.09.5 Hectares (9.5 Ares) situate in Survey No.89/16A on the north and the second item thereof is an extent of 0.02.5 Hectares (2.5Ares) situate in Survey No.90/3 on the South, right below the first item. The first item was originally owned by one Muthukrishna Reddiar's son - Narayanasamy Reddiar, who along with his wife and children, sold the same to the plaintiff on February 24, 1996 and the second item belonged to Kandhasamy Naicker who sold the same to the plaintiff on October 4, 1996. The Suit second schedule property lies on the southern side of the first schedule properties. Abutting the southern boundary of the Suit second schedule property, there exist an East-West Highway Road for about 100 years. Case of the plaintiff is that the Suit second schedule property is a pathway to access the first schedule properties from the East-West Highway and the plaintiff and her vendor have been using the same as such for agricultural and transport purposes for more than 100 years, thereby gaining a right of easement of necessity. However, the defendants have encroached upon the Suit second schedule property and constructed a wall thereon on May 1, 2012. Since the defendants may complete the construction before legal proceedings, the plaintiff requests an exemption



S.A.No.786 of 2021

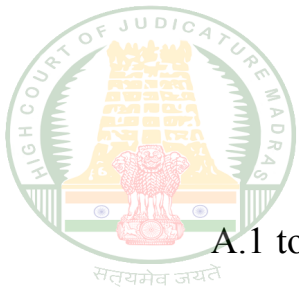
from the mandatory notice under Section 80 of the Civil Procedure Code, 1908. Therefore, the plaintiff has filed the Suit for declaration of plaintiff's right over the Suit second schedule property and mandatory injunction to remove the compound wall as well.

DEFENDANT'S CASE

4. The first defendant filed a written statement, which was adopted by the second defendant. The defendants completely denied all claims made by the plaintiff. The defendants asserted that the second schedule of properties belongs to the Government as *Natham* land and was allocated to the second defendant, who then proceeded to construct a compound wall thereon. According to the defendants, the Suit filed by the plaintiff is based on false claims intended to interfere with Government actions. The plaintiff can enjoy but cannot claim right over the Government lands. Therefore, they seek dismissal of the Suit with costs.

TRIAL COURT

5. At trial, plaintiff's husband by name Vivekanandar was examined as P.W.1 and one Chelladurai was examined as P.W.2 and Ex-



S.A.No.786 of 2021

A.1 to Ex-A.10 were marked on the side of the plaintiff. One Samikannu, Special Tahsildar was examined as D.W.1 and one Rathinavathi, Special Tahsildar was examined as D.W.2 and Ex-B.1 to Ex-B.4 were marked on the side of the defendants. Advocate Commissioner's report and plan were marked as Ex-C.1 and Ex-C.2.

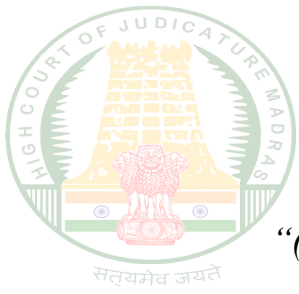
6. After full-fledged trial, the Trial Court held that the plaintiff failed to prove that the Suit second schedule property was used as a pathway by the plaintiff and her predecessors in title. Accordingly, it dismissed the Suit.

FIRST APPELLATE COURT

7. Feeling aggrieved, the plaintiff preferred an appeal before the First Appellate Court, which, after hearing both sides, dismissed the appeal and confirmed the Judgment and Decree of the Trial Court.

SECOND APPEAL

8. Feeling aggrieved, the plaintiff has preferred the present Second Appeal under Section 100 of the Code of Civil Procedure, 1908. The Second Appeal was admitted on November 17, 2021 on the following substantial questions of law:



WEB COPY



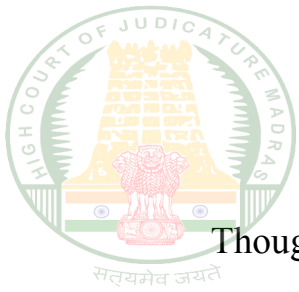
S.A.No.786 of 2021

- “(i) *Whether in law the Courts below are right in failing to see that the appellant satisfies all the ingredients of Section 13 of Easements Act and is entitled to relief?*
- (ii) *Whether in law the Lower Appellate Court was right in passing a sketchy judgment without considering the facts, evidence and law afresh and flouting the mandates of Order 41, Rule 31 C.P.C.?”*

ARGUMENTS:

9. Ms.Nilaphar for M/s.R.Meenal, learned Counsel for the appellant / plaintiff would argue that Survey No.89/16A is situate on the northern side and Survey No.90 is situate on the southern side abutting each other. Abutting Survey No.90 is the East-West Highway comprised in Survey No.91. A portion of Survey No.90 has been sub-divided into various sub-divisions in or around 1984 and the Suit second schedule property is situate in the western edge of sub-divisions 5,7 and 9 of Survey No.90. Suit second schedule property is being used by the plaintiff and her predecessors-in-title for more than 100 years, as a pathway to the Suit first schedule properties for ingress, egress, agricultural and transportation purposes from the East-West Highway.

Page No.6 of 18



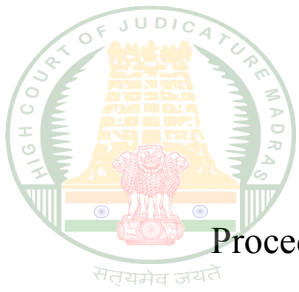
S.A.No.786 of 2021

WEB COPY

Though Suit second schedule property is a government poramboke land, its eastern side *i.e.*, the other portions of sub-divisions 5,7 and 9 of Survey No.90, are being used as agricultural land. She goes on to submit that people who practiced agriculture on the eastern side of Suit second schedule property used the same to access and enjoy the lands for agricultural purposes.

9.1. She would further argue that except Suit second schedule property, no other way of access is available to the plaintiff to reach Suit first schedule properties. Hence, the plaintiff is entitled by way of easement of necessity to use the Suit second schedule property as a pathway to access the Suit first schedule properties, as she and her predecessors-in-title have been doing for more than 100 years. The plaintiff has perfected prescriptive easementary right as well. The Trial Court as well as the First Appellate Court failed to consider the evidence adduced by the plaintiff in the right perspective and erred by dismissing the Suit. The First Appellate Court failed to apply its mind and its Judgment is not in tune with Order XLI Rule 31 of Code of Civil

Page No.7 of 18



S.A.No.786 of 2021

Procedure, 1908. Accordingly, she would pray to allow the Second Appeal, set aside the Judgments and Decrees of First Appellate Court and Trial Court, and decree the Suit.

10. Opposing the above submissions, Ms.R.Anitha Special Government Pleader, learned Counsel for the respondents / defendants would argue that the plaintiff failed to establish that the Suit second schedule property was servient tenement and the Suit first schedule properties are dominant tenements. Admittedly, the Suit second schedule property was a government poromboke land and the plaintiff cannot claim easementary right under Section 13 of the Indian Easements Act, 1882. Further, there exist a North-South pathway abutting the western edge of Survey Nos.89 and 90, branching off from the East-West Highway and proceeding towards North and the same is the 'Mamool Pathway' to Survey No.89/16A *i.e.*, first item of Suit first schedule properties. The said North-South pathway can also be used to access the second item of Suit first schedule properties. Having alternate pathway to the Suit first schedule properties, the plaintiff cannot claim easement by necessity. Even while assuming that no East-West pathway is available from the said North-South pathway to access the Suit first schedule properties, even



S.A.No.786 of 2021

then, the plaintiff can only lay claim on the western side properties to

Survey Nos.89/16A and 90/3 for pathway. She emphasised the point that,

at any event, easement by necessity can only be claimed when a single tenement had been severed into parts creating the necessity. Further, the plaintiff failed to prove the existence of pathway (Suit second schedule property) and that she and her predecessors-in-title are using the same for more than 100 years. The Trial Court as well as the First Appellate Court rightly dismissed the Suit. There is no reason to interfere with the same. Accordingly, she would pray to dismiss the Second Appeal, and confirm the Judgment and Decree of First Appellate Court.

DISCUSSION:

11. This Court has heard on either side and perused the materials available on record in light of the Substantial Questions of Law.

12. A rough sketch has been filed along with the plaint, whereof the blue washed portion depicts the Suit first schedule properties and the red washed portion shows the Suit second schedule property. Abutting the Suit second schedule property there is an East-West



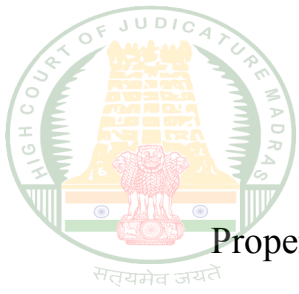
S.A.No.786 of 2021

Highway. There is no serious dispute with regard to the fact that the Suit

second schedule property is a government poromboke land. The Suit first schedule properties consists of two items viz., Survey Nos.89/16A and 90/3. In Survey No.89/16A, totally there are more than 25 sub-divisions. Survey No.90 has 12 sub-divisions. Sub-divisions 1 to 4 of Survey No.90 are patta lands (Ryotwari lands). Sub-divisions 5 to 12 are classified as government poromboke land, among which sub-divisions 5 to 9 thereof are remarked as *Natham* in Ex-B.2 – Settlement Register (12th column). From the above, it is discernible that Sub-divisions 5 to 12 of Survey No.90 belongs to the government.

13. The plaintiff lays her claim based on Sections 13 and 15 of the Indian Easements Act, 1882. To claim easementary right under Section 13, the plaintiff has to establish that the Suit second schedule property is a servient tenement and the Suit first schedule properties are the dominant tenements. She is also supposed to establish that both the tenements were earlier a single tenement, severance of which into parts have caused implied grant or necessity to the plaintiff. Clearly the burden lies upon the plaintiff to prove the above. For laying a successful claim under Section 13, in this case, the plaintiff must prove that Suit

Page No.10 of 18



S.A.No.786 of 2021

Properties, both the first and second schedule, were initially a single tenement or belonged to the same owner and subsequently, the government acquired the Suit second schedule property. If not, she has to prove that, earlier, both the Suit schedule Properties belonged to the government and was later assigned or transferred or conveyed to her predecessors-in-title.

14. In this case, the first and second items of Suit first schedule properties were purchased by the plaintiff vide Exs-A.2 and A.3 – Sale Deeds respectively in the year 1996, from different vendors. The plaintiff failed to examine the predecessors-in-title to show the existence of Suit second schedule property and its alleged usage as pathway to access Suit first schedule properties. Nor she has proved that the Suit Properties were earlier a single tenement.

15. Admittedly, the Suit second schedule property is a government land. To make out a case under Section 15, the plaintiff ought to prove the existence of the pathway and her enjoyment for more than 30 years, and the Suit ought to have been laid within two years from the date of completion of the said period of 30 years.

Page No.11 of 18



S.A.No.786 of 2021

16. The plaintiff examined P.W.2 – Chelladurai, who does not

have any property in the Suit survey numbers. He has deposed that he has been engaged as an agricultural labourer by the plaintiff for the past 30 years and that the Suit second schedule property is being used as a pathway to reach Suit first schedule properties. Be that as it may, an Advocate Commissioner was appointed by the Trial Court in this case, who upon inspecting the Suit Properties have submitted Ex-C.1 and Ex-C.2 – Report and Plan, both of which does not show the existence of any pathway as alleged by the plaintiff. The Advocate Commissioner regards the Suit second schedule property as ‘pathway claimed Suit Property’ meaning the Suit Property in which the plaintiff claims pathway rights. He has not mentioned that there exist a pathway. If really the plaintiff and her predecessors-in-title are in enjoyment of Suit second schedule property as a pathway for more than 100 years, obviously there would have been some traces of the same and the same would have reflected in Ex-C.1 and Ex-C.2. But that is not the case here. In view of Ex-C.1 and Ex-C.2, this Court is unable to believe the oral evidence of P.W.2, especially in the absence of corroborative evidence. Thus, the plaintiff has failed to prove the existence of pathway as well as her alleged enjoyment of the same.

Page No.12 of 18



S.A.No.786 of 2021

17. The plaintiff has established neither her case of easement by necessity nor of easement by prescription.

18. Ex-A.2 relating to first item of Suit first schedule properties has a mention of a 'Mamool Pathway' with no particulars as to where it lies. The burden is upon the plaintiff to prove that the said 'Mamool Pathway' lies in Suit second schedule property. As stated *supra*, the plaintiff has neither proved the existence of pathway in Suit second schedule property nor has proved her alleged enjoyment of Suit second schedule property as a pathway. Moreover, in Ex-A.3 relating to Item No.2 of Suit first schedule properties, there is no mention of any easementary right or pathway. Hence, the plaintiff has failed to establish that the 'Mamool Pathway' as described in Ex-A.2 is the Suit second schedule property.

19. The Trial Court after considering the evidence available on record held that the plaintiff failed to establish her claim of easementary right. The First Appellate Court has rightly concurred with the Trial Court's view, however, the reasoning assigned is not justifiable. The First Appellate Court observed that the property should be that of the

Page No.13 of 18



S.A.No.786 of 2021

easementary right seeker in order to claim easementary rights over the same. The observation is a clear outcome of wrong understanding of law.

However, as said *supra*, its conclusion that the plaintiff has not established any easementary right as claimed and hence, the Suit is to be dismissed is correct. Both the Courts concurrently held that the plaintiff has not established her case and hence, there is no need to interfere with the same.

20. To answer the Substantial Questions of Law specifically, the plaintiff has failed to satisfy the ingredients of Section 13 of the Indian Easements Act, 1882 as elaborated above and both the Courts are right in holding so. Further, though the First Appellate Court failed to frame proper points for consideration as contemplated under Order XLI Rule 31 of the Code of Civil Procedure, 1908, its discussion covers all the vital aspects necessary for deciding the Appeal Suit. Thus, the First Appellate Court has substantially complied with Order XLI Rule 31 of the Code of Civil Procedure, 1908, in the considered opinion of this Court. Substantial Questions of Law are answered accordingly.



S.A.No.786 of 2021

21. Before parting, it is made clear that this Judgment will

not be a bar for filing a fresh Suit seeking easementary right or any other lawful right for pathway on the other lands comprised in Survey No.89 and sub-divisions 1 and 2 of Survey No.90, or any other surrounding lands.

22. It could be reasonably inferred from the facts and circumstances, that the plaintiff purchased the 2nd item of Suit first schedule properties vide Ex-A.3 only to gain convenient access to the 1st item thereof from the East-West Highway. Considering the same, the first and second defendants may consider any request by the plaintiff (if she does not pursue, or does not succeed in pursuing, the options stated in Paragraph No.21 hereinabove), and may permit the plaintiff to enjoy a reasonable extent of Suit second schedule property as a pathway to access Suit first schedule properties, on the terms and conditions the defendants deem fit, untrammelled by the decision of this Court in dismissing the Suit.

CONCLUSION:

23. Resultantly, the Second Appeal stands dismissed. The

Page No.15 of 18



S.A.No.786 of 2021

Judgment and Decree of the First Appellate Court as well as the Trial

WEB COPY

Court are confirmed. In view of the facts and circumstances of this case, there shall be no order as to costs. Connected Civil Miscellaneous petition shall be closed.

25 / 06 / 2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK
To

1.The Sub Judge
Sub Court
Tittakudi.

2.The Additional District Munsif
Additional District Munsif's Court
Tittakudi.



WEB COPY



S.A.No.786 of 2021



WEB COPY



S.A.No.786 of 2021

R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN

S.A.NO.786 OF 2021

25 / 06 / 2025

Page No.18 of 18