

S.A.(MD)No.414 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.07.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)No.414 of 2018

Sam Sureshkhan

... Appellant

VS

Nalloor Town Panchayat,
represented by its Executive Officer,
Nalloor Deson, Nallur Village,
Vilavancode Taluk,
Kanyakumari District.

Arulanandha Raj (died)

...Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 20.12.2017 passed in A.S.No.33 of 2013 on the file of the Subordinate Court, Kuzhithurai, confirming the judgment and decree, dated 02.03.2019 passed in O.S.No. 392 of 2008 on the file of the I Additional District Munsif Court, Kuzhithurai.

For Appellant : Ms.J.Ajandhavalli
For Respondent : Ms.P.B.Ahamed Yasmin Parvin
Government Advocate



S.A.(MD)No.414 of 2018

JUDGMENT

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The unsuccessful plaintiff is before this Court on appeal. The Second Appeal is filed challenging the judgment and decree, dated 20.12.2017 in A.S.No.33 of 2013 on the file of the Subordinate Court, Kuzhithurai, confirming the judgment and decree, dated 02.03.2019, passed in O.S.No. 392 of 2008 on the file of the I Additional District Munsif Court, Kuzhithurai.

2.For the sake of convenience, the parties are referred to, as per the litigative status before the trial Court.

3.It is the case of the plaintiff that the suit property originally belonged to one Jacob, the Great Grandfather of the plaintiff. A partition deed was executed on 21.06.1977 in the family of Jacob. In the partition deed executed, the suit 'A' schedule property, which was shown as Item No. 1 in the partition deed, was allotted to the share of the plaintiff's father, Nallathampi Evans, his brothers, Jacob Thampi Evans, Jose Linty Evans and Jacob Hentry Banu. The suit 'B' schedule property, which was the Item No.



S.A.(MD)No.414 of 2018

1 in the 'B' schedule in the partition deed, was allotted to Bhanumathi Edison. The 10 feet common pathway, which is the suit 'C' schedule property/road, was allotted to both for 'A' schedule and 'B' schedule property in the partition deed.

4.It is the case of the plaintiff that 10 feet pathway was provided starting from Nagercoil-Thiruvananthapuram Main road in the north side of the 'A' schedule property till 'B' schedule property in the south. After the death of the plaintiff's father, the plaintiff and his mother inherited the property and they are carrying on business and further, they have also put up a residential building, which are all not the subject matter of the suit. The plaintiff's father had also put up a strong steel gate in the northern and southern side of the pathway and the plaintiff had, thereafter, laid the pathway by metals by using his own funds and maintained it, as a private road.

5.It is the further case of the plaintiff that in around November 2007, at the instigation of the second defendant, the first defendant attempted to convert the suit 'C' schedule road into a public road with a plan to link the



S.A.(MD)No.414 of 2018

private road with the panchayat pathway adjacent to suit 'B' schedule property. As such, the plaintiff issued a notice to the defendants and thereafter, had come up a suit seeking permanent injunction.

6.The defendants resisted the suit. The first defendant filed a written statement contending that the road measuring 7 cents was formed in the suit 'B' schedule property, which formerly belonged to Banumathy Edison. She had surrendered the right over the said road measuring 7 cents to Nalloor Panchayat by executing a gift deed, dated 12.12.2007. Subsequent to the gift being executed, the Panchayat had passed a resolution on 04.01.2008 permitting to accept the road, as Panchayat road. After the same was accepted, as a Panchayat road, the Panchayat had also passed a resolution, dated 08.02.2008 and they decided to convert the same into a concrete road, for which, a work order was approved and issued and the work was also started and completed in the year 2008. It is the specific case of the first defendant/Panchayat that no work was done within the suit 'C' schedule property. The Panchayat had done the work on the road, which belongs to the Panchayat and lies on the south of the 'C' schedule road, which was gifted to Panchayat by Banumathy Edison. As such, the plaintiff has no



S.A.(MD)No.414 of 2018

cause of action to file a suit, as against the first defendant.

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7.The second defendant filed a separate written statement contending that the plaintiff is not the absolute owner of the suit 'C' schedule road. All the owners in suit 'A' and 'B' schedule properties had right over the suit 'C' schedule road. The road, in which, the plaintiff is asserting a right, is a pucca motorable road running from Marthandam L.M.S. Girls' Higher Secondary School junction branching from National Highways to the Railway station. It is the further case of the second defendant that the suit 'B' schedule was allotted to Banupathy Edison, which was divided into 7 housing plots and therefore, after setting apart 7 cents in the eastern side of the suit 'B' schedule property for formation of the road, Banumathy Edison, had surrendered the said 7 cents to the Nalloor Panchayat for maintenance of the road by executing a gift deed. As such, the Panchayat had laid a concrete road on the southern side of the suit 'C' schedule. According to the second defendant, the road in 'C' schedule was converted into a metal road by spending Rs.40,000/-, which was also shared by the second defendant. The plaintiff had also acquiescence in the formation of the road for the common use of all the residents and sought for dismissal of the suit.



S.A.(MD)No.414 of 2018

8. During trial, the plaintiff examined himself as PW-1 and one Devaraj, as PW-2 and marked Ex-A1 to Ex-A9 and on the side of the defendants, the Executive Officer of the Panchayat was examined as DW-1, and second defendant was examined as DW-2 and one Amose was examined as DW-3 and Ex-B1 to Ex-B13 were marked. An Advocate Commissioner was appointed and his report and plan were marked as Ex-C1 and Ex-C2.

9. The trial Court after analysing the oral and documentary evidences, came to the conclusion that since the second defendant is the purchaser from Banumathy Edison, who was granted the suit 'B' schedule property in the partition and the second defendant, being the co-owner, through purchase from Banumathy Edison, the suit filed by the plaintiff as against the co-owner seeking for injunction, is not maintainable. The trial Court also on finding that that the suit 'C' schedule road having been put into public use, dismissed the suit. On appeal, the lower appellate Court concurred with the findings of the trial Court and concluded that when once the suit 'C' schedule road has been put into public use, the relief of injunction sought for by the plaintiff cannot be sustained and thereby,



S.A.(MD)No.414 of 2018

dismissed the appeal. Assailing the concurrent finding of fact, the plaintiff is before this Court on appeal.

10.This appeal has not been admitted and this Court by order, dated 21.03.2019, ordered notice to the respondent.

11.The learned Counsel for the appellant after making very many submissions on the merits of the appeal contended that now since the Panchyat had not laid any road in the suit 'C' schedule road and also the plaintiff, on considering the fact that the road is being used by the suit 'A' schedule owner and also the owners in suit 'B' schedule, which has been sold to several persons and further, the road, which has been created in the suit 'B' schedule property, has been linked with the road extending further on the southern side, the plaintiff is not intending to close the suit 'C' schedule road. The learned Counsel also submitted that the plaintiff will maintain the suit 'C' schedule road, as a road, without closing it with any gate and the road will always be kept open for the use of the public, as it is in use now. The learned Counsel further submitted that since the Panchayat had only attempted to lay a concrete road in the suit 'C' schedule road, it



S.A.(MD)No.414 of 2018

necessitated for them to file a suit, as the Panchayat cannot claim any right over the suit 'C' schedule road, since admittedly, Banumathy Edison had gifted only the road in 'B' schedule property and that will not give any right to the Panchayat to form a road or make a claim in the suit 'C' schedule road lying adjacent to the suit 'A' schedule.

12.The learned Government Advocate appearing for the Panchayat/respondent submitted that Banumathy Edison had only executed a gift deed in respect of the road that is available in the suit 'B' schedule property and the Panchayat had also passed a resolution and issued work order and formed a road in the suit 'B' schedule and they have not attempted to or intended to form any concrete road in the suit 'C' schedule property. The learned Government Advocate further submitted that the fact remains that already a road in suit 'C' schedule is put to public use and apart from the owners of the properties in the suit 'A' schedule suit 'B' schedule, since the road has been connected one side to the National Highway and the other side with the other public road, the public, who are all using the road, through the suit 'C' schedule, cannot be prevented practically. However, the learned Government Advocate submitted that as on date, the Panchayat does



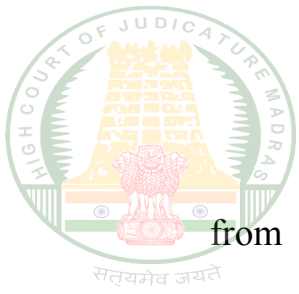
S.A.(MD)No.414 of 2018

not have any exclusive right over the suit 'C' schedule road and unless, the property is either gifted or the Panchayat acquires the road in a manner known to law, they will not be attempting to form any road or make any development in the suit 'C' schedule road.

13.The learned Counsel for the appellant further submitted that in view of the stand now taken by the respondent, the Second Appeal could be disposed of by recording the said submission.

14.Heard the rival submissions and perused the materials available on record.

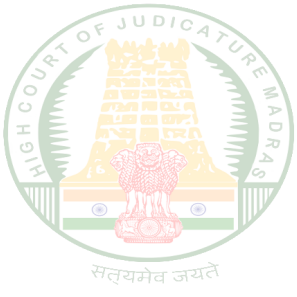
15.In view of the submissions made by the learned Counsel on either side, this Court is not intending to go into the further merits of the appeal. The Courts below have found that admittedly, the road in suit 'C' schedule is earmarked in the partition deed in Ex-A1, as common for both suit 'A' and 'B' schedule and Banumathy Edison was given right in this road in suit 'C' schedule, for the properties allotted to her in suit 'B' schedule. Further, admittedly, since the second defendant is one of the purchasers of a plot



S.A.(MD)No.414 of 2018

from the said Banumathy Edison, out of the suit 'B' schedule, then the second defendant will be having a right to use the road formed in the 'B' schedule and also to reach the main road through the road available in suit 'C' schedule. As such, this Court does not find any perversity in the findings arrived at by the Courts below in concluding that the suit seeking for injunction as against the second defendant, he being the co-owner, is not sustainable.

16.However, it is now asserted by the learned Counsel for the appellant that the plaintiff in considering the practicality of the present situation, they are not intending to close the road in the suit 'C' schedule and the suit 'C' schedule road will be maintained for public use, as such. The learned Government Advocate also submitted that they do not have any exclusive right over the suit 'C' schedule road and the right which they have got from Banumathy Edison only pertains to the road available in suit 'B' schedule and in view of that, even though they have laid a concrete road in the road available in the suit 'B' schedule, they have not attempted to relay or concrete the road in the suit 'C' schedule.



S.A.(MD)No.414 of 2018

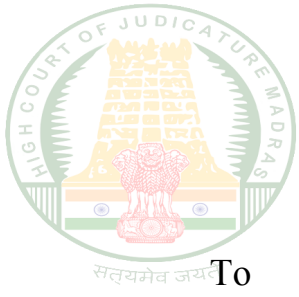
17.From the records, it is clear that the Panchayat is not having any right as on date and unless, they get the road in the 'C' schedule gifted in their favour or the Panchayat acquires the right over the road in a manner known to law, the Panchayat will not be having any right to deal with the suit 'C' schedule road.

18.In view of the above, while confirming the judgment and decree of the Courts below, the Second Appeal is disposed by observing that the plaintiff along with other owners will maintain the suit 'C' schedule road, as available as on date and the plaintiff shall not close the road by any gate or prevent the access of any public and 'C' schedule road can be used by all the public in common. No costs.

28.07.2025

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

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S.A.(MD)No.414 of 2018

To

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- 1.The Subordinate Judge, Kuzhithurai.
- 2.The I Additional District Munsif, Kuzhithurai.
- 3.The Executive Officer,
Nalloor Town Panchayat,
Nalloor Deson, Nallur Village,
Vilavancode Taluk,
Kanyakumari District.
- 4.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD)No.414 of 2018

G.ARUL MURUGAN, J.

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Judgment made in
S.A.(MD)No.414 of 2018

28.07.2025