



S.A.No.122 of 20

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved on:23.06.2023

Judgement Delivered on:30.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

S.A.No.122 of 2013

1.S.Dayalan @ Selvam
2.S.Susila
3.D.Malliga
4.REnuga
5.Kasturi

... Appellants/defendants

Vs.

D.Namratha

... Respondent/plaintiff

Prayer: Second Appeal is filed under section 100 of Civil Procedure Code as against Judgement and Decree dated 31.07.2012 made in A.S.No.23 of 2011 on the file of Principal District Judge, Thiruvallur only in partly allowing and modifying and in other aspects confirming the Judgement and Decree dated 12.08.2010 made in O.S.No.116 of 2006 on the file of Subordinate Judge, Poonamallee.

For Appellant : Mr.M.Kalyanasundaram
Senior Counsel for
Mr.S.Ganesh

For Respondent : Mr.M.Sriram



J U D G M E N T

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This Second Appeal has been filed as against the Judgement and Decree dated 31.07.2012 made in A.S.No.23 of 2011 on the file of Principal District Judge, Thiruvallur, in partly allowing and modifying and in other aspects confirming the Judgement and Decree dated 12.08.2010 made in O.S.No.116 of 2006 on the file of Subordinate Judge, Poonamallee.

2. In the trial Court, the respondent herein has filed the suit in O.S.No.116 of 2006 as against the appellants for the relief of permanent injunction and the same was decreed in favour of the plaintiff therein. As against the said decree and Judgement, the appellants herein being the defendants have preferred the First Appeal before the Principal District Judge, Thiruvallur, and the First Appellate Court also partly allowed the appeal by modifying the Judgment and Decree. As against the First Appeal confirmation of the judgement of trial Court, this Second Appeal has been preferred by the defendants.

3 (1). The case of the plaintiff is that the plaintiff's grand father namely M.P.Kumaraswamy Gounder, purchased a vacant site measuring to an extent



of 5470 sq.ft. in Survey No.314/2, Paruthipattu Village, Poonthamalee, Thiruvallur District, through sale deed 1.2.1995 in the name of the plaintiff.

The said land has been developed as a house site and after the purchase, the plaintiff has permitted the staff of her mother's institution namely St.Peter's Engineering College in Paruthipattu Village, Avadi, for their accommodation. There is no passage or road running in the plaintiff schedule property in S.No.314. The first defendant who is a neighbour, who claims to own certain lands in S.No.312 of the said village and the 2nd defendant is the first defendant's sister and the 3rd defendant is the wife of the first defendant and defendants 4 and 5 are relatives of the first defendant.

(ii) The first defendant who was occupying a plot of land on the western side of the plaintiff's property wanted to reach the land in S.No.312 by the private road and started to assert that the said private road connects S.No.315 and 312 which is factually not so. The first defendant has access in the neighbouring Survey Number more particularly in S.No.313 to reach the lands in S.No.312. The first defendant in order to reach the said land in S.No. 312, tried to extend the private road through the plaintiff's property which was prevented by the plaintiff. The defendants who are all close relatives joined



together and tried to disturb the possession of the plaintiff on 13.11.2006.

Therefore, the employee of plaintiff's mother's institution, one Mr. Nagarajan gave a police complaint before P-6 Avadi Police Station. The defendants have no manner of right to interfere with the peaceful possession and enjoyment of the plot of the plaintiff. Hence, the suit is filed for permanent injunction restraining the defendants their men, agents, or anybody on behalf them from interfering with the peaceful possession and enjoyment of the suit property in Survey No. 314/2, No.3, Paruthipattu Village. Poonthamallee, Thiruvallur District.

4(i). The case of the defendants is that the plaintiff has not come to the Court with clean hands and she has suppressed the material facts and filed this Suit. The father of the first defendant Mr. Srinivasalu Naidu, purchased the land measuring 1.30 acre in Ayan Panja S.No.312 situated in Paruthipattu Village from Mr.Nagarathina Naicker, through the sale deed dated 06.11.1951. Ever since the date of purchase, the defendants' father was in possession and enjoyment of the land by cultivating the same. The father of the first defendant was died. Thereafter, the said property was allotted to the first defendant through Family Partition deed dated 29.11.1995. The first



defendant is having access to the land from the main road only through the 20 feet road situated on the northern side of his cultivating land. The said 20 feet road comprised in S.No.314. The first defendant and other villagers have been using the 20 feet road in S.No.314. The first defendant has no other access to reach his land. The Avadi Municipality has assigned T.S.No.33 to the first defendant land and T.S.No.28 to the 20 feet road.

(ii) Originally the said land in S.No.314 was owned by Munusamy Naicker Vagaiyara and in the year 1986-1987, they had sold the land as house sites to various persons. At that time, the 20 feet road was set apart and since then the first defendant and others are using the same. The vendors of the plaintiff purchased the land measuring about 4800 sq.ft alone under 3 different sale deeds dated 9.12.1987. In the said sale deeds, the 20 feet road is mentioned as four boundaries. But the plaintiff with a view to grab the public road purchased the land measuring 5470 sq.ft by including the 20 feet common road. The sale deed itself is null and void. The vendors of the plaintiff had no right to sell more extent of land than what they purchased. Hence, the plaintiff cannot claim any right under the said sale deed.



(iii) The defendants had applied for electricity service connection for agricultural purpose on 15.04.2006. But the plaintiff raised the objection stating that 20 feet road is her private land and hence, electricity connection should not be granted. Thereafter, the first defendant has filed the Writ Petition in W.P.No.34799 of 2006 before the High Court, Chennai and after the order of the High Court dated 21.09.2006, the Tamil Nadu Electricity Board, authorities effected the electricity connection and the electricity posts are laid in 20 feet road. The plaintiff has already filed a suit against the first defendant and Tamil Nadu Electricity Board in O.S.No.517 of 2006 on the file of the District Munsif Court, Poonamallee and the same is also pending. In the said suit, the plaintiff has prayed the similar relief and by suppressing the said suit, filed this suit. The plaintiff cannot claim right over the public road.

(iv) The suit for bare injunction without a prayer of declaration is not maintainable. The plaintiff was never in possession and enjoyment of the 20 feet road at any point of time. There is no cause of action for the suit. Hence the suit is liable to be dismissed.



THE ISSUES:

5. Upon hearing the parties and perusal of pleadings and documents, the trial Court has framed the following issues:

1. Whether the contention of the plaintiff that the property belongs to the plaintiff and she has been in possession and enjoyment of the suit property is true?

தாவா சொத்து வாதிக்கு பாத்தியப்பட்டு வாதியின் சுவாதீனம் மற்றும் அனுபவத்தில் உள்ளது என்பது உண்மையா?

2. Whether the plaintiff is entitled for the relief of permanent injunction?

தாவா சொத்து குறித்து வாதி கோரும் நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வழங்கத்தக்கதா?

3.To what relief the plaintiff is entitled?

தாவாவில் வாதிக்கு வேறு என்ன பரிகாரம் வழங்கத்தக்கதா?

6. On the side of the plaintiff, the power agent of the plaintiff was examined as PWI and marked Exps. A1 to A12. On the side of the defendants, the first defendant was examined as DWI and one another witness was examined as DW2 and marked Exps B1 to B19 and also documents X1 and X2. In fact in the trial Court the common judgement was



passed in O.S.No.116 of 2006 along with 230 of 2008 and 231 of 2008. After elaborate discussions, the trial Court has decreed the suits in O.S. No.116 of 2006 and other suit O.S.No.230 of 2008 which is filed by the same plaintiff as against the first defendant herein and Tamil Nadu Electricity Board officials for mandatory injunction to disconnect the electricity service connection effected to the first defendants. The suit in O.S.No.231 of 2008 was filed by the first defendant in O.S.No.116 of 2006 i.e., first appellant herein for the relief of permanent injunction restraining the defendants from disconnecting the electricity service connection effected in the name of the plaintiff ie, the first defendant in O.S.No.116 of 2006 i.e., first appellant herein and the same was dismissed.

7. Aggrieved by the said common judgement and decrees, the defendants have preferred the First Appeal before the Principal District Judge, Tiruvallur, on various grounds in A.S.Nos. 23, 24 and 25 of 2011, corresponding Appeal number for this suit in O.S.No. 116 of 2006 along with 230 of 2008 and 231 of 2008.

8. The learned first Appellate Court after perusing the grounds of



appeal and other documents has formulated the following common points for determination:-

“1.Whether there is a 20 feet pathway in S.No. 314/2, it so, is it a private pathway or public pathway?

2.Whether the plaintiff in O.S.230/2008 is entitled for mandatory injunction against Tamil Nadu Electricity Board to remove the electric poles erected on the pathway and to remove the wire passes through over the pathway?

3.Whether the decree and Judgment passed by the learned Subordinate Judge in O.S.116/2006 is legally sustainable?

4.Whether the decree and Judgment passed by the learned Subordinate Judge in O.S.230/2008 is legally sustainable?

5.Whether the decree and Judgment passed by the learned Subordinate Judge in O.S.231/2008 is legally sustainable?

6 To what relief?"

9. After elaborate discussion, the first Appellate Court partly allowed the Appeal in A.S.No.23 of 2011, modifying the Decree and Judgement passed by the learned Subordinate Judge, Poonthamallee in O.S.No.116 of



2006 that the defendants and their men agents or anybody acting through them should not interfere with the peaceful possession and enjoyment of the suit property except tight of examining, repairing relief or altering or removing electricity line or post on the 20 feet passage/road on the suit property by the Tamil Nadu Electricity Board under due process of law.

(ii) The appeal in A.S.No.24 of 2011 was allowed with costs by setting aside, the Decree and Judgement passed by the learned Subordinate Judge, Poonthamallee in O.S.No.230 of 2008 dated 12.08.2018 and the suit is dismissed.

iii) The Appeal in A.S.No.25 of 2011 was allowed by setting aside the said Decree and Judgement passed by the learned Subordinate Judge, Poonthamalle in O.S.No.231 of 2008 dated 12.08.2010 and the suit was decreed granting the relief of permanent injunction restraining the defendants from disconnecting or shifting the electricity connection except due process of law.

10. Aggrieved by the common judgement passed in A.S.No.23 of 2011, this Second Appeal has been preferred by the appellant in A.S.No.23 of 2011 on various grounds including the following substantial questions of law. This



Court while admitting the Second Appeal has formulated the following substantial questions of law:-

1) Whether the plaintiff without having title over the property can legally alienate the property to third party?

2) When there is a dispute regarding the ownership without seeking prayer for relief of declaration, whether suit for permanent injunction alone is maintainable?

11. The status of the parties will be as called in the trial Court as plaintiffs and defendants.

12. The learned counsel for the appellants has argued that the suit property is house sites with 20 feet public pathway and the plaintiff's vendors had purchased the properties in the year 1987 by three separate sale deeds. At that time, they only purchased 4800 sq.ft with 20 feet common path way. The plaintiff purchased an extent of 5470 sq.ft. which is excess of 670 sq.ft of land. The vendor of the plaintiff had right over the property for an extent of 4800 sq.ft. Therefore, the sale deed itself is not valid in the eye of law. The



plaintiff's vendor cannot sell the property when they have no right except 4800 sq.ft. Further in the sale deeds of her predecessors itself, the common 20 feet pathway has been mentioned as four boundary. The Revenue records also shows that the 20 feet pathway starts from the main road to end with the northern boundary of the first defendant land S.No.312. The said road situated in 314/2. The plaintiff have filed the suit for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property. The defendants categorically denied the title of the property regarding 20 feet road. Once the defendants denied the title of the plaintiff she ought to have prayed for declaration over the title. The same plea also taken in the written statement, but the plaintiff failed to amend the plaint for relief of declaration of title over the property.

13. Further the plaintiff has no right over the above said pathway starting from main road to end of the first defendant's property i.e., S.No.312. The Courts below have failed to see the above said settled proposition of law and wrongly came to the conclusion that the first defendant has no right to the land in question and thereby he cannot question the title over the plaintiff's property. The available documents shows the existence of 20 feet road and the



plaintiff has purchased excess land from her vendor, in which, they have no right over the property. Therefore, the judgements of trial Court as well as first Appellate Court are liable to be set aside and the suit is to be dismissed by allowing this Second Appeal.

14. Already first defendant has filed Writ Petition before the High Court for getting electricity connection and based on the said order, the electricity connection was effected and the plaintiff also filed separate suit for mandatory injunction to disconnect the said electricity connection and the same was also dismissed by the First Appellate Court. The first defendant also filed separate suit and the same was also decreed in his favour not to disconnect the electricity connection given to the first defendant therein. Against the said two judgments, no appeals were preferred and thereby those judgements are final with regard to the electricity connection.

15. In the Suit in O.S.No. 231 of 2007, the plaintiff's contention is that the property is common property and the electric pole was installed in the said property and the same was decreed in favour of the plaintiff. While so, the defendants therein have to prefer an appeal as against the Decree and



Judgment. Otherwise the said verdict is final. Therefore, the plaintiff suit in O.S.No.116 of 2006 is subject to the result of other two suits which were disposed through the common judgement. The learned counsel in support of his submissions relied on the following judgements:-

1)Jharkhand State Housing Board Vs. Didar Singh and another reported in (2019) 17 Supreme Court cases 692.

2)T.V.Ramakrishna Reddy Vs.M.Mallappa and another reported in (2021) 13 Supreme Court Cases 135.

16. The learned counsel appearing for the respondent has argued that the plaintiff has purchased the suit property for an extent of 5470 sq ft. In the said sale deed, there was no mention about the path way as alleged by the first defendant. The defendants have no right, interest, title or possession over the property. The defendant in the suit is utter stranger to the property and thereby, the declaration of relief is not required. The trial Court as well as the First Appellate Court categorically discussed about the right of the plaintiff and defendants being the third party cannot question the title of the plaintiff



and the path way is only a private pathway not a public pathway and thereby without declaration, the suit for permanent injunction is maintainable.

17. Further, the Courts below have categorically discussed about the evidence adduced by the plaintiff as well as the defendants and the Courts below had taken into account all the documents and rightly decreed the suit in favour of the plaintiff. There is no substantial question of law as framed in this second appeal. Therefore, this Second Appeal is liable to be dismissed. The learned counsel relied on the following judgements:-

- 1) (1997) 5 Supreme Court Cases 438 relied Kshitish Chandra Purkait vs.Santhosh Kumar Purkait and others.
2. (1998) 6 Supreme Court Cases 683 relied in Sheel Chand vs. Prakash Chand.
3. (1981) 2 Supreme Court Cases 414 relied in Bholaram vs. Ameerchand.

18. The plaintiff's contention is that the plaintiff has purchased the suit property in the year 1995 through sale deed dated 1.2.1995. On and from the



date of sale deed itself, she has been in possession and enjoyment of the property. The defendants being adjacent land owner of the property attempted to have a right over the pathway to reach his land, where he has no right. Hence, she filed the suit. The defendants contention is that the first defendant has land in S.No.312 and they have been using the pathway in Survey No.314/2, which form part of the suit property. Now in order to prevent the defendants, the plaintiff has filed the suit.

19. In this case, trial Court has framed proper issues and answered the issues and then decreed the suit in favour of the plaintiff. As against the Decree and Judgment of the Trial Court, First Appeal had been filed by the defendants. The First appellate Court has not framed proper points for determination. On a careful reading of the judgments of the First Appellate Court, it is found that the First Appellate Court has passed a common judgment in three appeals and framed the common points for determination for all the appeals. There cannot be common issues and common points for determination and the same is not permissible under law. Each and every case has to be disposed on separate issues and each appeal has to be disposed of by framing separate points for determination. There is a chance to have a joint



trial and common judgment, but issues have to be framed separately on each case and there can be common discussion for answering the similar issues at the same time, there cannot be framing of common issues. Likewise, there cannot be formulation of common points for determination in appeals taken up for common judgements.

20. However, the first appellate Court has discussed about the common points and both sides, adduced sufficient evidence and the same is sufficient to dispose of the cases effectively. Thereby framing of the common points for determination in the judgments will not affect the case.

21. At the time of admitting this second appeal this court has formulated the following substantial questions of law:

1. Whether the plaintiff without having title over the property can legally alienate the property to 3rd party? On careful perusal of pleadings and other documents in the above said substantial question of law, there is a typographical error and thereby this Court has framed the substantial question of law as follows:



2. Whether the plaintiff's vendor without having title over the property can legally alienate the property to the plaintiff?

22. In this case, the plaintiff in O.S.No.116 of 2006 has filed the suit for permanent injunction restraining the defendants from interfering the peaceful possession and enjoyment of the suit property in Survey No.314/2, No.3 Paruthipattu Village, Poonthamalee, Thiruvallur District. The above said suit was decreed in favour of the plaintiff and aggrieved by the said Decree and Judgement the unsuccessful defendants who are appellants in this Second Appeal have preferred this first appeal before the Principal District Judge, Tiruvallur in A.S.No.23 of 2011 on various grounds and the said appeal was partly allowed and permitted the E.B authorities to use the pathway for maintenance of the electric polls erected in the land.

23. Aggrieved by the said decree and judgment, the appellants in the first Appeal have preferred this Second Appeal. Apart from this case, the respondent herein has also filed another suit in O.S.No.230 of 2008 on the file of Sub Court, Poonthamallee, for the relief of mandatory injunction to disconnect the electricity service connection given to the appellants herein and



the same was decreed in favour of the plaintiff therein through common judgement.

24. Further the appellants herein have also filed suit in O.S.No.231 of 2008 on the file of Sub Court, Poonamallee, for the relief of permanent injunction restraining the electricity board officials from disconnecting electricity connection given to the first defendant and the same was also dismissed as against the plaintiff therein, through common judgement. In fact the trial Court has conducted joint trial and passed common judgement in O.S.No.116 of 2006 along with 230 of 2008 and 231 of 2008. The above said joint trial was ordered by the learned District Judge, thereby, the suit in O.S.No.116 of 2006 which is originally filed on the file of Sub Court, Poonthamallee, had been tried along with other suits which are originally filed before the District Munsif Court, Poonthamallee in O.S.No.517 of 2006 and 116 of 2006 respectively. The case in O.S.No.517 of 2006 was renumbered before the Sub Court Poonthamallee as 230 of 2008 and O.S.No.116 of 2006 was renumbered as 231 of 2008. Even in the trial court judgment there is no reference about which case was taken as main case and evidence recorded in which case. In the deposition of witness also, there is no reference about joint



trial and whether evidence was recorded for other connected cases also.

However the evidence recorded in O.S.No.116 of 2006 ie., impugned judgement and decree are available in the case records, hence this Court can proceed the case with available records.

25. The plaintiff's contention is that she purchased the suit property in the year 1995 for an extent of 5470 sq.ft. At the time of purchase of the said property, the plaintiff was minor and her grandfather M.P.Kumaraswamy Gounder, was guardian for the plaintiff. Originally the plaint schedule property is house site plots, the first defendant is adjacent property owner, other defendants are close associates with the first defendant. The defendants are attempting to interfere with the plaintiff peaceful possession and enjoyment of the suit property by asserting that private road starting from main road to reach the defendants property. In fact the defendants has pathway in the neighbouring in S.No.313 to reach the lands of defendants ie, S.No.312. Therefore, they sought for the relief of permanent injunction.

26. The defendants contention is that the plaintiff has purchased the property from her vendor and they had only right over the property to an



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extent of 4680 sq.ft but without any title and right they have executed a sale deed in favour of the plaintiff for an extent of 5470 ie., including the common pathway. The plaintiff's vendor have purchased the property with 20 feet pathway rights. The said pathway has been clearly mentioned in the sale deed of vendor of plaintiff. The above said pathway is only pathway to reach the defendants' land in S.No.312. Therefore, the plaintiff sale deed itself is not correct and the vendor of the plaintiff have no right to alienate the property for an extent of 5470 when they got right only for an extent of 4800 sq ft. When the first defendant has attempted to erect electric poles in the common pathway, the plaintiffs have objected and thereby he filed Writ Petition before the High Court in W.P.No.34799 of 2006 and the same was disposed. Thereafter, the Electricity authorities gave service connections to the plaintiff land, for agricultural purpose. Therefore, the plaintiff has no exclusive right over the pathway mentioned in S.No.314/2 starting from the first defendants land to reach the main road.

27. In the trial Court, the power agent of the plaintiff was examined as P.W.I and Exps.A1 to A12 were marked on the side of the defendants. D.W.1



and D.W.2 were examined and Exps.B1 to B17 were marked and documents X1 and X2 were also marked.

28. The main contention of the plaintiff is that the property belongs to him and the defendants attempted to claim pathway over the suit property to reach his lands from main road to lands of defendants

29. The main contention of the defendants is that there is a road in existence which starts from the main road and ending with plaintiff land S.No.312. In this case, when the defendants denied the title of the plaintiff and claiming that the suit property is common pathway to reach the lands of the first defendant, it is the duty of the plaintiff to prove that the property exclusively belongs to the plaintiff and she has right, interest and title possession over the suit property. On the side of the plaintiff, she did not enter into the witness box to speak about the facts of the case, and no reasons stated for non examination of the plaintiff as witness.

30. Per contra, her power agent viz.. relative of the plaintiff was examined as P.W.I and he also deposed before the trial Court. It is well settled



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law that the Power Agent can depose on behalf of the party in the suit on his personal knowledge about the property and he cannot depose anything about personal knowledge of the principal i.e., plaintiff's knowledge about the property. The P.W.1 in his cross examination clearly stated that the plaintiff has given power only on 15.2.2010. The property was purchased in the year 1995 when the plaintiff was minor through her guardian grand father namely M.P.Kumaraswamy Gounder. But the said M.P.Kumaraswamy Gounder was not examined as witness in this case and no reasons stated by the plaintiff for non examination of the said M.P.Kumaraswamy Gounder as witness in this suit. Even according to the plaintiff the property was under the enjoyment of her mother's education institution, while so no body from the said educational institutions were examined as witnesses to establish the possession and enjoyment of the plaintiff.

31. The defendants denied the title of the property and the specific contention of the defendants is that the vendor of the plaintiff have no right over the property more than 4800 sq ft. Without title they have alienated the property with excess land of 670 sq.ft. While so, it is the duty of the plaintiff to prove that the vendor of the plaintiff had title and possession over the



property for an extent of 5470 sq.ft. and she has purchased the property from right persons with correct extent and she is in exclusive possession over the property for an extent of 5470 sq.ft. Though the suit is one for bare injunction when the defendant denied the title for whole extent of property it is the duty of the plaintiff to prove her possession for the entire property. The plaintiff failed to examine the vendor of the plaintiff as witness in the suit to establish that they had title and possession over the property for an extent of 5470 sq.ft. More over, the plaintiff has marked copy of sale deeds of her vendor as Ex.A3 has to A5 dated 9.12.1987. On careful perusal of those documents, it is seen that the sale deed in favour of Nirmala Ex.A3 land was purchased from her vendor for an extent of 1390 sq.ft. In that sale deed, four boundaries mentioned as Paruthipattu Village Punjai S.No.314/2 in this west of 20 feet common pathway, on the south of Ezhumalai plot, on the east of Ranganathan Vagayara plot, on the north S.Govindarajalu plot.

32. In Ex.A4 which is purchased by Chandiran, the property mentioned as Paruthipattu Village Punjai S.No.314/2, in this east of 20 feet with common pathway, west of Kannapiran Vagayara south plot of Kamala and north of S.No.312. In these, four boundaries an extent of 2000 sq.ft was



purchased. In the Ex.A5 sale deed in the name of Govindarajalu the property details stated as Paruthipattu Village Punjai S.No.314/2, in this west of 20 feet road common pathway south of plot of Nirmala east of Ranganathan vagayara, north of S.No.312, in this 1410 sq.ft land was purchased by the Govindarajalu. Therefore, from the documents filed by the plaintiff i.e., Exs A3 to A5, it is clear that the vendor of the plaintiff namely Nirmala had purchased an extent of 1390 sq.ft with a four boundary of 20 feet width common pathway. Another vendor namely Chandiran also purchased plot in S.No.314/2 Paruthipattu Village for an extent of 2000 sq.ft with a four boundary of 20 feet width common pathway. The another vendor namely Govindarajalu through Ex.A5 has purchased plot in S.No.314/2 Paruthipattu Village with an extent of 1410 sq.ft with four boundary of 20 feet width common pathway. Therefore, from the above said documents, it is clear that the plaintiff's vendor had right over the property only for an extent of $1390+1410+2000$ sq.ft in total=4680 sq.ft. With 20 feet pathway right.

33. The plaintiff has produced the certified copy of sale deed as Ex.A.2 dated 01.02.1995 and no any reason stated by the plaintiff for non production of original sale deed and thereby failed to fulfil the conditions made in section



65 of Indian Evidence Act to mark the copy of the sale deed as secondary evidence. Even according to Ex.A2., it reveals that the plaintiff vendor namely Nirmala, Chandiran and Govindarajalu had jointly executed sale deed for an extent of 5470 sq.ft and the same is not in consonance with their parental sale deeds in respect of extent and four boundaries and right of 20 feet pathway. Therefore, the vendor of the plaintiff had no right over the property for an extent 5470. Per contra they have right over the property only for an extent of 1390+ 2000+ 1410 totally 4800 sq.ft with 20 feet pathway rights.

34. Further the four boundaries also not tallied with the parent deeds of the plaintiff's vendor. Even as per Ex.A2, at the time of purchase of the property, the plaintiff was minor aged about 5 years and thereby, the plaintiff has no personal knowledge about the purchase of the above said land. The competent persons to speak about the sale in favour of the plaintiff are the grand father and guardian of the plaintiff who purchased the property in the year 1995 and the vendors of the plaintiff namely Nirmala, Chandiran and Govindarajalu. But none of them were examined as witness in the suit. The defendant being adjacent land owner claiming pathway rights over the suit property has denied the title and there is a cloud over the title of the suit



property. Though the plaintiff filed a suit for bare injunction, when the defendants is claiming pathway rights over the suit property by denying the title and possession of the property, it is the duty of the plaintiff to prove that the entire property belongs to her and she is in possession and enjoyment of the same.

35. In this case, the plaintiff failed to examine herself as witness and only examined the power agent who has no personal knowledge about the property. In this context, P.W.1 in his cross examination stated as under-

“வாதி தாவா சொத்தை கிரையம் வாங்கியது எனக்கு நேரிடையாக தெரியாது, தாவா சொத்து சம்பந்தப்பட்ட பொறுப்பில் இல்லை, கல்லூரியிலும் வாதிக்காகவும் நான் எந்த பொறுப்பிலும் இல்லை, யாரும் சொத்தை ஆக்கிரமிக்க கூடாது என்பதற்காக தினசரி வந்து பார்த்து விட்டு செல்வேன், தாவா சொத்தின் சர்வே எண் 314.2 ஆரம்பத்தில் அந்த புல எண்ணானது முனுசாமி வகையறாவுக்கு பாத்தியப்பட்டது என்றால் சரி, முனுசாமி வகையறாவுக்கு தான் சொத்தை வீட்டு மனையாக பிரித்து விற்று வந்தார்கள், முனுசாமி வகையறாக்களிடமிருந்து வாதிக்கு கிரையம் கொடுத்த நபர்கள் வாங்கியிருக்கிறார்கள், வாதி கோவிந்தராஜ், சந்திரன், நிர்மலா ஆகிய 3 பேரிடமிருந்து கிரையம் வாங்கி இருக்கிறார், முனுசாமி வகையறாக்களிடம் 3 பேரும் தனிதனியாக கிரையம் வாங்கினார்கள் அந்த 3 பேரும் வாங்கிய விஸ்திர்ணம் 4800 சதுர அடி என்றால் சரி, அவர்கள் கிரையம் செய்து கொடுக்கும் போது 4800 க்கு மேல் கிரையம் செய்தால் அது செல்லாது, 5470 சதுர அடியை அந்த 3 பேருக்கும் உரிமை கிடையாது, அந்த 3 பேரும் வாங்கிய கிரைய ஆவணத்தை நான் பார்த்திருக்கிறேன், அந்த 3 கிரைய பத்திரத்திலும் பொதுப்பாதை அமைத்து கிரையம்



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பெறப்பட்டுள்ளது, அந்த ரோடு முனுசாமி வகையறாக்களால் விடப்பட்டது என்றால் சரி, அந்த 20 அடி பாதையானது 314.2 எண்ணில் ஆரம்பித்து 312 பல எண் வரை சென்றது என்றால் சரியல்ல, கிரைய பத்திரங்களில் 314.2 அந்த பாதை நின்று விட்டதாக குறிப்பிட்டு சொல்லவில்லை,”

36. Therefore, from the evidence of PW.1, it reveals that he has no knowledge about the purchase of the property and he himself admitted that the vendor of the plaintiff had purchased properties through separate sale deeds for an total extent of 4800 sq.ft. Therefore, from the above said evidence, it is clear that the plaintiff has purchased the property more than the actual extent of the vendors right i.e., $5470-4800=670$. It is well settled law that no person can transfer his right more than what he is entitled to. But in this case the vendor of the plaintiff have only entitled to alienate the property for an extent of 4800 sq.ft. with 20 feet pathway rights.

37. Per contra they had executed sale deed for an extent of 5470 sq.ft. The vendors of the plaintiff had purchased the property through separate sale deeds with specific extent and four boundaries. But at the time of sale of property to the plaintiff they jointly executed a sale deed without mentioning



the correct extent, four boundaries and 20 feet had pathway rights. They sold an extent of 5470 sq.ft where they had only right of 4800 sq.ft. Therefore, the vendors of the plaintiff had no right to execute sale deed for an extent of 5470. Thereby, the sale of the plaintiff for entire extent of 5470 is not valid according to law. The vendors of the plaintiff having purchased land for a some of 4800 sq.ft had no legal right title over the property for 5470 sq.ft. Thereby, they cannot execute sale deed more than 4800 sq.ft. Though the defendants have not challenged the said sale deed of the plaintiff, now the plaintiff only filed the suit for the relief of permanent injunction alleging that the property belongs to the plaintiff and she is in peaceful possession and enjoyment of the suit property. Therefore, the whole burden lies on the plaintiff to prove that she had purchased the property and she has been possession and enjoyment over the same.

38. The trial Court and the first appellate Court have observed that the defendants being the adjacent owner and 3rd party to the property in S.No 314/2 has no right to question about the sale of the plaintiff. Thereby the defendants has no locus-standi to question about the extent of land purchased



in S.F.No.314/2. Once the plaintiff filed a suit alleging that the property belongs to her, she has to establish her right of possession over the property.

But in this case, the plaintiff has purchased the property without any title for full extent from her vendors. The plaintiff's vendors documents clearly shows the existence of pathway. Particularly the Exp.A4 the western boundary of the property mentioned as 20 feet width common pathway and the southern boundary mentioned as S.F.312 i.e, land of defendant, in Exp.B5 the eastern boundary mentioned as 20 feet width common pathway and the southern boundary mentioned as SF.No.312 i.e., land of defendant. Therefore, from the Exp.B4 and B5 we can infer that 20 feet width pathway was in existence and it touches the land in S.F.No.312. But the Courts below also held that there was existence of pathway but their finding are that the said pathway is only private pathway not public pathway. The courts below came to the conclusion that there is a pathway mentioned in the plaintiff's vendors documents but it is not a public pathway and private pathway. However, failed to consider that the vendor of the plaintiff have no title over the entire suit property and the plaint prayer is also for an entire extent of 5470 sq.ft. The courts below are of same view that the property pathway is private pathway and the first defendant being third party no way connected with S.F.No.314 cannot



question the same, but failed to consider that the plaintiff filed the suit based on sale deed Ex.A.2, and vendors of Ex.A.2 had no title for an extent of 5470sq.ft. Therefore, the above said finding of the trial Court as well as first appellate Court are not acceptable to that regard.

39. Once the plaintiff's vendors themselves had no right over the property, they cannot alienate the property to the plaintiff in which they had no right. Once the vendor of the plaintiff had no right to alienate the property, the plaintiff cannot claim over entire property of 5490 sq.ft through that sale. Therefore, the sale of entire extent of land had for an extent of 5490 sq.ft is not valid under law. The plaintiff sought for a relief of permanent injunction for entire property ie, for an extent of 5470 sq.ft. But originally the vendors of the plaintiff had right for an extent of 4800 while executing sale deed they without excluding the pathway executed sale for entire property. In this context it is relevant to refer the judgment of this Court in **1) T.GnamaniAmmal vs. The Avaniapuram, Town Panchayat**, wherein this Court had held as follows:

"9. In order to buttress his argument, the learned counsel



appearing for the respondent/defendant has befittingly drawn the attention of the Court to the decision reported in 2004(2) Law Weekly P-112 (Ammani Vs.The Tiruchengode Municipality rep, by its Commissioner TiruchengodeMunicipality. Tiruchengode Town Nammakkal District). wherein this Court has heldas follows;

"Reserving any site for any street, open space, park, School etc., in a lay out or plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be the legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it"

10. From the close reading of the decision referred to earlier, the following aspects have become emerged;

(a) If any site has been set apart for the formation of street park and school etc. it is deemed to be for public purpose;(b) Such a reservation has ceased the title of the owner;

(c) An obligation is created upon the owner of the land in



nature of trust; and

(d) The owner is precluded from transferring or selling his interest in it.

11. It is an admitted fact that the plaintiff has purchased the suit property under a registered sale deed dated 05.03.1984 and the same has been marked as Ex.A5. The approved plan has been marked as Ex.A4, wherein the suit property has been set apart for public purpose. As per the dictum given in the decision referred to earlier, it is made clear that as soon as the suit property has been set apart for public purpose the right of the alleged vendor of the plaintiff has become ceased and she is not having any transferable right. Therefore, virtually Ex.A5 has become a void document and the same has not conveyed any valid title in favour of the plaintiff. In short, the plaintiff is not having title to the suit property. Since the plaintiff is not having title to the suit property, he can easily be non suited. Both the Courts below after making threadbare discussion of all the controversial points, have rightly and properly come to the conclusion that the plaintiff is not entitled to get the reliefs sought for in the plaint."



2) *In Ammani Vs. The Tiruchengode Municipality, rep. By its Commissioner, Tiruchengode Municipality, Tiruchengode Town, Namakkal District reported in 2004 (3) CTC 251*, this Court also held in para 10 and 17 as under:-

"10. In the decision Pr.Chet Ram Vashit (dead) by Lrs V.Municipal Corporation of Delhi, AIR 1995 SC 430, wherein the Honourable Supreme Court held that reservation of land in respect of approved layout does not create any right or interest for the Corporation in the land so specified, however the land reserved cannot be dealt with by the owner except in conformity with the order of the authority In other words, it imposes a bar on exercise of power by the owner in respect of the land reserved. Reserving any site for any street, open space, park, School etc., in a layout or plan is normally a public purpose as it is inherent in such reservation that it shall be used by the public in general. The effect of such reservation is that the owner ceases to be the legal owner of the land in dispute and he holds the land for the benefit of the society or the public in general. It may result in creating an obligation in nature of trust and may preclude the owner from transferring or selling his interest in it.



17. If he acted in an unfair or inequitable manner, he cannot have relief. In this case, the appellant's vendor after leaving plots for public purposes obtained sanction to the layout and in contravention of the same it is sold to the appellant. Such conduct cannot entitle them to any relief at the hands of a Court of equity. Hence, the argument that the appellant is in lawful possession and entitled to injunction cannot be accepted."

40. From the reading of the said judgements, it is clear that once the owner of the property set apart for formation of street, park and schools it is deemed to be for public purpose. Such a reservation has ceased the title of the owner and obligation is created upon the owner of the land in nature of trust and owner is precluded from transferring or selling his interest in it. In this case on hand also the 20 feet road was formed in the year 1987, while the property was converted into plots and the third parties also purchased plots by mentioning this 20 feet width pathway. Moreover the plaintiffs vendors had also purchased three plots respectively through separate deeds. In those sale deeds of the vendors of the plaintiff the 20 feet pathway also mentioned as four boundary. Therefore once the pathway has been created for common purpose, the vendor of the plaintiff have no transferable right for the pathway



as their exclusive pathway. Further the vendor of the plaintiff purchased the property with specific extent but the plaintiff got sale deed from them for excess land. Once the vendors of the plaintiff admitted the 20 feet pathway then they cannot deny the existence of pathway and they estopped. Since the plaintiff is steps into the shoes of her vendor she also estopped from denying the existence of pathway. Therefore, the plaintiff could not get the sale deed for an extent of 5470 and the sale deed itself is void document to the extent of excess land and the same has not conveyed any title in favour of the plaintiff and thereby the plaintiff cannot sought for relief for entire property. Further the courts below have not discussed about the possession of the plaintiff, non examination of the plaintiff as witness, non examination of the vendors and non production of original deeds. In the suit for permanent injunction the main requirement is possession but no evidence adduced by the plaintiff for exclusive possession of entire property. Further on careful perusal of plaint prayer no specific mention about against whose possession and enjoyment injunction is prayed for. As per pleading the plaintiff's mother institution staffs are enjoying the property. Without considering these aspects the courts below have decreed the suit wrongly. The first appellate court has not stated reasons for modifying the Decree and Judgement of trial Court. Once the first



appellate court comes to conclusion that the suit property is common for particular persons of owners in S.F. 312 and the first defendant has no right then how allowed the E.B officials to maintain the said E.B lines and polls. The first appellate court ought to have dismissed the entire suit. Therefore as discussed supra the plaintiff vendor without having any title over the entire property cannot legally alienate the entire property to the plaintiff. Thus the first substantial question of law is answered.

Substantial Question of Law: 2

41. The plaintiff contention is that the entire property belongs to her and she is in possession of the property. The defendants are claiming pathway right over the property. As discussed in previous point, the pathway touches with the land in SF.No.312 which belongs to first defendant. As per sale deeds Ex.A1 to A5 we can infer that the said pathway belongs to all the property holders in the said 314/2. It is not the case of the plaintiff that the said pathway exclusively belongs to the plots holders of the said property. but the plaintiff case is that the entire property including the pathway exclusively belongs to her. Once the property was converted into plots with pathway, it has to be used as pathway for common purpose. Once the pathway created for



the plots thereafter the owner of the property cannot have any exclusive right over the property. The defendants contention is that he has been using the pathway as access to his land in S.F.No.312 and the municipality also taken over the land and as per the municipality records also it has been mentioned as pathway and exclusively sub divided as pathway.

42. On a careful perusal of the documents and evidences adduced on both sides, it is clear that the pathway is available from the land S.No.312 to main road. In this context the PW.1 in his evidence stated as under:-

“அந்த கிரைய பத்திரத்திலும் பொதுபாதை அமைத்து கிரையம் பெறப்பட்டுள்ளது, அந்த ரோடு முனுசாமி வகையறாக்களால் விடப்பட்டது என்றால் சரி, அந்த 20 அடி பாதையானது 314 பல எண்ணில் ஆரம்பித்து 312 பல எண் வரை சென்றது என்றால் சரியல்ல, வா,சா,4, 20 அடி பொதுபாதை 312 வரை சென்றதாக காட்டப்பட்டது என்றால் சரி அந்த ஆவணத்தில் தவறாக காட்டப்பட்டுள்ளது, 314 ல் சாலையோ, பாதையோ ஏதும் இல்லை என்று பிராது பாரா 4 ல் சொல்லப்பட்டுள்ளது, வழக்கு தாக்கல் செய்த பின்னிட்டு வாதி தரப்பில் கூடுதல் வழக்குரை தாக்கல் செய்யப்பட்டது என்றால் அது சம்பந்தமாக எனக்கு ஞாபகமில்லை, பிராது தாக்கல் செய்யப்பட்ட கூடுதல் வழக்குரையில் 4800 சதுர அடி போக மீதம் உள்ள இடம் 3 பேரும் பொது பாதையாக பயன்படுத்தியதாக சொல்லியிருக்கிறார், 7,8 வருடத்துக்கு முன்பு 314.2 ல் பாதை இருந்தது என்றால் அதில் 1 ம் பிரதிவாதி வகையறாக்களும் மற்றவர்களும் அனுபவித்து வந்தார்களா என்று எனக்கு தெரியாது,”



43. Therefore, PW.1 himself admitted the existence of pathway. Further the defendants in their written statement categorically stated that the defendants are having access to the land from the main road only through the 20 feet road situated on the northern side of his cultivating land. The 20 feet road is comprised in S.No.314. The first defendant has no other access to reach his land. Therefore, the defendants clearly stated that the said pathway is the only pathway to reach their lands. Thereby, it is clear that the defendants are denying the title of the plaintiff over the property. Once the defendants denied the title over the property, it is the duty of the plaintiff to seek relief of declaration, but in this case, the plaintiff has not prayed for the relief of declaration. More over the defendants in their written statement taken a specific plea that the suit for bare injunction is not maintainable without seeking relief of declaration. Despite that, the plaintiff has not taken any steps for seeking prayer for declaration. The evidences and documents filed by both side parties clearly established the existence of pathway.

44. Once the pathway is created, the same has to be used for that purpose only. In this context the trial court has discussed about the judgements in (1) 2007 (4) CTC 679 5 MLJ 243 in T.Gnanamani Ammal vs.



The Avaniyapuram Town Panchayat and (2) Ammani vs The Tiruchengode

Municipality and the trial court interpreted the said judgement that in this case there are unapproved layouts and not handed over the municipality thereby not applicable but the trial Court failed to note the ratio decidendi is once the property allotted for public purpose the same have to be used for that purpose only and here also the pathway 20 feet road was formed for the plots holders and the said plots were also sold to various persons with 20 feet pathway for common purpose thereby the surrender of pathway to Municipality and approved plots or unapproved plots are immaterial. In the case of hand even the plots are unapproved the intention of forming pathway i.e., 20 feet road is to reach the plot holders from their respective plots to the main road. The original owners who converted the plots alone created and formed this 20 feet road for access from main road to all plots. Therefore whether the said road was given by Government and whether it is approved or unapproved layouts are immaterial and the purpose to form a road alone has to be taken into account. The plaintiff being adjacent land owner also claiming the pathway and thereby he cannot be stranger and thereby title of the property has to be decided. Whiles, specific prayer has to be sought for declaration. Therefore the said case laws are squarely applicable to the present



facts of the case and the trial Court failed to apply the correct proposition of law. Further the defendants have produced the municipal records and they show the existence of pathway. Though DW.2 stated that he does not know whether the pathway was handed over to municipality, the documents Exs.XI. and X2 shows the existence of pathway. The plaintiff did not question the above municipality records. Therefore the first defendant cannot be treated as third party since they are claiming right of pathway over the property being adjacent owner of the said property. But the trial Court and the first appellate Court admitted the existence of pathway but their findings are the defendants being third party cannot question the title of the plaintiff and also the first appellate Court discussed about the easementary right and the first defendants failed to plead his easementary right and the defendants have not filed suit for declaration with regard to the path way.

45. It is true that the defendants have not filed any suit for declaration as against the sale deed of the plaintiff as well as for the common pathway. However, the plaintiff only filed a suit before the court for the relief of permanent injunction alleging that she is the owner of the property without having proper title over the property. While so, it is the duty of the plaintiff to



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prove her case with clear title and possession. In this case, the plaintiff has failed to prove her case that she is in exclusive possession of entire property.

Even according to the documents filed by the plaintiff the pathway in 314/2 has been in existence from the year 1987. The plaintiff is subsequent purchaser and her parental document also established the existence of 20 feet pathway. Already this Court in the previous point has decided that the vendor of the plaintiff had no title over the property for an extent of 5470 sq.ft and only had right for 4800sq.ft.

46. Further the available documents shows the existence of pathway in 314/2. The defendants once taken plea that this suit pathway alone is only access to reach his property, the plaintiff has to show that the defendants have alternative pathway to reach their land. In this context the plaintiff have not filed any documents to show that the first defendant has alternative pathway to reach his land. Though the plaintiff has pleaded in the plaint that in S.F number in 313, there is a pathway to reach the lands in S.F.No.312, but mere pleading will not amount to proof for existence of alternate pathway.



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47. Per contra the PW.I himself admitted that he has not filed any documents to show the alternative pathway. Further Exp. X1 and X2 were also filed and on a perusal of those documents there was no alternative pathway available to reach the lands to 312 and the land is surrounded by lands and houses. Further the Avadi Municipality records also shows the existence of pathway. Therefore, the plaintiff ought to have sought for the relief of declaration and the suit for relief of bare injunction without seeking relief of declaration is not maintainable.

48. The learned counsel for the appellant also relied the judgements.

1)Jharkhand State Housing Board Vs. Didar Singh and another reported in (2019) 17 Supreme Court cases 692, wherein the Hon'ble Apex Court has held that

"11. It is well settled by catena of Judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and



when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction"

2)T. V.Ramakrishna Reddy Vs.M.Mallappa and another reported in (2021) 13 Supreme Court Cases 135,wherein the Hon'ble Apex Court has held as follows:

"20. It will also be relevant to refer to the following observations of this Court in the case of Jharkhand State Housing Board v. Didar Singh and another2:

"11. It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises a genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction."



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49. On a careful reading of the judgements it is clear that when the defendants denied the title of the property the suit for bare injunction without seeking relief of declaration is not maintainable. In the case on hand also there is a cloud over the title and the defendants also denied the title of the property by claiming pathway rights over the property and thereby without seeking relief of declaration the suit is not maintainable.

50. The learned counsel for the respondents has argued that in this case no substantial question of law arose and the question of law framed are not correct and relied judgements in

1)Kshitish Chandra Durkait .vs. Santhoshkumar Purkait and other reported in 1987(5)SCC 438, wherein the Hon'ble Supreme Court in para 10 held as under:

“10. We would only add that (a) it is the duty cast upon the High Court to formulate the substantial question of law involved in the case even at the initial stage: and (b) that in (exceptional) cases, at a later point of time, when the Court exercises its jurisdiction under the proviso to sub-section (5) of Section 100 CPC in



formulating the substantial question of law, the opposite party should be put on notice thereon and should be given a fair or proper opportunity to meet the point. Proceeding to hear the appeal without formulating the substantial question of law involved in the appeal is illegal and is an abnegation or abdication of the duty cast on court; and even after the formulation of the substantial question of law, if a fair or proper opportunity is not afforded to the opposite side, it will amount to denial of natural justice. The above parameters within which the High Court has to exercise its jurisdiction under Section 100 CPC should always be borne in mind. We are sorry to state that the above aspects are seldom borne in mind in many cases and second appeals are entertained and/or disposed of, without conforming to the above discipline."

2)Sheel Chand vs. Prakash Chand reported in (1998)6 SCC 683, wherein the Hon'ble Supreme Court in para 7 held as under:-

"7. The question of law formulated by the learned Single Judge, noticed above, strictly speaking is not even a question of law, let alone a substantial question of law. The existence of a "substantial question of law" is the sine qua non for the exercise of jurisdiction by the High Court under



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the amended provisions of Section 100 CPC. It appears that the learned Single Judge overlooked the change brought about to Section 100 CPC by the amendment made in 1976, The High Court unjustifiably interfered with pure questions of fact while exercising jurisdiction under Section 100 CPC. It was not proper for the learned Single Judge to have reversed the concurrent findings of fact while exercising jurisdiction under Section 100 CPC."

3)Bholaram.vs.Ameer Chand reported in (1981)2 SCC 414, wherein the Hon'ble Supreme Court in para I held as under:-

This appeal by special leave by the defendant is directed against a judgment dated July 21, 1971 of the Madhya Pradesh High Court by which the High Court interfered in second appeal and after having set aside the findings of fact by the trial Court and the appellate Court decreed the plaintiff's suit for ejectment. We have gone through the judgment of the High Court us also of the courts below and we find that by and large the High Court seems to have reversed the concurrent findings of fact arrived at by the trial Court and the appellate Court and, therefore, prima facie travelled beyond the limits imposed on its jurisdiction under Section 100 of the Code of Civil



Procedure. The High Court, however, seems to have justified its interference in second appeal mainly on the ground that the judgments of the courts below were perverse and were given in utter disregard of the important materials the record particularly misconstruction of the rent note. Even if we accept the main reason given by the High Court the utmost that could be said was that the findings of fact by the courts below were wrong or grossly inexcusable but that by itself would not entitle the High Court to interfere in the absence of a clear error of law."

51. On careful reading of the said judgments, it is clear that the High Courts to formulate the substantial question of law involved in the case, even at the initial stage and that in exceptional cases at a later point of time. when the court exercise its jurisdiction, proviso to Sub Section 5 of Section 100 C.P.C., in formulating the substantial question of law, the opposite party should be put on notice therein and should be given a fair and proper opportunity to meet that point. Further the High Court's jurisdiction under Section 100 and 101 C.P.C., even in the findings of facts by courts below are wrong or grossly inexcusable, that by itself would not entitle the High Court



to interfere under Section 100 CPC, in absence of clear error of law and substantial question of law must exist and must be formulated by the High Court. The concurrent finding of fact cannot merely be interfered with in the Second Appeal. The existence of substantial question of law is a *sin qua non* for the exercise of jurisdiction by the High Court under the amended provision of Section 100 CPC.

52. In the case on hand, this court already formulated the substantial questions of law and the parties not raised any objections at initial stage, now, after 10 years when the case is posted for arguments raised the objection. However, on careful reading of the documents and grounds of appeal, the substantial questions of law are arose and already this court framed the substantial questions of law. Hence, the above said judgments submitted by the learned counsel appearing for the respondent will not be applicable to the present facts of the case.

53. The Courts below have failed to consider the above said aspects and wrongly came to the conclusion that the first defendant is third party and he cannot question the right of the plaintiff. The trial Court and first appellate



Court have misinterpreted the law and wrongly concluded that the defendants are third parties and they have no right to question the title of the plaintiff thereby the relief of declaration is not required and the suit for bare injunction is maintainable. Therefore, as discussed supra, this Court is of the opinion that suit for bare injunction without seeking relief of declaration is not maintainable, since the first defendant is claiming pathway rights in common pathway. Thus, the substantial questions of law is answered accordingly.

54. Therefore, as discussed above, this Court is of the opinion that the decree and common judgement passed in respect of A.S.No.23 of 2011 on the file of the Principal District Judge, Tiruvallur and the decree and common judgement passed in respect of OS.No.116 of 2006 on the file of Sub Court, Poonthamallee are liable to be set aside.

55. In the result, the Second Appeal is Allowed, the common Decree and Judgement passed in respect of in A.S.No.23 of 2011 on the file of Principal District Judge, Thiruvallur dated 31.07.2012 and the Decree and common Judgement passed in respect of O.S.No.116 of 2006 on the file of Sub Court, Poonamallee, dated 12.08.2010, are set aside and the suit in



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O.S.No.116 of 2006 on the file of Sub Court, Poonamallee, is dismissed. No costs.

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1. The Principal District Judge, Thiruvallur.

2.The Subordinate Judge, Poonamallee.

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2. The Public Prosecutor, High Court, Madras.

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P.DHANABAL.J,

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