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S.A.NOS.2172 AND 2173 OF 2002

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 08 / 03 / 2024

JUDGMENT PRONOUNCED ON : 07 / 06 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NOS.2172 AND 2173 OF 2002

S.A.NO.2172 OF 2002

1..Viswanathan (Died)
2.Saraswathi
3.V.Illayaraja

... Appellants /
Appellants /
Defendant

(App.1 died. App.2 and App.3 are
B/R as LR's of the deceased-App.1
vide Court order dated 23.02.2024
made in CMP Nos. 28992, 28994
and 29000 of 2023 in
S.A.No.2172 of 2002)

Versus

M.Sengotuvel

... Respondent /
Respondent /
Plaintiff



S.A.NOS.2172 AND 2173 OF 2002

PRAYER IN S.A.NO.2172 OF 2002: Second Appeal filed under Section

100 of Civil Procedure Code against the judgment and decree dated 18.12.2001 made in A.S.No.183 of 2000 on the file of the III Additional District Judge, Salem, confirming the judgment and decree dated 25.07.2000 made in O.S.No.802 of 1994 on the file of the Additional Subordinate Court, Salem.

S.A.NO.2173 OF 2002

- 1.I.Viswanathan (Died)
- 2.Athayammal (Died)
- 3.Saraswathi
- 4.V.Illayaraja

... Appellants /
Appellants /
Plaintiffs 1& 3

(App.1 was recorded as LR of the deceased-App.2 vide order of Court dated 14.07.2006 made in CMP No.18664/2003)

(Thereafter, App.1 passed away. App.3 and App.4 are brought on record as LR's of the deceased App.1 vide Court order dated 23.02.2024 made in CMP Nos. 29005, 29008 and 29004 of 2023 in S.A.No.2173 of 2002)

Versus



S.A.NOS.2172 AND 2173 OF 2002

1.Maniyarar alias Muthu Gounder (Died)

2.Sengotuvel

3.Kanagaraj

... Respondents 1 to 3/
Respondents 1 to 3/
Defendants 1 to 3

4.Perumayeeammal

... 4th Respondent /
4th Respondent /
2nd Plaintiff

5. Malliga

... 5th Respondent

(R5 was B/R as L.R. of R1-
Maniyarar alias Muthu Gounder vide
Court Order dated 23.07.2019 made
in CMP No.3382 of 2019 in SA
No.2173 of 2002)

PRAYER IN S.A.NO.2173 OF 2002: Second Appeal filed under Section
100 of Civil Procedure Code against the judgment and decree dated
18.12.2001 made in A.S.No.184 of 2000 on the file of the III Additional
District Judge, Salem confirming the judgment and decree dated
25.07.2000 made in O.S.No.530 of 1992 on the file of the Additional
Subordinate Court, Salem.

For Appellants : Mr.D.Shivakumaran

For Respondents : Mr.S.Kalyanaraman
(in both SA's)



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COMMON JUDGMENT

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Since the issues are interwoven and the parties are inter-related, Second Appeals in S.A.Nos. 2172 and 2173 of 2002 were heard together and will be governed by this common judgment. This common judgment, to add clarity and avoid ambiguity, is organized into four primary headings with corresponding subheadings as hereunder.

I. BACKGROUND

II. SECOND APPEAL NO. 2172 OF 2002

II(a) Plaintiff's Case

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II(c) Decision of the Courts below

II(d) Question of Law

II(e) Arguments

II(f) Discussion and Decision

III. SECOND APPEAL NO. 2173 OF 2002

III(a) Plaintiffs' Case

III(b) Defendants' Case

III(c) Decision of the Courts below

III(d) Question of Law

III(e) Arguments

III(f) Discussion and Decision

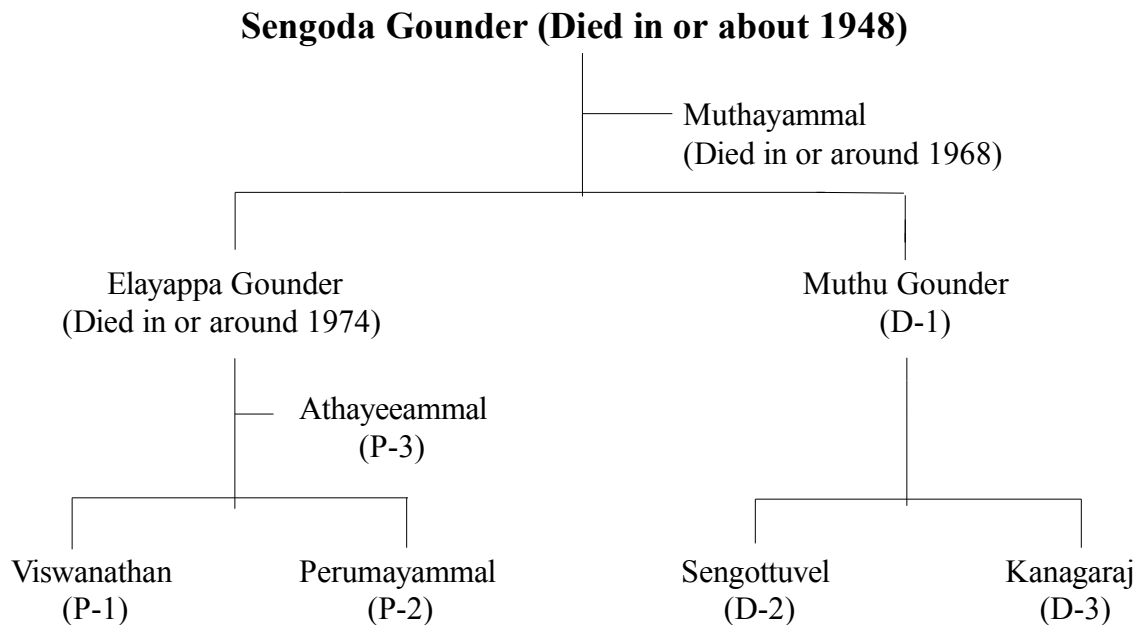
IV. CONCLUSION

I. BACKGROUND



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2) The relationship between the parties, is elucidated through the following genealogy chart.



Note:

- P-1, P-2, P-3 - Plaintiffs in O.S.No.530 of 1992.
- D-1, D-2, D-3 - Defendants in O.S.No.530 of 1992.
- D-2 & P-1 - Plaintiff and Defendant respectively in
 O.S.No.802 of 1994.

3) Appellant herein – Viswanathan and respondent herein – Sengottuvel are first cousins. On *June 22, 1992*, the respondent – Sengottuvel filed a suit in *O.S.No.527 of 1992* on the file of the District Munsif Court, Salem against the appellant - Viswanathan, seeking the



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relief of permanent injunction restraining him from interfering with the peaceful enjoyment of the cart track connecting his land in *Survey No.101* and 'East-West Vazhapadi-Mangalam Road' and from obliterating the same.

4) Thereafter, on *July 14, 1992*, appellant – Viswanathan along with his mother and sister, filed a Suit in *O.S.No.530 of 1992* on the file of the 'Additional Subordinate Court, Salem' (henceforth 'Trial Court') against respondent – Sengotuvel, his father - Muthu Gounder and his brother – Kanagaraj seeking the relief of partition of the land in *Survey No.101*.

5) Then, as per the order of the Court dated *September 14, 1994* made in *Tr.O.P.No.3 of 1994* on the file of Principal District Court, Salem, the Suit in *O.S.No.527 of 1992* was transferred to the Trial Court for joint trial with *O.S.No.530 of 1992*. On receiving the case files of *O.S.No.527 of 1992*, the Trial Court assigned *O.S.No.802 of 1994* to it.

6) Both the suits were tried together, and evidence and documents were recorded in *O.S.No.802 of 1994*. On the side of the



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plaintiff in *O.S.No.802 of 1994* - Sengotuvel, he himself was examined as

P.W.1 and his father, Muthu Gounder was examined as P.W.2 and Ex-A.1

to Ex-A.13 were marked. On the side of the defendant in *O.S.No.802 of*

1994 - Viswanathan, he himself was examined as D.W.1. One Muthusamy

and one Rajendran were examined as D.W.2 and D.W.3. Ex-B.1 to Ex-

B.11 were marked. The Advocate Commissioner's report and plan were

marked as Ex-C.1 and Ex-C.2 respectively.

II.SECOND APPEAL NO.2172 OF 2002

7) This Second Appeal is filed assailing the judgment and decree passed in *O.S.No.802 of 1994* which was filed seeking permanent injunction with respect to the cart track branching off from the 'East-West Vazhapadi-Mangalapuram Road' and extending to the northern 5 Acres 64 Cents land in *Survey No.101*. For the sake of convenience, under this heading, the parties will be referred to as per their array in *O.S.No.802 of 1994*.

II(a) Plaintiff's Case

8) According to the plaintiff, the Suit properties and some other properties were purchased by the plaintiff's father - Muthu Gounder



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and his grandmother - Muthayammal under the registered Sale Deed dated

July 4, 1957. The plaintiff, and his brother have divided the Suit Properties

and other properties by means of registered Partition Deed dated

November 6, 1991, as per which, the Suit properties mentioned in “A”

Schedule fell to the share of the plaintiff. There is a cart track measuring 7

feet in width and 100 feet in length, branching off from Mangalapuram

Main Road extending to the plaintiff’s property in the North direction.

Rough plan has been filed along with the plaint for better appreciation of

the facts. Easement right over the cart track, existing since time

immemorial, was granted to the land in Survey No.101 through the Sale

Deed dated *July 4, 1957*, and the Partition Deed dated *November 6, 1991*

supports the assertion. As a matter of fact, the defendant – Viswanathan

has signed as a witness in the Partition Deed. With the passage of time, the

defendant became inimical towards the plaintiff, and he has been trying to

obliterate the Suit Cart Track by ploughing. On *June 20, 1992*, the

defendant came with large followers and attempted to obliterate the Suit

Cart Track. Hence, the plaintiff filed a Suit for permanent injunction and

other reliefs.



II(b) Defendant's Case

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9) The Defendant denies that the Suit properties and other properties were purchased by the plaintiff's father along with his grandmother under the registered Sale Deed dated *July 4, 1957*. The defendant is unaware of both, the contents of the registered Partition Deed dated *November 6, 1991*, and the fact that the properties mentioned in 'A' Schedule therein fell to the share of the plaintiff. The Partition Deed being self-serving, will not bind the defendant.

9.1) According to the defendant, it is incorrect to assert that there is a Cart Track measuring 7 feet in width and 100 feet in length, branching off from Mangalapuram Main Road extending to plaintiff's property towards North. Rough plan filed along with the plaint is imaginary. Alleged cart track is not properly described in the plaint. From the plaintiff's house, a cart track runs on the eastern boundary in Survey No.101/2, and then turns towards east in the south-west corner of Survey No.100 belonging to the plaintiff's family and reaches Mangalapuram Main Road. Without describing this cart track which is in existence and usage and also running on plaintiff's land, the plaintiff is describing an imaginary cart track on the land of the defendant. A rough sketch is filed



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along with the written statement, explaining the cart track on the plaintiff's

land. The property described as a cart track in the Suit Property is actually a portion of agricultural land belonging to the defendant, which has been used by the defendant for the purpose of taking his tractor to his lands in *Survey No.101 and 102*. The plaintiff is trying to claim a novel right which he is not enjoying for more than 25 years. It is false to state that on *June 20, 1992*, the defendant with large followers attempted to obliterate the Suit Cart Track. The plaintiff has no title or any other right to claim relief of injunction in respect of the Cart Track.

II(c) Decision of the Courts below

10) The Trial Court, after conducting full trial and hearing arguments from both sides, held that the plaintiff proved the existence of the Suit Cart Track in *Survey No.102/8* and his right over it through Ex-A.1-Sale Deed, Ex-A.2 – Partition Deed executed between the plaintiff and his brother, and Ex-A.11 – Partition Deed executed between the defendant and his sister- Perumayammal; and that Ex-C.1 - Advocate Commissioner's report and Ex-C.2 – Advocate Commissioner's plan also supports the case of the plaintiff. Accordingly, the Trial Court decreed the



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Suit for injunction in *O.S.No.802 of 1994* on *July 25, 2000*.

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10.1) Feeling aggrieved with the judgment and decree, the defendant – Viswanathan preferred an appeal in *A.S.No.183 of 2000* before 'the III Additional District Court, Salem' [henceforth 'First Appellate Court']. The First Appellate Court, after conducting full trial and hearing arguments from both sides, concurred with the findings of the Trial Court and dismissed the appeal on *December 18, 2001*.

10.2) Feeling aggrieved with the judgment and decree of the First Appellate Court, the defendant – Viswanathan, preferred this Second Appeal in *S.A.No.2172 of 2002*.

II(d) Question of Law

11) In *S.A.No.2172 of 2002*, on *December 20, 2002*, this Court has framed the following substantial question of law:

“Whether the judgments of the Courts below are vitiated, in that, they have misled the evidence in particular the Commissioner's report and plan?”



II(e) Arguments

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12) The learned counsel for the appellant / defendant argued that there is no cart track as shown in the plaintiff's rough sketch. Nor there has been any Cart Track in defendant's land in plaintiff's use for 25 years as alleged. The claim of the plaintiff is imaginary. In the Advocate Commissioner's plan (Ex-C.2), there is no mention about the North-South Cart Track, proceeding towards North from the east-west Mangalapuram road. The plaintiff did not file any objection to the Advocate Commissioner's report and plan. Thus, the plaintiff failed to establish that the alleged Cart Track is in existence. Further, the Advocate Commissioner failed to show the existence of the Cart Track in use by the plaintiff situated on the plaintiff's land (*Survey Nos.100 and 101*).

12.1) Further, though the defendant has signed as a witness in Ex-A.2. – Partition Deed, he was not aware of the contents thereof. Hence the doctrine of estoppel would not be applicable. Further, the plaintiff ought to have sought for the relief of declaration. The Trial Court as well as the First Appellate Court did not consider and appreciate the documents and oral evidence properly. Accordingly, he prayed to allow the



appeal.

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13) In response, learned counsel for the respondent/plaintiff argued that the existence of the Suit Cart Track has been established vide Ex-A.1 - Sale Deed, Ex-A.2 - Partition Deed executed between the plaintiff and his brother and Ex-A.11 – Partition Deed executed between the defendant and his sister. Further, the defendant - Viswanathan has signed as a witness in Ex-A.2 - Partition Deed. Hence, the defendant- Viswanathan cannot turn around now and contend that there is no such cart track. The stand of the defendant is barred by the doctrine of estoppel by deed.

13.1) Further, the existence of the Suit Cart Track has been shown in the Advocate Commissioner's report and plan. The oral and documentary evidence available on record would establish that there is a North-South Cart Track as described in the Suit properties. The Trial Court and the First Appellate Court, considering the entire facts and circumstances and negated the defendant's claim. Hence, there is no warrant to interfere with their finding. Accordingly, he prayed to dismiss the Second Appeal.



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II(f) Discussion and Decision

14) This Court has considered the rival submissions and evidence available on record.

15) Perusal of the oral evidence of P.W.1 – Sengotuvel, P.W.2 – Muthu Gounder and D.W.1 – Viswanathan, would clearly show that Sengoda Gounder (Father of Muthu Gounder and Elayappa Gounder) along with one Sundaram @ Sengoda Gounder, purchased northern 5 Acre 64 Cents out of the total 7 Acres 64 Cents comprised in *Survey No. 101* of Ponnarapatty village. The remaining 2 Acres in the *Survey No. 101* was purchased in the name of the defendant's father - Elayappa Gounder. Then Sundaram @ Sengoda Gounder, sold his share in the 5 Acre 64 Cents viz., 2 Acre 82 Cents to Muthu Gounder (father of the plaintiff) and Muthayammal (grandmother of the plaintiff and the defendant). The said Sale Deed has been marked as Ex-A.1 Description of Property in Ex-A.1 – Sale Deed reads thus.

“கிரய சொத்து

சேலம் டி வாழப்பாடி சப்டி சேலம்
தாலுக்கா பொன்னாரம்பட்டி கிராமத்தில் எனக்கு
கிரய மூலமாய் பாத்தியப்பட்டு என் அனுபவத்தில்
இருந்துவரும் க. ச. நெ. 101 புஞ்சை ஏக்கர் 7.64 க்கு



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தீர்வை 9-9-0 இதில் வடபுறம் ஏக்கர் 5 செண்டு 64க்கு தீர்வை 9-9-0 இதில் வடபுறம் ஏக்கர் 5 செண்டு 64க்கு செக்குபந்தி முனியப்பக்கவுண்டன் குழந்தா கவுண்டன் நிலத்திற்கு மேற்கு ஆத்துக்கும் தெற்கு இளையப்பக்கவுண்டன் நிலத்துக்கு வடக்கு ஆத்துக்கும் இளையப்பக்கவுண்டன் நிலத்துக்கும் கிழக்கு இதன் மத்தியில் ஏக்கர்

5.64 நிலமும் வடபுறம் உள்ள கிணர் 1 பூராவும் தென்புறம் கிணர் 1 ல் 3ல் 2 பங்கும் கீழ்புறம் கவலைதுலையும், இதிலுள்ள தென்னை மரங்களும் புளியமரம் 1 பூராவும். . . இந்த நம்பர் எண். 7.64ல் தென்புறம் ஓரமாய் மேல்புறம் ஆத்துக்கு கைமாடு போகவர பாத்தியமும் மங்கலபுரம் போகிற ரோட்டில் இருந்து மேற்படி நெம்பருக்கு போகவர 102 / 8ல் மேல்புறம் 7 முள அகலம் தடபாத்தியமும்...”

(Emphasis supplied)

15.1) Thus, the entire extent of 7 Acres 64 Cents comprised in *Survey No.101* is within the Sengoda Gounder's family and not with any other third person. As per Ex-A.1, easement right was granted over a Cart Track 7 Cubit (7 முளம்) in width, branching off from Mangalapuram Road and extending to the northern 5 Acre 64 Cents in *Survey No.101* through the western side of *Survey No.102/8*. In other words, as per Ex-



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A.1, *Survey No.101* is the dominant heritage and *Survey No.102/8* is the servient heritage/tenement.

16) On *November 6, 1991*, the plaintiff - Sengotuvel and his brother entered into Ex-A.2 - Partition Deed whereby they partitioned the northern 5 Acre 64 Cents between them. The defendant denies it. However, for the reasons to be stated *infra* in Paragraph No.35.1, this Court is of the view that defendant cannot deny Ex-A.2. Ex-A.2 Partition Deed, wherein the defendant – Viswanathan has signed as a witness, reaffirms the plaintiff's right of easement over the Suit Cart Track. Relevant extract is hereunder.

“ஷை நிலங்களுக்கு விஸ்வநாதன் நிலத்தில் செல்லும் வண்டிப்பாதை வழியாகவும் விஸ்வநாதன் வீட்டிற்கு கீழ்புறம் செல்லும் பாதை வழியாகவும் சென்று வாழப்பாடி ௫ மங்களபுரம் மெயின்ரோட்டுக்கு போகவர தடவழபாத்தியம் எப்பவும் உண்டு.”

17) In this case, the plaintiff filed a Rough Sketch under Ex-A.6. The defendant also filed a Rough Sketch under Ex-B1. There is no dispute with regard to the fact that *Survey No.102/8* belonging to the defendant – Viswanathan abuts the East-West Vazhapadi-Mangalapuram



Road (See Ex-A.6 and Ex-B.1).

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18) An Advocate Commissioner was appointed who inspected the suit property on *June 23, 1992* in the presence of both parties and filed Report and Plan marked as Ex-C.1 and Ex-C.2 respectively. Paragraph Nos.3 to 5 of Ex-C.1 reads thus.

“3.The suit property is situate at Mangalapuram. “A” “B” is the suit cart track which is lead from south to north I took the measurement of the suit cart track, which consist of 18 feet breadth, 330 feet of length. The defendant lands are situated at both side of the suit cart track. The Maravalli Kizhangu (மரவள்ளி கிழங்கு) is cultivated on the eastern side of the defendant lands. I found the western side of the land is a harvested land which is mention as “H” in the plan.

4.On the eastern side of the suit cart track, I found there are 8 coconut trees and on the western side there are 5 coconut trees which are mention in the plan as F1, F2, F3, F4, F5, F6, F7, F8, F9, F10, F11, F12, F13. At the 'B' point near the road I found one Vembu Tree (வேம்பு மரம்).

5.As mention in the plan 'C' is the plaintiff house which is face on the south. 'D' is the defendant house, 'E' is the Kalam (களம்) G1, G2 are the hay stack (வைக்கோல் டோர்) which are installed on the western side of the suit cart track. There is no other way to go to the plaintiff land or



house except this cart track (A, B).”

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18.1) The defendant has filed an objection to the Advocate Commissioner's Report stating that the commissioner has failed to mention the alternate passage to the plaintiff's land and that he has failed to mention the directions properly. The said objection is not valid because, if really there is a passage is available in *Survey No.100*, to reach *Survey No.101*, the defendant would have pointed out the same to the Advocate Commissioner and if so, the Commissioner would have mentioned the same in his Plan and Report. Further, it is true that directions are not marked correctly in Ex-C.2 – Plan. Conjoint reading of the Ex-C.1 - Report and Ex-C.2 - Plan along with the oral evidence, Ex-A6 – Plaintiff's Rough Sketch, Ex-B.1 – Defendant's Rough Sketch and Exs-A.1, A.2, and A.11 would show that the commissioner has mistakenly labeled North as South and South as North. This is an inconsequential oversight as Ex-C.2 would clearly show the existence of a North-South Cart Track running along the western boundary of the defendant's land in *Survey No.102/8* which extends till the northern 5 Acres 64 Cents in *Survey No.101* belonging to the plaintiff and his brother - Kanagaraj.



19) Further case of the defendant is that the plaintiff has an alternate pathway in *Survey.No.100*. But the same has not been proved by the defendants. As stated above, no such cart track has been mentioned in Ex-C.1 and Ex-C.2. On the other hand, the evidence of D.W.3 coupled with Ex-A.9, Ex-A.12 and Ex-A.13 would prove the existence of the Suit Cart Track on the western side of *S.No.102/8* as described in Ex-A.1 - Sale Deed.

20) Hence, a positive easement right over a cart track in *Survey No.102/8* has been granted to access the northern 5 Acres 64 Cents in *Survey No.101* vide Ex-A.1 – Sale Deed. The plaintiff and his brother acquired the said extent of land by way of inheritance. Once an easement right is granted, it cannot be extinguished subject to Chapter V of Indian Easements Act, 1882. The defendant failed to plead and prove that the easement right by grant got extinguished. On the other hand, in view of Section 19 of the Easements Act, the plaintiff and his brother – Kanagaraj acquired the easement right over the Suit Cart Track by way of devolution and inheritance. Therefore, this Court is of the opinion that the plaintiff proved the existence of pathway in *Survey No.102/8* as described in Ex-



A.1 - Sale Deed.

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21) Further, the plaintiff has pleaded that on *June 20, 1992*, the defendant tried to obliterate the Suit Cart Track. Hence, the plaintiff has cause of action to seek the relief under Section 35 of the Indian Easements Act, 1882 read with Section 38 of the Specific Relief Act, 1963. In this case, Ex-A.1 Sale Deed confers easement right to the dominant heritage from servient heritage, the Suit for permanent injunction *simplicitor* is maintainable and there is no need to seek the relief of declaration. Hence, the argument of the defendant that the plaintiff ought to have sought for the relief of declaration does not hold water.

22) The Trial Court and the First Appellate Court, considering the evidence available on record including the Advocate Commissioner's report in the right perspective, have concurrently arrived at the finding that the plaintiff proved the existence of the Suit Cart Track. This Court finds no reason to interfere with the said factual finding based on evidence. Accordingly, the substantial question of law is answered in favour of the plaintiff and against the defendant.



III. SECOND APPEAL NO. 2173 OF 2002

23) This Second Appeal is filed assailing the judgment and decree passed in *O.S.No.530 of 1992* which was filed seeking the relief of partition of the land in *Survey No.101*. For the sake of convenience, under this heading, the parties will be referred to as per their array in *O.S.No.530 of 1992*.

III(a) Plaintiffs' Case

24) According to the plaintiffs, northern 5 Acre 64 Cents out of the total 7 Acres 64 Cents in *Survey No.101* of Ponnarapatty village was purchased by Muthu Gounder (D1) and Muthayammal (P1's grandmother and P3's mother-in-law) vide Sale Deed dated *July 4, 1957* from one Sundaram @ Sengoda Gounder. As per the Sale Deed, Muthayammal is entitled half share. There was no partition in her share. She passed away 25 years ago survived by her sons, namely Muthu Gounder (D1) and Elayappa Gounder (P1's father). Elayappa Gounder passed away in or about the year 1974 survived by the three plaintiffs. Thus, the plaintiffs together are entitled $\frac{1}{4}$ share and the defendants are



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entitled $\frac{3}{4}$ share in the said property.

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24.1) Further, plaintiffs' grandfather - Sengoda Gounder owned and enjoyed an extent of 2 Acre 82 Cents described in 2nd item of Suit Properties. The same is ancestral. Hence, the plaintiffs together are entitled $\frac{1}{2}$ share in the 2nd item of the Suit properties.

24.2) Thus, in all, the plaintiffs together are entitled 2 Acre and 82 Cents in the *Survey No.101*. Accordingly, the plaintiffs filed a Suit for partition and other reliefs in *O.S.No.530 of 1992* before the Trial Court.

III(b) Defendants' Case

25) The defendants admit that Elayappa Gounder passed away in 1974 and the property in *Survey No.101* was purchased in the name of D1 and his mother – Muthayammal vide Sale Deed dated *July 4, 1957*. However, it is incorrect to assert that 5 Acre 64 Cents was purchased. According to the defendants, only half share in 5 Acre 64 Cents



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was purchased.

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25.1) Defendant's case is that, originally D1's father purchased 1 Acre of land in *Survey Nos.102/3, 102/5, 102/6 and 102/1* vide Sale Deed dated *March 24, 1938*.

25.2) Further, D1's father along with one Sundaram @ Sengoda Gounder, purchased 5 Acre 64 Cents out of the total 7 Acres 64 Cents comprised in *Survey No. 101* of Ponnarapatty village. Remaining 2 Acres in the *Survey No. 101* was purchased in the name of Elayappa Gounder (P1's father and D1's brother). Then Sundaram @ Sengoda Gounder, sold his share in the 5 Acre 64 Cents viz., 2 Acre 82 Cents to D1 and D1's mother vide Sale Deed dated *July 4, 1957*.

25.3) D1 and his brother – Elayappa Gounder constituted a joint family and purchased many other properties including, some other properties in possession of P1 which are not included in the Suit Property.

25.4) Later, D1 and Elayappa Gounder divided the properties orally, whereby the extent of 5 Acres and 64 Cents in *Survey*



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No.101 along with the 1 Acre of land in *Survey Nos.102/3, 102/5, 102/6 and 102/1* purchased vide Sale Deed dated *March 24, 1938* was allotted to D1; and the remaining extent of 2 Acres in *Survey No.101* that stood in the name of Elayappa Gounder along with some other properties not included in the Suit Property was allotted to the share of the Elayappa Gounder (P1's father).

25.5) D1 took possession of the said 5 Acres and 64 Cents while the 1 Acre land remained in enjoyment of Elayappa Gounder. After the demise of Elayappa Gounder, when the defendants claimed the said 1 Acre land as per the oral partition, P1 refused to hand over its possession and obstructed the Suit Cart Track. Hence, D2 filed a suit in *O.S.No.527 of 1992* on the file of the District Munsif Court, Salem against the defendant - Viswanathan, seeking the relief of permanent injunction. Hence, the plaintiffs have filed this Suit as a counterblast. Hence, the Suit is to be dismissed.

III(c) Decision of the Courts below

26) The Trial Court, after conducting full trial and hearing arguments from both sides, held that oral partition took place between the



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plaintiffs' family and the defendants family. Later, through Ex-A.2 – Partition Deed, defendants partitioned among themselves, the property allotted to them in the said oral partition. The Suit is a counter-blast Suit. Accordingly, Trial Court dismissed the Suit for partition in *O.S.No.530 of 1992* on *July 25, 2000*.

26.1) Feeling aggrieved with the judgment and decree, the plaintiffs in *O.S.No.530 of 1992* preferred appeal in *A.S.No.184 of 2000* before the III Additional District Court, Salem. The First Appellate Court, after conducting full trial and hearing arguments from both sides, concurred with the findings of the Trial Court and confirmed the Trial Court's judgment and decree and thus, dismissed the appeal on *December 18, 2001*.

26.2) Feeling aggrieved with the judgment and decree, the plaintiffs in *O.S.No.530 of 1992*, preferred the Second Appeal in *S.A.No.2173 of 2002*.

III(d) Question of Law

27) In *S.A.No.2173 of 2002*, on *December 20, 2002*, this Court has framed the following substantial question of law:



“Are the Courts below correct in treating Ex.A2 the partition deed dated 6.11.1991, as a bar for the plaintiffs to file a suit for partition for the sole reason that the first plaintiff has signed the document as a witness, when the law is that signing of a document as witness does not by itself amount to knowledge of the contents and that the same does not estop anybody in a position contrary unless it is positively shown the contents of the documents at the time of signing it?”.

III(e) Arguments

28) Learned Counsel for the appellants/plaintiffs submitted that the Item No.1 of the Suit property was purchased by Muthu Gounder and his mother Muthayammal vide Sale Deed dated *July 4, 1957* from one Sundaram @ Sengoda Gounder. Muthayammal is entitled to half share in Item No.1 of Suit property. After the demise of Muthayammal, the defendants are entitled to 1/4th share and the plaintiffs are entitled to 3/4th share in Item No.1. Further, Sengoda Gounder purchased an extent of 2 Acre 82 Cents in *Survey No.101*. After his demise, the plaintiffs are entitled to 1/2 share in it.

28.1) Further submitted that merely signing as a witness in



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Ex-A.2 - Partition Deed would not amount to estoppel and that P1 - Viswanathan was not aware of the contents of Ex-A.2. The Trial Court and the First Appellate Court failed to consider the said fact and appreciate Ex-A.2 in the right perspective. Accordingly, he prayed to allow the appeal.

29) Per contra, the learned counsel for the respondents / defendants submitted that Sengoda Gounder purchased about 1 Acre of land in *Survey Nos.102/3, 102/5, 102/6, 102/1* by means of a registered Sale Deed dated *March 24, 1938*, and that he purchased some more lands using the earnings from this property on *December 18, 1944*. Sengoda Gounder and one Sundaram @ Sengoda Gounder purchased an extent of 5 Acres 64 Cents out of the total 7 Acres 64 Cents in *Survey No.101* of Ponnarapatty Village. The remaining extent of 2 Acres were purchased in the name of Elayappa Gounder, who is the brother of D1 and father of P1. Under Ex-A.1 – Sale Deed dated *July 4, 1957*, Sundaram @ Sengoda Gounder sold an extent of 2 Acres 82 Cents to Muthu Gounder and Muthayammal.

29.1) Elayappa Gounder and Muthu Gounder constituted a



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joint family and purchased many other properties including the properties, which are in possession of P1 and not arrayed as Suit Properties. Elayappa Gounder and Muthu Gounder divided the Suit Properties and other properties orally a long time ago whereby the Suit Properties fell to the share of the defendants. The partition has become complete, and no properties are available for partition between the plaintiffs and the defendants.

29.2) Further submitted that P1 - Viswanathan who have studied up to PUC and signed as witness in Ex-A.2 is not an illiterate person. He was very well aware of the nature of the document. Hence, P1 - Viswanathan is estopped from contending otherwise than in Ex-A.2. Further, this Suit has been filed as a counter blast. Accordingly, he prayed to dismiss the appeal.

III(f) Discussion and Decision

30) This Court has considered the rival submissions and evidence available on record.

31) The evidence of P.W.1, P.W.2 and D.W.1 would clearly



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show that Sengoda Gounder [Father of Muthu Gounder (D1) and Elayappa Gounder] along with one Sundaram @ Sengoda Gounder, purchased northern 5 Acre 64 Cents out of the total 7 Acres 64 Cents comprised in *Survey No. 101* of Ponnarapatty village. The remaining 2 Acres in the *Survey No. 101* was purchased in the name of P1's father - Elayappa Gounder. Then Sundaram @ Sengoda Gounder, sold his half share in the 5 Acre 64 Cents land viz., 2 Acre 82 Cents to D1 - Muthu Gounder (father of D2) and Muthayammal (grandmother of D2 and P1). Hence, the entire extent of *Survey No.101* is owned by Sengoda Gounder's family.

32) Admittedly, Sengoda Gounder died in or around the year 1948, leaving behind his two sons- D1 and Elayappa Gounder. According to the defendants, an oral partition took place long years ago between Elayappa Gounder and D1, whereby the northern extent of 5 Acres and 64 Cents in *Survey No.101* along with some other properties was allotted to D1; and the remaining extent of 2 Acres in *Survey No.101*



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that stood in the name of Elayappa Gounder along with some other properties not included in the Suit Property was allotted to the share of the Elayappa Gounder (P1's father).

33) In this regard, it is apposite to consider Ex-A.11 – Partition Deed dated *April 5, 1976* executed between P1 and his sister - Perumayammal. The said Partition Deed, has the following recitals:

“...ஆகிய நாம் இருவரும் மனப்பூர்வ சம்மதியில் எழுதிக்கொண்ட பாகக்கறார் பத்திரம். நாம் இருவரும் உடன்பிறந்த அக்காள் தம்பி. நம் இருவருக்கும் தனித்தனியாக திருமணமாகி தனிக்குடித்தனமாக இருந்து வருகிறோம். நம்மில் 2 லக்கமிட்டவருக்கு நம் தகப்பனார் உயிருடன் இருக்கும் பொழுதே ஜங்கம் சொத்துக்களும் சீர்வரிசைகளும் செய்துவிட்டார். ஸ்தாவர சொத்துக்களையும் வாய்மொழியாக பிரித்து 2 லக்கமிட்டவர் அனுபவத்தில் விட்டுவிட்டார் அதன் விபரம் 1லக்கமிட்டவருக்கும் தெரியும். அதன்படி எந்தவிதமான பத்திரமும் நாம் எழுதிக்கொள்ளவில்லை. இனியும் அப்படியே இருந்து வர சரிபட்டுவராததால் நம் தகப்பனார் பிரித்துக்கொடுத்தபடி நாம் A ஜாப்தாவில் கண்ட சொத்துக்களை நம்மில் 1லக்கமிட்ட I. விஸ்வநாதனும் அவர் வார்க்களும் இன்று முதல் சர்வ சுதந்திரமாகவும் B ஜாப்தா சொத்துக்களை நம்மில் 2 லக்கமிட்ட பெருமாயி அம்மாளும் அவர் வார்க்களும் சர்வசுதந்திரமாகவும் ஆண்டு அனுபவித்துக்கொள்ள



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வேண்டியது. இனி இன்று முதல் ஒருவருக்கு பாத்தியப்பட்ட
சொத்துக்களில் மற்றவர்களோ அவர் வாராகளோ
எவ்வித பாத்தியமும் கொண்டாட உரிமையில்லை...”

33.1) Further, in Ex-A.11 – Partition Deed, an extent of
southern 2 Acres in *Survey No.101* was allotted to P1. Relevant extract is
hereunder.

“...கரிசுஎண் 101 பு.எ.7.64 க்கு தீர் ரூ 9.55 இதில்
தென்புறம் ஏக்கர் 2.00 க்கு சக்குபந்தி 102/2 நம்பருக்கு
வடக்கு ஆத்திற்கு கிழக்கு முத்துக்கவுண்டர் பாகத்திற்கு
தெற்கு மேற்கு இதன் மத்தியில் ஏக்கர் 2.00 க்கு... தீர்வை
ரூ.2.50 செஸ் ரூ.7.38 மொத்தம் 9.88 X 25 மடங்கு ரூ.247.00
இதிலுள்ள கிணற்றில் 3ல் ஒருபாக மதிப்பு ரூ.1000.00
கவலைத்துலை 1 மாவடை மரவகைகளின்...”

34) If really the Suit properties were not partitioned between
Muthu Gounder (D1) and Elayappa Gounder, P1 and P2 would have
included the Suit Properties also in the said Partition Deed. Perusal of Ex-
A.11 fortifies the contention of the defendants that an oral partition took
place during the lifetime of Elayappa Gounder between him and D1. It
further reveals that northern extent of 5 Acre 64 Cents in *Survey No.101*
was allotted to Defendants and the remaining extent of 2 Acres in *Survey*



No.101 and some other properties were allotted to Elayappa Gounder.

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35) Further, D2 and D3 entered into Ex-A.2 – Partition Deed partitioning the properties allotted in the aforesaid oral partition and some other properties acquired by them. It is to be noted that in Ex-A.2 - Partition Deed, P1 - Viswanathan has signed as a witness. P1 was examined as D.W.1 and in his deposition, he has clearly admitted that he signed Ex-A.2 - Partition Deed as a witness, but he was not aware of the contents of Ex-A.2.

35.1) P.W.2 (D1) has deposed that the partition took place between his sons in the presence of himself and P1. Generally, merely signing as a witness on a document does not amount to estoppel. However, in this particular case, P1 is a literate individual. Even if we assume that P1 was not fully aware of the contents of Ex-A2, it is reasonable to expect that he knew D2 and his brother -D3, were entering into a Partition Deed. Further, the parties involved are not only closely related but also live as neighbours. In a village like the Suit village, where generally community interactions are close-knit, any partition of landed properties would



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inevitably become known to adjacent landowners Furthermore, the partition process is not a one day event; it typically spans over several days. Given these factors, the plaintiffs' claim that P1 was unaware of the partition between P2 and P3 does not hold up under scrutiny.

35.2) In other words, while simply signing as a witness on a document does not mean that the person was aware of the contents therein, the circumstances here indicate that the plaintiff was certainly aware of the partition of landed properties between D2 and D3.

36) Further, the contention of the defendants that this Suit to counter blast the Suit in *O.S.No 802 of 1994* is plausible. The Trial Court as well as the First Appellate Court concurrently have held that oral partition took place between the plaintiffs' family and the defendants' family. Later, through Ex-A.2 – Partition Deed, defendants partitioned among themselves, the property allotted to them in the said oral partition.

37) As stated *supra*, the plaintiff and the defendants are deriving title from Sengoda Gounder. Admittedly, Sengoda Gounder and



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Muthayammal had larger extent of properties. After the demise of Sengoda

Gounder and Muthayammal, their sons Muthu Gounder and Elayappa

Gounder orally divided the properties. The properties allotted to Muthu

Gounder have been partitioned under Ex-A.2 - Partition Deed. The

properties allotted to Elayappa Gounder have been partitioned between the

D1 and D2 vide Ex-A.11 - Partition Deed. The defendants has suppressed

facts and filed a Suit for partition only of an extent of 5 Acres 96 Cents in

Survey No.101. The other properties were not included in the partition suit.

Hence, the Suit in *O.S.No.530 of 1992* has been filed as a counterblast to

the Suit filed by the plaintiff in *O.S.No.527 of 1992* (O.S.No.802 of 1994

on the file of Trial Court). Hence, the Trial Court as well as the First

Appellate Court has rightly decided that the Suit Properties and some other

properties were orally partitioned between Muthu Gounder and Elayappa

Gounder. Hence, the Suit seeking the relief of partition must fail. The

substantial question of law is answered against the appellants and in

favour of the respondents.

IV. CONCLUSION

38) In view of the discussion above, the Second Appeals in



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S.A.Nos.2172 and 2173 of 2002 are dismissed. No costs.

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07 / 06 / 2024

Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
TK

To

- 1.The III Additional District Judge
III Additional District Court
Salem.
- 2.The Additional Subordinate Judge
Additional Subordinate Court
Salem.



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R.SAKTHIVEL, J.

TK

PRE-DELIVERY COMMON JUDGMENT
MADE IN
S.A.NOS.2172 AND 2173 OF 2002

07 / 06 / 2024