



S.A.No.62 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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JUDGMENT RESERVED ON : 11 / 09 / 2024

JUDGMENT PRONOUNCED ON : 12 / 12 / 2024

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NO.62 OF 2019

AND

CMP NOS.1288 OF 2019 AND 18227 OF 2024

IN

S.A.NO.62 OF 2019

1.G.Kamaraj

2.K.Ranjithkumar

3.K.Ravichandiran

4.G.Indhirani @ Indhira

... Appellants / Respondents /
Defendants

versus

1.K.Govindarajan

2.G.Thangammal

3.S.Selvaraju

4.S.Sathiyaraj

... Respondents / Appellants /
Plaintiffs

Prayer in S.A.No.62 of 2019: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated December 14, 2017, made in A.S.No.4 of 2017 on the file of the Sub Court, Rasipuram, setting aside the Judgment and Decree dated January 19, 2017 made in O.S.No.78 of 2014 on the file of the District Munsif Court, Rasipuram.

Prayer in CMP No.1288 of 2019: Civil Miscellaneous Petition filed under



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Section 151 of Code of Civil Procedure, 1908 praying to grant an Order of stay of the Judgment and Decree dated December 14, 2017 made in A.S.No.4 of 2017 in O.S.No.78 of 2014 on the file of the Sub Court, Rasipuram.

Prayer in CMP No.18227 of 2024: Civil Miscellaneous Petition filed under Order XLI Rule 27 of Code of Civil Procedure, 1908 praying to receive the document viz., 'Pathway Agreement dated July 25, 2020 registered before Sub Registrar, Rasipuram as Document No.2965 of 2020' in this appeal as additional evidence.

For Appellants : Mr.P.T.Rakesh
For Respondents : Mr.K.Balaji

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated December 14, 2017 passed in A.S.No.4 of 2017 by the 'Sub Court, Rasipuram' [henceforth 'First Appellate Court' for brevity], whereby the Judgment and Decree dated January 19, 2017 passed in O.S.No.78 of 2014 by the 'District Munsif Court, Rasipuram' [henceforth 'Trial Court' for brevity] was confirmed.

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



FACTUAL MATRIX

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3.Pazhamalai alias Sellamuthu Udayar had five sons, namely Karuppa Udayar [father of first plaintiff], Nallathambi Udayar, Kandhasamy Udayar, Ramasamy Udayar [grandfather of fourth and fifth plaintiffs], and Ganesa Udayar [father of first and fourth defendant]. The second plaintiff is the wife of the first plaintiff. The second and third defendants are the children of the first defendant. The fourth defendant is the sister of the first defendant.

3.1.The total extent of Survey No.318 is 8 Acres 85 Cents. An extent of 1 Acre 70 Cents in Survey No.318/2 and half-a-share in the common well in Survey No.318/3 along with some more properties initially belonged to Pazhamalai alias Sellamuthu Udayar as joint family properties. He along with his five sons divided these properties vide Partition Deed dated December 16, 1950, whereby the said extent of 1 Acre 70 Cents in Survey No.318/2 along with the said half-a-share in the common well in Survey No.318/3 was allotted to Ganesa Udayar.

3.2.One Kali Asari and his family members owned nearly 2 Acre 12 Cents in Survey No.318. There is no whisper about the title and ownership of the remaining extent therein.



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3.3.Said Kali Asari, his sons – Ramasamy & Rangasamy, and said Ramasamy's wife – Angammal executed Ex-A.2 - Sale Deed dated June 23, 1967 in respect of 48 Cents in Survey No.318/4 and 16 ½ Cents in Survey No.318/6 along with 2/10th share in the common well in Survey No. 318/5 in favour of Kandhasamy Udayar and Ramasamy Udayar.

3.4.Then on April 30, 1968, Kali Asari, his another son - Angamuthu and Angamuthu's wife – said Veeramal, executed Ex-A.1 - Sale Deed in respect of an extent of 48 Cents in Survey No.318/4, 16 ½ Cents in Survey No.318/6, and 2/10th share in the common well in Survey No.318/5 in favour of Kandhasamy Udayar and Ramasamy Udayar.

3.5.Then, Kali Asari's another son – Kuppusamy and Kuppusamy's family members executed Ex-A.3 - Sale Deed dated January 20, 1970 in respect of eastern half of the total extent of 81 Cents in Survey No.318/6 viz., 40 ½ Cents therein along with 1/10th share in the common well in Survey No. 318/5 in favour of Ramasamy Udayar.

3.6.On February 23, 1971, Ganesa Udayar executed a Sale Deed in respect of western half of the total extent of 81 Cents in Survey No.318/6 viz., 40 ½ Cents therein in favour of Kandhasamy Udayar vide



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Ex-A.4 - registered Sale Deed, recitals whereof describe the properties covered thereunder as Ganesa Udayar's self-acquired properties. Both sides have not marked the Sale Deed through which Ganesa Udayar purchased the properties covered under Ex-A.4.

3.7.On January 18, 1988, Kandhasamy Udayar and Karuppa Udayar exchanged their properties vide Ex-A.5 - Exchange Deed, whereby an extent of 60 Cents in Survey No.318/1, 60 Cents in Survey No.318/4, 41 Cents in Survey No.318/6 and 2/5th share in the common well in Survey No. 318/5 were acquired by Karuppa Udayar's family.

3.8.On September 13, 1999, Karuppa Udayar's family and Ramasamy Udayar's family exchanged their properties vide Ex-A.6 – Exchange Deed, whereby Karuppa Udayar's family acquired an extent of 60 ½ Cents in Survey No.318/4B, 39 ½ in Survey No.318/14 and 1/3rd share in the common well in Survey No. 318/5, while Ramasamy Udayar's family acquired an extent of 60 ½ Cents in Survey No.318/1 and 39 ½ in Survey No.318/4A.

3.9.This Court deems fit to reiterate here that the first plaintiff



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is the son of Karuppa Udayar, the second plaintiff is first plaintiff's wife, and 3rd and 4th plaintiffs viz., Selvaraj and Sathyaraj are the grandson of Ramasamy Udayar.

3.10.The Suit Description of Properties contains A, B and C Schedules. Case of the plaintiffs is that Suit 'A' and 'B' Schedule properties belong to the plaintiffs in the manner detailed above; and that Suit 'C' Schedule property is a Cart Track common to both, the plaintiffs and the defendants, used to reach 'A' and 'B' Schedule properties as well as defendants' properties.

3.11.There is no dispute with regard to the plaintiffs' title over Suit 'A' and 'B' Schedule properties. The dispute is only with respect to the Suit 'C' Schedule property. The contention of the plaintiffs is that the Suit Cart Track branches off from Kakaveri to Pattinam Main Road and runs along the northern boundary of the defendants' land in Survey No.318/2 to reach Suit 'B' Schedule property and then turns around the corner of Suit 'B' Schedule property to run down south along the western boundary of Survey No.318 till its end *i.e.*, till the South-West corner of Suit 'A' Schedule property in Survey No.318/7. According to the plaintiffs, Suit Cart Track is in existence for more than 100 years and is a common one for



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both, the defendants and the plaintiffs. Since the defendants obstructed the plaintiffs from using the Suit Cart Track, the plaintiffs have come up with the Suit for permanent injunction restraining the defendants from interfering with the plaintiffs use and enjoyment of the Suit 'C' Schedule common Cart Track.

3.12.On the other hand, while the defendants admit the existence of Cart Track running along the entire northern boundary and then turning around the corner of Suit 'B' Schedule property to run down south along the western boundary of Survey No.318, they contend that the plaintiffs do not own the same entirely. According to the defendants, 'the Cart Track that branches off from Kakaveri to Pattanam Main Road and runs along the northern boundary of the defendants' land in Survey No.318/2' ['said defendants' Cart Track' for convenience and clarity] was formed in 1998 by the defendants for their convenient enjoyment of their lands in Survey Nos. 318/2 and 318/12 and not a common Cart Track as alleged by the plaintiffs; therefore, it absolutely belongs to the defendants and the plaintiffs have no right over the same. To be noted, the said defendants Cart Track forms a portion of the Suit Cart Track. Further case of the defendants is that, vide registered Partition Deed dated March 13,



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2013 between first defendant and his brother - Murugesan, the said defendants' Cart Track was subdivided into Survey No.318/2A and Patta for the same was issued in favour of the first defendant, fourth defendant and their brother – Murugesan. According to the defendants, the way of access to the plaintiffs' land is not the said defendants Cart Track but the 'Mamool Pathway' extending from the East -West Cement Road and running along the western boundary of Survey No.318 *i.e.*, along the western boundary of plaintiffs' land. The defendants have filed a Rough Sketch to that effect.

TRIAL COURT

4.At trial, first plaintiff – K.Govindaraj was examined as P.W.1, one Manickam, who is a neighbouring land owner and also a licenced building surveyor and chartered civil engineer, was examined as P.W.2, one Sathish, Executive Officer of Pattanam Town Panchayat, was examined as P.W.3 and Ex-A.1 to Ex-A.14 along with Ex-X.1 – Compared Copy of the Blue Print were marked on the side of the plaintiffs. On the side of the defendants, the 2nd defendant – K.Ranjithkumar was examined as D.W.1, one Sugumar, Sub-registrar of Rasipuram was examined as D.W.2 and Ex-B.1 to Ex-B.13 were marked. The Report and Plan of the



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Advocate Commissioner were marked as Ex-C.1 and Ex-C.2 respectively.

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4.1.After full-fledged trial and hearing both sides, the Trial Court concluded that the plaintiffs failed to plead as to show their rights over the Suit Cart Track and hence, their claim is baseless. Further, the plaintiffs have failed to put forth a clear description of the Suit Cart Track showing its lie and location. On the other hand, the Suit Cart Track lies on the defendants' land and the defendants have resisted the Suit by contending that the Suit Cart Track was built for their own convenience and enjoyment over which the plaintiffs have no rights. Thus, it concluded that the plaintiffs failed to prove their case and accordingly, dismissed the Suit.

FIRST APPELLATE COURT

5.Feeling aggrieved, the plaintiffs preferred an appeal before the First Appellate Court, which after hearing both sides and perusing the evidence available on record, concluded that the plaintiffs have clearly pleaded and proved the existence of the Suit Cart Track and filed a Rough Sketch of the Suit Cart Track as well to show its lie and location. The plaintiffs' documents, Ex-B.5 – Partition Deed and Exs-C.1 & C.2 – Advocate-Commissioner's Plan and Report clearly establish the existence



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of Cart Track common to the plaintiffs and the defendants. The plaintiffs in

Paragraph No.5 have clearly described the Suit Cart Track as hereunder:

“The suit C schedule common cart track which is marked in green colour alone is the subject matter of the suit and the same starts from Kakkaveri to Pattanam Highways road and runs towards west adjacent on the northern side of the defendants' property and runs on the northern side of the suit B schedule property and then turns towards southern side at the end of the B schedule property and proceeds towards north-south and ends at the end of the suit A schedule properties.”

5.1.Further concluded that the Trial Court under the wrong notion that there are no pleadings and clear description of property, dismissed the Suit. Accordingly, it allowed the Appeal Suit by setting aside the Judgment and Decree of the Trial Court, and decreed the Suit.

SECOND APPEAL

6.Feeing aggrieved, the defendants have preferred this Second Appeal, which was admitted on January 22, 2019 on the following substantial questions of law:

“(1) Whether the Lower Appellate Court is correct in Law in decreeing the Suit for injunction with reference to the suit



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“C” Schedule cart track when there is no clarity as to the descriptions of the said schedule of property?

- (2) *Whether the Lower Appellate Court is correct in decreeing the Suit for bare injunction when the plaintiffs have not prayed for a declaration, more particularly, when the defendants have come forward with the categorical case that the “C” schedule cart track is situate in the land of the defendants and the 1st plaintiff as P.W.1 has also admitted that the cart track runs through Survey No.318/2 which belongs to the defendants?”*

ARGUMENTS:

7.Mr.P.T.Rakesh, learned Counsel for the appellants/ defendants reiterated the averments contained in the written statement and argued that the Cart Track in Survey No.318/2 viz., the said defendants’ Cart Track is the defendants’ separate Cart Track in which the plaintiffs have no right. The plaintiffs have access to their properties through the ‘Mamool Pathway’ running along the western boundary of Survey No.318 from the southern side, which has also been clearly noted by the Advocate Commissioner in his Report and Plan (Exs-C.1 and C.2). Further, Ex-B.11 to Ex-B.13, recitals whereof prove the existence of ‘Mamool Pathway’ in the western side of Survey No.318.

7.1.Referring to Ex-B.6 & Ex-B.7 - Pattas as well as Ex-B.9 –



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‘A’ Register, he argued that the extreme north portion of Survey No.318/2 is the said defendants’ Cart Track and it has now been sub-divided into Survey No. 318/2A. Patta for the same stands in the name of first defendant, first defendant's brother – Murugesan and 4th defendant.

7.2.Further argued that when the defendants had denied the title of the plaintiffs, they ought to have filed a Suit for declaration and not bare injunction. Accordingly, he prayed that the Second Appeal be allowed, the Judgment and Decree of First Appellate Court be set aside and the Judgment and Decree of the Trial Court be confirmed.

7.3.He further submitted that subsequent to the filing of the Second Appeal, the plaintiffs entered into a Pathway Agreement with one V.Kannan in respect of the extreme southern end of Survey No. 328 acquiring a pathway of 12 feet width branching off from the Main Road to reach their lands running parallel to the alleged Suit Cart Track. He contended that the said subsequent event has to be factored in while deciding the case. Accordingly, he prayed to allow the Order XLI Rule 27 Application and receive and mark the said Pathway Agreement.

7.4.He would rely on the following decisions in support of his



contentions:

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- (i) ***Wadi's Case*** - Judgment of Hon'ble Supreme Court in *Wadi Vs. Amilai and Others*, reported in *MANU/SC/0729/2002* ;
- (ii) ***Hero Vinoth's Case*** - Judgment of Hon'ble Supreme Court in *Hero Vinoth Vs. Seshammal*, reported in *MANU/SC/2774/2006* ;
- (iii) ***Kaliappan's Case*** - Judgment of this Court in *Kaliappan Vs. Chidambaranathan*, reported in *MANU/TN/3500/2011* ;
- (iv) ***Hukum Chandra's Case*** - Judgment of the Hon'ble Supreme Court in *Hukum Chandra (D) thr. L.Rs. Vs. Nemi Chand Jain and Others*, reported in *MANU/SC/1483/2018*; and
- (v) ***Balasubramanian's Case*** - Judgment of this Court in *Balasubramanian and Others Vs. T.Selvi and Others*, reported in *MANU/TN/4910/2023*

8.Per Contra, Mr.K.Balaji, learned Counsel for the respondents / plaintiffs reiterating the plaint averments would argue that the recitals contained in Ex-A.1 – Sale Deed, Ex-A.6 – Exchange Deed and Ex-B.5 – Partition Deed as well as the Ex-X.1 – First Defendant's House Construction Plan, would clearly establish the existence of Suit Cart Track



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and the rights of the plaintiffs therein.

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8.1.Further argued that the Advocate Commissioner in his Report and Plan has noted the presence of a '*Mammol Pathway*' running from south along the western boundary of Survey No.318. However, it is only a foot path and not wide enough to be a Cart Track. If the plaintiffs are using only that '*Mammol Pathway*' to access their lands as alleged by the defendants, they could not have practiced agriculture and built houses in Suit 'A' and 'B' Schedule properties.

8.2.Further argued that the plaintiffs and the defendants derive title from a common ancestor. Hence, the Suit Cart Track is a common one and the plaintiffs have right therein. The First Appellate Court has rightly appreciated the evidence on record and decreed the Suit by setting aside the Judgment and Decree of the Trial Court. There is no warrant to interfere with the same. Accordingly, he prayed to dismiss the Second Appeal by confirming the Judgment and Decree of First Appellate Court.

DISCUSSION:

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



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10.The first defendant's father – Ganesa Udayar was allotted an extent of 1 Acre 70 Cents in Survey No. 318/2 along with $\frac{1}{2}$ share in common well in Survey No.318/2 vide Ex-B.3 – Partition Deed. On perusal of Ex-B.3, it is seen that Pazhamalai alias Sellamuthu Udayar's family acquired the said properties from his brother Arunachala Udayar's family. Exs-A.1, A.2 and A.3 prove that Kali Asari's family had nearly 2 Acre 10 Cents therein. To be noted, entire extent of Survey No.318 does not belong to defendants; they own only a portion thereof and a common share in Survey No.318/3. Further the first defendant's father – Ganesa Udayar acquired western side 40 $\frac{1}{2}$ Cents in Survey No. 318/6 and later sold the same to Kandhasamy Udayar vide Ex-A.4 – Sale Deed. Later vide Ex-A.5 – Exchange Deed, first plaintiff's family acquired the said land. If really the '*Mammol Pathway*' branching off from East -West Cement Road and running along the western boundary of Survey No.318 is alone the way of access to the plaintiffs for Suit 'A' and 'B' Schedule properties, the first defendant's father, who had initially acquired a portion of the plaintiffs' properties as stated *supra*, could not have practiced agriculture therein for the reason that the said '*Mammol Pathway*' is a footpath as evident from Ex-C.2 – Advocate Commissioner's Plan.

11.Further Ex-A.1 – Sale Deed executed in 1968, whereby



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Kandhasamy Udayar and Ramasamy Udayar acquired title in a portion of land in Survey Nos.318/4 and 318/6 recites as follows:

'... உங்கள் சகோதரனான P.S.கணேசன் நிலத்தில் வடகிழக்கு மூலையில் ஓரத்தில் கிழக்கிலிருந்து மேற்கு நோக்கி செல்லும் தடத்தின் வழியாக ஷை கிரைய நிலங்களுக்கு செல்லும் வண்டி ஆள் கால்நடை முதலியவைகள் போக வர ஏற்பட்ட மாமூல் தடபாத்தியமும் ஆக இவைகள் பூராவும் இக்கிரையத்துக்குச் சம்பந்தப்பட்டது. . . .'

12.Further Ex-A.5–Exchange Deed executed between Kandhasamy Udayar and Ganesa Udayar's family in 1988 recites as follows:

'... மேற்கண்ட நிலங்களுக்கு, பட்டணத்திலிருந்து காக்காவேரி செல்லும் தென்வடல் ரோடிலிருந்து 10 அடி அகலத்தில் சர்வே.318/7, 15 இவைகளுக்கு சர்வே.318/2, 318/10, 13 இவைகளின் வடபுறமாகவும் மேல்புரம் அத்திலிருந்து சர். 318/13, 318/1, 318/4எ, 4பி, 318/6 இவைகளின் மேல்புரமாக தென்வடலாக வரும் தடத்தின் வழியாகவே ஆட்கள், கால்நடைகள், வண்டி வாகனாதிகள் முதலிய யாவும் போக வர தட பாத்தியம் உண்டு. . . .'

13.Further vide Ex-B.5 – Partition Deed executed in 2013



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between first defendant and his siblings, an extent of 69 ½ Cents in Survey No.318/2 ('A' Schedule – Item No.(1)] was jointly allotted to first and fourth defendants while 96 Cents thereof ['B' Schedule – Item No.(1)] was allotted to Rajamani (wife of Ganesa Udayar), Murugesan (son of Ganesa Udayar) and Jothi (daughter of Ganesa Udayar). Total extent thereof is 1 Acre 70 Cents. Thus, there is 5 Cents remaining there. The same is left for common enjoyment in the northern portion thereof. A Schedule properties of the said Partition Deed which were allotted to first defendant and fourth defendant has been described as follows:

'A - ஜாபிதா

2, 5 லக்கமிட்ட காமராஜ், இந்திரா (எ)
இந்திராணி ஆகியோர்கள் அடைந்த சொத்து விபரம்:-
நாமக்கல் டி, இராசிபுரம் சப்டி, Rபட்டணம்
கிராமம், சர்வே எண். 318/2 நெபு.ஹெக்.0.69.0க்கு (ஏக்.
1.70 1/2 செண்ட்)க்கு தீ.ரு.5.31 இதில் ஏக்.0.69 1/2
செண்ட் நிலத்திற்குச் செக்குபந்தி விபரம் :-

B-ஜாபிதாவுக்கு பிரிந்த பாக சொத்திற்கும்...(வடக்கு)
கிழமேல் பொது தடத்திற்கும் ...(தெற்கு)

சர்வே 318/12 கீழ்க்கண்ட 3வது அயிட்ட
சொத்துக்கும்

...(கிழக்கு)



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தென்வடல் தார் சாலைக்கும்

...(மேற்கு)

இதன் மத்தியில் உள்ள ஏக்.0.69 1/2 செண்ட் நிலம்
பூராவும்.

B-ஜாபிதா

1, 3, 4 லக்கமிட்ட ராஜாமணி, முருகேசன், ஜோதி
ஆகியோர்கள் அடைந்து கொள்ளும் சொத்து விபரம்:-

நாமக்கல் டி, இராசிபுரம் சப்டி, Rபட்டணம்
கிராமம், சர்வே எண். 318/2 நெபு.ஹெக்.0.69.0க்கு (ஏக்.
1.70 1/2 செண்ட்)க்கு தீரு.5.31 இதில் ஏக்.0.96 செண்ட்
நிலத்திற்குச் செக்குபந்தி விபரம் :-

சுப்பரமணி நிலத்திற்கும்

... (வடக்கு)

A-ஜாபிதாவுக்கு பிரிந்த பாக சொத்திற்கும் ... (தெற்கு)

கோவிந்தராஜ் நிலத்திற்கும்

... (கிழக்கு)

தென்வடல் தார் சாலைக்கும்

... (மேற்கு)

இதன் மத்தியில் உள்ள ஏக்.0.96 செண்ட் நிலம்
பூராவும், . . .

பொது சரா :-

சர்வே-318/2 நெம்பரில் வடபுரம் ஓரமாக கிழமேலாக
உள்ள 4 மீட்டர் அகலமுள்ள (0.5 செண்ட்) நிலத்தை A, B-
பாகஸ்தர்கள் பொதுவாக உபயோகப்படுத்திக் கொள்ள
வேண்டியது. . . !

14.From a bare reading of Ex-B.5 – Partition Deed, it can be



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inferred that out of the total extent of 1 Acre 70 Cents in Survey No.

318/2, about 1 Acre 65 Cents were only partitioned and the Partition Deed

was also valued for 1 Acre 65 Cents only. It would further show that the

remaining 5 Cents therein was left for common enjoyment of the plaintiffs

and the defendants. That remaining 5 Cents is the said defendants' Cart

Track over which the defendants claim absolute ownership and rights. If

really the said defendants' Cart Track was created for the defendant's

convenient enjoyment in 1998 and absolutely belonged to them as alleged,

the same would have reflected in the recitals of Ex-B.5 executed

subsequently in 2013, but that is not the case with Ex-B.5.

15. Further Ex-X.1 is the approved plan dated March 10, 1994 for residential building of Ramasamy Udayar's son – Chellamuthu, father of 3rd and 4th plaintiffs, marked through P.W.3 – Executive Officer of Pattanam Town Panchayat. Ex-X.1 has come from a proper custody and proper person namely Executive Officer. It shows the existence of a Cart Track towards the northern side of Survey No.318/2 in the year 1994 itself, which is contrary to defendants' contention that it was formed in 1998. Defendants' side cross-examined P.W.3 and posed a question as to why cannot the said Cart Track described to be located towards the northern



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side of Survey No.318/2, be located in the southern most end of the next

Survey No.328 located towards the north of Survey No.318/2. But nobody's case is that there was an East - West common Cart Track in Survey No. 328, and therefore, the question does not gain significance. Moreover the author of Ex-X.1, namely P.W.2 was also examined. He has deposed in support of the plaintiffs' contentions. P.W.2 is a relative of both, the plaintiffs and the defendants. He also owns some land in the neighbourhood. There is no reason to reject the evidence of P.W.2 and P.W.3.

16.Therefore, this Court is of the view that the contention that the said defendants' Cart Track was formed by the defendants in 1998 for their convenience and that they are the absolute right holders thereof do not hold water in view of Ex-A.1, Ex-A.5, Ex-B.5 and Ex-X.1 coupled with the evidence of P.W.2 and P.W.3.

17.The defendants would contend that Ex-B.6—Patta in respect of Suit Cart Track stands in the name of first defendant, fourth defendant and their brother - Murugesan. At this point, it has to be noted that there is



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no mention of any notice to the plaintiffs while issuing Ex-B.6. Moreover, a revenue record is generally not a document of title. Merely because Patta stands in defendants' name, it cannot be said that the defendants have absolute rights. Ex-B.6 does not extinguish the plaintiffs easementary right over the said defendants' Cart Track nor creates any absolute right in favour of defendants to prohibit the plaintiffs' easementary enjoyment.

18.Further the defendants very much relied on the recitals found in Ex-B.11 to Ex-B.13 to contend that the plaintiffs have a Cart Track branching off from East – West Cement Road and running along the western boundary of Survey No.318 towards North. Ex-B.11 to Ex-B.13 are Sale Deeds and Settlement Deed in respect of the Survey numbers situate immediately on the western side of Survey No.318. Ex-B.11 – Sale Deed executed in respect of Survey No. 314/5, description of properties whereof describes its eastern boundary as North - South Footpath ['தென்வடல் ஆள்தடத்திற்கும் மேற்கு']. Similarly, Ex-B.12 – Sale Deed and B.13 – Registered Settlement Deed describes the eastern boundary of the property covered respectively thereunder as North - South Footpath. It being a footpath, had it been the only way of access for accessing 'A' and 'B' Schedule properties, the plaintiffs could not have practiced agriculture



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or built houses in their properties. Moreover, the Advocate Commissioner in his Report and Plan viz., Ex-C.1 and Ex-C.2, has described the pathway between the point 'Y' and point 'Y1' (both points are situated near the South-West corner of the plaintiffs' properties) as a footpath (ஒத்தையடி பாதை). Thus, there is no other Cart Track to access the plaintiffs' properties. Hence, Ex-B.11 to Ex-B.13 do not aid the case of the defendants.

19.The plaintiffs' side marked Ex-A.9 – Google Map (Screen shot). It lacks certificate under Section 65B of Indian Evidence Act, 1872 and therefore, inadmissible. It cannot be relied upon.

20.Further, the plaintiffs have purposely omitted to produce Field Measurement Book [FMBs] and Village Map pertaining to Survey No.318, for the reason that it shows the existence of a footpath along the western boundary of Survey No.318, whereas the plaintiffs claim it to be a Cart Track. Now FMBs are available in public domain. Perusal of the FMB pertaining to Survey No.318 shows dotted line (.....) along the western boundary thereof which denotes that it is a footpath and not a Cart Track as alleged by the plaintiffs and defendants. The said footpath heads North past Survey No. 318 through the centre of Survey No. 328 in-between Survey



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Nos. 328/1B and 328/1C. Hence, it is not right to assert that there is Cart

Track along the western boundary of Survey No.318; it is only a footpath.

However, it does not affect the substance of the plaintiffs' case. In fact, it supports the case of the plaintiffs as they could not have used a footpath for practicing agriculture and building houses in their properties. Thus, they must have had some other way to access the Suit 'A' and 'B' Schedule properties, which is the Cart Track branching off from Pattanam to Kakaveri Main road running along the northern boundary of defendants' land viz., Survey No.318/2 to reach the northern boundary of plaintiffs' land in Survey No.318/13. The defendants had obstructed the portion of it running along their property viz., Survey No.318/2 (said defendants' Cart Track). Though the plaintiffs appear to describe the Suit Cart Track as a common Cart Track wherein the plaintiffs have a share, a comprehensive reading of the plaint and the evidence would show that the plaintiffs are claiming mere easementary right over the same. The plaintiffs cannot claim title over the said defendants Cart Track, but as detailed above, they have easementary right over the same. The defendants have merely denied the plaintiffs' title without any proper effort much less evidence. In these facts and circumstances, this Court is of the view that such name sake denials do not require the relief of declaration to be sought for by the plaintiffs.



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Further, the plaintiffs have described the Suit 'C' Schedule property sufficient enough to identify the same. Both sides have filed rough sketches. The Advocate Commissioner's Plan and Report (Exs.C1 and C2) also clearly describe the lie and location of the Suit Properties. Thus, there is clear description of Suit 'C' Schedule property. Substantial Questions of Law arising in this Second Appeal are answered accordingly.

21.The First Appellate Court has held that the plaintiffs are entitled to the common Cart Track while the evidence available on record do not say so; it could only be evinced from the evidence that there is Cart Track for 'common enjoyment' running along the northern boundary of Survey No.318, including that of defendants' Survey No.318/2. Hence, it is hereby clarified that the plaintiffs are entitled to only easementary right over the Suit Cart Track and no right over the soil.

22.As regards CMP No. 18227 of 2024, the defendants sought to mark additional documents vide the Order XLI Rule 27 Application. The plaintiffs filed counter affidavit in this regard, paragraph nos. 5 to 8 whereof reads thus:

“5.I submit that we also having property apart from the suit property being Survey Nos. 319/1, 314/2B, 314/2C, 314/2E, 314/5 & 314/4 at Pattanam Village, Rasipuram



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Taluk, Namakkal District, the said properties are adjacent to the suit properties. Since there is no pathway or cart track to access from the said property to the main road, we have entered into a Pathway Agreement dated 25.07.2020 with the adjacent land owners Mr.V.Kannan and Mr. Manikandan, who are the owners of Survey No.328/ 1C to an extent of 6 ½ Cents to use as pathway and cart track and registered as Doc No.2965 of 2020 at SRO, Rasipuram. The said property are situated in different are and dimension, which is absolutely northern side of the Suit Schedule B property, the agreement property in Survey No. 328/ 1C is the only way to access the said property.

6.I submit that the suit c schedule property is the only cart track available to the suit A & B Schedule property, hence the averment mentioned in para 6 of the affidavit that the respondents have their own cart track and pathway for their mention suit schedule property A & B are absolutely false and incorrect, the petitioners are put to strict proof of the same.

7.I submit that the suit was in the year 2014, the document mentioned in para 6 pertains to the year 2020, which is subsequent to the suit, therefore it cannot be admitted in evidence. The said document is no way connected to the issue of the suit i.e., Common Car track. Hence the present application for receiving additional document deserves to be dismissed.

I therefore pray that this Hon'ble Court may dismiss the above application in C.M.P.No. 18227 of 2024 in S.A.No. 62 of 2019 on the file of this Hon'ble Court with costs and thus render justice."



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23.The precise point to be determined in this case is whether the plaintiffs have right over the Cart Track running along the northern boundary of Survey No.318/2. Subsequent purchase of another pathway by the plaintiffs is not going to affect this case in any manner. There is already sufficient evidence available on record to decide the case. Hence, in view of the above, this Court is not inclined to allow the Order XLI Rule 27 Application. It is accordingly dismissed.

24.In view of the foregoing narrative, this Court is inclined to grant permanent injunction against defendants restraining them from the interfering with the plaintiffs' easementary usage and enjoyment of Suit 'C' Schedule property denoted in Ex-C.2 – Advocate Commissioner's Plan as running from point 'X' to 'X1', point 'X1' to 'X2' and point 'X2' to 'X3'. Advocate Commissioner's Report and Plan *viz.*, Ex-C.1 and Ex-C.2 shall form a part of the Decree.

CONCLUSION:

25.Resultantly, the Second Appeal stands dismissed. Connected Civil Miscellaneous Petition in C.M.P. No. 18227 of 2024 *viz.*, Order XLI Rule 27 Application is dismissed. The Judgment and Decree of



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the First Appellate Court is hereby confirmed. Keeping in mind the facts and circumstances of the case, there shall be no order as to costs.

Connected Civil Miscellaneous Petition in C.M.P.No.1288 of 2019 is closed.

12 / 12 / 2024

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
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R. SAKTHIVEL, J.

TK

To

1.The Sub Court
Rasipuram.

2.The District Munsif Court
Rasipuram.

PRE-DELIVERY JUDGMENT MADE IN
S.A.NO.62 OF 2019

12 / 12 / 2024