

S.A. No.1256 of 2004

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 24 / 03 / 2026

JUDGMENT DELIVERED ON : 14 / 07 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A. No.1256 OF 2004

1.S.Sundaram

S/o. K.Subramaniam Iyer

2.S.Rajalakshmi

W/o. K.Narasaier

3.S.Jayalakshmi

W/o. S.Sundaram

... Appellants /
Appellants /
Plaintiffs

All are residing at
No.7/38, Kamatchi Sastri Street,
Agraharam, Sathyamangalam,
Erode District.

Versus

1.V.Narayanan

S/o. V.Venkatesa Iyer

Meenakshi Amman Koil West Street,
Sathyamangalam,
Erode District.

2.P.Manorama

W/o. Late Baladhandapani

3.S.R.Selvaraj

S/o. Ramu Chettiar



4.S.R.Ponnusamy

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... Respondents /
Respondents /
Defendants

Respondents 2 to 4 are residing at
Telugu Brahmin Street, Sathyamangalam,
Erode District.

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated November 14, 2003 made in A.S. No.15 of 2003 on the file of the Principal Subordinate Court, Gobichettipalayam, confirming the Judgment and Decree dated November 28, 2002 made in O.S. No.91 of 2001 on the file of the District Munsif, Sathyamangalam.

For Appellants : Ms.G.Sumithra
for M/s.R.T.Doraisamy

For Respondents : Served – No appearance
* * *

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated November 14, 2003 passed in A.S.No.15 of 2003 by 'the Principal Subordinate Court, Gobichettipalayam' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated November 28, 2002 passed in O.S. No.91 of 2001 by 'the District Munsif Court, Sathyamangalam' ['Trial Court' for brevity] was confirmed.



2. For the sake of convenience, hereinafter, the parties will be

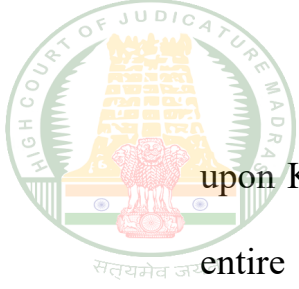
referred to as per their array in the Original Suit.

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PLAINTIFFS' CASE

3. The suit properties consist of 'A' and 'B' schedule of properties. Suit 'A' schedule property is the main property and Suit 'B' schedule property is an 'L' shaped small vacant strip of land, in Town Survey No.315, running along the northern and western side of the main property / Suit 'A' schedule property. The Suit 'A' schedule property measures 18 *Gajams* from east-west and 34 *Gajams* from north-south, equivalent to 54 feet east-west and 102 feet north-south. Suit 'B' schedule property measures approximately 6 feet $\times$ 54 feet on the northern side of the main property and 6 feet $\times$ 102 feet on the western side thereof.

3.1. The case of the plaintiffs is that they are the owners of the suit properties by virtue of two Sale Deeds dated June 11, 1987. Ever since the date of purchase, they have been in peaceful possession and enjoyment of the suit properties. According to them, the suit properties originally belonged to one Sreenivasa Iyyangar, who sold the same in favour of the brothers, namely Krishnamachariar and Ramanuja Iyyangar. Ramanuja Iyyangar passed away issueless and his share in the suit properties devolved

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upon Krishnamachariar. Thus, Krishnamachariar became the owner of the entire suit properties. Krishnamachariar passed away leaving behind his one and only daughter, namely Lakshmiammal, who sold the suit properties to the plaintiffs under the aforesaid two Sale Deeds dated June 11, 1987.

3.2. The plaintiffs further contend that the first defendant owns a house situate towards the north-eastern side of the suit properties; the second defendant owns a house towards its northern side; and the third and fourth defendants own a site towards its western side, upon which they have constructed a house. It is stated that a Municipal Road lies on the southern side of the suit properties.

3.3. According to the plaintiffs, the first and second defendants are attempting to convert the vacant strip of land, forming part of Suit 'B' schedule property, running east to west abutting the northern side of the Suit 'A' schedule property, into a drainage channel. The plaintiffs further allege that defendants 3 and 4 are attempting to encroach upon the vacant strip of land, forming part of Suit 'B' schedule property, running north-south abutting the western side of Suit 'A' schedule property, by raising constructions thereon. Therefore, the plaintiffs have filed the

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present Suit seeking the reliefs of permanent injunction against the defendants not to interfere with the plaintiffs' peaceful possession and enjoyment of the suit properties and mandatory injunction against the first defendant to close his drainage outlet pouring into the Suit 'B' schedule property.

DEFENDANTS' CASE

4. The third defendant filed a written statement which was adopted by defendants 1, 2, and 4. The defendants admit the lie and location of their houses with respect to the suit properties as well as the factum of existence of Suit 'B' schedule property.

4.1. According to the defendants, the plaintiffs did not purchase the entire extent of the suit properties and are not in possession and enjoyment of the whole of suit properties as claimed by them. Specific case of the defendants is that the portion of Suit 'B' schedule property situate on the northern side of Suit 'A' schedule property does not belong to the plaintiffs but the second defendant. Similarly, the portion of Suit 'B' schedule property situate on the western side of Suit 'A' schedule property also does not belong to the plaintiffs but to defendants 3 and 4. The defendants 2 to 4 are in lawful possession and enjoyment of their



respective portions. The plaintiffs have no right or title in Suit 'B' schedule property. Hence, the plaintiffs are neither entitled to the relief of permanent injunction nor that of mandatory injunction. On the above pleadings, the defendants sought dismissal of the suit.

TRIAL COURT

5. Based on the above pleadings, the Trial Court framed the following issues:

'(1)Whether the plaintiffs are entitled to the relief of permanent injunction?

(2)Whether the plaintiffs are entitled to the relief of mandatory injunction?

(3)To what other reliefs, the plaintiffs are entitled?'

5.1. At trial, the first plaintiff - Sundaram was examined as P.W.1 and one Ramani was examined as P.W.2 and Ex-A.1 to Ex-A.7 were marked on the side of the plaintiffs. On the side of the defendants, third defendant - Selvaraj was examined as D.W.1; second defendant - Manorama was examined as D.W.2 and one Murugesan was examined as D.W.3 and Ex-B.1 to Ex-B.8 were marked. Advocate Commissioner's report and plan were marked as Ex-C.1 and Ex-C.2 respectively.

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5.2. After full-fledged trial, the Trial Court held that the defendants have no title over the Suit 'B' schedule property. The Trial Court further held that, nonetheless, the first defendant has an easementary right to drain out his sewage water through the Suit 'B' schedule property and similarly second defendant is entitled to drain out his eave water through it. The Trial Court concluded that the plaintiffs are entitled to permanent injunction without any prejudice to the first defendant's aforesaid easementary right. As far as the mandatory injunction is concerned, the Trial Court dismissed the Suit. Thus, the Trial Court decreed the Suit in part.

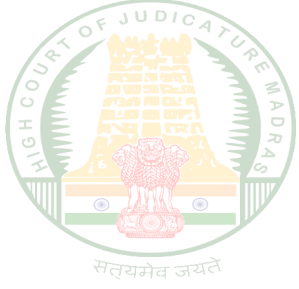
FIRST APPELLATE COURT

6. Feeling aggrieved, the plaintiffs preferred an appeal before the First Appellate Court. The First Appellate Court, after hearing both sides, concurred with the findings of the Trial Court and accordingly, dismissed the appeal and confirmed the Judgment and Decree of the Trial Court.

**SECOND APPEAL**

7. Feeling aggrieved, the plaintiffs have preferred the present Second Appeal under Section 100 of the Code of Civil Procedure, 1908, which was admitted on July 8, 2004 on the following substantial questions of law:

- "1) *Whether the Courts below after having found that the plaintiffs established their title and enjoyment over the Suit properties and the defendants failed to prove their title and enjoyment are correct in granting restricted permanent injunction and refused mandatory injunction?*
- 2) *Whether the courts below are correct in permitting the first defendant to discharge his eave's water through plaint 'B' schedule property inspite of the fact that no such plea was made in the written statement and no oral evidence given by him for supporting his case?*
- 3) *Whether the courts below are correct in shifting the burden of proving the easementary right upon the plaintiffs when the burden is upon the first defendant?*
- 4) *Whether the courts below are correct in permitting*

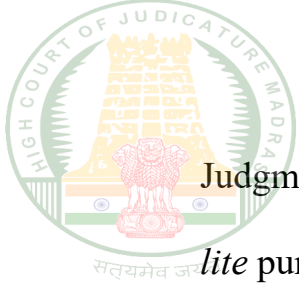


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the first defendant to discharge his eave's water through the plaint 'B' schedule property after having found that the plaintiffs established that the first defendant is having facility to drain his eave's water through the drainage provided by the Municipality in front of his house?"

8. During the pendency of the Second Appeal, the second defendant alienated his property in favour of one M.Basheer, son of S.A.Majeed. According to the plaintiffs, the said purchaser subsequently encroached upon a portion of the Suit 'B' schedule property and put up construction thereon. In view of the subsequent transfer, the plaintiffs filed C.M.P. No.3478 of 2023 in S.A. No.1256 of 2004 seeking to implead the said purchaser as a party to the Second Appeal. This Court, by its Order dated March 24, 2026, dismissed the said Civil Miscellaneous Petition while preserving the plaintiffs' right to initiate appropriate independent proceedings and seek relief in accordance with law. At the same time, the transfer by the second defendant is a *pendente lite* transfer as it was made during the pendency of this Second Appeal. Hence, the purchaser namely M.Basheer, son of S.A.Majeed is a *pendente lite* purchaser. Therefore, the

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Judgment and Decree passed in this Second Appeal will bind the *pendente lite* purchaser as well.

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ARGUMENTS

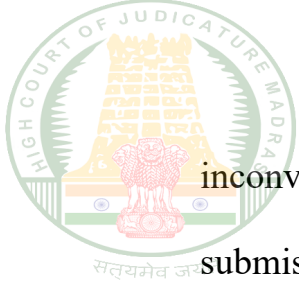
9. Ms.G.Sumithra, learned Counsel representing M/s. R.T. Doraisamy, learned Counsel on record for the appellants / plaintiffs submitted that, both the Trial Court and the First Appellate Court have concurrently held that the plaintiffs have established their proprietary right over the Suit 'A' and 'B' schedule properties.

9.1. Learned counsel further submitted that the property of the first defendant is situated on the north-eastern side of the suit properties; the property of the second defendant is situated on its northern side; and the properties of defendants 3 and 4 are situated on its western side. It was contended that the first defendant's house has been constructed facing east abutting a north-south road, where a sewage channel has also been provided. Similarly, the second defendant's property faces north abutting an east-west road which is also equipped with sewerage facilities. The houses of defendants 3 and 4 face west and there is no reason or necessity for them to use the Suit 'B' schedule property. According to the learned Counsel, once the plaintiffs have established their proprietary right over

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the Suit 'B' schedule property, the Suit is maintainable even without seeking the relief of declaration. In such circumstances, the Trial Court ought to have appreciated that there was no necessity whatsoever for the first defendant to drain sewage water towards the western side of his property, namely through Suit 'B' schedule property. It was further submitted that both the Trial Court and the First Appellate Court failed to take into consideration the fact that no actual drainage channel exists in Suit 'B' schedule property connecting it to any main drainage channel. In the absence of any such drainage channel in Suit 'B' schedule property, the defendants have no right or entitlement to discharge sewage water through the Suit 'B' schedule property.

9.2. Learned counsel further submitted that the first defendant has access to a drainage facility situated along the north-south road adjoining his property and therefore, can conveniently discharge his sewage water into the said drainage channel. Without making appropriate arrangements to connect to the existing drainage system, the first defendant cannot claim any right to drain sewage water through the plaintiffs' property as though he possess an easementary right. Under the guise of claiming an easementary right, the defendants cannot discharge sewage water into the Suit 'B' schedule property and thereby cause nuisance and

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inconvenience to the plaintiffs and damage to their property. On the above submissions, learned counsel prayed to allow the Second Appeal, set aside the Judgment and Decree passed by the First Appellate Court as well as that of the Trial Court and decree the Suit entirely.

DISCUSSION:

10.This Court has considered the arguments advanced by the learned Counsel appearing for the appellants / plaintiffs along with the materials available on record.

11.Case of the plaintiffs is that the defendants 1 and 2 are causing nuisance by draining out sewage / drainage water into the portion of the Suit 'B' schedule property situate abutting the northern side of Suit 'A' schedule property and that defendants 3 and 4 are trying to encroach upon the portion of Suit 'B' schedule property situate abutting the western side of the Suit 'A' schedule property, by attempting to put up construction thereon.

12.Case of the defendants is that Suit 'B' schedule property does not belong to the plaintiffs and they have no exclusive right or title



over the same. They further seem to claim easementary rights over the Suit 'B' schedule property.

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13. It is to be noted that Suit 'A' schedule property is situate in Town Survey Nos.313 and 314 and that Suit 'B' schedule property is situate in Town Survey No.315. The Trial Court as well as the First Appellate Court have concurrently arrived at the same finding and this Court does not find any reason to deviate from the concurrent factual finding.

14. Neither the plaintiffs nor the defendants have established title over the Suit 'B' schedule property. It is true that Ex-A.7 - Town Survey Register *qua* Town Survey Nos.313 to 315 *i.e., qua* Suit 'A' and 'B' schedule properties stands in the name of the plaintiffs and that the defendants have neither questioned nor assailed the validity of the Ex-A.7 - Town Survey Register, but it only proves the plaintiffs' enjoyment over Suit 'B' schedule property and not their title over the same. In fact, in Ex-A.1 and Ex-A.2, which are the two Sale Deeds even dated June 11, 1987 through which the plaintiffs claim title over the suit properties, the northern boundary of the property purchased by plaintiffs has been described as an east-west lane and the western boundary thereof has been described as *Poromboke* land. In other words, Suit 'B' schedule property

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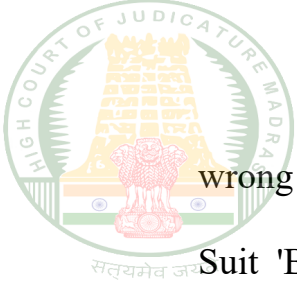
has been described as northern and western boundary of the property purchased by the plaintiffs. Hence, it is pellucid that under Ex-A.1 and Ex-A.2, the plaintiffs purchased only the extent situate to the south and east of Suit 'B' schedule property. It is also to be noted that the plaintiffs have described the Suit 'A' schedule property as measuring 5088 sq. ft., and that the total extent of property purchased under Ex-A.1 and Ex-A.2 also adds upto 5088 sq. ft. These show that the subject property of Ex-A.1 and Ex-A.2 is only Suit 'A' schedule property situate in Town Survey Nos.313 and 314 and it does not include Suit 'B' schedule property situate in Town Survey No.315. Hence, neither side has successfully asserted title over the Suit 'B' schedule property. At the same time, there is no need to decide title in a Suit for injunction.

15. On perusal of the available records, especially the Advocate-Commissioner's Report and Plan in Ex-C.1 and Ex-C.2, the first defendant's property is situated on the north-eastern corner of the suit properties. It faces east and abuts one north-south road. Insofar as the second defendant's property is concerned, the same faces north and abuts an east-west road. The evidence available on record further reveals that the properties of defendants 1 and 2 have adequate sewerage facilities in their respective abutting roads. In view of the availability of sufficient drainage

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facilities in front of their respective properties, the defendants do not have any necessity or entitlement to drain sewage water into the Suit 'B' schedule property. Further, Suit 'B' schedule property does not have any proper drainage channel built in it nor does it merge into one; when so, even while assuming that the defendants have established any right, title, or interest over the Suit 'B' schedule property, they are not entitled to discharge sewage water into it in. Such discharge of sewage water, if permitted, would result in nuisance and would also cause damage to the plaintiffs' east-west compound wall, apart from creating serious health hazards. To be noted, the report of the Advocate Commissioner in Ex-C.1 clearly establishes that the first defendant is discharging sewage water into the Suit 'B' schedule property, thereby causing damage to the plaintiffs' east-west compound wall on the northern side.

16. As both the plaintiffs and the defendants have failed to assert exclusive right or title over the Suit 'B' schedule property, they both are entitled to use the same, but that does not give any right to them to let in drainage / sewage water into it and cause nuisance or damage to property, when there is no proper drainage channel running therein and when it is not merging into one as stated *supra*. Nor does it give them any right to put up construction thereon. While so, there may not be anything

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wrong in draining natural water like rain water, and eaves water, into the

Suit 'B' schedule property provided it does not cause any nuisance or

damage to property. Hence, this Court is of the view that the plaintiffs are

entitled to permanent injunction against the defendants not to drain out

sewage / drainage water into or through the Suit 'B' schedule property and

not to put up any sort of construction / obstruction thereon. The parties

may use the Suit 'B' schedule property to drain out rain water or eaves

water as stated above. Further, this Court is inclined to grant a mandatory

injunction against the first defendant directing him to remove / block, the

drain / sewage outlet from his property into the Suit 'B' schedule property.

In these circumstances, the plaintiffs are held to be entitled to the reliefs of

permanent injunction and mandatory injunction as sought for. The Trial

Court as well as the First Appellate Court ought to have decreed the Suit as

prayed for, but they failed to do so. *Substantial Question of Law Nos.1 and*

2 is answered accordingly.

17. As far as Substantial Questions of Law Nos. 3 and 4 are

concerned, as stated *supra*, the plaintiffs failed to establish their title over

Suit 'B' schedule property. Perusal of Ex-A.7 - Town Survey Register

reveals that the Suit 'B' schedule property situate in Town Survey No.315 is

classified as '*Sarkar Poromboke*'. Further, in Column No.17 thereof headed

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as 'Adangal', plaintiffs name have been mentioned. Furthermore, in Column Nos.18 and 19 thereof, it is mentioned that Suit 'B' schedule property is being used as a lane. In these circumstances, in the absence of any drainage channel in the Suit 'B' schedule property and in the absence of Suit 'B' schedule property connecting to any drainage channel, the defendants cannot claim any easementary right to discharge sewage water into it nor can they put up construction thereon. However, it is made clear that the defendants are entitled to let natural flow of rainwater or eaves water into the Suit 'B' schedule property. *Accordingly, Substantial Questions of Law Nos. 3 and 4 are answered in the above terms.*

18. Since the Suit is one for injunction, it is made clear that both parties may file a fresh Suit for declaration to establish their title if any. In such a course, the observations *qua* title made by this Court in this Judgment, will not be binding on the Court deciding the declaration Suit. The Court shall proceed untrammelled by any of the observations made by this Court touching title.

CONCLUSION:

19. In the result, the Second Appeal is allowed and the Judgment and Decree passed by the First Appellate Court as well as those

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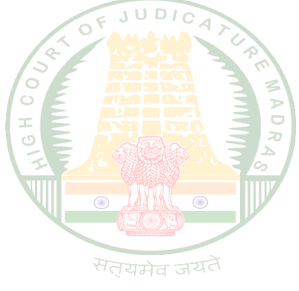
of the Trial Court are set aside and the Suit is decreed as prayed for with the observation that neither side has proved their title and there is no bar to let in rainwater or eaves water without causing any nuisance or damage to suit properties. Considering the facts and circumstances of the case, there shall be no order as to costs.

14 / 07 / 2026

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

To

- 1.The Principal Subordinate Court
Gobichettipalayam.
- 2.The District Munsif Court
Sathyamangalam.



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R. SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN

S.A. No.1256 of 2004

14 / 07 / 2026