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SA No. 233 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02-07-2026

DELIVERED ON: 21-07-2026

CORAM

THE HON'BLE MRS.JUSTICE N. MALA

**S.A.No. 233 of 2010
and M.P.No.1 of 2010**

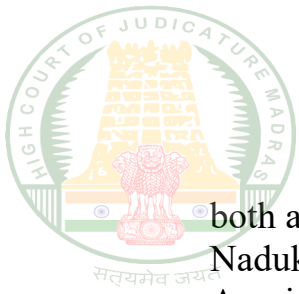
1. A.S.Lingam (died)
S/o. Sampath Udayar
Nadukuppam Village,
Arani Division,
Tiruvannamalai District.
2. Mrs. Allirani
W/o A.S.Lingam
3. Mrs. Prema
W/o Subramani
4. Dayalan .L.
S/o. A.S.Lingam
All are residing at
No.2/96 Pillaiyar Koil Street,
Nadukuppam Village,
Arani Taluk,
Tiruvannamalai District.

A1 died, A2 to A4 brought on record as LR's
of the deceased A1 vide Court order dated
07.03.2023 made in C.M.P.No16460 of 2019 in
S.A.No.233 of 2010

..Appellant(s)

Vs

1. Parthasarathy
S/o. Vadivel Udayar
2. Margabandhu (died)
S/o. Kishta Udayar



both at Pillaiyarkoil Street,
Nadukuppam Village,
Arani Taluk.

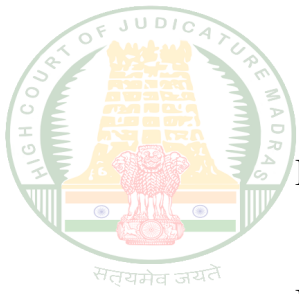
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3. Ramu Ammal
W/o.Late. Margabandhu
4. Murugan
S/o.Late. Margabandhu
5. Elumalai
S/o.Late. Margabandhu
6. Banu
D/o.Late. Margabandhu
7. Sankari
D/o.Late. Margabandhu
R3 to R7 are residing at Pillaiyarkoil Street,
Nadukuppam Village,
Arani Taluk.

R2 died, R3 to R7 brought on record as LR's of
the deceased R2 vide Court order dated
07.03.2023 made in C.M.P.Nos.19678 and
19681 of 2021 in S.A.No.233 of 2010

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of C.P.C., praying to allow the present Second Appeal by setting aside the Judgment and Decree in O.S.No.22 of 2003 dated 25.02.2008 by the District Munsif Court, Arani and confirmed by the First Appellate Court in A.S.No.29 of 2008 dated 29.07.2009 by the Learned Sub-Ordinate Judge, Arani, and grant a Judgment and Decree in favour of the Appellant.



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For Appellant(s):

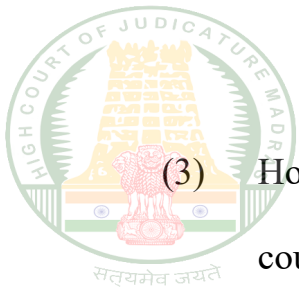
Mr.M.Venkatakrisnan
for M/s.P.Seshadri

For Respondent(s):

Mr.A.Gouthaman for R1, R3 to R7
R2 -Died**JUDGMENT**

- (1) The suit out of which the present second appeal arises was one for declaration of the plaintiff's right, title and interest in the suit 'B' schedule property, and for permanent injunction restraining the respondents from interfering with the plaintiff's peaceful possession of 'B' schedule property, a passage. The trial Court dismissed the plaintiff's suit for declaration by declaring suit 'B' schedule property as a common passage to be enjoyed commonly by both the plaintiff and the defendant. Aggrieved by the judgment and decree of the trial court, the plaintiff filed appeal in A.S.No.29 of 2008 and the defendant filed cross appeal A.S.No.29 of 2008. The Lower Appellate court by a common judgment and decree dismissed the plaintiff's appeal and allowed the defendants cross appeal. Challenging the judgment in appeal A.S.No.29 of 2008, the plaintiff has filed the above second appeal.
- (2) At the time of admission of the second appeal, this Court framed the following Substantial Question of Law:

“Whether the Courts below have ignored the settled principle that boundaries will prevail over extent?”



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- (3) However, at the time of hearing of the second appeal, the learned counsels on both sides submitted that the substantial question of law required to be re-framed and hence it was re-framed as follows:

“Whether the Lower Appellate Court is right in dismissing the suit of the Appellant, without properly considering Ex.B1 & B2 where it is made clear the northern boundary is only the wall?”

- (4) The parties will be referred to as per their ranking in the Trial Court for the sake of convenience.

- (5) The pleadings of the parties briefly stated are as follows:

The plaintiff on the basis of the sale deed dated 11.03.1996, under Ex.A1 claimed exclusive ownership and possession of the suit 'B' schedule property, a passage, measuring 3 ½ feet (North-South) by 81 feet (East-West). The dispute in the suit pertains to the 'B' schedule property only.

- (6) According to the plaintiff, the defendants property is situated to the South of the 'B' schedule passage and that the defendants' Northern wall forms their boundary. The plaintiff further stated that, the 1st defendant's house lay to the West of the 2nd defendant's house and that both the defendants had no right, title or interest to the 'B' schedule passage, which lies to the North of their Northern boundary wall. The plaintiff further stated that since the defendants attempted to interfere with his exclusive right and possession of the suit 'B' schedule passage, he was constrained to file the suit for declaration of his title and for permanent injunction



restraining the defendants from interfering with his peaceful possession and enjoyment of the suit 'B' schedule property.

(7) The defendants filed common written statement, repudiating the plaintiff's claim of absolute right, title, interest and possession of suit 'B' schedule passage. The defendant based on Exs.B1 and B2, asserted that the suit 'B' schedule property, the passage was enjoyed by their predecessors-in-title over four generations and that they had used the passage for ingress and egress to their backyard and to take their live stock through it. The defendants denied that their Northern wall served as the boundary to their property. The defendants contended that the plaintiff was not entitled to the reliefs in the suit and the same deserved to be dismissed.

(8) Before the Trial Court, the plaintiff examined himself as P.W.1 and his vendor was examined as P.W.2. Exs.A1 to A6 were marked on the side of the plaintiff. The 2nd defendant examined himself as D.W.1 and the 1st defendant was examined as D.W.2. One Amaresan was examined as D.W.3. The defendant's marked Exs.B1 and B2. on their side. The Advocate Commissioner's report and plan were marked as Exs.C1 to C3.

(9) After framing necessary issues, the trial Court found that the plaintiff was not entitled to the declaration of his title over the suit 'B' schedule property and also for the relief of injunction. The trial Court found that both the plaintiff and the defendants failed to prove their title over the suit



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property, and therefore declared that the suit 'B' schedule property as a common passage to be enjoyed commonly by them. Aggrieved by the judgment and decree of the trial Court, the plaintiff filed appeal in A.S.No.29 of 2008 and defendant filed cross appeal in A.S.No.29 of 2008. In the appeal and the cross appeal filed by the plaintiff and the defendants, the lower Appellate Court by common judgment and decree dated 29.07.2009, dismissed the plaintiff's appeal and allowed the cross appeal of the defendants. Aggrieved by the common judgment of the Appellate Court, the plaintiff has filed the above second appeal against the judgment in A.S.No.29 of 2008. In so far as cross appeal in A.S.No.29 of 2008 is concerned, the plaintiff has not preferred any second appeal.

- (10) At the time of hearing of the second appeal, the learned counsel for the defendant's raised a preliminary issue regarding the maintainability of the second appeal filed by the plaintiff.
- (11) The learned counsel for the defendants submitted that the second appeal is preferred by the plaintiff only against the judgment and decree in the appeal A.S.No.29 of 2008 filed by him and not against the cross appeal filed by the defendants in A.S.No.29 of 2008, which was decided against the plaintiff, and hence, not maintainable. According to the learned counsel for the defendants, the decree in favour of the defendant having attained finality, any interference in the second appeal in favour of the



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plaintiff would result in inconsistent and conflicting decrees, which the law strictly prohibits.

(12) The learned counsel for the plaintiff in reply to the said contention submitted that since the appeal and cross appeal arose out of a single suit, one trial and one decision, there is no need to file second appeal against the cross appeal. In support of his submission, the learned counsel relied on the judgment of the Allahabad High Court in **Ramnath Singh vs. Parshuram Singh & Ors.** reported in **(2024) 8 ILRA 931**. In which the Allahabad High Court held that, when a single suit gives rise to multiple appeals, a single second appeal is sufficient. The learned counsel submitted that the Allahabad High Court in the said case relied upon a decision of the Hon'ble Supreme Court in **Narhari vs. Shankar** reported in **AIR 1953 SC 419** and therefore the preliminary objection of the defendants deserves no merit.

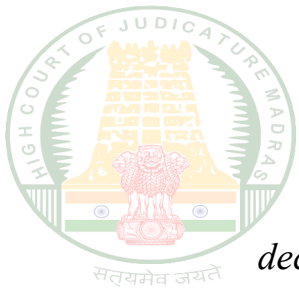
(13) I have bestowed my anxious consideration to the rival submissions.

(14) The facts of the Hon'ble Supreme Court case in **Narhari & Ors. vs. Shankar & Ors.** reported in **AIR 1953 SC 419**, which was followed by the aforesaid judgment of the Allahabad High Court, are that, the plaintiff filed a suit for possession of 2/3rd share of land in a particular survey number and for mesne profits against two sets of defendants, each set claiming that they were in possession of 1/3rd share of the land and



maintaining that they were entitled to it, as their share of the family property.

(15) The Trial Court decreed the suit, against which two separate appeals were preferred by the two sets of defendants. The first Appellate Court allowed both the appeals and dismissed the plaintiff's suit. On the basis of the judgment, two decrees were framed by the first Appellate Court. The plaintiff preferred two appeals before the High Court, one of which was filed beyond the period of limitation. At the time of hearing of the appeal, preliminary objection was raised by the defendants stating that, since one of the appeals was filed beyond the period of limitation, the other appeal would not be maintainable and should fail since the dismissal of the time barred appeal would operate as *res judicata*. The High Court found that the plaintiff ought to have filed two separate appeals within limitation and as one of the appeals which was admittedly time barred, failed, the other First Appeal also fails on the equitable principles of *res judicata*. Hence, the High Court dismissed both the appeals. Against the judgment of the High Court, two appeals were preferred to the Judicial Committee and placed before the Hon'ble Supreme Court. In the factual background of the case, the Hon'ble Supreme Court held that "*when there is only one suit, the question of res judicata does not arise at all and in the present case, both the decrees are in the same case and based on the same judgment, and the matter*



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decided concerns the entire suit. As such, there is no question of application of principle of res judicata. The same judgment cannot remain effective just because it was appealed against with a different number or a copy of it was attached to a different appeal. The two decrees in substance are one". The Hon'ble Supreme Court also held that the question of *res judicata* would arise only when there are two suits. That, even when there are two suits, if a decision is given simultaneously, it cannot be said that the decision was rendered in a former suit. On such finding, the Hon'ble High Court allowed the appeals and remanded the case to the High Court. The decision in the said judgment related to the applicability of the principles of *res judicata* to two identical decrees [dismissed] in one suit.

- (16) In my view, the aforesaid judgment does not aid the plaintiff's case, since the facts of the case before the Hon'ble Supreme Court are completely different from the facts in the present case. In the case, before the Hon'ble Supreme Court, there was only one suit which was dismissed and two appeals by two sets of defendants were preferred before the High Court. Since one of the appeals was filed beyond time, the contention was raised that since the time barred appeal was liable to be dismissed, the other appeal was not maintainable and deserved to be dismissed by applying the principles of *res judicata*. The said contention was accepted



on the premise that the principles of *res judicata* would apply only when there are two suits.

(17) In the present case, it is seen that the suit is one and also the decision is one. Against the single decision, an appeal was preferred by the plaintiff and a Cross Appeal was preferred by the defendants. The plaintiff's appeal was dismissed, but the defendants cross appeal was allowed. The lower Appellate Court drafted a decree dismissing the plaintiffs appeal and allowing the defendants cross appeal. The Lower Appellate Court in the Cross Appeal of the defendants, gave a conclusive decision, determining the rights of the parties upon adjudication and therefore finality was reached in the controversy pertaining to the rival claims of the parties to suit 'B' schedule passage. In my view, the conclusive determination in the cross Appeal of the defendants has put to rest the rights of the parties in that sphere. The defendants by virtue of decree in the Cross Appeal hold a valid, finalised and executable decree under the exact same suit. Under such circumstances, if the plaintiff's second appeal is entertained and the original suit is decreed, two conflicting and contradictory decrees would be created within the same sphere, which will be against the mandate of law. Unless and until the decree granted in favour of the defendants in cross appeal is challenged, the second appeal as regards the decree in the appeal of the plaintiff will have to be rejected as incompetent and not maintainable, because it fails to challenge the

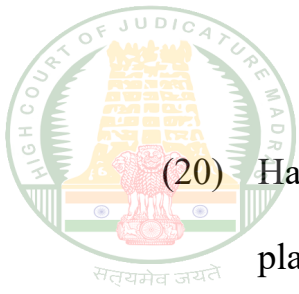


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finality of the decree passed in the cross appeal. Even though the bar of *res judicata* as expanded by the Apex Court, is held to be inapplicable, the Second Appeal is still not maintainable, for its adjudication would culminate in inconsistent and conflicting decrees.

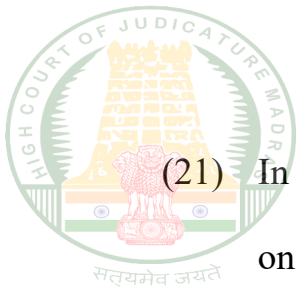
(18) In my view, if the defendants cross appeal was dismissed, there could have been no impediment to the plaintiff preferring a single Second Appeal, on the basis of the ratio laid down in the judgment of the Hon'ble Supreme Court in *Narhari's case*. However, in the present case, though there is a single suit, two appeals [one regular appeal and a Cross Appeal] were preferred and two different decisions have been rendered, i.e one, in favour of the defendants and one against the plaintiff. Therefore, in my view, even *de hors* the doctrine of *res judicata*, the Second Appeal cannot be entertained, since any interference may give rise to conflicting and inconsistent decrees.

(19) The law is very clear that, even to constitute a bar, no formal decree is necessary. It is enough if the rights of the parties are finally adjudicated, since the adjudication itself would irrefutably assume the status of a decree. In the case on hand, the cross appeal which is in the nature of a cross suit, has been allowed and therefore, I have no hesitation in holding that in the absence of a challenge to the decree in cross appeal, the appeal against the decree in the plaintiff's suit alone is not maintainable.



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(20) Having held as above on maintainability, even on merits, I find that the plaintiff cannot succeed. Both the Courts below, on an examination of the entire evidence on record, and particularly the plaintiffs own document, Exs.A1 and A6, found that in the absence of any mention of the 'B' Schedule passage in them, the plaintiff's claim for exclusive right to the passage was unacceptable. Further the Lower Appellate Court, on an appreciation of the evidence of P.W2, (the vendor and brother-in-law of the plaintiff) held that the plaintiff's assertion of leaving a 3 ½ feet by 81 feet passage following the purchase under Ex.A1, was apparently false, since PW2 in his cross-examination admitted that although under Ex.A1, the purported sale was only of a vacant site, in fact, a house property was also sold and only to evade the payment of stamp duty, the Sale Deed was executed as if the sale was of the vacant site only. Even, the Trial Court found that the plaintiff's averment that after purchasing the vacant site under Ex.A1, while constructing the house, he left the 'B' Schedule property as a passage, was contrary to his title documents and the evidence of PW2, his brother-in-law-cum-vendor. Since the case of the plaintiff is rejected based on his own documents, the question of appreciating the defendants documents does not arise, more so, when the Courts below on an appreciation of the entire evidence for cogent and rational reasons rejected the plaintiff's case.



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(21) In the light of the factual findings of the Courts below, which are based on proper appreciation of the evidence on record, I find no warrant to interfere with the factual findings of fact, more so, when no perversity is made out. The substantial question of law is answered against the plaintiff.

(22) In view of the aforesaid discussion, I find no merit in the second appeal. Hence, the same is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

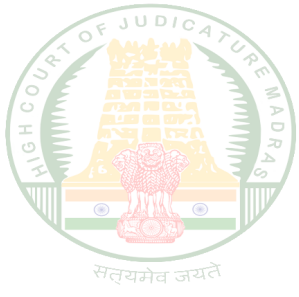
21-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
dsn/AP

To

1.The District Munsif Court, Arani.

2.The Sub-Ordinate Judge, Arani.



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N.MALA, J.

dsn/AP

Judgment in

S.A.No. 233 of 2010

Delivered on 21-07-2026