



WEB COPY



S.A.No.390 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 30.04.2026**

**PRONOUNCED ON : 20.07.2026**

**CORAM**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**S.A.No.390 of 2023**  
**and C.M.P.No.12164 of 2023**

M.Amirdha Jothi

... Appellant

Vs.

1.K.Daisy Rani  
2.V.Shanmugam  
3.J.Damodharan  
4.D.Devarajan

... Respondents

**Prayer:** Second Appeal filed under Section 100 of C.P.C., against the judgment and decree of the learned Sub-ordinate Judge at Thiruvottiyur, dated 18.10.2022 passed in A.S.No.11 of 2022, partially allowing the appeal, confirming partially the decree and judgment of the District Munsif Court, Thiruvottiyur in O.S.No.248 of 2016 dated 30.08.2019.

For Appellant : Mr.K.Prabhakaran

For Respondents : Mr.R.Dhamodaran for R1 & R2  
R4 – sd- No appearance  
R3 No such person.



S.A.No.390 of 2023

## **JUDGMENT**

WEB COPY

The unsuccessful plaintiff is the appellant. She filed a suit seeking declaration of his right of access through 'B' schedule property to reach 'A' schedule property and also for injunction restraining the defendants 1 to 3 from obstructing the plaintiff's right to access through the 'B' schedule passage to reach 'A' schedule property. The plaintiff also sought for a declaration against the 4<sup>th</sup> defendant that the cancellation deed dated 02.04.2014, executed by the 4<sup>th</sup> defendant cancelling the earlier settlement executed by him in favour of the plaintiff was null and void.

2. The trial Court decreed the suit as prayed for. Aggrieved by the same, the defendants 1 to 3 preferred a first appeal and the same was partly allowed by dismissing the suit in respect of prayer (a) and (b) seeking declaration of right of access through 'B' schedule property and injunction. The judgment and decree of the trial Court insofar as the prayer (c) declaring the cancellation deed dated 02.04.2014 was null and void was affirmed. Aggrieved by the same, the plaintiff has come before this Court.



S.A.No.390 of 2023

3. According to the plaintiff, the 4<sup>th</sup> defendant originally owned

47 cents of agricultural land in S.Nos.12/24 and 12/7G in the suit village.

He sold an extent of 10440 sq.ft., on the Western side to the 1<sup>st</sup> defendant under Ex.A1 dated 15.09.2006. While selling the Western side portion to the

1<sup>st</sup> defendant, the 4<sup>th</sup> defendant retained the rear portion on the Eastern side.

He has also earmarked a passage to reach the property on the Eastern side.

The passage portion on the Southern side of the Western portion was not sold to the 1<sup>st</sup> defendant. Even in the sale deed dated 15.09.2006, in the

schedule of property, the Southern boundary of the property sold to 1<sup>st</sup> defendant was described as passage earmarked for having access to plots.

Subsequently, the property retained on the Eastern side was settled by 4<sup>th</sup> defendant in favour of the plaintiff under registered settlement deed dated

10.09.2007 which has been marked as Ex.A2. The property covered by settlement deed has been shown as 'A' schedule property. The passage for

reaching 'A' schedule property has been shown as 'B' schedule property.

4. It was also stated that B' schedule property was the only access to reach 'A' schedule property and the plaintiff has been enjoying 'A' schedule property by using 'B' schedule property as passage from the date of purchase. The second defendant, who is the father of the first defendant



S.A.No.390 of 2023

protested usage of 'B' schedule property by the plaintiff. The third defendant, who is the brother's son of the second defendant also joined hands with the second defendant in obstructing the plaintiff's right of user over the 'B' schedule property. It is also stated that the passage starts from Manali Road on the Western side leads to the land of the first defendant and the plaintiff. The plaintiff wanted to sell the property settled in her favour and hence, applied for Encumbrance Certificate on 16.12.2016. Only thereafter, she acquired the knowledge about the cancellation of the settlement deed by the 4<sup>th</sup> defendant by cancellation of deed dated 02.04.2014 which has been marked as Ex.A6. Since unilateral cancellation of settlement deed by 4<sup>th</sup> defendant was invalid, the present suit has been filed seeking the above said relief.

5. The contesting defendants 1 to 3 filed a written statement and resisted the suit mainly on the ground that the 4<sup>th</sup> defendant originally owned 54 cents of land [47 cents in S.No.12/24 and 7 cents in S.No.12/7G] in two different survey numbers and the same were not adjacent or contiguous, but situated at different locations. The allegation in the plaint as if 4<sup>th</sup> defendant sold 10440 sq.ft. of land in S.Nos.12/24 and 12/7G was denied and it was the case of the defendants that the said extent of land situate only in

4/14



S.A.No.390 of 2023

S.No.12/24 but not in S.No.12/7G. It was further pleaded by the defendant

that 4<sup>th</sup> defendant earmarked a passage on the Southern side of S.No.12/24 which was not sold to the first defendant to reach the property retained by him on the Eastern side.

6. Further, it was averred by the defendants 1 to 3 that passage was confined to S.No.12/24 and it was never extended to the adjacent land on the Western land in S.No.12/23 to reach the Manali Salai on further West. It was also stated that the length and breadth of the passage was not at all mentioned in the document relied on by the plaintiff and hence, the plaintiff was not justified in claiming a passage with the length of 33.8 metres in East-West and 5 metres in North-South. It was also stated that the property settled in favour of the plaintiff situated in two survey numbers in S.Nos.12/24 and 12/7G, which was situated apart. Therefore, according to the defendants, four boundaries given in the settlement deed executed in favour of the plaintiff as if both the parcels of the land situate within four boundaries mentioned in the deed was not correct. The defendants specifically pleaded that the land situate on the Western side of the property owned by the 4<sup>th</sup> defendant in S.No.12/23 belonged to one Kulothungan and the plaintiff seeks right of passage in the property belonged to the said



S.A.No.390 of 2023

Kulothungan and in such circumstances, the suit filed by the plaintiff without impleading the said Kulothungan was bad for non-joinder of necessary party. The defendants also disputed the field map produced by the plaintiff as tampered one. On these pleadings, the defendants sought for dismissal of the suit.

7. Before the trial Court, the son of the plaintiff was examined as P.W.1, and through him, 9 documents were marked as Ex.A1 to Ex.A9. On behalf of the defendant, 3<sup>rd</sup> defendant was examined as D.W.1 and through him five documents were marked as Ex.B1 to Ex.B5. The advocate commissioner's report and plan have been marked as Ex.C1 and Ex.C2.

8. The trial Court, on consideration of evidence available on record, came to the conclusion that the plaintiff established her case and decreed the suit as prayed for. Aggrieved by the same, the defendants 1 to 3 filed the first appeal in A.S.No.11 of 2022 on the file of the Sub Court, Thiruvottiyur. The first appellate Court, on re-appreciation of evidence available on record, came to the conclusion that the plaintiff failed to establish her case in respect of right of access over the suit 'B' schedule property and hence, partly allowed the appeal by dismissing the suit in



S.A.No.390 of 2023

respect of declaration and injunction regarding the suit 'B' schedule property.

The findings of the trial Court regarding the invalidity of the cancellation deed dated 02.04.2014 were affirmed. Aggrieved by the said judgment and decree, the plaintiff come by way of this Second Appeal.

9. The learned counsel appearing for the appellant/plaintiff would contend that the suit 'B' schedule property is the only access to the suit 'A' schedule property settled in favour of the plaintiff and hence, the first appellate Court committed an error in dismissing the relief regarding the passage. He further submitted that the first appellate Court ought not to have rejected the Advocate Commissioner's report and plan without examining the Commissioner.

10. Per contra, the learned counsel appearing for the respondents 1 and 2 would submit that the plaintiff failed to give proper description of the property and if the boundaries mentioned in the plaint have been accepted as correct, the portion of the property in S.No.12/23 belonged to the third party Kulothungan will also be come with the suit 'B' schedule property and therefore, the present suit filed by the plaintiff without impleading the said Kulothungan is not at all maintainable. The learned



S.A.No.390 of 2023

counsel further submitted that the first appellate Court based on the proper appreciation of evidence available on record came to the conclusion that the plaintiff failed to give proper description of the property and hence, negated the prayer for declaration and injunction.

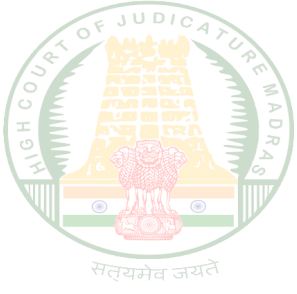
**11.** This Court heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

**12.** The plaintiff claims right over the suit 'A' schedule property and the right of access to suit 'A' schedule property through suit 'B' schedule property by virtue of a settlement deed dated 10.09.2007 marked as Ex.A2. A close scrutiny of the above schedule of property in Ex.A2 settlement deed, as extracted in the judgment of the first appellate Court, would indicate that the settlor 4<sup>th</sup> defendant herein owned 54¼ cents in two survey numbers viz., 12/7G and 12/24. v He owned 7 ¼ cents in S.No.12/7G and 47 cents in S.No.12/24. Under a settlement deed, he settled 30¾ cents of land in the above mentioned survey numbers, which situated on the Eastern side of property sold to the first defendant Daisy Rani. Therefore, it is clear that the plaintiff got right over the lands situated in S.Nos.12/24 and 12/7G alone



under the settlement deed. A perusal of FMB sketch for S.No.12 included in the typed set of papers would indicate that S.No.12/24 and S.No.12/7G are situated apart and they are not contiguous. Therefore, the four boundaries given in the settlement deed in favour of the plaintiff as if both the survey numbers are contiguous appear to be not correct. Hence, in the settlement deed executed in favour of the plaintiff, the property covered by the settlement deed was not properly described. It is also seen from the FMB sketch, S.No.12/24 situate on the Eastern side. On its immediate West there is S.No.12/23. On further West lies the road portion. In fact, the topography of suit property which could be gathered from FMB sketch was admitted by plaintiff's side witness P.W.1. The relevant portion of his evidence reads as follows:

"**வா.சா.2** நான்காம் பிரதிவாதி வாதிக்கு எ அட்டவணை சொத்தை தான செட்டில்மெண்ட் எழுதிக் கொடுத்ததுதான். அதில் இரண்டு சொத்துக்கள் காட்டப்பட்டுள்ளது ஒன்று புல எண் 12/7ஜி ல் ஏழேகால் செண்டும் மற்றொன்றில் புல எண். 12/24 ல் 23 1/2 செண்டும் ஆக மொத்தம் முப்பதேழுக்கால் செண்டும் வா.சா.2 ல் தான செட்டில்மெண்ட் செய்யப்பட்டது என்றால் சரிதான். மேற்படி இரண்டு இடங்களும் வெவ்வேறு இடத்தில் உள்ளது என்றால் சரிதான். இரண்டும் இடைவெளி 500 அடிக்கு மேல் இருக்கும். மேற்படி இரண்டு சொத்துக்கும் நீள அகலம் தனித்தனியே குறிப்பிடவில்லை. புல எண். 12/24 க்கு மட்டுமே நாற்புர எல்லைகள் காட்டப்பட்டுள்ளது என்றால் சரிதான். 12/7ஜிக்கு நாற்புர



WEB COPY



S.A.No.390 of 2023

எல்லைகள் காட்டவில்லை என்றால் சரிதான். வா.ச.2 ல் தெற்கு பக்கம் வழி பாதை மட்டுமே காட்டப்பட்டுள்ளது. நீள அகலம் காட்டப்படவில்லை. அந்த வழி பாதை எந்த சாலையில் சேருகிறது என்று காட்டவில்லை. வழக்குரையில் சொத்து விவரத்தில் பி அட்டவணையில் தெற்கு பக்கம் வழி பாதைக்கு நீள அகலம் காட்டப்பட்டுள்ளது. மேற்படி வழிபாதை தான செட்டில்மென்டில் குறிப்பிடவில்லை. அதை எவ்வாறு எடுக்கப்பட்டது என்றால் நாங்கள் அளந்தோம். புல எண்.12/22 இரண்டாம் பிரதிவாதி சண்முகத்திற்கு சொந்தமான புல எண்.12/23 தமிழரசி, குலோதுங்கன் என்பவருக்கும் சொந்தமானது என்றால் சரியில்லை சண்முகத்துக்கு சொந்தமானது ஆகும். 12/24க்கு மேற்கே சாலைக்கும் எங்கள் இடத்திற்கும் இடையில் புல எண்.12/23 இடம் உள்ளது என்றால் சரிதான்."

13. Therefore, it is clear that P.W.1 categorically admitted that in between the road portion and the suit survey No.12/24, there is a different S.No.12/23. However, in the plaint description, the said S.No.12/23 has not been shown as Western boundary of the suit property. On the other hand, the road portion which is situated on the further West of S.No.12/23 has been shown as Western boundary. Therefore, it is clear that the plaintiff by giving wrong boundary attempts to claim right over the property situate in S.No.12/23, which belonged to a third party. P.W.1 also admitted that the plaintiff get 7 ¼ cents of land in S.No.12/7G and 27 ½ cents of land in S.No.12/24 and both these survey numbers are situate in different places and the distance between these two survey numbers are nearly 500 meters. He

10/14



S.A.No.390 of 2023

also admitted that the linear measurement of the passage was not been mentioned in the settlement deed. From the admission of P.W.1 and the FMB sketch, it is clear that the plaintiff failed to give proper description of the suit property.

14. The first appellate Court in it's judgment categorically observed that though the plaintiff purchased two pieces of property in 2 different survey numbers, the Advocate Commissioner failed to identify the two pieces of land in two different survey numbers and the same have not been properly described in the report. Therefore, according to the first appellate Court, the Advocate commissioner's report and plan are not useful to identify the property. P.W.1 also admitted that as per Ex.A4, FMB sketch, the passage on the Southern side of suit S.No.12/24 has got length of 17.8 meters and breath of 5 meters. However, in the plaint 'B' schedule property, the length and breadth of the passage has been mentioned as 33.8 meters into 5 meters. Therefore, this Court has no hesitation in coming to the conclusion that the plaintiff failed to give proper description of suit 'B' schedule property and in the absence of correct boundaries and linear measurement, she is not entitled to get a declaration and injunction. The first appellate Court pointed out the defects in the description of the property



S.A.No.390 of 2023

in the plaint schedule and negated the prayer for declaration and injunction in respect of 'B' schedule passage. I do not find any error or perversity in the said conclusion of the first appellate Court.

**15.** As far as prayer (c) is concerned, it is settled law unilateral cancellation of settlement deed is not valid and hence, the first appellate Court rightly affirmed the findings of the trial Court.

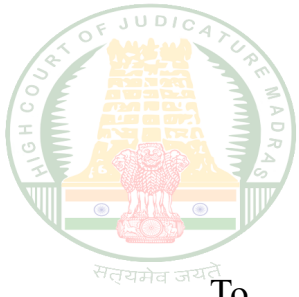
**16.** In the light of the above discussion, I do not find anything to interfere with the findings of the first appellate Court negating the relief of plaint prayers (a) and (b) seeking declaration and injunction in respect of the 'B' schedule property. The appellant has not made out any substantial question of law for consideration in the Second Appeal and hence, the same is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

**20.07.2026**

Index : Yes/No  
Speaking order: Yes/No  
Neutral Citation: Yes/No

vsm

12/14



S.A.No.390 of 2023

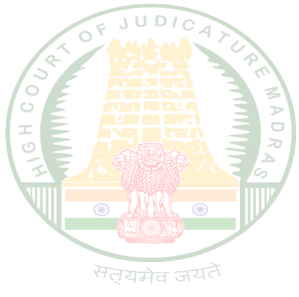
To

1. The Sub-ordinate Judge, Thiruvottiyur.
2. The District Munsif Court, Thiruvottiyur
3. The Section Officer  
VR Section, High Court, Madras.

**S.SOUNTHAR, J.**

vsm

**Pre-Delivery Judgment made in**



WEB COPY



S.A.No.390 of 2023

**S.A.No.390 of 2023**

**20.07.2026**