

S.A.No.1608 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 10.04.2026

Pronounced on : 07.07.2026

CORAM

THE HON'BLE MS.JUSTICE R.POORNIMA,

S.A.No.1608 of 2003

S.Rajammal

... Appellant/Appellant/1st Defendant

Vs.

1.A.Vedamuthu (Died)

2.Louis Mary (Died)

... Respondents 1 & 2 / Respondents 1 & 2 / Plaintiffs

3.Madurai Municipal Corporation

rep. By its Commissioner,

Anna Building,

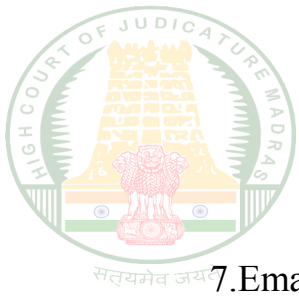
Thallakulam, Madurai. ... 3rd Respondent/ 3rd Respondent/2nd defendant

4.V.Jerold William Raja

5.V.Stalin Arokiya Raja

6.Jomin Amala Rani

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7.Emalda Fathima

... Respondents 4 to 7

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Respondents 4 to 7 are brought on record as LR. of the deceased 1st respondent vide Court order dated 31.03.2022 made in CMP(MD)No.1279 of 2022.

PRAYER : Second Appeal is filed under Section 100 Cr.P.C., as against the judgment and decree dated 08.04.2003 made in A.S.No.84 of 1994 on the file of the II Additional Subordinate Court, Madurai, confirming the judgment and decree dated 02.03.1994 made in O.S.No.1042 of 1990 on the file of the Additional District Munsif Court, Madurai.

For Appellant : Mr.Niranjan S.Kumar

For Respondents : Mr.K.K.Kannan – for R3

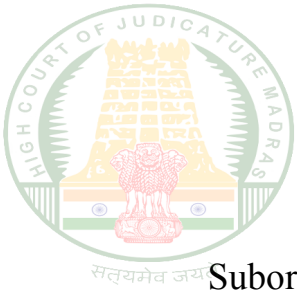
Mr.I.Robert Chandrakumar – for R4 to R7

Died – R1 (steps taken)

R2 (memo filed in USR No.45750)

JUDGMENT

This Second Appeal is filed against the judgment and decree dated 08.04.2003 made in A.S.No.84 of 1994 on the file of the II Additional



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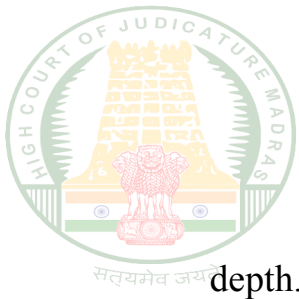
Subordinate Court, Madurai, confirming the judgment and decree dated 02.03.1994 made in O.S.No.1042 of 1990 on the file of the Additional Principal District Munsif Court, Madurai.

2.The appellant is the 1st defendant in O.S.No.1042 of 1990.

The suit was filed by the respondents 1 & 2/plaintiffs for declaration that the plaintiffs are entitled to use the ABCD common pathway and injunction restraining the defendants, their men, agents from interfering with their user of rights of way. The suit was decreed by the trial Court in O.S.No.1042 of 1990, against which an appeal was filed by the defendant, which was also dismissed by the Additional Subordinate Judge, Madurai in A.S.No.84 of 1994 on 08.04.2003. Aggrieved over the same, the present second appeal is filed.

3.The brief case of the plaintiff is as follows:-

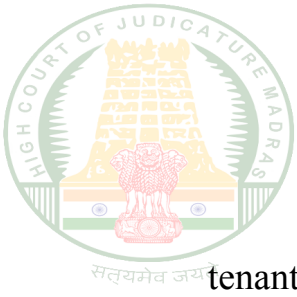
The suit property is situated in survey No.34/24. The portion marked in the rough sketch annexed to the plaint in AIJJ-1 is located to the north east portion of vaikkal poramboke measuring 12½ feet and 3 feet



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depth. 63 ½ feet on the east west portion and Southern portion of the property is a channel/kanmai. The properties of an extent 40 cents situated in S.Nos.33/3 and 33/4 and an extent of 66 cents situated in S.No.34/2B situated on the southern portion of channel were initially purchased by Andal Ammal and others. They converted the same into plots. The usage of the channel was defunct and it became road. Subsequently, the 1st defendant also converted the Nanjai land into house plots and also formed layouts. The said lands were purchased by one Gurumurthy, the predecessor-in-title of the plaintiff on 15.07.1978 in S.No.34/24. The plaintiffs purchased one of the plots from the said Gurusamy through a registered sale deed dated 15.07.1978. Since then, they are in possession and enjoyment of the property. They have applied for water connection on 06.10.1978 after paying necessary fees to the Corporation of Madurai. When the Corporation tried to lay pipes, the 1st defendant and their men restrained the same. Thereafter, a suit in O.S.No.138 of 1979 was filed by the said 1st defendant against the Municipality and the plaintiffs prayed for declaration of the properties described as AIJJ-1. They have also filed a suit in O.S.No.532 of 1979 for permanent injunction restraining the defendants, their men and the



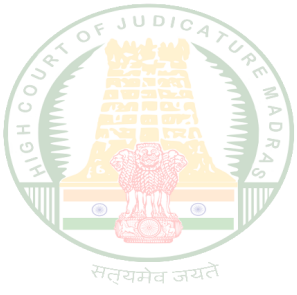
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tenant from removing the fence on the south eastern side of the suit property or in any way interfering with or trespassing into the suit property marked ABCD in the rough sketch in R.S.No.33/4C measuring 5 feet north-south and 84 feet east-west.

3.2.In that suit, the plaintiffs were shown as defendants 1 and 2 and the Municipality was added as 3rd defendant. Both the suits were tried jointly and dismissed by the trial Court. Against which, the defendants filed an appeal in A.S.Nos.74 of 1980 and 80 of 1980 and both the appeals were dismissed. Aggrieved over the same, they have also filed second appeal in S.A.Nos.484 of 1981 and 506 of 1981 before this Court and the same was also dismissed.

3.3.Now the 1st defendant tried to encroach the property shown as ABCD on 25/05/1990, which was prevented by the plaintiffs. The plaintiffs used the said portion pathway, but the defendants are trying to encroach the suit property. The defendants after knowing fully well that except the suit property, the plaintiffs cannot have ingress and egress to reach the suit property. Hence, the suit.



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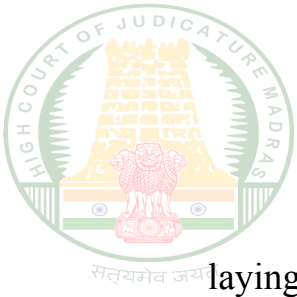
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4.The defendants filed written statement disputing that the suit property is the absolute property of the defendants. Initially, 5 feet common pathway was available. The plaintiffs in order to use the said lands have falsely stated that the measurement of the property is 12 ¼ feet. They have no right to seek declaration.

5.The additional written statement also filed by the 1st defendant with a prayer to treat the Commissioner report filed in O.S.No. 532 of 1979 as part and parcel of this suit and states that Survey Nos.33/3, 33/3C is his property and the original survey number is 33. The plaintiffs property is situated in Survey No.34 and thereafter, sub divided into S.Nos. 34/1 and 34/24.

6.The plaintiffs also disputing the same and also filed rejoinder by contending that the 1st defendant's property is not situated in Survey No. 33, but it situated in survey number is S.Nos.33/3 and 33/4. Subsequently, S.No.33/3 & 33/4 was sub divided as Survey Nos.33/3B and 33/4B and thereafter, the same was acquired by the Madurai Municipal Corporation for

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laying road. The 1st defendant received compensation, he is, therefore, entitled to a small portion on the southern side. He has no right over the property situated in Survey No.33/3C and 33/4C.

7. On the basis of the rival pleadings, the trial Court framed the following issues for consideration:-

i) Whether the plaintiffs are entitled to declaration and permanent injunction with regard to ABCD portion in suit schedule property?

ii) Whether the plaintiffs have paid proper Court fee?

iii) Whether the 1st defendant is also owner of part of the suit property ?

8. On the side of the plaintiffs, P.W.1 was examined and Exs.A1 and A36 were marked. On the side of the defendants, D.W.1 to D.W.4 were examined and Exs.B1 to B6 were marked.

9. After hearing the evidence and considering the documents, the Additional District Munsif Court, Madurai, has decreed the suit in



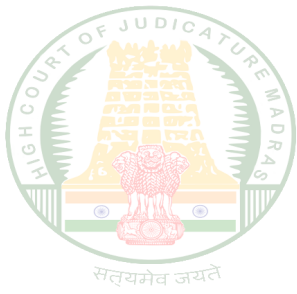
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O.S.No.1042 of 1990, dated 02.03.1994 as prayed for. Against which, the 1st defendant preferred an appeal in A.S.No.84 of 1994 on the file of the Additional Subordinate Court, Madurai. After hearing the parties, the First Appellate Court also dismissed the appeal, by confirming the decree and judgment of the trial Court. Against which, this present Second Appeal has been filed by the 1st defendant.

10.This Second Appeal was admitted on the following substantial question of law:-

- a. Whether the courts below are justified in putting the burden on the Appellant/Defendant to prove the actual extent and location of the suit pathway?*
- b. Whether the courts below are justified in holding that the finding rendered in O.S.No.532 of 1979 constitute a resjudicata for the present claim of this appellant?*
- c. Whether the judgment and decree of the Courts below are perverse and contrary to the oral and documentary evidence adduced by the parties?*

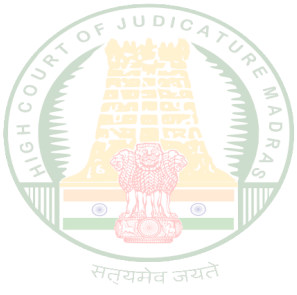


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11. For the sake of convenience, the parties are referred to herein, as their own ranking as before the trial Court.

12. The learned counsel for the appellants contended that it is the plaintiffs has to prove the existence of pathway ABCD lies in S.No. 34/24 runs from north south, measuring to an extent of 12 $\frac{1}{4}$ feet on eastern side. He further submits that the width of pathway is shown as 5 feet only and the common pathway is situated corresponding to T.S.Nos.64 and 65, to an extent of 6.23 feet width from North South. Further, the suit common pathway including encroachment is 2.62 feet on the eastern side is 2.7 meters (8.85 feet). The 1st defendant's property is situated on northern side of common pathway in S.No.33/4 corresponding to T.S.No.61, 62 and 63. Hence, it is clear that the suit common pathway lies only in S.No.34/24 with north-south measurement as 6.23 feet as against the plaintiffs wrongfully claimed for 12 $\frac{1}{4}$ feet in the suit schedule property. Hence, prayed to allow the second appeal.



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13. The learned counsel for the respondents 4 to 7 submitted that an Advocate commissioner was appointed to find out the suit property and a report was submitted on 19.09.1979, which is marked as Ex.A.7 and two sketches were marked as Ex.A.8 and Ex.A.9. Ex.A.7, which shows the distance between the Angammal's property and latrine is 12 feet 3 inches, which is 12 $\frac{1}{4}$ ft, for which no objection was filed by the 1st defendant. ABCD is a public pathway and the 1st defendant has no right over the same.

14. He further submitted that in the year 1968, the Government made acquisition for formation of 50 feet road from 1st defendant's property and she also received compensation. The rough sketch prepared by the Advocate Commissioner clearly reveals that the 1st defendant lands would end at the southern wall of the latrine. Hence, prayed to dismiss the second appeal.

15. Heard the learned counsel on either side and perused the materials available on record.

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ANSWER TO THE SUBSTANTIAL QUESTIONS OF

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LAW:-

16. According to the appellant, the common pathway measures only 5 feet and not 12¼ feet. However, the same stands disproved by Commissioner's Report (Ex.A7) and sketches (Ex.A8 and Ex.A9) namely the Commissioner's reports filed in O.S. No.138 of 1979 and O.S. No.532 of 1979, which were instituted by the appellant himself against the respondents for permanent injunction and declaration, claiming that the property measuring 5 feet north-south and 59 feet 5 inches east-west was his absolute property. The sketch annexed to the Commissioner's report in the said suits reveals that the distance between the property of Angammal situated on the northern side of the respondents' property and the latrine situated on the eastern side of the suit property is 12 feet 3 inches.

17. Further, in the said suits, the appellant had impleaded the Madurai Municipal Corporation as one of the defendants. The Corporation specifically disputed the appellant's claim and contended that the property was not his exclusive property, but Government poramboke land used as a

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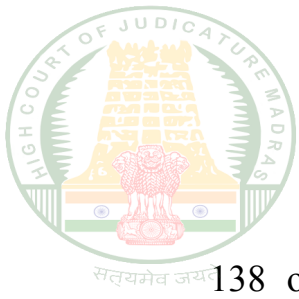
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common pathway. The plan forming part of the Commissioner's report was not disputed by the appellant, who was the plaintiff therein. Therefore, the objection now raised by the appellant in the present suit is unsustainable.

18. In the present suit, the disputed property is shown in the plaint plan as the "ABCD" portion and described as a pathway. The trial Court, upon appreciation of evidence, held that the said "ABCD" portion was not the absolute property of the defendants, as they had failed to establish exclusive title over it, and that it is a common pathway situated in Government poramboke land. Though the first defendant claimed that the remaining 7-1/2 feet belonged to him, the evidence clearly establishes that it is Government poramboke land, over which he has no title.

19. It is further established that the property owned by the appellant in Survey Nos.33/3 and 33/4, to an extent of 76 links, had already been acquired in the year 1968, for which compensation was paid. Therefore, the appellant has no subsisting right to claim the suit property as his absolute property. The issue having already been adjudicated in O.S. No.

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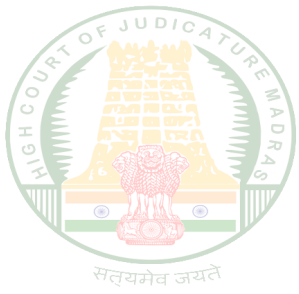
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138 of 1979 and O.S. No.532 of 1979, and the findings having been confirmed in appeal as well as in second appeal, the appellant is precluded from re-agitating the same.

20. Further, when the appellant sought removal of the electric post situated in the common pathway, the request was rejected by the District Collector under Ex.A33 dated 16.09.1986, holding that the land claimed by the appellant is a public pathway.

21. It is further seen that when the Municipality attempted to widen the road, the appellant raised objections which is marked as Ex.A34, in response, the District Collector, by proceedings dated 16.09.1986, categorically held that the appellant had no right to obstruct or object to the use of the common pathway.

22. The present suit is not barred by constructive *res-judicata*, as the subject matter and measurements involved herein are distinct from those in the earlier suits.



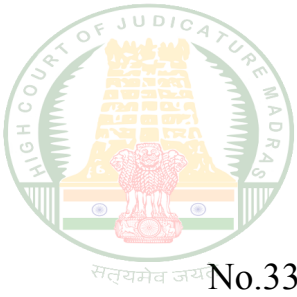
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23. Therefore, both the trial Court and the first appellate Court, having considered the nature and character of the property and its location adjacent to the respondents' property, rightly held that the defendant has no right to prevent the plaintiff from using the common pathway shown as the "ABCD" portion in the plaint plan.

24. During the pendency of the second appeal, this Court appointed an Advocate Commissioner, by order, dated 24/07/2025, nearly 22 years after the filing of the second appeal, for the purpose of measuring the suit property. However, the Commissioner reported that, according to the Town Survey Register, the original survey numbers had been subdivided and renumbered into several Town Survey Numbers.

25. The Advocate Commissioner's report reveals considerable ambiguity regarding the identity and correlation of the suit properties. According to the Commissioner, the suit property in old Survey No.34/24, which originally belonged to the plaintiff, had been subdivided into new Survey Nos.64 and 65. Likewise, the property and road in old Survey



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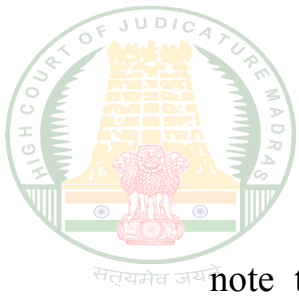
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No.33/4, originally belonging to the defendant/appellant, were stated to correspond to new Survey Nos.61, 62 and 63.

26. However, the surveyor's report creates further confusion, as while it mentions that old Survey Nos.34/24 and 34/2 corresponds to new Survey Nos.64 and 65, it does not disclose the corresponding new survey number for old Survey No.33/4. This omission creates serious uncertainty in identifying the exact location and extent of the disputed pathway.

27. Though the surveyor has noted certain encroachments in Survey Nos.64 and 65, he has failed to specifically identify the person responsible for such encroachment. More importantly, the Advocate Commissioner has categorically recorded that the Tahsildar expressed, there was no feasibility to identify the suit common pathway with reference to the old survey records.

28. Therefore, the Commissioner's report, which was relied upon by the appellant, does not in fact support his case. It is pertinent to

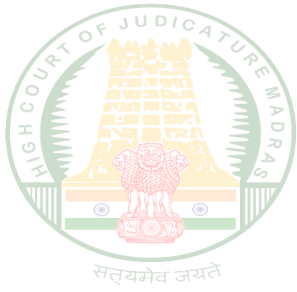


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note that the appellant had not taken steps to seek appointment of an Advocate Commissioner either during the pendency of the suit or at the appellate stage. Only after a lapse of nearly twenty two years, an application for appointment of Commissioner has been filed and it was allowed. Even then, the report failed to serve its intended purpose of properly identifying and inspecting the suit property.

29. In such circumstances, the appointment of Commissioner after a lapse of 22 years for identifying the suit pathway appears belated, as the physical features of the property had lost their original character, making accurate measurement difficult. Nevertheless, even according to the Commissioner's report, it has not been established that the respondents/plaintiffs had encroached upon any portion of the property belonging to the first defendant/appellant. Thus, even based on the Commissioner's report, the plaintiffs have not encroached upon any land belonging to the appellant. Hence, this Court finds no infirmity, illegality, or perversity in the concurrent findings rendered by the Courts below.



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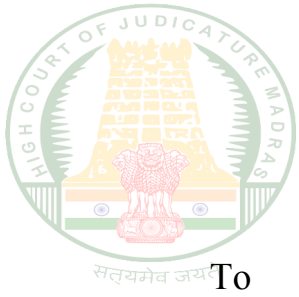
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30. In view of the above, this Court finds that the Trial Court, upon proper appreciation of the pleadings and evidence, rightly decreed the suit, which was duly confirmed by the First Appellate Court. This Court finds no infirmity or illegality in the said judgments. The Second Appeal is devoid of merits and the same is liable to be dismissed.

31. In the result, the Second Appeal is **dismissed**. No costs. Consequently, connected miscellaneous petitions are closed.

07.07.2026

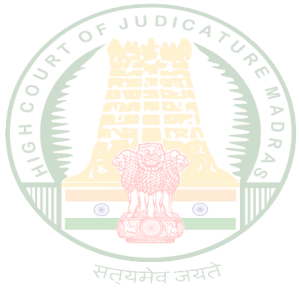
NCC : Yes / No
Index : Yes / No
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To
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- 1.The II Additional Subordinate Court,
Madurai.
- 2.The Additional District Munsif Court,
Madurai.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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RM

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