

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

S.A.No. 610 of 2020  
and  
C.M.P.No. 12892 of 2020

N.Chinnappan (Died)

1.Muthammal

2.Selvabagiam

3.Suganthi

4.Pushpalatha

...Appellants/ Defendants

Vs.

Palaniammal

...Respondent/ Plaintiff

Prayer: Second Appeal filed under Section 100 of C.P.C., against the judgment and decree dated 26.11.2019 made in A.S.No. 66 of 2018 on the file of the I - Additional Sub-court, Coimbatore confirming the judgment and decree dated 03.04.2018 made in O.S.No. 543 of 2010 on the file of the II - Additional District Munsif Court, Coimbatore.

For Appellants : Mr.S.Mukunth  
for M/s. Sarvabhuman Associates

J U D G M E N T

The defendants in O.S.No. 543 of 2010 have come up with this second appeal challenging the decree for permanent injunction granted in the said suit upon its confirmation by the Appellate Court in A.S.No. 66 of 2018.

2. The plaintiff laid the said suit contending that the 5 feet passage situated North of his property and the South of the defendants' property is a public street over which she has a right of access.

3. The defendants resisted the suit contending that the 5 feet stretch of land situated on South of their property and North of the plaintiff's property is their patta land and it does not belong to Veerapandi Panchayat as claimed by the plaintiff.

4. At trial, the plaintiff was examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3. Exs.A1 to A9 were marked. On the side of the defendants, the 3<sup>rd</sup> defendant was examined as D.W.1 and Exs.B1 to B5 were marked. Certain revenue documents and public records were marked as Exs.X1 to X9 through P.W.2 and P.W.3, who are the official witnesses.

5. On a consideration of the evidence on record, the learned Trial Judge came to the conclusion that the 5 feet pathway is in fact land belonging to the local body and the public including the plaintiff have a right of access over the same. On the above findings, the learned Trial Judge decreed the suit. Aggrieved, the defendants preferred an appeal in A.S.No. 66 of 2018. The learned Appellate Judge, upon a reconsideration of the evidence on record agreed with the conclusions of the learned Trial Judge and dismissed the appeal. Hence, this present second appeal.

6. I have heard Mr.S.Mukunth, learned counsel appearing for the appellants.

7. Mr.S.Mukunth, learned counsel appearing for the appellants would vehemently contend that the Courts below were wrong in concluding that the 5 feet pathway belongs to the local body namely, Veerapandi Panchayat. He would submit that the documents, Exs.X1 to X9 relate to the Mariamman Kovil Street and not the 5 feet pathway which is a subject matter of the suit. The Courts below, upon a consideration of the documents and the oral evidence adduced came to the factual conclusion that they relate to the 5 feet pathway only. The claim of the defendants that it belongs to them absolutely have been negatived by the Courts below.

8. Despite his best efforts, Mr.S.Mukunth, learned counsel for the appellants is unable to make out a question of law much less a substantial question of law in order to enable me to entertain this appeal. This appeal therefore fails and it is accordingly dismissed without being admitted. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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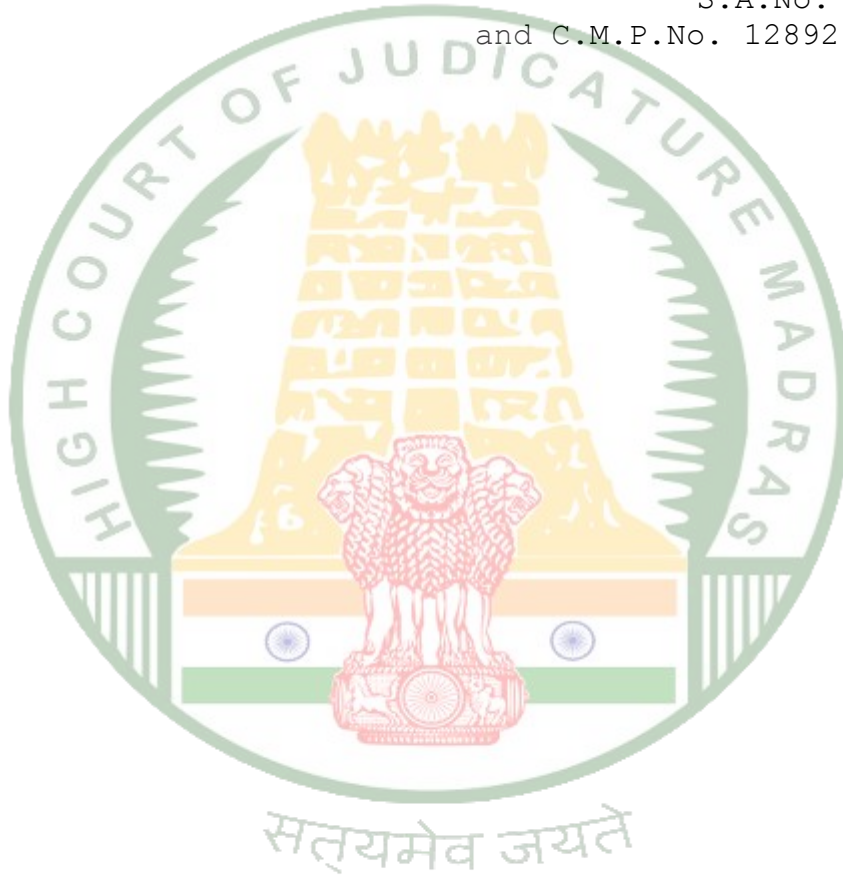
To:

1. The I - Additional Subordinate Judge,  
Coimbatore.
- 2.The II - Additional District Munsif Court,  
Coimbatore.

1 cc to M/s. Sarvabhuman Associates, Sr. 37872

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