



S.A.No.614 of 1999

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.04.2023

PRONOUNCED ON : 01.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

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1. A.Ramasesh Ammal (died)
2. Augustin
3. Nelson
4. Easter Vimala
5. Navaroji
6. Jansi
(Appellants 2 to 6 are brought on records
as legal heirs of the deceased sole
appellant vide order dated 06.10.2017
in C.M.P.(MD)No.6151 to 6153 of 2016
in S.A.(MD)No.614 of 1999)

... Appellants

Vs.

1. R.Shantha
2. Y.Vedakkan Nadar
3. Ramesh (died)
4. Kumar
5. Minor Muniasamy
(Respondents 3 to 5 are impleaded
vide order dated 14.12.2021 made
in C.M.P.No.114 of 2002 in S.A.No.
614 of 1999)
6. Rejina
7. Preethi
8. Dharshan
(Respondents 6 to 8 are brought on record
as legal heirs of the deceased R3 vide
order dated 05.04.2022 made in C.M.P.(MD)



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No.329 of 2022 in S.A.No.614 of 1999)

... Respondents

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Second Appeal filed under Section 100 C.P.C. against the Judgment and Decree dated 25.03.1999 made in A.S.No.73 of 1996 on the file of the learned Additional Sub Judge, Tirunelveli, reversing the Judgment and Decree dated 26.06.1996 made in O.S.No.261 of 1992 on the file of the District Munsif Court, Tirunelveli.

For Appellants	:	Mr.K.P.Narayana Kumar
For R1	:	Mr.S.Meenakshi Sundaram, Senior Counsel
For R2, R4, R5		
R6 to R8	:	No appearance
For R3	:	Died

JUDGMENT

The first appellant herein, A.Ramaseshammal, as the plaintiff, filed a suit in O.S.No.261 of 1992 on the file of the learned Principal District Munsif, Tirunelveli, seeking the relief of permanent injunction as against the defendants/respondents 1 and 2, restraining them from interfering with her peaceful enjoyment of the third item of the suit schedule property. After the trial, the learned Principal District Munsif, Tirunelveli, by Judgment and Decree dated 26.06.1996, decreed the suit as prayed for. For the sake of convenience, the parties are referred to as per their rank before the trial court.



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2. Challenging the same, the first defendant/first respondent herein filed an appeal suit in A.S.No.73 of 1996 before the learned Additional Subordinate Judge, Tirunelveli. The learned Additional Subordinate Judge, by Judgment and Decree dated 25.03.1999, allowed the appeal by setting aside the Judgment and Decree dated 26.06.1996 passed by the learned Principal District Munsif, Tirunelveli.

3. Aggrieved over the same, the plaintiff has filed the present second appeal by raising the following substantial questions of law:

(i) Whether the lower appellate Court is right in negating the claim of the appellant to the 2nd schedule property as a common lane belonging to him and other shares of T.S.No.390, without establishing who are all common owners of the lane, as the same is contrary to the pleadings and the relief sought for?

(ii) Whether the findings of the Court below are vitiated by its failure to consider the recitals in Exs.A4 and A5 and B2 and B3?

(iii) Whether the findings of the lower appellate court are vitiated by its erroneous approach to the pleadings and the reliefs sought for?



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4. While admitting this Second Appeal, this Court has formulated the following substantial questions of law:

(i) Whether the findings of the Court below are vitiated by its failure to consider the recitals in Ex.A4 and A5 and B2 and B3?

(ii) Whether the findings of the lower Appellate Court are vitiated by its erroneous approach to the pleadings and the reliefs sought for?

5. The case of the plaintiff is that she purchased the suit schedule properties from one Thangathammal under a registered sale deed dated 12.06.1991 and from the date of purchase, she is in exclusive possession and enjoyment of the suit schedule properties. The first and second items of the suit schedule properties are house properties, which belong to her. In between two house properties, a common courtyard is there. On the western side of the said houses, there are two houses, which belong to one Kuppammal. Therefore, the common courtyard belongs to the plaintiff and the said Kuppammal. The third item of the suit schedule property is a lane. The said suit lane also belongs to the plaintiff and one Kuppammal and they are in possession and enjoyment of the suit lane as a pathway exclusively.



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The defendants owned houses on the eastern side of the said suit lane. The first defendant's house bearing Door No.30 lies in Survey No.388. The second defendant's house bearing Door No.31 lies in Survey No.389. In between two houses, a common courtyard is there and the defendants are using it as a pathway. Therefore, there is no necessity for them to use the said suit lane as a pathway to reach their houses. Further, they have no right or title over the suit lane. However, on 29.05.1992, the defendants are trying to trespass into the suit lane. Therefore, she filed the suit for permanent injunction restraining the defendants, their men, servants, agents, etc. from interfering with her peaceful possession and enjoyment of the suit lane.

6. The case of the defendants is that their houses are situated on the eastern of the common lane, which is described as third item of the suit schedule property. The second defendant's house is situated on the southern side of Shenbagam Pillai single street and he got an entrance from the said street. Apart from that, the second defendant has to pass through the disputed common lane towards the south to reach their latrine. So far as the first defendant is concerned, she has to proceed towards south from Shenbagam Pillai single street and after passing the middle of the lane, she



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has to turn towards east to enter into the courtyard lying in between the first and second defendant's house. The said doorway facing west abetting the disputed common lane is in existence for more than 60 years. This entrance is being used as main entrance for more than 60 years by the first defendant and her predecessor-in-title for more than 60 years. Moreover, the first defendant has to pass through the disputed lane towards south for reaching the dry lavatory situated behind the house of the first defendant. Further, the sale deed standing in the name of the defendants also clearly prove that the disputed common lane is being used and enjoyed by the defendants and their predecessor-in-title for more than 50 years along with the plaintiff and her predecessor-in-title. Therefore, the plaintiff does not have any exclusive right over the common lane. Hence, the suit is liable to be dismissed.

7. The trial Court, after considering the above pleadings, framed the following issues:

- (i) Whether the second item of the property is in exclusive possession and enjoyment of the plaintiff?
- (ii) Is it true that the defendants are also co-owners of the second item of the suit property?
- (iii) Whether the plaintiff is entitled to get the relief of permanent



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injunction?

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(iv) To what other relief the plaintiff is entitled to?

8. In order to substantiate the above pleadings, on the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and 10 documents were marked as Exs.A1 to A10. On the side of the defendants, four witnesses were examined as D.W.1 to D.W.4 and three documents were marked as Exs.B1 to B3. Besides, two court documents were marked as Exs.C1 and C2.

9. The trial Court, after considering the oral and documentary evidence, came to a conclusion that the plaintiff has proved her case and decreed the suit as prayed for. Challenging the same, the first defendant filed an appeal suit in A.S.No.75 of 1996 before the learned Additional Subordinate Judge, Tirunelveli. The first Appellate Court, by its Judgment and Decree dated 25.03.1999, reversed the Judgment and Decree dated 26.06.1996 passed by the trial Court and allowed the appeal. Challenging the same, the plaintiff has filed the present second appeal. During the pendency of the second appeal, the plaintiff/first appellant died and her legal heirs are brought on record as appellants 2 to 6.



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10. The learned counsel appearing for the appellants would submit that admittedly, there is no dispute over the first and second items of the suit schedule property. However, there is a dispute over the suit lane which is described as third item of the suit schedule property. The plaintiff purchased the suit schedule properties under Ex.A1 dated 12.06.1991 from one Thangathammal. As per Ex.A1, she purchased $\frac{1}{2}$ portion of the third item of the suit schedule property. Therefore, the plaintiff is having exclusive right over the suit lane along with one Kuppammal, who is the adjacent owner. He would further submit that since the defendants are having separate lane to reach their houses, there is no need for them to use the suit lane as a common lane. Further, the defendants have no right over the suit lane. According to the learned counsel for the appellants, the First Appellate Court has failed to consider the oral and documentary evidence in a right and proper perspective and it erroneously held that the plaintiff has failed to prove her case.

11. The learned counsel appearing for the appellants would further submit that the plaintiff's vendor purchased the suit schedule properties under a sale deed dated 20.11.1978. The plaintiff, in order to establish her



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claim, has marked her vendor's sale deed dated 20.11.1978 as Ex.A2, which clearly shows that the suit lane exclusively belongs to the plaintiff and the said Kuppammal. But, the lower Appellate Court has failed to advert to the recital of Ex.A2 and by relying upon Ex.B1-Town Survey Field Register, has come to a wrong conclusion that in respect of suit lane in T.S.No.390, six other persons' names have been shown as co-owners and therefore, the plaintiff is not having exclusive right over the suit lane.

12. The learned counsel for the appellants would further submit that the lower Appellate Court has failed to look into the prior title deeds of the defendants under Ex.A4 and Ex.A5, which do not confer any right in respect of the suit lane in T.S.No.390. He would further submit that the lower Appellate Court failed to advert to the evidence of P.W.2, the vendor of the 2nd respondent herein, who categorically stated that the suit lane is exclusively belonging to the plaintiff. Further, the lower Appellate Court has failed to advert to the specific recitals in Ex.B2 and Ex.B3 that the suit property has only been described as a boundary and the pathway right granted only on the eastern side of the property dealt with under Ex.B2 and Ex.B3. Therefore, the suit lane is exclusively belonging to the plaintiff and the said Kuppammal. Therefore, the appeal has to be allowed and the



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defendants should be restrained from interfering with the peaceful enjoyment of the suit lane.

13. The learned Senior Counsel appearing for the first respondent would submit that though the plaintiff claims that she and one Kuppammal are having exclusive right over the suit lane, she has not impleaded the said Kuppammal as a party to the suit proceedings. In the written statement, the defendants have categorically denied the exclusive right over the second item of the suit property. When there is a denial of exclusive right of the plaintiff over the suit lane, the plaintiff should have amended the relief for declaration and permanent injunction. But, the plaintiff has not taken any step either to amend the relief seeking for declaration or to file a fresh suit for declaration and permanent injunction after obtaining leave of the Court. Further, Ex.B1-Town Survey Field Register shows that six persons are having common right to use the suit lane as common lane. During the cross examination, P.W.1, husband of the plaintiff, has admitted that apart from their predecessor-in-title, six other names have also been shown as co-owners. Further, Ex.A2 also shows the suit lane as a common lane. Therefore, the defendants are also entitled to use it as a common lane.



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14. The learned Senior Counsel appearing for the first respondent would further submit that the plaintiff has not produced genealogy and not explained as to how she has got $\frac{1}{2}$ share in the suit lane along with one Kuppammal. In order to prove her case, neither the said Kuppammal was added as a party to the suit proceedings nor examined her vendor during the trial. Therefore, it is very clear that the plaintiff has not proved her case by preponderance of probabilities. Therefore, there is no merit in the second appeal and the same has to be dismissed.

15. Heard both sides and perused the records.

16. The plaintiff claims that she purchased the suit schedule properties under Ex.A1-sale deed dated 12.06.1991. The house properties are shown as first and second items of the suit schedule properties and the pathway lane is shown as third item of the suit schedule property. She further claims that as per Ex.A1, she purchased $\frac{1}{2}$ share in the third item of the suit schedule property and therefore, she and one Kuppammal alone are having right over the suit lane exclusively and the defendants do not have any right, interest and title over the suit lane.



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17. The defendants claim that the suit lane is a common lane and their predecessors-in-title were using the suit lane as a common lane to reach their houses. Therefore, the plaintiff and Kuppammal are not having exclusive right over the suit lane. In the written statement, they have also denied the exclusive right and title over the lane.

18. Admittedly, there is no dispute over the first and second item of the properties. There is a dispute only over the suit lane which is mentioned as third item of the suit schedule property. The plaintiff purchased the suit schedule properties under Ex.A1-sale deed dated 12.06.1991. In Ex.A1, the disputed suit lane is mentioned as third item of the suit schedule property showing $\frac{1}{2}$ share without partition. Whereas in Ex.A2-the plaintiff's vendor's sale deed dated 20.11.1978, the suit lane is shown as a common lane. One Augustin, the husband of the plaintiff, was examined as P.W.1. During his cross examination, he admitted that seven other persons are also having right over the suit lane. P.W.1 has also admitted that he made this statement based on the Town Survey Field Register, which was marked as Ex.B1. But P.W.1 deposed that he was not sure about the defendants' predecessors-in-title and other persons claiming common right over the suit lane. A perusal of Ex.B1 shows that the suit lane is mentioned as a common



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lane and one Rengampillai, Arunachalathammal, Suriyampillai, Thirumalaimoorthy, Vellammal, Sudalaimuthur are also having right over the suit lane.

19. But, the plaintiff has suppressed the said fact before the Court and failed to prove that she and one Kuppammal alone are having exclusive right over the suit lane. Further, Ex.A5-sale deed of the first defendant's vendor also shows that the suit lane is described as common lane. Therefore, the plea made by the plaintiff claiming that she and one Kuppammal alone are having exclusive right over the suit lane, cannot be accepted. When Ex.A2 shows the third item of the property as common lane, it is the duty of the plaintiff to prove as to how she has derived $\frac{1}{2}$ share in the third item of the property.

20. Further, the plaintiff has not impleaded the said Kuppammal as a party to the suit proceedings and she has not been examined as a witness on the side of the plaintiff. When the defendants in the written statement specifically denied the title over the suit lane, the plaintiff should have taken steps either to amend the relief for declaration of title or to file a fresh suit for declaration and permanent injunction, after obtaining leave of the Court.



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But, the plaintiff has failed to do so.

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21. Considering the oral and documentary evidence adduced before the trial Court, it is seen that the suit lane is a common lane and the defendants' predecessors-in-title were also using the suit lane as a common lane. But, the plaintiff has failed to prove her case that she and the said Kuppammal are having exclusive right over the suit lane as common lane for them alone.

22. Even in the Commissioner's report, it is seen that the defendants are having entry towards the suit lane, which was not denied on the side of the plaintiff. The defendants claim that they are using the suit lane as a common lane for more than 60 years. The plaintiff, only based on Exs.A1 and A2, is claiming right over the suit lane. Further, the plaintiff has not given any proper explanation regarding Ex.B1-Town Survey Field Register, in which, six other names have also been shown as co-owners.

23. Considering the above, this Court is of the considered view that the lower Appellate Court, after re-appreciating the entire oral and documentary evidence, has rightly allowed the appeal suit by setting aside



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the Judgment and Decree dated 26.06.1996 made in O.S.No.261 of 1992 on the file of the District Munsif Court, Tirunelveli. Accordingly, the second appeal is dismissed. The Judgment and Decree dated 25.03.1999 made in A.S.No.73 of 1996 on the file of the learned Additional Sub Judge, Tirunelveli is confirmed. The substantial questions of law are answered accordingly as against the appellants. There shall be no order as to costs.

01.06.2023

NCC : Yes / No.

Index : Yes / No.

Internet: Yes / No.

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To

1. The learned Additional Sub Judge,
Tirunelveli.
2. The District Munsif Court,
Tirunelveli.
3. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

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Pre-delivery Judgment made in
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