



S.A.No.2055 of 2004

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

DATED : 09.02.2024

CORAM

**THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN**

Second Appeal No. 2055 of 2004  
and  
C.M.P.No.17501 of 2004

---

Hamsaveni (Died)

2. Eswari
3. Arumugam
4. Vanitha
5. Ramu
6. Anjai

... Appellants

(Appellant No. 1 died, Appellants 2 to 6 are brought on record as legal heirs of the deceased first appellant vide Court order dated 24.11.2022 made in CMP.Nos.19659, 19660, 19661, 19613 & 19665 of 2022 in S.A.No.2055 of 2004)

Versus

- 1.Nalini
- 2.Ravi

...Respondents

**Prayer:-** Second Appeal is filed under section 100 of the Civil Procedure Code, as against the Judgment and Decree dated 28.07.2004 in A.S.No.79 of 2003 on the file of the Sub Court, Tirupattur, Vellore District, reversing the Judgment and Decree dated 26.09.2003 made in O.S.No.221 of 1997 on the file of the District Munsiff Court, Ambur, Vellore District.



S.A.No.2055 of 2004

WEB COPY

For Appellants : Mr. S.T. Bharath Gowtham  
for Mr. T.R. Rajarajan  
For R1 : Mr. P. Anand for  
Mr. K.R.A. Muthu Krishnan  
For R2 : Not ready in notice

### **J U D G M E N T**

The 1<sup>st</sup> defendant in the suit is before this Court in this second appeal. Pending appeal, the 1st defendant/sole appellant died and therefore his legal heirs are brought on record as appellants A2 to A6. The plaintiff in the suit is the 1<sup>st</sup> respondent herein. The 2<sup>nd</sup> defendant is the 2<sup>nd</sup> respondent.

2. This second appeal has been filed challenging the judgment and decree dated 28.07.2004 made in A.S. No. 79 of 2003 on the file of the Sub Court, Tirupattur, Vellore District reversing the judgment and decree dated 26.09.2003 made in O.S. No. 221 of 1997 on the file of the District Munsif Court, Ambur, Vellore District.

3. For the sake of convenience, the parties are referred as per the ranking before the trial Court.

4. According to the plaintiff, the suit property originally belonged to one K.S. Subramaniam who settled the property to his daughter



S.A.No.2055 of 2004

Patchaiyammal through a registered settlement deed dated 05.07.1947 marked as Ex.A1. There upon the said Patchaiyammal was in possession and enjoyment of the property. Thereafter, the plaintiff purchased the suit property from the said Patchaiyammal and others by means of registered sale deed on 30.01.1995 marked as Ex.A2 and in pursuance of the sale deed, the patta and revenue document have been mutated in her favour. It is the further case of the plaintiff that she purchased the property in Ex.A2 in which, the cart-track was omitted by document writer which was subsequently made good. The cart track was in existence and usage by the vendor's vendor. The vendor Patchaiyammal and her heirs had accepted the mistake that the sale deed executed is without describing the pathway which they were using for more than 45 years, by means of another sale deed.

5. According to the plaintiff, there is no other pathway to reach her land and it is an easement of necessity. While so, the defendant who was a recent purchaser on 22.05.1997 under Ex.B2 started to obstruct the pathway which the plaintiff is entitled to use for the purpose of taking bullock cart and vehicles. Later in view of the technical objections made by the 1<sup>st</sup> defendant, they have impleaded the 2<sup>nd</sup> defendant who is the adjacent owner and filed the suit claiming declaration to declare the easementary right of the plaintiff



S.A.No.2055 of 2004

in respect of the suit pathway/ cart-track and for permanent injunction.

WEB COPY

6. The defendant has resisted the suit by filing written statement stating that the plaintiff is not entitled to the relief claimed in the suit as the cart-track was not in existence and it is only an imagination of the plaintiff. The plaintiff has not given the length and breadth of the cart-track, boundaries of the cart-track and survey number on which the cart-track is available. According to the defendant the framing of the suit as such is not maintainable under law since the plaintiff claims right to cart-track as easement of necessity and she should have sought relief of easementary right and title to cart-track. It is the specific case of the defendant that there is no cart-track either in the village natham in Survey No.177/4 or Village Natham in Survey No.177/5.

7. After the written statement was filed, the plaintiff had amended the plaint seeking to declare her easmentary right in respect of the suit cart track.

8. Subsequent to the amendment of the plaint, the defendant has filed additional written statement stating that the plaintiff has not stated the



S.A.No.2055 of 2004

date from which she is in enjoyment of the easementary right, especially when the suit is filed for declaration of the easementary right to the cart-track and therefore prayed for dismissal of the suit.

9. During trial, the plaintiff examined herself as P.W.1 and four other witnesses P.W.2 to P.W.5. were examined and Ex.A1 to A8 were marked. On the side of the defendants, the 1<sup>st</sup> defendant examined herself as D.W.1 and four witnesses D.W.2 and 5 were examined and Ex.B1 to B8, documents, were marked. Further Ex.X1 and X2 were marked as court documents.

10. The trial court after appraising the evidences and documents dismissed the suit. The trial Court found that the plaintiff has filed the suit on the basis of easement of necessity, but she failed to establish the existence of suit cart-track. It was also held that the plaintiff has not proved that she is not having any other alternative way of access to her lands. Further the plaintiff is bound to establish that she was using the cart-track. The trial Court also found that even as per the evidence of the plaintiff's husband P.W.2 there is an alternative way available for the plaintiff to access her lands.



S.A.No.2055 of 2004

11. Aggrieved by the same the, plaintiff filed appeal in A.S.No.79 of 2003 on the file of the Subordinate Judge, Thirupathur. The lower appellate Court after re-appraising the evidences allowed the appeal and decreed the suit. The lower appellate Court came to the conclusion that since the plaintiff has purchased the cart-track in Ex.A3, she has become the owner of the cart-track. Ultimately, the first appellate Court passed a decree declaring the suit cart-track in favour of the plaintiff based on Ex.A1 and A3.

12. Aggrieved by the judgment of the first appellate court, reversing the judgment and decree of the trial court, the 1st defendant is before this Court in the above appeal.

13. This Court, by order dated 29.10.2004, framed the following substantial questions of law:-

1. In the absence of measurement, Survey No. and other details of the pathway mentioned either in the plaint or in the schedule, still is the learned subordinate judge right in granting the relief of declaration of an easementary right and injunction?

2. When there is evidence to establish an alternative pathway as admitted in evidence by the plaintiff, still is the learned subordinate judge right in granting a decree when the suit is based on the principle of easement of necessity?

3. When the first defendant having established the existence of a house in the front portion of his property and in the absence of any proof or suggestion of non-existence of the



S.A.No.2055 of 2004

same, still is the learned subordinate judge right in granting a decree on the basis of the plaint?

4. When the claim of easement and title are mutually inconsistent and the plaintiff having not exercised his option at the inception, whether he claims title or easement, still is the learned subordinate judge right in upholding the plaintiff's plea of easement of necessity?

14. The learned counsel appearing for the appellant argued that when the plaintiff has filed the suit only for the relief based on the easement of necessity, she is bound to establish the existence of the cart-track and that there is no other alternative way available for her to reach her property. The learned counsel further contended that the trial Court has rightly dismissed the suit, but the lower appellate Court has interfered with the judgment of the trial Court and granted relief based on the document in Ex.A3. The lower appellate Court has declared the plaintiff as the owner of the cart-track based on the documents in Ex.A1 and A3, which is not sustainable. When the plaintiff has not pleaded that she has become the owner of the property in Ex.A3, the relief of declaration of title of the suit property granted by the first appellate court based on the sale deed in Ex.A3, even without framing of any issues by the trial Court is legally not sustainable. Thus, the judgment of the lower appellate Court is beyond the pleadings and relief granted is perverse.

15. The learned counsel for the appellant further contended that the



S.A.No.2055 of 2004

plaintiff ought to have elected to plead whether she is claiming right on the basis of Ex.A1 and A3 and claim title over the property as a owner or whether she is claiming the relief based on easement of necessity on the ground that she is having no other alternative way or access. In this case, the plaintiff based her claim on the ground of easement of necessity and based on the documents and evidences, the trial Court rightly found that the plaintiff has not established the existence of the suit cart-track and also she has not proved by evidences that there is no other alternative way available for her to access her house. The lower appellate Court also has specifically given a finding that the plaintiff is not entitled to claim the relief on the basis of easement of necessity but in view of Ex.A3, however, decreed the suit by declaring the title in favour of the plaintiff in respect of the suit property, for which there is no pleading or prayer made in the suit. The learned counsel therefore contended that the judgment of the lower appellate Court is perverse and sought for allowing the second appeal. The learned counsel, in support of his contention, relied on the judgments reported in:

1.The Judgment of the Honourable Supreme Court in Bachhaj Nahar Vs.Nilima Mandal and another made in Civil Appeal Nos.5798-5799 of 2008 dated 23.09.2008.



S.A.No.2055 of 2004

2. The Judgment of the Honourable Supreme Court in Manohar Lal vs. Ugrasen and others reported in (2010) 11 SCC 557.

3. The Judgment of this Court in K.Kalianna Gounder Vs. Sundararaj reported in (2019) 5 CTC 80.

4. The Judgment of this Court in Natesan Vs. Arumugham reported in (2017) 1 LW 937.

5. The Judgment of the Honourable Supreme Court in Raruha Singh Vs. Achal Singh and others reported in AIR 1961 SC 1097.

16. Per contra, the learned counsel for the 1<sup>st</sup> respondent contended that the existence of the suit cart-track is available even in the title deed of the plaintiff in Ex.A1 and Ex.A2. The Cart-track was not mentioned in the sale deed due to mistake of the document writer who omitted the same. The plaintiff's vendor is having a right over the cart track and was using the same. Therefore, by sale deed in Ex.A3 dated 22.08.1997, the plaintiff purchased the right over the cart-track and thereby she became the owner of the cart-track. The learned counsel further contended that even though they have filed the suit for easement of necessity, since the plaintiff has become the owner of the property, the lower appellate Court taking note of the purchase of the cart-track by the plaintiff in Ex.A3 and also considering the documents in



S.A.No.2055 of 2004

Ex.A1 has rightly allowed the appeal and decreed the suit declaring the title of the plaintiff in respect of the cart-track.

17. The learned counsel further contended that the plaintiff's vendor and also the plaintiff were using the cart-track all along and only after having purchased the suit property, the defendant has restrained the plaintiff from using the cart track by constructing a wall and therefore, the plaintiff has sought for the relief of permanent injunction also. The learned counsel further contended that the lower appellate Court has allowed the appeal by considering the evidences and documents in the right perspective. Therefore, the finding on facts recorded by the lower appellate court cannot be termed as perverse and sought for dismissal of the second appeal.



S.A.No.2055 of 2004

18. Heard the learned counsel on both sides and perused the materials available on record.

19. Admittedly, the plaintiff has purchased the suit property in Ex.A2 and the title deed of her vendor was marked in Ex.A1. Even according to the plaintiff, when the property was conveyed in her favour under Ex.A2, the cart track was not mentioned and no right over the cart track was given in her favour. The plaintiff has come up with the suit contending that her vendor and herself have been using the cart track and there is no other alternative way available to reach her property and therefore, she is entitled to use the cart track based on the easement of necessity. The plaintiff has not claimed her relief as a owner based on any documents in her favour and specifically filed suit based on easement of necessity. Then, it is for the plaintiff to plead and prove that she has a right over the cart track based on easement of necessity.

20. Section 13 of the Indian Easements Act 1882 deals with easements of necessity and quasi-easements and Section 13 is extracted hereunder:-



**S.A.No.2055 of 2004**

“ 13.Easements of necessity and quasi-easements-where one person transfers or bequeaths immovable property to another,

(a) If an easement in other immovable property of the transferor or testator is necessary for enjoying the subject of the transfer or bequest, the transferee or legatee shall be entitled to such easement or

(b) If such an easement is apparent and continuous and necessary for enjoying the said subject as it was enjoyed when the transfer or bequest took effect, the transferee or legatee shall, unless a different intention is expressed or necessarily implied, be entitled to such easement or

(c) if an easement in the subject of the transfer or bequest is necessary, for enjoying other immovable property of the transferor or testator, the transferor or the legal representative of the testator shall be entitled to such easement; or

(d) if such an easement is apparent and continuous and necessary for enjoying the said property as it was enjoyed when the transfer or bequest took effect, the transferor, or the legal representative of the testator, shall unless a different intention is expressed or necessarily implied, be entitled to such easement.

Where a partition is made of the joint property of several persons,

(e) if an easement over the share of one of them is necessary for enjoying the share of another of them, the latter shall be entitled to such easement, or

(f) If such an easement is apparent and continuous and necessary for enjoying the share of the latter as it was enjoyed when the partition took effect, he shall, unless a different intention is expressed or necessarily implied, be entitled to such easement.

The easements mentioned in this section, clauses (a), (c) and



WEB COPY



S.A.No.2055 of 2004

(e) are called easements of necessity.

Where immovable property passes by operation of law, the persons from and to whom it so passes are, for the purpose of this section, to be deemed, respectively, the transferor and transferee.”

21. As such if the plaintiff is claiming the relief as per easement of necessity, she should be able to succeed only if she is able to establish that the property was divided from common ancestors/owners and that there is no other access to the property except through the servient tenement and that property will become un-useful if the right is deprived.

22. From the facts and evidences adduced, it could be seen that the plaintiff has not established the existence of the cart track. The defendant has filed patta No.3692 issued by the Special Tahsildar in favour of the first defendant for the lands situated in Survey No.177/5 in Ex.B1 and the sale deed executed in favour of the 1<sup>st</sup> defendant in respect of the 2250 square feet as Ex.B2. Further the vendors of the 1<sup>st</sup> defendant Indrani ammal is the mother of Umapathy who examined himself as DW2. In the document filed in Ex.B2, the said Indrani ammal settled the properties in favour of D.W.2's wife on 06.01.1987 which is filed as Ex.B3 and the 1<sup>st</sup> defendant has paid the house tax receipts for the property purchased by him and the receipts are filed as Ex.B4 to B8. D.W.2 who is the attesor in Ex.B3 has given evidence



S.A.No.2055 of 2004

stating that he is well aware of the lands purchased by the plaintiff and for the purpose of reaching the lands, the access is through the 4 feet passage in between Rajavel's house and Murugesan's house and there is no way of access between the lands purchased by the 2<sup>nd</sup> defendant and the lands purchased by the 1<sup>st</sup> defendant.

23. Apart from the other witnesses, the defendants have examined D.W.5/Village Administrative Officer and in his cross examination, he has clearly given evidence that in the FMB sketch, the roads and passages if at all available in the village will be reflected in the map. But the passage in the patta lands will not be reflected. D.W.5 has further stated that the lands belonging to the plaintiff has been sub divided as Survey No. 10/2 and 10/4 and it is the natham poramboke that belong to the Government and in respect of the survey No.7/1 it is not known as to who was in possession.

24. The plaintiff has averred in the plaint that the only way of access to her property is through the cart track whereas P.W.2 who is the husband of the plaintiff has admitted in his evidence that there is a passage of way available between Rajavel Mudaliar House and Nadaraja Mudaliar House and the property of the plaintiff could be accessed through this passage, however





S.A.No.2055 of 2004

conveyed by her vendor later by a sale deed dated 22.08.1997 in Ex.A3.

WEB COPY

27. From the documents available on record it could be seen that the plaintiff has purchased the property on 30.01.1995 in Ex.A2 and the 1<sup>st</sup> defendant has purchased the property by sale deed dated 22.05.1997 in Ex.B2. Thereafter, the plaintiff claims to have purchased the cart track from her vendors on 22.08.1997 in Ex.A3. Only thereafter the suit has been filed on 19.09.1997 and until then, the plaintiff has not claimed that she has become the owner of the cart track and she has filed the suit for declaration declaring her easementary right in respect of the cart track. After the defendants filed the written statement, the plaintiff amended the plaint, restricted the relief in the suit only on the basis of easement of necessity. The right of the plaintiff to claim the cart track based on a document and claiming ownership is completely opposite to the plea of right of passage through easement of necessity. For the reasons known to the plaintiff, she has stuck to the stand of claiming the relief over the cart track only based on the easement of necessity.

28. In such circumstances the onus is on the plaintiff to plead and prove that she has no other access to her property except through the lands of



S.A.No.2055 of 2004

the defendant/servient tenement and that the property will be unusable if right of the passage is deprived.

29. When the trial Court has taken note of the fact that the plaintiff has not established through evidences that there is no other alternative way available and that she is not entitled for the relief by easement of necessity, the lower appellate Court has reversed the findings and decreed the suit. The lower appellate Court has framed the points for consideration and it has specifically framed point No.4 as to whether the plaintiff is entitled for the relief over the cart track based on easement of necessity. The lower appellate Court has arrived at a finding that the plaintiff has purchased the cart track in Ex.A3 and as far as easement is concerned it is a right exercised over other persons property. The lower appellate Court found that since the plaintiff herself has become the owner of the cart track through Ex.A3, the relief based on easement of necessity cannot be granted. Holding so, the lower appellate Court has passed the decree declaring the title of the plaintiff in respect of the cart track based on Ex.A1 and A3.

30. It is the specific case of the plaintiff that when she purchased the property in Ex.A2, the right over the cart track was not conveyed by her



S.A.No.2055 of 2004

vendor and there is no other pathway for her to reach her land and it is required as an easement of necessity. Further there is no pleading in the plaint in respect of the claim of title over the cart track based on Ex.A3. Only in the cause of action paragraph in the plaint, the plaintiff has mentioned about the sale deed dated 22.08.1997. However, the plaintiff has claimed the relief only for declaring the easementary right in respect of cart track. When it is the specific case of the plaintiff that the plaintiff claims the right only based on the easement of necessity and also has not sought for any declaration of title over the cart track as a owner based on Ex.A3, the trial Court has not framed any specific issue with respect to the title of the plaintiff over the cart track. Further the claim of declaration of title asserting ownership through registered document and the claim of right based on easement of necessity are mutually inconsistent and cannot go together. It is for the plaintiff to decide and proceed to base her claim in the suit. When the entire pleadings in the suit and the issue framed and evidences adduced are only on the basis of easement of necessity, the judgment and decree of the lower appellate Court holding that the plaintiff has become the owner of the cart track based on the document in Ex.A3 without even any specific pleadings or relief claimed in respect of the same is not based on materials available on record and pleadings of the parties.



S.A.No.2055 of 2004

WEB COPY

31. At this juncture, it is useful to refer the judgment relied in Bachhaj Nahar Vs.Nalima Mandal and another reported in (2008) 17 SCC 491. The relevant portion of the decision of the Hon'ble Supreme Court is extracted hereunder:

"10. The High Court, in this case, in its obvious zeal to cut delay and hardship that may ensue by relegating the plaintiffs to one more round of litigation, has rendered a judgment which violates several fundamental rules of civil procedure. The rules breached are:

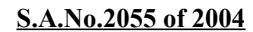
(i) No amount of evidence can be looked into, upon a plea which was never put forward in the pleadings. A question which did arise from the pleadings and which was not the subject-matter of an issue, cannot be decided by the court.

(ii) A court cannot make out a case not pleaded. The court should confine its decision to the question raised in pleadings. Nor can it grant a relief which is not claimed and which does not flow from the facts and the cause of action alleged in the plaint.

(iii) A factual issue cannot be raised or considered for the first time in a second appeal.

.....

18. A perusal of the plaint clearly shows that entire case of the plaintiffs was that they were the owners of the suit property and that the first defendant had encroached upon it. The plaintiffs had not pleaded, even as an alternative case, that they were entitled to an easementary right of passage over the schedule property. The facts to be pleaded and proved for establishing title are different from the facts that are to be pleaded and proved for making out an easementary right. A suit for declaration of title and possession relates to the existence and establishment of natural rights which inhere



20. The pleadings necessary to establish an easement by prescription, are different from the pleadings and proof necessary for easement of necessity or easement by grant. In regard to an easement by prescription, the plaintiff is required to plead and prove that he was in peaceful, open and uninterrupted enjoyment of the right for a period of twenty years (ending within two years next before the institution of the suit). He should also plead and prove that the right claimed was enjoyed independent of any agreement with the owner of the property over which the right is claimed, as any user with the express permission of the owner will be a licence and not an easement. For claiming an easement of necessity, the plaintiff has to plead that his dominant tenement and the defendant's servient tenement originally constituted a single tenement and the ownership thereof vested in the same person and that there has been a severance of such ownership and that without the easementary right claimed, the dominant tenement cannot be used. We may also note that the pleadings necessary for establishing a right of passage is different from a right of drainage or right to support of a roof or right to watercourse. We have referred to only these aspects to cannot assume or infer a case of easementary right, by show that a court referring to a stray sentence here and a stray sentence there in the pleading or



S.A.No.2055 of 2004

evidence.

.....

WEB COPY

23. It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A', court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court cannot grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.

24. In the absence of a claim by the plaintiffs based on an easementary right, the first defendant did not have an opportunity to demonstrate that the plaintiffs had no easementary right. In the absence of pleadings and an opportunity to the first defendant to deny such claim, the High Court could not have converted a suit for title into a suit for enforcement of an easementary right. The first appellate court had recorded a finding of fact that the plaintiffs had not made out title. The High Court in second appeal did not disturb the said finding. As no question of law arose for consideration, the High Court ought to have dismissed the second appeal. Even if the High Court felt that a case for easement was made out, at best liberty could have been reserved to the plaintiffs to file a separate suit for easement. But the High Court could not, in a second appeal, while rejecting the plea of the plaintiffs that they were owners of the suit property, grant the relief of injunction in regard to an easementary right by assuming that they had an easementary right to use the schedule property as a passage."



S.A.No.2055 of 2004

32. In the above case, where when the relief of declaration of title was claimed and there was no pleadings in respect of the claim on the basis of easement of necessity, the Hon'ble Supreme Court has set aside the decree passed based on easement of necessity, where declaration of title was claimed based on the ownership through registered document. The Hon'ble Supreme Court held that when there was no specific pleadings and relief claimed in respect of the easement of necessity, the Court could not have traversed beyond the pleadings and relief claimed in the suit while granting the decree.

33. In the instant case also, the entire case of the plaintiff was based on the easement of necessity and the plaintiff failed to establish that there was no alternative way available to reach her property and that the lands will be un- usable without the easementary right being granted, on the contrary, the defendants have established through evidences that alternative way of access is available. The lower appellate Court without any pleadings or any issues framed and also without any relief claimed on the basis of declaration of title over the cart track based on the registered document, passed the decree declaring the title of the plaintiff based on Ex.A1 and A3 without any pleadings or prayer in the suit and it cannot be sustained.



S.A.No.2055 of 2004

34. This Court in K.Kalianna Gounder Vs.Sundararaj reported in

2019 (5) CTC 80, in paragraph No.5 to 7 held as follows:

"5. Before advertng to the specific facts of the case, it is essential to point out the legal position that claim of right of passage as a Co-owner is diagonally opposite to the plea of right of passage as an easement. They are mutually exclusive to each other. Unfortunately in this case, the Courts below have held that the Respondents right of passage and have a Cart-track in the common area earmarked for specific purpose as Co-owner and also held that the passage right gets enhanced by easement of necessity.

6. The right of enjoyment in the common property by the co-sharers is subject to a restriction that such enjoyment should not prejudice or cause inconvenience or detrimental to the interest of the other Co-owners. Whereas, the right of easement is not based on the title but accepting the title with the Servient Owner, the enjoyment of the easement has to be claimed by the Dominant Tenement.

7. In this case the Plaintiffs have made mutually exclusively claim in respect of their the right of passage through a Cart-track in the common property. The Courts below have granted the relief recognising the Plaintiff as Co-owner of the property as well as Owner of the Dominant Tenement and entitled for right of passage by easement of necessity."

35. As such when the plaintiff claim the relief based on the easement of necessity, she is bound to establish that she has no other access to the lands except the servient tenement and the property is unusable if right of passage is deprived. As it is seen from the evidences that alternative way is available for the plaintiff to access her property, the relief based on easement of



S.A.No.2055 of 2004

necessity cannot be granted which has been rightly held by both the Courts below. But the lower appellate Court has decreed the suit by holding that the plaintiff has become the owner of the cart track based on Ex.A1 and A3. As discussed earlier, the finding of the lower appellate Court is not based on the pleadings, and the relief claimed in the suit. When the decree is granted declaring the title of the plaintiff based on title through registered documents, the defendants have not been put on notice and given opportunity to defend their case in respect of decree granted declaring the title of the plaintiff. In such circumstances, the findings of the lower appellate Court is perverse and it is liable to be interfered.

36. Even though the plaintiff has not established right of access through the cart track based on the easement of necessity but however claims that she has become the owner in view of the purchase of the cart track through the document in Ex.A3, the liberty is reserved for the plaintiff to initiate appropriate proceedings to assert her claim of title over the suit cart track, based on the registered document.

37. In view of the above findings, the substantial questions of law are answered in favour of the appellant and against the respondents.



**S.A.No.2055 of 2004**

Therefore, the second appeal is allowed and the judgment and decree of the lower appellate Court is set aside. However, there is no order as to costs.

**09.02.2024**

Index : Yes/No

Speaking order/non-speaking order

mpa

To

1. The Sub Court, Tirupattur, Vellore District.
2. The District Munsiff Court, Ambur, Vellore District.



WEB COPY



S.A.No.2055 of 2004

**G. ARUL MURUGAN, J.,**

mpa

S.A. No. 2055 of 2004

09.02.2024