



S.A.(MD).No.265 of 2012

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **28.11.2024**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.265 of 2012

and

M.P.(MD)Nos.1 and 2 of 2012

1.Mohan
2.Sathasivan
3.Krishnan
4.Rajagopal
5.Subramanian
6.Pazhaniyappan
7.Rajeswary
8.Padmakala

... Appellants

/Vs./

1.Shake Ummar
2.Akila

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree dated 14.03.2012, made in A.S.No.77 of 2011 on the file of the Sub Court, Padmanabhapuram, confirming the Judgment and Decree, dated 06.07.2011, made in O.S.No.491 of 2008 on the file of the Principal District Munsif Court, Padmanabhapuram.

For Appellants	: M/s.J.Anandhavalli
For Respondents	: Mr.M.Mohamed Ibram Saibu for M/s.Ajmal Associates



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JUDGMENT

The present second appeal is preferred by the defendants 3 to 10 against the Judgment and Decree dated 14.03.2012, passed in A.S.No.77 of 2011 on the file of the Sub Court, Padmanabhapuram, confirming the Judgment and Decree, dated 06.07.2011, passed in O.S.No.491 of 2008 on the file of the Principal District Munsif Court, Padmanabhapuram.

2. The plaintiff in the suit is the 1st respondent herein, the defendants 3 to 10 in the suit are the appellants herein and the 11th defendant in the suit is the 2nd respondent herein. For the sake of convenience, the parties are referred as plaintiff and defendants as per the ranking in the suit.

3. The suit is filed for declaration to declare his easementary right by grant for using the 'C' schedule property as a pathway and mandatory injunction directing the defendants 2 to 11 to make the 'C' schedule property in its original stage failing which the plaintiff may be granted permission to execute through Court and realise the expenses from the defendants 2 to 11 and permanent injunction in favour of the plaintiff restraining the defendants 2 to 11 from



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causing any kind of obstruction to the plaintiff from using the 'C' schedule property as pathway. The original suit was allowed. Aggrieved over the same, the defendants 3 to 10 preferred an appeal and the same was dismissed. Aggrieved over the same, the present second appeal is preferred by the defendants 3 to 10.

4. The issue between the parties is that the plaintiff is using the defendants' land as pathway and is claiming easementary rights. The defendants' contention is that the entire property belongs to them and there is no pathway in the said 'C' schedule property at any point of time. If pathway is created, they cannot use the property in entirety. Further contention of the defendants is that the entire 47 cents cannot be a pathway and the claim of the plaintiff cannot legally sustained.

5. Pending second appeal, the plaintiff has purchased the nearby property and has created a pathway. Therefore, the plaintiff has circulated a letter wherein he has stated that he has purchased a separate property for accessing his land and he is not inclined to pursue the suit. Further, based on the letter, the Learned Counsel appearing for the 1st respondent herein has filed a memo and the said memo is extracted hereunder:



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"In the above Second Appeal, we have entered appearance on behalf of 1st Respondent / Plaintiff. He filed the above suit for the relief of declaring his easementary right by grant for using ' C ' schedule property as his pathway and for the relief of mandatory injunction and permanent injunction and the said suit has been concurrently decreed in his favour. Aggrieved over the same, present Appellants have preferred the present Second Appeal. Now by his letter dated 25.11.2024, he informed us that, during the pendency of this Second Appeal, he arranged alternative pathway to reach his property by way of exchange deed with another adjacent owner and therefore, he is not willing to pursue the suit. I herewith annexed the said letter also. Hence, I filed the present memo to record the above facts and dispose the Second Appeal and thus render justice."

6. This Court is of the considered opinion when the plaintiff is not willing to pursue the second appeal the same can be recorded, however the second appeal ought to be allowed, since there is a decree in favour of the plaintiff and against the defendants 3 to 10 / appellants herein. Therefore, the second appeal is allowed, the judgment and decree granted by the Trial Court and the Appellate Court are set aside.



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7. With the above said observations, the present second appeal is allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

28.11.2024

Index : Yes / No

NCC : Yes / No

Tmg

TO:

1. Sub Court, Padmanabhapuram.
2. Principal District Munsif Court,
Padmanabhapuram.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.265 of 2012

Dated:
28.11.2024