



S.A. No.1299 of 2008

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

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DATED : 05.06.2025

CORAM

**THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI**

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1.K.Marimuthu Gounder (Died)

2.M.Raja

3.M.Maruthathal

4.Muthulakshmi

... Appellants

\*A1 died, A3 & A4 are B/R as LR's of the deceased A1 vide Court order dt.16.03.2023 made in CMP.No.6254 of 2023 in SA.No.1299/2008 (VLNJ).

Vs

Kaliammal

... Respondent

**PRAYER:** Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree passed in A.S.No.21 of 2008 on the file of the Subordinate Court, Pollachi, dated 29.07.2008, reversing the judgment and decree passed in O.S.No.13 of 2005 by the District Munsif Court, Pollachi, dated 06.11.2007.

|                |   |                                                     |
|----------------|---|-----------------------------------------------------|
| For Appellants | : | Mrs. Hemasampath, Senior Counsel<br>For Mr.S.Prabhu |
| For Respondent | : | Mr.M.N.Balakrishnan                                 |



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## **JUDGMENT**

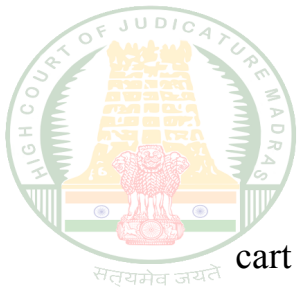
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The appellant has filed this Second Appeals against the Judgment and decree passed in A.S.No.21 of 2008 on the file of the Subordinate Court, Pollachi, dated 29.07.2008, reversing the judgment and decree passed in O.S.No.13 of 2005 by the District Munsif Court, Pollachi, dated 06.11.2007.

2. For the purpose of convenience, the parties herein are referred to as they were ranked in the suit.

3. Challenging the reversal findings of the first appellate court, the defendants have preferred this appeal. Before the trial court, the respondent/plaintiff filed a suit in O.S. No. 13 of 2005 for the relief of permanent injunction, restraining the defendants from causing any interference with the plaintiff's right to use the B-Schedule cart track. The suit was filed against two defendants, who are the appellants herein. Before the trial court, both the defendants contested the suit, stating that no such

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cart track as described in the B-Schedule existed within the suit property.

They also contended that the plaintiff had an alternative pathway to reach her land.

4. Considering the submissions from both sides, the trial court framed issues and appointed a Commissioner, who submitted his report. After considering the title deeds relied on by the plaintiff and the Commissioner's report, the learned trial Judge held that the plaintiff's vendor, Dharman, was not assigned the B-Schedule cart track. Therefore, the plaintiff was bound to prove how she acquired the right over the B-Schedule pathway, which runs through the lands of the defendants. Furthermore, the Commissioner's report did not establish the existence of the B-Schedule common pathway, and it was found that the plaintiff had not obtained any pathway right from the common owner, Dharman. Consequently, the suit was dismissed, as the plaintiff failed to establish the existence of the B-Schedule cart track. Challenging the said finding, the plaintiff preferred an appeal in A.S. No. 21 of 2008.

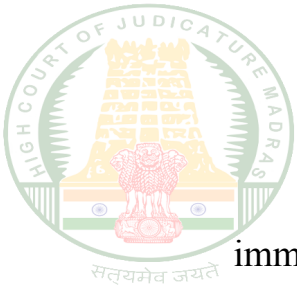


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5. The learned first appellate Judge analyzed the evidence on record and framed separate points for consideration. By evaluating the Commissioner's report and the available evidence, the appellate court held that the B-Schedule pathway was the only cart track available for the plaintiff to reach her property. The appellate court further found that there was no alternative cart track as claimed by the defendants to access the A-Schedule property. Accordingly, the appeal was allowed, and the suit was decreed. Challenging the reversal findings, the defendants have preferred this second appeal.

**6. The brief facts of the case are as follows:** The plaintiff claims that she is the absolute owner of the A-Schedule property, purchased from her brother Dharman. The defendants are adjacent landowners. The B-Schedule property is a cart track that allegedly begins from an East-West highway, turns in an East-West direction on the extreme North, and ends at the southern part of the plaintiff's land. The plaintiff contends that this cart track is the only way to access her land and that it is mentioned in the sale deed dated 01.01.2004. The cart track has allegedly existed since time



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immemorial and has been used by both the plaintiff and the defendants.

However, due to strained relations, the defendants are now attempting to obstruct the B-Schedule cart track, prompting the plaintiff to file the present suit.

7. The defendants filed a written statement disputing the plaintiff's right and title over the alleged B-Schedule cart track. They contended that there was no such cart track in existence and that the plaintiff had a separate pathway to access her land. They also claimed that the plaintiff was suppressing the existence of an alternative path from Nelligoundenpalayam–Devarayapuram Thar Road and had filed this suit without necessity. To prove the existence of the cart track, a Commissioner was appointed by the trial court. Although the trial court did not accept the Commissioner's findings, the first appellate court appreciated the report and concluded that the B-Schedule pathway was the only route available to reach the plaintiff's land. This finding of the first appellate court is now being challenged by the defendants.



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8. The learned counsel for the appellants argued that the courts below failed to consider that the vendor of the plaintiff, namely Dharman (her own brother), derived title to the property under a registered partition deed dated 28.12.2001 (Ex.A2). In this partition deed, the rights of the other two sharers to use the cart tracks available in their respective lands were clearly mentioned. However, there was no mention of any right for Dharman to use the alleged B-Schedule cart track. This omission indicates that Dharman had been using a different path branching from Nelligoundenpalayam–Devarayapuram Thar Road. It was further contended that under Ex.A2, the vendor of the plaintiff was not given any right to use the B-Schedule cart track. However, in the subsequent sale deed dated 01.01.2004, Dharman conferred upon his sister (the plaintiff) a right to use the cart track, even though he had no such authority. The plaintiff is now claiming rights based on that sale deed, which is not legally sustainable.

9. Moreover, the counsel argued that the Commissioner's report (Exs. C1 to C4) does not support the plaintiff's case, but the first appellate court has erroneously appreciated it and granted relief, which is liable to be set



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aside. The availability of an alternative pathway was clearly shown in the Commissioner's reports Ex.C3 and Ex.C4. Additionally, the plaintiff has not proved any easementary right over the B-Schedule cart track, and without establishing such right, the relief granted by the first appellate court is liable to be set aside.

10. This Court admitted the Second Appeal on 22.10.2008 on the following substantial questions of law:

*(A) Whether the suit filed for bare injunction without prayer of declaration and without description of the alleged "B"Schedule cart track is maintainable in law.*

*(B) Whether the plaintiff can make contradictory claim based on sale deed Ex.A1 and Easement and succeed.*

*(C) Is the Court below right to rely on Ex.A1 to decide right of the plaintiff which is self serving document and even the vendor himself did not have any authority to convey the right."*



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11. By way of reply, the learned counsel for the respondent/plaintiff submitted that the existence of the B-Schedule cart tract was proved through the Commissioner's report. Further, the second visit report of the Commissioner marked as Ex.C3 and Ex.C4 establishes the arbitration of the pathway. Even in the Commissioner's report, it was not established that there exists any alternative pathway as pleaded by the defendant. Apart from that, there is a common well that can be accessed only through the B-Schedule cart tract. Therefore, the findings rendered by the First Appellate Judge, who appreciated the evidence on record, are sustainable. Hence, she prays that the appeal be dismissed as devoid of merit.

12. Now, considering the submissions from both sides, the core dispute is regarding the usage of the B-Schedule pathway. According to the plaintiff, it is the only pathway to reach her land and has been used since time immemorial. The defendants, however, object on the grounds that the B-Schedule pathway did not exist since time immemorial, nor did the plaintiff's vendor have any such right. Through Ex.A1 sale deed, the plaintiff has allegedly created a new cart tract right over the respondent's



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land, even though the plaintiff's vendor had no such right. Furthermore, the plaintiff also claimed easementary rights, which contradicts her claim under Ex.A1. As per the sale deed, the plaintiff purchased the property from her brother, and it mentions the B-Schedule pathway, which describes the route as starting from Govindapuram, East Itteri, passing through the defendant's land in Survey No.113/1B1, and ending within the same survey number, with the right of usage granted to the plaintiff.

13. The sale deed was executed in 2004. The plaintiff's vendor acquired the property through a partition deed marked as Ex.A2 dated 28.12.2001. Before selling the property, the vendor obtained rights through the said partition. The plaintiff owns land in S.No.113/1B3, and there is a common well in S.No.113/2D. To access these, the B-Schedule cart tract is the only viable pathway. Hence, the plaintiff's entire claim, though based on the sale deed, also invokes easement by necessity. Despite relying on Ex.A1, the plaintiff seeks only the relief of permanent injunction and not a declaration of rights.



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14. As per the Commissioner's report, the B-Schedule pathway starts from Govindapuram, East Itteri, and disappears at Point E in the Commissioner's sketch. It was observed that the front portion appeared to be recently planted. After shifting slightly, the pathway turns southwest and reaches the defendant's house. Thereafter, no signs of the cart tract were visible, but a narrow way continues southward and ends near the common well. Thus, the existence of the cart tract was established with the help of the Commissioner's report, although some parts were dismantled. The report further reveals that the B-Schedule property is the only access route to the plaintiff's land and that no alternative pathway exists through the lands of Dharman, the plaintiff's brother, or any other route.

15. The arbitration of the pathway also reveals that the defendants interfered with its usage, which necessitated the plaintiff to approach the Court seeking a permanent injunction. The pleadings in the plaint clearly show that this is the only route to access the plaintiff's land. Though there is no prayer for a declaration, the defendant's conduct compelled the



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plaintiff to file the suit, making her claim for injunction legally sustainable.

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Accordingly, Question of Law A is answered.

16. Admittedly, the plaintiff claims rights under the sale deed, but also contends that the pathway has been in use since time immemorial and that no other access route exists. Therefore, the plaintiff's claim stands both under the sale deed and under easement by necessity. Accordingly, Question of Law B is answered.

17. The learned counsel for the appellants argues that, except for Ex.A1 sale deed, no previous title deeds of the plaintiff's predecessors mention the pathway. It is admitted that the plaintiff purchased the property from her brother, Dharman @ Dharmalingam, and that the land originally belonged to Athammal, the plaintiff's paternal grandmother. The assets of Athammal were jointly enjoyed by her paternal uncle and her brother Dharman, from whom the plaintiff purchased the property. There is a common well that can be reached only through the B-Schedule property. Therefore, even though Ex.A1 is a self-acquired document, the physical



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features of the property clearly reveal that the B-Schedule pathway is the only access to the plaintiff's A-Schedule land, as also confirmed by the Commissioner's report.

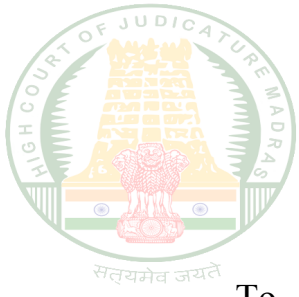
18. Through the partition deed, the plaintiff's vendor acquired certain items of the property and retained others when selling to the plaintiff. Thus, the B-Schedule pathway was the only route to reach the plaintiff's land, and this right was explicitly provided in Ex.A1. Therefore, even by way of necessity, the plaintiff is entitled to use the B-Schedule property. The findings of the First Appellate Court are sustainable. Accordingly, Question of Law C is answered.

19. Accordingly the appeal is dismissed as devoid of merits. There shall be no order as to costs.

**05.06.2025**

Index : Yes/No  
Neutral Citation : Yes/No  
Speaking/Non Speaking order  
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To  
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1. The Subordinate Judge, Pollachi.
- 2.The District Munsif, Pollachi.
- 3.The Section Officer, VR Section, High Court of Madras.



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**T.V.THAMILSELVI, J.**

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