



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-09-2025

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CORAM

THE HON'BLE DR.JUSTICE R.N.MANJULA

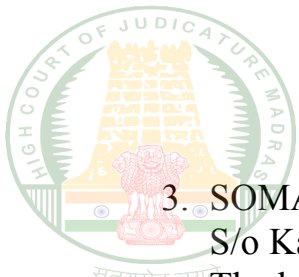
SA No. 791 of 2010

1. M.Marappan(died)
S/o Late Marappa Gounder, 5, Iyyappa Naga,
Gobichettipalayam.
2. Rajathi,
W/o. Late Marappan,
3. M.Senthil,
S/o. Late Marappan,
4. M.Sundar,
S/o.Late Marappan,
5. M.Uma,
W/o. K.S.Sridharam, Appellants 2 To 5 Are
Residing At No.1/77, Kanjanoor,
Ikkarainegamam, Sathyamangalam Taluk.

..Appellants

Vs

1. K.M.Muthuvelappan
S/o Late Marappa Gounder, Pughazendhi Street,
Gobichettipalayam.
2. K.M.Satheesh
S/o Muthuvelappan, Pughazendhi Street,
Gobichettipalayam.



3. SOMASUNDARAM

S/o Kalianna Mudaliar, Kasipalayam,
Thadapalli Village, Gobichettipalyam Taluk.

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..Respondent(s)

[APPELLANTS 2 TO 5 BROUGHT ON RECORD AS LRS OF THE DECEASED SOLE APPELLANT VIZ., MARAPPAN VIDE ORDER OF COURT DATED 21/07/2020 MADE IN CMP.NO.19933 TO 19935/2016 IN SA.No.791/2010]

PRAYER – This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree of the Subordinate Judge, Gobichettipalayam in A.S.No.44 of 2009 dated 29.03.2010 confirming the judgment and decree of the District Munsif, Gobichettipalayam in O.S.No.46 of 2001 dated 11.03.2009.

For Appellants: Mr.S.Kaithamalai Kumaran

For RR1 & 2: M/s.Ma.P.Thangavel

JUDGMENT

The appeal has been preferred challenging the judgment and decree of the Sub Court, Gobichettipalayam dated 29.03.2010 in A.S.No.44 of 2009. The deceased 1st appellant is the plaintiff who has filed the suit in O.S.No.46 of 2001 for permanent injunction restraining the defendants from interfering with the plaintiff's usage of the alleged suit pathway. The Trial Court had dismissed the said suit on 11.03.2009. The First Appeal preferred challenging the judgment of the Trial Court also got dismissed on 29.03.2010. Aggrieved over that, the present Second Appeal has been preferred.



2. The short facts pleaded in the plaint of the plaintiff:-

(i). The plaintiff is entitled to his property as per the partition deed dated 30.03.1972 and the decree passed in O.S.No.12 of 1978 of this Court. The plaintiff was in possession and enjoyment of the extent as per the existing ridge. After the decree passed in the above suit, the plaintiff limited his cultivation to an extent of 2 acres and 15 cents, without measuring and formed a ridge to demarcate his extent of the property in his enjoyment. Even after the decree was confirmed by the High Court on 20.11.1978 in O.S.No.12 of 1978, the defendants are not willing to measure the land and put up a ridge between the lands of the plaintiff and the defendants 1 and 2.

(ii) The plaintiff is also entitled to a pathway of 12 links in width (8 feet and 8 inches) in the defendants land along the northern border as shown in the plaint plan. The 13 links pathway includes the irrigation koppu also. The defendants 1 and 2 are unlawfully interfering with the use of the pathway by claiming that there is no pathway. Subsequent to the suit, the defendants 1 and 2 sold their property to the 3rd defendant by not mentioning the suit pathway in the sale deed. Hence, the purchaser has been impleaded as 3rd defendant during the pendency of the suit. As the plaintiff has filed the suit for permanent



injunction, later he amended it for also seeking mandatory injunction in respect of X, Y portion shown in the plaint plan.

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3. The short facts pleaded by the defendants:-

(i) There is no pathway on the lines as pleaded by the plaintiff. Even in the description of the property in the suit, it is not mentioned that there is a pathway measuring 13 links and the plaintiff has been in enjoyment of the same. In the partition deed it is mentioned as 2 acre and 03 cents, but the plaintiff has filed a suit saying that he is entitled to 2 acres and 15 cents. It is not known whether the plaintiff has sought easementary right in respect of the excess 12 cents. But the earlier suit has not been filed on that ground.

(ii) The defendants had purchased the suit property in Survey No.142/1. So it is false on the part of the plaintiff to say that the defendants have demolished the red marked portion. As the plaintiff has stated that he had established a ridge as a boundary between his property and the defendants property, there is no need to measure the property once again. The plaintiff has not filed a suit for declaration and the existence of the pathway also not established by way of seeking a prayer to appoint an Advocate Commissioner.



The 3rd defendant also adopted the ridge. The 3rd defendant remained exparte and he did not file written statement.

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4. On the side of the plaintiff, two witnesses were examined as P.W.1 and P.W.2 and Exs.A1 to A9 were marked. On the side of the defendants, one witness was examined and Exs.B1 to B7 were marked.

5. At the conclusion of the trial and considering the evidence available on record, the Trial Court had dismissed the suit and appeal preferred by the plaintiff also got dismissed. Aggrieved over that, the Second Appeal has been preferred and this Court has admitted the Second Appeal on the following Substantial Question of Law:-

“Whether the Courts below had misdirected themselves on a plain reading of Ex.A2, wherein, a provision had been granted for retention of land as pathway for the usage of the appellant and had not appreciated the said document in its proper light?”

6.The learned counsel for the appellant submitted that even in Ex.A2 – partition deed dated 30.03.1972 itself there is a mention about the pathway. But the learned Courts below did not appreciate the same properly. He further



submitted that the 1st appellant/plaintiff has been in enjoyment of the suit pathway. The 1st and 2nd defendants would subsequently sold the suit property in favour of the 3rd defendant through Ex.A6 – sale deed, wherein also there is a mention about the pathway.

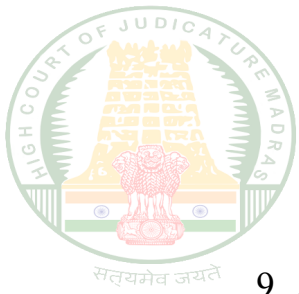
7.The 3rd respondent remained exparte before the Courts below.

8.The learned counsel for the respondents 1 and 2 submitted that the Trial Judge has appreciated the evidence on record and the 1st appellant/plaintiff has not proved his case and the physical features on the ground by seeking the appointment of the assistance of the Commissioner. It is right for the Courts below to make a observation that the plaintiff has not proved his entitlement to the alleged pathway. As the substantial questions of law revolves around Ex.A2 – partition deed, the recitals of the partition deed is taken up for consideration directly. The above partition deed – Ex.A2 has been entered into between the plaintiff, the 1st defendant and his parents. In the said partition deed, 'A' Schedule properties have been allotted to the plaintiff's father and 'B' Schedule properties have been allotted to the plaintiff and 'C' Schedule properties have been allotted to the 1st defendant who is the brother of the plaintiff. No property has been allotted to the mother of the plaintiff. Apart



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from the properties allotted to each share holders, there are some common recitals made in the partition deed to the benefit of the parties concerned. In the said common recitals it is stated that there is a common pathway in the width of 13 links proceeds from kopu vaikal and running across the 1st defendant's land and plaintiff's land and that can be used as a common pathway by the plaintiff. It is also mentioned in the said recitals that the said pathway is on the northern end. But however, the Courts Below appears to have got confused with the earlier suit filed by the plaintiff in respect of his claim for 2 acres 15 cents – 2 share. It is alleged by the 1st appellant/plaintiff that the above properties were demarcated with the ridge and that has got nothing to do with the suit pathway which is said to be situated in the northern end. However, attention of the Trial Court has got diverted to the above claim of the plaintiff made in his earlier suit. So far as this suit pathway is concerned, it is shown in red color in the plan. While making discussion about Ex.A2 – partition deed, the Trial Court has made reference as to the lands allotted to the plaintiff in the partition deed in 'B' and 'C' schedule properties. The plaintiff's share is seen to be situated on the Eastern side of the 1st defendant's share under 'C' Schedule property. The Trial Court appears to have identified that there was no such pathway.



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9. Actually, the pathway has been shown in the partition deed and not in the respective Schedule properties allotted to the parties to the partition deed. But it has been stated in the common recitals. On a careful reading of the common recitals it can be seen that there is a mention about the pathway measuring 13 links lying on the northern end of the lands of the 1st defendant and the plaintiff and that has to be used as pathway for both the plaintiff and the 1st defendant.

10. Had the Trial Court or the I Appellate Court read Ex.A2 – partition deed holistically, the above recitals would have been found out properly.

11. The 1st appellant/plaintiff did not venture to take the assistance of the Advocate Commissioner as he pleaded that he could establish his entitlement to the pathway on the basis of the title deed itself. The recitals found in the partition deed in respect of 13 links pathway has been further asserted in the sale deed executed by the 1st defendant in favour of the 3rd defendant under Ex.A6 on 11.06.2001. In the sale deed itself, the 1st defendant has mentioned about 13 links pathway and the pathway has been shown as the northern side boundary. In Ex.A3 – sale deed which has been executed by the 1st defendant in



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favour of the 3rd party also, there is a mention about the 13 links pathway on the northern end of their lands. But for the reasons best known to the appellants, the details of the above documents have not been properly explained to the Courts below. The Courts below have got diverted to the extent of the property claimed to be in enjoyment of the plaintiff, though the said subject is not the issue in matter. From the original document of the plaintiff's property Ex.A2 and the subsequent sale deed executed by the 1st defendant which is inclusive of Ex.A6, the plaintiff could prove that there existed a pathway of width 8 links. It is this pathway which is shown as common pathway in the recitals of Ex.A2 – partition deed. As the plaintiff/1st appellant has established the presence of pathway at the northern end of his property, to be used as common pathway, the Courts below ought to have granted the relief to the plaintiff. As the said exercise has not been done properly, I feel judgment dated 11.03.2009 made in O.S.No.46 of 2001 is liable to be set aside and the judgment of the I Appellate Court dated 29.03.2010 made in A.S.No.44 of 2009 is liable to be reversed and the suit is decreed as prayed for. The rough sketch shall form part of the decree.



12. In the result, the Second Appeal is allowed. No costs.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

GSA

To

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Gobichettipalayam.
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S/o Muthuvelappan, Pughazendhi Street,
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3. SOMASUNDARAM
S/o Kalianna Mudaliar, Kasipalayam,
Thadapalli Village, Gobichettipalyam Taluk.
4. The Subordinate Judge,
Gobichettipalayam.
5. The District Munsif,
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DR.R.N.MANJULA, J.

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