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S.A.Nos.154 & 155 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 19 / 10 / 2024

JUDGMENT PRONOUNCED ON : 20 / 01 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A.NOS.154 AND 155 OF 2018

AND

CMP NO.4863 OF 2018 IN S.A.NO.154 OF 2018

AND

CMP NO.4864 OF 2018 IN S.A.NO.155 OF 2018

S.A.NO.154 OF 2018

1.A.Murugesan
2.M.Pushpavathi

... Appellants /
Respondents 1 & 2 /
Plaintiffs

Vs.

1.K.Shanthi

... 1st Respondent /
Appellant /
6th Defendant

2.Chinnammal
3.Palanisamy

Govindaraj (Died)

4.Dhanabakkiyam
5.P.J.Sridhar
6.K.C.Jayamani
7.Minor K.G.Manikandapirabhu

... Respondents /
Respondents 3 to 9 /
Defendants 1 to 5



S.A.Nos.154 & 155 of 2018

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated June 20, 2011 made in A.S.No.135 of 2008 by the Principal District Judge, Erode, reversing the Judgment and Decree dated November 29, 2007 made in O.S.No.43 of 2005 by the Principal District Munsif, Erode.

For Appellants	:	Mr.V.S.Kesavan
For Respondent-1	:	Mr.N.Manokaran
For Respondents 2 to 7	:	Given up

S.A.NO.155 OF 2018

1.A.Murugesan
2.M.Pushpavathi

... Appellants /
Respondents /
Plaintiffs

Vs.

T.Sugumar

... Respondent /
Appellant /
Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated June 20, 2011 made in A.S.No.96 of 2008 by the Principal District Judge, Erode, reversing the Judgment and Decree dated November 29, 2007 made in O.S.No.501 of 2005 by the Principal District Munsif, Erode.

For Appellants	:	Mr.V.S.Kesavan
For Respondent	:	Mr.N.Manokaran



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COMMON JUDGMENT

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The Second Appeal in S.A.No.154 of 2018 is directed against the Judgment and Decree dated June 20, 2011 passed in A.S.No.135 of 2008 by the 'Principal District Court, Erode' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated November 29, 2007 passed in O.S.No.43 of 2005 by the 'Principal District Munsif Court, Erode' ['Trial Court' for brevity] was reversed.

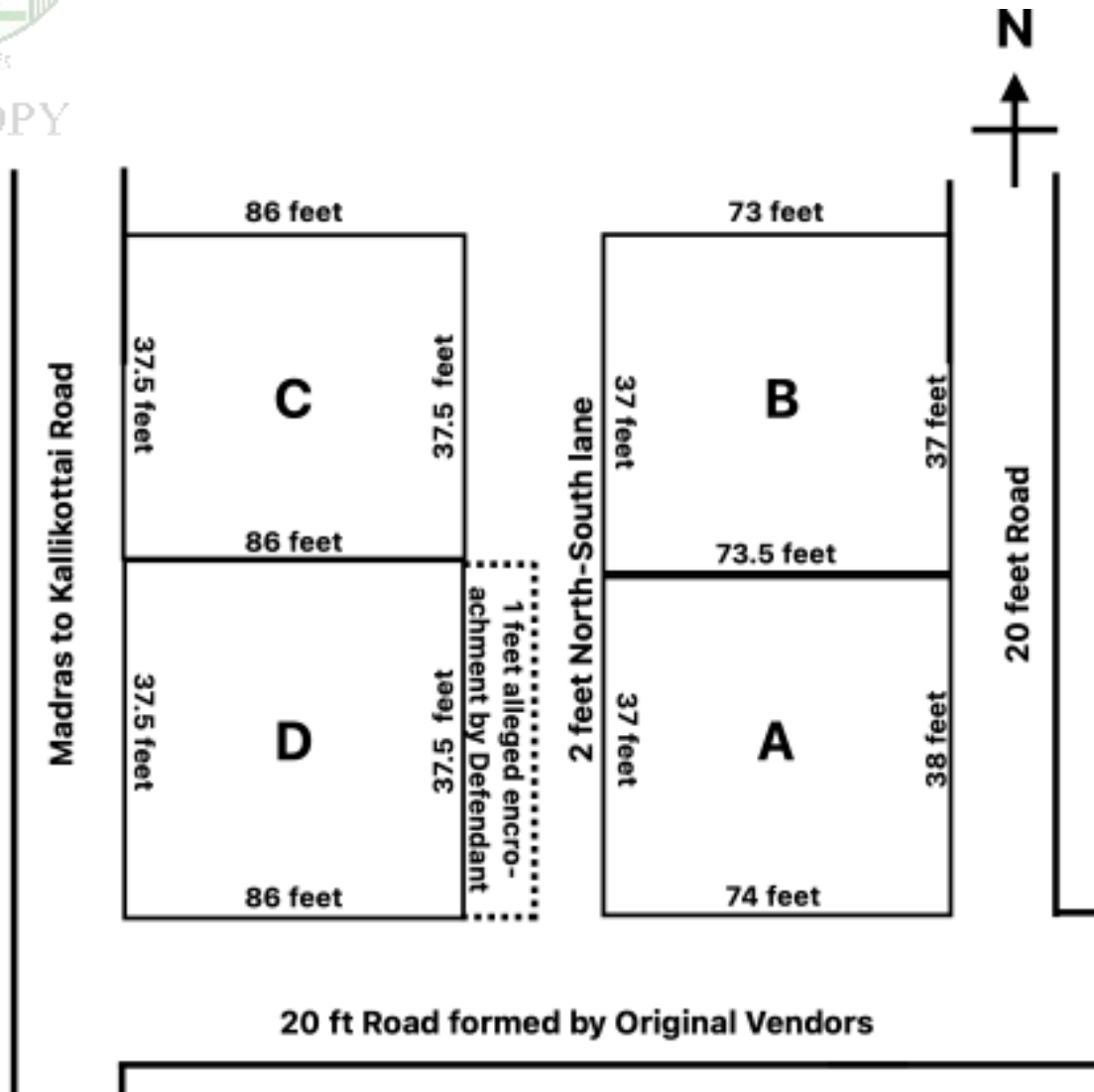
2. The Second Appeal in S.A.No.155 of 2018 is directed against the Judgment and Decree dated June 20, 2011 passed in A.S.No.96 of 2008 by the First Appellate Court, whereby the Judgment and Decree dated November 29, 2007 passed in O.S.No.501 of 2005 by the Trial Court was reversed.

3. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit in O.S.No.43 of 2005.

4. The following diagram is drawn based on the evidence available on record for better understanding of facts of the case:



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2. In both the Original Suits, the Suit Properties remain substantially the same. The portions marked as 'A' to 'C' in the above diagram constitutes the Suit 'A' Schedule properties in both the Original Suits. The North-South Lane shown constitutes Suit 'B' Schedule property in both the Original Suits; but its measurement varies. In O.S.No.43 of 2005, contrary to the recitals contained in Ex-A.1 to Ex-A.6, the



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plaintiffs have described the Suit North-South Lane as if it is measuring 3.5 feet in width. It measures only 2 feet in width as per Ex-A.1 to Ex-A.6, which contain the Sale Deeds and the Gift Settlement Deeds relating to the Suit Property as stated *infra*. In O.S.No.501 of 2005, the width of the said North-South Lane Path has been described as 2 feet, which is in line with the recitals of Ex-A.1 to Ex-A.6.

3. The dispute between the parties is with regard to North-South Lane shown in the above diagram, which constitutes Suit 'B' Schedule property in both the Suits. The parties dispute its nature and measurements. Case of the plaintiffs is that the defendants encroached the Suit North-South Lane and constructed a compound wall and a toilet therein. In O.S.No.43 of 2005, the plaintiffs seek to declare their right, title and interest in the Suit North-South Lane (3.5 feet in width) and remove the encroachments of the defendants therein by way of a mandatory injunction. Plaint prayer in O.S.No.43 of 2005 reads thus:

'a) Permanent injunction restraining the defendants, their men, servants, heirs, representatives, agents whomsoever under them and through from interfering into and disturbing with the peaceful possession and enjoyment of the 'A' schedule property either actually or by referring the alleged right of the way in the original lane set out in 'B' schedule now merged



with suit 'A' schedule property and with property of the defendants by in any made of executing deeds of conveyance etc.

b) Declaring the rights, title, interest of the plaintiffs over the 'B' schedule property;

c) Mandatory injunction fixing the boundaries of the 'B' schedule lane by removing the superstructure of compound wall and latrines etc. built up by the defendants 1 to 4 for the congenial joint common user of the same forever;

d) Awarding the costs of the suit; and

e) Granting such other and further reliefs as the Hon'ble Court may deem fit and proper in the circumstances of the case and thereby render justice.”

3.1. In O.S.No.501 of 2005, since the defendants executed a General Power of Attorney in respect of Suit North-South Lane Path in favour of one T.Sugumar, the plaintiff seeks for the relief of permanent injunction against the power holder restraining him from interfering with the peaceful possession and enjoyment of the Suit North-South Lane by the plaintiffs. Plaint prayer in O.S.No.501 of 2005 reads thus:

“a) Permanent Injunction restraining the defendant, his men servants, heirs, representatives agents whomsoever under him and through him from interfering into and disturbing with the peaceful possession and enjoyment of the A



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- Schedule property either actually or by referring the alleged right of the way in the original lane set out in B- Schedule now merged with suit A - Schedule property and with property of Chinnammal by the alleged Power of Attorney dated May 11, 2005, S.R.O.Bhavani allegedly executed by Chinnammal Vahayara in favour of the defendant in any mode of encumbering and alienating deeds of conveyances etc.,;

b) Awarding the costs of the suit; and

c) Granting such other and further reliefs as the Hon'ble Court may deem fit and proper in the circumstances of the case and thereby render justice."

4. It is averred in the written statement filed by the first defendant in O.S.No.43 of 2005 that the Suit filed by the plaintiffs is frivolous, vexatious, and not maintainable, either in law or on the facts of the case. The plaintiffs are put to strict proof of all allegations, except those specifically admitted. The defendants denied the plaintiffs' claim of exclusive ownership of the 2-foot lane in question, asserting that it has always been a common lane used by both parties and their predecessors. The Sale Deeds and other documents relied upon by the plaintiffs are self-serving and do not confer any valid title to them. The defendants denied the claim that the lane has been exclusively used by the plaintiffs since 1964 or that any agreement was made regarding its division or



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appropriation. Further, the defendants refuted the allegations with regard to the panchayat and subsequent developments to the lane. The defendants stated that their property was purchased in 1970. The plaintiffs have no exclusive right or title over the lane, which has been commonly used for decades. The defendants further challenges the valuation of the Suit, alleging it has been intentionally undervalued to evade proper Court-fees. According to the defendants, they have not encroached upon the Suit Property and it is the plaintiffs who have encroached upon it. Moreover, the suit has been filed with *malafide* intention to harass the defendants and establish a false claim over the lane. As there is no genuine cause of action, the defendants prayed for the dismissal of the Suit with costs.

5.The defendant in O.S.No.501 of 2005 filed written statement stating that the Suit filed by the plaintiffs is baseless, legally unsustainable and intended to harass the defendant. The claim of exclusive ownership over the 2-feet pathway is denied, as it is a public lane used by all parties. The defendant is only an authorized agent under a General Power of Attorney dated May 11, 2005 and has no personal ownership, as the property belongs to Annamalai, who has not been made as a party to the Suit. Without impleading Annamalai or filing necessary



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documents like power of attorney, the plaintiffs' claims cannot be sustained. Therefore, the defendant claimed that Suit lacks merit and accordingly prayed for dismissal of the Suit with costs.

5.1.The case of the defendants in both the Original Suits in short is that they did not encroach upon Suit North-South Lane, which is a common lane. On the other hand, it is the plaintiffs who have encroached the Suit North-South Lane. Further, the Suit is barred by limitation as even according to the plaintiffs, the alleged encroachment was made in the year 1982 whereas the Suit is laid in the year 2005.

6. The Trial Court upon perusal of the evidence and after hearing either side, decreed the Suit in O.S.No.43 of 2005 declaring that the plaintiffs have title over the Suit North-South Lane and granted permanent and mandatory injunction in respect of Suit Properties.

7. Likewise, in O.S.No.501 of 2005, the Trial Court directed the defendant therein not to sell or transfer the disputed property based on the Power of Attorney dated May 11, 2005.

8. Upon appeal before the First Appellate Court by the



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aggrieved defendants, the First Appellate Court found that there is no evidence available on record to show when the encroachments were made and since for mandatory injunction, the period of limitation is 3 years, the Suit is barred by limitation. Upon these findings, the Appeal Suits were allowed and the Original Suits were dismissed by setting aside the Common Judgment and Decree passed by the Trial Court.

9. Aggrieved by the Common Judgment and Decree of the First Appellate Court, the plaintiffs have come up with these Second Appeals, which were admitted by this Court on March 13, 2024 on the following Substantial Questions of Law:

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- a. *Whether the Lower Appellate Court completely missed the vital fact that the suit lane is in existence or not?*
- b. *Whether the decree and judgment of the Appellate Court below are pervasive in nature because they categorically missed the vital facts of the case and warranting interference of this Hon'ble Court?*

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- a. *Whether the Lower Appellate Court completely missed the vital fact that the present suit is for bare injunction and defendant admitted he has no title or right over the suit property?*
- b. *Whether the Lower Appellate Court is right in giving a common judgment without discussing the issues in the above suit separately?*
- c. *Whether the Lower Appellate Court below properly perused the reports of the Advocate Commissioner and plan of the Surveyor? '*

10. Mr.V.S.Kesavan, learned Counsel for the appellants / plaintiffs would argue that the recitals in Ex-A.1 to Ex-A.6 documents clearly prove the existence of the Suit lane. Further, Ex-C.1 to Ex-C.5 – Report and Plan of the Advocate Commissioner would prove the encroachment made by the defendants in the Suit 'B' Schedule property. The learned Counsel for the appellants would further argue that there exists east-west lane between the plaintiffs' property and the defendants' property (Between the properties covered under Ex-A.3 – Sale Deed and that covered under Ex-A.6 – Sale Deed) and there exists some dispute between the plaintiffs and the defendants with regard to the same. The plaintiffs reserve their right to initiate action. The dispute between the plaintiffs and the defendants with regard to east-west lane is not the



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subject matter of these Second Appeals. the The Trial Court rightly appreciated the evidence and decreed the Original Suits. The First Appellate Court failed to appreciate the evidence available on record in the right perspective and dismissed the Original Suits. The same is perverse. Accordingly, he would pray to allow these Second Appeals, set aside the Judgment and Decree of the First Appellate Court and confirm those of the Trial Court.

11. Mr.N.Manokaran, learned Counsel for the respondents / defendants would argue that the Advocate-Commissioner's Reports and Plan in Ex-C.1 to Ex-C.5 did not specify the encroachment. The Advocate-Commissioner failed to note down the encroachment made by the plaintiffs. Hence, the reports of the Advocate – Commissioner in Ex-C.1 to Ex-C.5 cannot be accepted. He would further argue that the defendants in O.S.No.43 of 2005 put up construction 20 years before. Hence, the prayer for a mandatory injunction is barred by limitation, as the plaintiffs have acquiesced in the act of alleged encroachment. The First Appellate Court appreciated the evidence in the right perspective and set aside the Judgment and Decree of the Trial Court, thereby dismissing the Original Suits. There is no reason to interfere with the same.



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Accordingly, he would pray to dismiss these Second Appeals. He would rely on the judgment of the Hon'ble Supreme Court in ***Krothapalli Satyanarayana -vs- Koganti Ramaiah and Others***, reported in (1984) 2 SCC 439.

12. Heard on either side. Perused the materials available on record.

13. The portions marked as 'A' and 'B' in the above diagram were purchased by second plaintiff by virtue of Ex-A.1 - Registered Sale Deed dated September 14, 1985. Then she executed Ex-A.2 - Registered Gift Settlement Deed dated July 11, 1991 in favour of her husband / first plaintiff in respect of the portion marked as 'B' in the above diagram. The mother of first plaintiff purchased the house site marked as 'C' in the above diagram vide Ex-A.3 - Registered Sale Deed dated July 22, 1964 and the same has been later settled in favour of first plaintiff under a registered Gift Settlement Deed dated April 24, 2002. The house property marked as 'D' in the above diagram was purchased by the first defendant under Ex-A.6 - Sale Deed dated December 11, 1970. There is a lane of 2 feet width running North-South in-between the said portions as shown in



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the above diagram.

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14. In Ex-A.1 and Ex-A.2, the western boundary of the portions marked as 'A' and 'B' in the above diagram is described as '2 feet North-South Lane Path' [. . . 2 அடி அகல தென்வடல் சந்து தடத்துக்கு (கிழக்கு) . . .]. Likewise, in Ex-A.3 to Ex-A.6, the eastern boundary of the portions marked as 'C' and 'D' in the above diagram has also been described as '2 feet North-South Lane Path' [. . . E.K. இராமசாமிகவுண்டர் வகையறா (Vendor) இரண்டடி அகலத்தில் விட்டிருக்கும் தென்வடல் சந்துக்கு (மேற்கு)]. To be noted, Ex-A.5 is the Title Deed of the vendor of the first defendant while Ex-A.4 is the Title Deed of the vendor of the first defendant's vendor. The Advocate Commissioner filed Ex-C.1 to Ex-C.5 – Reports and Plans which shows the existence of a North-South Lane location of which is as shown in the above diagram. Further, in Ex-A.1 to Ex-A.6, it has been stated that the portions marked as 'A' to 'D' comes with easementary right over the roads running on all four side of the layout consisting of portions marked as 'A' to 'D', as well as the 2 feet North-South Lane Path. It has been further stated that none comes with right over Soil in the said roads and the lane path. To put it differently, the surrounding roads and the North-South Lane are meant for common use



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to the owners of the portions marked as 'A' to 'D'. The facts narrated *supra* are completely based on evidence available on record. It is apposite to state the recitals found in Ex-A.3 to Ex-A.6 hereunder:

Recitals found in Ex-A.3

' . . . ஷை இடத்துக்கு எங்களால் விடப்பட்டிருக்கும் அகலமான ரோடுகளிலும், சந்து தடத்திலும் நடந்து கொள்ள வேண்டியது. . . '

Recitals found in Ex-A.4 to Ex-A.6

' . . . ஷை இடத்துக்கு E.K.இராமசாமிகவுண்டர் வகையறாக்களால் விடப்பட்டிருக்கும் அகலமான ரோடுகளிலும், சந்துகளிலும் போய்வந்து கொள்ளும் தடபாத்தியமும் சகிதமும் . . . '

15. Thus, it is clear that Suit North-South Lane is a common 2 feet lane over which neither the plaintiffs nor the defendants can claim absolute title. All they have is easementary right to enjoy it as a pathway. Hence, the defendants 1 to 4 in O.S.No.43 of 2005 have no authority or power to execute Ex-A.22 – General Power of Attorney Deed dated May 11, 2005 (Document NO.232/2005/Book-4, SRO Bhavani). Therefore, the said document is void *ab initio*. Consequently, the alleged General Power



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Attorney Agent - T.Sukumar will not get any right through Ex-A.22.

Perusal of evidence does not reveal a clear picture about the alleged encroachments made by either side. A lane should only be used as a lane and hence, any encroachments thereof are liable to be removed. If any encroachment is made over the Suit North-South Lane, the affected party is entitled to remove the same as per law.

16. The Trial Court erred in granting declaration of title over the Suit North-South Lane in favour of plaintiffs, while it is actually a common lane over which both the plaintiffs and the defendants have easementary right. The Suit lane was formed by the original owners for accessing their other properties and for usage as pathway by the purchasers of the properties in the layout. The First Appellate Court erred in dismissing the Appeal Suits on the ground that the Suit for mandatory injunction is barred by limitation. This Court is of the view that Suits relating to encroachment on pathways have recurring cause of action and hence, they are not barred under Article 135 of the Limitation Act, 1963. Substantial Questions of Law are answered accordingly.

17. Resultantly, Second Appeal in S.A.No.154 of 2018 is



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partly allowed and the Judgment and Decree of First Appellate Court in A.S.No.135 of 2008 are set aside, and the Judgment and Decree of the Trial Court in O.S.No.43 of 2005 are modified as hereunder:

17.1. Permanent injunction is granted in respect of Suit 'A' Schedule properties subject to measurements stated in Ex-A.1 to Ex-A.3;

17.2. It is declared that the Suit North-South Lane is a common lane of 2 feet width. Neither the plaintiffs nor the defendants can claim title over the Suit lane. The plaintiffs and the defendants are having easementary right only over the Suit Lane. Both parties are not entitled to put up any construction or encroach upon the Suit lane;

17.3. The boundaries of the Suit lane shall be demarcated / fixed as per Ex-A.1 to Ex-A.6. If there are any encroachments found after fixation of boundaries, the parties are entitled to remove the encroachments as per law.

18. As far as the Second Appeal in S.A.No.155 of 2018 is concerned, the Second Appeal is allowed and the Judgment and Decree of the First Appellate Court are set aside and those of the Trial Court are



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modified as hereunder:

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18.1. Permanent injunction is granted against the respondent in S.A.No.155 of 2018 – T.Sugumar (Defendant in O.S.No.501 of 2005) restraining him from disturbing the plaintiffs' possession and enjoyment of the Suit Properties, measurements of which are to be taken as in Ex-A.1 to Ex-A.3. Further, he is restrained from encumbering or alienating the Suit 'B' Schedule property based on the General Power of Attorney Deed dated May 11, 2005 registered in the Sub-Registrar Office, Bhavani.

19. There shall be no order as to costs in view of the facts and circumstances of the case. Consequently, connected Civil Miscellaneous Petitions are closed.

20 / 01 / 2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK



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To

1.The Principal District Judge
Erode.

2.The Principal District Munsif
Erode.



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R. SAKTHIVEL, J.

TK

PRE-DELIVERY COMMON JUDGMENT MADE IN

S.A.NOS.154 AND 155 OF 2018

20 / 01 / 2025