



S.A.No.90 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

|                      |                   |
|----------------------|-------------------|
| <b>Reserved on</b>   | <b>22.09.2025</b> |
| <b>Pronounced on</b> | <b>10.12.2025</b> |

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN  
THILAKAVADI**

**S.A.No.90 of 2023 and C.M.P. No.2967 of 2023**

M. Seethapathy

...Appellant

**Vs.**

1. Srinivasan  
2. Padmavathy  
3. Devarajan  
4. Balaraman  
5. The Thakkolam Town Panchayat  
Represented by its Executive Officer  
Thakkolam, Arakkonamm Taluk  
Ranipet District  
...Respondents

**Prayer :** Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 01.09.2022 passed in A.S. No.36 of 2018, on the file of the Sub Court, Arakkonam, confirming the Judgment and decree dated 31.07.2018 passed in O.S.No.77 of 2011, on the file of the District Munsif Court, Arakkonam.

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WEB COPY For Appellant : Mr. Y. Jyothish Chander

For Respondents : Mr. A. Maheshnath for R5  
R1 to R4 – No appearance

### **JUDGMENT**

This Second Appeal is preferred against the judgment and decree dated 01.09.2022 passed in A.S. No.36 of 2018, on the file of the Sub Court, Arakkonam, confirming the Judgment and decree dated 31.07.2018 passed in O.S.No.77 of 2011, on the file of the District Munsif Court, Arakkonam.

2. The plaintiff has filed the suit in O.S. No.77/2011 for declaring the registered Gift Deed dated 28.12.2006 executed by the 4<sup>th</sup> defendant in favour of the 6<sup>th</sup> defendant as null and void and not binding on the plaintiff and to declare the common passage situate on the west of the suit property measures only 16 feet in width and for permanent injunction.



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3. According to the plaintiff, he had purchased the suit property measuring an extent of 1298 sq. ft. in S.Nos.342/2B and 2C with specific boundaries morefully described in the suit schedule from the 4<sup>th</sup> defendant under a sale deed dated 16.07.2003, who sold the same to the plaintiff as power agent of one Bakthan and others. Though the western boundary is mentioned as common passage, no specific measurement was given in the sale deed, but in the ground only 16 feet passage remains and the same is also admitted by the defendants. While so, the 4<sup>th</sup> defendant has executed a sale deed in favour of the 6<sup>th</sup> defendant on 28.12.2006 in respect of the suit property without any alienable right. The plaintiff has put up construction in the suit property after getting approval from the competent authority and also obtained electricity connection. The defendants 1 to 3, taking advantage of the Gift deed executed by the 4<sup>th</sup> defendant, started to claim a 20 feet width passage and attempted to interfere with plaintiff's possession in the suit property. Hence, the suit.

4. The claim of the plaintiff was resisted by the defendants 1 to 4



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stating that the plaintiff and his brother have purchased Plot Nos. 7 and 8 under a registered sale deed dated 16.07.2003. Thereafter, the 4<sup>th</sup> defendant approached the 5<sup>th</sup> defendant on 28.12.2006 to regularize the unapproved plots. At that time, the 5<sup>th</sup> defendant directed the 4<sup>th</sup> defendant to hand over the common passage through a registered Gift Deed. Hence, the 4<sup>th</sup> defendant executed a Gift Deed for common passage measuring 20 feet width, though the 4<sup>th</sup> defendant formed the plots with common passage of 16 feet width before approval. The 4<sup>th</sup> defendant informed the above facts to all the purchasers. In this connection, the plot owners, except the plaintiff and his brother, have executed rectification deeds with the 4<sup>th</sup> defendant and the same was registered. The 5<sup>th</sup> defendant after receipt of the Gift Deed executed by the 4<sup>th</sup> defendant approved all the plots vide letter dated 29.12.2006. Thereafter, the plot owners, except the plaintiff, got building approval after the rectification deed. While so, the plaintiff fraudulently obtained the building approval from the 5<sup>th</sup> defendant successor and got electricity connection. The plaintiff demanded Rs.5,00,000/- for executing the rectification deed. Thereafter, the 16 feet common passage is shifted from



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the western side of the suit property to the eastern side. Hence prayed for dismissal of the suit.

5. The trial court dismissed the suit vide its judgment and decree dated 31.07.2018 against which appeal was preferred. The first appellate court also dismissed the appeal suit vide its judgment and decree dated 01.09.2022 confirming the decree of the trial court.

6. The present Second Appeal is preferred by the plaintiff challenging the judgment and decree passed by the court below.

7. The Second Appeal has been admitted on the following substantial questions of law:

*“1. Whether the courts below were right in rejecting the prayer for declaration in prayer (b) of the plaint, having found that the common pathway exist is only 16 feet which makes the judgment and decree perverse?*

*2. Whether the courts below were not right in*



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*decreeing the suit on the admission of the defendants under Order XII Rule 6 CPC, which makes the judgment and decree perverse?*

*3. Whether the Lower Appellate Court is justified in not framing proper point for consideration in the appeal for disposal of the lis, required under Order 41 Rule 31 CPC?"*

8. The learned counsel for the appellant/plaintiff submits that the plaintiff has purchased Plot No.7 with specific boundaries under Sale Deed dated 16.07.2003. While so, the 4<sup>th</sup> defendant got approval to his convenience by gifting 20 feet width common passage to the 5<sup>th</sup> defendant, which affects the right of the plaintiff. The 4<sup>th</sup> defendant unilaterally executed rectification deeds without concurrence of the plot owners and in fact, the above documents were not exhibited before the trial court. Increasing the common passage to 20 feet from 16 feet, will lead to demolition of plaintiff's building to an extent of 4 feet. The first appellate court erred in not framing proper points for consideration as required under Order 41 Rule 31 CPC. The courts below erred in dismissing the suit filed by the plaintiff. Hence, prayed for allowing the



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9. On the other hand, the learned counsel appearing for the 5<sup>th</sup> defendant would submit that the 4<sup>th</sup> defendant has not obtained any permission from the 5<sup>th</sup> defendant to execute the gift deed in favour of the Government. It is further submitted that the approved plan given by the 5<sup>th</sup> defendant for the formation of layout in which the extent of road is given as 20 feet width and any subsequent event happened between the plaintiff and the defendants 1 to 4 is not binding upon the 5<sup>th</sup> defendant. The courts below have rightly considered the above facts, rejected the reliefs claimed by the plaintiff, which warrants any interference by this Court.

10. Despite notice, the respondents/defendants 1 to 4 remained absent.

11. Heard on both sides. Records perused.



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12. The first and foremost contention on the side of the appellant is that after executing Ex.A3 sale deed in respect of the suit property in favour of the appellant / plaintiff, the 4<sup>th</sup> defendant / power agent had no alienable right to execute a gift deed under Ex.A4 dated 28.12.2006 to the Government in respect of the same suit property. It is not in dispute that on the western side of the suit property, there was only 16 feet passage and thereafter, the 4<sup>th</sup> defendant executed a gift deed in favour of the Government, gifting 20 feet passage. It cannot be disputed that the excess 4 feet land belongs to the plaintiff under Ex.A3 sale deed dated 16.07.2003. The Advocate Commissioner's report and plan confirms that there is only 16 feet passage on the western side of the suit property. Admittedly, the plaintiff has obtained building approval from the 5<sup>th</sup> defendant / Panchayat under Ex.A6 approval plan dated 09.02.2010. On 29.12.2006 under Ex.A2 proceedings, the 5<sup>th</sup> defendant has regularised the plots. Therefore, the 4<sup>th</sup> defendant / power agent, after alienating all the plots has executed a registered gift deed dated 28.12.2006 under Ex.A4 in favour of the Government showing the width of the common passage as 20 feet, which is highly illegal and improper. In fact, the 5<sup>th</sup>



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defendant had also sent a letter on 19.07.2011 to the 4<sup>th</sup> defendant under Ex.A10 stating that the registered gift deed dated 28.12.2006 executed by him without its consent is not valid and the same is illegal. The 4<sup>th</sup> defendant / power agent cannot extend the width of a common passage and gift the same to the Government after the property has been sold to the plaintiff, as this would likely violate the plaintiff's right and potentially be invalid. The common passage's status is tied to the sale deed in favour of the plot owners and making an unilateral change and gifting it to a third party after the sale, is a breach, because the common passage was part of the property sold to the plaintiff. Changing its width and using it for a purpose not agreed upon in the sale is a breach of contract and could be legally challenged by the plaintiff. A layout owner can gift additional land to the Panchayat for a common passage even after selling unapproved plots to various persons, provided they still retain legal ownership and clear title to the specific land being gifted. The core condition for gifting immovable property is that the layout owner must be the lawful owner with a clear title at the time of the gift. Land already sold through registered sale deeds to individual plot owners



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is no longer the layout owner's property, and thus cannot be unilaterally gifted. The scenario of gifting lands for common area like common passage often arises during the process of regularizing unapproved layouts. If the additional land to be gifted for common passage affects the rights of the previously sold plot owners, their consent is required. In the present case, no such consent was obtained from the plaintiff by the 4<sup>th</sup> defendant at the time of executing the gift deed. In fact, the 4<sup>th</sup> defendant had no alienable right to execute the gift deed in respect of the portion of land already sold to the plaintiff. Though the 4<sup>th</sup> defendant would contend that the 5<sup>th</sup> defendant instructed him to hand over the common passage through a registered gift deed, the 5<sup>th</sup> defendant would contend that the 4<sup>th</sup> defendant executed the gift deed dated 28.12.2006 in favour of the 6<sup>th</sup> defendant without obtaining any permission from the 5<sup>th</sup> defendant. Moreover, the 4<sup>th</sup> defendant has stated that the other plot owners, except the plaintiff and his brother, owning plot number 7 and 8, have executed rectification deeds with the 4<sup>th</sup> defendant and they have got building approval after executing the rectification deeds. However, none of the plot owners were examined on the side of the 4<sup>th</sup> defendant to establish



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the same. The alleged rectification deeds were also not marked on the side of the 4<sup>th</sup> defendant. Hence, the 4<sup>th</sup> defendant failed to establish that, with the consent of the plot owners the rectification deeds were executed. Moreover, it is not in dispute that the plaintiff has obtained building permission from the 5<sup>th</sup> defendant and also got service connection to the suit property. Though it was contended on the side of the 4<sup>th</sup> defendant that the plaintiff fraudulently obtained building approval from the successive 5<sup>th</sup> defendant, the same is not established. The courts below failed to consider the above facts in a proper perspective. The first appellate court has relied upon G.O.(MS). 59 dated 25.07.2006 without analyzing whether the said Government Order is applicable to the facts of the present case. Opportunity must have been given to the plaintiff to agitate the same. The first appellate court ought to have framed proper and necessary points for consideration as contemplated under Order 41 Rule 31 CPC in this regard. Order 41 Rule 31 of the Code of Civil Procedure mandates that an appellate court's judgment must clearly states the points for determination, the decision on each point, and the reasons for those decisions. The courts below failed to evaluate the *lis* in suit in



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a proper perspective and increasing the common passage to 20 feet, will lead to demolition of the appellant / plaintiff's building to an extent of 4 feet, when the facts remains that the plaintiff has valid title and in possession of the suit property and the 4<sup>th</sup> defendant, without the consent of the plaintiff, had no alienable right to execute Ex.A4 gift deed in respect of the property already sold to the plaintiff. The courts below were not right in refusing the relief claimed by the appellant / plaintiff having found that he is in possession and title vest with him, which makes the judgment and decree perverse. Hence, the judgments and decree of the courts below are liable to be set aside. Therefore, all the substantial questions of law are answered in favour of the appellant.

13. In the result,

i.The Second Appeal is allowed. No costs. Consequently connected Civil Miscellaneous petition is closed.

ii.The judgment and decree dated 01.09.2022 passed in A.S. No.36 of 2018, on the file of the Sub Court, Arakkonam,



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confirming the Judgment and decree dated 31.07.2018 passed in O.S.No.77 of 2011, on the file of the District Munsif Court, Arakkonam, is set aside. The suit in O.S. No.77 of 2011 is decreed as prayed for.

10.12.2025

Index: Yes/No  
Internet: Yes/No  
Speaking/Non-Speaking order  
bga

To

1. The Sub Judge, Arakkonam
2. The District Munsif, Arakkonam
3. The Section Officer, VR Section, High Court, Madras.



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**K.GOVINDARAJAN THILAKAVADI,J**

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**Pre delivery Judgment in**  
**S.A.No.90 of 2023 and**  
**C.M.P. No.2967 of 2023**

**10.12.2025**