



WEB COPY

SA No. 156 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-11-2025

CORAM

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

**SA No. 156 of 2011
and M.P.No.1 & 2 of 2011**

JEEVAJOTHI

S/o Thiruvengkatachalam Keezhvani Keezhvani
Village Bhavani Tk
Erode Dist

..Appellant(s)

Vs.

1.Subbulashmi @ Ammasaiammal(died)
W/o Gurusamy
Keezhvani Keezhvani Village Bhavani Tk Erode
Dist

2.SHANTHI
W/o Ravi
Keezhvani Keezhvani Village Bhavani Tk Erode
Dist

3.Govindarajan(died)
S/o Gurusamy Mudaliar
Keezhvani Keezhvani Village Bhavani Tk Erode
Dist.

R3 Died, R1 Died. R2 Already On Record Is
Recorded As Legal Heir Of The Deceased
R1.Memo Recorded(usr.No.3608, Dated



30/01/2025) Vide Court Order Dated 30/10/2025
Made In Sa.No.156 Of 2011(rnmj)

4.PRAKASAM

S/o Vadiveu Mudaliar

At Moongilpaty Keezhvani Village Bhavani Tk

Erode Dist

..Respondent(s)

Prayer: Second Appeal is filed under Section 100 of CPC as against the judgment and decree dated 29.07.2010 made in A.S.No.30/2008 on the file of the Sub Court, Bhavani – confirming the judgment and decree dated 28.10.2005 made in O.S.No.253/2005- on the file of the II Additional District Munsif Court, Bhavani – in so far as it is against the appellant.

For Appellant(s): Ms.D.Sathya
for Ms.ZEENATH BEGUM

For Respondent(s): M/S.M.NARAYANASWAMY FOR R2

JUDGMENT

The appellant is the plaintiff who filed a suit in O.S.No.253/2005 seeking the relief of permanent injunction. The trial Court partly decreed the suit in respect of 'A' schedule property and dismissed the suit in respect of 'B' and 'C'



schedule properties. Hence both the plaintiff and the defendants have preferred the first appeal in A.S.Nos.30/2008 & 06/2009. The lower Appellate Court dismissed both the appeals by confirming the judgment of the trial Court. The plaintiff has filed the Second Appeal challenging only the operation of the judgment in respect of 'B' and 'C' Schedule property (A.S.No.30/2008). However, the defendants did not prefer any appeal as against A.S.No.06/2009. So the relief granted in respect of the 'A' Schedule has become absolute. Now the Second Appeal is only in respect of 'B' and 'C' Schedule properties.

2. The facts pleaded by the plaintiff in the plaint in brief:

The plaintiff's paternal uncle is Gurusamy Mudaliar. The first defendant is the wife of Gurusamy Mudaliar. The second and third defendants are the children of the first defendant. The plaintiff's father died when he was a minor. The plaintiff's father is the paternal grandfather of Gurusamy Mudaliar who had the ancestral properties in S.No.4/1, S.No.3 / Kilavani Vilalge, Bhavani Taluk. After the demise of plaintiff's father, the plaintiff, his mother and his brothers along with Gurusamy Mudaliar has entered into partition. In the said partition



S.No.4/1,3/4, 7, 10, 12 were allotted to Gurusamy Mudaliar. The lands in S.No.3/2, 5, 8, 11 and 13 at Keezhvani Village belong to plaintiff's family.

While partitioning the property in the above said manner, the pathway has been allotted in Resurvey No.4/13. In order to reach the lands in S.No.3, a pathway runs from the western side of Bhavani Athani road and it has been shown as 'A' schedule property. S.No.4/1 has been sub-divided into S.No.4/1A to 13 subsequent to the partition. The suit pathway has been given as an easement of necessity. A family partition had been occurred in the plaintiff's family on 05.07.1989 and in which properties have been allotted to the plaintiff and he continue to use 'A' schedule property.

2.1 On 10.03.1994, Gurusamy Mudaliar, his another son Murugesan and his children sold the lands in S.No.2/4, 2/8, 3/1 to the plaintiff and his wife Kuppaiyammal. The above sale is inclusive of 1/4 share of the Well situated in S.No.4/1A. Just in order to reach those lands, the plaintiff has purchased the right in pathway. As the defendants have created troubles even after the purchase of the pathway, the plaintiff has filed a suit in O.S.No.528/1985 on the



file of the District Munsif Court, Bhavani, against the defendants 1 to 3, seeking the relief of permanent injunction. The above suit has been dismissed on 18.02.1999. A first appeal in A.S.No.70/1999 was preferred challenging the above judgment of dismissal and in which a settlement has been arrived between both the parties and in which 'B' schedule pathway was formed. A compromise decree has also been passed in A.S.No.70/1999. From the date of compromise decree the plaintiff and the defendants 1 to 3 are using the suit 'B' schedule property for transportation purposes.

2.2 The right in the Well purchased by the plaintiff and his wife's on their $\frac{1}{4}$ share in the Well in S.No.4/1A has been shown in 'C' schedule. In view of the said purchase the plaintiff's wife and the plaintiff are entitled to $\frac{1}{8}$ share each in the Well and the first and second defendants are entitled to $\frac{1}{4}$ share and the third defendant is entitled to $\frac{1}{4}$ share and another son of Gurusamy Mudaliar is entitled to $\frac{1}{4}$ share. The fourth defendant has purchased the share of Ramachandran's $\frac{1}{4}$ share recently. The defendants tried to destroy the Well and converted it as a land by closing the same. The defendant's have attempted to



prevent the plaintiff from using 'A' and 'B' schedule pathway by causing obstruction and that was prevented. Subsequently, the plaintiff has filed the suit for permanent injunction.

3. The written statement filed by the first defendant and adopted by the defendants 2, 3 and 4 in brief:

The defendants deny that the plaintiff's family has been allotted with the lands in S.No.3/2, 5, 8, 11 and 13. It is false to state that there was a pathway to S.No.3 through S.No.4/13 and it has not been stated so in the partition deed of the year 1975. If the same is found place in the subsequent partition deed dated 05.07.1989, it is not true. The plaintiff is entitled only to 'A' schedule property and he did not use any pathway. The pathway alleged by the plaintiff is situated in defendant's patta lands. During resurvey, a small portion of land in resurvey No.4/1A has been attached to the land in resurvey No.4/13. However, it ought to have been connected to resurvey No.4/1A. The defendants did not claim any right in the suit 'B' schedule property.



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3.1 It is false to state that the defendants have attempted to close the Well in 'C' schedule property. The well was closed with stones and wood and that has to be properly maintained. The defendants have obtained service connection to the Well in the year 1987 and have a 5 H.P. Motor pump sets. As there was no water in the Well, it was in disuse for nearly 7 years. When the defendants attempted to clean the Well, it was prevented by the plaintiff. The plaintiff is irrigating his lands by taking water from some other Well. The defendants did not obstruct the plaintiff from using 'B' schedule pathway.

4. On the basis of the above pleadings, the trial Court has framed the following issues:

1/ 'V' ml;ltiz brhj;jhd tz;oj;jlkhdJ thjpapd; g{kpf;F bry;y
trjpa[hpikapd; mog;gilapy; gad;gLj;jg;gLfpwjh?

2/ gpupthjpfs; jhth rp bc&l;a{y; brhj;jpy; cs;s ku';fis mfw;w
chpika[s;stuh ?



3/ thjp nfhhpa ghpfhuk; fpilf;fj;jf;fjh ?

4/ ntW vd;d ghpfhuk; thjpf;F fpilf;fj;jf;fjh ?

5. During the course of the pleadings, on the side of the plaintiff two witnesses have been examined as P.W.1 and P.W.2 and documents Exs.P1 to P9 were marked. On the side of the defendants two witnesses have been examined as D.W.1 and D.W.2 and no documents were marked. Two Court documents were marked as Exs.C1 and C2.

6. At the conclusion of the trial the trial Court decreed the suit in respect of suit 'A' schedule property and dismissed the suit in respect of 'B' and 'C' schedule property and the first appeal preferred by both parties got dismissed and now the plaintiff has filed this Second Appeal pressing his relief in respect of 'B' and 'C' schedule properties.

7. The Second Appeal is admitted with the following Substantial Questions of Law:



“1) Whether the judgment of the Court below are vitiated in that they have refused to grant a relief in respect of the suit B schedule property on the ground that there is already a decree in respect of this property under Exhibit A4, whereas the parties to the said decree and the present suit are different ?

2. Whether the judgment of the Courts below are vitiated in that they have refused to grant relief in respect of the C schedule property only on the presumption that no agriculturist would attempt to close the agricultural well ?”

8. The learned counsel for the appellant / plaintiff submitted that both the Courts below has not granted the relief in respect of ‘B’ schedule property only on the presumption that the very same relief has been granted to the appellant / plaintiff in the earlier suit in O.S.No.528/1985 and A.S.No.70/1999; though there was a compromise decree entered between the plaintiff and the defendants in A.S.No.70/1999 in respect of the pathway right of the plaintiff, a new cause of action has arisen subsequently and hence the appellant / plaintiff was compelled to file the suit; hence, the Courts ought to have granted the relief by taking into consideration of the subsequent cause of action and the relief in respect of ‘C’ schedule has been denied only on surmises and premises by



ignoring the actual violation caused by the defendants to the plaintiff to enjoy the rights over the Well; even in the Written statement of the respondent / defendants they admit the plaintiff's right in 'B' schedule cart track and also the plaintiff's right in the 'C' schedule Well; in such case the Courts below ought to have decreed the suit in entirety instead of dismissing it in respect of suit 'B' and 'C' schedule property.

9. The learned counsel for the respondents / defendants submitted that when there is already a decree granted in respect of 'B' schedule property, the plaintiff ought not to have filed a suit once again against the same property which is hit by the principles of *res judicata*; so far as the 'C' schedule Well is concerned, there is no necessity to close the Well and hence it is right for the trial Court and first appellate Court to deny the relief sought by the plaintiff in respect of 'C' schedule Well.



10. The matter lies in a very narrow campus. Even in the written statement, the defendants did not deny the plaintiff's right to use 'B' schedule pathway and also their 1/4th share in the 'C' schedule Well. Even the respondents / defendants did not deny the fact that there was a compromise decree passed in A.S.No.70/1999 between the same parties and the parties have agreed that 'B' schedule cart track will be formed and both the parties have the right to use the 'B' schedule pathway. When the right of the appellant / plaintiff is confirmed and the plaintiff has been given with the right to use 'B' schedule property by virtue of the compromise decree already passed in the earlier proceedings, in case of any violation of the said decree by way of causing obstruction to the appellant / plaintiff to enjoy the above right, would give her the cause of action to initiate the contempt proceedings and not a fresh suit. Even now the respondents / defendants did not deny the plaintiff's pathway right over the 'B' schedule cart track. In case the respondents / defendants continue to cause obstruction to the plaintiffs from using the cart track, it is always open to the plaintiff to initiate contempt action.



11. The only argument of the learned counsel for the appellant / plaintiff is that whenever a violation is caused, that would give rise to new cause of action and hence the plaintiff is entitled to maintain a suit for permanent injunction. Only by saying that the defendants have prevented the plaintiff from enjoying the pathway right, the earlier suit has been initiated and in which the right of the parties were confirmed and one of the terms of the compromise is that one party should not obstruct the other party from using 'B' schedule cart track. In such case, the decree itself would take care of any violation committed by either of the parties and the party affected has got the right to initiate contempt actions against the one who has violated the terms of compromise which form part of the compromise decree passed in A.S.No.70/1999. Thus the Substantial Question of Law No. 1 is answered.

12. With respect to 'C' schedule property which pertains to $\frac{1}{4}$ joint right for the plaintiff in the suit Well also the respondents / defendants do not have any quarrel. In the written statement itself the defendants have admitted the plaintiff's right over the same. In such case, the trial Court could have granted



the decree in respect of 'C' schedule property also. But the Courts have thought that no agriculturist would close the Well.

13. From the observation of the trial Court's judgment it is clear that the plaintiff was using the water from some other Well and not from the suit Well. When an agriculturist has got a right in a Well, he would not relinquish such right except for any valid reasons when he continues to undertake agricultural activities in his lands. The Courts below ought to have appreciated the above evidence as a preponderance of probabilities that the defendants would have obstructed the plaintiff from making using of his right in the suit Well. Had the plaintiff's right in the suit 'C' schedule Well has not been prevented he would not have stopped from using the same. Instead of appreciating the cause of action, basing on the evidence available on record, it appears that the Courts below have denied the relief in respect of the 'C' schedule property on a mere presumption, which is not correct. Thus the Substantial Question Law No.2 is answered.



14. In view of the above, the Second Appeal is allowed. No costs.

Connected miscellaneous petitions are closed.

19-11-2025

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To:

1. The Sub Judge, Bhavani .
2. II Additional District Munsif, Bhavani



WEB COPY

SA No. 156 of 2



DR.R.N.MANJULA, J.

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SA No. 156 of 2011



WEB COPY

SA No. 156 of 2



19-11-2025