



S.A.No.629 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2025

CORAM:

THE HONOURABLE MRS JUSTICE **R.KALAIMATHI**

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- 1.C.Perumal (died)
- 2.Thangammal
- 3.P.Sasikumar
- 4.P.Thavamani
- 5.Kala
- 6.Akilandeswari

st

(1 st appellant died . Appellants 2 to 6
brought on record as L.Rs of deceased

st

1 st appellant vide Court order dated 02.08.2023
made in CMP.No.4637/2022)

... Appellants /Plaintiffs

Vs

- 1.R.Arjunan
- 2.Lakshmi

... Respondents/Defendants

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.47 of 2011, dated 21.11.2011 on the file of II Additional Subordinate Court, Salem, reversing the judgment and decree in O.S.No.271 of 2009, dated 11.02.2011 on the file of the Principal District Munsif Court, Salem.



For Appellants : Ms.P.Veena Suresh

For Respondents : Mr.Ruban Chakkaravarthi
for M/s.Kaithamalai Kumaran

JUDGMENT

This second appeal has been preferred by the plaintiff against the Judgment and Decree dated 21.11.2011 passed in A.S.No.40 of 2011 by the II Additional Subordinate Court, Salem reversing the Judgment and decree dated 12.02.2011 made in O.S.No.271 of 2009, on the file of the Principal District Munsif Court, Salem.

2. The parties are indicated as per the litigative status and ranking before the Trial Court.

3. According to the plaintiff viz, C.Perumal , s/o.Chinnathambi Gounder of Panangadu, Andipatti, Sivthapuram, Salem Taluk, the suit property is a private road belonging to the plaintiff and situated in S.No.15/10B. The said property is part of the property purchased by the plaintiff's father one Chinnathambi Gounder and the plaintiff, on the death of his father, succeeded to the properties. The legal heirs of Arumuga Gounder and Chinnathambi



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Gounder appointed one Rathinam, S/o.Annathaa Gounder of Pottiyapuram as

Power of Attorney to sell their lands in S.No.14/3 – 0.12 cents, in S.Nos.14/5A - 0.22 cents, in S.No.14/5B - 0.19 cents in S.No.14/7 0.28 cents, in S.No.14/8, 0.07 cents, in S.No.14/9 - 0.08 cents, in S.No.15/10A, - 0.06 cents, in S.No.15/10zb, - 0.05 cents, in S.No.15/7 - 0.23 ½ cents, in S.No.15/18 – 0.16 cents. The plaintiff and above said persons had given power to sell the above lands with a right of easement/ right of way in the suit land by way of grant only the above lands. The right of way was given by the plaintiff from the Siddharkoil main Road to the above mentioned lands only. The power of attorney has no authority to give right of way to any other lands other than the above mentioned.

3.1. The easementary right has to be enjoyed only according to the extent of grant. The owner of the land should not be burdened by any excess or unauthorized use. Any excess use or unauthorized use is illegal. The defendants are neighbouring land owners. They have got lands on the east, west and south of the properties of the plaintiff and others. There is a way to the defendants lands from Siddhar Koil Main Road. There is a panchayat road on the southern and western side of the defendants' land.



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3.2. The said Rathinam attempted to sell the right of way to the said land to other party. The act of Rathinam is in excess of the authority given under the deed. Such unauthorized act is not valid and binding upon the plaintiff's.

3.3. Notice to the said Rathinam was issued by the plaintiff and the suit in O.S.No.649 of 2008 was filed before the District Munsif Court, Salem. On 25.03.2009, the defendants and their men attempted to take bullock cart with mud to their lands through the suit land. The defendants have no right or interest to take cart or use the land as way to their lands on the east, west and south of the lands covered under Power of Attorney deed dated 13.12.2007.

3.4. The defendants and their men have to be restrained by means of permanent injunction from in any way interfering or using the suit land as pathway to their properties on the south, east and west of the properties covered under Power of Attorney Deed dated 13.12.2007.



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4. Contending contra, the defendants who are the husband and wife would contend in common, that the defendants have purchased the property covered in S.No.14/5A, 14/5B to an extent of 2210 sq.ft. On 18.02.2008, the second defendant has purchased the property covered under S.No.14/9 to an extent of 1762 sq.ft. The above survey numbers have been given in the Power of Attorney deed. So, as per the deed of Power of Attorney, the vendees are entitled to enjoy the right of way. The plaintiff cannot impose restrictions that the defendants should not use the suit land for reaching other than suit properties.

5. The defendants, after purchasing the aforesaid properties, are planning to construct house and to take all building materials to the concerned house site through the road which runs from north to south in the centre of the property. The plaintiff has no right to obstruct the statutory right of way of the defendants.

6. Based on the divergent pleadings, the trial Court framed the relevant issues. At trial, to substantiate the plaint details, on the plaintiff's side, two witnesses were examined and six documents were marked. On the side of

the defendants, 1st defendant was examined as D.W.1 and one Tr.Mariyappan

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was examined as DW2 and three documents were marked.

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7. The learned counsel for the appellants/defendants would strenuously argue that the suit property belonged to the plaintiff. In the power of attorney deed, the plaintiff has specifically granted right to the power of attorney holder to convey the purchasers right of way only for the plots in the survey numbers mentioned in the Power of Attorney Deed. She would further contend that the easementary right of way has been granted only to lands, covered under the power of attorney. It is a well settled position of law that the power of attorney holder has no right to grant any right in excess of what is given to him under the power of attorney deed. Any right given to the defendants by the power of attorney, which was not given to the power of attorney by the plaintiff, is null and void.

8. Per contra, the learned counsel appearing for the respondents would vehemently contend that the defendants have purchased the plots for their personal use to go to their lands purchased from Krishnaveni, The power of attorney Rathinam has given the right of way to the defendants to reach their lands also. He would further contend that the plaintiff cannot impose



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restrictions on how to use the pathway. Once the power of attorney has been given, the plaintiff does not retain any lands in the suit property he has no right at all to question the defendants.

9. Upon appreciation of oral and documentary evidence and after hearing both sides arguments, the Trial Court as well as the First Appellate Court gave a finding in favour of the plaintiffs.

10. The trial Court has held that the defendants' can use the pathway only to reach the plots purchased from the power of attorney of the plaintiff namely Rathnam and the defendants have no right to use the pathway to reach their lands and chose to decree the suit in favour of the plaintiff.

11. Aggrieved by the same, defendant Nos.1 & 2 have preferred Appeal in A.S.No.47 of 2011 before the II Additional Sub Court, Salem against the Judgment and Decree dated 21.11.2011. Upon consideration of the trial Court records and after hearing the arguments of both sides, the First Appellate Court held that the defendants have purchased under Ex.B2 property through the plaintiff's power agent, the defendants can very well use the suit property to reach the property which they have purchased under

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Ex.B2 and from the property mentioned in Ex.B2 they can reach the other properties. The plaintiff has failed to prove that he has retained any properties mentioned in Ex.A4- Power of Attorney, the Principal District Judge, Salem allowed the appeal by Judgment and Decree dated 11.02.2011 and dismissed the suit in O.S.No.271 of 2009.

12. To put it in a nutshell, the plaintiff, who was the erstwhile owner of layout shown in the rough plan, has filed the suit to grant permanent injunction restraining the defendants from using the suit property/pathway to reach the lands situated to the east, west and south of lay out.

13. It is an admitted fact that the power of attorney of the plaintiff has executed Ex.B 2 and Ex.B5 Sale Deeds in favour of the defendants no.1 and 2 to use the suit property/pathway to reach the plots as well as to reach their lands. The defendants have not claimed any easementary rights.

14. It is pertinent to note that the suit property namely, pathway is laid to reach the plots situated in layout (26 plots) . The First Appellate Court has held that the plaintiff has not retained any properties mentioned in Ex.A1 power of attorney deed .



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15. The suit property is in fact pathway for the purpose of using the same by the purchasers of plots put up in the layout. When the suit pathway is laid for selling plots in the lay out and all the plots (26 plots) are sold out, the plaintiff does not have any right to question the plot owners as to how to use the path way (suit property). The plaintiff has to seek remedy from his power of attorney Rathinam if he has exceeded the authority. The plaintiff has stated that he filed the suit before the District Munsif Court, Salem against the power of attorney in O.S.No.649 of 2008.

16. Nothing is putforth about the said suit by the appellant herein. In such a view of the matter, this Court does not find any perversity or infirmity in the findings of the First Appellate Court and this Court also does not find any good reason to interfere with the well considered findings of the First Appellate Court. No substantial questions of law arise for consideration.

17. Based on the aforestated observations and discussions, this second appeal stands dismissed. Sequel to this, the Judgment and decree



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passed by the First Appellate Court in A.S.No.47 of 2011, dated 21.11.2011

stands confirmed. There is no order as to costs.

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Internet:Yes

Index:Yes/No

Speaking/Non speaking order

kkd

To

1. Principal District Munsif Court,
Salem .
2. The II Additional Subordinate Court, Salem.



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R.KALAIMATHI,J.

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