



WEB COPY



S.A.No.803 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.05.2025

CORAM:

THE HONOURABLE MRS. JUSTICE **R.KALAIMATHI**

S.A.No.803 of 2012
and M.P.No.1 of 2012

T.Senthilkumar @ Kolanjinathan

... Appellant/Plaintiff

vs.

- 1.Natarajan(died)
- 2.Palaniammal
- 3.Dharmaraj
- 4.Sivakumar

(R2 to R4 brought on record as LR's of
the deceased sole respondent viz.,

Natarajan vide Court order dated 15.11.2021

made in CMP.Nos.7234, 7235 & 7240 of 2020) ... Respondents/Defendants

This Second Appeal is filed under Section 100 of C.P.C. to set aside the decree and Judgment dated 22.09.2011 passed in A.S.No.59 of 2009 on the file of the Subordinate Court, Ariyalur, reversing the decree and Judgment dated 21.08.2009 passed in O.S.No.209 of 2007 by the District Munsif Court, Ariyalur.

For Appellant : Mr.P.Valliyappan
Senior Counsel
for M/s.S.M.S.Sriram Narayanan

For Respondents : Mr.C.Sa.Krishnan
for M/s.V.Srimathi



S.A.No.803 of 2012

JUDGMENT

WEB COPY

This second appeal has been preferred by the plaintiff against the Judgment and Decree dated 22.09.2011 passed by the Subordinate Court, Ariyalur in A.S.No.59 of 2009.

2. Parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. According to the plaintiff, S.F.No.483/3 & 491/4 belongs to the plaintiff ancestrally in Thathanoor, Kumizhiyam Road. From time immemorial, on the eastern side, Chellamuthu and the plaintiff reach their lands along the pathway shown in Yellow colour in the plan, which is situated in S.F.No.483/3. Through his pathway only cart, cattle and men used to reach the lands on the eastern side from the road and there is no other pathway. The plaintiff and his predecessor in title used this pathway from time immemorial and even prescribed right by their open, continuous and peaceful enjoyment of pathway as of right.

3.1. The plaintiff purchased the land in S.F.No.491/4 from Chellamuthu on 13.10.1998. The defendant purchased the land in S.No.483/3 from the very same person - Chellamuthu on 03.12.2003. In both the sale deeds, specific



S.A.No.803 of 2012

recitals regarding pathway was omitted to be mentioned. Nevertheless, the pathway is being used by the plaintiff as before and the non-mentioning of pathway in the sale deed will not erase the plaintiff's right of the pathway. Since easementary right runs with the land, the defendant objected the plaintiff from using the pathway, hence the suit was filed.

4. Whereas, the defendant filed the written statement contending interalia that it is a lame excuse that the vendor omitted to state the pathway in the suit property. He neither objected nor created any problem to the plaintiff. Since all of a sudden, the plaintiff is trying to create and claim new pathway right in the property of the defendant arbitrarily without having any semblance of right in the suit property. The defendant used to take the pesticide with water in a barrel in a tractor and for which the defendant for his personal use left the suit property in his land. The plaintiff and his predecessors have their pathway from the north. Even the sale deed of the plaintiff discloses the fact that in the four boundaries details, it is mentioned as on the northern side 'Ozhungai,' which nullifies the claims of the plaintiff. The plaintiff claims are not sustainable in law.

5. Based on the diverget pleadings, the Trial Court framed the following issues :-

- i) Whether the plaintiff is entitled for declaration of easementary right of pathway and for



S.A.No.803 of 2012

consequential permanent injunction as prayed for?

ii)

iii) To what other relief, the plaintiff is entitled to?

6. At trial, to substantiate the plaint details, on the plaintiff's side, the plaintiff has examined himself as P.W1 and ten documents have been marked. Ex.A2 is the Sale Deed dated 13.10.1998 executed in favour of Defendant T.Senthilkumar in respect of S.No.491/4. Ex.A3 is the Sale Deed executed in favour of the defendant Natarajan by Chellamuthu dated 03.12.2003 in respect of S.No.483/3. Ex.A6 to Ex.A10 are the copies of Field Measurement Book. On the defendant side, four witnesses were examined. The defendant has examined himself as D.W.1., Mr.Kaliyaperumal – D.W.2 and D.W.4 – Subramanian are independent witnesses. D.W.3 – Anbazhagan is a Senior Draftsman and seven documents were marked. Ex.C1 and Ex.C2 are the rough sketch and report of the Advocate Commissioner.

7. The trial Court upon consideration of oral and documentary evidence and after hearing the arguments advanced by the learned counsel on either side, held that the pathway right claimed by the plaintiff is an implied grant and concluded that the plaintiff is entitled for easementary right of pathway over the suit property and ultimately decreed the suit in entirety.



S.A.No.803 of 2012

8. Aggrieved, the defendant preferred appeal before the Sub Court,

Ariyalur in A.S.No.59 of 2009.

WEB COPY

9. The First appellate Court, in consideration of the case records and upon hearing the arguments of both sides, it was concluded that the plaintiff did not prove as to the usage of suit pathway and he has omitted to mention about the Ozhungai which runs in the east-west to the north of plaintiff's property namely, S.No.491/1 and for the prime reason that the plaintiff fails to prove his case and ultimately allowed the appeal by setting aside the Judgment of the Trial Court.

10. Aggrieved, the plaintiff herein has preferred this second appeal.

11. The following substantial questions of law arise for consideration :-

i) When Section 8 of the Transfer of Property Act contemplates that with every transfer of property the legal incidents like the easements annexed thereto passes on to the transferee, is the Lower Appellate court correct in law in holding that the appellant is not entitled to the easementary right over the suit property purchased under Ex.A2 Sale Deed dated 13.10.1998?

ii) When the respondent has admitted that both have purchased the property from Sellamuthu and that Sellamuthu was reaching his lands through the suit property, whether the Lower Appellate Court is correct in law in denying the relief declaration and injunction?



12. The learned counsel appearing for the appellant would vehemently contend that Ex.C1 & Ex.C2 reveal the existence of suit pathway and the appellant/plaintiff does not have any right alternate access and D.W.1 has also categorically admitted that there is a east-west pathway and he is using the same to reach his land.

13. To strengthen his argument, the following judgments were referred to :-

- i) ***Mangayarkarasi vs. Veerappan Ambalam and Others*** reported in, (1998) 2 LW 147.
- ii) ***K.Kolandaidsami Gounder (died) and another vs. Manickam*** reported in, 2001 (4) CTC 193.
- iii) ***Ponnan and Others vs. Peraman and another*** reported in, 2006 (5) CTC 573.
- iv) ***Loordhu Mary and 7 Others vs. The Bishop of Tanjore & the President, the Diocese of Tanjore Society at Tanjore, Bishop House, Tr5ichy Town and Munsif and another,*** reported in, 2007 (1) CTC 628.

14. Sum and substance of the case of the plaintiff is that the land in S.Nos.491/1 and 491/2 belonged to the plaintiff ancestrally. From the road on the eastern side, Chellamuthu (plaintiff's predecessor in title in respect of S.No.491/4) and the plaintiff has been reaching his lands through the suit pathway which is situated in S.F.No.483/3, the plaintiff purchased the land in S.No.491/4 from Chellamuthu on 13.10.1998. In the said sale deed, specific recitals regarding pathway is not mentioned.



S.A.No.803 of 2012

WEB COPY

15. Whereas, the defendant Mr.Natarajan, who has purchased the property in S.No.483/3 to the south of pathway would strongly contend that the pathway is not being used by the plaintiff and had only been using the Ozhungai which is situated on the north of S.No.491/1. He has been reaching the ancestral land and sought for dismissal of the suit.

16. The plaintiff claims easmentary right through the suit pathway.

17. In order to prove the case, the plaintiff has examined himself as P.W.1 and filed his proof affidavit in line with the details of the plaint. No other independent witness namely, surrounding land holders was examined to speak about the usage of pathway by the plaintiff and the revenue official has not been examined.

18. On application by the plaintiff, an Advocate Commissioner has been appointed and he has filed his report and a Rough Sketch. From thorough perusal of the report and Rough Sketch, it is pellucid that there is a pathway on the eastern side of Kumiliyam Road on the north of the defendant's property (S.No.483/3) it ends in the defendant's property. Admittedly, these details are not found in the sale deed of either plaintiff (Ex.A2) or defendant's sale deed (Ex.A3).



S.A.No.803 of 2012

WEB COPY

19. D.W.1 would admit the fact that there is a pathway situated on the north of his property wherein it is used by him to plough the land with the help of tractor. The revenue staff has been examined as P.W.3 (Mr.Anbazzhagan – Draftsman). He has filed the Field Measurement Book (Ex.B7) in respect of Field S.Nos.483, 490 & 491. In the Field Measurement Book pertains to S.No.483 the suit pathway is not shown. D.W.2 - Mr.Kaliyaperumal and D.W.4- Mr.Subramanian, independent witnesses have spoken about the pathway and they had supported the case of the defendant to the effect that it is only used by the defendant. D.W.4 has spoken about the presence of Ozhungai which runs to the north of S.No.491/1 (plaintiff's ancestral property).

20. The plaintiff has claimed equitable relief. Whether the plaintiff has established a strong case is a moot point, except the self-assertion of P.W.1 and the Advocate Commissioner's report, no other evidence is available to support the case of the plaintiff.

21. The suit property is pathway which is shown as 'ABCD' by the Advocate Commissioner in his Rough Sketch. To the north of the suit pathway land S.No.483/2 is situated which belongs to one Perumal. To the south of the suit pathway, the defendant has purchased the land S.No.483/3. To the east



S.A.No.803 of 2012

of the above said Perumal, land S.No.491/1 is situated (plaintiff's ancestral property). To the east of the above said defendant's land, in S.No.491/2 is situated (plaintiff's ancestral property. To the north of the land S.No.491/1, Ozhungai runs in east-west. There is no dispute as to the lie and location of the property.

22. In the given circumstances, for the following reasons, the plaintiff has to be non-suited.

i) No independent witness or his predecessor in title have been examined to establish his case.

ii) One who seeks claim before the Court has to come with clean hands.

iii) The defendant's side has spoken about the Ozhungai which runs on the east-west and on the north of S.No.491/1 (ancestral property of the plaintiff).

iv) Revenue documents also do not support the case of the plaintiff .

23. Having failed to establish this case, it should not lie in the mouth of the plaintiff that he has been using the suit pathway to reach his land in S.No.491/1 and 491/2 (ancestral property of the plaintiff).



WEB COPY



S.A.No.803 of 2012
R.KALAIMATHI,J.

kkd

24. This Court does not find any perversity or infirmity in the findings of the First Appellate Court and this Court does not find any good reason to upset the findings of the First Appellate Court. In such view of the matter, the substantial questions of law are answered against the plaintiff.

25. Based on the aforesaid observations and discussions, this second appeal stands dismissed. Sequel to this, the Judgment and decree granted by the Subordinate Court, Ariyalur in A.S.No.59 of 2009 dated 22.09.2011 stands confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

22.05.2025

kkd
Internet:Yes
Index:Yes/No
Speaking/Non speaking order

To

1. The Principal District Court, Krishnagiri,
2. The Principal Subordinate Court, Ariyalur.

S.A.No.803 of 2012