



S.A.No. 385 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

Dated 22.08.2025

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

S.A.No. 385 of 2015
and M.P.No.1 of 2015

Govindasamy

... Appellant

Vs

- 1.Veerasley (Died)
- 2.Murugesan (Died)
- 3.Chinnapillai (Died)
- 4.Chandrakasan (Died)
- 5.Manimegalai
- 6.Sangeetha
- 7.Mani Bharathi
- 8.Vallarasu
- 10.Lalitha
- 11.Vembu
- 12.Kumar
- 13.Chinnapillai
- 14.Venkatesan
- 15.Chinnadurai
- 16.Lakshmi
- 17.Aandal

... Respondents

*(R2 Died, RR5 to 8 are brought on record as legal heirs of the deceased R2
R3 died, RR9 to 12 are brought on record as legal heirs of the deceased R3
R4 died, RR13 to 17 are brought on record as legal heirs of the deceased R4
vide Court order dated 01.08.2025 made in C.M.P.Nos.19261, 19264, 19266,
19269 to 19271 of 2024 & 7417 of 2025 in S.A.No.385 of 2015)*

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure



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Code against the Judgment and decree of the Additional Subordinate Judge's Court at Ariyalur, dated 27.02.2015 in A.S.No.105 of 2009 partly reversing the judgment and decree of the Additional District Munsif Court at Ariyalur, dated 29.07.2009 in O.S.No.578 of 2004.

For Appellant : Mr.P.Valliappan Senior Counsel
for Mr.S.M.S.Shriram Narayanan

For Respondents : RR1 to 4 – Died
Mr.Niranjhan for RR5 to 17
for Mr.Nihal Ahamed

JUDGMENT

This Second Appeal had been filed against the judgment and decree of the Additional Subordinate Court, Ariyalur dated 27.02.2015 in A.S.No.105 of 2009 partly reversing the judgment and decree of the Additional District Munsif Court at Ariyalur, dated 29.07.2009 in O.S.No.578 of 2004.

2. Heard Mr.P.Valliappan, learned Senior Counsel for Mr.S.M.S.Shriram Narayanan, learned counsel for the appellant and Mr.Niranjhan, learned counsel for Mr.Nihal Ahamed, learned counsel appearing on behalf of the respondents 5 to 17.

3. Learned counsel appearing for the appellant would contend that the appellant had filed the suit for declaration that the suit scheduled property is a



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pathway and with a consequential injunction restraining the respondents from interfering with the petitioner's right in using the same and also for a mandatory injunction for removal of the hanging branches in the suit scheduled property. He would submit that the Trial Court had partly decreed the suit holding that the appellant had a right of usage as a foot pathway and with an injunction was granted as prayed for. But, the Court had held that the plaintiff is not entitled to use the same as a cart pathway and also for a mandatory injunction as sought for.

4. As against the same, the appellant had filed an appeal suit which was partly rejected holding that the appellant would be entitled for a right of cart track pathway with a width of 7 feet only. The mandatory injunction sought for was also negatived by the first Appellate Court. Aggrieved against the same, the present appeal had been filed.

5. Learned Senior Counsel would vehemently contend that having accepted Ex.A5, the first Appellate Court ought to have granted a decree in its entirety in respect of Ex.A5 and there was no reason available for the first Appellate Court to restrict the cart track to only 7 feet. He would further submit that the mandatory injunction ought to have been followed as the over hanging branches of the suit scheduled property would impede the usage of



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the same as a cart tack by the appellant. He would further bring it to the notice of this Court that the respondent had not challenged the judgment and decrees under which the appellant was entitled to used the suit property which would itself show that the appellant's case for the entire 15 feet width of the suit scheduled property has been proved. Therefore, he seeks interference with the judgment and decree of the Court below.

6. Countering his arguments, Mr.Niranjhan, learned counsel appearing for the respondents 5 to 17 would contend that the appellant neither in his pleadings nor even in the schedule had specifically made a statement that the suit scheduled property which is a cart track is 15 feet in width. He would further submit that even under Ex.A5 on which basis the Courts have come to a conclusion that the suit property is a cart track, no measurements have been given. He would further submit that there has been no evidence to substantiate that the cart track measured 15 feet and therefore, there is no error in the first Appellate Court's presumption that the cart track would only be 7 feet. Therefore, he would submit that there is no error apparent on the face of this Court much less any substantial question of law as framed by the appellant had arisen for consideration and therefore, he prays this Court to dismiss the appeal.



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7. I have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

8. The following substantial question of law has been framed by this Court on 21.05.2025.

“a. Having found that the appellant is entitled to Cart-track right, whether the lower appellate Court is incorrect in law in restricting the width of the Cart-track to just seven feet, overlooking the fact that the same is not feasible to use?

b. whether the Courts below are correct in law in non-suited the appellant with regard to the relief of Mandatory Injunction, on the ground of lack of report and plan by advocate commissioner, especially when an advocate commissioner can be appointed, even in appellate stage?”

9. With regard to question of law (a) that had been framed by the Court, as rightly pointed out by the learned counsel for the respondent is wholly on a presumption. Neither under Ex.A5, nor the pleadings in the plaint or even in the schedule to the plaint, the appellant had given the measurement of the cart track. Further, the appellant had not placed any material on record to show that the presumption that had been arrived at by the first Appellate Court in holding that the cart track has a width of 7 feet is perverse. The relief that had



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been granted by the first Appellate Court had been made on a presumption that the cart track should have a minimum width of 7 feet. Such presumption in the view of the Court does not require any interference, for the simple reason that the appellant who is the plaintiff had not substantiated by any material whatsoever that the cart track measures more than 7 feet. Further, the said question of law has framed by this Court is wholly factual and there are no law involved in the same.

b) Since, the appellant had not substantiated the width of the cart track. That apart, he had not substantiated by any specific pleading as to the hindrance that had been caused to the appellant by producing any substantial evidence either both or by documentary or oral evidence. The mandatory injunction as prayed for cannot be granted. The Courts below had rightly denied the relief of mandatory injunction as prayed for by the petitioner which also requires no interference by this Court in the present Second Appeal. The second substantial question of law is accordingly answered.

In fine, the Second Appeal fails and accordingly the same is dismissed. However, there shall be no order as to costs.

22.08.2025



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Index: Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
Gba

To

- 1.The Additional Subordinate Court, Ariyalur .
- 2.The Additional District Munsif Court, Ariyalur
- 3.The Section Officer,
V.R Section, High Court Madras.



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K.KUMARESH BABU,J.

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A Pre-delivery order made in
S.A.No. 385 of 2015
and M.P.No.1 of 2015

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