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SA No. 693 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-11-2025

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THE HONOURABLE MR.JUSTICE P. DHANABAL

SA No. 693 of 2015

and

C.M.P. No. 3022 OF 2023

NATESAN

S/o Ranga Pillai, Opposite Mariamman
Temple, Porasalpatti Akkaraipatti Post,
Mallasamudhram Via, Namakkal Dt.

Appellant(s)

Vs

Senthil Raja

S/o A.Subramaniam, Kanakkupillai
Thottam, Opposite Mariamman Temple,
Porasalpatti Akkarai Post,
Mallasamudhram Via, Namakkal Dt.

Respondent(s)

PRAYER: The Second Appeal has been filed under Section 100 of Code of Civil Procedure against the Judgment and Decree of the learned Subordinate Judge, Rasipuram dated 10.04.2015 in A.S. No.8 of 2014 confirming the Judgment and Decree of the learned District Munsif, Rasipuram dated 08.04.2013 in O.S. No.214 of 2010.

For Appellant(s): M/s.T.M.Hariharan

For Respondent(s): Mr. T.R. Rajagopalan,
Senior Advocate for
M/s.P.Veena Suresh



ORDER

The Second Appeal has been preferred as against the Judgment and Decree of the learned Subordinate Judge, Rasipuram dated 10.04.2015 in A.S. No.8 of 2014 confirming the Judgment and Decree of the learned District Munsif, Rasipuram dated 08.04.2013 in O.S. No.214 of 2010, wherein the respondent herein has filed an Original Suit in O.S. No.214 of 2010 on the file of the learned District Munsif, Rasipuram for the relief of declaration and permanent injunction and the said Suit was dismissed in respect of declaration and the Suit was decreed in respect of permanent injunction. Aggrieved by the said decree and judgment, the defendant had preferred an appeal before the I Appellate Court i.e., Subordinate Court, Rasipuram and the same was dismissed. Aggrieved by the said decree and judgment, the present Second Appeal has been preferred by the defendant.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Trial Court.

3. **The brief averments of the Plaint before the trial Court are as follows:**

The Suit property originally belongs to the Plaintiff through a Settlement Deed dated 18.06.1997 and the Plaintiff is in enjoyment and possession of the



property. The defendant is having property on the western side of the Plaintiff's land and the defendant purchased the property through a Sale Deed dated 27.02.1992. The defendant purchased the property excluding cart track which is on the Southern side of the defendant's land. There is cart track runs from Vaiyappamalai Road towards Eastern side and on the Southern side in Survey No.36/1C and again, it runs on the Northern side and runs on the Western side of Survey No.51/1C and 35/5 and on the Eastern side of Survey No.35/3. The said cart track is in breadth of 15 feet from the Road. The cart track is mentioned as litteri in all the Sale Deeds. While so, the said cart track is common for all the adjacent land owners. Now the defendant is claiming title of the cart track. On 26.10.2010, the defendant along with rowdy elements came to the property and tried to obliterate the existing cart track and also planted coconut trees upto his boundary and on the southern side of the coconut trees, the cart track runs towards East. Therefore, it is required for the Plaintiff as 'easement of necessity'. Therefore, the Plaintiff has filed the Suit for declaration and for permanent injunction.

4. The brief averments of Written Statement filed by the 1st defendant are as follows:-

The Suit filed by the Plaintiff is false and not maintainable either in law or on facts. The Plaintiff has to prove all the averments made in the Plaint,



except those that are specifically admitted by the defendant. It is true that the defendant purchased the property through a Sale Deed dated 27.02.1992 and it is not correct that excluding the cart track situated on the southern side, the property was purchased. In fact, the defendant purchased the property through a Sale Deed dated 27.02.1992. At the time of purchased of the property, there was no any pathway in existence and he purchased the entire property for valuable consideration. The Survey No.36/1c is exclusively belonging to the defendant. After purchase of the property by the defendant, there was no any pathway as alleged in the Plaint. The Plaintiff is using the pathway from Aattayampatti Main Road to Purasalpatti Road. The defendant is also using the said Road to access his property and there is no pathway in existence in S.F. No.36/1C. Already the Suit in O.S. No.200/2010 was filed, in which, an interim order was obtained. Suppressing the same, the present Suit has been filed by the Plaintiff. Therefore, the Suit is liable to be dismissed.

5. Based on the above said pleadings and upon hearing both sides and perusing the documents, the trial Court had framed the following issues:

(i) Is it true that there is no pathway available in S.F. No.36/1C and the Plaintiff trespassed in the property and created pathway on 02.12.2010 as alleged by the defendant.

(ii) Whether the Suit Plan is incorrect.



(iii) Whether the Plaintiff has pathway through Survey Nos.28, 32, 34, 35 and 51.

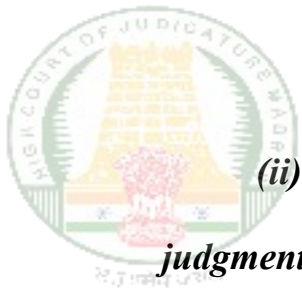
(iv) Whether the Plaintiff is entitled to the relief as prayed for in the Plaintiff.

(v) To what reliefs, the parties are entitled to.

6. In order to prove the case of the Plaintiff, before the trial Court, he examined PW1 to PW3 and marked Ex.A.1 to Ex.A.13 and on the side of defendant, DW1 was examined and Ex.B.1 to Ex.B.16 were marked. The Commissioner's report and Plan have been marked as Ex.C.1 and Ex.C.2. After evaluating the oral and documentary evidences adduced on either side, the trial Court decreed the Suit in respect of the permanent injunction and dismissed the Suit in respect of declaration. Aggrieved by the said decree and judgment passed by the trial Court dated 08.04.2013, the defendant had preferred an appeal before the First Appellate Court i.e., Subordiante Court, Rasipuram in A.S. No.8 of 2014 on various grounds.

7. The First Appellate Court after hearing both sides and perusing the records, framed the following ***points for determination:***

(i) Whether the decree and judgment passed by the trial Court is sustainable in law.



(ii) Whether there are any reasons to interfere with the decree and judgment of the trial Court.

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8. After analysing the evidences adduced on both sides and perused the records including the judgment of the trial Court, the ***First Appellate Court dismissed the appeal filed by the defendant by confirming the decree and judgment passed by the trial Court. Aggrieved by the said decree and judgment, the present Second Appeal has been preferred by the defendant.***

9. This Court, while admitting the second appeal, has framed the following substantial questions of law:

(i) Having negated the principal declaratory relief sought for by the respondent, have not the Courts below erred in law in granting the consequential relief of permanent injunction.

(ii) Having rightly found that the respondent has not made out a case of easement of necessity, has not the appellate Court erred in granting the relief of permanent injunction on a reasoning that the appellant cannot deny the claim.

(iii) Is not the Plaintiff to succeed on the strength of his own case and has not appellate Court erred in granting a relief of permanent injunction



after having negated the claim of title and easement of necessity, by picking holes in the case of the appellant.

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10. The learned counsel appearing for the appellant / defendant would submit that the appellant is the defendant in the main Suit and the respondent has filed the Suit for declaration and permanent injunction. According to the Plaintiff, the Suit property is a cart track and the Suit cart track is a common cart track and therefore, filed the Suit for declaration declaring that the Suit property is a common pathway to all and further prayed for permanent injunction from interfering with the Plaintiff's enjoyment of the cart track. The trial Court without considering the evidence adduced on the side of the defendant, decreed the Suit by granting permanent injunction and dismissed the Suit in respect of declaration. Once the trial Court come to a conclusion that the Plaintiff is not entitled to the relief of declaration, ought to have dismissed the relief in respect of permanent injunction. In fact, the defendant purchased the property through a Sale Deed dated 27.02.1992 for a valuable consideration and the entire property situated in S.F. No.36/1C was purchased by him and the Plaintiff has no right over the property purchased by the defendant and he has alternative pathway and there is no extension of pathway as alleged by the Plaintiff. However, the Courts below have failed to consider the defense of the defendant and erroneously decreed the Suit. The First Appellate Court has also, without



appreciating the evidence in a proper perspective manner, dismissed the appeal.

There is no evidence in respect of the 'easement of necessity'. However, the

Courts below have decreed the Suit on the ground of 'easement of necessity'.

Therefore, the Courts below have erred in coming to the conclusion. The

Plaintiff has to succeed on the strength of his own case and should not take

advantage of the defense. Therefore, the Appellate Court erred in granting a

relief of permanent injunction after having negatived the claim of title and

easement of necessity. Therefore, the decree and judgment of Courts below are

liable to be set aside.

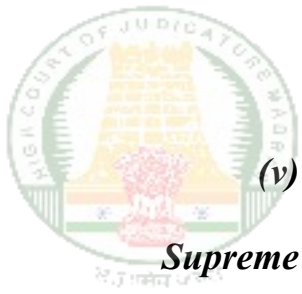
11. In support of his contention, the learned Counsel appearing for the appellant has relied upon the following judgments:

(i) *Kolandaisami Gounder (decd) and another v. Manickam reported in 2001(4) CTC 193.*

(ii) *Hero Vinoth (Minor) v. Seshammal reported in (2006) 5 Supreme Court Cases 545.*

(iii) *Chapsibhai Dhanjibhai Danad v. Purushottam reported in 1971(2) Supreme Court Cases 205.*

(iv) *City Municipal Council Bhalki, by its Chief Officer v. Gurappa (Dead) by Legal representatives and another reported in (2016) 2 Supreme Court Cases 200.*



(v) Bacchaj Nahar v. Nilima Mandal and another reported in (2008) 17

Supreme Court Cases 491.

(vi) Rajendran and another v. State Assistant Commissioner of Police

(Law and Order) reported in (2008) 17 Supreme Court Cases 501.

(vii) Gurbux Singh v. Harminster Kaur reported in (2010) 14 Supreme

Court Cases 301.

(viii) Tamil Nadu Housing Board, Chennai v. M. Meiyappan and others

reported in (2010) 14 Supreme Court Cases 309.

(ix) The State of Tamil Nadu represented by the District Collector,

Tiruchirappalli v. K. Purushothaman reported in 1998-2-L.W. 171.

(x) D. Anjappa & others v. Marappa reported in 2014-3-L.W. 442.

12. The learned Senior counsel appearing for the respondent / Plaintiff would submit that the Suit property is a cart track and it is a common property. The said cart track is in existence from the time immemorial. The Plaintiff and other land owners have been using the said pathway to reach their lands and now the defendant attempted to restrict the Plaintiff from using that pathway and the defendant has purchased the property in the year 1992 by excluding the pathway. The pathway is situated on the Southern side of the defendant's property. The defendant attempted to restrain the Plaintiff from using the said pathway and also denying the right of the Plaintiff in the pathway., Therefore,



the Plaintiff filed a Suit. In order to prove his case, the Plaintiff has examined PW1 to PW3 and marked Ex.A.1 to Ex.A.13. On the side of the defendant, he examined DW1 and Ex.B.1 to Ex.B.16 were marked. The Commissioner was also appointed and the Commissioner report and plan have been marked as Ex.C.1 and Ex.C.2. The Sale Deed dated 15.07.1945, which has been marked as Ex.A2, clearly shows the existence of the pathway in the southern side of the defendant's property in S.F. No.36/1 and it runs towards Survey Nos.51/1C, 35/5 and 5/3. The defendant purchased the property through a Sale Deed, Ex.A.4, dated 27.02.1992. In that Sale Deed also, the pathway has been mentioned. Therefore, the defendant has purchased the property by excluding the said cart track. The said cart track was mentioned on the southern side of the defendant's property. Moreover, Ex.A1, A3 and A5, the registered Deeds, also mentioned about the existence of the Suit pathway and the Advocate Commissioner also filed his report and Plan and clearly stated about the existence of the pathway. Therefore, the trial Court came to a fair conclusion that the pathway is available, but the Plaintiff failed to prove that the pathway is a common pathway. However, granted permanent injunction from using the pathway and not to interfere with the usage of pathway by the Plaintiff. The First Appellate Court also confirmed the existence of the pathway and decreed the Suit on the ground of long possession and enjoyment and 'easement by prescription'. Therefore, the Courts below have rendered findings clearly and



relied upon the evidences adduced on both sides and there is no perversity and there is no scope for interfering with the concurrent findings of the Courts below. Therefore, this second appeal is liable to be dismissed.

13. This Court heard both sides and perused the entire materials available on record.

14. In this case, the Plaintiff has filed the Suit for declaration that the Suit property is a common pathway and to grant permanent injunction restraining the defendant from using the pathway by the Plaintiff. According to the defendant, there is no existence of pathway and he purchased the entire property through a Sale Deed. Therefore, he denied the right of the Plaintiff for using the pathway. In order to prove the case of the Plaintiff, he examined PW1 to PW3 and marked Ex.A.1 to Ex.A.13 and on the side of defendant, DW1 was examined and Ex.B.1 to Ex.B.16 were marked. On a perusal of documents it is clear that in all the documents existence of pathway is clearly mentioned. The documents Ex.A1 to A4 and Ex.A13 clearly reveal the existence of pathway on the southern side of the property in S.F. No.36/1 and the Commissioner's report also clearly established that there is a pathway in existence in the property. All the documents are old documents. Even in Ex.A4, Sale Deed in the name of the defendant, the pathway has been clearly mentioned, wherein it has been clearly



stated that “இதில் ஆட்டையாம்பட்டி வையப்பமலை ரோட்டில் இருந்து இந்த நிலத்தில் தென்புறமாயும் இதன் தொடர்ச்சியாக வடபுறம் நோக்கி இந்த நிலத்தில் கிழக்குப் புற ஓரமாய் அக்கரைப்பட்டி சின்ன ஏரி வாய்க்கால் நோக்கி செல்லும் தடத்தில் எங்களுக்குண்டான வண்டி வாகனங்கள் கால்நடைகள் ஆட்கள் போக வர உண்டான பாத்தியம் நீங்கலாக மேலே கண்ட சொத்துக்கள் பூராவும் கிரயம்.”

15. The above said recitals clearly show that the said pathway is situated on the southern side of the property in Survey No.36/1C and the said pathway was retained by the vendor of the defendant. Now the defendant is denying the existence of the said pathway. Therefore, the Courts below have come to conclusion that the pathway is in existence. However, the Courts have decided that the Plaintiff has not filed any document to show that the property is a common pathway and however, the Plaintiff is enjoying the said pathway. Therefore, declined to grant relief of declaration and granted relief of permanent injunction.

16. As far as the 1st substantial question of law that “*having negatived the principal declaratory relief sought for by the respondent, have not the Courts below erred in law in granting the consequential relief of permanent injunction*” is concerned, the Plaintiff has filed the Suit for declaration



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declaring that the Suit property is a common pathway i.e., for the Plaintiff, defendant and for others and also prayed for permanent injunction restraining the defendant and his men, in any way, preventing the Plaintiff from using the cart track. The Plaintiff has filed the Suit for a common pathway and paid Court Fee under Section 25(b) of Tamil Nadu Court Fees and Suits Valuation Act and for the relief of permanent injunction, paid Court Fee under Section 27(c) of Tamil Nadu Court Fees and Suits Valuation Act. Therefore, the Plaintiff has sought for the relief of declaration, but not for consequential relief of permanent injunction, however again paid a separate Court Fee under Section 27(c) of Tamil Nadu Court Fees and Suits Valuation Act for the relief of permanent injunction. The relief of permanent injunction was not sought for as a consequential relief for declaration, but it was claimed through separate relief on payment of separate court fee. Therefore, the Courts below have negatived the declaration relief by holding that the Plaintiff has failed to prove that the pathway is common for Plaintiff, defendant and others. However, held that the Plaintiff is using the Cart track for a long period and thereby, granted permanent injunction on the payment of separate Court fee.

16.1. At this juncture, the learned counsel appearing for the appellant has relied upon judgment in ***D. Anjappa & others v. Marappa reported in 2014-3-L.W. 442***, wherein this Court held that when the main relief of declaration is declined, the consequential relief of permanent injunction cannot be granted.



16.2. As far as the judgment of *The State of Tamil Nadu represented by the District Collector, Tiruchirappalli v. K. Purushothaman reported in 1998-*

2-L.W. 171 is concerned, this Court held that in a Suit for declaration and consequential relief of permanent injunction, if the Plaintiff is not entitled to get the declaration as sought for, naturally the consequential relief which flows from the main relief also cannot be granted.

In the case on hand, the relief of permanent injunction has not been sought for as a consequential relief for the declaration, but it is a separate relief on separate Court fee, therefore, the said case law will not be applicable to the present facts of the case. The Courts below have not granted consequential relief of permanent injunction and therefore, the question of consequential relief of permanent injunction would not arise. Thus the **1st substantial question of law is answered.**

17. As far as the **2nd substantial question of law that having rightly found that the respondent has not made out a case of easement of necessity, has not the appellate Court erred in granting the relief of permanent injunction on a reasoning that the appellant cannot deny the claim is concerned**, the First Appellate Court has rendered findings that the respondent has not made out the case of ‘easement of necessity’, but the trial Court has



rendered findings that the Plaintiff has proved 'easement of necessity' and the First Appellate Court has rightly held that there is no pleading in respect of 'easement of necessity' and there is no evidence. However, the First Appellate Court granted permanent injunction only on the ground of long enjoyment of the Plaintiff on the ground of 'easement by prescription'. The trial Court in its judgment discussed that the Plaintiff proved the existence of the pathway and there is no pathway available in Survey Nos.28, 32, 34, 35 and 51 and the Plaintiff failed to prove that the said pathway situated in S.F. No.36/1C belongs to the Plaintiff, the defendant and others and the Plaintiff has not examined any revenue officials to prove that the said pathway is a common pathway. Therefore, declined for the declaration relief, however based on the 'easement of necessity', granted the relief of permanent injunction. The First Appellate Court also rendered findings in respect of existence of the pathway. However, discussed that though the Plaintiff is not entitled to the pathway by way of 'easement of necessity', he is entitled to use the pathway on 'easement by prescription'. The Plaintiff has not filed the Suit on a representative capacity. Therefore, declined to grant declaration relief and granted only permanent injunction.

17.1. Both the Courts have accepted the long enjoyment and possession of pathway by the Plaintiff and granted permanent injunction. The Plaintiff in



his pleadings pleaded that it is the only cart track and it is the only mode of access for the Plaintiff to reach his land and therefore 'easement of necessity' is required for the Plaintiff. Though the wordings are not pleaded properly, the Courts can infer from the pleadings and evidence that the Plaintiff is using the Suit pathway to reach his land and it is not the case of the defendant that the pathway is not a common pathway and he totally denied the existence of the pathway. The Plaintiff proved the existence of pathway. Therefore, there is no error in granting permanent injunction by the First Appellate court on the basis of 'easement by prescription'.

17.2. At this juncture, the learned counsel appearing for the appellant has relied upon judgment of this Court in ***K. Kolandaisami Gounder (decd) and another v. Manickam reported in 2001 (4) CTC 193.***

On a careful perusal of the said judgment, it is clear that creation of easement of necessity should be outcome of prior relationship between tenement. Mere convenience or inconvenience is not test of easement of necessity. Easement of necessity arises where normally both dominant and servient tenements are in common ownership so that creation of easement by implication of law may be said to be outcome of former jointness of two tenements. In the case on hand also, there are no pleadings in respect of 'easement of necessity' and there is no evidence that the properties of the



Plaintiff and the defendant were under common ownership and thereafter, the properties have been purchased by them from the common owner of the properties. However, both the Courts have rendered concurrent findings about the existence of pathway and the same is under the possession and enjoyment of the Plaintiff, thereby granted permanent injunction and no ground for interference with the findings of the 1st Appellate Court.

17.3. The learned counsel for the appellant has further relied upon the following judgments:

(i) ***Hero Vinoth (Minor) v. Seshammal reported in (2006) 5 Supreme Court Cases 545***

On a careful perusal of the above judgments, it is clear that a substantial question of law will also arise in a contrary situation, where the legal position is clear, either on account of express provisions of law or binding precedents, but the Courts below has decided the matter, either ignoring or acting contrary to such legal principle and an entirely new point raised for first time before High Court is not a question involved in the case unless it goes to root of the matter, it would be substantial question of law. In the case on hand also, there are no pleadings in respect of 'easement by prescription'. However, the Plaintiff pleaded that he is enjoying the property as common from time immemorial.



(ii) ***Bachhaj Nahar v. Nilima Mandal and another reported in (2008) 17***

Supreme Court Cases 491.

From the above said judgment, it is clear that without pleading and an opportunity of hearing to defendant, no amount of evidence, can be looked into to grant any relief and for claiming easement of necessity, the Plaintiff has to plead that his dominant tenement and the defendant servient tenement originally constituted a single tenement and the ownership thereof vested in the same person and that there has been a severable of such ownership and that without the easement right claimed to dominant tenement cannot be used. A Court cannot assume or infer a case of easement right by referring to a strong sentence herein and a strong sentence therein in a pleading or evidence.

(iii) As far as the judgment of ***Chapsibhai Dhanjibhai Danad v. Purushottam reported in 1971(2) Supreme Court Cases 205 is concerned***, the Hon'ble Supreme Court held that a party to a Suit can plead inconsistent plea in the alternative such as the right of ownership and a right of easement. But where he has pleaded ownership and has failed, he cannot subsequently turn around and claim that right as an easement by prescription.

(iv) As far as the judgment of ***Gurbux Singh v. Harminder Kaur***



reported in (2010) 14 Supreme Court Cases 301 is concerned, the Hon'ble Supreme Court held that without framing issues, without let in evidence, any point determined by the Court, the same is not permissible in law.

(v) As far as the judgment of *Tamil Nadu Housing Board, Chennai v. M. Meiyappan and others reported in (2010) 14 Supreme Court Cases 309 is concerned*, it will not be applicable to the present facts of the case.

In the case on hand also, according to the defendant, the Plaintiff has not pleaded about the easement by presumption, however, the Plaintiff has pleaded about the enjoyment of pathway and also pleaded about the easement of necessity. Though there is no specific pleading about the 'easement by prescription', there are pleadings in respect of the 'easement of necessity'. Though there is no evidence to prove the 'easement of necessity', the available evidences are sufficient to hold 'easement by prescription' and the parties are also aware about the pleadings and evidences adduced by them. Therefore, it cannot be said that there are no pleadings in respect of 'easement right'. Therefore the First Appellate Court has rendered findings after analysing the evidences. Thus the 2nd *substantial question of law is answered*.

18. The *3rd substantial question of law that "is not the Plaintiff to succeed on the strength of his own case and has not appellate Court erred in*



granting a relief of permanent injunction after having negated the claim of title and easement of necessity, by picking holes in the case of the appellant”

is concerned, the Plaintiff has filed the Suit for declaration and for permanent injunction. Already the trial Court has declined to grant declaration relief, since the Plaintiff failed to prove that the pathway is common for all and the First Appellate Court has also confirmed the above said relief. However, the trial Court granted permanent injunction based on the ‘easement of necessity’ and the First Appellate Court has not accepted the ‘easement of necessity’ and granted permanent injunction on the basis of ‘easement by prescription’. Both the Courts have not relied upon the evidence of defendant and both the Courts have relied only the evidence adduced by the Plaintiff for grant of permanent injunction and decreed the Suit.

18.1. The Plaintiff has to succeed on the strength of his own case and he cannot take advantage of the weakness in the case of the defendant. In this case, the First Appellate Court has analysed the evidence adduced on the side of the Plaintiff and based on the Plaintiff’s side evidence only, granted permanent injunction and specifically the First Appellate Court in its findings stated that PW2 and PW3 have categorically deposed about the existence of the pathway from time immemorial and the Sale Deed, Ex.A.4, which stands in the name of the defendant also revealed the existence of pathway and PW1 also admitted the



contents of Ex.A.4, therefore, came to a conclusion that the pathway is in existence and there is no any alternative pathway to reach the Plaintiff's land.

Further observed that though there is no any evidence for the 'easement of prescription' and the Plaintiff also pleaded that he is using the cart track for a long period and the pathway is the only way to reach the Plaintiff's land and the cart track is in existence from the time immemorial, thereby came to a conclusion that the defendant has no right to interfere with the Plaintiff's possession and enjoyment of the property, thereby granted permanent injunction. Therefore, nowhere the First Appellate Court discussed about the weakness of the defendant's case and based on the defendant's case, the decree has not been granted and only based on the Plaintiff's side evidence, the First Appellate Court has granted permanent injunction. Therefore, both the Courts below have rendered concurrent findings and this Court need not interfere with the findings of the Courts below.

19. Further, it is well settled law that this Court has a limited scope under Section 100 of Code of Civil Procedure and only based on the substantial questions of law, the Court can interfere with the judgments of the Courts below and on factual aspect, while exercising Section 100 of Code of Civil Procedure, this Court need not interfere with the concurrent findings of the Courts below.



20. In view of the above discussions and answers to the Substantial Questions of law, this Court is of the opinion that the *second appeal has no merits and deserves to be dismissed.*

21. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

28-11-2025

mjs

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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P.DHANABAL J.
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