



S.A.No.579 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 03.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No.579 of 2013
and
M.P.No.1 of 2013

1. Sengottuvel
2. Muthulakshmi
3. Jaganathan
4. Devarajan
5. Thilagavathi
... Appellants

Versus

1. Muthusamy Gounder @ Muthu Gounder
2. Vijaya
3. J.Sakthivel
4. Sundaram
5. Thilagavathi
6. Sundaram
... Respondents

Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 29.08.2012 in A.S.No.24 of 2011 passed by the learned Sub Judge at Tiruchengode reversing the Judgment and Decree dated 09.07.2010 in O.S.No.305 of 2002 passed by the learned Principal District Munsif, Tiruchengode.

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

For Respondents : Mr.V.Srimathi for R-1 to R-3
Mr.R.V.Agilan for
Mr.C.Jagadish for R-4



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JUDGMENT

This Second Appeal had been filed to set aside the Judgment and Decree dated 29.08.2012 in A.S.No.24 of 2011 passed by the learned Sub Judge at Tiruchengode reversing the Judgment and Decree dated 09.07.2010 in O.S.No.305 of 2002 passed by the learned Principal District Munsif, Tiruchengode.

2. The brief averments of the amended plaint are as follows:

2.1. The suit properties and other properties originally belonged to one Raja Gounder and his brothers. The 1st Plaintiff's mother purchased common 1/5th share in old Survey Nos. 29 and 30 excluding 25 cents. The remaining 4/5th share was purchased by the ancestors of Defendants 2, 5 and others. Subsequently, in the resurvey, new numbers were assigned as S.No.182 and 196/1. The Defendants 1 to 5 are having lands immediately south of ittari now Panchayat road. Subsequently, the 1st Plaintiff and others divided their properties by means of registered partition deed on 4.11.1964. The 1st Plaintiff and his mother were allotted with the properties on the south and west of the Defendants' property. A mamool common pathway/cart track of 15 links width was provided for better enjoyment of all sharers. The Plaintiffs have appended



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a rough plan along with the plaint depicting the exact topography on ground.

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The Plaintiffs claim that the Defendants 1 to 5 have purchased the C' Schedule property in the partition deed dated 4.11.1964 admitting that the partition deed is a true and valid one. So much so the Defendants 1 to 5 and their men are estopped from contending contra to partition deed dated 04.11.1964. The recitals in the partition deed dated 04.11.1964 are binding on the Defendants on all fours. The Plaintiffs, Defendants and others are enjoying the suit property as an easement of necessity all these years openly, continuously, peacefully and uninterruptedly all these years much to the knowledge of the Defendants. There is a clear cut well beaten cart track of 15 links width. The Plaintiffs have no other cart track. The Suit cart track is specifically stated in the partition deed. The 1st Plaintiff during his life time voluntarily executed two gift settlement deeds dated 2.6.2005 and 8.3.2007 and parted possession also in favour of the Plaintiffs 2 and 3 and the same have been marked as exhibits by the Defendants. The Defendants, with a view to knock off the Suit property for a pittance, were scheming plan to block the Suit cart track. Their manifold attempts were foiled by the Plaintiffs. At last, on 27.11.2002 the Defendants joined together and came to the suit property along with their men, servants and agents and made attempts to obliterate and obstruct the Suit property and annex the same along with their cultivable lands. The Plaintiffs,



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with the timely help of neighbours and well wishers, avoided the threat of the Defendants and their men. The Defendants have no right to obstruct the Plaintiffs as users and enjoyers of the cart track to reach their lands from Panchayat road. The Plaintiffs prayed before this Court to pass a decree declaring the Plaintiffs' right to use the cart track cum pathway as detailed in the plaint rough plan, directing by means of a permanent injunction restraining the Defendants from in any manner causing obstruction to Plaintiffs, his men, cattle and carts and tractor from using the cart track, awarding the cost of the suit.

3. The brief averments of the written statement of the 1st Defendant which is adopted by Defendants No.2 to 5 are as follows:-

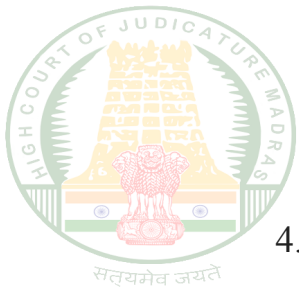
3.1. The Suit is false, fraudulent and unsustainable in law and on facts. It is true to say that the Defendants 1 to 5 are having lands immediately south of itteri now panchayat road. This Defendant categorically denies the validity of the partition deed dated 4.11.1964. This Defendant submits that the Plaintiffs are claiming the right of access by way of easement of necessity. This Defendant submits that the Commissioner was appointed and filed his report and plan in I.A.1409/2002 on 13.12.2002. This Defendant submits that in the commissioner's report, the alternative cart track has been clearly



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mentioned as "HIJKLNO" which joins with CF portion. The above cart track is the cart track to the Plaintiffs and now, only with a view to give trouble to the Defendants, the Plaintiffs have claimed a novel right of cart track over this Defendant's land, which is against law and natural justice. Once an alternative cart track is in existence and proven, the question of claiming cart track over the Defendant's lands does not arise and hence the Suit is not maintainable in law. The Plaintiffs or their ancestors never used the Suit cart track to reach their lands. Since the land in S.No.196/1 belonging to the Defendants 1 to 5 is laying fallow, the Commissioner has noted the same as cart track and nothing more. A man cannot ask for as a matter of right to claim a cart track over 3rd party's land that too when an alternative cart track is in existence. This Defendant submits that the Plaintiffs never used the western portion of S.No.196/1 as cart track and their claim is a myth. This Defendant submits that the Suit as framed itself is not maintainable in law. The Suit is for the relief of declaration with regard to the easement right of cart track and hence, the suit ought to have been valued under Section 31 of the Court Fees Act and not under Section 25(d) of the Tamil Nadu Court Fees Act and hence, the Suit fails. Therefore, 1st Defendant humbly prays that this court may be pleased to dismiss the Suit with costs.



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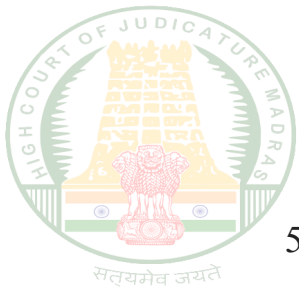
4. The brief averments of the written statement of 6th Defendant are

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4.1. The Plaintiff's suit is false, vexatious and not sustainable in law.

Though this Defendant has been arrayed as 6th Defendant, there is no reason alleged in the plaint why he has been impleaded. This Defendant's ancestor purchased the property in S.No.182/2 of Ramapuram Village along with cart track right in S.No.196/1 of Ramapuram Village as per the sale deed dated 7.5.1935 and is in possession and enjoyment of the same. It is also true that a common cart track is provided for better enjoyment of all sharers. It is also true that both parties are enjoying the suit property openly, continuously, peacefully and uninterruptedly all these years. This Defendant and his ancestors also enjoyed the right and are enjoying the right of cart track of taking cattle, carts and tractors. Since this Defendant never denied the Plaintiffs' right of cart track and never prevented the Plaintiffs to use the Suit cart track, this Defendant is not a necessary party to the Suit. This Defendant therefore prays that this court may be pleased to pass suitable orders.

5. The brief averments of the additional written statement filed by first Defendant are as follows:-



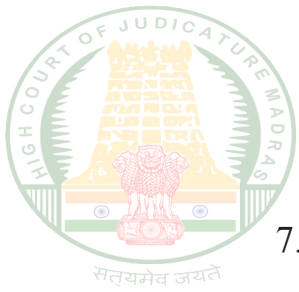
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5.1. The 1st Plaintiff executed the settlement deed in favour of the Plaintiffs 2 and 3 dated 2.6.2005 and 8.3.2007. But the 1st Plaintiff had not taken any steps to implead the Plaintiffs 2 and 3 before beginning the trial. Only for dragging the trial, now the 1st Plaintiff amends the plaint. The Plaintiffs 2 and 3 never enjoyed the Suit property.

6. The brief averments of the reply statement filed by the Plaintiffs are as follows:-

6.1. It is true that the 1st Plaintiff pending Suit has executed a gift settlement deed on 02.06.2005 and 08.03.2007 in favour of the Plaintiffs 2 and 3 and the Plaintiffs 2 and 3 are in possession and enjoyment of the Suit properties and other properties as per the above gift settlement. Hence, the Plaintiffs 2 and 3 were added and impleaded as parties to the Suit. The Suit cart track has been detailed in the gift settlement deed dated 02.06.2005 and 08.03.2007 and these Plaintiffs 2 and 3 are enjoying the Suit cart track as in the documents in their favour. The Defendants 2 to 5 also admit the same in the sale deed in favour of the Defendant No.1. As such, the Defendants are estopped from contending otherwise with respect to the Suit property.



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7. From the above pleadings, the trial court has framed the following

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issues:-

1. Whether the 1st Plaintiff had executed the settlement deeds dated 2.6.2005 and 8.3.2007 infavour of the 2nd and 3rd Plaintiffs?

2. Whether the Suit is bad for non-joinder of necessary parties?

3. Whether the allegations of the Defendants No.1 to 5 that the Plaintiffs No.2 and 3 are not in possession and enjoyment of the Suit property are true?

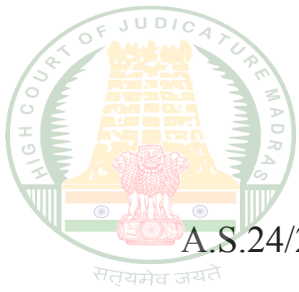
4. Whether the doctrine of estoppel is applicable to the Defendants in respect of the Suit property?

5. Whether the Plaintiffs are entitled to the relief of declaration and permanent injunction as prayed for?

6. To what other relief are the Plaintiffs entitled?

8. Before the trial court, on the side of the Plaintiffs, P.W-1 to P.W-3 were examined and Ex.A-1 to Ex.A-6 were marked. On the side of the Defendants, D.W-1 to D.W-3 were examined and Ex.P-1 to Ex.P-3 were marked. The reports of the Commissioner and sketch were marked as Ex.C1 and Ex.C-2.

9. After full-fledged trial of the case, the trial court dismissed the Suit against which the Plaintiffs in this Suit had preferred the Appeal in



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A.S.24/2011 and the 6th Defendant in the Suit had preferred the appeal in A.S.34/2011.

10. On hearing the arguments of the learned Counsel for the Appellants and the learned Counsel for the Respondents and on perusal of the records before the trial Court, the learned Sub Judge had allowed the Appeal in A.S.Nos.24 & 34 of 2011 dated 29.08.2012. Aggrieved, the Defendants had preferred this Second Appeal before this Court.

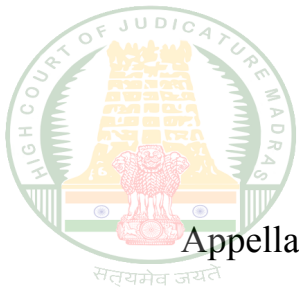
11. The learned Senior Counsel for the Appellants submitted that the Suit in O.S.No.305 of 2002 was filed by the Plaintiffs seeking the right of cart track cum pathway through the lands of Defendants 1 to 6 in the Suit. The sixth Defendant was sailing with the Plaintiffs. The other Defendants objected. The learned Senior Counsel for the Appellants invited the attention of this Court to the averments in the Plaint and averments in the written statement particularly, to Paragraph No.6 which reads as follows:

“6..... This Defendant submits that in the commissioner's report the alternative cart track has been clearly mentioned as H I J K L N O which joins with CT portion. The above cart track is the cart track to the Plaintiff and now only with a view to give troubles to the Defendants, the Plaintiffs are claiming a novel right of cart track over this Defendant's land, which is against law and



natural justice. Once an alternative cart track is in existence and proved, the question of claiming cart track over the Defendant's lands does not arise and hence the Suit is not maintainable in law. Either the Plaintiff or their ancestors never used the Suit cart track to reach their lands. Since the land in S.No.196/1 belongs to the Defendants 1 to 5 is laying fallow, the Commissioner has noted the same as cart track and nothing more. A man cannot ask for a matter of right to claim a cart track over 3rd parties land that too when an alternative cart track is in existence. This Defendant submits that the Plaintiff never used the western portion of S.No.196/1 as cart track and the claim is a myth. This Defendant submits that the Suit as framed itself is not maintainable in law. Hence the Suit is liable to be dismissed in law.”

12. The learned Senior Counsel for the Appellants invited the attention of this Court to the discussion of the evidence in Judgment of the learned District Munsif in O.S.No.305 of 2002 dated 09.07.2010, particularly, paragraph Nos.17 to 26 and also to the evidence of P.W-1 to P.W-3. It is the contention of the learned Senior Counsel for the Appellants that the learned District Munsif had, on proper appreciation of evidence, arrived at a conclusion that the Plaintiffs are not entitled to claim the right of cart track cum pathway through the lands of the Defendants as easement of necessity and dismissed the Suit. In the Appeal, the learned First Appellate Court Judge, in his Judgment in A.S.Nos.24 & 34 of 2011 dated 29.08.2012, reversed the finding of the learned District Munsif, Tiruchengode and granted a decree to the Plaintiffs in O.S.No.103 of 2002. The learned Senior Counsel for the Appellants invited the attention of this Court to the discussion of the very same evidence by the learned Sub Judge, Tiruchengode in page 12 of the



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Appellate Court Judgment. It is the contention of the learned Senior Counsel for the Appellants that the claim of the Plaintiffs is to be proved through cogent evidence regarding right to easement of necessity. Here, there is ample evidence before the trial Court regarding alternative cart track through the Advocate Commissioner's report under Ex.C-1 and Ex.C-2. Still, the learned First Appellate Court Judge granted a decree ignoring the Provisions of law regarding the easement. Therefore, the substantial questions of law raised by this Court have to be answered in favour of the Appellants herein and the Judgment of the learned District Munsif, Tiruchengode in O.S.No.305 of 2012 dated 09.07.2012 is to be restored and the Judgment of the First Appellate Court in A.S.No.24 and 34 of 2011 dated 29.08.2012 is to be set aside.

13. In support of his contentions, the learned Senior Counsel for the Appellants in the Second Appeal relied on the following rulings:

13.1. In the case of **Kikubhai Parshottambhai Patel Vs. Babubhai Vallabhbbhai Patel** reported in **MANU/GJ/0790/2004** wherein it has been observed as follows:

“14. It may be appreciated that the Suit of the Plaintiffs was dismissed by the trial Court on the ground that there is an alternative way available to them and if there is an alternative way then they cannot take recourse of Section 13 (e) of the Indian Easement Act i.e., easement of necessity. The defence of alternative way was pleaded by the Defendants, therefore, the burden is on the Defendants to prove that there is an alternative way for the Plaintiffs to enter into their fields.”



WEB COPY 13.2. In the case of **Justiniano Antao and others Vs. Bernadette B. Pereira**

(Smt) reported in **(2005) 1 SCC 471** wherein it has been observed as follows:

“9. ... Therefore, it is clear that it is not the case that the Plaintiff has been using the access as of right through the property of the Defendants for more than 20 years. Since the Plaintiff has an access through the southern side of her property, we see no reason why the property of other persons be used as an access to her house. If the Plaintiff had no access to her house except through that of the property of the Defendants then perhaps we would have considered appreciating as easement of necessity.”

13.3. In the case of **Sree Swayam Prakash Ashramam and ors. Vs. G. Anandavally Amma and Ors.** reported in **MANU/SC/0010/2010** wherein it has been held as follows:

“27. Since we have accepted the findings of the High Court as well as of the trial Court on the question of implied grant, it would not be necessary for us to deal with the decisions on the easement of necessity which necessarily involves an absolute necessity. If there exists any other way, there can be no easement of necessity.”

13.4. In the case of **Gouri Amma Krishnamma Vs. Seethalakshmi Amma and others** reported in **2003 SCC Online Ker 245 : AIR 2004 Ker 75** wherein it has been observed as follows:

“8. ... But it is to be noted that alternative inconvenient pathway is not a ground for claiming easement of necessity. The existence of alternative pathway however inconvenient it be is sufficient to reject the claim of easement of necessity. The necessity must be absolute and not convenient mode of enjoyment. Further easement of necessity cannot be claimed in the absence of severance of tenements.”



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13.5. In the case of ***Rameshchandra Bhikhabhai Patel Vs. Maneklal Maganlal Patel, and another*** reported in ***AIR 1978 Guj 62*** wherein it has been observed as follows:

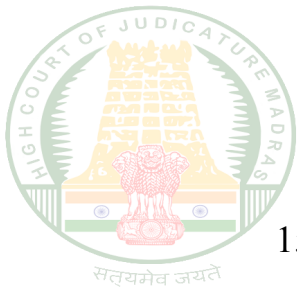
“11. The question is: can the easement of necessity survive after the alternate outlet is available?.....”

13.6. In the case of ***R.Paramasivan and another Vs. Smt. T. Anusuya*** reported in ***ILR 2005 KAR 1188*** wherein it has been observed as follows:-

“13. It is also pertinent to note that between 1982 from the time of obstruction to the said passage even according to the Plaintiff, she is using the alternative passage as noted above on the south eastern side of the property. Such being the case, it cannot be said that the Suit passage in question was a matter of necessity as per Section 13 and 14 of the Indian Easement Act. More over, as noted above in the Judgments rendered by several High Courts, unless it is a matter of necessity and if there is disruption for the said passage, the same cannot be claimed as a matter of right.

15.....More over, in view of the fact that she acquired an alternate passage at the south-eastern side to have access to her property by virtue of entering into an agreement with one Sitalakshmi, it has to be held that the Plaintiff did not establish her right over the passage not proved that it is a matter of necessity. Accordingly points 1 and 2 have been answered.”

14. In the light of the above rulings, the learned Senior Counsel for the Appellants seeks to allow this Appeal and set aside the decree granted by the first Appellate Court, viz., learned Sub Judge, Tiruchengode in A.S.No.24 of 34 of 2011.



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15. The learned Counsel for the sixth Defendant before the trial Court submits that he was sailing along with the Plaintiff before the trial Court and claims that he relied on the sale deed in the year 1935 wherein the right of pathway had been claimed and he was not objecting to the Plaintiffs using the land of sixth Defendant as an easement of necessity.

16. The learned counsel for the Respondents 1 to 3 submitted that the Respondents 1 to 3 are the Plaintiffs in the Suit. The Plaintiffs had relied on the deed of the year 1964 executed between the land owners regarding the right of cart track cum pathway, based on which, the Plaintiffs had filed the Suit. The first Plaintiff is the son of Pavaiammal for whom the property under Ex.A-1 was allotted in which the cart track had been mentioned clearly. The learned District Munsif had failed to consider the recital under Ex.A-1 marked in the evidence and had relied on the Advocate Commissioner's report and the evidence of the Plaintiff's Witnesses in cross-examination regarding the partition and the settlement deed executed by the first Plaintiff in favour of his daughter and grandchildren, based on which, he had rejected the claim of the Plaintiffs.

17. The learned Counsel for the Respondents 1 to 3 had invited the



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attention of this Court to the recitals in Ex.A-1 which was not considered by the learned District Munsif and he had relied on the Advocate Commissioner's Report regarding alternative pathway. The learned District Munsif failed to consider that the recitals in Ex.A-1 which specifically mentions about right of cart track-cum-pathway for the adjacent land owners as ABCD which had been extracted by the learned Sub Judge in assessing the evidence in his Judgment in Paragraph 15. Ex.A-1 is the partition deed among the co-owners. Therefore, the purchasers of the property are entitled to the same rights as in Ex.A-1. The Plaintiff is the son of party to the deed Ex.A-1, Pavaiammal and therefore, he had relied on the same recital to establish his right. The Defendants 1 to 4, who are the purchasers of the property cannot deny the easementary right granted in 1964, which was agreed to between the co-owners of the property based on the partition among them and there is a specific recital that the parties to the document shall not interfere with the right of pathway/cart track with specific measurements also stated in the very same document. In documents Ex.C-1 and Ex.C-2-Advocate Commissioner's Reports, it is clearly stated that the disputed property is shown in green colour and the alternative pathway as claimed by the Defendant is shown where it is not found to be usable. Therefore, the learned counsel for the Respondents (Plaintiffs before the trial Court) submitted that the Judgment of the learned Sub Judge is a



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well-considered Judgment on an independent assessment of evidence and therefore, the judgment of the first Appellate Court is to be confirmed and the Second Appeal is to be dismissed.

18. In support of his contentions, the learned Counsel for the Respondents relied on the following decisions:-

18.1. In the case of ***Subbiah Gounder Vs. Ramaswamy Gounder*** reported in ***AIR 1973 MADRAS 42*** wherein it has been The relevant portion is extracted hereunder:-

“When Co-owners, at the time of partition, set apart a portion of the common property to be used as common for the beneficial enjoyment of their respective shares, that involves a dedication by each of them of a portion of the property, which, but for such dedication, would become his exclusive property. Each of such co-owners of the common property is entitled to use the property in the way most advantageous and beneficial to him without, at the same time, causing any injury or detriment to the other co-owners. It is for such a co-owner to decide in what way he could so use the common property to his maximum advantage. It is not for the other co-owners to dictate in what manner the other co-owner should enjoy the common property so long as the user of the common property by one co-owner does not materially interfere with the use of the property by the other co-owners or affect their rights or in any way weaken, damage or injure the common property. Such co-owners are not entitled to prevent the other co-owner from using the common property in the way most beneficial to him.”

18.2. In the case of ***Sm.Pravabati Roy and another vs. Dwijendra Lal Senupta and another*** reported in ***1986 SCC OnLine Cal 140*** wherein it has been observed as follows:



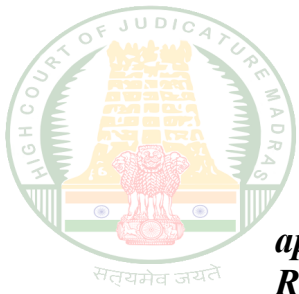
“12. “In this connection reference may be made to the observation of Gale on Easement (14th Edition at page 118) since relied on by Mr. Mukherjee “If, however a particular part of the property cannot, without the right claimed, be used for its designed purpose, then it is probably true to say that a right of access for that purpose will arise as of necessity.”

18.3. In the case of **Malaya Gounder (died) Vs. Nachiappa Gounder** reported in **2012 (2) MWN (Civil) 591** it has been held as follows:

“16. Nextly, when we go through the easement of necessity as sought for by the Plaintiffs, it has been shown in Ex.A7, field map that the cart track which is branching from Alampalayam to Koothapalayam Panchayat Road towards south goes up to S.No.165 and 178 and it did not branch towards east to join with another Panchayat Road found in S.Nos. 155, 179 and 182. However, the commissioner's report would go to show that there is a branching of cart track towards east to go to Itteri and thereafter to reach panchayat road. The said cart track should have been as told by the Plaintiffs that it could not be used as a regular and pucca cart track since the commissioner himself has reported that there are various branches of roots of the trees which have been obstructing the thorough usage of the cart track. In the said circumstances, we cannot deem it as an alternate route to reach Alampalayam to Koothapalayam Panchayat Road. That cart way cannot be considered as an alternate cart way. The Plaintiffs have produced the evidence for the usage of the cart track through the grant, by prescription and also through necessity. When the existence of the Suit cart track itself is admitted and it has been shown to court that the Plaintiffs have been using the said cart way for over 44 years through admission of D.W.1, the finding reached by the first appellate Court on facts cannot be assailed. In view of the discussions held above, the questions of law framed by this court are not decided in favour of the Appellants/Defendants.”

Substantial Questions of law:

(i) When the first Respondent examined as P.W-1 categorically admitted the existence of the alternative cart tract and the fact that they have been using the same, is the lower



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appellate Court correct in law in decreeing the Suit filed by the Respondents 1 to 3, when they right over the Suit cart-track by way of easement of necessity without considering the Provisions of Section 13 of the Easements Act, 1882?

(ii) When Exhibit A1 partition deed dated 04.11.1964 refers only to the alternative cart track and the same is admitted by the first Respondent examined as P.W-1, whether the lower Appellate Court is correct in law in holding that the said document refers to the Suit cart-track, by misconstruing the recitals contained therein?

19. Heard the learned Counsel for the Appellants and the learned Counsel for the Respondents.

20. Perused the deposition of Witnesses and documents, Judgment of the learned Principal District Munsif and the Judgment of the learned Sub Judge.

21. On perusal of the records, it is found that the cart track is referred to in Ex.A-1, based on which the learned first Appellate Judge had granted the decree stating that the Defendants are estopped from denying right of pathway/cart track. The rulings relied on by the learned counsel for the Respondents in the case of ***Malaya Gounder (died) Vs. Nachiappa Gounder reported in 2012 (2) MWN (Civil) 591*** are found applicable to the facts of this case. Ex.A-1 is the document relied on by the Plaintiffs whereas the Advocate



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Commissioner's report is contradictory to the recitals. Without considering the document under Ex.A-1, the Advocate Commissioner had visited the property and filed the report. Therefore, the claim that what had been mentioned in the recitals in Ex.A-1 is the cart track which is stated as alternative cart track in Advocate Commissioner's Report as "HIJK-JLDN" had been rejected by the learned Sub Judge in his Judgment. From the Advocate Commissioner's report under Ex.C-1 and Ex.C-2, it is found that it is not in use "HIJK-JLDN" whereas the property shown as green colour is stated by the Advocate Commissioner whereas the cart track identified by the Plaintiffs. The Defendant had shown an alternative cart track which as per the report of the Advocate Commissioner is HIJK-JLDN which is found as bushes. Therefore, the claim that an alternative pathway available is not in use, that had been in use is as per the recital under Ex.A-1. In the cross-examination of Plaintiff as P.W-1, it is stated that he had settled the property Ex.B-1 to his daughter and grandchild. Therefore, without impleading them as necessary parties, the Suit is not maintainable is the suggestion of the Defendants. The Plaintiff, is a senior citizen. He alone knows the enjoyment of the property over a period of years which his daughter or grandchild will not be able to assert through their evidence. Therefore, he alone is competent to speak about the same and in Ex.A-1, his name is also found as Minor Muthusamy Gounder S/o. Nalliappa



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WEB COURT Gounder and the party to the document under Ex.A-1 is his mother/Pavaiammal. Therefore, the learned Sub Judge, as learned Appellate Judge had, on assessment of evidence through the document, had arrived at a conclusion that the Plaintiff had proved his case. The conduct of the Defendants denying cart track/pathway attracts the principle of estoppel in the light of the recital in Ex.A-1. Therefore, he had decreed the Suit in favour of the Plaintiffs. Ex.C-1 and Ex.C-2 will not help the defence of the Defendants. The conduct of the Defendant is contradictory to the recitals under Ex.A-1. Therefore, the right of easement granted among the co-owners to enjoy their properties as per Ex.A-1 and as early as in 1935 under Ex.B-7 is denied by the Defendants 1 to 5 which is the cause for filing of the Suit. The claim of the Defendants that there is alternative pathway is based on the Advocate Commissioner's report under Ex.C-1 and Ex.C-2 which will not help the case of the Defendants. The Plaintiff asserted his right only through the document relied upon him under Ex.A-1 which was relied by the learned Sub Judge. As per the ruling of *Malaya Gounder (died) Vs. Nachiappa Gounder reported in 2012 (2) MWN (Civil) 591*, Ex.C-1 and Ex.C-2 mentions about obstructions in the alternative pathway whereas Ex.A-1 gives the specific right of cart track between the co-owners to enjoy the property for transporting agricultural produce through cart track and for movement of cattle and human beings. Here



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also, the Commissioner reported that there are obstacles in the pathway which is shown as alternative pathway by the Defendant which are bushes and other obstructions. Therefore, the observation in the reported Judgment is that we cannot define it as an alternative route to reach Thimmipalayam to Ramapuram Road. Here also, the Plaintiffs had produced the evidence for the usage of cart track through the grant Ex.A-1 by prescription and also through necessity. The existence of the Suit cart track itself is admitted and shown to the Court that the Plaintiffs had been using the cart track for several years from the date of Ex.A-1, 1964, till the date of filing of the Suit and P.W-1 is the competent person/the Plaintiff to speak about the same. P.W-3 is the daughter of the Plaintiff, who has no sufficient knowledge. In the cross-examination, wantonly, it is suggested that the Plaintiff as well as the sixth Defendant had no work other than inviting litigation and creating trouble to adjacent land owners. That is only to harass P.W-1 when he has a good case. Therefore, the arguments of the learned Senior Counsel for the Appellants are found not acceptable in the light of the specific recitals in Ex.A-1 (Easment by grant). Ex.B-7 and the Advocate Commissioner's report cannot be relied on for the simple reason, ignoring the recitals under Ex.A-1 and Ex.B-7. Therefore, the substantial questions of law-1 and 2 are answered in favour of the Respondents 1 to 3 and against the Appellants.



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WEB COPY22. The Judgment of the learned Sub Judge, Tiruppur is found on proper assessment of evidence particularly when the document had been marked based on which the Plaintiff has asserted the right of cart track. The conduct of the Defendants 1 to 5 before the trial Court denying the recitals in Ex.A-1 amounts to the principle of estoppel which cannot be ignored by a court of law. The learned District Munsif failed to consider those aspects and relied on the ground that the Plaintiff had settled the property in favour of his daughter and grandchild. Therefore, he cannot institute the Suit without impleading them as necessary parties and therefore, dismissed the Suit. The learned District Munsif had not properly appreciated the evidence available before him through the competent witness/Plaintiff and the documents relied on by the Plaintiff. Even if the property had been settled in his daughter's name, he is competent to speak about the same, as the recital under Ex.A-1 mentions his name. Based on Ex.A-1, he had filed the Suit. The learned District Munsif failed to consider those aspects and dismissed the Suit on technicalities of law. The learned first Appellate Judge had, on proper appreciation of evidence particularly recitals in Ex.A-1, had decreed the Suit. Therefore, the arguments put forth by the learned Senior Counsel for the Appellants, what had been granted by way of prescription, cannot be denied



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by the Defendants. Therefore, the rulings relied on by the learned Senior

WEB Counsel for the Appellants in

(i) *MANU/GJ/0790/2004* in the case of *Kikubhai Parshottambhai Patel Vs. Babubhai Vallabhbhai Patel;*

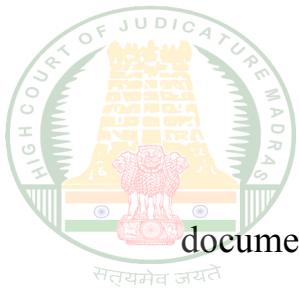
(ii) *(2005) 1 SCC 471* in the case of *Justiniano Antao and others Vs. Bernadette B. Pereira (Smt).;*

(iii) *MANU/SC/0010/2010* in the case of *Sree Swayam Prakash Ashramam and ors. Vs. G. Anandavally Amma and Ors.;*

(iv) *2003 SCC Online Ker 245 : AIR 2004 Ker 75* in the case of *Gouri Amma Krishnamma Vs. Seethalakshmi Amma and others.;*

(v) *AIR 1978 Guj 62* in the case of *Rameshchandra Bhikhabhai Patel Vs. Maneklal Maganlal Patel, and another.;* and

(vi) *ILR 2005 KAR 1188* in the case of *R.Paramasivan and another Vs. Smt. T. Anusuya.* are not applicable to the facts of this case. As pointed out by the learned Sub Judge, the matter is simple. The recital in Ex.A-1 proves the claim of the Plaintiff. The claim of the Defendants 1 to 5 before the trial Court is that it is agreed between the co-owners, parties to the document under Ex.A-1 that there is a specific cart track as mentioned in Ex.A-1 with a specific recital that each of the co-owners shall maintain it and shall not object to the other co-owners against the recital in Ex.A-1. Therefore, the Court has to grant a decree as per the recital and not otherwise and it binds all the parties to the



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documents and the Defendants as their successor who had purchased the property is bound by the same recitals under Ex.A-1 (cart track created by adjacent land owner by a grant by each of the law owners). He or she cannot deny the existence of such a contract at the earliest point of time, the right granted by prescription. Therefore, the substantial questions of law in this case have to be answered against the Appellants who have denied the grant of right by prescription.

23. In the light of the above discussions, the ruling cited by the learned Counsel for the Respondents

(i) in the case of ***Subbiah Gounder Vs. Ramaswamy Gounder reported in AIR 2012 MADRAS 182;***

(ii) In the case of ***Sm.Pravabati Roy and another vs. Dwijendra Lal Senupta and another reported in 1986 SCC Online Cal 140.*** ; and

(iii) In the case of ***Malaya Gounder (died) Vs. Nachiappa Gounder reported in 2012 (2) MWN (Civil) 591*** are squarely applicable to the facts of this case.

24. In the light of the above discussions, the substantial questions of



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law are answered in favour of the Respondents/Plaintiffs against the Appellants/Defendants. The Judgment and Decree dated 29.08.2012 in A.S.No.24 of 2011 passed by the learned Sub Judge at Tiruchengode reversing the Judgment and Decree dated 09.07.2010 in O.S.No.305 of 2002 passed by the learned Principal District Munsif, Tiruchengode is found proper which does not warrant any interference by this Court.

In the result, this ***Second Appeal is dismissed with costs.*** The Judgment and Decree dated 29.08.2012 in A.S.No.24 of 2011 passed by the learned Sub Judge at Tiruchengode reversing the Judgment and Decree dated 09.07.2010 in O.S.No.305 of 2002 passed by the learned Principal District Munsif, Tiruchengode is confirmed. Consequently, connected Miscellaneous Petition is closed.

03.06.2025

dh

Index : Yes/No

Internet: Yes/No

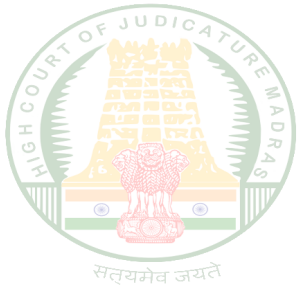
Speaking/Non-speaking order



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- To
1. The Principal District Munsif
Tiruchengode.
 2. The Sub Judge,
Tiruchengode.
 3. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

dh

Pre-delivery Judgment made in
S.A.No.579 of 2013

03.06.2025