



WEB COPY

SA No. 288 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-04-2025

CORAM

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No.288 of 2025

and C.M.P.No.8593 of 2025

1. Rasagounder
2. Kandhasamy

...Appellant(s)/
Appellant(s)/Defendants

Vs

1. Kuppusamy @ Kuppana
- 2.Kandhasamy

...Respondent(s)
/Respondent(s)/Plaintiffs

Prayer: Appeal filed under Section 100 of the Code of Civil Procedure to set aside the Judgment and Decree dated 05.08.2024 in A.S.No.24 of 2017 on the file of the Sub Judge, Tiruchengode, confirming the Judgment and Decree dated 13.10.2017 in O.S.No.264 of 2012 on the file of the Additional District Munsif, Tiruchengode.

For Appellants : Mr.K. Karthikeyan

JUDGMENT

This Second Appeal is directed against the Judgment and Decree dated 05.08.2024 made in A.S.No.24 of 2017 on the file of the learned Subordinate Judge, Tiruchengode, confirming the Judgment and Decree dated 13.10.2017



passed in O.S.No.264 of 2012 on the file of the learned Additional District Munsif, Tiruchengode.

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2.The parties will be referred to as per their rank in the Original Suit.

3.The appellants are the defendants. The suit is filed for permanent injunction restraining the defendants from interfering with their peaceful use and enjoyment of the cart track marked as ABCDEF, leading to their lands situated in S.No.313/2.

4.According to the plaintiffs, the suit properties originally belonged to their common ancestor Ramaiah Gounder, whose sons effected a registered Partition Deed dated 16.08.1955 in Document No.1908/1955. Under the said partition, the plaintiffs were allotted "A" Schedule properties, and the defendants were allotted "B" Schedule properties, with a specific cart track right of 5 cubits width granted to the plaintiffs over the defendants' land. It was the further case of the plaintiffs that they have no other access to their lands except through the suit cart track and that the defendants, with an intention to disturb their lawful right, attempted to obstruct the same in April 2012 and again on 14.09.2012, compelling them to file the suit.

5.The defendants denied the existence of any cart track on ground and contended that no such right was ever enjoyed by the plaintiffs. According to them, the plaintiffs never used the alleged pathway and had waived the same by



long non-user. It was further contended that since the defendants specifically denied the taseimentary right, the suit for bare injunction without seeking declaration of casementary right was not maintainable in law. The defendants also questioned the correctness of the rough sketch and valuation of the suit.

6.The Trial Court upon consideration of oral and documentary evidence held that the plaintiffs were granted a cart track right and that such right continued to subsist and further held that the plaintiffs had established lawful possession and right of user, thus, the Trial Court decreed the suit for permanent injunction on 13.10.2017. On appeal, the First Appellate Court framed necessary points for consideration and independently re-appreciated the entire evidence on record. The Appellate Court held that when a right of way is granted under a registered Partition Deed, it amounts to easement by grant, and in such cases, a separate declaratory relief is not mandatory. Accordingly, the Appeal Suit was dismissed on 05.08.2024, confirming the Judgment and Decree of the Trial Court. Aggrieved over the same, the defendants have preferred this Second Appeal.

7.The learned counsel appearing for the appellants contended that both the Courts below committed serious errors in law by granting injunction in the absence of a declaratory relief. Heavy reliance was placed on certain portions of the cross-examination of PW1 to contend that the plaintiffs themselves admitted non-existence of the cart track. It was also argued that the Courts



below failed to properly appreciate the physical features of the property and wrongly discarded the plead of the defendants regarding impossibility of laying a pathway. Hence, the learned counsel prayed for allowing this appeal.

8.This Court has carefully considered the submissions made on either side and perused the records.

9.It is an admitted fact that the parties traced their title through a registered Partition Deed dated 16.08.1955. A reading of Ex.A1 clearly shows that a cart track of specified width was expressly granted to the plaintiffs. Such a right flows from contract and amounts to easement by grant under law. When an easementary right is created by an express document, the dominant owner need not seek a separate declaration every time such right is obstructed. The remedy of injunction is maintainable to protect an existing right. The objections raised by the defendants reveal that there is no cart track as alleged by the plaintiffs and at any point of time, they were not enjoying the cart track. To prove his right and enjoyment, the plaintiff marked Ex.A.1-Partition Deed, wherein the ancestors of the plaintiffs and the defendants were given right, in the year 1955, in which "A" schedule property was allotted to the plaintiffs' branch and the defendants branch. The 'B' schedule was given to the defendant's branch. While describing in the 'A' schedule, the plaintiffs' branch was given right with a pathway right to take cattle and water for cultivation. The admissions of PW1, when read in entirety, do not extinguish the right granted under Ex.A1. Mere obstruction or temporary non-user cannot defeat a right



created under a registered instrument. Therefore, the defendants have no right to deny the right of the plaintiffs as observed by the Trial Court and so also confirmed by the First Appellate Judge. Both the Trial Court and the First Appellate Court have rendered concurrent findings of fact based on proper appreciation of evidence.

10. According to the learned counsel for the appellants, the plaintiff has not taken steps to identify the property through the Advocate Commissioner. On the other hand, the defendants have taken steps to identify the property with the help of the Advocate Commissioner, but the said submission was dismissed by the Trial Court. Admittedly, the defendants have not filed any revision. Under Ex.A.1- Partition Deed, the plaintiffs proved that the branches of the plaintiffs were granted right to use the cart track. Hence, the findings rendered by both the Courts below are confirmed.

11. In these circumstances, I find no ground much less any substantial question of law to interfere with the concurrent findings of the Courts below. The Second Appeal is liable to be dismissed and accordingly, the same is dismissed. However, there shall be no order as to costs.

16-04-2025

mps

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No



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To

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



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T.V. THAMILSELVI, J,

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