



S.A.No.361 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2025

CORAM

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

S.A.No.361 of 2023

and C.M.P.No.10947 of 2023

and C.M.P.No.15068 of 2025

Vaithilingam

...Appellant/Plaintiff

Vs.

1. State of Tamil Nadu

represented by the District Collector,
Office of the District Collector,
Ariyalur District.

2. The Tahsildar,

Jayankondam,
Udayarpalayam Taluk,
Ariyalur District.

3. The Commissioner,

Andimadam Union,
Udayarpalayam Taluk,
Ariyalur District.

4. The President,

Devanur Panchayat,
Devanur Village,
Udayarpalayam Taluk
Ariyalur District.

...Respondents/Defendants



S.A.No.361 of 2023

WEB COPY

PRAYER:- This Second Appeal is filed under Section 100 of Code of Civil Procedure, 1908, to set aside the judgment and decree dated 01.03.2023 passed in A.S.No.56 of 2017 on the file of the Sub-Court, Jayandondam reversing the judgment and decree dated 18.07.2013 passed in O.S.No.259 of 2007 on the file of the District Munsif Court, Jayankondam and allow this Appeal.

For Appellant : Mr.S.Nagarajan

For Respondents : Mr.P.Gurunathan
Additional Government Pleader

JUDGMENT

This Second Appeal has been preferred by the plaintiff against the judgment and decree dated 01.03.2023 made in A.S.No.56 of 2017 by the Subordinate Court, Jayankondan, Ariyalur District.

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

3. According to the plaintiff, suit properties are two items of dry land, situate in one block, in Survey No.230/3A 0.09.0 ares and in Survey No.230/3B Hectare 1.22.5 ares, north-south 3 metre x east-west 124 metre. The plaintiff purchased the suit properties on 07.06.1990 and patta has been



S.A.No.361 of 2023

granted in his name. There is a live fence with trees, on the north of the suit property. On 24.07.2007, the 4th defendant encroached into the first and second item of the suit property with JCB and destroyed the live fence and the trees such as neem tree, portia tree and Acacia tree and laid the road. For laying of road, the defendants no.1 to 3 have allocated funds. The plaintiff has sustained loss to the tune of Rs.1,00,000/-. The FMB in respect of the suit property indicates that there is a cart track to the north of the suit property. Plaintiff was not given any notice before laying of the road, hence the suit.

4. Per contra, on behalf of the defendants no.3 and 4, it is contended that it is incorrect to state that the suit properties item no.1 and 2 are in one block. The first item of the property was a cart track and the public have been using the said property as cart track. Even in the sale deed of the plaintiff, in the boundary details, it has been mentioned as to the south and west of cart track on the east of the plaintiff's property road runs in north to south and on the north, cart track is situated in east-west. First item of the suit property does not belong to the plaintiff. From the inception, public have been using the cart track situated in S.No.230/3A for the past 100 years. It was sub-divided as cart track. Thereafter plaintiff obtained patta in his name



S.A.No.361 of 2023

is not legal. When the road lying work was going on, the plaintiff did not raise any objection and without any basis, with false details, he has filed the suit.

5. The trial Court framed relevant issues. To prove the plaint details, the plaintiff has examined himself as P.W.1 and four documents have been marked. Ex.A1 dated 07.06.1990 is the sale deed executed in favour of the plaintiff in respect of the suit properties. On the defendants side, one witness has been examined. Advocate Commissioner was appointed by the trial Court and he has filed his report and rough sketch (Ex.C1 and Ex.C2). The trial Court upon consideration of oral and documentary evidence, except the relief of future mesne profits, suit was decreed in favour of the plaintiff.

6. Aggrieved, the defendant preferred appeal in A.S.No.56 of 2017 before the Subordinate Court, Jayamkondan. Before the First Appellate Court, on behalf of the defendants, one Narayanan has been examined as R.W.2 and seven documents have been marked. Ex.R1 dated 02.03.2022 is FMB in respect of the suit property. Ex.R5 and Ex.R6 dated 17.08.1964 and 22.08.1964 are the sale deeds executed in favour of Manikkam. Ex.R7 dated 07.07.1990 is the copy of sale deed executed by said Manikkam in favour of the plaintiff in respect of the suit properties. Upon consideration of the records and after hearing the arguments advanced by either side, the First



S.A.No.361 of 2023

Appellate Court holding that the plaintiff has only purchased the property in S.No.230/3B (second item of suit property) and first item of the suit property, namely, S.No.230/3A is a cart track that is being used by the public and allowed the appeal and set aside the judgment of the trial Court. Aggrieved the plaintiff has preferred this Second Appeal.

7. The following substantial question of law arise for consideration:-

“1. Whether the First Appellate Court has erred in law in reversing the judgement of the trial Court, when the appellant has proved his title along with possession and enjoyment of the suit property and the Commissioner Report (Ex.C1) indicates that there is a cart tract beyond the property of the appellant on the northern side for the use of common public?”

8. The plaintiff has examined himself as P.W.1 and filed his proof affidavit in line with the details of the plaint. It is the evidence of P.W.1 that he purchased an extent of acre 3.25 cents through Ex.A1. He would admit the fact that in FMB, there is a cart track in his patta land. It is the further evidence of P.W.1 that in between first and second item, earth was excavated and that his land was not encroached by the Government was



S.A.No.361 of 2023

denied by him. When a suggestion was posed to him that, in fact, he had encroached into the first item of the property 0.09.0 ares, it was denied by him.

9. The boundary details found in Ex.A1-Sale deed dated 07.06.1990 is extracted hereunder:-

“ராமசாமி வகையரா நிலத்திற்கு கிழக்கு நத்தத்திற்கு வடக்கு”

10. Ex.A2 is the FMB in respect of suit property in suit S.No.230 of Udayarpalayam. Ex.A3 is the patta in respect of the suit properties dated 06.08.2007.

11. It has been stated in the report of the Advocate Commissioner that in S.No.230/3A, road is laid and to the north of S.No.230/3B, trees have been cut and the tree base are found in between the north of the property in S.No.230/3B.

12. The Taluk Surveyor has been examined as R.W.1. It is the categorical evidence of D.W.1 that S.No.230 was sub-divided as 3A and 3B under Section 9(2) of the Survey and Boundaries Act, 1923, under Updated Register Scheme. The pathway which is in use was measured and notice



S.A.No.361 of 2023

was given to the respective parties and the pathway was sub-divided as 230/3A. He would further state that the total extent of land purchased under Ex.A1 is acre 3.25 cents. After obtaining administrative sanction, the 3rd and 4th respondents have converted the cart track as road and at any point of time, plaintiff was not the owner of the first item of the suit property.

13. The sum and substance of the plaintiff's case is that he purchased the two items of the property from Manikkam as per Ex.A1 dated 07.06.1990. From the revenue records, it is inferable that the first item of the suit property S.No.230/3A – 0.09.0 ares is situated to the north of the second item of suit property S.No.230/3B.

14. It is pertinent to note that the parent documents of the plaintiff in respect of the suit property have been marked as Ex.R5 and Ex.R6. As per Ex.R5 sale deed dated 17.08.1964, Lokanambal Jaganadhan and her son, Ilangovan Jaganadhan have sold an extent of 3.00 acres in S.No.230/3 and a mention is made in the boundary details to the north of 3.00 acres, the pathway is situated. The same property was sold by Ranganathan to Manikkam on 25.08.1964 (S.No.230/3, 3.00 acres) with the same boundary details. Whereas, the plaintiff has purchased from the said Manikkam through Ex.A1/Ex.B7 on 07.06.1990 and the extent dealt with in Ex.A1 is



S.A.No.361 of 2023

Acre 3.25 cents. Manikkam has purchased only 3.00 acres. Over and above the extent purchased by Manikkam through Ex.B7, he has sold 3.25 acre, which is not legal.

15. It is clear that the plaintiff's predecessor in title Manikkam was owning only an extent of 3.00 acres in S.No.230/3. In the year 1986, under Updated Register Scheme, the pathway was sub-divided as 230/3A, 0.09.0 ares and in fact the plaintiff should have purchased S.No.230/3B and the extent is only 3.00 acres. Therefore, granting of patta in respect of S.No.230/3A is also incorrect on the part of the Government. In S.No.230/3, an extent of 3.00 acres was owned by the plaintiff's vendor and beyond the said extent, the plaintiff does not have any right. For the said reason only the plaintiff did not choose to examine his vendor as he marked the parent title deeds namely, Ex.R5 and Ex.R6. Therefore, adverse inference is drawn against the plaintiff for non-filing of Ex.R5 and Ex.R6 his parent sale deeds.

16. As regards the cause of action, the plaintiff would state that on 24.07.2007, the 4th defendant encroached into the first and second item of the suit property and laid the road. From a careful perusal of oral and documentary evidence namely, Ex.A1, Ex.A2, Ex.A3, Ex.C1 and Ex.C2 coupled with Ex.R1 to Ex.R6, it is pellucid that vendor of the plaintiff was



S.A.No.361 of 2023

only owning an extent of 3.00 acres. The plaintiff cannot dispute the fact that the pathway situated to the north of suit property was converted as a road. The said pathway has been converted into road. From a perusal of Ex.R1-comprehensive FMB, the said pathway runs further in the western side and turns to north. The said pathway situated to the north of S.No.230/3B, runs in the north as well as on the eastern side of the suit property. The plaintiff did not examine any independent witness to prove his case. When Ex.A1 itself reads that the pathway runs on the north-eastern side of the suit property, he is estopped from contending that his land is encroached and road was laid. When the plaintiff admitted the fact that to the north of his property, already public pathway is there, it should not lie in his mouth of the P.W.1 that his property was encroached and the road was laid. For the below said reasons, the plaintiff is non suited:-

i). Plaintiff's predecessors' in title namely, Logambal and her son, Ilangovan in the year 1964, and their purchaser Ranganathan on 25.08.1964 have dealt with the suit property in S.No.230/3, 3.00 acres. But the plaintiff has purchased from Manikkam through Ex.A1, 3.25 acres, when he is only entitled to convey an extent of 3.00 acres.



S.A.No.361 of 2023

WEB COPY

ii). In all the sale deeds, namely, Ex.A1, Ex.R5 and Ex.R6, to the north and east of the suit property, pathway details are mentioned. The cause of action mentioned in the plaint is baseless.

17. In view of the above said narrations and based on the aforesaid observations and discussions, plaintiff's case is totally incorrect and the First Appellate Court has taken into account both side oral and documentary evidence in a right perspective and dismissed the suit, which does not warrant interference by this Court. This Court does not find any infirmity or perversity in the findings of the First Appellate Court.

18. More so, S.No.230/3A is a pathway, which was found under the Updated Register Scheme in the year 1986 and plaintiff's property is in Survey No. 230/3B an extent of 3.00 acres (Ex.R5 and Ex.R6). Therefore, through in revenue records, S.No.230/3A stands in the name of plaintiff, it is incorrect.

19. In C.M.P.No.150168 of 2025, the appellant / plaintiff has filed the revenue documents in respect of the suit properties and the order passed in



S.A.No.361 of 2023

E.P.55 of 1982. These are all the documents available for the plaintiff before the trial Court as well as the First Appellate Court. He has not explained why the documents have been belatedly filed before this Court. Hence, the C.M.P.No.15068 of 2025 is dismissed.

20. Above being the position, this Second Appeal stands dismissed. Sequel to this, the judgment and decree dated 01.03.2023 passed in A.S.No.56 of 2017 on the file of the Subordinate Court, Jayankondam stands confirmed. There is no order as to costs. Consequently, connected Civil Miscellaneous Petition stands closed.

17.10.2025

Mac

R.KALAIMATHI, J.

Mac

Copy to

1. The Sub-Court, Jayandondam
2. The District Munsif Court, Jayankondam



WEB COPY



S.A.No.361 of 2023

S.A.No.361 of 2023
and C.M.P.No.10947 of 2023
and C.M.P.No.15068 of 2025

17.10.2025