



Second Appeal No.671 OF 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.06.2025
<i>Pronounced on</i>	18.07.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.671 OF 2019

1. Gajji Gowdu (Died)
2. Chinna Ellammal
- 3.G.Saraswathi, D/o Late Gajji Gowdu,
4. G.Govindammal, D/o Late Gajji Gowdu,
5. G.Muruesan, S/o Late Gajji Gowdu
6. G.Sudaramurthy, S/o Late Gajji Gowdu .. Appellants

Appellant 3 to 6 brought on record as LR's of the deceased 1st appellant, vide Court order dated 09.07.2021 made in CMP No.3619/2021 in S.A.No.671/2019

versus

1. Shanmugam
2. Pushpa .. Respondents

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 11.04.2019 made in A.S.No.19 of 2017 on the file of Sub Court, Vaniyambadi, Vellore District, reversing the judgment and decree dated 16.03.2017 made in O.S.No.111 of 2011 on the file of the Principal District Munsif Court, Ambur.



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For Appellants : Mr.N.Manokaran
For Respondents : Mr.R.Subramanian for
Mr.B.Ravi for R1 & R2

JUDGMENT

This Second Appeal arises out of the judgment and decree, dated 11.04.2019 passed by the learned Sub Judge, Vaniyambadi, Vellore District in A.S.No.19 of 2017 reversing the judgment and decree dated 16.03.2017 passed by the learned Principal District Munsif, Ambur.

2. The plaintiffs, who are unsuccessful before the lower appellate Court, are the appellants herein and the respondents herein are the defendants.

3. For the sake of convenience, the parties herein after referred to their nomenclature before the trial Court.

4. The case of the plaintiffs is that by virtue of a registered partition deed dated 13.10.1964, the 1st plaintiff got 2 cents out of 12 cents in S.No.188/2 towards his 1/6th share and one of the co-sharers,

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namely, Chengkannan sold away 2 cents of his share by way of a registered sale deed dated 05.06.1981 in S.No.188/2A in favour of the 2nd plaintiff, who is the wife of the 1st plaintiff and thereby, the plaintiffs have become the absolute owners of total 4 cents, which are described as Item Nos.1 and 2 of suit schedule. Both suit survey numbers, viz., 188/2 and 188/2A were assigned with a new sub division Survey No.188/2A2. It is also the case of the plaintiffs that they got a right to reach the suit property by a foot path existing in S.No.188/2B-1 from Vellore-Alangayam main road on eastern side to the western side of the suit property under UDR plan. The 1st defendant is the cousin brother of the 1st plaintiff and he was allotted share near to the suit properties under the same partition deed.

5. While so, according to the plaintiff, the defendants were restraining the plaintiffs from entering into the the suit schedule mentioned property and to harvest the same and thereby, causing interruption to the plaintiffs' peaceful possession and enjoyment of the suit property. The plaintiffs claimed that they had pathway to reach their



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property existing in S.No.188/2B-1 from Vellore-Alangayam main road on eastern side to the western side of suit property and except the said foot path, there is no other pathway available for the plaintiffs to enter into their lands since the suit properties were surrounded in all fours by the lands of the defendants. Hence the suit.

6. The 1st defendant filed a Written Statement, *inter alia*, stating that the plaintiffs were never in possession of the suit property and they are not entitled to the relief of injunction against the defendants. The plaintiffs have not given correct particulars of the suit property including its extent, boundaries and physical features. Further, in his additional written statement, the 1st defendant has stated that abutting Vellore to Alangayam main road, on the western side, there is Aadiparasakthi temple which is a private temple and on Southern side of the temple, there is a land in S.No.188/2B1 belonging to the 1st defendant. In between this piece of land and temple, there is no foot path and that there is not even trace of foot path. While so, only in order to create a right to passage, the plaintiffs sought the relief of declaration. The plaintiffs'



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vendor had no right over the alleged foot path, hence the 2nd plaintiff cannot derive any title or right over the said foot path way. In other words, the vendor cannot transfer more than what he had and therefore, the plaintiffs cannot claim the right over the foot path and the suit is not maintainable.

7. It is further stated that the vendor of the plaintiffs, namely, Chengkannan had no right to the alleged passage and the boundaries given in the sale deed dated 05.06.1981 favouring the 2nd plaintiff are incorrect. There is no passage at all to the property purchased by the 2nd plaintiff as well as the share allotted to the 1st plaintiff. In other words, the defendants are owning land in and around the land purchased by the 2nd plaintiff as well as the share of land allotted to the 1st plaintiff and absolutely there is no access to the said land purchased by the 2nd plaintiff as well as share allotted to the 1st plaintiff. According to the 1st defendant, the plaintiffs are owning 0.4 acre out of 0.12 acres in S.No.188/2 and the defendants are owning 0.08 acre out of 0.12 acre in the said survey and to reach 0.04 acre by the plaintiffs, there is no



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passage/foot path at all and that the alleged passage was created in the sale deed by the said Chengkannan in favour of the 2nd plaintiff though the said vendor did not have any right over the alleged passage. Hence, the plaintiffs cannot claim the same. With these averments, the 1st defendant sought for dismissal of the suit.

8. On consideration of the pleadings of the respective parties, the trial Court, framed the following issues for consideration:

1. Whether the plaintiffs are entitled for permanent injunction as prayed for?
2. Whether the alleged cause of action is true?
3. To what other relief, the plaintiffs are entitled to?

Apart from the above, the following additional issues were also framed, viz.,

1. Whether there is any foot path way exist as AB mentioned in the rough plan?
2. Whether the plaintiffs have right on the alleged AB mentioned foot path?
3. Whether the plaintiffs are entitled to the declaration of title to the suit property as claimed?



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WEB COPY 9. In order to prove their case, the plaintiffs examined Pws to 3 and marked documents as Exs.A1 to A6, while the defendants examined Dws 1 to 4 and marked documents as Exs.B1 to B4. Advocate Commissioner was examined as CW.1 and his report and sketch were marked Exs.C1 to C4.

10. The trial Court, on consideration of both oral and documentary evidence adduced by both parties, has made the following observations, viz.,

i) Though the defendants denied the existence of any foot path passage or even a trace of foot path in between Adhiparasakthi Temple and survey No.188/2B1, the Commissioner's report has falsified the said contention of the defendants. To overcome the report of the Advocate Commissioner which reveals the existence of the foot path, the defendants have put forth a new case that the said foot path way depicted in the Advocate Commissioner's report, pathway created and formed by the defendants in order to reach to their cattle shed in survey No.188/2B1 and that it is exclusive pathway only for the usage of the defendants and not for anybody else;



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ii) *The existence of foot pathway in between Survey No.188/2B1 and Adhiparasakthi temple is admitted by DW.1 and DW.3 in their evidence;*

iii) *In Ex.C2 sketch, the foot pathway is shown to run from Vellore to Alangayam road upto the land in Survey No.188/2A1 which belongs to the 1st defendant and Ex.C3 reveals that the said pathway had taken a bend on the western and is shown to end upto the plaintiffs land i.e. Survey No.188/2A2;*

iv) *From the evidence of DW.3, it is evident that only through the zig zag pathway, i.e. the one shown to exist in Ex.C4, the plaintiffs could reach their lands, i.e. Surve No.188/2A2;*

v) *It is true that the plaintiffs are not entitled to use the foot pathway, the defendants would have prevented the plaintiffs from using the disputed pathway ever since 1981. But the defendants have not prevented the plaintiffs till the year 2010 when the dispute arose between the plaintiffs and defendants regarding the usage of pathway;*

vi) *The plaintiffs land in Survey No.188/2A2 is surrounded by defendants land on all sides. Therefore, since the land allotted to*



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the 1st defendant abutting the Vellore to Alangayam main road, the other allottees can reach to their lands only through the 1st defendant's land which is in Survey No.188/2B1;

vii) There is no evidence to show that the suit pathway was allotted to the vendor Chengkannan and hence, the sale of right over the pathway by Chengkannan in favour of the 2nd plaintiff is not proved;

viii) The plaintiffs have proved to be in possession and enjoyment of suit property and also the disputed pathway. Even though the plaintiffs have not proved their exclusive title over the disputed pathway way, this Court has concluded that from the admissions made by the defendants and their witnesses that except the disputed pathway, there is no other pathway available to the plaintiffs to reach their lands and the said usage has been ever since the partition in the year 1964 and also since 1981 whereby 2 cents of Chengkannan was purchased by the 2nd plaintiff;

11. Having observed the above, the trial Court has categorically held that the plaintiffs are entitled to the relief of declaration of title over Item 1 and 2 of the suit property, but not entitled to the relief of



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declaration over the suit pathway, however, they are entitled to use pathway and thereby, granted the relief of permanent injunction in respect of the alleged pathway. Accordingly, decreed the suit in part.

12. Aggrieved over the judgment and decree of the trial Court, the defendants have preferred an appeal. The lower appellate Court, on analysis of the findings of the trial Court, has arrived at the following conclusions, viz.,

i)Therefore, the crucial documents in this case are Exs.A1 and A2, though the plaintiffs have focussed their case only on the basis of the admission made by the DW.1, but the plaintiffs have to prove their case and they cannot take the shelter or advantage on the weakness of the dependants case. The plaintiff has to prove the right over the AB portion through Ex.A1 and A2 and they cannot given any oral evidence against the written document as per Section 92 of the Indian Evidence Act because they are focussing their case only Ex.A1 and A2;

ii) But as per evidence of PW.1 and his supporting witnesses PW.2 and PW.3 have claimed the right of way as easementary right since there is no other way to reach 2nd item of the suit schedule



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WEB COPY *property except ab portion annexed in the plaint plan.*

iii) It is clear from Section 4 of Easements Act, that the plaintiff cannot be permitted to claim the easement ownership and easement right with inconsistent plea and the plaintiff should stick on to his specific claim, therefore, the trial Court should have analyzed the case only based on Ex.A1 and A2 and not on the basis of Commissioner's report;

iv) The Commissioner has deposed as CW1 and stated that after his 1st visit, the foot path has been dumped with mud and therefore, the direction of the foot path has been changed. But this Court is not inclined to accept the evidence because by mere dumping the mud, the direction of the foot path will not change and the direction of foot path mentioned in Ex.C2 and mentioned in Ex.C4 are entire different direction;

v) Therefore, this Court finds that the Commissioner's report is biased and it cannot be looked into for any purpose;

vi) Therefore, this Court finds that the trial Court has failed to consider the pleadings and documents produced by the plaintiffs and wrongly considered and decreed the suit.



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WEB COPY 13. Having reached the above conclusions, the lower appellate Court set aside the judgment and decree of the trial Court and allowed the appeal preferred by the defendants.

14. Questioning the same, now the plaintiffs have come forward with the present Second Appeal.

15. While admitting the Second Appeal, vide order, dated 18.06.2019, this Court framed the following substantial questions of law, viz.,

“a. Whether the First Appellate Court is correct in dismissing the suit on the ground that there is no mention in Exs.A1 and A2 enabling the plaintiffs to use the suit pathway for access to their property, especially when the plaintiffs have established their property, especially when the plaintiffs have established their implied grant in relation to suit passage as an access to their property?

“b. Whether the plaintiffs are entitled to get the relief under the concept of Easement by lost grant,



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since there is no other pathway was provided and no objection was raised by the defendants to use the pathway till the date of cause of action, to reach the property of the plaintiffs?

“c. Whether the judgment of the First Appellate Court is perverse and vitiated, for its failure to follow the law laid down in “*Sree Swayam Prakash Ashram Vs. G.Ananda Valliammal*” (2010 (2) SCC 689) ?”

16. Questioning the judgment and decree passed by the lower appellate Court, Mr.N.Manokaran, learned counsel appearing for the appellants/plaintiffs, at the outset, would vehemently contend that it is an admitted fact even as per the averments of the written statement filed by the 1st defendant and also from the evidence of DWs.1 and 3 and by way of Reports and sketches of the Advocate Commissioner, Exs.C1 to C4, that the plaintiffs have no other pathway to reach their lands except the suit pathway, the plaintiffs and their predecessors were using the same for decades till the date of cause of action. He would point out that it is not in dispute that the plaintiffs got 4 cents, viz., 2 cents by virtue of partition deed ExA1, dated 13.10.1964 and another 2 cents by the



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registered sale deed Ex.A2, dated 05.06.1981, situated in S.No.188/2A2, which is not disputed by the defendants. They are only disputing that there is no existence of suit pathway at all. The trial Court, however, based upon the evidence of DWs.1 and 3 and Advocate Commissioner's reports and sketches, Exs.C1 to C4, has rightly held that there is a suit pathway and till 1978, the father of DW.2 was also enjoying his 2 cents only through the subject pathway and except the suit pathway, there is no other pathway to reach the lands of the plaintiffs. He would also contend that even though the trial Court has declined to declare the suit pathway, but rightly granted permanent injunction over the suit pathway and thereby, the plaintiffs are entitled to use the suit pathway on the basis of the doctrine of easement by lost grant.

17. He would also contend that the appellate Court without appreciating the evidence available on record as regards the existence of suit pathway in proper perspective, unfortunately, only by taking into consideration Exs.A1 and A2 which do not convey any right or title towards suit pathway and also the vendor of the 2nd plaintiff had not



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conveyed any suit pathway, except 2 cents, held that the plaintiffs cannot claim right or title over the suit pathway. The learned counsel would contend that the lower appellate Court ought to have analysed the evidence which would clearly establish that the suit pathway has been in usage from the year 1964 and that the plaintiffs are not having any other alternative pathway to reach their lands and even in the absence of specific plea as regards implied grant of easementary right, the lower appellate Court, on consideration of peculiar circumstances where the plaintiffs have no access, except the suit pathway, ought to have held that by virtue of partition that had taken place in the year 1964, the parties to the partition have been enjoying their respective shares and as such, the plaintiffs were also enjoying by using the suit pathway to reach their lands, which would establish that there was a grant by implication and such implied grant of easementary right in relation to suit pathway ought to have been held in favour of the plaintiffs even in the absence of plea of easement. In this regard, the learned counsel relied upon a decision reported in *“Sree Swayam Prakash Ashramam and another versus G.Anandavally Amma and others”* reported in (2010) 2 SCC 689.



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WEB COPY 18. The learned counsel for the appellants also relied upon the decisions of this Court in ***“Koolan @ Munusamy versus Chennammal”*** reported in 2019 (2) CTC 397 and ***“Kuruvilla Joseph (minor) and others versus Devagiri Plantation Ltd. rep. By M.D., and another”*** reported in CDJ 2021 MHC 098 to support of his contentions that right of easement does not depend on the concessions made by the parties to a sale deed, but it exists independent of it and if the suit pathway is not there, there is no way to reach the plaintiffs' property and further, Section 13 of the Easement Act provides for easement of necessity and right of way will invite itself to ensure that none of those who are the parties to the partition is disadvantaged due to want of a right of access. Therefore, he would point out that the 1st plaintiff is one of the co-sharers by virtue of the partition under Ex.A1, he should not be put to disadvantage for want of a right of access.

19. He also relied upon a decision of the Hon'ble Supreme Court in ***“S.B.Noronah versus Prem Kumari Khanna”*** reported in (1980) 1 SCC



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52 wherein, it is held that common sense approach should be taken to technical defects in the pleadings and law should not be stultified by Courts by sanctifying little omissions as fatal flaws.

20. The learned counsel would further contend that Advocate Commissioner's report and sketches are crucial pieces of evidence that can be very well relied upon by the Courts when there were no objections filed by the other party and in the present case, even though no objections were filed by the defendants, however, the lower appellate Court declined to rely upon the Advocate Commissioner's report and sketches. He would contend that the Advocate Commissioner's report and sketches, viz., Exs.C1 to C4 would clearly reveal the existence of the suit pathway. But the defendants contrary to their written statement, had taken a different stand that suit pathway is created for their exclusive usage to reach the cattle shed, is nothing but an afterthought to overcome the learned Advocate Commissioner's report. He would also contend that even in the absence of specific pleadings regarding easementary right over the suit pathway, since in their oral evidence, DW.1 and DW.3 had



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admitted the existence of foot pathway, the Court is empowered to pronounce judgment based on the admissions made by the parties by virtue of Order 12 Rule 6 CPC.

21. With the above contentions and also in the peculiar circumstances where the plaintiffs have no access to their lands except the suit pathway without which, absolutely, there is no possibility for the plaintiffs to reach their lands and enjoy the property, the learned counsel would urge this Court to set aside the judgment and decree of the lower appellate Court and in factual circumstances coupled with evidence, this Court can even to mould the relief and grant the same, which would meet the ends of justice.

22. Per contra, Mr.R.Subramanian, learned counsel appearing for the respondents would contend that the plaintiffs sought the relief of declaration in respect of their suit property including the suit pathway based on Exs.A1 and A2 and the vendor of the plaintiffs under Ex.A2, in fact, was not allotted the alleged suit pathway and therefore, he cannot



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convey what he does not have to the plaintiffs. He pointed out that the relief of declaration over the suit pathway was negated by the trial Court, but the plaintiffs have not challenged the same by way of appeal and once the relief of declaration goes, the consequential relief of injunction cannot be sustained. In this regard, he relied upon a decision of this Court in ***“D.Anjappa & others versus Marappa”*** reported in (2014) 3 LW 442, wherein, it has been held that once the relief of declaration of title is rejected, grant of consequential relief of injunction, cannot be sustained. Therefore, he would contend that once the trial Court based upon both documentary and oral evidence, rightly rejected the relief of declaration in respect of the suit pathway, but erroneously granted the consequential injunction, which the lower appellate has rightly set aside the same, which does not require any interference.

23. He would also contend that even for claiming easementary right, there should be a pleading in the plaint and once the plaintiffs failed to establish their right and title over the suit pathway, they cannot turn up and claim easementary right. In this regard, he relied upon a



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WEB COPY decision of the Hon'ble Supreme Court in “***Bachaj Nagar versus Nilima Mandal and another***” reported in (2008) 17 SCC 491, wherein, it has been held that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings and that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

24. Therefore, the learned counsel would contend that the lower appellate Court has rightly set aside the judgment and decree of the trial Court, which requires no interference and hence sought for dismissal of the suit.

25. Heard the learned counsel appearing for the parties and perused the entire materials placed on record.

26. The appellants, as plaintiffs, have filed O.S.No.111/2011 before the District Munsif Court, Ambur, against the respondents for declaration of title and permanent injunction. According to the

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26.1. The claim of the plaintiffs was resisted by the defendants stating that there is no foot pathway as alleged in the plaint and the 2nd plaintiff's vendor had no right to transfer the alleged pathway. The defendants alone are absolute owners of the property and at no point of time the plaintiffs used the alleged pathway.

26.2. The trial court and the first appellate court has rendered a concurrent finding holding that the vendor of the plaintiffs himself had no title over the foot pathway and so the plaintiffs cannot claim any right or title over the suit pathway.



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WEB COPY 26.3. The plaintiffs claim title over the suit pathway based on a partition deed (Ex.A1) and sale deed (Ex.A2), wherein the 2nd plaintiff's vendor had conveyed the pathway in favour of the 2nd plaintiff. The trial court and the first appellate court has rightly held that since there is no document to show that the plaintiffs' vendor was allotted the suit pathway, he cannot convey what he does not have. By holding so, the trial court rightly rejected the prayer for declaration of title to the suit pathway. However, the trial court has granted the relief of permanent injunction, which was reversed by the first appellate court by holding that when the relief of declaration of title is rejected, the trial court ought not to have granted the relief of permanent injunction, by referring to the judgment in *D. Anjappa & others Versus Marappa* reported in **2014 (3) LW 442**, in which it was held that once the relief of declaration is negated, the consequential relief of injunction cannot be granted. No perversity or infirmity is found in the said findings. No appeal was preferred by the plaintiffs in this regard. Now it has to be seen whether the plaintiffs are entitled for any alternative relief without any pleadings.



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WEB COPY 26.4. A perusal of the plaint clearly shows that the entire case of the plaintiffs was that they were the owners of the suit pathway and therefore sought for the relief of declaration over the suit pathway. The plaintiffs had not pleaded, even as an alternative case, that they were entitled to easementary right of passage over the schedule property. The learned counsel for the defendants would rely on the judgement of the Hon'ble Supreme Court in the case of ***Bachhaj Nahar vs. Nilima Mandal and another*** reported in ***(2008) 17 Supreme Court Cases 491*** wherein it has been held that the relief can be granted only with reference to the prayer made in the pleadings. The relevant paragraphs of the aforementioned judgment is extracted here under:

19. Easements may relate to a right of way, a right to light and air, right to draw water, right to support, right to have overhanging eaves, right of drainage, right to a watercourse, etc. Easements can be acquired by different ways and are of different kinds, that is, easement by grant, easement of necessity, easement by prescription, etc. A dominant owner seeking any declaratory or injunctive relief relating to an easementary right shall have to plead and prove the nature of easement, manner of acquisition of the easementary right, and the manner of disturbance or



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WEB COPY obstruction to the easementary right.

20. The pleadings necessary to establish an easement by prescription, are different from the pleadings and proof necessary for easement of necessity or easement by grant. In regard to an easement by prescription, the plaintiff is required to plead and prove that he was in peaceful, open and uninterrupted enjoyment of the right for a period of twenty years (ending within two years next before the institution of the suit). He should also plead and prove that the right claimed was enjoyed independent of any agreement with the owner of the property over which the right is claimed, as any user with the express permission of the owner will be a licence and not an easement. For claiming an easement of necessity, the plaintiff has to plead that his dominant tenement and the defendant's servient tenement originally constituted a single tenement and the ownership thereof vested in the same person and that there has been a severance of such ownership and that without the easementary right claimed, the dominant tenement cannot be used. We may also note that the pleadings necessary for establishing a right of passage is different from a right of drainage or right to support of a roof or right to watercourse. We have referred to these aspects only to show that a court cannot assume or infer a case of easementary right, by referring to a stray sentence here and a stray sentence there in the pleading or evidence.



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21. A right of easement can be declared only when the servient owner is a party to the suit. But nowhere in the plaint, the plaintiffs allege, and nowhere in the judgment, the High Court holds, that the first or the second defendant is the owner of the suit property. While concluding that the plaintiffs were not the owners of the suit property, the High Court has held that they have a better right as compared to the first defendant and has also reserved liberty to the plaintiffs to get their title established in a competent court. This means that the Court did not recognise the first defendant as the owner of the suit property. If the High Court was of the view that the defendants were not the owners of the suit property, it could not have granted declaration of easementary right as no such relief could be granted unless the servient owner is impleaded as a defendant. It is also understandable as to how while declaring that the plaintiffs have only an easementary right over the suit property, the court can reserve a right to the plaintiffs to establish their title thereto by a separate suit, when deciding a second appeal arising from a suit by the plaintiffs for declaration of title. Nor is it understandable how the High Court could hold that apart from the plaintiffs, other persons living adjacent to and north of the suit property were entitled to use the same as passage, when they are not parties, and when they have not sought such a relief.



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22. The observation of the High Court that when a plaintiff sets forth the facts and makes a prayer for a particular relief in the suit, he is merely suggesting what the relief should be, and that it is for the court, as a matter of law, to decide upon the relief that should be granted, is not sound. Such an observation may be appropriate with reference to a writ proceeding. It may even be appropriate in a civil suit while proposing to grant as relief, a lesser or smaller version of what is claimed. But the said observation is misconceived if it is meant to hold that a civil court may grant any relief it deems fit, ignoring the prayer.

23 [Ed. : Para 23 corrected vide Official Corrigendum No. F.3/Ed.B.J./89/2009 dated 17-7-2009.] . *It is fundamental that in a civil suit, relief to be granted can be only with reference to the prayers made in the pleadings. That apart, in civil suits, grant of relief is circumscribed by various factors like court fee, limitation, parties to the suits, as also grounds barring relief, like res judicata, estoppel, acquiescence, non-joinder of causes of action or parties, etc., which require pleading and proof. Therefore, it would be hazardous to hold that in a civil suit whatever be the relief that is prayed, the court can on examination of facts grant any relief as it thinks fit. In a suit for recovery of rupees one lakh, the court cannot grant a decree for rupees ten lakhs. In a suit for recovery possession of property 'A',*



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court cannot grant possession of property 'B'. In a suit praying for permanent injunction, court cannot grant a relief of declaration or possession. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.

Therefore, in the absence of a claim by the plaintiffs based on a easementary right, without giving an opportunity to the defendants to deny such claim, a suit for declaration of title cannot be converted into a suit for enforcement of easementary right. The facts to be pleaded and proved for establishing title are different from the facts that are to be pleaded and proved for making out an easementary right. A suit for declaration of title and possession relates to the existence and establishment of natural rights which inhere in a person by virtue of his ownership of a property. On the other hand, a suit for enforcement of an easementary right relates to a right possessed by a dominant owner/occupier over a property not his own, having the effect of restricting the natural rights of the owner/occupier of such property.

26.5. Therefore, It is settled law that easement and title do not go



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WEB COPY together. This Court in **2004(4)CTC 414 (Arunachalam Pillai vs. Sorimuthu Pillai)** has held that easementary right and ownership are mutually exclusive concepts. Easement over property can be claimed only if the person admits the title of the other person. Therefore, the plaintiffs having claimed ownership cannot revive his plea for easementary right.

26.6. In the case relied on by the appellants/plaintiffs reported in **2010(2) SCC 689 (Sree Swayam Prakash Ashramam and another vs. G. Anandavally Amma and others)**, the plaintiff therein claimed both easement of necessity and easement of grant. But, in the instant case, there is no prayer for declaration of easementary right. Therefore, the first appellate court has rightly dismissed the suit filed by the plaintiffs which does not warrant interference by this Court. Accordingly, the substantial questions of law framed above are answered in negation against the appellants/plaintiffs and in favour of the respondents/defendants. The Second Appeal is devoid of merits and the same is liable to be dismissed.



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27. In the result,

- I. The Second Appeal is dismissed. No costs.
- II. The judgment and decree dated 11.04.2019 made in A.S.No.19 of 2017 on the file of Sub Court, Vaniyambadi, Vellore District, is upheld.

18.07.2025

bga

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To

1. The Subordinate Judge, Vaniyambadi, Vellore District.
2. The Principal District Munsif, Ambur.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI, J.

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Pre-delivery Judgment made in

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