



WEB COPY

S.A.No.311 of 2014



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.05.2025

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

S.A.No.311 of 2014
and M.P.No.1 of 2014

1.G.Mohanarangam

2.R.Maragadavel

(2nd appellant (third party) was impleaded

vide order of this Court dated 23.10.2019

made in C.M.P.No.22704/2019

in S.A.No.311 of 2014)

...Appellants/Respondents/Defendants

Versus

G.R.Krishnaveni

...Respondent/Appellant/Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree dated 20.11.2013 made in A.S.No.274 of 2012 on the file of the XV Additional City Civil Court, Chennai, reversing the Judgment and Decree dated 22.03.2012 made in O.S.No.861 of 2008 on the file of the V Assistant City Civil Court, Chennai.

For 1st Appellant : Mr.V.Subramani

For 2nd Appellant : Mr.K.Shanmugakani

For Respondent : Mr.S.S.Vijaya Kumar

for M/s.B.Jai Sundar



JUDGMENT

WEB COPY

Aggrieved by the judgment and decree dated 20.11.2013 passed in A.S.No.274 of 2012 by the XV Additional City Civil Court, Chennai, the defendant herein preferred this Appeal.

2.Parties are indicated herein as per their litigate status and ranking before the Trial Court.

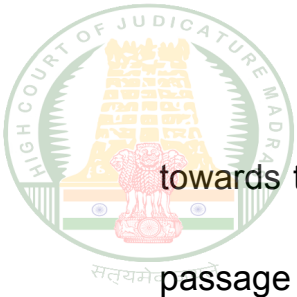
3.According to the plaintiff herein her mother-in-law late Chandraammal was the absolute owner of the house, ground and premises comprised in T.S.No.41(part), block No.29, in Old S.No.34/10A part, at Peravallore Village, Perambur-Purasaiwalkam Taluk, with total extent of 2 grounds and 1149 sq.ft, which was purchased by her by a registered sale deeds dated 02.03.1934 in Doc.No.318/1934 and on 17.04.1935 in Doc.No.702/1935 dated 06.04.1945/Registration No.393/1945. A portion of the property with an extent of 1 ground and 215 sq.ft in the A Schedule, was purchased by the defendant from the original owner late Chandraammal, as per sale deed dated 23.11.1988 in Doc.No.4428/1988. The property sold to the defendant situate



WEB COPY

on the rear side. A common passage was provided to the defendant to have ingress and egress to Chinnasamy Raja Street and a mention is made in the sale deed that only permission to use the common passage was given. The late Chandraammal retained the remaining portion out of two grounds and 1149 sq.ft (sold out to the defendant one ground and 215 sq.ft) executed a registered Will dated 13.12.1985 in Registration No.68/1985 bequeathing 'B' Schedule property to her son V.Govindaram and grandsons G.Aravindkumar and G.K.Sathyanarayanan.

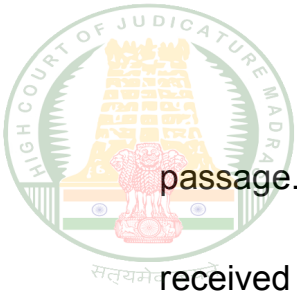
4.It is the further case of the plaintiff that after her demise, the Will was probated in O.P.No.642/2000. The plaintiff's husband and her two sons, who are the absolute owners of the house, ground and premises bearing Old Door No.11 at Chinnasamy Raja Street with a total extent of 1919.52 sq.ft. Her husband and her two sons executed a settlement deed on 18.08.2003 in Doc.No.5806/2003 at the office of the Sub-Registrar, Sembium in favour of the plaintiff. The plaintiff became the absolute owner of the said property which is shown as B Schedule in the plaint. In the settlement deed itself, it has clearly been mentioned that the plaintiff has every right, title and interest



WEB COPY

towards the common passage, to have ingress and egress over the common passage and also to draw water from the well situated on the Eastern side end of the common passage. The common passage is described as 'C' schedule property in the plaint.

5.The plaintiff has a house in 'B' Schedule property consisting of two portions and the same have been let out the drainage pipes have been laid under the earth in the 'C' Schedule property. The plaintiff has to carry out the white washing and repairs only through the common passage. Repairs to the drainage will be carried out only by entering into the common passage. It is the further case of the plaintiff that the defendant recently put up a gate at the entrance of the 'C' Schedule common passage and also another gate in the middle of 'C' Schedule passage. The defendant has locked both the gates and holding the keys with him. He refused permission to the plaintiff to enter into the 'C' Schedule common passage, even to remove the blocks in the drainage. The defendant has closed the well in the 'C' Schedule property by filling it up and encroached upon the 'C' Schedule property by putting up construction namely three sun shades projecting two feet into the common



WEB COPY

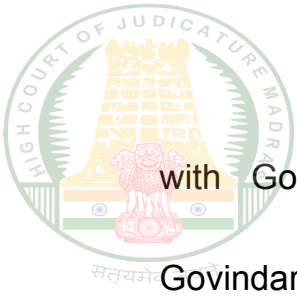
passage. Pre-suit notice was issued to the defendant and the plaintiff has received a reply with untenable details. As the defendant failed to remove the locked iron gates or the encroachments and continued to prevent the plaintiff from entering 'C' Schedule property, a suit was laid

i) for permanent injunction restraining the defendant from interfering with the plaintiff's right of ingress and egress into the 'C' Schedule property.

ii) for mandatory injunction to remove the obstructions in the 'C' Schedule common passage.

iii) for permanent injunction to restrain the defendant from putting up any obstruction by way of construction or otherwise in the 'C' Schedule property.

6. Contending contra, the defendant contended that the defendant purchased 'A' Schedule property from Chandraammal by a sale deed dated 23.11.1988 along with a well which is situated in the middle of 'A' Schedule property. In the common passage both the plaintiff and one Govindaraj had constructed sun shades which are projecting into the 'C' Schedule property. 'C' Schedule common passage is in the exclusive usage of the defendant along



WEB COPY

with Govindaraj. The defendant with the knowledge and consent of Govindaram, husband Krishnaveni put up a mesh wooden framed gate with lock facility and the southern end of 'C' Schedule property, adjacent to Chinnasamy street in the year 2001 with an intention to prevent the entry of street dogs, passer by and anti social elements. At the time of installation of the said gate, out of trust, mutually agreed by the defendant and Govindaram that the gate will not be locked for any reason and no hand lock was fixed in the gate. The defendant has fixed gate at the entrance of 'A' Schedule property to prevent the entry of unknown persons and for safety purpose. He has not put up any construction over 'C' Schedule property. The defendant never locked the first gate abutting Chinnasamy Street. The defendant uses the 'C' Schedule property to reach his 'A' Schedule property which is the only pathway to reach from Chinnasamy street. The defendant never refused to allow the plaintiff to use the common passage (C Schedule property).

7. Based on the rival contentions, following issues were framed by the

Trial court:



1. Whether the plaintiff is entitled to get permanent injunction as prayed for?
2. Whether the plaintiff is entitled to get mandatory injunction as prayed for?
3. Whether there is no cause of action for the suit as alleged by the defendant?
4. To what other relief the plaintiff is entitled?

8. At trial, in order to substantiate the plaint details, on the plaintiff's side, one witness was examined and ten documents were marked. Ex.A1 dated 18.08.2003 is the copy of the settlement deed executed by Chandraammal in favour of her son and grand children. Ex.A2, dated 23.11.1988 is the certified copy of the sale deed executed by V.Govindaram (husband of the plaintiff) in favour of the defendant. On the defendant's side, defendant has examined himself as D.W1 and two documents have been marked. The report of the Advocate Commissioner dated 24.04.2008 is Ex.C1 and his rough plan is Ex.C2.

9. Upon consideration of oral and documentary evidence and after hearing the arguments advanced by the learned counsels appearing for both sides, the Trial Court concluded that as the defendant put up his name board



upon the Mesh gate and relying upon the testimony of P.W1, chose to non suit

the plaintiff as there is no cause of action as alleged in the plaint.

WEB COPY

10. Aggrieved, the plaintiff preferred an Appeal in A.S.No.274/2012 before the XV Additional City Civil Court, Chennai and upon consideration of entire case records and after hearing the arguments advanced by both sides the 1st Appellate Court allowed the appeal by setting aside the judgment and decree dated 22.03.2012 passed in O.S.No.861/2008 by the learned V Assistant Judge, City Civil Court, Chennai.

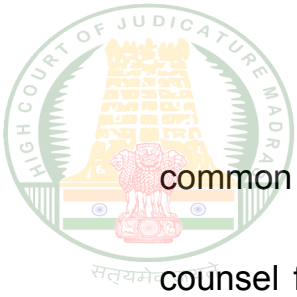
11. The learned counsel for the appellant/defendant would vehemently contend that in fact the defendant never obstructed the plaintiff from using the common passage in 'C' Schedule Property and hence, there was no obstruction. The evidence of P.W1 to the effect that she visited the suit schedule property in the year 2004, was not appreciated properly by the first appellate Court. the plaintiff cannot seek for an injunction restraining the defendant from interfering with the plaintiff's right in respect of common passage while she is not in possession of the suit property.



WEB COPY

12.He would further contend that the two gates put up by the defendant in 'C' schedule property is only for safety and security purposes. The learned counsel for the appellant would also further contend that the plaintiff is infact infuriated by the defendant's name board fixed upon the gate at the entrance.

13.Whereas, the learned counsel for the respondent/plaintiff would strenuously argue that in the settlement deed executed in favour of the plaintiff it has been clearly stated that the plaintiff has right, title and interest over the common passage, to have ingress and egress over the common passage and also to draw water from the well situated at the eastern end of the common passage, which is described as 'C' schedule property. It is the further argument of the learned counsel for the respondent/plaintiff that the plaintiff has her drainage connection in the common passage by laying drainage pipes in 'C' schedule property: for maintaining her buildings she has to use the common passage. The gates put up one at the entrance and in the middle of 'C' schedule common passage have been locked by the defendant and thereby the defendant not permitted the plaintiff to enter into the 'C' schedule



WEB COPY

common passage even to remove the blocks in the drainage. The learned

counsel for the respondent/plaintiff would further contend that the defendant

has put up three sun shades projecting two feet into the common passage.

The 1st appellate Court, having taken into account the details of rights of the

plaintiff over the common passage coupled with the report and plan of the

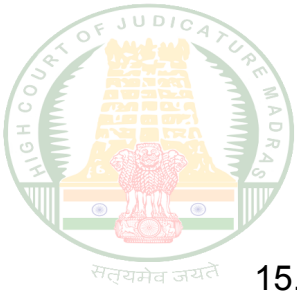
Advocate Commissioner, has set aside the judgment of the trial Court,

thereby, appreciated the case in a proper perspective which needs no

interference by this Court.

14.The following substantial questions of law arise for consideration:-

1. Whether the 1st appellate Court is correct in granting a decree based on the right of easement in respect of the common passage when there is no servient tenement and dominant heritage?
2. Whether the finding regarding obstruction caused in the common passage in the absence of any evidence is perverse?
3. Whether the 1st appellate Court is correct in granting injunction while the plaintiff is not in possession of the suit property?

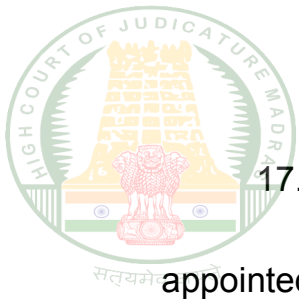


WEB COPY

15.The plaintiff G.R.Krishnaveni who is the dominant owner has laid the suit that the defendant be restrained from preventing her from using the common passage which is left for the use of defendant and by the plaintiff.

The plaintiff, who is examined as P.W.1, has spoken in line with the plaint pleadings. Further, she would depose that before filing the suit, she did not visit the 'C' schedule common passage. The defendant cannot deny the fact that she has let out her houses to two tenants which is situated in 'B' schedule property and admittedly as per the Commissioner's Report Ex.C1, the drainages of the plaintiff's houses are situate in the common passage 'C' schedule property.

16.Further, it is the candid case of the plaintiff that the defendant has put up two gates, one at the entrance of the common passage and another one gate in the 'C' schedule property and thereby prevented the plaintiff from using common passage.



WEB COPY

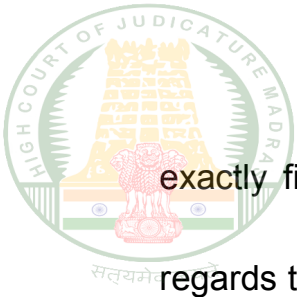
17. Upon an application by the plaintiff, an Advocate Commissioner was appointed to visit the suit property, to make local inspection and to note down the physical features of 'A', 'B' and 'C' schedule properties. From the report and rough plan of the Advocate Commissioner, it is made clear that Chinnasamy Raja Street runs in South-North. Plaintiff's property is situated in the Eastern side. 'C' schedule common passage runs East-West. A gate with wooden frame fixed at the entrance of the common passage in the front gate six name boards are put up on the gate. According to the Advocate Commissioner's Report, the pathway measures 68.6 inches upto the 2nd gate. P.W.1 has stated that the gate put up at the entrance of the 'C' schedule absolutely prevents her from entering the common passage (C schedule property). Her version is further strengthened by the report of Advocate Commissioner. D.W.1 in his written statement as well as in his proof affidavit has also made a mention that he has put up two gates, one at the entrance of 'C' schedule property (one passage) and other one at the point where the common passage ends. Therefore P.W.1 allegation to the effect that she is prevented from entering into the common passage by fixing a gate at the entrance of common passage stands proved. The argument of the learned



WEB COPY

counsel for the respondent to the effect that P.W.1 has lastly visited the suit property in the year 2004 will not hold water because her case is her men were prevented from entering into the common passage in the course of maintaining her rented house, where the drainages for the rented house are situate in the common passage ('C' schedule property).

18.As per the sale deed Ex.B1 dated 23.11.1988 the defendant gets easement right by grant. The common passage measurement as per Ex.B1 is measuring 80 1/2 feet length East-West 3 feet on the Western side (North-South) and 4 feet X 6 feet (North-South) in the Eastern side totally 372 square feet in area. Therefore, the length of the common passage in the East-West is 80 1/2 feet. From a careful perusal of the evidence of P.W.1 coupled with the Advocate Commissioner's Report the extent of the common passage from the 1st gate fixed adjacent to the Chinnasamy Street and the gate fixed on the Eastern side is not proved. In order to ascertain about these facts the plaintiff should have sought the help of revenue officials for taking measurements and the said details should have been put forth by way of examining the revenue officials. For these reasons, the plaintiff has failed to prove where the well is



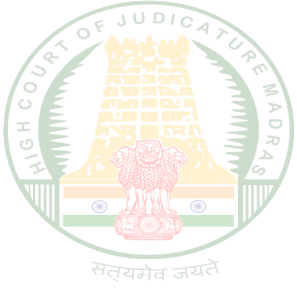
exactly fixed and so also as to the 2nd gate which is mentioned as G2. As

regards the protrusion of the sun shades alleged to have been constructed by

the defendant, the plaintiff has not clearly established this fact.

19.No doubt, the gate fixed at the entrance of common passage is a strong cause of action for the plaintiff to file the suit, which is also admitted by the defendant in his written statement to the effect that two gates have been fixed by the defendant, one at the entrance of the common passage and other one in the Eastern side of the main road. There is no issue about the location of 'A' and 'B' schedule properties. The defence of the defendant to the effect that the plaintiff need not use the common passage is not sustainable in law, as the plaintiff has put up the drainage in the common passage for the houses situate in the 'B' schedule property. It is relevant to refer to the evidence of D.W.1 (defendant)

“...சி2 வரைபடத்தில் உள்ள ஜி1 மற்றும் ஜி2 கேட்டுகள் பொதுப்பாதையில் தான் அமைந்துள்ளன. ஆணையர் தன்னுடைய அறிக்கையில் ஜி1 கேட்டானது கலபமாக திறந்து முடக்கூடிய நிலையில்லை என்று குறிப்பிட்டுள்ளார் என்றால் சரிதான். ஜி2 கேட்டை நான் எப்பொழுதும் முடியே வைத்துள்ளேன் என்றால் சரிதான்.



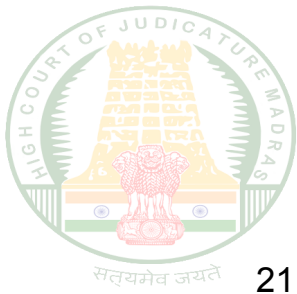
WEB COPY

S.A.No.311 of 2014



பொதுப்பாதையில் ஒரு கைபம்ப் உள்ளது, அதை நான் போட்டுள்ளேன் எனக்கு சொந்தமானது. பிவிசி பைப் ஒன்று பொதுப்பாதையில் செல்கிறது என்றால் சரிதான்....”

20.The right of pathway is granted to the defendant in order to reach his property purchased under Ex.B1 and he is not permitted to cause hindrance to the dominant owner. Though the defendant would contend that these gates were fixed by getting permission from the plaintiff's house, was not proved in accordance with law. The above said details of the evidence of D.W.1 coupled with Advocate Commissioner's plan would clearly establish that defendant has fixed the gates in the common passage. In these circumstances based on Ex.A3 notice, Ex.A4 reply notice, Ex.A5 letter of the plaintiff, Ex.A6 reply letter of the defendant both sides evidence and the Advocate Commissioner's Report would clearly establish the fact that the plaintiff has got a right over the common passage and the defendant has created hindrance as admitted by him. The Advocate Commissioner's Report reads that the protrusions are coming inside the defendant's property. Therefore the judgment of the 1st appellate Court in allowing the suit in its entirety except the removal of sun shades, stands confirmed.



WEB COPY

21. In view of the above, the substantial questions of law are answered in favour of the plaintiff.

22. Based on the above said observations and discussions this Second Appeal stands dismissed. Sequel to this judgment and decree dated 20.11.2013 passed in A.S.No.274 of 2012 passed by the XV Additional City Civil Court, Chennai, stands confirmed.

1. To have more clarity, as regards prayer No.1 in the plaint permanent injunction in favour of plaintiff, restraining the defendant and his men from interfering the plaintiff's right of ingress and egress through the common passage (C schedule property) is granted.

2. Mandatory injunction against the defendant to remove the obstructions namely two iron gates and to remove the filled up earth in the well is granted in favour of the plaintiff.

3. Permanent injunction against the defendant from putting up any construction in the C schedule property is also granted.



S.A.No.311 of 2014



There is no order as to costs. Consequently, connected
Miscellaneous Petition is closed.

WEB COPY

29.05.2025

gbi

To

- 1.The XV Additional City Civil Court,
Chennai.
- 2.The V Assistant City Civil Court,
Chennai.
3. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



WEB COPY

S.A.No.311 of 2014



R.KALAIMATHI, J.,

gbi

S.A.No.311 of 2014

29.05.2025