



S.A.No.73 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2025

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

S.A.No.73 of 2023
and
C.M.P.No.2398 of 2023

1. Kandaswamy

2. K.Meenakshi

3. K.Partheeban

... Appellants/Defendants

Vs.

R.Palaniyammal

... Respondent/Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of C.P.C. to set aside the Judgment and Decree dated 21.10.2019 made in A.S.No.61 of 2015 passed by the Principal Subordinate Judge, Namakkal, confirming the Judgment and Decree dated 05.11.2015 made in O.S.No.667 of 2010 on the file of Principal District Munsif Court, Namakkal.

For Appellants : H.Shabeer
for M/s.Sarvabhauman Associates.
For Respondent : Mr.T.L.Thirumalaisamy

JUDGMENT

The defendants have preferred this Second Appeal against the judgment and decree dated 21.10.2019 passed in A.S.No.61 of 2015 by the Principal Subordinate Court, Namakkal.



S.A.No.73 of 2023

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2. The parties are indicated herein as per their litigative status and ranking before the Trial Court.

3. According to the plaintiff, the suit property is dry land, to an extent of Acre 4.51 cents in S.No.166/E2 situate at Bomasamuthram Agraharam Village of Namakkal Taluk, absolutely belongs to the plaintiff by purchase under registered sale deed dated 28.01.2010 from R.Shanmugam. As the plaintiff borrowed loan from Tamil Nadu Mercantile Bank, Namakkal, she had deposited original title deed with the Bank. The said Shanmugam purchased the property in the Auction Sale conducted on 30.04.2008. Since then, the said Shanmugam had been in possession and enjoyment of the suit property by paying kist and by raising crops. The plaintiff has been in possession and enjoyment of the suit property by cultivating the same. Revenue records are changed in her name.

3.1. The defendants 1 and 2 are parents of 3rd defendant and they own land to south of the suit property in S.No.166/1. There is a panchayat road on north of suit property which runs in east-west. There is fence comprising of stones and barbed wires on north-west and south of the property.

3.2. There is no cart-track to reach the defendants' property from east-west panchayat road and the defendants had been insisting the plaintiff to provide pathway from east-west panchayat road through the suit property to



S.A.No.73 of 2023

their lands. But, the plaintiff expressed her refusal for the approach of the defendants in person and through mediators. On 09.12.2010, the defendants with their men trespassed into the suit property and removed the stone with barbed wires existing on the western side completely up to 20 feet in north and 30 feet on south and took away the materials. Namakkal Police registered case against the defendants and their men. The defendants are not arranging for laying of new cart-track towards south in the rock portion from the western extremity of the suit property to reach their land. The defendants have no right of way through the suit property. Due to the said attitude of the defendants, cloud is cast upon the plaintiff's title over the suit property. Hence, the suit for the relief of declaration of title and for consequential permanent injunction restraining the defendants and their men from disturbing the peaceful possession and enjoyment in any way by laying any pathway over the suit property is laid.

4. Per contra the details of the plaint are counteracted by the defendants by filing written statement. It has been averred that initially the suit property and the lands of the defendants were owned by one Ramasamy Naicker. The property at the hands of defendants were purchased on 02.04.1999 (Ex.B2) by one Arumuga Mudaliar from the said Ramasamy Naicker. Out of the total extent of land owned by Ramasamy Naicker, he sold the southern portion of the property to Arumuga Mudaliar. In which on the



S.A.No.73 of 2023

northern side property at the extreme western side, in north-south to an extent of five mulam width in order to take his bullock cart and cattle, easementary right is granted to the vendee – Arumuga Mudaliar. The remaining property of Ramasamy Naicker on the northern side is the suit property. The defendants have been reaching their property through the suit property based on easement by grant. After the death of Arumuga Mudaliar, the 1st defendant's grandfather obtained sale deed on 12.07.1953, wherein it was sold with the pathway right and the defendants have been using the said pathway since then. Even in the partition deed dated 24.03.1997, the said details are found and in derogation to the said rights of the defendants, the plaintiff filed the suit for declaration of title and for permanent injunction is not maintainable in law.

5. Based on the divergent pleadings, the trial Court framed appropriate issues.

6. At trial, to substantiate the plaint details, two witnesses have been examined and eight documents have been marked. Ex.A2 dated 28.01.2010 is the sale deed (Certified Copy) executed by Shanmugam in favour of the plaintiff in respect of the suit property. On the defendants' side, seven documents have been marked. Report and plan of Advocate Commissioner are Exs.C1 and C2.



S.A.No.73 of 2023

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7. The trial Court, upon consideration of oral and documentary evidence and after hearing the arguments advanced by either side, concluded that the stand of the defendant that as per Ex.B2 pathway right granted cannot be accepted and decreed the suit.

8. Aggrieved, the defendants preferred Appeal in A.S.No.61 of 2015 before the Principal Sub-Court, Namakkal. Upon consideration of material records and after hearing the arguments advanced by either side, the First Appellate Court concluded that the defendants have not established with sufficient evidence that easement by grant was available in the plaintiff's land and the defendants have not made any counter claim to declare the pathway right and dismissed the appeal.

9. The Following Substantial Questions of Law arises for consideration:

"1. Whether the Courts below are correct in law in shifting the burden of proof upon the appellant to prove the case filed by the respondent?"

2. Whether the Courts below are correct in law in overlooking the existence of pathway in the documents filed by Appellant / respondent?"

3. Whether the Courts below are correct in law in



S.A.No.73 of 2023

*overlooking the report filed by Advocate Commissioner
wherein the existence of pathway is mentioned?"*

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10. At the first instance, suit was laid only for the relief of permanent injunction not to disturb the peaceful possession and enjoyment of the suit property including not to lay any pathway over the suit property. At a later point of time, the plaint was amended in respect of the relieves and relief of declaration of title was added.

11. The core defence of the defendants is that plaintiff's predecessor in title, Ramasamy and 1st defendant's predecessor in title, Ramasamy are one and the same person and originally the said Ramasamy while he sold the property situate to the southern side of the suit property has sold his suit property along with pathway right.

12. As per the evidence of PW1, the name of predecessor in title is Ramasamy Naidu, son of Muthusamy Naidu. On perusal of earliest title deed of defendants - Ex.B2, defendants' vendor Arumuga Mudaliar purchased the property from Ramasamy Naicker, S/o.Muthusamy Naicker. Therefore, the above said persons must be different persons and the details put-forth by the defendants are not true.



S.A.No.73 of 2023

WEB COPY

13. Ex.B3 is the sale deed executed by Karupanna Mudaliar vagayara in favour of 1st defendant's grandfather Palani Gounder on 12.07.1953, wherein, the said pathway right is not mentioned in Ex.B3. It is also relevant to note that in schedule of property details in Ex.B3 it is mentioned as Ra.Muthusamy Naidu land's south which means, the suit property was owned by Ra.Muthusamy Naidu in the year 1953.

14. There is no dispute in respect of title to the suit property. The defendants also do not dispute about the plaintiff's title to the suit property. But, the defendants strangely claimed pathway right in the plaintiff's property. In such circumstances, it is relevant to note that the defendants have not made any counter-claim. It is established principle of law that plaintiff has to establish his case.

15. Considering the nature of the defence taken by the defendants and the fact that they have not claimed any counter-claim and in Ex.B3-Sale Deed, pathway right is not at all mentioned. Defendants have not established their stand by examining the Revenue Officials. In Ex.B3 sale deed there is no mention about pathway right.



S.A.No.73 of 2023

16. Advocate Commissioner has visited the suit property and has noted about the physical features of the suit property. As the 1st defendant's grandfather while purchasing his property (south of the suit property), pathway right was not mentioned in Ex.B3.

17. Originally, the suit property was purchased by the father of P.W.1 and in the family partition that took place on 04.04.1984, the suit property fell to the share of plaintiff's husband, Ramasamy Gounder (Partition Deed dated 04.04.1984/Ex.B1). In the partition, PW1 was allotted 'C' schedule, whereas the property situated to the south of the suit property was purchased by the first defendant's grandfather, Palani Gounder as per Ex.B3.

18. In Ex.B1 to Ex.B4, of course, there is a mention about '5' feet wide pathway on the western extremity of northern portion of their land.

19. Though, on the defendants' side, the above said documents have been marked, as the defendants claim easementary right as per Ex.B2 and Ex.B3 documents, as the first defendant own about 4.00 acres of land. The defendants' claim of easementary right upon the plaintiff's land is however not satisfactorily established. In this regard, the evidence let in by the defendants to establish the pathway right in the plaintiff's land is not satisfactorily proved. Even through Ex.B2-Sale Deed dated 02.04.1990, the pathway right details is



mentioned, whether the vendor had such a right to convey pathway right ought to be seriously looked into.

20. In such circumstances, as the details of the plaintiff in respect of the suit property is not in dispute and as per the aforestated observations and discussions, the trial Court as well as the First Appellate Court have decreed the suit in right perspective. These details should have been pleaded by the defendants and proved in detail.

21. This Court is of the considered view that the Judgment of the First Appellate Court does not suffer from any infirmity or perversity. This Court also does not find any good reason to upset the findings of the First Appellate Court. The substantial questions of law are answered in favour of the plaintiff.

22. Above being the position, this Second Appeal stands dismissed. Sequel to this, Judgment and decree passed in A.S.No.61 of 2015 dated 21.10.2019 on the file of the Principal Subordinate Judge, Namakkal stands confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

07.10.2025

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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S.A.No.73 of 2023

R.KALAIMATHI, J.,

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To

1. The Principal Subordinate Court, Namakkal.
2. The Principal District Munsif Court, Namakkal.

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