



S.A.No.159 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2025

CORAM:

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

S.A.No.159 of 2023
and
C.M.P.No.4645 of 2023

Kandasamy

... Appellant/Plaintiff

Vs.

1. Palanisamy

2. Marappan

... Respondents/Defendants

PRAYER: This Second Appeal is filed under Section 100 of C.P.C to set aside the Judgment and Decree dated 22.10.2021 made in A.S.No.28 of 2021 on the file of the Additional Subordinate Court at Namakkal by confirming the judgment and decree dated 31.03.2021 made in O.S.No.216 of 2016 on the file of the Principal District Munsif Court at Namakkal.

For Appellant : Mr.T.L.Thirumalaisamy

For Respondent: Mr.K.Venkatasubban

for M/s.Sarvabhauman Associates

JUDGMENT

Aggrieved by the judgment and decree dated 22.10.2021 passed in A.S.No.28 of 2021 by the Additional Subordinate Court, Namakkal, the sole plaintiff herein has preferred this Second Appeal.



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2. According to the plaintiff, plaintiff has constructed a house in Survey No.330/2 and has been residing in the said house. The plaintiff's properties are mentioned as P and P1 in the rough plan attached to the plaint (the details found in the rough plan are not admitted by the defendant). To the west of the plaintiff's property a Thar Road runs in North-South direction, a car track is situated on the north and east of plaintiff's property are shown as R1, R2 / R2, R3. The defendants' houses (H) are situated to the northern side and to the south of his house, 2nd defendant house is situated (H1). To the western side of the houses, their lands are situated in S.No.329/4b and S.No.320 9/10. The defendants have been using the south-north Thar road and east-west Thar Road.

2.1. In order to reach his properties mentioned as P and P1, he has been using R, R1 road and thereafter using Cart Track R1, R2 and another Cart Track R2 and R3 which runs in the North-South direction. R2-R3 pathway is in existence. Since long time the breadth of the said cart track is 15 feet. He does not have any alternative pathway. His ancestors also used R1, R2 and R2, R3 cart track. Recently, he was restrained from using R2, R3 pathway that runs in North-South direction. Hence, the suit for the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property.



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3. It was counteracted by the defendant by stating that there is no pathway as such in the North-South direction as mentioned in the plaint. S.No.331 land is meant for the backward community people. Defendants' houses are situated in S.No.329/10. Plaintiff has been using R, R1 South-West pathway and North-West road and straight away he may reach his land situated to the east of the said road.

4. At trial, in order to substantiate the plaint details, plaintiff has examined himself as PW1 and five documents have been marked. On the defendants' side, 2nd defendant has examined himself as DW1 and three documents have been marked.

5. Upon consideration of oral and documentary evidence and after hearing the arguments advanced by either side, the trial Court has held that the plaintiff has not proved as to the lie and location of the suit property and in what way he is claiming the cart track right and there is no cart track as such in North-South direction and therefore, it was concluded that the plaintiff is not entitled for the relief of permanent injunction against the defendants and chose to dismiss the suit.

6. Aggrieved, the plaintiff preferred appeal before the Sub-Court,



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Namakkal in A.S.No.28 of 2021. In consideration of the entire records and after hearing the arguments advanced by either side, the First Appellate Court accepting the reasoning given by the trial Court and dismissed the appeal thereby confirming the judgment and decree passed by the trial Court.

7. The plaintiff has filed the suit for the relief of permanent injunction to the effect that he shall not be restrained from using cart track running in North-South direction which is situated to the North of his property in Survey No.330/2 of Melappatty Melmugam Village. When the details of the plaint was gone through, the said details shown was tallied with the rough plan attached to the plaint. But an Advocate Commissioner was appointed by the trial Court and he has filed his report along with rough plan.

8. The Advocate Commissioner has visited the suit property thrice and has filed his report. Advocate Commissioner's report reads that there is a pathway in North-South direction with a breadth of 15 feet. The report of the Advocate Commissioner also would read that there is East-West pathway laid by the plaintiff in his land and it reaches the Thar road.

9. P.W.1 has not stated what type of easement is claimed- by prescription or by grant or necessity. In Exs.A3 to A5 sale deeds, no survey numbers are mentioned. The plaint is bereft of very many material particulars



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such as, whether the suit cart track is a Government pathway or if it is a private pathway or who the dominant owner. Survey number details are silent in the plaint. Plaintiff would state that he owns lands in S.No.330/2 and S.No.331. During his cross-examination, he would contend that he does not have any property in S.No.331. In respect of S.No.331, it is the case of D.W.1 that S.No.331 is inam land meant for assigning the land to the backward community people. It is the further evidence of P.W.1 that his house is situated in S.No.329/10. As there is no mention about Survey Number in Exs.A3 to A5 sale deeds, the plaintiff cannot take advantage of the details found in the said sale deeds.

10. Moving further, lie and location of thar road to the west of plaintiff's property, S.No.330/2 is not in dispute. Though rough plan is not drawn properly, even the said rough plan explicates that the plaintiff can easily reach the thar road situated to the west of his land (S.No.330/2). Advocate Commissioner has also mentioned that plaintiff has laid a pathway in East-West direction in S.No.330/2 which is marked as X, X1 and the said pathway of the plaintiff leads to the thar road (as mentioned in the Commissioner's Report).

11. In view of the above narrative, the plaintiff is found to have miserably failed to prove the existence of R2-R3 cart track and he has also failed to aver



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and plead on what basis he has claimed right over the R2-R3 cart track.

12. This Court does not find any good reason to upset the finding of the First Appellate Court. No substantial questions of law arise for consideration.

13. Based on the aforesaid observations and discussions, this Second Appeal stands dismissed. Sequel to this, the judgment and decree dated 22.10.2021 passed by the Additional Sub-Court, Namakkal in A.S.No.28 of 2021 stands confirmed. There is no order as to costs. Consequently, connected miscellaneous petition if any stands closed.

19.08.2025

Internet:Yes
Index:Yes/No
Speaking/Non speaking order

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To

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

R.KALAIMATHI. J.

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