



S.A.No.1276 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	23.06.2025
Pronounced on	08.08.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A. No.1276 of 2019

1. Kaliappan

2. Kunjammal

...Appellants

Vs.

Gurusamy

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 28.03.2019 passed by the Subordinate Judge, Bhavani, Erode District, in A.S. No.51 of 2017, confirming the judgment and decree dated 28.02.2017 passed by the Principal District Munsif, Bhavani, Erode District, in O.S.No.515 of 2015.

For Appellants : Mr.S. Shanmuga Sundaram

For Respondent : Mr.S.A. Shanmugam

JUDGMENT



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The Second Appeal is at the instance of the defendants in O.S.No.515/2015. This suit has been filed by the plaintiff seeking the following reliefs:

- i. That the defendants, their legal heirs, or their agents shall not in any manner obstruct or interfere with the plaintiff's peaceful enjoyment of the 'ABCD' common pathway — whether by constructing buildings, dumping stones, damaging the 'ABCD' common pathway, or by any other means.
- ii. It also seeks an order to appoint a Advocate Commissioner to fix the southern boundary of the plaintiff's property with the help of a surveyor.

2. The case of the plaintiff in brief is as follows:

2.1. The suit property was purchased by the plaintiff on 20.10.2011 under Ex.A2 from one Kuppusamy and the same is a vacant site. The plaintiff is using the same as Sheep pen from the date of purchase. According to the plaintiff there lies a 5 feet width pathway to the south of



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WEB COPY the suit property to reach the suit property from his ancestral property lying 50 feet away from the suit property on the southern side. The plaintiff has no other pathway to reach the suit property. The said pathway is shown as ABCD in the plaint plan. The defendants without any right whatsoever in the said pathway, attempting to prevent the plaintiff from using the pathway by encroaching and making arrangements to construct a building in the said pathway. Hence the suit.

2.2. The suit was resisted by the defendants contenting that the sale deeds in favour of the plaintiff do not mention where the pathway actually lies and therefore, the plaintiff is not entitled for the relief of permanent injunction unless the said pathway is properly identified by the plaintiff. Hence, prays for dismissal of the suit.

2.3. At trial, the plaintiff was examined as P.W.1 and four documents were marked on the side of the plaintiff. On the side of the defendants, no oral or documentary evidence were let in. Ex.C1 and Ex.C2 were marked as court documents.

2.4. The trial court, based on the materials on record, granted the



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relief of permanent injunction in favour of the plaintiff. However, the trial court directed the plaintiff to seek for an appointment of Advocate Commissioner and demarcate the southern boundary of the suit property. The findings of the trial court was upheld by the first appellate court by its judgment and decree dated 28.03.2019. Aggrieved by this, the present Second Appeal is preferred by the defendants in the suit.

3. The following substantial questions of law were raised in the memorandum of appeal.

- i. Whether the courts below are perverse in granting permanent injunction in favour of the plaintiff with regard to the passage ABCD, when the passage ABCD itself was not identified by the courts below?
- ii. Whether the courts below erred in law in allowing the prayer for appointment of commissioner to fix the southern boundary of the suit property after decreeing the suit for permanent injunction?
- iii. Whether the findings of the courts below are perverse?

4. The learned counsel for the appellants/defendants submits that



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the courts below erred in granting the relief of permanent injunction with regard to the common passage 'ABCD' in favour of the plaintiff, when both the courts were not able to identify the common passage 'ABCD'. His further contention is that the trial court even after considering Ex.C1 and Ex.C2 which clearly states that there is a 10 feet mud pathway on the southern side of the plaintiff's property and to the south of the said pathway there is a common passage of 3 ½ feet shown as 'ABCD' and that a third party is claiming exclusive right over the said pathway, the trial court erred in rendering a finding that there is a 5 feet common passage on the southern side of the plaintiff's property.

5. On the other hand, the learned counsel for respondent/plaintiff submits that the courts below, based on Ex.A1 and Ex.A2 sale deeds, found the existence of the suit passage and rightly directed to appoint an Advocate Commissioner and demarcate the southern boundary of the suit property to find out where the 5 feet width passage actually lies. Therefore, the findings of the courts below warrants no interference.

6. Heard on both sides. Records perused.



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7. Based on the sale deeds marked as Ex.A1 and Ex.A2 on the side of the plaintiff, the courts below categorically held that the plaintiff is having right of access in a 5 feet width pathway lying to the south of the plaintiff's property purchased under Ex.A2 sale deed and granted the relief of permanent injunction. Since the plaintiff failed to establish where the suit passage actually lies and the report and sketch of the Advocate Commissioner was also not clear as to where the suit passage actually lies, the courts below ought not to have granted the relief of permanent injunction against the defendants. The report and sketch of the Advocate Commissioner filed before the trial court shows two passages with different extents and they are not in accordance to the extent mentioned in the sale deeds. While so, the courts below ought not to have granted the relief of permanent injunction without proper identification and demarcation of the suit passage. However, the courts below rightly directed for appointment of Advocate Commissioner to measure the disputed land with the aid of surveyor based on Ex.A1 and Ex.A2 sale deeds and demarcate the southern boundaries of the suit property, to find



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out where the suit passage actually lies. No infirmity or perversity found in the said directions given by the courts below. Hence, the judgment and decree passed by the courts below in granting permanent injunction in respect of 'ABCD' passage alone is set aside.

8. In the result, the Second Appeal is party allowed. No costs. The judgment and decree dated 28.03.2019 passed by the Subordinate Judge, Bhavani, Erode District, in A.S. No.51 of 2017, confirming the judgment and decree dated 28.02.2017 passed by the Principal District Munsif, Bhavani, Erode District, in O.S.No.515 of 2015 by granting permanent injunction in respect of 'ABCD' passage alone is set aside and the matter is remitted back to the trial court with the following directions in the matter.

1. The trial court shall reissue the warrant to the same Advocate Commissioner if available or appoint any other Advocate as Commissioner if the earlier commissioner is not available to measure the suit property with the help of surveyor and demarcate the southern boundaries of the suit property, identify, measure and



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demarcate the suit passage based on Ex.A1 and Ex.A2 sale deeds along with field map if available in the presence of the parties and their respective counsel within a period of one month from the date of receipt of a copy of this order.

2. The Commissioner shall prepare his report and sketch, file it on the record of case and thereafter the trial court would give opportunity to the parties to lead evidence and on considering the evidence as well as the report of Commissioner, shall decide the suit afresh in accordance with law as expeditiously as possible, preferably within four months of the receipt of this order. No order as to costs.

08.08.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



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1. The Subordinate Judge, Bhavani, Erode District.
2. The Principal District Munsif, Bhavani, Erode District.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
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Predelivery Judgment in
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