



S.A.No.103 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.08.2025
Pronounced on	14.11.2025

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.No.103 of 2020

C.M.P.No.2167 of 2020

- 1.Dhanapal
- 2.Sabapathy (died)

- 3.Thaiyalnayaki
- 4.Silambarasan
- 5.V.Devi
- 6.Brammadevi
- 7.Sabanadevi

[Appellants 3 to 7 brought on record as legal heirs of the deceased 2nd appellant vide order of Court dated 09.09.2022 made in C.M.P.No.14940, 14941 & 14944 of 2022 in s.A.No.103/2020 and C.M.P.No.2167 of 2020]

...Appellants



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Kaliyaperumal
Vs.
...Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 18.02.2019 in A.S.No.25 of 2017 on the file of learned Principal Subordinate Judge, Mayiladuthurai reversing the well considered judgment and decree dated 04.02.2017 in O.S.No. 36 of 2007 on the file of learned District Munsif, Sirkazhi and the allow the second appeal.

For Appellant : Mr. S.Saravana kumar
For Respondent : Mr.B.Jawahar

JUDGMENT

This Second Appeal is preferred against the judgment and decree dated 18.02.2019 in A.S. 25 of 2017 on the file of learned Principal Subordinate Judge, Mayiladuthurai, reversing the judgment and decree dated 04.02.2017 in O.S.No. 36 of 2007 on the file of learned District Munsif, Sirkazhi.



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2.The parties will be referred to by their ranks in the suit.

3.The plaintiff has filed the suit in O.S.No.36/2007 for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment in the suit property.

4.According to the plaintiff, the suit properties were purchased by him under two sale deeds dated 20.07.1994 and 06.10.1984 respectively. The plaintiff has put up a thatched house in the 1st item of the suit property and the assessment is made in the name of the plaintiff. The entire suit properties are in the possession and enjoyment of the plaintiff. It is further stated that to the north of the suit properties the plaintiff is having another tiled house in Survey No.230/1. The defendant's houses are lying to the north of the said tiled house belonging to the plaintiff. The plaintiff has put up fence in the suit properties in order to prevent people and cattles entering into the suit property. He had also installed an iron gate on the front side of the suit property. While so, the defendants are threatening that they are going to form a road in the suit property. Hence, the suit.



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5. The claim of the plaintiff is resisted on the side of the defendants stating that the defendants are having access to their houses only through the iron gate put up by the plaintiff and that there is no other alternative access for the defendants to reach their properties from Radhanallur road. It is further submitted that the above three meter width passage is situated in S.Nos.230/4, 230/5 and 230/1 and the same is used by the plaintiff and the defendants' and their ancestors for more than 12 years without any objection. Hence, the defendants are having easementary right over the said passage. While so, the plaintiff in the year 1999 without the consent of the defendants has put up the iron gate for which a panchayat was convined on 20.04.1999. In the said panchayat, the plaintiff agreed to remove the iron gate, but failed to do so. Hence, the plaintiff is not entitled for the relief claimed in the above suit and prayed for dismissal of the suit.

6.The trial Court dismissed the suit filed by the plaintiffs. Aggrieved by this, the plaintiff preferred the appeal suit in A.S.No.25 of 2017. The first appellate Court, decreed the suit of the plaintiff on the



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ground that the defendants failed to establish the existence and the usage of the passage. Challenging the judgement and decree of the First Appellate Court this second appeal is preferred.

7.The learned counsel for the appellants/defendants would submit that through Exs.B.1 to B.12, the defendants have established the existence and usage of the disputed passage and the same was not considered by the First Appellate Court. He would further submit that the plaintiff has deliberately suppressed the undertaking given by him under Ex.B8 for removing the iron gate. The First Appellate Court totally ignored the undertaking given by the plaintiff under Ex.B.8. The trial Court has rightly held about the existence of the common passage and the same used by the plaintiff and the defendants for more than 20 years. The plaintiff failed to establish that he is in uninterrupted possession of the suit property for more than 20 years. His further contention is that the suit for permanent injunction is not maintainable without claiming the relief of declaration of title when there is cloud over the title of the plaintiff. The first appellate Court without following the procedure as set



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out under Order 41 Rule 31 CPC erroneously reversed the well considered judgment of the trial Court which warrants interference by this Court. To support his contention he has relied upon the judgement of this Court in S.A.No.1041 of 2010. Hence, prayed for allowing the second appeal.

8.On the other hand, the learned counsel appearing for the respondent/plaintiff submits that the suit properties absolutely belonged to the plaintiff. The defendants failed to establish the easementary right in the suit property. He would further submit that the plaintiff had never given any undertaking before the panchayat for removal of the gate. Moreover, the defendants are not sure whether their claim is based on 'easement for necessity' or 'easement by Prescription'. He would further submit that the plaintiff has installed the iron gate in the year 1999 itself. While so, the defendants contention that they are in continuous enjoyment of the passage for more than 20 years cannot be true. He would further submit that the defendants are using the passage on the eastern side of their house. The First Appellate Court has rightly decreed



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the suit filed by the plaintiff which warrants any interference by this Court.

9.Heard on both sides and records perused.

10.The First and foremost contention of the appellants/defendants is that they are in enjoyment of the 3 feet passage lying on the north of the suit properties for more than 12 years. Therefore, the defendants are having easement right over the said passage.

11.An easement is the legal right to use property granted to people who do not own that property. There are typically two parties with rights concerning an easement. The "dominant estate", held by the person who benefits from the use of the easement ; and the "servient estate", held by the owner of the land which the easement crosses. An easement is more than a personal privilege of use and bestows upon the holder legal rights that cannot be deprived by the mere wish of the owner of the servient estate. Therefore, when creating an easement, both parties must ensure



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absolute clarity of the scope of easement. In most cases, property owners have the right to deny an easement on their property, but once the easement is established, they must comply with its condition. The dominant estate must demonstrate whether the said easement right is "easement for necessity" or "easement by prescription". An easement by necessity is a legal right that grants access to a land locked property through a neighbour's land, created when a larger parcel is divided and one part is left without a public road or other access. Hence, an easement by necessity is a legal right that arises out of practical necessity. It allows an individual to access another property owners land in order to enjoy their own property. This easement is based on the principles that land locked properties must have access and lasts only as long as the necessity exists. It is not granted by a simple agreement but arises out of legal necessity for the property to be used at all. This easement is automatically withdrawn or extinguished if an alternative access become available. Therefore, easements by necessity are created out of need when accessing one's own property requires crossing another's.



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12. On the other hand, "easement by prescription" occurs when some one uses another person's property openly and continuously without permission for a legally defined period. This period varies by jurisdiction but often ranges from ten to twenty years. For instance, if a person is using a path across his neighbour's land for many years without their objection, he might eventually gain legal rights to continue using the path through an easement by prescription. Therefore, easement by prescription develop over time through continuous and open use without explicit permission.

13. Both types serve essential roles in ensuring fair use and accessibility of properties but arise under different circumstances and legal principles. Understanding these differences can help to navigate potential disputes or negotiations involving property access rights. Moreover, one cannot claim any easement right unless it is established that in law there had been existing easement right. The defendants must establish whether it is easement of necessity or easement by prescription.



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14. In the present case, the defendants' claim easement right in the passage lying on the north of the suit properties. But the defendants failed to establish the existence of the said passage. The defendants themselves admitted that they have access to their houses through an alternative pathway. Therefore, the defendants cannot claim easement of necessity. Moreover, the defendants themselves admitted that the plaintiff has installed the iron gate in the year 1999 and that even after the panchayat resolution that took place on 20.04.1999, the plaintiff failed to remove the said iron gate. Therefore, the contention of the defendants that they are using the disputed passage continuously for more than 20 years cannot be accepted. With regard to an easement by prescription, the defendant is required to prove that he was in peaceful, open and uninterrupted enjoyment of the right for a period of 20 years. Hence, the defendants failed to establish that they are entitled to use the passage by easement by prescription. Hence, the first Appellate Court has rightly decreed the suit in favour of the plaintiff which warrants any interference by this Court.



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15.The next contention of the learned counsel for the appellants/defendants that the findings of the First Appellate Court is vitiated for not following the procedure under Order 41 Rule 31 of the Code of Civil Procedure. The findings of a first Appellate Court are not automatically vitiated for not strictly following the procedure under Order 41 Rule 31 of CPC, especially if there has been "substantial compliance". The failure to frame points for determination is not fatal as long as the Court has considered all the issues in the appeal, addressed in the grounds of appeal, and provided reasons for its decision. In the present case, the First Appellate Court has considered all the issues and grounds raised in the appeal. The judgment reflects a conscious application of mind to the facts and the law. There has been "substantial compliance" with the rule, though there is no literal adherence. It is also not explained by the appellants/defendants in what way the appellants/defendants are affected for not adhering to the above provision. Hence, the arguments putforth by the learned counsel for the appellants/defendants in this regard is unsustainable.



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16.In the result,

(i) this second appeal is dismissed. No costs.

(ii) the judgment and decree dated 18.02.2019 in A.S.No. 25 of 2017 on the file of learned Principal Subordinate Judge, Mayiladuthurai, reversing the judgment and decree dated 04.02.2017 in O.S.No. 36 of 2007 on the file of learned District Munsif, Sirkazhi is upheld. Consequently, connected miscellaneous petition is closed.

14.11.2025

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

vsn

To

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



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K.GOVINDARAJAN THILAKAVADI,J
vsn

Pre delivery Common Judgment in

S.A.No.103 of 2020

and

C.M.P. No.2167 of 2020

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