



S.A.(MD)No.275 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.275 of 2019

and

C.M.P.(MD)No.5278 of 2019

M.Sundaravel

... Appellant/Appellant/
Defendant

vs

S.Selvaraj

...Respondent/Respondent/
Plaintiff

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 19.03.2019 made in A.S.No.12 of 2014, on the file of the Principal Sub Court, Thoothukudi, confirming the judgment and decree dated 10.01.2013, made in O.S.No.05 of 2011, on the file of the Principal District Munsif Court, Thoothukudi.

For Appellant : Mr.L.Siva
for Mr.G.Mohankumar

For Respondent : Mr.S.Kadarkarai



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JUDGMENT

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The defendant is before this Court on appeal.

2. The Second Appeal is filed challenging the judgment and decree, dated 19.03.2019 in A.S.No.12 of 2014, on the file of the Principal Subordinate Court, Thoothukudi, confirming the judgment and decree dated 10.01.2013 made in O.S.No.5 of 2011, on the file of the Principal District Munsif Court, Thoothukudi.

3. For the sake of convenience, the parties are referred to as per the litigative status before the trial Court.

4. The case of the plaintiff is that the suit schedule both items of properties are situated in S.No.310/5A2. The properties originally belonged to one Madasamy Nadar, who had converted the lands into housing plots. On 14.05.2005, Madasamy Nadar had sold away the first schedule property in favour of the plaintiff through a registered sale deed. From the date of purchase, the plaintiff is in possession and enjoyment of the suit property. It



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is the further case of the plaintiff that the second schedule property is a 15 feet North South common pathway. The original owner Madasamy Nadar had provided this 15 feet pathway in the lay out for the purpose of common usage and access to all the properties in both sides of the road. In the sale deed purchased by the plaintiff, the boundary has been mentioned showing this pathway in item No.2 and therefore, the plaintiff is having every right to use the pathway. It is the further case of the plaintiff that he has already completed a building and the same has been assessed with Door No.4/310/2 and 4/310/3.

5. According to the plaintiff, after the defendant had purchased some of the properties on either side of the road, wherein also the pathway has been shown as a boundary in the documents purchased by him, but however, the defendant with an intention to grab the pathway, had started to make an encroachment by putting up construction. Since the attempt made by the plaintiff to prevent the same was not successful, the plaintiff had come with the suit for the relief of permanent injunction and mandatory injunction.



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6. The defendant resisted the suit by filing a written statement contending that the pathway as mentioned in the second item of the suit schedule properties is not a public pathway. It is the case of the defendant that the plaintiff is having access to his property through the main road. The defendant further alleged that the plaintiff had in fact encroached 1 ½ feet and constructed his building in the property belonging to the defendant. The defendant had also contended that the plaintiff is not having any right in the second item of the suit schedule properties and sought for dismissal of the suit.

7. During trial, the plaintiff examined himself as P.W.1 and marked exhibits A.1 to A.8. On the side of the defendant, the defendant examined himself as D.W.1 and one Andrews Masilamani as D.W.2 and had not marked any documents. An Advocate Commissioner was appointed. The report filed by him and the plan were marked as Exs.C.1 and C.2.

8. The trial Court, after analysing the evidences both oral and documentary, came to the conclusion that all the plot owners having lands in S.No.310/5A2 are entitled to have an access through the pathway in item



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No.2 of the suit properties, as the original owner had made the lay out and has formed the road for having access and enjoyment of the purchasers of the plots. The trial Court has also, from the Advocate Commissioner's report, found that the defendant had started to put a pillar and therefore, finding that the defendant is intending to encroach upon the pathway, decreed the suit. On appeal, the lower Appellate Court also on finding that even though the defendant had purchased many of the plots, he cannot make an exclusive claim over the second item of the suit properties (pathway), simply because the pathway has not been gifted to the local body and further even the documents, through which the defendant purchased the properties, had shown the item No.2 as pathway giving access to his properties and thereby dismissed the appeal confirming the judgment and decree of the trial Court. Assailing the concurrent finding of facts, the defendant had preferred the above Second Appeal.

9. The Second Appeal has not been admitted and by order dated 24.06.2019, this Court had only issued notice to the respondent.



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10. The learned Counsel appearing for the appellant argued that the defendant is owning of the plots annexing that pathway in item No.2 and when the plaintiff is having a single plot which has an access to the main road, the claim of the plaintiff to have access is not justified. The learned Counsel further contended that the plaintiff, having the property in the beginning of the pathway having access with the main road, does not have any right to question about any construction made in the pathway, which is in a dead end surrounded by the properties of the defendant. The learned Counsel contended that the Courts below have not properly appreciated this aspect and therefore, the findings rendered are perverse and sought for interference of this Court.

11. Per contra, Mr.S.Kadarkarai, learned Counsel appearing for the respondent argued that when a lay out has been formed and a pathway has been provided in item No.2 of the suit properties, the pathway would remain as such for ever and it is to be for the access and enjoyment of all the plot owners. It is his further contention that simply because the defendant has purchased many of the plots, that will not be given him any exclusive right to annex the pathway along with his properties. The learned Counsel



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further contended that when even in the documents purchased by the defendant, the pathway is shown as access to the properties, the attempt of the defendant to encroach and put up construction cannot be sustainable and the Courts below had rightly decreed the suit, which needs no interference and hence, sought for dismissal of the Second Appeal.

12. Heard the rival submissions and perused the materials available on record.

13. Admittedly, originally the properties in S.No.310/5A2 belonged to Madasamy Nadar. The original owner had converted the lands into housing plots and for the purpose of providing way and access to each of the plots, he has also earmarked the roads. Admittedly, in respect of the plots formed by him, the road has been provided in item No.2 of the suit properties, having a width of 15 feet. It is admitted by both parties that the plaintiff had purchased the property on 04.05.2005 in Ex.A.1 from the owner Madasamy Nadar purchasing plot No.5. It is an admitted case also that the defendant had purchased the properties on several dates in Exs.A.2 to A.5 from Madasamy Nadar, which are the plots starting from Plot No.5



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purchased by the plaintiff. Perusal of the documents in Exs.A.1 to A.5 reveals that all these plots have an access and way through 15 feet road formed in Item No.2 of the suit properties. Even though, the plaintiff since having the property in the beginning, has an access on all the three sides, only in view of the same, the plaintiff cannot be prevented or restrained from having access through 15 feet pathway in the second item of the suit properties. Since the plaintiff being the owner of the item No.1 of the suit properties, is entitled to have an access from every point of the property, wherever the roads are provided.

14. It is the only case of the defendant that since he has purchased the other plots from 1 to 8, except Plot No.5 purchased by the plaintiff and since the plaintiff is having the plot situated at the beginning of the road itself, he cannot make a claim in respect of 15 feet pathway, which is also lying in the dead end. The claim made by the defendant and the argument raised in this regard cannot be accepted for the simple reason that when the lay out has been formed and even de hors the handing over of the road to the local authority, the owner of each plot is entitled to have way of access and right through the common pathway provided in Item No.2 of the suit



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properties. May be the defendant has so far purchased the other plots as of now, but that will not curtail the right of the plaintiff from having access to the second item of the suit properties. Further the defendant during the trial had taken a stand that he has not encroached the item No.2 of the suit properties.

15. In this regard, the Advocate Commissioner was appointed and on inspection, report along with plan were filed in Exs.C.1 and C.2 and the Courts below had, from the report, come to the conclusion that the defendant has raised a pillar in a portion of the pathway and therefore, the defendant has intention and had already started up construction by encroaching a part of the pathway in item No.2. In such circumstances, the Courts below, by relying on the documents came to be filed by the plaintiff in Exs.A.1 to A.8 and also by relying on the report filed by the Advocate Commissioner, had rightly arrived at a finding that the plaintiff is entitled to have an access to the pathway in item No.2 and the defendant cannot encroach upon the property or curtail the right of the plaintiff.



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16. The findings rendered by the Courts below are based on the materials available on record. This Court does not find any illegality or perversity in the findings arrived at by the Courts below. No question of law, much less a substantial question of law arises for consideration in the Second Appeal.

17. Accordingly, the Second Appeal stands dismissed. However, there is no order as to costs. Consequently, the connected Civil Miscellaneous Petition is closed.

09.07.2025

Internet :Yes/No
Index :Yes/No
NCC :Yes/No
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To

- 1.The Principal Sub Court, Thoothukudi,
- 2.The Principal District Munsif Court, Thoothukudi.
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

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G.ARUL MURUGAN, J.

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Judgment made in
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