



SA(MD)No.370 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 29.07.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.370 of 2019

and

C.M.P(MD)No.7321 of 2019

Thankam

... Appellant / Appellant / Plaintiff

Vs

Lukas

.. Respondent / Respondent / Defendant

Prayer : This Second Appeal is filed under Section 100 C.P.C., against the judgment and decree passed in A.S.No.42 of 2016 dated 25.03.2019 on the file of the Subordinate Court, Padmanabhapuram, confirming the judgment and decree passed in O.S.No.210 of 2013 dated 31.08.2016 on the file of the Additional District Munsif, Padmanabhapuram.

For Appellant

: M/s. Rama Prabh
for K.Sree Kumaran Nair

For Respondent

: M/s. Praveenraj
for Mr.V.M.Bala Moham Thampi



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JUDGMENT

The unsuccessful plaintiff is before this Court on appeal. The judgment and decree is filed the Second Appeal is filed as against the judgment and decree passed in A.S.No.42 of 2016 dated 25.03.2019 on the file of the Subordinate Court, Padmanabhapuram, confirming the judgment and decree passed in O.S.No.210 of 2013 dated 31.08.2016 on the file of the Additional District Munsif, Padmanabhapuram.

2. The parties are referred to as per the ranking before the trial Court.

3. It is the case of the plaintiff that the suit property comprised in resurvey No.347/2A and 348/2A1 of Aruvikkarai Village belongs to the plaintiff, having purchased through a registered sale deed dated 16.06.2000. Pursuant to the purchase, she has been in possession and paying tax. The house has been assessed to property tax in Door No. 4/90. The defendant has property lying adjacent on the West of the plaintiff's schedule. There is a common pathway having a width of 5 links on the



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extreme South of the suit survey number property, left in common by the then owners. The pathway is used as a common pathway by the plaintiff and also the property owners on the western side including the defendant. It is the further case of the plaintiff that the defendant is attempting to widen the existing pathway by encroaching into the plaintiff's suit property. On such attempt was made on 09.09.2013, but the same was prevented by the plaintiff. As such the plaintiff had come up with the suit seeking for permanent injunction.

4. The defendant resisted the suit admitting that there is a pathway available adjacent to the South of plaintiff schedule property as well as the defendant's property running towards West - East direction having a Width of 11 links on its western side and 14 links on its eastern side. It is the case of the defendant that the said pathway having 12 Links originally belongs to two persons namely Sekar and Kesavan Nair. The properties were purchased by the plaintiff and the defendant from the respective owners where the 11 links of pathway was available between their property and the plaintiff had falsely come up with the suit only with an intention to encroach and reduce the pathway to 5 Links and



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annexed the balance 6 Links with her property. As such the defendants sought for dismissal of the suit.

5. During trial, the plaintiff examined herself as P.W.1 and marked Ex.A1 to Ex.A6. On the side of the defendant, the defendant examined himself as D.W.1 and one Sekar as D.W.2 and marked Ex.B1 to Ex.B10. The trial Court after analyzing the evidence came to the conclusion that the plaintiff had not established that the pathway was only having 5 Links, when the measurement was not available in the document of the plaintiff in Ex.A1. Further, the trial Court by placing reliance on the admission of the plaintiff that 12 Links pathway is available, had dismissed the suit. On appeal, the lower appellate Court also concurred with the findings of the trial Court and dismissed the appeal. Assailing the concurrent finding of fact, the plaintiff had preferred the appeal.

6. The appeal has not been admitted and this Court by order dated 16.08.2019 only issued notice to the respondent.



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7. Learned counsel appearing for the appellant argued that only a pathway measuring an extent of 5 Links was available annexing the plaintiff's property which is shown in the suit schedule and the defendant is attempting to widen the pathway and as such the suit came to be filed. It is his contention that the plaintiff by filing documents in Ex.A1 and also by letting in evidence established that there is a pathway which is having a width of 5 Links and thereby the defendant cannot be allowed to increase the width which would ultimately result in encroachment in the plaintiff's property and the Courts below without properly appreciating the evidence let in by the plaintiff, had erroneously decreed the suit by relying on a statement as an admission, which is perverse and sought for interference.

8. Per contra, learned counsel appearing for the respondent contended that when the plaintiff had come up with the claim in respect of a pathway, then he ought to have shown the pathway as a separate schedule and the suit is liable to be dismissed for non identification of the property. It is her further contention that when the extent of the



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pathway is not available in Ex.A1, the defendant had filed document in Ex.B1 which is the parent document of the plaintiff where the 12 Links pathway is available. As such plaintiff cannot maintain the suit contenting that the pathway is having only 5 Links. The Courts below further by placing reliance on the admission of P.W.1 had dismissed the suit which needs no interference and sought for dismissal.

9. Heard the rival submissions and perused the material available on record.

10. The plaintiff had come up with the suit seeking for bare injunction, claiming that the defendant is attempting to increase the width of the pathway available in the suit property beyond 5 Links. The plaintiff had not shown any separate schedule in the suit property, identifying the pathway separating from the property belonging to the plaintiff. The perusal of the sale deed filed by the plaintiff in Ex.A1 through which she had purchased the suit property shows that there is no extent mentioned in respect of the pathway in the document. It is only the claim of the plaintiff that the extent of the pathway is only 5 Links



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and the defendant is making an attempt to increase it. Further, the plaintiff had not established through any other documents that the extent of the pathway in the suit property lying adjacent to her property, has only 5 Links and the plaintiff had also not taken any steps for appointment of any advocate commissioner to note down the physical features in respect of the exact width of the pathway that is available in the suit property.

11. On the other hand, the defendant had filed the document in Ex.B4 which is the title deed pertaining to the property purchased by the plaintiff. When the suit pathway originally belong to one Sekar and Kesavan Nair, Kesavan Nair had sold the properties through Ex.B2 on 04.10.1999. Further Buvaneshwari, vendor of defendant who purchased in Ex.B1 has sold the property in favour of the defendant on 15.03.2007 in Ex.B3. The perusal of this documents would go to show that there is an extent of 12 Links pathway available between the property of the plaintiff and the defendant in Ex.B1 to Ex.B4. When the defendant, by filing documents, had established the existence of the 12 Links pathway that is available, the plaintiff who had come up with the claim that the

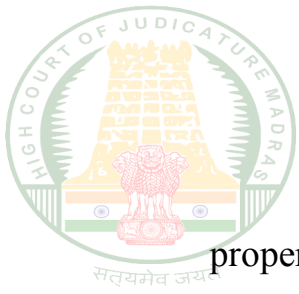


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pathway is only available with the extent of 5 Link, had not substantiated the claim by any oral or documentary evidence.

12. It is to be noted that the plaintiff in her evidence had admitted that an extent of 12 Links pathway is available adjacent to his property which leads to the main road. When there is a categorical admission on the part of the plaintiff that an extent of 12 Links is available adjacent to her property and further, the documents in Ex.A1 which is a sale deed executed in her favour does not have any measurement in respect of the pathway available adjacent to her property, the claim of the plaintiff that the pathway in the suit property is only available to an extent of 5 Links, cannot be sustained.

13. It is also to be seen that when the plaintiff in fact attempted to encroach a portion of 12 feet pathway that is available in the suit property, the defendant had filed a complaint which is marked as Ex.B6 and based on which action was taken as against the plaintiff. Further the defendant had also filed the photographs in Ex.B8 to Ex.B10 to establish the existence of 12 Links pathway available in the portion of the suit



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property. When the defendant had established by documents and evidences that 12 feet pathway is available in the portion of the suit property, the plaintiff had come up with the suit, even without showing the pathway as a separate schedule, but had sought for injunction in respect of the entire suit property without disclosing the actual extent of pathway that is available. In the guise of seeking an injunction, the plaintiff had not disclosed that an extent of 12 Links pathway is actually available and the claim made by her that the defendant is attempting to increase the pathway from 5 feet, cannot be sustained even based on the categorical admission made by her.

14. The Courts below have rightly appraised the evidences and had dismissed the suit and the concurrent finding rendered are based on the materials available on record. This Court does not find any illegality or perversity in the finding arrived at. No substantial question of law arise for consideration in this appeal.



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15. Accordingly, this Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

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

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To

1. The Subordinate Judge, Padmanabhapuram.
2. The Additional District Munsif, Padmanabhapuram.
3. The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ARUL MURUGAN, J.

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