



SA(MD)No.318 of 2025

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 23.07.2025**

**CORAM :**

**THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN**

**S.A.(MD)No.318 of 2025**

**and**

**C.M.P(MD)No.11141 of 2025**

Mookkayee

... Appellant / Appellant / 4th Defendant

Vs

1.Nirmala

M.Iranniyan (Died)

2.Kalaiselvi

3.Ilayaraja

4.V.Sudarvizhi

... Respondents / Respondents /Plaintiffs

5.State of Tamilnadu,  
represented by its District Collector,  
Thanjavur  
office at Collectorate,  
Trichy Road,  
Thanjavur Taluk and Musif.

6.The Assistant Engineer,  
Highways Department,  
Thanjavur,  
Office at Old Court Road,  
Thanjavur Town and Munsif.



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7. The Superintending Engineer,  
T.N.E.B. Thanjavur,  
Office at Pudukkottai Road,  
Thanjavur Town and Munsif.

...Respondents / Respondents / Defendants 1 to 3

Prayer : This Second Appeal is filed under Section 100 C.P.C., against the judgment and decree dated 08.04.2025 passed by the learned Principal Subordinate Judge, Thanjavur in A.S.No.25 of 2023 confirming the judgment and decree dated 07.03.2023 passed by the learned Additional District Munsif, Thanjavur in O.S.No.346 of 2009.

For Appellant : Mr.C.Suresh Kannan

### **JUDGMENT**

The fourth defendant is before this Court on appeal. The Second Appeal is filed challenging the judgment and decree dated 08.04.2025 in A.S.No.25 of 2023 on the file of the learned Principal Subordinate Judge, Thanjavur, confirming the judgment and decree dated 07.03.2023 in O.S.No.346 of 2009 on the file of the Additional District Munsif Court, Thanjavur.



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2. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3. It is the case of the plaintiff that the 'A' schedule suit property originally belong to one Vijayavalli and the plaintiff had purchased the 'A' schedule property through registered sale deed dated 31.07.1989 for valuable consideration. Earlier, the land in Survey No.70/1 and 70/2 of Nanjikottai Vattam, had been converted into lay out by forming house site and the land approval was obtained from the Nanjikottai Panchayat Board and named Sundarapuram. 44 plots are earmarked in the lay out Sundarapuram. The plaintiff had purchased the plot No.5 from the lay out which is the 'A' schedule suit property. Likewise, the adjacent house site Plot Numbers 4, 28, 44 and 42 have been purchased by their respective owners and they are in possession and enjoyment of their respective plots. It is the further case of the plaintiff that the lay out is situated in the eastern side of Thanjavur-Mathakkottai road and the 'A' schedule property is situated adjacent to the main road. The adjacent plot owners who have purchased the property had constructed and put up a



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compound. The only access to the property purchased by the plaintiff in

'A' schedule is having access from the Thanjavur-Mathakottai main road.

The fourth defendant had encroached the extent more fully described in 'B' schedule and thereby the entire ingress and egress to the 'A' schedule suit property has been obstructed. Since the plaintiff wanted to construct the house in the 'A' schedule suit property, she had asked the fourth defendant who is in encroachment in front of the plot to vacate the 'B' schedule property. However, the fourth defendant hurriedly taken steps to put up a hut for which the plaintiff had sent objections and also complaints. Thereafter, the plaintiff had again on 23.08.2007, sent a petition to Tahsildar. But however, the fourth defendant had not vacated the 'B' schedule property. Hence the plaintiff had come up with the suit to remove the encroachment of the fourth defendant.

4. The defendant resisted the suit by disputing the claim of the plaintiff. It is the case of the defendant that the 'B' schedule is a Natham land and in which the defendant had been in continuous and peaceful possession for nearly 40 years. The Panchayat, by recognizing the possession, had issued house tax receipts. The plaintiff has no right to



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seek to evict the fourth respondent from the Natham land. The plaintiff who is related to highway officials are taking forcible steps to evict the fourth defendant. Since the property is Natham land, the Panchayat and Tahsildar are also necessary parties. Therefore, suit filed is not sustainable and sought for dismissal.

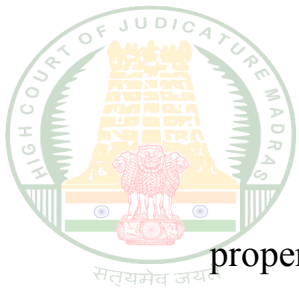
5. During trial, the plaintiff examined herself as P.W.1 and further examined the Assistant Engineer of Highways Department as P.W.2 and marked Ex.A1 to Ex.A10. On the side of the defendant, none has been examined and no documents are marked. The trial Court after analyzing the evidence, came to the conclusion that the plaintiff having purchased the 'A' schedule in Ex.A1, as per the documents has access from the Thanjavur- Mathakkottai main road through the 'B' schedule and further from the evidence of P.W.2, the Assistant Engineer, it is established that the claim of the defendant that it is a Natham land is false and that the 'B' schedule property is a Highway margin belonging to the department. 'B' schedule is a road margin which is vest with the Highway department. The trial Court decreed the suit. On appeal, the lower appellate Court reappraised the evidences and by relying on the documents filed by the



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plaintiff, came to the conclusion that the 'B' schedule is a highway margin and the plaintiff had by examining P.W.2 had proved the same. The lower appellate Court had also additionally considered the two documents in Ex.A9 and Ex.A10 which are the steps taken by the department to evict the fourth respondent. The lower appellate Court dismissed the appeal confirming the judgment and decree of the trial Court. Assailing the concurrent finding of fact, the fourth defendant had preferred this appeal.

6. Learned counsel for the appellant argued that when 'B' schedule property is a Natham land, the plaintiff cannot maintain the suit without impleading the Tahsildar and the Village Panchayat, as they are the rightful authorities. It is his further contention that the fourth defendant being in long possession in the Natham land, is entitled to continue in enjoyment and the plaintiff cannot evict the fourth defendant. Learned counsel further contended that the plaintiff is having access to the property on the other side and does not mainly rely on the 'B' schedule property. It is his further vehement contention that the document in Ex.A9 and Ex.A10 marked through P.W.2 does not relate to the suit



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property and therefore, the decision arrived at by the lower appellate Court mainly on relying on the Ex.A9 and Ex.A10, is erroneous and perverse sought for interference of this Court.

7. Heard the learned counsel on either side and perused the materials available on record.

8. Admittedly, a lay out in the name of Sundarapuram had been formed in Survey No.70/1 and 70/2. 44 house plots were earmarked in the lay out. From the lay out, the plaintiff has purchased plot No.5 through sale deed dated 31.07.1989 in Ex.A1. The document in Ex.A1 executed in favour of the plaintiff reveals that the Sundarapuram lay out is situated abutting the Thanjavur - Mathakkottai road and in the lay out plot No.5 is situated abutting this main road. As such from the documents purchased by the plaintiff in Ex.A1, the only access to the property of the plaintiff in Plot No.5 is from Thanjavur - Mathakottai main road.

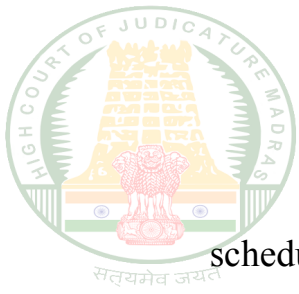


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9. It is the case of the plaintiff that the fourth defendant had encroached the 'B' schedule property which is lying between the property purchased by her in plot No.5 and the main road and thereby the entire access to the property from the main road has been obstructed. The plaintiff, since her request to the fourth defendant to remove the encroachment was not fruitful, has come up with the suit. The plaintiff apart from filing documents in Ex.A1 had examined the Assistant Engineer of the Highways Department as P.W.2. The P.W.2 had given evidence to the effect that the 'B' schedule property is a road margin which belongs to the highway department.

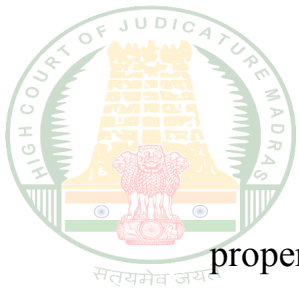
10. It is to be noted that the only defence on the side of the defendant is that the 'B' schedule is a Natham land and therefore the defendant is entitled to occupy the Natham land, in which only the revenue authorities and the Panchayat are having a say. When the plaintiff had by filing a document in Ex.A1 and also by examining P.W. 2, the official from the Highway department, had established the fact that 'B' schedule property is a road margin which belongs to the highway department, it is for the 4th defendant / Appellant to prove that 'B'



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schedule is a Natham land. When the onus was on the fourth defendant to establish the fact asserted by him as per Section 103 of the Indian Evidence Act, the defendant had not examined any witness or filed any documents on her side to prove the fact as claimed by her. It is also to be noted that the 4th defendant herself has not chosen to enter into the witness box to give evidence in support of the claim. When the onus was on the fourth defendant to prove her claim, it was for the fourth defendant to produce the best available evidence. However, the fourth defendant herself has not chosen to enter into the witness box to lead evidence and has also not filed any documents. As such only an adverse inference is to be drawn against the fourth defendant.

11. It is also to be noted that the documents in Ex.A9 and Ex.A10 had been marked on the side of the plaintiff and P.W.2 had given evidence to the effect that already a direction was passed by this Court wherein the department was directed to remove the encroachment on the road margin and pursuant to which notice has been issued to the fourth defendant to remove the encroachment. Even though, the learned counsel for the appellant contend that this does not pertain to the suit 'B'



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property, no cross examination to that effect has been made and no contra evidence or document has been let in on the side of the defendant to disprove the same. In the absence of any such materials and when the plaintiff had proved that the 'A' schedule has access only through the 'B' schedule property through the documents purchased by her in Ex.A1 and particularly when the official from the Highway Department has been examined as P.W.2 who has given evidence that the 'B' schedule property is a road margin and further pursuant to the direction of this Court, proceedings have been initiated against the fourth defendant for removal of the encroachment, the claim made by the appellant cannot be accepted.

12. The Courts below have rendered a concurrent finding of fact and had decreed the suit based on the evidence available on record. This Court does not find any illegality or perversity in the finding rendered. No substantial question of law arise for consideration in this Second Appeal for admission.



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13. Accordingly, this Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

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

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To

1. The Principal Subordinate Judge, Thanjavur.
2. The Additional District Munsif, Thanjavur
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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