



SA(MD)No.298 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.07.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.298 of 2018

and

C.M.P(MD)No. 8959 of 2018

S.Andikonar

... Appellant / Appellant / Defendant

Vs

1.Pappathiyammal (Died)

2.Subbiah

*(2nd respondent is brought on record
as LR of the deceased 1st vide Court*

order dated 11.08.2018) ... Respondent / Respondent / Plaintiff

Prayer : This Second Appeal is filed under Section 100 C.P.C., against the judgment and decree dated 23.06.2011 passed in A.S.No.11 of 2011 on the file of the Subordinate Judge, Kovilpatti, confirming the judgment and decree dated 12.08.2010 passed in O.S.No.169 of 2006 on the file of the learned District Munsif Court, Kovilpatti.

For Appellant

: Mr.D.Nallathambi

For R2

: Mr.R.Devaraj



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JUDGMENT

The defendant is before this Court on appeal. The Second Appeal is filed challenging the judgment and decree dated 23.06.2011 in A.S.No. 11 of 2011 on the file of the learned Subordinate Judge, Kovilpatti, confirming the judgment and decree dated 12.08.2010 passed in O.S.No. 169 of 2006 on the file of the learned District Munsif Court, Kovilpatti.

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

3. It is the case of the plaintiff that the suit property is a pathway absolutely belonging to the plaintiff. The plaintiff had purchased a house in D.No.113A along with pathway for the access to the property through registered sale deed dated 16.09.1981 for valuable consideration from one Ulagu Konar. His vendor Ulagu Konar had originally purchased the property in Door No.113A along with the suit property through a registered sale deed dated 05.11.1979 for a valuable consideration from one Pitchiah Reddiar. From the date of purchase, the plaintiff's vendor



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and the plaintiff had been in possession and enjoyment of the house purchased by them and the suit property pathway. The defendant's father Sangara Pandian had purchased the adjacent property through registered sale deed dated 26.02.1968 from Pitchaiya Reddiyar. The property purchased by the defendant also has a separate pathway. While so, the defendant started to interfere in the suit pathway which absolutely belongs to the plaintiff and as such the plaintiff had come up with the suit seeking for declaration and permanent injunction.

4. The defendant resisted the suit by filing a written statement contending that the plaintiff does not have any right over the suit pathway. The defendant disputed the purchase of the plaintiff. It is contended that the defendant is also having a right over the suit pathway and they have been using it for a long time nearly 39 years. When the defendant is also having a right, the suit filed by the plaintiff seeking for declaration and injunction is not sustainable.

5. During trial, the plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A7. On the side of the defendants, D.W.1 and D.W.



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2 were examined and Ex.B1 and Ex.B2 were marked. An Advocate Commissioner was appointed and his report and plan was marked as Ex.C1 and Ex.C2. The trial Court after analyzing the evidences came to the conclusion that the plaintiff had established his title to the suit pathway through the registered document in Ex.A2 and Ex.A3. But the defendants admittedly do not have any right in the pathway through Ex.B1 and Ex.B2. On the plaintiff establishing the title, the trial Court decreed the suit. On appeal, the lower appellate Court also by relying on the admission of D.W.1 to that effect that by documents they do not have a right in suit pathway, concurred with the finding of the trial Court and dismissed the appeal. Assailing the concurrent finding of fact, the defendant is before this Court on appeal.

6. The second appeal has not been admitted and by order dated 20.01.2022 only notice of motion was ordered.

7. Learned counsel appearing for the appellant argued that even though right in the suit pathway is not specifically mentioned in the sale deed in Ex.B1 and Ex.B2, still they had been in usage of the suit pathway



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for a long period and as such the suit seeking for declaration as against the defendant, cannot be sustained. Learned counsel further contended that even though as per the documents, the defendant is having another pathway for their property, still that cannot be taken as a ground to deny the right which had accrued in favour of the defendant in the suit pathway. It is his further vehement contention that the Courts below had misconstrued the admission of D.W.1 to that effect that no right has been given in Ex.B1 and Ex.B2 but however he had clearly stated that they have a right in the suit pathway as they are in usage. These aspects were not rightly considered by the Courts below and therefore the finding rendered are perverse and sought for interference of this Court.

8. Per contra, learned counsel appearing for the respondent submitted that the plaintiff by filing the sale deeds in Ex.A2 and Ex.A3 had established the title to the suit pathway and in view of the same, the Courts below had rightly declared the title and granted the consequential injunction. Learned counsel further contended that the suit pathway has been established by the documents and also the plaintiff had taken steps by seeking appointment of advocate commissioner and through the report



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in Ex.C1 and Ex.C2, it is established that apart from the suit pathway, the defendant is having his own access to his property through the pathway which was given to him and he do not have any scope to use the suit pathway. As such the Courts below have rendered a concurrent finding based on the available materials and needs no interference and sought for dismissal.

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

10. The issue involved in the suit is in respect of the suit pathway. The plaintiff claims an exclusive right and title over the suit pathway. To establish her right, the plaintiff had filed the documents in Ex.A2 and Ex.A3. The perusal of the documents in Ex.A2 and Ex.A3 reveals that one Pitchaiya Reddiyar had sold the property bearing Door No.113A along with the suit pathway in favour of one Ulagu Konar through registered sale deed dated 05.12.1979 in Ex.A2. Ulagu Konar, who became the absolute owner by purchase, had thereafter sold the property, purchased by him which includes the suit pathway, in favour of the



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plaintiff through registered sale deed dated 16.09.1981 in Ex.A3. By filing the two documents in Ex.A2 and Ex.A3, the plaintiff had established that the suit pathway is in existence and the suit pathway was purchased by the plaintiff's vendor and thereafter by the plaintiff for valuable consideration through registered sale deeds. In view of the purchase made by the plaintiff, the plaintiff being an absolute owners, had come up with the suit seeking for declaration of title and for consequential permanent injunction. When the plaintiff had established the title to the suit pathway by the two documents in Ex.A2 and Ex.A3, the defendant only claimed that he is also have a right in the suit pathway.

11. In this regard, the defendant had filed two documents in Ex.B1 and Ex.B2. Perusal of the sale deeds particularly, the documents in Ex.B2 which is the sale deed executed in favour of the defendant's father Sangarapandian Konar by Pitchaiya Reddiyar, reveals that a separate property had been conveyed in favour of the defendant's father and also along with the property, a separate pathway to have access had been conveyed in favour of the defendant. The document in Ex.B1 also



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reveals that the defendant have a separate pathway to the property. The documents filed by the defendant in Ex.B1 and Ex.B2, does not give any right in favour of the defendant to use the suit pathway which has been conveyed in favour of the plaintiff. As such the defendant failed to establish by documents that he has any right over the suit pathway which absolutely belongs to the plaintiff.

12. It is also to be noted that the defendant who claims right over the suit property had not chosen to enter into witness box to give evidence but however had examined D.W.1 and D.W.2. D.W.1 in his evidence had categorically admitted that they do not have any right over the suit pathway from the documents executed in their favour in Ex.B1 and Ex.B2. When the documents does not give a right to the defendant in the suit pathway which has been admitted by them and when the defendant simply claim a right over the suit pathway which has been absolutely sold and belongs to the plaintiff, unless the defendant establishes before the Court by filing any material to show that they have any right in the suit pathway, they cannot merely deny the title of the plaintiff in order to claim for any right in the suit pathway.



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13. The plaintiffs had also taken steps by seeking for an appointment of advocate commissioner and his report had also been filed in Ex.C1 and Ex.C2 where the existence of the pathway and the other pathway which is available in the enjoyment of the defendant which was conveyed to them in Ex.B1 and Ex.B2, were all been established. The Courts below have rightly considered the rival documents filed and finding that the plaintiff had established title over the suit property, had decreed the suit and this Court does not find any illegality or perversity in the concurrent finding rendered. No substantial question of law arise for consideration in this appeal.

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

30.07.2025

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

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G.ARUL MURUGAN, J.

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To

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

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