



S.A.No.2043 of 2001

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Second Appeal No.2043 of 2001

1.Balasubramani (died)

2.Pandarinathan

3.Marimuthu

4.Radhakrishnan

5.Sundarasan

6.Selvaganesh

7.Thanga Guruvammal

(A7 is brought on record as LR of the
deceased A1 vide order dated 19.06.2009
made in CMP Nos.21051 & 21052 of 2003)

.. Defendants/Appellants/Appellants

Vs.

Paulrajan (died)

2.Manoranjitham

3.P.Ponmarimuthu

4.U.Meenakshi

5.D.Vijayalakshmi

6.P.Saravanamoorthy

(R2 to R6 are brought on record as
LRs of the deceased sole respondent
vide court order dated 17.09.2019 made
CMP(MD)Nos.7566 to 7568/2019)

Respondents



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PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 31.08.2001 made in A.S.No.36 of 2000 on the file of the Sub Court, Srivilliputhur, confirming the Judgment and Decree dated 22.09.2000 made in O.S.No.336 of 1998 on the file of the Principal District Munsif, Srivilliputhur.

For Appellants : Mr.K.Muraleedharan for
Mr.S.Ramakrishnan

For Respondents : Mr.M.Muthugeethayan

J U D G M E N T

The defendants are the appellants in the second appeal. The deceased first respondent herein filed the suit in O.S.No.336 of 1998 on the file of the Principal District Munsif, Srivilliputhur, for declaration that the second schedule property in the plaint is a common lane belonging to the appellants and the first respondent, and for consequential relief of a permanent injunction and also a mandatory injunction to remove the encroachments made by the appellants from the third schedule property. In case of failure to remove the encroachments made by the appellants in the said schedule property, to permit the first



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respondent to remove the above-said encroachments and reimburse the cost from the appellants.

2. After trial, the trial Court decreed the suit as prayed for. Aggrieved by the judgment and decree passed by the trial Court, the defendants filed an appeal before the Sub Court, Srivilliputhur, in A.S.No.39 of 2000. The first appellate Court, after hearing the arguments of both sides, dismissed the appeal. Therefore, the defendants are before this Court by way of this second appeal.

3. The brief facts in the plaint are that the suit first schedule property absolutely belongs to the deceased first respondent, namely, Paulrajan. It is a house that was jointly purchased by the deceased first respondent and one Thalavai Pandia Nadar and Ramasamy Nadar from one Pushpamaniammal by way of a registered sale deed dated 08.09.1963. The said Paulrajan subsequently purchased a 2/3rd share from the co-owners, namely, Thalavai Pandia Nadar and Ramasamy Nadar, over the suit first schedule property by virtue of a registered sale deed dated 02.02.1974. Therefore, the first schedule property belongs to



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the first respondent herein. In the western side wall of the house, four windows are located on the ground floor and four windows are located on the first floor, for the free flow of air and light to the house situated in the suit first schedule property. Besides the above-said windows, there are four tin-sheeted pipes located on the western wall of the house to discharge the rainwater into the suit second schedule property, for which a small drainage channel is also located in the second schedule property, and to maintain the western side wall of the house, the respondents used the second schedule property for doing repair work and maintenance work and also whitewashing by enjoying the suit second schedule property by free ingress and egress all along for more than 35 years. While so, the first appellant obstructed the enjoyment of free ingress and egress of the suit second schedule property by the deceased first respondent and constructed a wall in the second schedule property to an extent of 36 feet in length from south to north out of 38 feet and 2 feet 7½ inches in breadth from east to west out of 3 feet. The encroached portion of the second schedule property mentioned in the plaint is described as third schedule property. The respondents are claiming rights over the property by virtue of the four boundaries mentioned in



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the partition deed, wherein the first appellant, namely Balasubramanian, along with his brother Sivasubramania Nadar, partitioned their properties among them, wherein the house property was allotted to the first appellant and the four boundaries categorically revealed that the western portion is a common pathway having 3 feet. The deceased first respondent, from the day of the purchase of the suit first schedule property in the year 08.09.1963, along with one Thalavai Pandia Nadar and Ramasamy Nadar, enjoyed the suit second schedule property as a common lane. Thereafter, he purchased the entire property on 02.02.1974 from the other co-sharers, as stated above, and became the absolute owner of the house located in the suit first schedule property and the respondents were also continuously enjoying the second schedule property for the past 35 years along with the appellants. However, the obstruction was made by the appellants by constructing a wall having an extent of 36 feet from south to north and 2 feet 7½ inches from east to west, which is shown as the encroached portion and mentioned as third schedule property in the plaint.



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4. The brief facts of the written statement filed by the appellants are that the suit second schedule property as per the partition deed dated 27.11.1954 belongs to the first appellant and his brother and no other third party has right in the said property and the consensus said to have been entered between the parties before the Nadar Uravin Murai, where the signature of the first appellant is obtained only by way of coercion and the same will not bind on him and the suit second schedule property absolutely belongs to the first appellant and as per Ex.A7 only, a permission was granted to whitewash and do renovation works of the western wall of the house of the suit first schedule property which belongs to the first respondent, and therefore, the suit has to be dismissed.

5. Based on the pleadings, the trial Court framed the following issues:

1. Whether the second schedule property is a common lane?
2. Whether the second schedule property absolutely belongs to the defendants?



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3. Whether the defendants encroached and constructed second schedule property?

4. Whether the plaintiff is entitled to get the decree of declaration, permanent injunction and mandatory injunction as prayed for? and

3. What other relief to the plaintiffs are entitled?

6. After completing the pleadings, during the trial, on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3, and 15 documents were marked as Exs. A1 to A15. On the side of the second defendant, three witnesses were examined as D.W.1 to D.W.3, and four documents were marked as Exs.B1 to B4. Besides, two Court documents were marked as Exs.C1 and C2.

7. After trial, the trial Court decreed the suit by a judgment and decree dated 22.09.2000. Aggrieved over the same, the defendants filed the appeal before the Sub Court, Srivilliputhur, in A.S.No.36 of 2000. After hearing the arguments of both sides, the first appellate Court dismissed the appeal and confirmed the judgment and decree passed by



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the trial Court. Challenging the same, the defendants have filed the present second appeal.

8. While admitting the second appeal, this Court, considering the facts and circumstances of the case, has formulated the following substantial questions of law:

“1. Whether the judgment and decree of the courts below are vitiated for decreeing the suit of the respondent/plaintiff when he has not produced any evidence to substantiate his right?

2. Are not the judgment and decree of the courts below vitiated for failing to construe the recitals in Ex.A4?”

9. The learned counsel appearing for the appellants submitted that one Arunachala Nadar is the father of the first appellant and one Sivasubramanian Nadar. After the demise of the said Arunachala Nadar, his sons, namely, the first appellant and the said Subramanian Nadar, had effected partition among themselves on 27.11.1954, as per Ex.A4.



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After the partition, the first appellant had been in peaceful possession and enjoyment of the property without any hindrance. The first respondent, Paulrajan, is a neighbour. He purchased the eastern portion of the property that is mentioned as first schedule property from his vendor, one Thalavaipandian Nadar and Ramasamy Nadar, on 02.02.1974 as per Ex.A3. The first respondent purchased the property after a lapse of 20 years. The first respondent's property is on the eastern portion of the appellants' property. The respondent's front portion of the property is on the east-west length of 10 feet, and it has been reflected in the sale deed (Ex.A3). The first appellant's threshold adjoins the first respondent's east-west wall and was put up by the appellants' ancestors long ago.

10. In the year 1985, the first appellant put up a wall on his property, and the same was objected to by the deceased first respondent, and a lane dispute arose between them. The deceased first respondent demolished the wall. On 21.04.1985, a Nadar Uravinmurai conducted a meeting by one Gopalsamy, wherein the deceased first respondent, Paulrajan, assured that he would construct the demolished wall of the



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first appellant, Balasubramanian, at his own cost. It was written on a paper, and the signatures were obtained in the presence of the Panchayat. However, it was not complied with by the deceased first respondent, and as such, the dispute developed further between them. Both lodged a complaint before the Thalavaipuram Police Station against each other. On 18.06.1997, both the first appellant and the first respondent had executed a lane agreement in the presence of the Village Administrative Officer stating that the first respondent was given the right to whitewash the western side wall and that renovation rights were given only twice every year, viz., on Pongal and Panguni Pongal festival days only. On those days, whenever the first respondent required it, the doors had to be opened by the first appellant, enabling the first respondent to have whitewash on his western wall.

11. Subsequently, on 24.03.1998, on the disturbance caused by the first respondent, the first appellant lodged a complaint before the Thalavaipuram Police Station stating that the first respondent was obstructing and disturbing the construction work. Based on his complaint, the first respondent was enquired about by the police



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officials. The first respondent has stated that there is no objection to leaving 4½ inches from his wall (one chamber) to construct the wall, and it was signed on the back side of the complaint. Accordingly, the first appellant constructed a wall on his property. The first respondent, taking advantage of a reference made in the partition deed (Ex.A4) that there is a common pathway, had claimed rights over it, which is incorrect. The said partition had been effected among the brothers themselves. The common pathway referred to in Ex.A4 will binds the parties to the document alone. No other third party can claim right of common pathway while neither the plaintiff nor his predecessors in interest either purchased from the defendants or their predecessors in interest. In the above-said property, there is no pathway available. It is not connected with the street on the northern side as well as the southern side of the appellants' property. There is no connection from south to north. It is only for the brothers' usages. It has been reflected as a 3-feet pathway. If it is really a pathway the villagers used to go in and around, it should have been either referred to in the revenue records or in the plaintiff's document. When the common pathway is not at all referred to in the plaintiff's document, he cannot claim right over the common pathway on



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the basis of Ex.A4, which is intended for the brothers among the appellants/defendants. Due to such an occurrence, the deceased first respondent instituted a suit against the first appellant and his sons.

12. The learned counsel for the appellants further submitted that an Advocate Commissioner was appointed to visit the property, and he submitted a report with a sketch, and the same was marked as Ex.C1 and C2. For the above-said report, the appellants filed their objection through their Advocate on 27.08.1999. In the Commissioner's report, the Commissioner mentioned that in the front portion of the property on the east-west portion of the length of the plaintiff's building, there is a 10 feet breadth that was marked by the Commissioner as M-N portion. Page No. 3 of the Commissioner's report reflects that an old stepping stone adjoining the plaintiff's wall is referred to.

13. The learned counsel for the appellants further submitted that the respondents are claiming the right of common lane. He has got no right to enter into the appellants' property. The respondents are claiming rights based on Ex.A4, which was only between the brothers,



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and no other third party got a right in the appellants' property. As per Ex.A7, only a permission or license was given twice a year for whitewashing and renovation works only and not on the entire right. There is no reference in Ex.B4 as a pathway. He further submitted that the trial Court as well as the first appellate Court failed to consider the main object and the legal position. Both the trial Court and the first appellant Court have not properly appreciated Ex.A4-partition deed, which is the defendants' document. When the first respondent/plaintiff has miserably failed to establish that in the second schedule property, he has also got right by producing any document, and Ex.A7 has further strengthened the appellants' right in the common wall, the first respondent/plaintiff's suit has to be dismissed. The first respondent/plaintiff has to establish his case from his oral and documentary evidence and not on the weakness or loopholes on the other side.

14. In support of his contention, the learned counsel for the appellants has placed reliance on the following Judgments:-



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(1) ***Subramanian and another vs. K.Panneer Selvam (Civil Appeal No.9472 of 2010 dated 08.02.2021);***

(2) ***(2002)1 MLJ 549 (Subramaniya Konar vs. Palani Pillai and others);***

(3) ***(2003)1 MLJ 722 (S.Ramesh Babu vs. R.Bhaskar and another);*** and

(4) ***(1999)1 MLJ 324 (P.Chenchu Ramiah vs. Noohu Nachia and another).***

15. The learned counsel for the respondents submitted that the trial Court, after consideration of oral and documentary evidence, particularly the Advocate Commissioner's report, decreed the suit. The learned trial Judge was pleased to consider Ex.A4 the partition deed dated 27.11.1954, wherein the first appellant, along with his brother Siva Subramania Nadar, entered into a partition, and the suit second schedule property was shown as the eastern boundary in the above said partition deed, and it was categorically mentioned as a common pathway 3 feet (பொது நடைபாதை 3 அடி உள்ள இடத்திற்கும் (மேற்கு)) and the same belongs to the first appellant's family alone. Hence, the trial Court held



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that the above-said four boundaries mentioned in Ex.A4 the partition deed categorically reveal that the western boundary is a common pathway. Besides, the above-said findings were rendered by the trial Court as per Ex.B2, the sale deed dated 24.05.1949 executed by the first appellant's father, namely, Arunachala Nadar, in favour of his daughter Gomathiammal, wherein the four boundaries reveal the suit second schedule property and also reveal the 1/3rd share in the second schedule property belongs to the first appellant. The Ex.B2 sale deed reveals that the first appellant has 1/3rd share in the second schedule property, and he does not have any right in the entire second schedule property, and the said recitals in Ex.B2 have not been pleaded by the first appellant in his written statement. He further submitted that the trial Court appreciated Ex.A5 along with the oral evidence of PW2, namely, the President of Thalavaipuram Nadar Uravin Murai, and the said witness categorically deposed that the first appellant agreed that the respondents would use the suit second schedule property for maintenance and repairs, and the said consensus was agreed upon by the first appellant and the first respondent. Prior to the execution of Ex.A5 dated 26.05.1985, a consensus had already been arrived at



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between the parties under Ex.B1 dated 21.04.1985, and the same has not been stated by the first appellant in his written statement and also in the deposition of DW1, namely, the son of the first appellant, and in the said Ex.B1, it has been mentioned that the common lane belongs to the first appellant.

16. The learned counsel for the respondents further submitted that PW3 categorically deposed that the first appellant agreed that the respondents would enjoy the suit second schedule property for maintenance and repairs and entered into a consensus and signed in Ex.A7 dated 18.06.1997. However, the said document, Ex.A7 was now disowned by the first appellant, which is nothing but estoppel, and if the above-said agreement was entered into between the parties under coercion, then the first appellant ought to have made a complaint to the jurisdiction police station, but no such action was taken by the first appellant. Insofar as his contention regarding Ex.A7 that it was orally cancelled is concerned, the trial Court, after elaborate consideration of the oral and documentary evidence, held that Exs.A5 and A7 are still in existence and the said documents reveal that the suit second schedule



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property is a common lane and it does not absolutely belong to the first appellant herein. He further submitted that the learned trial Judge considered the evidence of DW1 and DW3, who categorically deposed that a 4-1/2 inch gap between “CD” and “JH” could not use to maintain and to do any repair works and also do whitewash on the western side wall of the suit first schedule property. The evidence of DW1 and DW2 categorically reveals that the first appellant has provided a space of 4-1/2 inches in between “CD,” which is the western side wall of the respondents, and “JH,” which is the encroached wall constructed by the first appellant to an extent of 36 feet from south to north and 2 feet 7-1/2 inches from east to west, which is shown as suit third schedule property. The son of the first appellant was examined as DW1, and the mason of the first appellant was examined as DW2, who categorically admitted that a 4-1/2 inch gap alone has been provided between the western side wall of the respondents and the encroached portion of the wall constructed by the first appellant. The above-said encroachment made in the common lane by the first appellant very much affects the rights to maintain repair and also the whitewashing of the western side wall of the respondent, and therefore, the learned trial Judge was



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pleased to grant the relief of mandatory injunction as prayed for.

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17. The learned counsel for the respondents further submitted that the first appellate Court also considered Ex.B2, wherein the first appellant has only 1/3 right over the suit second schedule property, and he cannot claim exclusive right over the entire common pathway, namely, suit second schedule property. The right, which devolved under Ex.B2 upon the first appellant, was considered by the trial Court, and it has not been denied by the first appellant. The first appellant has not revealed the other co-sharers of the common pathway described in the suit second schedule property in his written statement. The first appellate Court also considered the documents marked as Ex.A5 and Ex.A7 and thereby held that the above-said consensus arrived at between the parties is not a license as pleaded by the first appellant and thereby held that the suit second schedule property is a common lane belonging to both, namely, the first appellant and the first respondent. The first appellate Court considered the Advocate Commissioner's report and the physical features located in the western side wall of the suit first schedule property, namely, four windows each on the ground floor, and



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on the first floor, and the four tin-sheeted pipes to discharge the rainwater to the drainage situated in the second schedule property. The first appellate Court has considered the oral and documentary evidence and the Advocate Commissioner's report and also the respective findings rendered by the trial Court and confirmed the judgment and decree of the trial court and thereby dismissed the appeal suit. As against which, the first appellant filed the present second appeal. Pending the appeal, the first appellant and the respondent Paulrajan died, and hence, their legal heirs were impleaded in the second appeal.

18. The learned counsel for the respondents further submitted that the grounds raised by the appellants before this Court with regard to Exs.B1 and B2 and Exs.A4, A5, and A7 have already been considered by both the Courts below, and they concurrently held that the suit second schedule property does not absolutely belong to the first appellant as per Ex.B2 and Ex.B2 devolves the rights of 1/3rd share over the common pathway to the first appellant and not an absolute right over it. Therefore, the suit second schedule property is not the absolute property of the appellants. From the eastern boundary mentioned in



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Ex.B2, it is seen that it is only a common pathway. Besides, Ex.A5 refers to Ex.B1 and the same has not been pleaded by the appellants in their written statement, and the recitals found in Ex.A5 and Ex.A7 reveal the consensus reached between the parties to use and enjoy the suit second schedule property by the first respondent for maintenance and repair of the western side wall of the house and thereby use the said property for whitewashing and also free ingress and egress of the suit second schedule property. But the evidence of DW1 and DW2 categorically reveals that by virtue of the encroached wall constructed by the appellants, which is described as the third schedule mentioned property, wherein a gap of 4 ½ inches alone has been provided in between the southern side wall of the respondents and the encroached wall constructed by the appellants herein, the respondents are unable to enter into the common lane and to maintain and renovate and do repairs of their western side wall and also whitewashing of their house. The above-said oral and documentary evidence of the respective parties has been considered by both of the Courts below, and they rendered concurrent findings after analyzing the entire oral and documentary evidence. Therefore, the appellants have not substantiated their case



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before this Court, and no substantial question of law has been raised before this Court for consideration as per Section 100 C.P.C. Hence, the learned counsel prays for dismissal of this second appeal.

19. Heard the learned counsel appearing on either side and perused the materials available on records.

20. The specific case of the respondents is that the deceased first respondent purchased the first schedule property, which is a house property, and the second schedule property, shown as a common lane, which is shown in the partition deed, marked as Ex.A4, and the appellants encroached on the second schedule property and put up a construction, and therefore, the first respondent sought a mandatory injunction to remove the encroachment and construction. The main contention of the respondents is that, as per the partition deed (Ex.A4), the western boundary is a common pathway. Besides, Ex.B2 is the sale deed dated 24.05.1949 and it was executed by the father of the first appellant, namely, Arunachala Nadar, in favour of his daughter Gomathiammal, wherein the four boundaries include the suit second



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schedule property and also that the 1/3rd share in the second schedule property belongs to the first appellant. Ex.B2 the sale deed reveals that the first appellant has only a 1/3rd share in the second schedule property, and he does not have rights in the entire second schedule property. The said recital in Ex.B2 has not been pleaded by the first appellant in his written statement.

21. Further, the trial Court also appreciated Ex.A5 along with the oral evidence of P.W.2, namely, the President of Thalavaipuram Nadar Uravinmurai. The said witness categorically deposed that the first appellant agreed that the first respondent would use the suit second schedule property for maintenance and repair, and the said consensus was agreed to by the first appellant. Prior to the execution of Ex.A4, dated 26.05.1985, the consensus had already been arrived at between the parties under Ex.B1, dated 21.04.1985. However, it has not been revealed by the first appellant in his written statement. Though the first appellant has admitted the said documents, Exs.A5 and A7, he stated that the signature was obtained by coercion. However, he has not produced any material to show that he made a complaint that his



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signature was obtained by coercion.

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22. A reading of the materials shows that Exs.A5 and A7 are admitted by the appellants. Exs.A5 and A7 reveal that the suit second schedule property is a common lane, and it does not belong to the first appellant. D.W.1 and D.W.3 also stated the existence of the second schedule property. The Commissioner's report also shows the existence of the second schedule property and also the encroachment, i.e., the third schedule property. From the oral and documentary evidence of both parties, the trial Court appreciated the evidence and declared the second schedule property as a common lane for both. The first appellate Court also re-appreciated the evidence and also confirmed the judgment and decree of the trial Court.

23. The specific case of the appellants is that there is no second schedule property. The second schedule property absolutely belongs to the appellants, and the respondents have not established that it is a common lane, and before the Panchayathars, they obtained the signature in Exs.A5 and A7 by coercion that will not bind the appellants.



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Both the trial Court and the first appellate Court failed to appreciate the oral and documentary evidence. Ex.A4 does not show any common lane/pathway. Therefore, the findings of both the Courts below are perverse.

24. A reading of the oral and documentary evidence, specifically the plaint, the evidence of P.Ws.1 to 3, and also Exs.A1, A2, A5 and A7 makes it clear that there is a common lane. Even the Commissioner's report is also very clear. Both the fact-finding Courts have rightly appreciated and re-appreciated the oral and documentary evidence and given the finding in favour of the first respondent and declared the second schedule property is a common lane, and the appellants have encroached upon the common lane and put up construction, which is shown as the third schedule property. Therefore, rightly, the decree has been granted.

Question No.1:

25. Insofar as the first substantial question of law is concerned, a reading of the plaint filed by the deceased first respondent and the



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written statement filed by the deceased first appellant, and also the evidence of both the plaintiff and the defendants, shows that P.W.1 and P.W.3 themselves admitted that there was a 4 ½ inch gap between CD and JH and the gap between HJ and FG was encroached upon by the appellants. The encroachment would affect the rights to maintain the repairs and also to do the whitewashing of the western side wall of the respondents, which is the first schedule property. Therefore, from the oral and documentary evidence of P.W.1 to P.W.3 and Ex.A4, the partition deed, and Ex.B2 the sale deed dated 24.05.1949 executed by the father of the first appellant in favour of his daughter Gomathiammal, who is the sister of the first appellant, wherein the four boundaries include the suit second schedule property, it is seen that only a 1/3rd share alone in the second schedule property belongs to the first appellant.

26. Further, Ex.B2, the sale deed, reveals that the first appellant has a 1/3rd share in the second schedule property, and he does not have any right in the entire second schedule property. Therefore, from the recitals in Ex.A4, it is clear that it is a common lane



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and it does not absolutely belong to the appellants. From the evidence of P.Ws.1 and 3, it is seen that there is an encroachment in the common lane, and because of the encroachment, the respondents could not enter into the common lane for whitewashing and other repair works.

27. A reading of the judgment of both the courts below show that the first respondent has substantiated his averments made in the pleadings by way of oral and documentary evidence. Hence, this substantial question of law is answered accordingly.

Question No.2:

28. There is no dispute with regard to the first schedule property, which belongs to the respondents. According to the respondents, the second schedule property is a common lane. Even in Ex.A4, the partition deed itself, there is a recital in the boundaries, and therefore, it is only a common lane, and it is not the absolute property of any other. Ex.B2 is the sale deed, and it has been executed by the father of the first appellant in favour of his own daughter, which shows that the first appellant has 1/3rd share and not the absolute right. Further, the



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Commissioner's report also reveals that in order to do the repair work or also get the free light and air through the window on the western wall of the first schedule property, the second schedule property is only a common lane. From the evidence of D.W.1 and D.W.2, there was an encroachment. The Commissioner's report also corroborates the same.

29. A reading of Ex.A4, the partition deed, shows that the western boundary is a common pathway. Further, a reading of Ex.B2, the sale deed dated 24.05.1949, shows that it is between the family members of the appellants, and it also reveals the four boundaries of the suit second schedule property and the share of 1/3 by the first appellant in the second schedule property. The appellants have suppressed the material facts regarding Ex.B2, the sale deed said to have been executed by his father in favour of his sister.

30. Further, there is a Panchayat muchalikka. Though the existence of Ex.A5 and A7 was admitted, it was stated that the same were entered between the parties under coercion. But admittedly, there was no complaint regarding the same. Therefore, now the appellants



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cannot say that there is no consent that was arrived at. Exs.A5 and A7 are in existence, and the recitals of Ex.A5 and A7 also reveal that the suit second schedule property is a common lane and it does not absolutely belong to the first appellant and the appellants have admitted the existence of Ex.A5 and A7. Unless it is proved contrary in the manner known to law, the respondents are entitled to the second schedule property and use the second schedule property as a common lane.

31. A reading of the entire evidence, this Court does not find any perversity in the appreciation of evidence by the trial Court and the re-appreciation of evidence by the first appellate Court. As the first appellate Court is the final court of the fact-finding, it re-appreciated the evidence and gave findings that the second schedule property is a common lane, and confirmed the judgment and decree passed by the trial Court. Therefore the judgment and decree passed by the first appellate Court is not vitiated. The second substantial question of law is answered accordingly.



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32. A combined reading of the pleadings, oral and documentary evidence of both the parties, and the report and plan of the Advocate Commissioner clearly shows that the first schedule property is a house property that belongs to the deceased first respondent as per Ex.A4 and as per Exs.A5 and A7, the second schedule property has been shown and established as a common lane, and from the evidence of PW1 and PW3, there was an encroachment and construction, and there is no space for entering into the second schedule property by the respondents. Therefore, the trial Court granted a mandatory injunction. The first appellate court re-appreciated the evidence and confirmed the judgment and decree of the trial Court.

33. A combined reading of the pleadings, oral and documentary evidence, and also the report and plan of the Advocate Commissioner, this Court does not find any merit in the second appeal. There is no quarrel with the decisions referred to by the learned counsel for the appellants; however, they are not applicable to the present case on hand,



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as they are distinguishable on facts. Both the substantial questions of law are answered accordingly. The second appeal is liable to be dismissed.

34. In the result, the Second Appeal fails and the same is dismissed. Considering the facts and circumstances of the case, there is no order as to costs.

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Index : Yes / No

Speaking Order : Yes / No

skn

To

1.The Sub Judge,

Srivilliputhur.

2.The Principal District Munsif, Srivilliputhur.

3. The Section Officer,

VR Section,

Madurai Bench of Madras High Court,
Madurai.



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P.VELMURUGAN, J.

skn

Judgment made in

Second Appeal No.2043 of 2001

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