

S.A.No.1916 of 2001

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Pronounced on : 22.08.2025

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CORAM:

THE HONOURABLE MRS.JUSTICE P.VELMURUGAN

S.A.No.1916 of 2001

M/s.Pandian Chemicals Ltd.,
Rep. by the Managing Director,
S.Annamalai

... Appellant

..Vs..

1. Dr.K.Padmanabhan (died)
2. Nagammal Mills Ltd.,
Rep. by the Managing Director,
P.Kumarasamy
3. P.Kumarasamy
S/o.Dr.K.Padmanabhan

... Respondents

(R3 brought on record as LR of the deceased
R1 and R2 cause title name amended vide order
dated 06.12.2013 made in M.P.(MD) Nos.1 to 4 of 2009)

PRAYER : Second Appeal filed under Section 100 C.P.C., to set aside the judgment and decree dated 20.02.2001 made in A.S.No.9 of 1997 by the learned Additional Subordinate Judge, Additional Sub Court, Nagercoil, reversing the judgment and decree dated 17.12.1996, made in O.S.No.683 of 1995 by the learned Principal District Munsif, Nagercoil, by allowing the second appeal.



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For Appellant : Mr.A.P.Athithan
For Respondents : M/s.N.Krishnaveni,
Senior Counsel for
Mr.P.Thiagarajan for R2 & R3

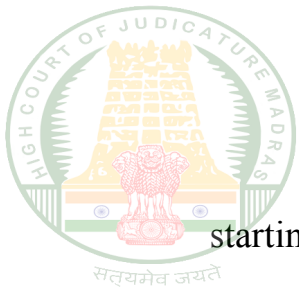
JUDGMENT

The appellant is the defendant and the respondents are the plaintiffs in O.S.No.683 of 1995. The plaintiffs filed the said suit for declaration and permanent injunction.

2 For the sake of convenience, the parties are referred to as per their ranking before the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

3 The case of the plaintiffs in nutshell is as follows:

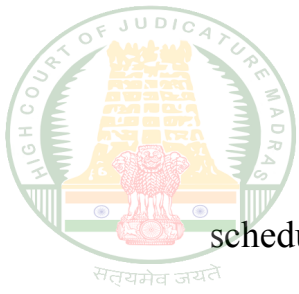
According to the plaintiffs, the first plaintiff purchased 5 acres 43½ cents of land in S.No.618/1-2 of Thovla Village (Now R.S.No.789/3, 4 and 5) of Aralvaimozhi Village the plaintiff A schedule property in the sale conducted by the Commissioner, appointed by this Court in C.P.No. 615 of 1963 and the sale certificate dated 12.03.1977 was also issued. The access to the A schedule property is a pathway of about 20 feet wide



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starting from Aralvaimozhi – Kumarapuram road and proceeding southward, which passes through R.S.Nos.765, 764, 772, 771, 774 and 778 and the same has been shown in plaint B schedule property. Out of the said survey numbers 765 is a poramboke land. The B schedule pathway had been there since the time immemorial, which was set apart as pathway by the then owners for access to their respective properties on south from the Aralvaimozhy – Kumarapuram road. From the date of purchase of A schedule property, the first plaintiff had been in absolute possession and enjoyment of the same and has been using the B schedule property as pathway as of right for ingress and egress to A schedule property. The predecessors of the first plaintiff as well as the adjoining land owners including one M.M.Gregory, who owned land on the south, had been using the B schedule property pathway as of right for access their land. Therefore the first plaintiff obtained easement right by prescription to use the B schedule pathway by his continuous use as of right from 21.04.1974 onwards in continuation with the use of his predecessors of plaint B schedule pathway as of right for more than 50 years to access A schedule property.

3.1 Further there is no other pathway excepting the B



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schedule pathway to reach the property of the first plaintiff. The said pathway is sufficiently wide and the first plaintiff and his predecessors and the said M.M.Gregory had been taking their vehicles including heavy vehicles through the B schedule pathway to their properties all along. The defendant has recently among other properties purchased the properties in R.S.Nos.778 and 780 and for the purpose of having access, entered into an agreement with the said M.M.Gregory, which is evidenced by a registered document dated 14.03.1990 styled as a lease deed. Subsequently the said M.M.Gregory had assigned right in the B schedule pathway to the first plaintiff as per exchange deed dated 05.10.1994. Thus the first plaintiff had obtained the right to use the B schedule pathway for access to the A schedule property by way of easementary right by prescription and as per the said exchange deed dated 05.10.1994.

3.2 While so, the first plaintiff had leased out the A schedule property to the second plaintiff as per registered lease deed dated 17.07.1995 on a rent of Rs.1000/- per year for erecting Wind Mills and the second plaintiff had been making preparations for the erection of Wind Mills. To enter into the plaint A schedule property, the second plaintiff and its officers and men have been using plaint B schedule



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pathway as access from Aralvaimozhy-Kumarapuram road and vice versa.

The defendant attempts to obstruct the plaintiffs' use of the B schedule pathway from July 1995 onwards. But the attempts made by the defendant and their men were resisted by the plaintiffs and their men. The conduct of the defendant is highly illegal and opposed to law. The defendant or its men have no right whatever to make any attempts to obstruct the plaintiffs from using the B schedule pathway to access from Aralvaimozhy-Kumarapuram road situated on the North to plaintiff scheduled property. Therefore the present suit is filed praying to declare the right of the plaintiffs to use the plaintiff B schedule pathway and restraining the defendant and their servants and man or anybody/claiming under them from interfering in any manner with the use of the plaintiff B schedule pathway by the plaintiffs. Otherwise the plaintiff will be put to irreparable loss and injury.

4 The suit was resisted by the defendant denying the title of the first plaintiff on the A schedule property and the averments made in the plaint stating that the defendant purchased the property in R.S.No.778 and 780 and also entered into a registered lease agreement dated 14.03.1990 with M.M.Gregory to use the pathway formed by him in

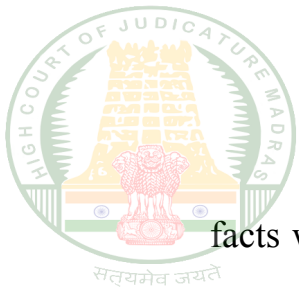


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R.S.Nos.774/2, 774/1, 771/3, 4 and 5, 772/2, 3 and 778/1. The cause of action alleged in the plaint is imaginary and the plaint is not valued properly. The plaintiffs have suppressed the real facts and approached this Court with false and vexatious statements.

4.1 Even before the lease agreement dated 14.03.1990, Mr.Gregory had formed a pathway to reach his lands, narrow and incomplete. In fact he was able to form the pathway in R.S.Nos.7774/2, 774/1, 771/3, 4 and 5, 772/2, 3 and 778/1 by purchasing a small strips of lands and as well as by getting right of passage from respective owners. The defendant who wanted to take heavy vehicles to his lands, purchased the properties in R.S.Nos.778, 780 etc. and approached M.M.Gregory and obtained the right to use his pathway which were narrow and incomplete. Further the defendant obtained the right to improve the pathway.

4.2 To make the pathway formed by M.M.Gregory complete and wide, this defendant has acquired right of passage from the respective owners and also completed the pathway to reach his property by spending huge money. Further for the convenience of the defendant, he has formed his own pathway in his land in R.S.No.778. The above



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facts will clearly show that the pathway was formed recently to move the vehicles freely to the property of the defendant and the same are well known to the plaintiff. Therefore the plaintiffs cannot claim easement right by prescription and right of user for several years. The right granted to M.M.Gregory was only a license and the same was also revoked by the defendant by issuing lawyer notice through registered post as well as by a registered document dated 21.08.1995. Even if it is assumed that M.M.Gregory was granted some right recognized by law, it is only applicable to the lands of M.M.Gregory alone and he has no right to convey the right of pathway to any third parties in connection with the lands which do not belong to him.

4.3 The plaint averments makes it clear that M.M.Gregory has only parted with 5 cents of lands through an exchange deed dated 05.10.1994. Hence the plaintiff can use the pathway only to reach the 5 cents land covered by exchange deed and it is clear that the plaintiffs are having no right of way either by prescription or by acquisition by exchange deed to use the entire B schedule pathway to reach their A schedule property. If the said M.M.Gregory has granted any right to the plaintiff, such a grant is invalid and unenforceable in law,



since he has got absolutely no right to increase the burden over B schedule pathway particularly over the strip of lands in R.S.Nos.764, 771/5, 774/1, 778/1, 2, 3 and 4. The plaintiff cannot claim right through M.M.Gregory to use the parts of the pathway which were formed by the defendant in his own land in R.S.Nos.764, 774/1, 774/2, 771/3, 4, 5 and 772/2 and 3 and 778. The plaintiff is not entitled to get any relief and the suit is liable to be dismissed.

5 On the basis of the above pleadings, the Trial Court framed the following issues :

1. Whether the plaintiffs are entitled to use plaint B schedule pathway?
2. Whether the plaint B schedule pathway is created recently by the defendant?
3. Whether the plaintiffs are entitled to the relief of declaration as prayed for in the plaint?
4. Whether the plaintiffs are entitled to the relief of permanent injunction as prayed for in the plaint?
5. To what relief?

6 Before the trial Court, on the side of the plaintiff, two



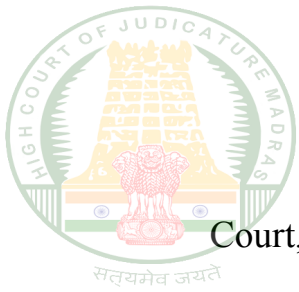
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witnesses were examined as P.Ws.1 and 2 and 9 documents were marked as Ex.A1 to A9. On the side of the defendant, one witness was examined as D.W.1 and 20 documents were marked as Ex.D1 to D20. The Advocate Commissioner was examined as C.W.1, through whom two documents were marked as Ex.C1 and C2.

7 After full contest, the learned Principal District Munsiff, Nagercoil, dismissed the suit filed by the plaintiffs vide judgment and decree dated 17.12.1996 on the ground that the plaintiffs have not proved the easement right over the plaint B schedule pathway.

8 Aggrieved over the judgment and decree passed by the trial Court, the plaintiffs filed an appeal in A.S.No.9 of 1997 before the learned Additional Subordinate Judge, Additional Sub Court, Nagercoil. The learned Additional Subordinate Judge, after analysing the oral and documentary evidence adduced on both sides, vide judgment and decree dated 20.02.2001 reversed the findings recorded by the trial Court by allowing the appeal filed by the plaintiffs.

9 As against the reversal judgment of the first appellate



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Court, the defendant is before this Court with the second appeal. On 18.01.2002, this Court, while admitting the Second Appeal, formulated the following substantial question of law:

“Whether the suit for declaration of plaintiff's right to use the “B” schedule property as a pathway is maintainable in view of the inconsistent pleas of acquisition of easementary right of way by enjoyment for over prescriptive period and right of pathway acquired by assignment under Ex.A3?”

10 Learned counsel appearing for the appellant/defendant would submit that prior to purchase of property by the appellant/defendant in the year 1990 there was no pathway as shown by the respondents/plaintiffs in the plaint. It is the appellant/defendant, who developed the pathway by acquiring a small portion of lands from the neighbouring land owners by spending huge money. The respondents are not using the B schedule property as pathway to reach their A schedule property. The respondents/plaintiffs have claimed that they purchased the property in the year 1974 and since then till the filing of the suit they were enjoying the B schedule property as pathway over the period of 20 years



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and hence they are entitled to declaratory right by prescription. If that be the case of the respondents/plaintiffs, it is not necessary for them to obtain portion of pathway by way of exchange deed Ex.A3 from M.M.Gregory. Once the respondents/plaintiffs claimed any right of using B schedule property by prescription, they have to establish the right by documentary evidence and also they have to prove the fact that they are using the B schedule property as pathway by prescription over the period of 20 years without any hindrance of anybody or otherwise. In the present case, the respondents/plaintiffs have failed to prove their right of using the B schedule property by prescription. Therefore they are not entitled to get the relief as sought for in the plaint.

10.1 Even though the trial Court had not accepted the case of the respondents/plaintiffs and dismissed the suit, the first appellate Court without considering the pleadings, oral and documentary evidence, erroneously allowed the appeal recognizing the right of the plaintiffs over B schedule property. If at all there was pathway in ancient period, the revenue record would have shown the description/classification of B schedule property as pathway. It is settled proposition of law that plaintiff has to stand on their own and they cannot take advantage of the loopholes



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left by the defendant. The suit for declaration of the respondents/plaintiffs' right to use the B schedule property is not maintainable in view of the inconsistent pleas of acquisition of easmentary right by prescription and right of pathway acquired under Ex.A3. Therefore the finding of the first appellate Court is not sustainable under law. There is no material to show that prior to 1974 itself the disputed pathway from Aralvaimozhi – Kumarapuram road about 20 ft. wide was in existence and the plaintiffs were using the same to reach their A schedule property. Therefore the judgment of first appellate Court is liable to be set aside and the judgment of trial Court has to be confirmed.

11 Learned counsel for the respondents/plaintiffs would submit that the first respondent purchased the property in the year 1974 which shown as A schedule property in the plaint and from the date of purchase till the filing of the suit in the year 1995 they were enjoying the B schedule property as pathway to reach A schedule property. Even prior to 1974 i.e. prior to purchase of property by the first plaintiff, the ancestors of the respondents/plaintiffs and the owners of neighbouring lands since time memorial used the B schedule pathway from



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Aralvaimozhi – Kumarapuram, to reach their respective properties. The first plaintiff let the A schedule property to the second plaintiff under lease deed Ex.A4 dated 17.07.1995 and thereafter second respondent started using the B schedule pathway. The appellant/defendant and their men restrained the second plaintiff from using the B schedule pathway to reach the lease property.

11.1 The appellant/defendant purchased the properties only in the year 1990 and they obtained lease deed Ex.A2/Ex.B8 from M.M.Gregory on 14.03.1990 to use the pathway for 99 years, in which it is clearly mentioned about the existence of the pathway. If at all the appellant/defendant has purchased the property from the erstwhile owner they need not get lease deed from the said Gregory under Ex.A2/B8 to use the pathway, which itself shows that the pathway was already there and in order to reach A schedule property the respondents/plaintiffs used the same. P.W.1, who is the employee of the second plaintiff Company has clearly stated that from the year 1974 i.e. from the date of purchase of the property by the first plaintiff, they were using the B schedule pathway to reach A schedule property. Even the appellant/defendant admitted that M.M.Gregory is a adjacent land owner of the B schedule property, who

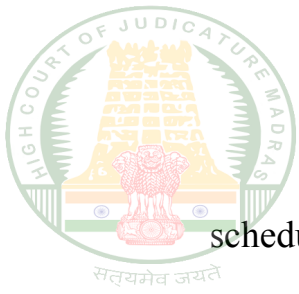


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was examined as P.W.2, who has also clearly stated that B schedule pathway was in existence prior to 1974 and he was using the same as pathway since 1956 and the defendant obtained exchange deed/lease deed Ex.A2/Ex.B8 to use the pathway. The defendant also admitted that the first respondent had been using the pathway from 1974 till 1995 before leasing out the same to the second respondent. Even prior to 1974, B schedule pathway was in access, which was proved from the evidence of P.W.2, from whom admittedly the appellant/defendant obtained right to use the disputed pathway. Therefore the respondents/plaintiff have proved their right on the B schedule pathway by oral and documentary evidence and even though the trial Court failed to appreciate the oral and documentary evidence, the first appellate Court re-appreciated the entire evidence and legal position and reversed the findings of the trial Court by allowing the appeal, whereby the respondents/plaintiffs' right on the B schedule pathway has been recognized.

11.2 There is no inconsistent plea as contended by the appellant/defendant. The appellant/defendant came to the suit schedule property only in the year 1990, whereas, the respondents/plaintiffs purchased the property in the year 1974 and since then they were using B



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schedule pathway to reach A schedule property. Even after coming to suit schedule property also the appellant/defendant have not denied the right of the respondents/plaintiffs to use the B schedule pathway. Therefore from the year 1974 till 1995 i.e. till filing of the suit, the respondents/plaintiffs were using the B schedule pathway and the plaintiffs got right to use the B schedule pathway by prescription. From the date of purchase viz. 21.04.1974 till third week of July 1995 i.e. date of filing of the suit more than 20 years the respondents/plaintiffs were using the B schedule pathway without any hindrance of anyone. Therefore the plaintiffs are entitled to claim right of pathway by prescription. The first appellate Court also after analysing the entire materials, allowed the appeal filed by the plaintiffs recognizing the right on the B schedule pathway.

12 Admittedly on the date of filing of the suit by the respondents/plaintiffs, B schedule pathway was in existence. Now the only question is that as to whether the B schedule pathway was in existence prior to purchase of A schedule by the first respondent/plaintiff in the year 1974 and whether since then they were using the pathway, which is 20 feet road from Aralvaimozhi to Kumarapuram Road to reach



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their A schedule property and whether the respondent is entitled to use B schedule pathway as right by prescription since they were using the same over the statutory period of twenty years without any hindrance or obstruction of anybody.

13 The main contention taken by the appellant is that there cannot be any inconsistent plea for claiming right. The person, who filed suit, has to come with a specific claim as to whether he is entitled to use the B schedule property as pathway by prescription or any other right, whereas, in the present case, the respondent themselves have not come with the specific plea and they are claiming right in different ways, which is not permissible under law.

14 The deceased employee of the second respondent/second plaintiff company was examined as P.W.1. He has clearly deposed that the first respondent/first plaintiff purchased the property measuring an extent of 5 Acres 43½ cents situated in S.No. 618/1-2 of Thovala Village (Now in R.S.No.789/3, 4 and 5) of Aralavaimozhi Village, in the auction sale conducted by the Commissioner, on 21.04.1974, since the Pioneer Company, the erstwhile



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owner of the property went in liquidation and since then they are using the B schedule property as pathway till the date of filing of the suit.

15 Further one M.M.Gregory, from whom the appellant obtained lease deed Ex.A2/Ex.B8 on 14.03.1990 for a period of 99 years to use the disputed pathway, was examined as P.W.2, and his evidence is very clear that the pathway was in existence from the year 1956. Admittedly the said M.M.Gregory is the owner of 43 ½ Acres of land near the disputed pathway, who formed the pathway originally and was using the same to reach his properties. It is also an admitted fact that both the appellant/defendant and the respondents/plaintiffs have obtained right of using the pathway through registered deeds. But it is also the claim of the respondents/plaintiffs that they are using the B schedule property as pathway from the date of purchase of A schedule property in the year 1974 and thereafter in the year 1994 the first plaintiff purchased 5 cents from the said M.M.Gregory and obtained right to use the pathway through the exchange deed Ex.A3.

16 The said M.M.Gregory/P.W.2 has deposed that even



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prior to purchase of A schedule property by the first respondent/first plaintiff, B schedule pathway was in existence and from the date of purchase of the property by the first respondent in the year 1974 they are using the B schedule pathway to reach their A schedule property. He further deposed that not only the plaintiffs, the adjacent land owners are also using the same B schedule pathway to reach their respective lands, since it is the only way about 20 ft. starting from Aralvaimozhi – Kumarapuram Road and proceeding southward, to reach the properties, which passes through R.S.Nos.765, 764, 772, 771, 774 and 778. Out of the said properties, R.S.No.765 is a Poramboke land and the appellant/defendant purchased the properties in R.S.Nos.778 and 780 in the year 1990. Therefore this Court can safely come to the conclusion that the B schedule pathway was in existence prior to purchase of the A schedule property by the first respondent/first plaintiff in the year 1974 and they were using the same as pathway to reach their A schedule property.

17 To strengthen the case of the respondents/plaintiffs, the Advocate Commissioner, who was appointed, pending suit, and visited the disputed properties has also clearly stated that the B schedule



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pathway was in existence long back. Therefore the question as to whether the B schedule property was in existence prior to purchase of the A schedule property by the first plaintiff is answered in favour of the plaintiff.

18 Now the point to be decided is as to whether the plaintiffs were using the B schedule pathway from the date of purchase of the A schedule property till the date of filing of suit and they are entitled to use the same by prescription. Even though earlier all the properties in and around B schedule pathway were vacant land viz. Nanja and Punja, people, who lived there, used to walk through the disputed pathway to reach their respective lands. However, subsequently the properties were re-classified and the owners of the nearby lands might have paved the way but, admittedly one of the properties in S.No.765 is a poramboke land.

19 The first respondent purchased the property much earlier to the appellant/defendant and the evidence of P.Ws.1 and 2 are very clear that the B schedule property was in existence from the year 1956 and the Commissioner report also shows that B schedule property



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was in existence. The Advocate Commissioner was examined as C.W.1 and he admitted the existence of B schedule pathway.

20 The appellant/defendant denied the right of the respondents/plaintiffs, saying the M.M.Gregory, from whom the first plaintiff purchased 5 cents and obtained right to use the pathway, has no right to execute Ex.A3 in favour of the first plaintiff, since the defendant has revoked the right of said M.M.Gregory through Ex.B9 dated 21.08.19. But admittedly the defendant purchased the properties in R.S.Nos.778 and 780 in the year 1990 and also entered into lease agreement with said M.M.Gregory to use the disputed pathway, whereas the first respondent/plaintiff purchased the A schedule property in the year 1974 and since then they were using the B schedule pathway to reach the A schedule property, which was proved from the evidence of the P.W.1, who is the employee of the second plaintiff and P.W.2 M.M.Gregory who was having larger extent of lands in and around the B schedule pathway. P.W. 2, from whom the defendant obtained right to use the B schedule pathway initially, has clearly deposed that B schedule pathway was in existence prior to 1956 and time memorial they are using the same to reach their respective lands and the report of the Advocate Commissioner also



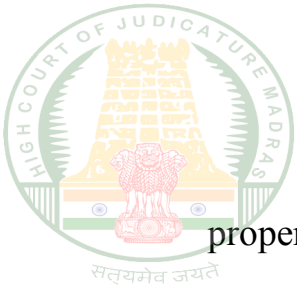
confirmed the same.

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21 Under such circumstances the respondents/plaintiffs proved that time memorial they were using the B schedule pathway and they are entitled to use the same by prescription.

22 As far as the defence of inconsistent plea is concerned as concluded by the first appellate Court the plaintiffs claim right by prescription and by obtaining right from the said M.M.Gregory and also by easement of necessity, which cannot be said as not maintainable under law. Therefore there is no inconsistent plea and therefore the substantial question of law is answered accordingly.

23 To prove an easement of necessity, one must demonstrate that the right of way is absolutely essential for accessing the property, which means proving the absence of any other reasonable access to the property. For establishing an easement right in general, continuous and uninterrupted use of the claimed right for 20 years prior to the suit is typically required. In the present case, the first respondent/plaintiff clearly pleaded that they have no other alternative way to reach their A schedule



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property and the appellant/defendant had not proved the contrary and even there is no material to reject the pleading of the plaintiff. Therefore the plaintiffs are entitled to use the B schedule pathway by way easement of necessity. Further the first respondent/plaintiff pleaded that from the date of purchase i.e. 21.04.1974 till the filing of the suit in the year 1995 they were enjoying the suit B schedule pathway without any hindrance i.e. over a period of 20 years and the evidences of P.Ws.1 and 2 have also supported the version of the plaintiffs. Hence the plaintiffs can claim right by way of prescription also.

24 The appellant/defendant to support his contention of inconsistent plea by the plaintiffs is not maintainable, placed reliance on the decisions of this Court reported in *2015 1 LW 570 (K.Krishnamoorthy vs. Nagammal & Others)* and in *S.A.(MD) No.1226 of 2000 (Vadivel and others vs. Rengasamy)*. The facts and circumstances of those cases are distinguished from the present case and hence the same are not applicable to the facts of the present case on hand.



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In the result,

- i. The Second Appeal stands dismissed. No costs.
- ii. The degree and judgment dated 20.02.2001 made in A.S.No.9 of 1997 by the learned Additional Subordinate Judge, Additional Sub Court, Nagercoil, is hereby confirmed.

22.08.2025

Neutral Citation : Yes/No

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To

1. The Additional Sub Court, Nagercoil.
2. The Principal District Munsif, Nagercoil.
3. The Section Officer, V.R. Section, High Court, Madras.



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