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S.A.No.1981 of 2001

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	09 / 04 / 2025
Delivered on	09/ 07 /2025

CORAM:

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

S.A.No.1981 of 2001

- 1.Chinnammal (died)
- 2.Subbiah Gounder
- 3.Velusami

: Appellants

(A-3, who is already on record
and recorded as legal representatives
of the deceased first appellant vide
order dated 21.08.2019 made in
C.M.P.No.7313 of 2019 in
S.A.No.1981 of 2001)

.VS.

- 1.Velusami
- 2.Balasubramanian
- 3.Chidambaranathan
- 4.Adaikkalamurthi
- 5.Senthilkumar

: Respondents

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 18.08.1999 made in A.S.No.70 of 1999, on the file of Principal Sub Court, Tiruchirapalli, confirming the judgment and Decree dated 19.02.1999 made in O.S.No.246 of 1995, on the file of District Munsif, Manapparai, dated 19.02.1999.



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For Appellants : Mr.T.M.Hariharan

For Respondents : Mr.K.Govindarasan
For M/s.Sarvabhuman Associates

* * *

J U D G M E N T

This Appeal is directed against judgment and decree passed in Appeal Suit No.70 of 1999, by the Principal Sub Court, Tiruchirapalli, confirming the judgment and decree made in O.S.No.246 of 1995, on the file of District Munsif, Manapparai.

2. The short facts of the plaint are as follows:-

The first plaintiff was the owner of the disputed property since purchase in 1973, holding full possession, and she had the relevant legal documents (patta). In 1986, the first plaintiff agreed to sell the property to the second plaintiff. The third plaintiff is the son of the second plaintiff, and both the second and third plaintiffs have been using the property for agricultural purposes. As such, the defendants have no rights over the suit schedule property. According to the plaintiffs, the defendants' property is located to the south of their property. The plaintiffs claim that the defendants initially tried to purchase the property from the first plaintiff, but when the property was sold to the second plaintiff, the



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defendants attempted to buy it from him instead. When the second plaintiff refused their offer, the defendants allegedly began causing trouble by encroaching on the plaintiffs' property with the help of henchmen and damaging the field's bund. Therefore, the plaintiffs have filed this suit seeking a permanent injunction.

3. The first defendant, representing the other defendants, filed a written statement denying the plaintiffs' claims. While not disputing the plaintiffs' ownership of the suit property, the defendants state that the property originally belonged to one Kuppusamy Naidu, who had two sons, Ramaiya Naidu and Krishnaswamy Naidu. After the property was divided between the two sons, the plaintiffs purchased their portion from the descendants of Ramaiya Naidu, while the defendants purchased their portion from the descendants of Krishnaswamy Naidu.

4. The defendants further stated that the plaintiffs' property and the defendants' property, which is situated to the south of the plaintiffs' property, were originally separated by a common pathway. At the time of this division, water from the Boodakurichi Kulam (a water reservoir) to the north of the plaintiffs' property used to flow towards the west side through a "vaikkal vazhi" (a water channel). This water pathway had been continuously used by the



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defendants and their ancestors. After the defendants acquired the land to the south of the plaintiffs' property, they continued to have the right to use this water channel as a water supply path. According to the defendants, the water flowing through the western side of the plaintiffs' property towards the southern side does not affect the plaintiffs' land in any harmful way. They also claim that neither they nor their ancestors have ever caused any obstruction to this water flow, nor have they interfered with the plaintiffs' property to the north. Thus, the defendants assert that the "vaikkal vazhi" water channel on the plaintiffs' western side has always existed for their use, without any disturbance to the plaintiffs' property. However, the plaintiffs have obstructed the defendants from using the said water channel. Therefore, the defendants prayed for the dismissal of the suit.

5. In reply, the plaintiffs filed their reply statement, stating that no water channel passes through the property as alleged by the defendants, and that the claim is purely imaginary. They further denied that their predecessors ever used the said water channel.

6. Before the trial Court, on the side of the plaintiffs, two witnesses were examined P.W.1 and P.W.2; and eight documents viz., Exs.A.1 to A.8 were marked and the report of the Advocate Commissioner and rough sketch was



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marked as Exs.C1 and C2 respectively. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and two documents were marked as Exs.B1 and B2 and the report of the Advocate Commissioner and rough sketch was marked as Exs.C3 and C4 respectively.

7. The trial Court, upon considering the oral and documentary evidence adduced by the parties, passed an order of mandatory injunction in favour of the plaintiffs, however, subject to the easementary right of irrigation claimed by the defendants over the channel running along the western boundary of the suit property. Aggrieved over the same, the plaintiffs preferred A.S.No.70 of 1999 before the Principal Sub Judge, Tiruchirapalli and the learned appellate Judge also dismissed the appeal, by confirming the findings of the trial Court. Aggrieved over the judgments and decrees of the Courts below, the appellants/plaintiffs have filed this appeal.

8. The learned counsel appearing for the appellants contend that the alleged channel across their land, which the respondents claim gives them easement rights, does not appear in the survey plan (Ex.A8) for S.No.217. The lower courts have wrongly concluded that the respondents are entitled to easement rights over a north-south channel on the western edge of the appellants' property. It is also argued that the second Commissioner's report



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clearly shows the respondents have tried to falsely claim an easement right over the appellants' land by going as far as to close and hide a channel on their own land in S.Nos.217/2 and 217/6. This crucial fact was completely overlooked by the courts below resulting in a serious error that strikes at the core of the judgments under challenge. He further points out that the first Commissioner's report and plan, which suggested a channel existed on the appellants' land, had been superseded and should not have been relied on. The second Commissioner, who later inspected the property, found no evidence of any such channel being closed or covered by the appellants. It seems the first Commissioner was mistakenly referring to a channel in the respondents' land (S.Nos. 217/2 and 217/6A), which the respondents themselves had closed, likely for improper reasons. The learned counsel also contends that the courts relied too heavily on the oral testimonies of D.W.1 and D.W.3, which were not enough to establish any easement right over the appellants' property and these testimonies, being unreliable and contradictory, should have been rejected. Finally, when the Commissioner visited the property, there was no channel on the western side of the appellants' land that could serve the respondents' land, which further weakens the respondents' claim to any easement right. The learned counsel further contends that while the litigation was pending, the defendants attempted to destroy the water channel. Hence, the appellants/ plaintiffs lodged a complaint with the Valanadu Police Station on 29.04.2023, which is still pending.



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9. Per contra, the learned counsel appearing for the respondents/defendants would contend that the courts below rightly concluded that the respondents have easement rights over the north-south channel on the western side of the appellants' property. The first Commissioner's report and plan clearly confirmed the existence of the channel, and it should not be dismissed. The second Commissioner's failure to find the channel does not negate its existence, as changes to the property could have occurred after the initial inspection. Furthermore, the respondents deny the claim that they closed or hid any channel on their own land, and the submission that the respondents acted improperly is baseless and unsupported by evidence.

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

11. The Second Appeal was admitted on the following substantial questions of law:-

(i) Whether the Courts below are right in reserving an easmentary right over a north-south channel in the west of the appellant's property, when admittedly no such channel is shown in the survey plan and when the respondents have attempted to close a channel in their lands that feeds S.No.217/6B and 217/6C?



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(ii) Whether the alleged easmentary right claimed by the respondents is established in any manner known to law and whether the oral evidence of D.Ws.2 and 3 which are suspect in material respects alone is sufficient to clothe the respondents with the easmentary rights over a channel not found to be in existence?

(iii) whether in any evident, the appellate Court is right in reserving an easmentary right in favour of the respondents with respect to a channel 3 feet in width when there is no pleading or proof regarding the width of the alleged channel?

12. The Court, vide its proceedings dated 13.04.2023, observed that before the trial Court the Advocate Commissioner had visited the suit property twice for inspection and the plans and reports submitted on both occasions regarding the existence of the channel caused some confusion. To resolve the matter, the Court appointed an Advocate Commissioner to bring finality to the issue. The Advocate Commissioner subsequently filed a report dated 01.06.2023, and the respondents, in turn, filed their reply to this report on 09.06.2023.

13. The specific case of the plaintiffs is that the first plaintiff purchased the suit property in 1973 and held valid title and possession. In 1986, she agreed to sell the property to the second plaintiff, and the third plaintiff, who is his son,



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is also in possession of it. The land is used for agriculture. The defendants, whose land lies to the south, had earlier attempted to purchase the suit property but, upon refusal, tried to encroach and damaged the bund. Hence, the plaintiffs sought a permanent injunction to restrain interference.

14. The specific case of the defendants is that the land originally belonged to Kuppusamy Naidu, whose sons divided it between themselves. The plaintiffs purchased from one branch, and the defendants from the other. They claim an ancestral right to use a north-south irrigation channel running along the plaintiffs' western boundary, drawing water from Boodakurichi Kulam. They allege the plaintiffs obstructed their established water usage, asserting an easementary right.

15. Though the plaintiff filed the suit for permanent injunction restraining the respondents from interfering with the plaintiff's peaceful possession and enjoyment of the suit property measuring 23 cents in S.No.217/5, Kannukuzhi Village, Manapparai Taluk, Trichy District, the trial Court, after trial, decreed the suit for permanent injunction. However, it also granted relief to the respondents to use the channel running through the western side of the suit property based on their easementary right. Though the respondents have not challenged the order of permanent injunction, the appellant, aggrieved by the finding granting

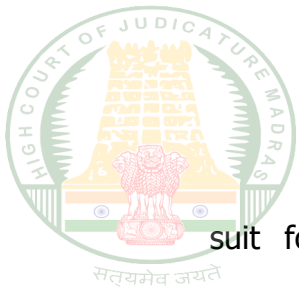


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an easementary right to the respondents to use the channel, filed an appeal before the first appellate Court. The first appellate Court, after hearing the matter, dismissed the appeal and confirmed the judgment and decree passed by the trial Court.

16. The main contention of the appellants is that the field map of the suit property was marked as Ex.A8, in which no channel has been shown, and there is no evidence of any existing channel. Even the second commissioner's report and the plan marked as Exs.C3 and C4 do not show the existence of any old channel. Therefore, the appellants contend that the trial Court and the first appellate Court have granted the relief of easementary right solely based on the oral evidence of D.W.2 and D.W.3. It is also contended that there is already a channel in the respondents' property, and when an alternative channel exists, the relief of easement of necessity cannot be granted. Further, in the absence of documentary evidence, particularly when Ex.A8 (FMB sketch) does not show the existence of a channel, granting such a decree based on the oral evidence of D.W.3 is against settled principles of law. Therefore, the respondents are not entitled to any relief of easementary right.

17. There is no dispute that the respondents own lands situated on the southern and western sides of the suit property. Though the appellants filed the



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suit for permanent injunction, since there was no dispute regarding the ownership and possession of the suit property, both the Courts below granted a decree for permanent injunction. The main question that now arises is whether the channel, as claimed by the respondents, exists on the western side of the suit property.

18. According to the appellants, no such channel exists. On the other hand, the respondents assert that there is a north-south running channel on the western side of the suit property through which they have been irrigating their lands for decades, and hence they have an easementary right. Though the appellants have relied on the FMB sketch marked as Ex.A8, which does not indicate any north-south channel on the western side of the suit property, the oral evidence of D.W.2 and D.W.3 indicates otherwise. D.W.1 sold the suit property to the appellants, and even prior to that, the respondents had purchased the adjacent property. As per the evidence of D.W.2, the channel has existed for over 20 years prior to the sale in 1973 and water was drawn through the said north-south running channel situated on the western side of the suit property. D.W.3, who is an independent witness, also categorically stated that a channel existed on the western side of the property and that the lands to the south were irrigated using this channel. Particularly, lands in S.Nos.217/6B and 217\6C are irrigated solely through the said channel, which runs along the



southern boundary of the suit property. From the evidence of D.W.2 and D.W.3, the respondents have clearly established the existence of a channel on the western side of the suit property. D.W.2, being the previous owner of the suit property, deposed that the channel had existed for over 20 years even before the sale to the appellants in 1973.

19. In the present case, although the FMB sketch marked as Ex.A8 does not show a channel on the western side of the suit property, the categorical and consistent evidence of D.W.2 and the independent witness D.W.3 has clearly established that such a channel has been in existence for several decades. It is a well-settled principle that entries made in official records are presumed to be genuine unless they are rebutted by contrary evidence. Therefore, the presumption in favour of the entries in the public document stands rebutted by strong oral evidence. As such, the findings of the trial Court and the appellate Court are based on proper appreciation of evidence.

20. The trial Court as well as the first appellate Court, based on both oral and documentary evidence, rightly granted the decree for permanent injunction in favour of the appellants and simultaneously recognised the easementary right of the respondents. Considering the nature and usage of the land, and also the evidence of the predecessor-in-title to the plaintiff, both Courts rightly concluded



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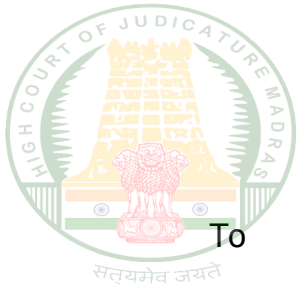
that the respondents have acquired an easementary right to draw water through the said channel for irrigating their lands. The findings rendered by both the Courts below are based on factual aspects and supported by material evidence.

21. There is no substantial question of law arising in this second appeal. The respondents have successfully established the existence of a channel on the western side of the suit property and their right to use the same for irrigation. Hence, there is no merit in the second appeal, and it is accordingly dismissed. However, there shall be no order as to costs.

09 / 07 /2025

Index: Yes/No.
Speaking Order : Yes/No.
Neutral Citation Case : Yes/No.

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To

1. The Principal Sub Court,
Tiruchirapalli,

2. The District Munsif,
Manapparai,



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P.VELMURUGAN, J.

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Judgment made in
S.A.(MD)No.1981 of 2001

09/07/2025