



S.A.No.389 of 2002

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.03.2025

Pronounced on : 07.04.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

S.A.No.389 of 2002

K.C.Manniah(a) Chinnadurai

... Appellant / Respondent/
Defendant

Vs

1.Sethu (Died)

2.Adaikalam (Died)

3.Theivanai

4.Ariyal

5.Rakki

6.Vijaya

7.Dhanam

8.Pottu

9.Murugan

10.Shanthi

(R3 to R4 are brought on record as legal
representatives of the deceased 1st respondent
vide Court order dated 27.06.2023)

(R5 to R10 are brought on record as legal
representatives of the deceased 2nd respondent
vide Court order dated 01.03.2024.)

... Respondents/ Appellants /
Plaintiffs

Prayer : This Second Appeal is filed under Section 100 of Civil Procedure Code to set
aside the judgment and decree of the learned Additional District Judge cum Chief



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Judicial Magistrate, Pudukottai district, 09.10.2000 in A.S.No.128 of 1999 reversing
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the judgment and decree of the learned District Munsif, Tirumayam, in
O.S.No.151/96 dated 19.03.1999 and dismiss the suit.

For Appellant : Mr.V.K.Vijayaraghavan
For Respondent: Mr.A.Balaji for R3 and R4
Mr.A.Karthik for R9

JUDGMENT

This Second Appeal is filed to set aside the judgment and decree of the learned Additional District Judge cum Chief Judicial Magistrate, Pudukottai district, 09.10.2000 in A.S.No.128 of 1999 reversing the judgment and decree of the learned District Munsif, Tirumayam, in O.S.No.151/96 dated 19.03.1999 and dismiss the suit.

2. The suit property measuring about 3.52 acres in the new survey number 100/6, originally belongs to one Nachiappa Chettiar, S/o.Kasi Chettiar. The plaintiffs are brothers. They purchased the entire 3.52 acres from Nachiappa Chettiar, through separate sale on 10.09.1973. After purchase the western portion measuring about 1.63 acres by the first plaintiff and the second plaintiff on the east measuring about 1.89 acres are in possession and enjoyment. Later, the entire portion was subdivided as 100/6A and 100/6B and issued patta separately to the plaintiffs.

3. On the west of the property purchased by the plaintiffs, there is a vacant site. On the south of S.No.100/6B, there is a channel measuring about 7 feet breadth is



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running from West to East and then to North and then to left. In the channel portion, neither the defendant nor his predecessor in title, have any right. The defendant is residing on the west of the suit property and they put up a well. They attempted to lay pipeline in the property, for which they have no right. The suit is laid for permanent injunction and cost.

4. The defendant filed written statement stating that the total extent in S.No.100/6 measures about 3.67 acres. Out of the total extend of 3.67 acres, the plaintiff have purchased only 3.52 acres. The remaining 15 cents is the subject matter of the suit. That 15 cent is used by the villagers for more than 100 years. On both sides, there were several kind of trees planted. Still now that portion belongs to Nachiappa Chettiar. A pathway starts from Pudukkottai Yembal road towards east passes through survey number 100. A poramboke land and connected the Olungai and then passes through survey number 99 towards Adi Dravidar colony. Those people can pass through the disputed portion only.

5. On the request made by the Adi Dravidar people, the disputed portion measuring about 15 cents was gifted for the pathway. The defendant put up the pipe line through the pathway. Because of that activity, there is no trouble to any one. The defendant never attempted to lay any pipe line through the patta land of the plaintiffs.



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6. On the basis of the pleadings, the trial Court formulated the following issues:

i) whether the suit property belongs to the plaintiffs and in possession ?

ii) Whether the suit property is used by the villagers for more than 100 years as pathway ?

iii) whether the plaintiff is entitled for the relief of permanent injunction ?

iv) to what other relief.

7. Before the trial Court, on the side of the plaintiffs, two(2) witnesses were examined and nineteen(19) documents marked. On the side of the defendant, three witnesses were examined, eight documents marked and after remand, P.W.3 was examined on the side of the plaintiffs, 27 documents were marked and two documents namely the commissioner report and plan were marked as Ex.C1 and Ex.C2.

8. The trial Court after remand, dismissed the suit of the plaintiffs with cost. Against which A.S.No.128 of 1999 was filed by the plaintiff. Similarly, a suit in O.S.No.137 of 1996 was filed by the very same plaintiffs against the Government seeking declaration and for permanent injunction not to change the classification of the property. Both the suits were tried separately by the trial Court which came to be



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dismissed. Against which A.S.No.127 of 1999 was preferred against the judgment and decree passed in O.S.No.137 of 1996. Similarly A.S.No.128 of 1999 was filed against the judgment and decree in O.S.No.151 of 1996. The appellate Court namely the Additional District Judge cum Chief Judicial Magistrate, Pudukkottai, allowed both the appeals. Against the appellate Court judgment in A.S.No.128 of 1999 against the judgment in O.S.No.151 of 1996, the present Second Appeal is preferred by the defendant namely K.C.Manniah @ Chinnadurai.

9. At the time of the admission, the following substantial questions of law is framed ;

1) Whether the judgment of the Lower Appellate Court is perverse as it is against the admissions of P.W.1 and P.W.2 in their evidence ?

2) Whether the report of the Advocate Commissioner alone can form the basis for the decree in favour of the plaintiffs, when the Commissioner has given evidence that he has not ascertained the boundaries of the suit property ?

10. Heard both sides.

11. Before answering the substantial questions of law framed, the learned counsel appellant would submit that the respondent who are the plaintiff did not purchase the entire extend available in Survey No.100/6 in the name of their vendor



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namely Nachiyappa Chettiar. The total extent according to them, measures about 3 acres 67 cents. Out of the 3 acres 67 cents, the plaintiffs together purchased only 3.52 acres. The remaining portions measuring about 15 cents is the disputed portion between the parties. According to the appellant, that portion, as mentioned by them in the written statement, is enjoyed as a common pathway by the villagers for several years running about 100 years. On the edge of this pathway the defendant laid the pipeline. The plaintiffs never purchased that property and so they cannot make any objection.

12. Per contra, learned counsel for the respondent would submit that there is a clear finding by the appellate Court in this regard. No property in excess of 3.52 acres purchased by them is available on ground.

13. Now the learned counsel on record for the appellant would dispute the commissioner report and plan, stating that the commissioner has not measured the entire extent available in Survey No.100/6 which was later subdivided into 100/6A and 100/6B. The disputed portion was gifted by Nachiappa Chettiar in favour of the Government, through which the above said pathway runs. It was contended before the appellate Court by the plaintiffs that the channel lies only within the 3 acres 52 cents and Nachiappa Chettiyar never retained any portion to himself for gifting the same to the Government. That was admitted by his vendor in a criminal case. But



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without their knowledge, Survey No.100/6B was again subdivided to 100/6B1 and 100/6B2. 100/6B2 is classified as a common pathway.

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14. The commissioner was examined before the trial Court and commissioner has stated that he measured the property with reference to the sale document of the plaintiffs. He has not mentioned the four boundaries and he never looked into any title document of vendor. Relating the subdivision, the Tahsildar, Thirumayam Taluk was examined as D.W.3 in the connected suit to ascertain whether any pathway runs through 3.52 acres. The case was remitted back to the trial Court. Only after that commissioner was appointed and he has filed his report. The Court recorded a finding that whether 15 cents is available on ground apart from 3.52 acres purchased by the plaintiffs, is not clear in the commissioner report. The Court found fault with the revenue authorities in classifying the disputed portion as pathway without following the proper procedure. The appellate Court further recorded a finding that if anything found in excess of 3.52 acres, separate action may be initiated by the parties. By pointing out this observation, it is contended by the appellant that directing the parties to further litigation once again may only escalate the issue and will not solve it. According to him, the matter may be remitted back to the trial Court for fresh consideration.

15. Learned counsel for the respondents would submit that they have no



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objection for the same but on ground, no excess of 15 cents apart from 3.52 acres purchased by them is available. If it is available then they can have no objection. As mentioned by the appellate Court, the commissioner report is not clear in this regard. So it is not helping the Court to find out a solution.

16. To substantiate his argument learned counsel for the appellant by producing evidence of P.W.1 would submit that it is admitted by the plaintiffs themselves that the vendors purchased 3.67 acres. They purchased 3.52 acres, the remaining 15 cents was left out, but they are in occupation of the entire property which seems that they are in possession of 3.67 acres.

17. The plaintiffs further admit that the pathway mentioned by the defendant runs from Pudukottai to Yembal road ends with their property. On the south of their property, there is a channel measuring about 7 feet breadth, 500 feet length. By pointing out these admissible portion of the plaintiffs evidence, they contend that it is a fit case for remanding the matter back. But I am afraid that such a course should be adopted by this Court.

18. Originally the suit was remitted back to the trial Court for finding out this particular fact. But inspite of that the parties did not take steps. The problem still exists. So instead of remanding the matter back, I am of the considered view that a finding can be called for from the trial Court by giving certain directions.



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19. I am not going to discuss about the judgment cited on the side of the appellant as to how the measurement should be undertaken by the commissioner.

The Commissioner was normally appointed to measure the properties with the aid of qualified surveyor attached to the Taluk office. I am not commenting anything regarding the measurement now. It is left to the parties to give proper memo of instructions to the commissioner in this regard. The commissioner may also be required to measure the property with the help of qualified surveyor attached to the Taluk Office concerned, with reference to the title documents of the plaintiffs and the revenue records available and further commissioner may be directed to pin point whether any area or portion is available in excess of 3.52 acres purchased by the plaintiffs and the physical features available in the entire property.

20. With the observation, the following direction is issued to the trial Court.

i) The trial Court may reissue warrant either to the very same commissioner if available, if not, to any other person with the above said instructions.

ii) The commissioner fee must be borne by the appellant herein. Commissioner may be directed to file report within three months from the date of issue of warrant.

iii) The trial Court may permit the parties to file their objections and if anything is required, may permit the parties to lead further evidence, examining the commissioner and the concerned surveyor. Record finding of facts with reference to



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the above said issue. It must be submitted to this Court within six months.

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21. Registry is directed to send the records to the trial Court, immediately and list the matter after receiving the findings from the trial Court.

sd/-
07/04/2025

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/04/2025

Sub-Assistant Registrar (C.S.-I/ II /III/ IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Pnn
TO

1 THE ADDITIONAL DISTRICT JUDGE CUM CHIEF JUDICIAL MAGISTRATE,
PUDUKKOTTAI DISTRICT.

2 THE DISTRICT MUNSIFF, TIRUMAYAM.

COPY TO

1 THE SECTION OFFICER, VR SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

2 THE SECTION OFFICER, JUDICIAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.A.KARTHIK Advocate SR.No.23025(F) DATED 07/04/2025

+1. C.C. to M/S.A.BALAJI Advocate SR.No.23568(F) DATED 08/04/2025

+1. C.C. to M/S.V.K.VIJAYARAGAVAN Advocate SR.No.24006(F) DATED
09/04/2025



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ORDER

IN

SA No.389 of 2002

Date :07/04/2025

NBF/SAR/ (21/04/2025) 11P/8C

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