

S.A.Nos.947 & 2015 of 2002

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 14.07.2025

JUDGMENT PRONOUNDED ON : 12.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.Nos.947 and 2015 of 2002

SA.No.947 of 2002

P.Manimaran

....Appellant/1st Respondent
/1st Defendant

Vs.

1.Chinnakannu

2.N.Arumugam

3.P.Amaravathi

4.Dhanaselvi

5.P.Anbu Raja

...Respondents 1 to 5 /Appellants 1 to 5
/Plaintiffs 2 to 6

6.Manapparai Municipality
Rep.by its Special Officer

.....6th Respondent/2nd Respondent
/2nd Defendant

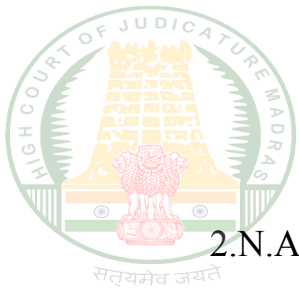
SA.No.2015 of 2002

Manapparai Municipality
Rep.by its Special Officer

....Appellant/2nd Respondent
/2nd Respondent

Vs

1.Chinna Kannu (died)



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2.N.Arumugam

3.P.Amaravathi

4.Dhanaselvi

5.P.Anburaja

...Respondents 2 to 5 /Appellants 1 to 5
/Plaintiffs 2 to 6

6.P.Manimaran

....6th Respondent/1st Respondent
/1st Defendant

7.Thirumoorthy

8.Elayaraja

9.Nallamani

10.Indirajothi

11.Padmavathi

12.Jayanthirani

....Legal heirs of the 1st Respondent

(Respondents 7 to 12 in both the second appeals are brought on record as legal heirs of the deceased first respondent vide Court order dated 26.02.2021)

COMMON PRAYER: The Second Appeals are filed under Section 100 of C.P.C, against the decree and judgment passed by the Principal District Judge of Tiruchirappalli in A.S.No.90 of 2001 on 07.02.2002 reversing the decree and judgment passed by the District Munsif of Manapparai in O.S.No.621 of 1982 on 20.02.2001.

S.A.No.947 of 2002:

For Appellant : Mr.S.Dhinakaran
For M/s.I.Dinesh Deepa

For Respondents : No appearance for R2
:Mr.M.Vallinayagam
Senior Counsel
for Mr.J.Anandkumar for R3 to R5
: Mr.T.Madasamy for R6



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S.A.No.2015 of 2002:

For Appellant : Mr.T.Madasamy

For Respondents : No appearance for R2

:Mr.M.Vallinayagam
Senior Counsel
for Mr.J.Anandkumar for R3 to R5, R7 to R12

: Mr.S.Dhinakaran
For M/s.Y.B.Seetharaman for R6

COMMON JUDGMENT

These two second appeals have been filed by the first and second defendants in O.S.No.621 of 1982 on the file of the District Munsif Court, Manaparai challenging the decree granted by the First Appellate Court.

(A) Factual Background:

2.The respondents herein had filed O.S.No.621 of 1982 seeking the relief of declaration that there is no pathway much less of public pathway in and around the western portion of the suit property as an access from V.O.C street to reach the house of the 1st defendant or the other houses in Dr.Ambedkar Street and for a consequential relief of permanent injunction restraining the defendants from entering upon or trespass into the suit schedule property either by laying road or pipeline through the western portion of the suit schedule property. It was further prayed for grant of



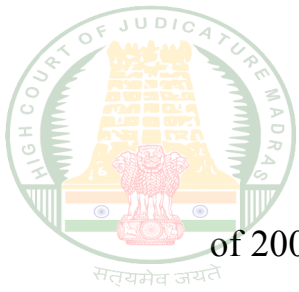
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mandatory injunction for removal of a pipeline in case if the defendants had laid a pipeline in the suit property.

3.The suit was dismissed by the trial Court. On appeal, the suit was decreed by the First Appellate Court. Challenging the same, S.A.No.69 of 1986 was filed before this Court by the first defendant in the suit. This Court by way of judgment and decree dated 31.08.1998 had allowed the second appeal and remitted the matter back to the trial Court to give an opportunity to the plaintiff to amend the plaint so as to incorporate the measurement with regard to the disputed portion. It also gave liberty to the defendants to adduce additional evidence on the additional documents.

4.After remand, the plaintiff had filed I.A.No.877 of 1999 to amend the description of the properties so as to incorporate the measurement of the disputed portion. This application came to be allowed on 24.08.2000 and the amendment was carried out. The trial Court again dismissed the suit by way of a judgement and decree dated 20.02.2001. Challenging the same, the plaintiff had preferred A.S.No.90 of 2001 before the Principal District Court, Trichy.

5.The First Appellate Court was pleased to set aside the judgment and decree of the trial Court and allowed the appeal. Challenging the same, the first defendant in the suit has filed S.A.No.947 of 2002. The second defendant in the suit namely Manaparai Municipality has filed S.A.No.2015



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6. At the time of admission, the following questions of law were framed in S.A.No.947 of 2002;

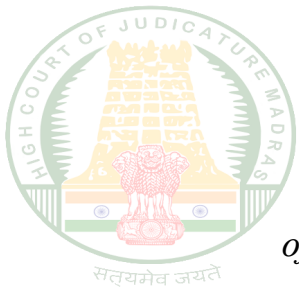
1) Whether the judgment and decree of the First Appellate Court in reversing the decree and judgment of the Trial Court is legally sustainable inasmuch as the respondents 1 to 5 have not given proper measurements to the disputed property as directed by this Honourable Court in Second Appeal No.69 of 1986.?

2) Whether the judgment and decree of the First Appellate Court in reversing the decree and judgment of the Trial Court is legally sustainable inasmuch as it has not properly considered the order of remand passed by this Honourable Court in Second Appeal No.69/86?

3) Whether the judgment and decree of the First Appellate Court in reversing the judgment and decree of the Trial Court on the ground that the respondents 1 to 5 cannot be non-suited for failure to specify the disputed portion is legally sustainable inasmuch as it goes against the order of remand passed by this Honourable Court in Second Appeal No.69/86?

7. In S.A(MD).No.2015 of 2005, the following substantial question of law was framed:

“Whether the reversion judgment and decree of the lower appellate Court is sustainable in law as it has not considered the entire evidence available on record and law applicable to the facts



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of the case?

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8. At the time of arguments, this Court felt that the additional substantial questions of law arise for consideration and were framed on 10.07.2025 and it was adjourned to 14.07.2025 to enable the counsels to make their submissions on the additional substantial question of law common to both the appeals.

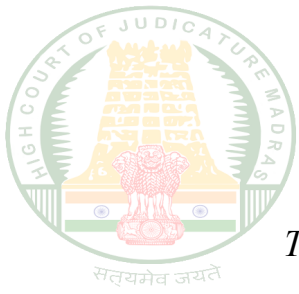
Additional Substantial Questions of Law:

(1) Whether the judgment and decree of the First Appellate Court in reversing the decree and judgment of the Trial Court is legally sustainable in as much as the 1st appellate Court relied on the mentioning of the vacant site by the respondents 1 to 3 in the mortgage deed executed in favour of one Alagammal when no title or usage is proved by the respondents 1 to 5.

(2) Whether the judgment and decree of the First Appellate Court in reversing the decree and judgment of the Trial Court is legally sustainable in as much as the 1st appellate Court came to the conclusion that the 12 feet vacant site is not the property of a 3rd party.

(3) Whether the judgment and decree of the First Appellate Court in reversing the judgment and decree of the Trial Court on the conclusion that the trial Court assumed that the vacant site is Government Property.

(4) Whether the judgment and decree of the first appellate Court in reversing the judgment and decree of the



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Trial Court is legally sustainable in as much as it has found that the respondent 1 to 5 have not filed any document of title or long usage to the disputed property.

(5) Whether the judgment and decree of the first appellate Court in granting a decree for mandatory injunction namely for the removal of the pipe line from the disputed property is legally sustainable when the pipe line is used by the public at large.

9.Since both the appeals arise out of the common judgment of the trial Court and the First Appellate Court, they are tagged together and a common judgment is passed.

10.In the plaint, it is contended that the suit schedule property which is marked as 'ABCD' in the plaint plan is the ancestral property of the plaintiffs and they have acquired title by prescription and adverse possession. According to the plaintiffs, the suit schedule property is situated in V.O.C street. The west of the suit property has been sold to one Sangaiah and Muthiah by the plaintiffs' father which is originally found part and parcel of the ancestral property of the plaintiff. Therefore, the plaintiffs are the owners of the east of the property sold to Sangaiah and Muthiah.

11.The plaintiffs have further contended that the defendants have no right whatsoever either proprietary or easementary or otherwise over the suit schedule property. There is no pathway much less a public pathway in



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and over the any suit schedule property. Neither the first defendant nor the second defendant have got any right over the same. The first defendant who is a former Councillor of the second defendant municipality is attempting to disturb the possession of the plaintiffs over the suit property claiming that there is a pathway over the suit property.

12.In the plaint, it is further contended that the second defendant municipality has sanctioned irregular service connection and attempted to lay pipeline from V.O.C.street to the house of the first defendant which is located on the northern side. However, the said attempts were stopped by the plaintiffs. As far as sanctioning of pipeline connection to the houses in Dr.Ambedkar Street is concerned, they are given only from Malaiyandi Street. The second defendant is colluding with the first defendant and by way of high-handed attitude, they are attempting to lay a road in the suit property. There is no pathway in the suit schedule property.

13.The plaintiffs had sent a legal notice to the defendants under Ex.A2 for which a reply was sent as if there is a pathway. Hence, the present suit for declaration that there is no pathway much less a public pathway in and around the western portion of the suit property from VOC street.

14.The first defendant had filed a written statement contending that there is 12 ft.public pathway in and over the suit property. Out of the said 12 ft. public pathway, accepting the said public pathway, the plaintiffs have sold



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some portion of their properties to one Sangaiah and Muthiah under Ex.B4.

Thereafter, the plaintiffs have encroached upon the public pathway. The 12 ft. vacant site is shown in Ex.A3 mortgage deed as a pathway. Therefore, the suit has to be dismissed.

15.The second defendant municipality has filed a written statement disputing the title of the plaintiffs over 'ABCD' portion. It was further contended that as per lie, there is a 12 ft. width north-south mamul pathway which bifurcates the plaintiffs' property from that of the Sangaiah and Muthiah. The said pathway is being used for so many years. If the pathway is closed, the first defendant would not have any other pathway. The municipality also disputed the allegation of collusion with the first defendant. It was further contended that the permission has been granted to lay pipeline over the public pathway. Since no notice was given prior to the filing of the suit to the municipality, the suit is not maintainable.

16.The trial Court dismissed the suit based on the following findings:

a).On 03.07.1982, the Town Inspector had declared the disputed portion as street belonging to the municipality. Though the plaintiffs claim that it is a village natham and they are enjoying the same for several generations, no documents have been produced on the side of the plaintiffs. On the other hand, the witnesses examined



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on the side of the defendants have deposed that since it was a vacant site, everyone in the village was using it as a pathway.

b)When the Town Inspector was examined as DW5, he had deposed that the general public are using it as a public pathway.

c)On the side of the second defendant municipality, it is contended that it is a village natham and it belongs to the Government and therefore, for the welfare of the general public, it can be used as a pathway and it does not belong to the plaintiffs.

d)Even as per deposition of PW3, the suit property belongs to the Government and it is an unoccupied vacant site. The plaintiffs have not produced any revenue records, patta or 'B' memo to establish their possession over the suit property.

e)The vacant site is not shown as plaintiffs' property in the partition deed under Ex.A4 dated 17.10.1963, even after remand, the plaint has not been amended and measurements have not been incorporated. The plaintiffs have not filed any application for appointment of Advocate Commissioner to measure the suit schedule property, only then, whether there is 12 ft. pathway or a 6 ft. pathway is available, could be found out. However, the commissioner's report filed in another suit in O.S.No.426 of 1984 has been marked as Ex.A18.



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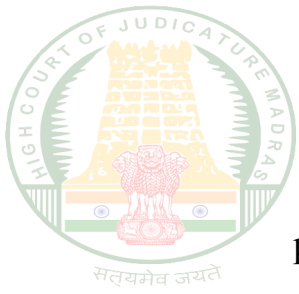
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g).Despite directions issued by the High Court in S.A.No. 69 of 1986, the plaintiffs have not amended the plaint so as to incorporate the measurement of the suit property. Hence, the plaintiffs are not entitled to any relief.

h)Since the suit property belongs to the Government and it is an unoccupied vacant site, the suit is not maintainable without impleading the Government. Based upon the said findings, the trial Court has dismissed the suit.

17.Findings of the First Appellate Court are as follows:

a)Since the suit schedule property is a grama natham, there is no possibility of any title deed or revenue records. Only the documents reflecting the transactions of the adjacent properties can be looked into to find out whether there is any



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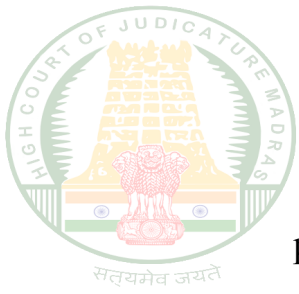
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pathway in the suit property or not.

b)There is no dispute with regard to the identity of the property and in such circumstances, the non-filing of an application for appointment of advocate commissioner would not in any way affect the case of the plaintiffs.

c)The mortgage under Ex.A3 executed by the plaintiffs in favour of one Azhagammal clearly reveals that a vacant site which is owned by the plaintiff is located on the eastern side of the property mortgaged. This document is of the year 1968.

d)Ex.A4 dated 17.10.1963 is a partition deed between Sangaiah and Muthiah. In the partition deed, the eastern boundary is referred to as plaintiffs' property. Therefore, 12 ft.vacant site is not the property of a third party, but it is the property of the plaintiffs. If there was a common pathway running of the eastern side of the property, allotted to the share of Sangaiah and Muthiah, it would have been certainly reflected in the description of property in the partition deed. The trial Court had assumed that the vacant portion lying between the property of the plaintiffs and the said Sangaiah is an unauthorised grama natham. Such presumption is not fortified by any record. In Ex.A5 dated 22.06.1979, there is no reference about any common



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pathway between the property of Sangaiah and that of the plaintiffs.

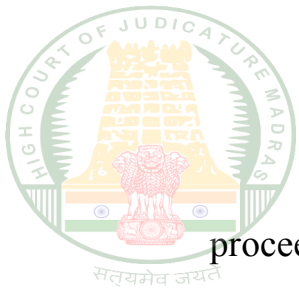
e)When the plaintiffs have established their title and possession over the suit property by way of Ex.A3, the trial Court was not right in dismissing the suit on the ground that patta or 'B' memo was not produced by the plaintiffs. The deposition of witnesses examined on the side of the defendants are quite contrary to the recitals in the document and therefore, they cannot be relied upon, to non-suit the plaintiffs.

f)The Assistant Surveyor, examined as DW5, has not assigned any reason whatsoever to declare the vacant site as a public pathway.

g)The defendants have filed Ex.B3 sale deed, which fortifies the case of the plaintiffs, wherein there is no reference about the common pathway. The documents filed on the side of the plaintiffs establish that they have got a better title than that of the respondents, over the suit property. There is no iota of evidence on the side of the defendants to establish that there is a public pathway in and over the suit property.

18.Based upon the above said findings, the First Appellate Court

was pleased to set aside the judgment and decree of the trial Court and has



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proceeded to allow the first appeal. Challenging the same, the present second appeals have been preferred by the defendants 1 and 2.

(B).Submissions of the learned counsels appearing on either side:

19.According to the learned counsel for the appellants, the prayer sought for in the suit is not maintainable, in view of the fact that a negative prayer has been sought for. The plaintiffs have not prayed for a declaration of title. On the other hand, the plaintiffs have prayed for a declaration that the suit is not a pathway. Therefore, the entire burden is upon the plaintiffs to establish that it is their private property and there is no pathway over the same. The plaintiffs have not filed any registered document or the revenue records to establish their title or possession over the suit schedule property.

20.The learned counsel for the appellants submitted that a survey was conducted in the year 1982 and the Assistant Surveyor has declared the same as a public pathway. During his deposition as DW5, he has categorically pointed out that initially it was Oor natham owned by the Government and later, due to usage of the general public, it was declared as public pathway by the municipality. In such circumstances, it is clear that the plaintiffs have neither established their title nor their possession over the suit schedule properties. The learned counsel had further submitted that this is the only pathway connecting to V.O.C.street and only through this pathway drinking



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water pipeline could be laid for the welfare of the general public. The

plaintiffs are obstructing the said functions of the municipality.

21.The learned counsel for the appellants had further submitted that the pathway is reflected in the document executed by the plaintiffs' father in favour of the third party. Only showing the said pathway, the plaintiffs had sold the property in favour of Sangaiah and Muthiah. Now the plaintiffs cannot turn around and contend that there is no pathway at all, much less a public pathway.

22.When the plaintiffs have filed a suit for declaration, the entire burden is upon them to establish the fact that it is a private property. However, he has miserably failed to do so. On the other hand, the defendant municipality was able to establish the fact that it is not a vacant site belonging to the plaintiffs, but it is a public pathway which is being used by the general public. The trial Court has rightly appreciated the oral and documentary evidence and has proceeded to dismiss the suit. The First Appellate Court has not considered the evidence of DW5 and even the documents filed on the side the plaintiffs and has arrived at an erroneous finding that there is no pathway in the suit property.

23.The learned counsel for the appellants further submitted that after remand, the plaintiffs have in fact amended the plaint schedule properties by incorporating the measurement of the disputed lands. However,



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by mistake, the substantial questions of law were raised at the time of admission that no such amendment was carried out by the plaintiffs.

Therefore, they have requested the Court to frame additional substantial questions of law at the time of argument.

24.The learned Senior Counsel appearing for the respondents raised a strong objection for framing of additional substantial questions of law on the ground that, originally the substantial questions of law were based on erroneous facts and therefore, the appeal has to be dismissed. The appellants cannot be permitted to raise additional substantial questions of law. However, subject to the objections raised by the learned senior counsel appearing for the respondents/plaintiffs, this Court has permitted, to raise such questions of law and framed them and granted time to either counsels to make their submissions.

25.Per contra, the learned Senior Counsel appearing for the respondents/plaintiffs submitted that one Chinnakannu as plaintiff has filed O.S.No.249 of 1994 before the District Munsif Court, Manaparai as against the Tamil Nadu Government represented by the District Collector, Trichy and two other official respondents. In the said suit, the present first defendant was shown as fourth defendant. The suit was filed for the relief of mandatory injunction directing the official respondents to delete the word 'pathway' in Natham Survey No.573 and to incorporate the word 'vacant site'. The suit was



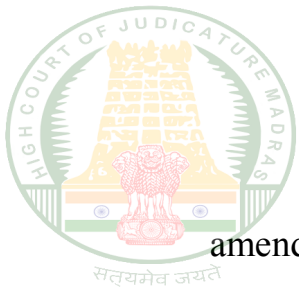
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decreed exparte on 14.11.1997. He had further submitted that E.P.No.45 of 2001 was filed and the municipality had complied with the decree by deleting the word 'pathway' and incorporating the word 'vacant site'. Therefore, the municipality cannot maintain the present second appeal.

26.The learned Senior Counsel had further pointed out that though the first defendant was a party to the said suit, he has also not challenged the said decree. He had further contended that, patta has also been granted in favour of the plaintiff for the suit schedule properties. The learned Senior Counsel had further submitted that during the cross examination, DW1 has admitted that the suit properties are natham properties as per the settlement records. He had further pointed out that in case, it is a public pathway, it would have been reflected in the street register maintained by the municipality. For the first time, only in the year 1982, the suit property was shown as a public pathway in the records of the municipality.

27.The learned Senior Counsel for the respondents further submitted that Ex.A4 partition deed of the year 1963 and Ex.A3 mortgage deed of the year 1968 would clearly reveal that there is no pathway, but it was only a vacate site belonging to the plaintiffs. The learned Senior Counsel had further contended that though the plaint was amended after remand, the defendants have not chosen to file any additional written statement disputing or challenging the measurement provided by the plaintiffs in their



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amendment. Hence, he prayed for confirming the judgement and decree of the

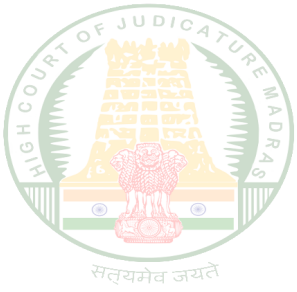
First Appellate Court.

28. Heard both sides and perused the material records.

(C) Discussion:

29. The plaintiffs contend that there is no public pathway in and over the suit property. On the other hand, the defendants contend that there is a public pathway. The deposition of the Taluk Sub Inspector of Survey plays a crucial role in adjudicating the dispute between the parties. He has been examined as DW5. During his cross examination, he has admitted that when survey was conducted in the year 1939, it has been recorded as Government vacant site and it was not referred to as a street then. He had further admitted that the suit survey number namely S.No.573/2 is 'kudieruppu natham' and not 'occupied natham'. He had further admitted that only during the street survey in the year 1982, for the first time it was recorded as a street.

30. The above said deposition of the Inspector of Survey would clearly indicate that from the year 1939 onwards, it was only a Natham land and according to him, it belonged to the Government. For the first time in the year 1982, it was declared as a street by the municipality. On 15.06.1982 under Ex.A2, a legal notice has been addressed by the plaintiffs to the municipality. Therefore, it is clear that immediately on being declared as a public pathway, the plaintiffs have raised their objection.



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31. One of the plaintiffs namely N.Chinnakannau had filed O.S.No. 249 of 1994 as against the State represented through District Collector, Tiruchirappalli, Surveyor and the present first defendant for deleting the word 'pathway' from the Town Survey Register and for incorporating the word 'vacant site'. The said suit has been decreed by the trial Court on 14.11.1997. The first defendant herein was arrayed as 4th defendant in the said suit, has not chosen to file any appeal. The official defendants in the said suit have accepted the decree and carried out the directions, by deleting the word 'public pathway' and inserting the word 'vacant site' for Natham S.No.573/2. Therefore, the present second appeal filed by the first defendant in S.A.No. 947 of 2002 is clearly not maintainable.

32. As per deposition of Surveyor (DW5), from the year 1935 -1939 till 1982 the property was shown as Natham land, in the custody of the Government. The Government was made as a party in O.S.No.249 of 1994. After suffering a decree, they have not chosen to challenge the same. In such circumstances, the rights of the municipality arise only when the said survey number is declared as a street in the year 1982. Therefore, now the municipality cannot contend that they were not parties to O.S.No.249 of 1994 and there they are not bound by the said decree.



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33.The plaintiffs have filed Ex.A3 mortgage deed, Ex.A4 partition deed which clearly reveal that the suit property is shown as vacant site of the plaintiffs and not as a public pathway. Those documents are of the 1968 and 1963 respectfully. The appellants in S.A.No.947 of 2002 had filed O.S.No. 426 of 1984 before the District Munsif Court, Manaparai as against the purchasers from the plaintiffs namely Sangaiah and Muthiah claiming his pathway rights over the present suit property. The said suit was dismissed by the trial Court on 27.11.1990 and the judgment and decree are marked as Ex.A16 and A17.

34.The appellant in S.A.No.947 of 2002 has not chosen to challenge the said judgment and decree. Therefore, the present second appeal filed by him is not maintainable.

(D).Conclusion:

35.In view of the above said deliberations, all the substantial questions of law are answered as against the appellants. The second appeals stand dismissed. No costs.

12.08.2025

Index : Yes / No
Internet : Yes / No
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- 1.The Principal District Judge
Tiruchirappalli
- 2.The District Munsif
Manaparai
- 3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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S.A.Nos.947 & 2015 of 2002

R.VIJAYAKUMAR,J.

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Pre-delivery Judgment made in
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12.08.2025