



S.A. No. _____

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	11.11.2025
Pronounced on	09.02.2026

CORAM

THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN THILAKAVADI

S.A.No.278 of 2019 and

C.M.P. No.4099 of 2019

K. Sundarapandian

...Appellant

Vs.

S. Ganesan

... Respondent

Prayer: Second Appeal filed under Section 100 CPC, 1908 to set aside the decree and judgment dated 24.09.2018 passed in A.S. No.38 of 2015, on the file of the Principal Subordinate Court, Krishnagiri, reversing the Judgment and decree dated 25.09.2015 passed in O.S. No.333 of 2008, on the file of the District Munsif Court, Krishnagiri.

For Appellant : Mr.S.Kanniah

For Respondent: No appearance.

JUDGMENT

Challenge in this Second Appeal is made to the decree and judgment dated 24.09.2018 passed in A.S. No.38 of 2015, on the file of the Principal Subordinate Court,



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Krishnagiri, reversing the Judgment and decree dated 25.09.2015 passed in O.S. No.333 of 2008, on the file of the District Munsif Court, Krishnagiri.

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2. The appellant as plaintiff has preferred the above suit for declaring the pathway marked as 'CDEF' in the rough sketch as common to both the plaintiff and the defendant and for easement of necessity and prescription granting a mandatory injunction against the defendant to remove all the obstructions over the said common pathway including the bathroom, toilet and storage water tank marked as 'X', 'Y' & 'Z' in the sketch and for costs.

3. The parties are referred to as per their ranking in the trial court

4. According to the plaintiff, his mother had purchased the suit property under a registered sale deed dated 26.03.1966. Thereafter, the plaintiff has constructed a house on the eastern side, described as 'A' in the plaint rough plan. The defendant's house is located on the western side of the plaintiff's house and the same is mentioned as 'B' in the rough plan. Parallel to the two houses, there is a common pathway measuring about 72 feet in length and 3 ½ feet in width, marked as 'CDEF' in the plaint plan. Apart from that, there are pipe lines belonged to both parties, embedded in it. In these



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circumstances, the defendant has wrongly constructed a toilet and bathroom, and a water tank in the said pathway, described as 'X', 'Y' and 'Z' in the rough plan. Hence, the suit.

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5. The claim of the plaintiff is resisted on the side of defendant stating that the above constructions are made only on his own land. Further stated that, while constructing the house, the defendant found that the plaintiff has occupied the defendant's land to an extent of 2 feet and embedded the pipe line in it. There is no common pathway existing as alleged by the plaintiff and the claim of the plaintiff is false. The extent mentioned in the patta is contra to the actual extent mentioned in the sale deed 26.03.1966 in favour of plaintiff's mother. Hence, prayed for dismissal of the suit.

6. The trial court, upon considering the materials on record, decreed the suit in favour of the plaintiff. Aggrieved by this, the defendant has preferred the appeal suit in A.S. No.38/2015. The first appellate court reversed the judgment and decree passed by the trial court. Challenging the same, the present Second Appeal is preferred by the plaintiff.

7. The learned counsel for the appellant / plaintiff would submit that the first appellate court erred in holding that there is no documentary evidence in support of the



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claim of common passage by the plaintiff. The plaintiff has sought for easement of necessity for the right to enjoy the air and light through his windows and right in the common passage. The first appellate court erred in observing that there is no reference in the sale deeds produced by the parties with respect to the common pathway. The first appellate court erred in ignoring the report of the Advocate Commissioner while deciding the dispute between the parties. The first appellate court erred in holding that the plaintiff who has sought for the relief of declaration is not entitled to seek the relief of easement by necessity and prescription. Hence, prayed for setting aside the decree and judgment passed by the first appellate court.

8. Despite sufficient opportunity given to the learned counsel for the respondent, there is no representation on the side of the respondent.

9. Heard Mr.S. Kanniah, learned counsel appearing for the appellant. Records perused.

10. According to the plaintiff, he has constructed a house in the house site purchased by his mother under a sale deed dated 26.03.1966. He would claim that there is a pathway running from north to south measuring 72 feet in length and 3 ½ feet in



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width between the house of the plaintiff and the defendant. The said pathway is common to the plaintiff and the defendant from time immemorial and pipe lines are embedded in the pathway belonging to the plaintiff and the defendant and that the defendant has constructed the toilet and bathroom in the pathway, cutting the pipe lines and abutting the windows of the plaintiff's house, obstructing the air and light to the plaintiff's house. The defendant resisted the suit contending that there is no common passage between plaintiff's and defendant's house and that the plaintiff has illegally encroached his property and embedded the pipe lines. The specific contention of the defendant is that he has constructed the bathroom and toilet and water tank in his own property and that the plaintiff has constructed his house in full extent without leaving any gap and therefore, he is not entitled for easementary right.

11. The plaintiff has shown the existence of the pathway, marked as 'CDEF' in the plaint plan. However, the plaintiff failed to establish the existence of the pathway by producing documentary evidence. Admittedly, the plaintiff is claiming title over the suit property based on a patta issued in his favour. Since the plaintiff has filed a suit for declaration of pathway and mandatory injunction for removal of obstruction, the burden lies upon the plaintiff to prove the existence of common pathway and that the defendant has encroached upon it by putting up construction. The learned Advocate Commissioner in his report and plan, marked as Ex.C1 and Ex.C2, has stated about the alleged



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encroachment by the defendant. The learned Advocate Commissioner ought to have measured the properties of the plaintiff as well as the defendant before arriving at such conclusion. Admittedly, the learned Advocate Commissioner has measured the property of the plaintiff alone and not the property of the defendant. Hence, the first appellate court rightly rejected the report of the Advocate Commissioner. Moreover, in sale deeds of the plaintiff and the defendant, the existence of the common passage is not mentioned. In the absence of any satisfactory evidence, the contention of the plaintiff that there is a common passage cannot be accepted. As rightly pointed out by the first appellate court, the plaintiff having filed a suit for declaration to declare the suit property as a common passage, is not entitled to claim easementary right over the said property, which plea is totally contradictory to the relief sought for in the suit. The plaintiff has claimed right and title in the property. Such claim of right either absolutely or in common is totally different from claiming the right of easement either by grant or by necessity. Both claims do not go together. Therefore, the first appellate court has rightly rejected the plaintiff's claim over easementary right. Unless the plaintiff establish that he is having right over the disputed area, the relief of mandatory injunction could not be granted. In the present case, the plaintiff failed to establish the existence of the common passage. The first appellate court rightly dismissed the suit filed by the plaintiff. No perversity or infirmity is found in the judgment of the first appellate Court.



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12. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The decree and judgment dated 24.09.2018 passed in A.S. No.38 of 2015, on the file of the Principal Subordinate Court, Krishnagiri, is upheld.

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Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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To

1. The Principal Sub Judge, Krishnagiri
2. The District Munsif, Krishnagiri
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.
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Pre delivery judgment in
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