WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-10-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 165 of 2010
and MP.No.1 of 2010

CNR:{HCMA010122132010}

Deivasigamani
No 58 East Kattu Kottai 2nd Ward Mallur Salem.

..Appellant(s)

Vs

1. Kandasamy
   Backside Of Mallur Post Office
   Komarapalayam Road Mallur Salem Dist.
2. Ayyanar
   East Kattu Kottai 2nd Ward Mallur Salem Dist.

..Respondent(s)

PRAYER: This Second Appeal is filed under Section 100 of CPC to set aside the Decree and Judgment dated 29.09.2009 rendered in AS.No.49 of 2009 on the file of the Subordinate Judge, Salem, setting aside the judgment and decree dated 31.12.2008 rendered in OS.No.1107 of 2007 on the file of the District Munsif Judge, Salem.

For Appellant(s): Mr.T.Karunakaran
For Respondent(s): Mr.N.Damodaran for R1

R2 – Served – No appearance

JUDGMENT

This Second Appeal has been preferred as against the decree and judgment passed by the Principal Sub-Judge, Salem in A.S.No.49 of 2009 dated 29.09.2009.

https://www.mhc.tn.gov.in/judis

WEB COPY

2. The appellant is the plaintiff who filed a suit for bare injunction as against the respondents herein in OS.No.1107 of 2007 on the file of the District Munsif Salem and the said suit was decreed in favour of the plaintiff on 31.12.2008. Aggrieved by the said decree and judgment, the defendants 1 and 2 have preferred an appeal in AS.No.49 of 2009 on the file of the Principal Sub-Judge, Salem. The said appeal was allowed on 29.09.2009 by setting aside the decree and judgment passed by the trial court. Aggrieved by the said decree and judgment, the plaintiff has preferred this second appeal.

3. The case of the plaintiff is that originally the suit property belonged to father of the plaintiff - Pachamuthu Padayachi through sale deed dated 27.12.1967. After the demise of father of the plaintiff, he has been in possession and enjoyment of the property. The defendants are the adjacent landowners of the suit property and they are third parties to the suit property. Due to political dispute between the parties, the defendants attempted to interfere with the plaintiff's possession and enjoyment of the suit property and thereby he has filed this suit for permanent injunction.

4. The case of the defendants is that the defendants totally denied the plaint awareness and according to the defendants, there is a foot pathway existing in the suit property, which is common to the plaintiff and the defendants. The abovesaid pathway is the only pathway to reach the lands of the

https://www.mhc.tn.gov.in/judis

WEB COPY

defendants. They are using the said pathway for more than 100 years. Therefore, they resisted the suit that they are entitled to the said foot pathway.

5. Based on the above said pleadings, the trial court has framed the following issues for trial.

a) Whether there is any foot pathway common to the plaintiff and the defendant?

b) Whether the plaintiff is entitled for the injunction relief?

6. Before the trial court on side of the plaintiff, they examined PW1 and PW2 and marked Ex.A1 to Ex.A4. On side of the defendants, DW1 and DW2 were examined and marked Ex.B1 to Ex.B3. After analyzing the evidences adduced on both sides, the trial court decreed the suit on 31.12.2008. Aggrieved by the said decree and judgment, the defendants 1 and 2 have preferred an appeal in AS.No.49 of 2009 on various grounds.

7. The first appellate court framed the following points for determination.

"1. வாதி மற்றும் எதிர்வாதிகளுக்கு பொதுவில் பாத்தியப்பட்ட தடம் ஒன்றுதானா சொத்தின் வடபுறத்தில் உள்ளது என்று எதிர்வாதிகள் சொல்வது சரியா?

2. அவ்வாறு பொது தடம் எதுவும் இல்லையென்று வாதி சொல்வது

https://www.mhc.tn.gov.in/judis

WEB COPY

சரியா?

3. வாதி கோரும் நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?

4. இந்த மேல்முறையீட்டு வழக்கு அனுமதிக்கத்தக்கதுதானா?

5. வாதிக்கு கிடைக்கத்தக்க வேறு பரிகாரம் என்ன?"

8. Thereafter, the first appellate court set aside the decree and judgment passed by the trial court by allowing the appeal. Aggrieved by the said decree and judgment, present second appeal has been preferred by the plaintiff.

9. This court, at the time of admitting the second appeal, framed the following substantial questions of law.

(i) Whether the lower appellate court is correct in allowing the appeal on the basis of oral evidence when the lower appellate Judge himself has given a finding that the respondents/defendants have not disproved the appellant's case by way of documentary evidence, i.e., Revenue record and Commissioner's Report?

(ii) Whether the lower appellate Court is correct in weighing the oral evidence given by the respondents/defendants when the appellant/plaintiff has proved his case by way of documentary evidence, i.e., Ex.A.1 to A.4?

10. This Court heard both sides and perused the records.

https://www.mhc.tn.gov.in/judis

WEB COPY

10. After elaborate arguments, both the learned counsels agreed that there is no dispute in respect of the 1.2 acres of land belonging to the appellant/plaintiff, and the dispute is regarding the pathway.

11. According to the plaintiff, there is no pathway existence within 1.2 Acres of land and the same is belonging to the plaintiff. The defendants also not disputed the title of the plaintiff over the 1.2 Acres of land and the only contention of the defendants is that the pathway mentioned in the suit schedule is not exclusively belongs to the plaintiff and the defendants also having right to use the said pathway.

12. The counsel appearing for the appellant has also admitted the existing pathway and not seriously disputed the pathway rights as observed by the courts below.

13. The learned counsel appearing for the respondents also claimed the pathway rights mentioned in the suit property and apart from that pathway, there is no any other claim made by them. In the plaint itself, in the description of property the plaintiff mentioned the pathway and it is not exclusively belongs to the plaintiff and one Arundayammal also having right over the said pathway property and the plaintiff also not claiming any exclusive rights over the pathway mentioned in the suit property. The defendants also not claiming any

https://www.mhc.tn.gov.in/judis

WEB COPY

exclusive right over the said pathway and they have not claimed any right in the property mentioned in the suit schedule. Both the parties agreed that they have right to use the said pathway without any interference by each other. Therefore, it is appropriate to dispose of this second appeal by recording the abovesaid submissions.

14. Accordingly, the Second Appeal is disposed of in the abovesaid terms. Consequently, connected miscellaneous petition is closed. No costs.

27-10-2026

Index : Yes/No
Internet:Yes/No
Neutral Citation:Yes/No
gv

https://www.mhc.tn.gov.in/judis

WEB COPY

To

1. The District Munsif Judge, Salem
2. The Subordinate Judge, Salem,
3. The Section Officer,
V.R. Section,
High Court, Madras.

https://www.mhc.tn.gov.in/judis

WEB COPY

P.DHANABAL J.

GV

SA No. 165 of 2010
and MP.No.1 of 2010

27-10-2026

https://www.mhc.tn.gov.in/judis

WEB COPY

https://www.mhc.tn.gov.in/judis

WEB COPY

https://www.mhc.tn.gov.in/judis