IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08 / 06 / 2026

CORAM:

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

S.A. NO.1552 OF 2005

1.Kaliaperumal
S/o. Suyamprakasam
Ka. Elamangalam,
Vriddhachalam Taluk.

2.Muthammal (Died)
W/o. Suyamprakasam
Ka. Elamangalam,
Vriddhachalam Taluk.

3.Devendiran
S/o. Suyamprakasam
Ka. Elamangalam,
Vriddhachalam Taluk. … Appellants / Respondents / Defendants

4.R.Arivazhagan
S/o. M. Ranganathan
17/46, Throubathi Amman Koil Street,
Boodamur and Post,
Vriddhachalam – 606 003.

5.Latha W/o. Devendran
Ka. Ilamangalam,
Vriddhachalam Taluk. … Appellants /legal representatives of deceased Appellant No.2 - Muthammal

Note:
1) Appellant No.2 passed away. Her legal representatives are already on record as Appellant Nos.1 and 3. Memo recorded *vide* Order of this Court dated March 9, 2023 in S.A. No.1552 of 2005.

2) Appellant Nos.4 and 5 are brought on record as legal representatives of the deceased Appellant No.2 *vide* Order of this Court dated March 15, 2023 made in C.M.P. No.6082 of 2023 in S.A. No.1552 of 2005.

Vs.

1.Minor Arunkumar (aged 7 years) (Died)
Represented by his mother and next friend -
Muthulakshmi W/o. Selvarasu
Ka. Elamangalam,
Vriddhachalam Taluk. … Respondent-1 / Appellant / Plaintiff

2.S.Selvaraju
S/o. Singaram

3.Muthulakshmi
W/o. Selvarasu

4.Parasakthi
D/o. Selvaraju

Respondents 2 to 4 are residing at
Ka. Ilamangalam,Vriddhachalam Taluk.

... Respondent Nos. 2 to 4 / legal representatives of deceased Respondent No.1 - Minor Arunkumar

Note: Respondents 2 to 4 are brought on record as legal representatives of the deceased Respondent No.1 *vide* Order of this Court dated August 9, 2019 made in C.M.P. Nos.13096 of 2019, 13097 of 2019 and 13098 of 19 in S.A. No.1552 of 2005.

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated December 8, 2014 made in A.S. No.8 of 2004 on the file of the Additional Subordinate Court, Vriddhachalam, modifying the Judgment and Decree dated October 30, 2003 made in O.S. No.173 of 2003 on the file of the Additional District Munsif, Vriddhachalam.

For Appellants	:	Mr.V.Anand
For Respondent-1	:	Passed away, Steps taken
For Respondents 2-4	:	Mr.J.Prithivi

* * *

JUDGMENT

This Second Appeal is filed assailing the Judgment and Decree dated December 8, 2014 passed in A.S. No.8 of 2004 by 'the Additional Subordinate Court, Vriddhachalam' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated October 30, 2003 passed in O.S. No.173 of 2003 by 'the Additional District Munsif Court, Vriddhachalam' ['Trial Court' for brevity] was modified to the effect that the plaintiff is the title holder of north-south 15 ½ feet instead of north-south 13 feet. The appellants herein are the defendants in the Original Suit and respondents in the Appeal Suit.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFF'S CASE

3. Case of the plaintiff is that the suit property originally belonged to one Singaram as his ancestral property. On February 4, 2002, the said Singaram executed a Gift Settlement Deed in favour of the plaintiff, who was then a minor represented by his mother and natural guardian, Muthulakshmi. Pursuant to the said Gift Settlement Deed, the plaintiff has been in possession and enjoyment of the suit property. A common passage is situated on the northern side of the suit property, over which both the plaintiff and the defendants are entitled to a right. Owing to some previous animosity, the defendants attempted to interfere with the plaintiff's peaceful possession and enjoyment of the suit property. Hence, the plaintiff has filed the Suit seeking declaration, permanent injunction, and costs.

DEFENDANTS' CASE

4. The first defendant filed a written statement, which was adopted by defendants 2 and 3. The case of the defendants is that the plaintiff is entitled only to an extent measuring north-south 4 metres on the western side of suit property and north-south 4.2 metres on the eastern side thereof, and east-west 12.6 metres on the southern side thereof and east-west 12.2 metres on the northern side thereof, as per Patta No.218 issued without any objection in the year 1997 after due enquiry under the Updating Revenue Scheme. The plaintiff did not raise any objection during the said enquiry. According to the defendants, the Gift Settlement Deed dated February 4, 2002 was executed containing false particulars, as it was executed for 15 ½ feet north-south while the executant was entitled only to a lesser extent in the suit property *i.e.,* only 13 ½ feet north-south in the suit property. It is further contended that the Judgment and Decree passed in O.S. No.54 of

2002 on the file of the District Munsif Court, Vriddhachalam is a collusive decree and is not binding on the defendants. The defendants further state that the plaintiff was never in possession and enjoyment of and has no right over the east - west passage. On the contrary, the said passage belongs absolutely to the defendants and is an exclusive passage, which has been in the enjoyment of the defendants and their vendors. All other averments in the plaint are denied as false. Accordingly, the defendants prayed for dismissal of the suit.

TRIAL COURT

5. At trial, on the side of the plaintiff, the plaintiff's mother / natural guardian / next friend namely, Muthulakshmi was examined as P.W.1, the original owner of the suit property - Mr.Singaram was examined as P.W.2 and one Mr.Govindasamy was examined as P.W.3 and Ex-A.1 to Ex-A.6 were marked. On the side of the defendants, the first defendant was examined as D.W.1, and one Mr.Subramanian and one Mr.Ramalingam were examined as D.W.2 and D.W.3 respectively and Ex-B.1 & Ex-B.2 were marked. Advocate Commissioner's report and plan were marked as Ex-C.1 and Ex-C.2.

6. The Trial Court, after analyzing the oral and documentary evidence, held that Ex-A.1 - Gift Settlement Deed dated February 4, 2002. Ex-A.1 was executed referring to Ex-A.2 - Patta No.218. When so, had there really been any mistake in the said Patta No.218, the same could have been corrected at that point of time itself. Hence, the Trial Court concluded that the plaintiff is not entitled to claim more extent than what is stated in Patta No.218. accordingly, the Trial Court decreed the Suit-in-part and granted declaration and injunction in respect of the extent of the suit property as mentioned in Ex-A.2 - Patta No.218 *i.e.,* to the extent of east-west 42 feet and north-south 13 feet.

FIRST APPELLATE COURT

7. Feeling aggrieved, the plaintiff preferred an appeal before the First Appellate Court. The First Appellate Court after hearing both sides, held that patta is not a document of title and revenue records like patta do not always represent the true state of affairs. Generally, when a common passage is allotted in a family partition, the land would be of uniform length and breadth throughout. In this case, along the land of the plaintiff alone, the passage is shown as double the width. Further, by relying on Ex-C.1 and Ex-C.2, the First Appellate Court held that the plaintiff is using the northern side as a backyard. The defendant did not claim adverse possession. Upon arriving at these findings, the First Appellate Court went on to allow the appeal and decree the Suit as prayed for.

SECOND APPEAL

8. Feeling aggrieved, the defendants have preferred this Second Appeal, which was admitted on December 23, 2005 on the following substantial questions of law:

"a. Whether the 1st appellate court is correct in law in allowing the appeal without setting aside the factual findings of the trial court?

b. Whether the 1st appellate court is correct in law in allowing the appeal by ignoring that the plaintiff is estopped from claiming more extent than what was granted in patta No.218 as recited in Ex.A1?

c. Whether the 1st appellate court is correct in law in relying on a collusive exparte decree in O.S.No.54 of 2002 to which these appellants / defendants are not parties?

d. Whether the 1st appellate court is correct in law in relying on the commission report for finding possession in favour of the plaintiff?"

ARGUMENTS

9. Mr.V.Anand, learned Counsel on record for the appellant, would submit that the plaintiff's predecessor-in-title, namely Singaram, was in enjoyment of the suit property measuring east-west 42 feet and north–south 13½ feet alone. He would further contend that, with a view to encroach upon the defendants' property, Singaram executed Ex-A.1- Gift Settlement Deed dated February 4, 2002 in favour of the plaintiff, conveying a larger extent than what he was actually entitled to on ground. He would also submit that the plaintiff is entitled only to the extent mentioned in Patta No.218. Ex-A.1 - Gift Settlement Deed was executed only based on Ex-A.2 - Patta No.218; therefore, Singaram had no right to convey any extent beyond what is covered under the said patta. According to the learned Counsel, the Trial Court, on proper appreciation of the facts and circumstances of the case, rightly decreed the Suit-in-part. However, the First Appellate Court, without proper appreciation of the evidence available on record, without any reasons for deviating from the findings of the Trial Court, erroneously allowed the appeal and modified the Judgment and Decree of the Trial Court. Hence, he prays to allow the Second Appeal and set aside the Judgment and Decree passed by the First Appellate Court.

9.1. He relies on the following decisions in support of his submissions:

(i) Judgment of the Hon'ble Supreme Court in *Sarju Pershad Ramdeo Saiiu -vs- Jwaleshwari Pratap Narain Singii*, reported in *1964 - L.W.-373*;

(ii) Judgment of this Court in *S.Madasamy Thevar -vs- A.M.Arjuna Raja*, reported in *2000-3-L.W.793*; and

(iii) Judgment of this Court in *B.Parvathy -vs- Ramakrishna Mission*, reported in *2001-3-L.W.182.*

10. *Per contra*, Mr.J.Prithivi, learned Counsel on record for respondents 2 to 4 / legal representatives of the deceased sole plaintiff, would bring to notice of this Court the deposition of P.W.3, who is one of the vendors of the defendants, and submit that both the plaintiff and the defendants derive title from a common ancestor. He would contend that the plaintiff has been in possession and enjoyment of an extent measuring 15 ½ feet north-south and 42 feet east-west in the suit property. He would further submit that one of the family members of the defendants was a Village President, and owing to the influence, the Revenue Authorities, without adhering to the principles of natural justice and without conducting a proper enquiry, reduced the plaintiff's entitlement in the suit property in the revenue records, as if the plaintiff was entitled only to a lesser extent on the north - south measurement. Learned Counsel would also point out that P.W.3 in his evidence, has clearly deposed that the plaintiff and the defendants are co-owners / co-heirs in respect of the east - west passage situated abutting the northern side of the suit property measuring north-south 15 ½ feet. He would further submit that patta is not a document of title. According to the learned Counsel, the oral evidence on record clearly establishes that the plaintiff has been in continuous possession and enjoyment of the suit property measuring north-south 15 ½ feet without any hindrance for a considerable length of time. The First Appellate Court, on proper appreciation of the evidence, has rightly allowed the appeal, modified the Judgment and Decree passed by the Trial Court, and decreed the Suit. Therefore, there is no reason for this Court to interfere with the same. Accordingly, he would pray to dismiss the Second Appeal.

DISCUSSION

11. This Court has heard the submissions made on either side and perused the materials available on record.

12. Originally, there was a Natham land forming the larger extent of land in Survey No.64/17. P.W.3 and D.W.3 have deposed that they along with plaintiff's grandfather, defendants' father were all co-owners / co-heirs of the said Natham land. P.W.3 and D.W.3 have deposed that the said Natham land was orally partitioned between the co-owners / co-heirs carving out a common east-west passage branching off the north-south road for the use and enjoyment of all the co-owners / co-heirs. Upon partition, the co-owners / co-heirs enjoyed their respective portions separately, while enjoying the passage in common.

13. Later, while the portion allotted to the plaintiff's grandfather remained with them, the defendants purchased the remaining portions from the other co-owners / co-heirs. Thereafter, in 1997, under Natham Land Tax Scheme, the said Natham land in Survey No.64/17 was measured out, new survey numbers were assigned and patta was issued to the co-owners / co-heirs in respect of their respective portions. In other words, the common passage was assigned New Survey No.156/16, the plaintiff's portion was assigned New Survey No.156/21, the portions owned by the defendants towards the eastern side of the plaintiff's portion were assigned New Survey Nos.156/17 to 156/20 and the portion owned by the defendants towards the northern side of the plaintiff's portion next to the common passage was assigned New Survey No.156/15.

14. The point to be noted here is that the plaintiff and the defendants derive title from a common ancestor and that the said Natham land in Old Survey No.64/17 was orally partitioned between co-owners / co-heirs by carving out a common passage branching off from the north-south road and running east-west, for convenient access of all the co-owners / co-heirs. The oral evidence on either side shows that the east-west passage is a common one. However, the defendants would rely on Ex-B.1 - Patta to claim exclusive right over the said passage in New Survey No.156/16. It is a settled proposition of law that a patta, by itself, is not a document of title. There is no satisfactory evidence to show that such patta was granted after conducting a proper enquiry into the nature, character, and ownership of the property *i.e.,* east-west passage. In the absence of sufficient materials, this Court is of the considered view that the mere issuance of patta under the Natham Land Tax Scheme does not confer title upon the defendants. The defendants have not produced any title deed or other documentary evidence to substantiate their claim that the east-west passage in Survey No.156/16 exclusively belongs to them. In the absence of any title deed or other supporting document, and in view of the deposition of P.W.3 and D.W.3 that an east-west passage branches off from the north-south road as a common passage for the enjoyment and easy access of all the co-owners /

co-heirs, this Court is of the view that the defendants have not established their exclusive title over the east-west passage in Survey No.156/16. Moreover, the evidence on record namely Advocate-Commissioner's Report and Plan in Ex-C.1 and Ex-C.2, reveals that the plaintiff's house has an entrance on its northern side facing the disputed passage. The existence of such an entrance lends further support to the plaintiff's case that the passage has been in common use and enjoyment by the adjoining owners. These circumstances further proves the plaintiff's claim that the disputed portion is a common passage and not the exclusive property of the defendants, by way of preponderance of probabilities. The materials available on record indicate that the defendants, by suppressing the true factual position, obtained patta in respect of the east-west common passage in New Survey No.156/16 in favour of first defendant as though the same exclusively belonged to him. It further appears that the revenue authorities, without proper application of mind and without conducting a thorough enquiry into the nature and ownership of the property, issued patta in favour of the first defendant in respect of the common passage in New Survey No.156/16. Therefore, the defendants cannot claim any exclusive right over the common passage, nor can they obstruct its use by others by parking a tractor, storing agricultural implements, or otherwise causing hindrance to the plaintiff and other co-owners / co-heirs of the passage, if any.

15. So, the defendants' claim of exclusive ownership over the east-west passage is now ruled out. The next concern is the north-south entitlement of the plaintiff in the suit property. Case of the plaintiff is that he is entitled to north-south 15 ½ feet and east-west 42 feet in the suit property. While there is no dispute with regard to the east-west measurement, the defendants contends that the plaintiff is entitled to a north-south measurement of only 13 ½ feet. According to the defendants, the plaintiff is wrongfully claiming an additional extent of north-south 2 feet from the east-west passage, which this Court has held to be a common passage.

16. As already stated *supra*, Old Survey No.64/17 was orally partitioned carving out a common east-west passage, among co-owners / co-heirs including plaintiff's grandfather, defendants' father, P.W.3 and D.W.3. Subsequently, while the plaintiff's grandfather gifted his portion to the plaintiff, the defendants purchased the portions belonging to the P.W.3, D.W.3 and other co-owners / co-heirs. And thereafter, under Natham Land Tax Scheme, in 1997, a portion of Old Survey No.64/17 was measured out and assigned New Survey Nos.156/14 to 156/21. Further as stated *supra*, Survey No.156/21 belongs to the plaintiff, Survey No.156/16 is the east-west common passage and Survey Nos.156/14, 156/15 & 156/17 to 156/20 belongs to the defendants.

17. The common east-west lane provides access to New Survey Nos.156/14 to 156/21, except New Survey No.156/17. New Survey No.156/17 could be accessed through New Survey No.156/18, and they both belong to the defendants.

18. This Court has carefully perused the Field Measurement Book (FMB) annexed to the Ex-B.1 - Patta pertaining to Suit Survey Nos.156. The FMB reveals that the properties of defendants in New Survey Nos.156/15 & 156/18 to 156/20 (except New Survey No.156/17) maintain a uniform width of more or less 5.2 metres which is roughly 15 ½ feet.

19. Naturally, when co-owners / co-heirs divide their common property, they would divide it equally. In this case, as mentioned in Ex-B.1 - Patta, while the properties of co-owners / co-heirs which are now owned by the first defendant in New Survey Nos.156/15 & 156/18 to 156/20 have a north-south measurement of more or less 15 ½ feet, that of the plaintiff in

New Survey No.156/21 alone has only about 13 ½ feet. There was no reason to provide a lesser north-south extent of 13 ½ feet to the plaintiff's grandfather while the other co-owners / co-heirs got 15 ½ feet. One may argue that this discrepancy is owing to the fact that the plaintiff's portion abuts the north-south road and thus, enjoys a frontage unlike the properties of other co-owners / co-heirs. This is untenable as the co-owner / co-heir's property in New Survey No.156/15 now owned by the first defendant also enjoy a similar frontage by abutting the same north-south road yet measures 15 ½ feet north-south. Thus, Ex-B.1 - Patta is wrong in not only attributing exclusive ownership of the common passage to the defendants, but also in enlarging the north-south extent of the portion of the common passage running along the suit property and thereby correspondingly reducing the north-south extent of the plaintiff's property *viz.,* the suit property. In other words, in Ex-B.1 - Patta, a portion on the northern side of the plaintiff's portion, which was left vacant without any construction by the plaintiff, has been wrongly treated as a part of the common passage. As stated *supra*, there is nothing available on record to show that Ex-B.1 - Patta was issued after due notice and inquiry to the plaintiff or his grandfather - Singaram and hence, the same would not be binding the plaintiff. The authorities have wrongfully restricted the plaintiff's entitlement in the suit property by granting patta in favour of the defendants as if the common passage exclusively belongs to the defendants and by overstating the north-south extent of the portion of the common passage running along the suit property. Ex-B.1 - Patta cannot restrict the plaintiff's entitlement to the extent mentioned therein and the same is not binding on him. Yet another contention of the defendants is that Ex-A.2 - Patta in respect of the suit property itself stipulates only a lesser north-south extent *viz.,* 4 meters. Again, there is no evidence available on record to show that Ex-A.2 - Patta which is also issued in 1997 under the Natham Land Tax Scheme, was issued after due notice to the plaintiff and inquiry.

20. The question as to whether the decree passed in O.S. No.54 of 2002 is collusive or otherwise is immaterial for the purpose of deciding the present appeal, in view of the facts and circumstances of the case and the conclusions reached by this Court above. It would not bind the defendants as they were not party to the same. Hence, the First Appellate Court ideally ought not to have relied on the same. However, the First Appellate Court did not entirely rely on the same. The First Appellate Court considered the same cumulatively with various other evidence. Even when the reliance placed on the decree passed in O.S. No.54 of 2002 is excluded, the findings of the First Appellate Court are well reasoned and hold good. It is to be noted that, the First Appellate Court, upon a careful reappraisal of the oral and documentary evidence, allowed the appeal and modified the Judgment and Decree of the Trial Court by declaring that the plaintiff is entitled to an extent of 15½ feet on the north-south axis of the suit property. In all other respects, the Judgment and Decree of the Trial Court was confirmed. Thus, the First Appellate Court has concurred with the findings of the Trial Court in other aspects. Further, this Court has considered the case laws relied on by the learned Counsel for the appellants duly. There is no quarrel with the legal position advanced therein. However, they do not come to the aid of the appellants, as in this case, the First Appellate Court has assigned reasons for its findings against those of the Trial Court. ***Accordingly, the substantial question of law framed as "A" and "C" is answered in the above terms.***

21. As already stated, revenue records, including patta, do not confer / constitute a document of title. Consequently, there is no legal impediment to a party establishing and claiming title or possession over an extent of land different from, or in excess of, the extent reflected in the patta, provided such claim is supported by acceptable evidence. Ex-B.1 - Patta cannot restrict the plaintiff's entitlement to the extent mentioned therein.

Accordingly, the substantial question of law framed as "B" is answered in the above terms.

22. The Advocate Commissioner's report and plan clearly depict the actual physical features, location and measurements of the suit property. The First Appellate Court has considered the Advocate Commissioner's report and plan only to that extent for the purpose of appreciating the factual position. The First Appellate Court did not find possession in favour of the plaintiff by relying entirely on the Advocate-Commissioner's Report and Plan. This Court finds no irregularity or illegality in the approach adopted by the First Appellate Court in relying upon the said report. ***Accordingly, the substantial question of law framed as "D" is answered in the above terms.***

CONCLUSION

23. In fine, the Second Appeal is dismissed. The Judgment and Decree passed by the First Appellate Court is confirmed. Considering the facts and circumstances of the case, there shall be no order as to costs.

08 / 06 / 2026

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
TK

R. SAKTHIVEL, J.

TK

To
1.The Additional Subordinate Court
Vriddhachalam.

2.The Additional District Munsif
Vriddhachalam.

S.A.NO.1552 OF 2005

08 / 06 / 2026