



S.A.No.157 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 02.06.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.157 of 2023
and
C.M.P.Nos.4561 and 4566 of 2023

1.K.Ajay Kuma

2.K.Jayaraman

... Appellants

vs.

1.Boopalan (ex-parte)

2.Subramani Reddiyar

3.The Commissioner,
Vellore City Municipal Corporation,
Vellore District.

4.L.Suresh

5.S.Muneer

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside Judgment and Decree in A.S.No.12 of 2017 dated 24.03.2020 passed by the Additional Sub-ordinate Judge, Vellore, confirming the dismissal of the suit by a Judgment and Decree dated 14.09.2016 in O.S.No.435 of 2009 by the Court of District Munsif, Katpadi.



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For Appellant : Mr.P.K.Sabapathi
For R3 : Dr.S.Suriya
Standing Counsel for Vellore Corporation
For R4 and R5 : Mr.E.Kannadasan
For R1 : Notice Dispensed with vide Court
order dated 26.03.2026

J U D G M E N T

The unsuccessful plaintiffs are the appellants. They filed a suit for declaration of title and permanent injunction. The suit was dismissed by the Trial Court and the findings of the Trial Court were affirmed by the First Appellate Court. Challenging the concurrent findings, the plaintiffs have come before this Court.

2. According to the appellants/plaintiffs, the suit property originally belonging to plaintiffs' father Kesava Mudaliar under the Settlement Deed dated 19.06.1946. The plaintiffs' father plotting out the suit property and sold the plots to third parties. While plotted out his property, the plaintiffs' father retained a strip of land with a width of 10 feet on the 'A' schedule property, which is more fully described in the red color portion in the plaint



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plan for having ingress and egress. It is the specific case of the plaintiff that the 10 feet passage retained by the plaintiffs' father was his private property and no other persons can have any manner of access over the same. The 1st defendant is the owner of the land on the eastern side of the disputed passage. The 2nd defendant seems to have entered into a Sale Agreement with the 1st defendant. The defendants without having any manner of right attempting to interfere with physical possession of the suit property over the disputed 10 feet passage and hence, the present suit was filed seeking declaration of title and permanent injunction.

3. In the plaint schedule, the disputed portion has been shown as strip of land on the Southern Side are the vacant site with east-west measurement of 310 feet and North-South measurement of 14 feet on the Western Side and 21 feet on the Eastern Side.

4. The 2nd defendant filed written statement and resisted the suit by claiming that the red colored portion of the disputed passage shown in the plaint plan, is a public street and the general public are entitled to have ingress and egress over the same. The allegation in the plaint as if, the plaintiffs' father reserved the disputed property for his own use was



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specifically denied. It was also stated that the red marked disputed passage has been under the maintenance of Selection Grade Town Panchayat, Tharapadavedu and the 2nd defendant also raised the plea of non-joinder of necessary parties as the ground of defence.

5. The defendants 4 and 5 filed a separate written statement and claimed that the disputed passage is a public road and named as 'Gandhi Road'. It was also stated that all the residents of that locality are entitled to use the disputed passage as it is a public road. Therefore, they sought for dismissal of the suit.

6. Before the Trial Court, the 1st plaintiff was examined as PW.1 and 4 documents were marked on behalf of the plaintiffs as Exs.A1 to A4. The defendants 4 and 5 have been examined as DW.1 and DW.2 respectively. 5 other witnesses were examined on behalf of the defendants as DW3 to DW.7. 9 documents were marked on behalf of the defendants as Exs.B1 to B9. The Advocate Commissioner's report, plan and its annexures were marked as Exs.C1 to C5. Apart from these exhibits, 13 documents were marked as Exs.X1 to X13.



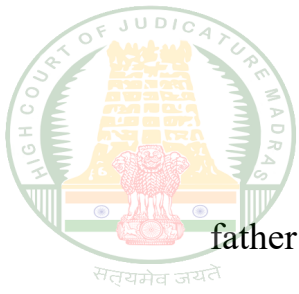
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7. The Trial Court on appreciation of oral and documentary evidence

available on record, came to the conclusion that the disputed suit passage is a public street and dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.12 of 2017 on the file of the Additional Subordinate Court, Vellore. The First Appellate Court affirmed the findings of the Trial Court. Aggrieved by the same, the plaintiffs have come before this Court.

8. The learned counsel appearing for the appellants would submit that the suit passage was part of the property settled in favour of the plaintiffs' father under Ex.A1-Settlement Deed, dated 19.06.1946 and hence, the Courts below committed serious error in negating the relief prayed for in the suit. The learned counsel further submitted that the defendants have not produced any document to show that the suit passage was vested with Local Authority and maintained as a road by the Local Authority. In such circumstances, according to him, the judgment and decree passed by the Courts below are liable to be set aside.

9. It is not in dispute that the suit property originally belonged to plaintiffs' father. Likewise, both the parties admitted that the plaintiffs'



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father laid a layout in the suit survey number and sold various plots to third parties. The plaintiffs in their plaint pleaded that in the southern side of the suit 'A' schedule property, the plaintiffs' father retained a strip of land with a width of 10 feet for the purpose of his own use and the defendants without having any manner of right attempted to interfere with his possession over the same. On the other hand, it was the contention of the defendants that the disputed passage on the southern side has been used all along as a public road and all Members of the General Public are entitled to have access through the said passage.

10. Though the plaintiffs claimed that their father plotted out the land in the suit survey number and sold it to third parties, he does not produce any layout plan to establish his case. The plaintiff also claimed that after selling the plots, the plaintiffs' father retained the disputed strip of land for his own use. The 1st plaintiff, who was examined as PW.1 in his evidence clearly admitted that his father plotted out the suit property in the year 1946 and he had no idea whether he obtained proper approval for the layout. When the plaintiffs are not in a position to say whether their father obtained layout approval there is no basis for them to plead that the disputed passage was retained by them for their father's own use.



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11. It is seen from the annexures to the Advocate Commissioner's report, in the revenue documents, the suit survey number has been sub-divided and the disputed passage has been given sub-division No.314/3B11, 3C3, 3D3 and 3E3. In the revenue document namely Natham Fair Adangal, the classification of the disputed suit passage has been mentioned as 'Government Poramboke Street'. Therefore, it is clear that in the revenue records, the suit property is not standing in the name of plaintiffs' father but it is classified as 'Government Poramboke Street'. The classification in the revenue records goes against the case of the plaintiffs. Further, the Advocate Commissioner, in his report clearly mentioned that the suit property has been referred to as 'Gandhi Road'.

12. PW.1, in his evidence clearly admitted that the disputed suit passage was mentioned as 'Gandhi Road' in the Advocate Commissioner's report. Therefore, it is clear that the suit property has been used by general public as a road and the same is named as 'Gandhi Road'. The Advocate Commissioner has been examined as DW.5, he in his evidence deposed that gravel had been used in suit disputed passage for the purpose of laying road by the 3rd respondent/Local Authority.



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13. It is also seen from the Advocate Commissioner's report and plan, there are electric poles or houses on either side of the disputed passage and the main entrance of the houses are opening into the disputed passage. The said physical features supports the case of the defendants that the suit property has been used as a public road all along. The existences of houses on either side of the suit property and opening entrance into the suit property has been spoken about by the Advocate Commissioner, who was examined as DW.5.

14. The Ward Member of the Local Authority has been examined as DW.6. She deposed that the suit property has been used as a public road for several years with the name Gandhi Street. She also deposed that there are electric poles, sewerage canal, borewell in the suit property. The Junior Engineer of the Tamil Nadu Electricity Board has been examined as DW.7. He deposed about erection of electric poles in the suit property. Therefore, the physical features noted by Advocate Commissioner in his report and plan and the oral evidence of DW.6 and DW.7 clearly established that the suit property has been used as a public street for several years and the general public have got right of access over the same. Both the Courts below on proper appreciation of oral and documentary evidence available on



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record, came to a conclusion that the suit property has been used as public street for several years and the plaintiffs are not entitled to seek declaration of title and injunction as prayed for. I do not find any perversity or error in the conclusion reached by the Courts below.

15. **In Nutshell:-**

- (i) The Second Appeal stands dismissed.
- (ii) Consequently, the connected civil miscellaneous petitions are closed.
- (iii) In the facts and circumstances of the case, there will be no order as to costs.

02.06.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm

To

- 1.The Additional Subordinate Court,
Vellore.
- 2.The District Munsif Court,
Katpadi.



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S.SOUNTHAR, J.

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