



WEB COPY

SA No. 100 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-02-2026

CORAM

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

**SA No. 100 of 2025
AND
CMP No. 2869 of 2025**

D.Chandra

W/o. Dharmarasa, 3/79, Bhavatha Amman Koil
Street, Singalanthapuram Post, Rasipuram,
Namakkal District.

..Appellant(s)

Vs

1.J. Manikandan

S/o. Duraisamy Pillai, Res. at No.3/78A, East
Street, Singalandapuram, Rasipuram, Namakkal
District.

2.J Karthikeyan

S/o. D. Jayapal, Res. at No.3/78A, East Street,
Singalandapuram, Rasipuram, Namakkal District.

3.J. Vanithamani

W/o. Jayapal, Res. at No.3/78A, East Street,
Singalandapuram, Rasipuram, Namakkal District.

4.Gandhimathi

W/o. Ganesan, No.5/6, Kavin Photo Studio,



Pudupalayam, Pothanur Post, Paramathi Velur
Taluk, Namakkal District.

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5.The Block Development Officer

Singalandapuram Panchayat Union, Rasipuram Tk,
Namakkal dt.

6.The President

Singalandapuram Panchayat, Rasipuram Tk,
Namakkal Dt.

..Respondent(s)

SA No. 100 of 2025

To set aside the Judgement and decree in AS No.13/2024 on the file of Subordinate Judge, Rasipuram, dated 24.09.2024 confirming the decree dated 30.01.2024 in OS No.83/2010 on the file of the District Munsif Court, Rasipuram.

SA No. 100 of 2025

For Appellant(s): Mr. M.Santhanaraman

For Respondent(s): Mr.R.Siddharth Agp

For R5 And R6

Mr P.Mathivanan

For R1 To 4



JUDGMENT

WEB COPY This second appeal has been filed to set aside the Judgement and decree made in A.S No.13 of 2024 on the file of Subordinate Judge, Rasipuram, dated 24.09.2024 confirming the Judgment and decree dated 30.01.2024 made in O.S No.83 of 2010 on the file of the District Munsif Court, Rasipuram.

2. For the sake of convenience, the parties are referred to as per their rank cited in the Original Suit. The appellant herein is the 1st defendant and the respondents 1 to 4 herein are the plaintiffs in the original suit.

3. The brief facts of the case are as follows:

(i) The case of the plaintiffs is that the suit property belongs to their grand father Late Duraisamy. vide Sale Deed dated 29.05.1978. After his demise, the plaintiffs' father ie. D. Jayapal who was the 1st plaintiff in O.S No.83 of 2010 and the plaintiffs were enjoying the suit property in S.No.430/15 to an extent of 675 sq.ft which is located at Singalanthapuram Village, Rasipuram Taluk, and Namakkal District. To reach the house in the suit property from East West Raja Veethi, there is 6.6 feet (2 meters) breadth lane running South to North. The said lane is common lane which was used by land owners of residing in both sides of lane. The common lane starts at a stretch of 6.6 feet breadth on the



southern side and narrow down to 3.3 feet. (1 meters) in S.No.430/2016. But, the 1st defendant who is the neighbour having the suit property on the eastern and western side of the common lane, had constructed her house and encroached 2 feet in the Eastern side common lane by putting up staircase 5 ½ feet above the ground to the length of 6 feet thereby the staircase is protruding in the common lane. Further, 1st defendant started digging up 7 feet foundation pit to an extent of 22.5 feet length in the Western side common lane thereby encroaching near about 2 ½ feet. Therefore, the plaintiffs raised objection with regard to the encroachment of the common lane. Hence, plaintiffs/the respondents 1 to 4 herein have filed the suit in O.S. No.83 of 2010 seeking for declaration and for mandatory injunction directing the 1st defendant to remove the encroachment made in the common lane in S.No.430/16.

(ii) The first defendant in the Written statement has stated that as per the document, the first defendant's predecessor had constructed their house within their measurement, after settlement deed in her favour and further she demolished the house and built a terrace house east and west of the disputed lane in the year 2003. The plaintiffs have acquired only the right to use the intervening lane. The 1st defendant did not encroach on the lane and constructed the house.



4. On the basis of pleadings of both sides, the Trial Court framed the following issues for Trial.

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1. *Is the suit property description correct?*
2. *Is it correct that the South-North lane leading from East West Rajaveethi to the plaintiff's property is a common lane with a width of 2 meters in the south and one meter in the north?*
3. *Does the first defendant encroach on the common lane?*
4. *Does the suit have a cause of action?*
5. *Is it correct that the defendants two and three are unnecessary parties?*
6. *Are the plaintiffs are entitled to relief as claimed in the suit?*
7. *What are the other remedies available to the parties?*

5. During the course of trial, on the side of Plaintiffs, P.W.1 and P.W.2 were examined and Ex.A1 to Ex.A7 were marked. Through P.W1, Ex.B1 and Ex.B2 were marked through cross examination of P.W1. The 1st defendant did not adduce oral evidence on her side. The witness documentary evidence is marked Ex.X1. The Advocate Commissioner was also appointed and the Report and plan of the Advocate Commissioner were marked as Ex.C1 to Ex.C3.



6. Based on the Commissioner reports marked as Ex.C1 and Ex.C2, and Ex.B2, the Trial court, vide Judgment and Decree dated 30.01.2024, allowed the suit on the following ground:

(i) As per the Ex.B1-Partition Deed, the 1st defendant is claiming the right over the extent of the property in question to that effect. However, the plaintiff has not raised any objection nor claimed any declaration over the title of the property in question. They have pleaded only declaration and mandatory injunction in respect of S.No.430/16 regarding the encroachment of the common lane by protruding staircase while constructing her house. Therefore the issue only is with regard to the common lane in S.No.430/16.

(ii) The commissioner report reveals that the alleged encroachment is made by the 1st defendant in S.No.430/16 wherein a Staircase has been protruded in the common lane. However, there is no objection filed against the commissioner report by the 1st defendant. Therefore, the Staircase put up by the 1st defendant, would cause inconvenience to the plaintiff while entering in the common lane. Therefore, the encroachment made by the 1st defendant on the eastern side of the lane was established by the plaintiff and the relief was granted in favour of the plaintiff.

(iii) and finally held that in S.No.430/16 an extent of 6.6 feet (two meters) breadth on the southern end, for an extent of 3.3 feet (one meter) on the northern end is a common lane as alleged by the plaintiff and directed the 1st defendant to remove the encroachment made in S.No.430/16 as per in Ex.C2



within a period of three month at his own costs. Further, as there is no cause of action for the defendants 2 and 3, the suit is dismissed against the respondents 2 and 3.

7. Aggrieved over the said judgment passed by the Trial Court, the Appellant had preferred the First Appeal in A.S.No.13 of 2024 before the Subordinate Judge, Rasipuram. However, the 1st Appellate Court vide Common Judgment dated 24.09.2024, dismissed the said Appeal Suits preferred by the Appellant confirming the findings of the Trial Court. Hence, the Appellant has filed this Second Appeal before this Court.

8. The following Substantial Questions of law are found in the Memorandum of grounds of the present Second Appeal.

1. Whether a mandatory injunction can be granted when neither party has proved ownership through documentary evidence of the property over which injunction is sought?

2. Whether the Courts below were justified in granting mandatory injunction merely on the basis of usage of common lane without proof of ownership?



3. *When the particular land is classified as Natham in the revenue records, a person claiming right over the same and seeking declaration relief and mandatory injunction thereof in the absence of evidence of title is entitled for the same?*

4. *Whether the 1st Appellate Court was justified in law in relying upon the 2nd commissioner's report without examining the difference between the two reports?*

5. *Whether the 1st appellate Court erred in not considering the principles of adverse possession and prescription in relation to common pathways on promboke lands?*

9. The learned counsel for the appellant would submit that mere user of the common lane does not create ownership rights. Ex.A1 clearly describes that the plaintiff has right to use common lane only to ingress and egress his property. The right of passage is distinct from ownership rights. A mandatory injunction cannot be granted mere based on right of user. When ownership is disputed and unproven, mandatory injunction is not maintainable.



10. The Plaintiff did not have any right to the suit property. In a suit for declaration, heavy burden rests upon the plaintiffs to prove their title over the property in question such as by way of succession, purchase, assignment from the Government, or even by perfecting the title by adverse possession. But, the plaintiffs did not establish any of such title, ownership, possession etc.

11. The learned counsel for the appellant would further submit that the 1st Appellate Court failed to appreciate the evidence of Ex.B2, received by the appellant under RTI Act which reveals that the common lane is Promboke land and demarcation was carried out before the Second Survey by the Court Commissioner and failed to appreciate the fundamental distinction between right of passage over Promboke land and ownership rights necessary for maintaining a mandatory injunction as the legal implication of the land being Promboke in nature.

12. Per contra, the counsel for the respondents 1 to 4 would submit that the plaintiffs have proved that the lane in dispute in S.No.130/16 is a common lane as well as encroachments made by the 1st defendant by virtue of the Commissioner report Vide Ex.C1 and Ex.C2. The same is agreed by both the Courts below. Hence, there is no merit in the ground of the Second Appeal. As per the schedule of property, the dispute is relating to common lane in S.No.430/16 wherein the 1st defendant has constructed a staircase protruding



upto the common lane disturbing the plaintiffs to ingress and egress in the common lane. Hence, the Trial Court and the 1st Appellate Court after considering the entire oral and documentary evidence granted relief in favour of the plaintiffs. Hence, the Second Appeal is liable to be dismissed.

13. Heard both sides and perused the materials available on record.

14. Having considered facts and circumstances of the case and submissions made by the learned counsel on either side, it is undisputed fact that both the plaintiff and the defendant are residing at either side of the common lane. The case of the plaintiffs that they are reaching their house property from the main road through the common lane whereas the 1st defendant has put up the staircase that protrudes into the common lane thereby the right of ingress and egress of the plaintiffs is obstructed. Hence, the plaintiffs are not unable to access in easy manner in the common lane. But the appellant/1st defendant contends that the common lane is for the purpose of ingress and egress and the plaintiffs are not entitled to claim over there without any title, right and interest. Such circumstances, mandatory injunction granted in favour of the plaintiffs without clear title is erroneous one.



15. On perusal of the Commissioner report as well as Plan, vide Ex.C1 and Ex.C2, it is seen that there is a common lane with a width of two meters in the south and one meter in the north from the main road and there is a staircase that protrudes into the common lane. The same is evidenced from the photographs submitted by both side parties.

16. In such circumstances, during the enquiry, the learned counsel for the appellant/1st defendant appeared before this Court and agreed to remove the staircase that protrudes into the common lane. Further, on verifying the photographs filed by both parties, it is seen that both parties have put up steps along the common lane. Hence, both the parties are directed to remove the steps put up by them in order to easy access in the common lane for both parties.

17. In view of the above, the appellant/1st defendant is hereby directed to remove the staircase that protrudes into the common lane and steps which occupies the common lane and the respondents 1 to 4/plaintiffs are hereby directed to remove the steps put up in the common lane within a period of three months from the date of receipt of copy of this Judgment.



18. With the aforesaid directions, this Second Appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

04-02-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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