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SA No. 667 of 2015



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**SA No. 667 of 2015 &
M.P.No.1 of 2015**

Karupannan(died)

1. Thangavel S/o Karupannan
Sarayakaran Thottam Karukkampalayam
Kabilakurichi Village, Paramathi Velur Taluk
Namakkal
2. Krishnamoorthy
S/o Sarayakaran Thottam Karukkampalayam
Kabilakurichi Village, Paramathi Velur Taluk
Namakkal
3. Chinnammal
W/o Late Karupannan, East Street, Poosari
Palayam, Kolakattupudur Namakkal Dist
4. Sampooram
D/o Karupannan Poosari Palayam,
Kolakattupudur Namakkal Dist
5. Mallika
D/o Karupannan Poosari Palayam,
Kolakattupudur Namakkal Dist
6. Sarasu
D/o Karupannan Vadakarasiyathur Post,
Namakkal Dist

..Appellant(s)

Vs

Palaniappan
S/o Marappagounder, Sarayakaran Thottam
Karukkampalayam Kabilakurichi Village,
Paramathi Velur Taluk, Namakkal

..Respondent(s)



Prayer: Second Appeal filed under Section 100 of Civil Procedure Code against the Decree and Judgment dated 31.03.2015 made in A.S.No.4 of 2014 on the file of Court of Additional Subordinate Judge (Trainee District Judge), Namakkal, reversing the decree and Judgment dated 21.10.2013 made in O.S.No.92 of 2008 on the file of the District Munsif Court cum Judicial Magistrate, Paramathy.

For Appellant(s): Mr.R.Rajesh
For Respondent(s): Mr. T.L.Thirumalaisamy

J U D G M E N T

This Second Appeal has been preferred as against the Judgment and Decree passed by the learned Additional Subordinate Judge, Namakkal in A.S.No.4 of 2014 dated 31.03.2015.

2. The respondent herein has filed the suit before the trial Court in O.S.No.92 of 2008 on the file of the District Munsif cum Judicial Magistrate, Paramathi for the relief of declaration and consequential relief of permanent injunction and the suit was dismissed by Judgment and Decree dated 21.10.2013. Aggrieved by the said Decree and Judgment, the plaintiff in O.S.No.92 of 2008 has preferred the Appeal Suit before the learned Additional Subordinate Judge, Namakkal in A.S.No.4 of 2014 and the said Appeal Suit was partly allowed declaring that the plaintiff is entitled for using the suit pathway shown in AB portion for carrying men, cattle and vehicles to the 'P' series lands, except P2 lands in Survey No.262/6B and the plaintiff is entitled for consequential relief of permanent injunction restraining the plaintiff as against the defendant from exercising such a right. Aggrieved by the said



Decree and Judgment of the First Appellate Court, the defendants have preferred this Second Appeal.

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3. For the sake of convenience and brevity, the parties herein are referred as plaintiff and defendants, as referred before the trial court.

4. The brief averments of the plaint are as follows:-

The suit properties are ancestral properties of the plaintiff and he is entitled to the property through oral partition between the plaintiff and the 1st defendant. The 1st defendant is the younger brother of the plaintiff and the 2 and 3 defendants are sons of the 1st defendant. The suit properties and other properties originally belonged to the paternal grand father of the plaintiff namely, Karuppana Gounder and his brothers, Chinna Gounder and Periya Gounder. The said Karuppana Gounder, China Gounder and Periya Gounder orally partitioned their properties and Survey Nos.262/5 and 6 were allotted to Karuppana Gounder and Survey no.262/4 was allotted to Periya Gounder and Survey no.265/11 was allotted to Karuppana Gounder. In the north-south, there was a Eteri pathway on the western side of the lands in Survey Nos.262 and 265 and the same was later formed as Panchayat road. From the said Panchayat road, there was a pathway to reach the lands situated in S.Nos.262/4 and 5 and through that pathway, they used to take cattles and agricultural goods and the said pathway has been shown as ABCD in the plaint plan. From the said pathway, the land holders in S.F.Nos.262/4, 5 and



6 and 265/11 are reaching their properties. The properties mentioned as 'P' series, P, P1, P2, P3 and P4 property belongs to the plaintiff. The property belongs to the 1st defendant has been referred in the plan as D, D1, D2, D3, D4 and D5. The plaintiff and the 1st defendant orally partitioned their properties and survey nos.262/5A, 6B, 6D and 265/11A was allotted to the plaintiff and he got patta in his favour. Similarly, S.F.Nos.262/5B, 6A, 6C, S.F.No.265/11B have been allotted to the 1st defendant and he also got patta for those properties. Apart from that, the plaintiff and the 1st defendant purchased the property in Survey no.262/5C, from one Kuppusamy son of Pongiya Gounder, in that, southern side was enjoyed by the plaintiff and the northern side was enjoyed by the 1st defendant. The 1st defendant separately purchased the property in S.No.262/4 from Mottiyagounder son of Periyagounder and due to the misunderstanding between the plaintiff and the 1st defendant, the 1st defendant caused hindrance from enjoying the pathway by denying the rights of the plaintiff to use the pathway. The plaintiff and his predecessors used the said pathway for more than 50 years and the plaintiff is entitled to the pathway through easement by prescription and further, except this pathway, there is no other alternative pathway available to reach the properties of the plaintiff, therefore, the plaintiff has filed the suit.

5. The gist of the written statement filed by the defendants are as follows:-



The suit is not maintainable either in law or on facts and is liable to be dismissed in limini. The plaintiff is put to strict proof of the allegations levelled herein except those that are specifically admitted by the defendants herein. It is not correct to state that the suit properties belonged to Karuppana Gounder, Chinna Gounder and Periya Gounder. There was no partition between them and no properties were separately allotted to the father of the plaintiff and the 1st defendant. It is also not correct that there was a pathway on the western side of the properties in Survey Nos. 262 and 265. It is false to state that from that panchayat pathway, there is a pathway running through S.Nos.262/4 and 5. The plaint plan furnished by the plaintiff is not correct and the plaintiff has to prove the oral partition and separate patta granted to the plaintiff and the 1st defendant and they purchased the property from Karuppana Gounder, S.F.No.262/5C and the enjoyment as alleged by the plaintiff. In fact, the suit properties and other properties are ancestral joint family properties of the plaintiff and the defendants. The properties were not divided by metes and bounds and for convenient enjoyment, the parties are in separate enjoyment of the properties. The plaintiff and the defendants and their predecessors have been in enjoyment of the properties by taking cattles and agriculture goods when there was no crops raised in the lands. There is no existence of any pathway, viz., ABC Pathway, as alleged in the plaint plan and taking advantage of the financial position of the defendants, the plaintiff, in order to purchase the properties from the defendants, harassing the defendants, there is no cause of action for the suit and the suit is liable to be dismissed.



6. Based on the above said pleadings and upon hearing both sides, the trial Court has framed the following issues for trial :-

“1.Is it true that the plaintiff and his ancestors have been using the ABC suit pathway running along Survey No. 262/5B for the past 50 years?

2. Whether the plaintiff is entitled to the permanent injunction sought for in this suit?

3.What other reliefs the plaintiff is entitled to?

Based on the pleadings, evidence and documents produced on either side, the above questions are re-casted under Rule 5 of Order 14 of the CPC.

1. Whether the plaintiff is entitled to the declaratory relief of ABC Pathway as seen in the rough sketch?

2. Whether the permanent injunction sought by the plaintiff is available to them as a continuation of the declaratory relief?

3. To what other reliefs the plaintiff is entitled to?”

Before the trial court on the side of the plaintiff, P.Ws.1 and 2 were examined and marked Exhibits Exs.A.1 to A.3. On the side of the defendants D.W.1 and D.W.2 were examined and marked Exs.B1 and B.2. The Commissioner Report and the rough sketch have been marked as Exhibits C.1 ad C.2 and after analysing the evidences adduced on both sides, the trial court has dismissed the suit.



7. Aggrieved by the said Decree and Judgment, the plaintiff has preferred an Appeal Suit before the First Appellate Court in A.S.No.4 of 2014 on various grounds. The First Appellate Court has framed the following points for determination:-

“1. Whether the suit properties are derived by the plaintiff and defendant from common ancestors and by oral partition or not?

2. Whether the Judgment and Decree of the trial court is liable to be set aside for not giving opportunity to the parties at the time of amending (re casting) the issues at the time of Judgment?

3. Whether the plaintiff is entitled for declaration of the ABC Pathway as shown in plaint rough plan by way of easement of necessity as prayed for?

4. Whether the plaintiff is entitled for consequential injunction as prayed for?

5. Whether the plaintiff has to be non suited for non mentioning of correct description of the suit property?

6. Whether the appeal is liable to be allowed or not?

After analysing the evidences adduced on both sides, the First Appellate Court partly allowed the appeal and decreed the suit in respect of easement right of the pathway declaring that the plaintiff is entitled for using the suit pathway, shown in AB Portion to the P Series Lands, except P2 land in S.No.262/6B and also entitled for consequential relief of permanent injunction. Now challenging the said Decree and Judgment of the First Appellate Court, the defendants have preferred the Second Appeal.



8. This Court, at the time of admitting the Second Appeal, on 11.08.2015, formulated the following Substantial Questions of law:-

“a. Whether the judgment and decree of the first appellate Court is legally sustainable in as much as the description of property in the plaint is given as D and D1 but in the plan annexed to plaint described as D and D4 and the description of property was not given properly in plaint schedule as contemplated under Order 7 Rule 3 of C.P.C. and as such the suit itself is hit under Order 7 Rule 3 of C.P.C?

b. Whether the oral partition between the plaintiff and defendant is proved on failure to examine of the father of the appellants / 1st defendant and non-production of documents in respect to survey no.262/4 by the appellants and ignoring the fact that the plaintiff has to prove his case and burden of proof is always on the plaintiff to prove his case?”

9.The learned counsel for the appellants would submit that the plaintiff has filed the suit for the relief of declaration to declare that the plaintiff has easement right to use the pathway to reach their lands and the defendants have denied the existence of pathway, in fact, originally the suit properties and other properties are undivided Hindu Joint Family ancestral properties and no partition have been effected between the parties by metes and bounds and they are enjoying properties without partition and the plaintiff and the defendants used to take cattles and agriculture goods for cultivation and for



harvesting the crops. There is no specific pathway, as alleged in the plaint.

Before the trial court, on the side of the plaintiff, P.Ws.1 and 2 were examined and marked Exs.A.1 to A.3 and on the side of the defendants, D.W.1 and D.W.2 were examined and marked Exhibits B.1 and B.2 and Commissioner was also appointed and the commissioner report and rough sketch have been marked as Exs.C1 and C.2 respectively. The trial Court after elaborate discussions, fairly came to the conclusion that the plaintiff has failed to identify the property and the plaint has not been framed in consonance with Order 7 Rule 3 of C.P.C and the plaintiff has failed to prove the oral partition and the easement of necessity, thereby correctly dismissed the suit, whereas, the First Appellate Court without considering the evidences, erroneously decreed the suit by setting aside the Judgment and decree of the trial Court. The First Appellate Court failed to consider that the properties are under common enjoyment and the plaintiff failed to discharge his burden in proving the case.

9.1. Further, even as per Ex.A.2, sale deed, there are no recitals in respect of the existence of ABC Pathway, further, the description of properties mentioned in the plaint is given as D and D1, whereas in the plan, it is mentioned as D and D4 and without proof for oral partition, without even examining the father of the plaintiff and without producing documents for survey no.262/4, the First Appellate Court decreed the suit, therefore, the Second Appeal is liable to be allowed by setting aside the Judgment and Decree of the First Appellate Court.



10. The learned counsel appearing for the respondent would submit that the plaintiff and the 1st defendant are brothers and originally the suit property and other properties belonged to the plaintiff and 1st defendant and they orally partitioned their properties and thereafter, they purchased the properties from paternal uncle and the same was also orally partitioned and there is a pathway situated starting from main road between the lands of the plaintiff and the defendants to reach the plaintiff's lands, the plaintiff is using that pathway and that is the only pathway to reach the lands of the plaintiff. The plaintiff's land has been mentioned as 'P' series and the lands of the defendants has been mentioned as 'D' series and the plaint plan also enclosed with the plaint. The suit pathway is the only way to reach 'P' series lands, due to misunderstanding between the plaintiff and the 1st defendant, the defendants are now attempting to restrain the plaintiff from enjoying the said suit pathway, which is the only pathway to reach these lands, thereby filed this Suit. Before the trial Court, he examined the witnesses and marked documents. The trial Court without considering the evidences adduced on the side of the plaintiff, erroneously decreed the suit. However, the First Appellate Court appreciated the facts in the proper perspective manner and allowed the appeal, therefore, the First Appellate Court has correctly applied the law and decreed the suit. There is no illegality or perversity in the Judgment passed by the First Appellate Court and that there are no substantial questions of law involved in this case, therefore, the Second Appeal is liable to be dismissed.



11. Heard the learned counsel on both sides and perused the documents placed on record.

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12. In this case, there is no dispute that the properties are ancestral Hindu Joint Family properties of the plaintiff and defendants. It is an admitted fact that originally property belonged to Karuppana Gounder and his brothers, Chinna Gounder and Periya Gounder. According to the plaintiff, the said Karuppana gounder and his brothers orally partitioned the properties and the properties of Karuppana Gounder devolved into the plaintiff and the 1st defendant, who are sons of Karuppana Gounder, there is no dispute in respect of the title of the properties. According to the plaintiff, the properties, mentioned as P, P.1, P.2, P.3, P.4 belongs to the plaintiff and the D series, D, D1 to D5 belongs to the defendants. The properties 262/5A, 6B 6C 6D and 262/11A belongs to the plaintiff and he obtained separate patta, similarly the properties 262/5B, 6A, 6C, 265/11B, belongs to the 1st defendant and separate patta has also been granted in his name. Apart from that, both the plaintiff and the 1st defendant purchased the property in S.F.No.262/5C and the same was also orally divided and the plaintiff is in enjoyment over the southern side and the 1st defendant is in enjoyment of northern side. The 1st defendant separately purchased the property in S.F.No.262/4. The defendants have not specifically denied the above said description of properties, but merely stated that the plaintiff has to prove the above said facts.



13. Since there is no specific denial in respect of nature of the properties, it is deemed to be admitted by the defendants. On the side of the plaintiff, P.Ws.1 and 2 were examined and marked Ex.A.1 to A.3. Ex.A.1 is the patta, Ex.A.2 is the sale deed in the name of the plaintiff and the 1st defendant, Ex.A.3 is the rough sketch. On the side of the defendant, D.W.1 and D.W.2 were examined and marked Exhibits B.1 and B.2. Ex.B.1 is the FMB sketch for S.No.262, Ex.B.2 is the FMB sketch of S.No.265. Since the suit is filed for declaration in respect of the easement right in respect of the pathway, the plaintiff has to prove the existence of the pathway and his enjoyment of the pathway. According to the plaintiff on the western side of S.F.Nos.262 and 265, there is a panchayat pathway and from the said panchayat pathway, the ABC mentioned pathway is in existence and the said pathway is the only pathway to reach the 'P' series of the properties of the plaintiff. The defendants have not denied the rights of the parties and enjoyment over the properties.

14. It is also admitted fact that the properties have been sub-divided and properties in S.Nos.262/5A, 6B, 6D and 265/11A belongs to the plaintiff and the properties in S.Nos.262/5B, 6A, 6C and 265/11B belongs to the defendants. The properties purchased in S.No.262/5C has not been sub divided, but all other properties have been sub divided. The defendants have not denied the above said sub division. It is an admitted fact that all the



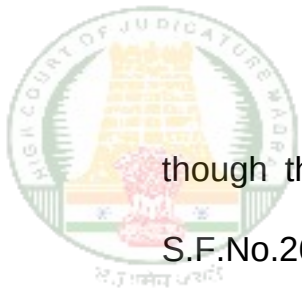
properties were their family properties and they enjoyed in common and thereafter, through oral partition, they enjoyed the properties and thereafter, one property was purchased by the plaintiff and 1st defendant, therefore, the entire properties were enjoyed by the same family. While so after sub division, without any pathway, how the parties are in enjoyment of the properties has to be explained by the defendants, but there is no explanation.

15. When the plaintiff ascertained that there is a pathway from A to C shown in the plan and through that pathway, they reached their lands, it is for the defendants to establish that there is alternative pathway and this is not the only pathway to reach their lands. In this context, it is relevant to refer the Commissioner Report and Plan Ex.C.1 and Ex.C.2 and as per Commissioner Report and Plan, there is a pathway in existence between the land of the plaintiff and defendants. Even as per the documents filed by the defendants, Ex.B.1 to Ex.B.3 the property in S.No.262/2 has been sub-divided and the plaintiff also admitted the above said sub-division and S.No.265 also sub-divided. Therefore, even from the documents filed by the defendants, it is clear that the properties have been sub-divided and separate patta has been issued in favour of the plaintiff. Therefore, the plaintiff established his case that there is a pathway in existence and the property has been sub-divided and separate patta has been issued and the properties are under separate enjoyment of the parties, therefore, the plaintiff is entitled to the relief in respect of the properties.



16. The trial court in the judgment rendered findings that the plaintiff has failed to prove the existence of the pathway and the description of property is not correct, thereby failed to prove that he is entitled for easement right for the properties and declined to grant the relief and dismissed the suit, whereas the First Appellate Court rendered findings that the relationship between the parties are not disputed and the devolvement of the property from the common ancestors are also not disputed, the 1st defendant denied the partition between himself and the plaintiff, but however, separate patta has been granted in favour of the plaintiff and his son in respect of survey no.262/5A, 262/6B, 262/6D through Exhibit, A.1 Patta. The statement of the Defendant no.1 is also corroborated and separate patta was issued in favour of the plaintiff, therefore, there was oral partition between the plaintiff and the 1st defendant. As per Ex.A.2, Survey No.262/5C was purchased by the plaintiff and the 1st defendant from Karuppana gounder, son of Ponnaiya Gounder and the plaintiff's contention is that northern portion was enjoyed by the 1st defendant and southern portion was enjoyed by the plaintiff, though the defendants denied in the written statement, D.W.1 in his evidence admitted that D series lands shown in the plan are enjoyed by the defendants, therefore, the plaintiff has established the oral partition.

17. Further D.W.1 himself admitted that survey no.262/4, 5 and 6 and 265/11 belonged to their grand father, therefore, the plaintiff proved his case,



though the trial Court held that boundaries referred in Ex.A2 in respect of S.F.No.262/5C are not correct, the plaint plan and existence of the property have not been disputed by the parties and moreover, the 1st defendant, who is the brother of the plaintiff is the competent witness to speak about the partition and he has not been examined as witness, therefore, the First Appellate court has correctly come to the conclusion that the properties were originally from common ancestors and therefore, the plaintiff has proved his claim. The above said findings of the trial court are based on the evidences. To claim easement of necessity, the plaintiff has to establish that the plaintiff dominant tenement and defendant's servient tenement originally constituted a single tenement. In the case on hand, the suit properties were from common ancestors and there was oral partition between the plaintiff and the 1st defendant and thereby the plaintiff has proved his case and the First Appellate Court has correctly decreed the Appeal Suit, the trial court has failed to consider the above said aspects.

18. As far as the Substantial Questions of Law (a). Whether the judgment and decree of the First Appellate Court is legally sustainable in as much as the description of property in the plaint is given as D and D1 but in the plan annexed to plaint described as D and D4 and the description of property was not given properly in plaint schedule as contemplated under Order 7 Rule 3 of C.P.C. and as such the suit itself is hit under Order 7 Rule 3 of C.P.C? is concerned, the plaintiff has described the property in the plaint



and according to the trial court, it is not in consonance with the provisions of Order 7 Rule 3 of C.P.C., As per Order 7 Rule 3 of CPC, suit property has to be identified either by the boundaries or by the survey numbers, in the present case, it is the path way and the plaintiff has mentioned survey numbers with sub division numbers and also filed the plaint plan, in the rough sketch it is clearly stated as ABC pathway. The defendants also though disputed existence of the pathway, D.W.1 through the evidence admitted existence of pathway and the Court can identify the property through the description of property mentioned in the plaint. The commissioner report also revealed the existence of pathway. In the plaint description, the property has been mentioned as “மேற்படி நில ளுக்கு மேற்கேயுள்ள தென்வடல் ப சாயத்து ரோடுலிருந்து ஒன்றாம் பிரதிவாதியின் டி டி1 நில களில் தென்புறத்தில் ஏபிசி ஒழு கில் 12 அடி அகலத்தில் கிழமேலாக செல்லும் பாதையில் therefore, the pathway has been mentioned as ABC starting from north-south panchayat road and running towards lands of the 1st defendant mentioned in the plan as southern side of D and D1.

18.1. In the plan, as per the plaint, 262/5D has been mentioned as D and D1 has been mentioned as northern side of 262/5C. The description of property is only to identify the property and from the plaint plan, we can easily identify the A to C properties and even as per description of property mentioned in the plaint, the said ABC pathway is situated on the southern side of D and D1. As per the plaint, it starts from D4 and ends with D3, therefore, it



is a minor discrepancy and it does not affect the identification of the property, therefore, description of the property is in consonance with Order 7 Rule 3 of CPC. The trial court has wrongly come to the conclusion that the property has not been properly identified, whereas the First Appellate Court has correctly decreed the suit and there is no difficulty in identifying the property particularly, when the defendants has not disputed the identity of the property, therefore, the Judgment passed by the First Appellate Court is legally sustainable in respect of the description of the property.

19. As far as the Substantial Questions of Law b. Whether the oral partition between the plaintiff and defendant is proved on failure to examine of the father of the appellants / 1st defendant and non-production of documents in respect to survey no.262/4 by the appellants and ignoring the fact that the plaintiff has to prove his case and burden of proof is always on the plaintiff to prove his case is concerned, the plaintiff has specifically mentioned the sub division numbers and Ex.A.1, patta has been granted in favour of the plaintiff and his son and the defendant's Exhibits B1 and B2 also revealed that the properties have been sub divided, therefore, it is clear that the properties have already been partitioned between the parties. DW1 also during the cross examination admitted the issuance of separate patta to the plaintiff and he himself filed the FMB sketch for Survey Nos.262 and 265, from those documents, it is clear that the properties have been sub divided, therefore, the plaintiff has proved that the properties are orally divided between them.



Moreover, the competent person to speak about the partition and enjoyment of the property is the 1st defendant, but he was not examined as witness on the side of the defendants, therefore, the defendants failed to prove their contention, whereas, the plaintiff clearly proved the oral partition and as far as the Survey No.262/4 is concerned, according to the plaintiff, the 1st defendant has purchased the property from one Mottaiya Gounder, son of Periya Gounder, but no documents have been filed by the plaintiff. The defendants also not denied the purchase of the above said property. The 2nd defendant had purchased the property in S.Nos.262/4; 264/4, but has not produced any documents and the plaintiff has not denied that the said property belongs to 2nd defendant, therefore, when the plaintiff proved the oral partition between the plaintiff and the 1st defendant and the existence of the pathway, non production of documents in Survey nos.262/4, 262/4, no way affect the case of the plaintiff, thus the substantial question of law is answered.

19.1 Further, the trial Court discussed about four boundaries mentioned in Ex.A.2, whereas on perusal of Ex.A.2, it revealed the four boundaries have been mentioned for the entire survey number and not for the particular Survey No.262/5C, therefore, merely because the four boundaries have not been tallied, it cannot be said that there is no pathway and the property has not been purchased by plaintiff.

In view of the above said discussions, the Second Appeal has no merits and the same deserves to be dismissed. Accordingly, the Second Appeal is



dismissed. Consequently, connected miscellaneous petition is closed. No costs.

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13-02-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

To

1. The Additional Subordinate Judge, Namakkal
2. The District Munsif cum Judicial Magistrate, Paramathi



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P.DHANABAL J.

ssd

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