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SA No. 731 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 731 of 2015

1.R.Ashokan S/o Ranganathan
2.R.Rajamanickam S/o Ranganathan

..Appellant(s)

Vs

1.K.Ammasai S/o Late Kaliappan
2.Settu S/o Late Sadaiyagounder
3.S.Mariappan S/o Late Sadaiyagounder,
4.S.Kumar S/o Late Sadaiyagounder,
5.The Tahsildar
Valappady Valapady Town, Valapady Tk,
Salem Dt.

..Respondent(s)

PRAYER: The Second Appeal has been filed under Section 100 of Code of Civil Procedure as against the judgment and decree dated 08.06.2015 made in A.S. No.4 of 2015 on the file of the Principal Subordinate Court, Salem modifying the judgment and decree passed in O.S. No.840 of 2009 dated 17.07.2014 on the file of the 2nd Additional District Munsif Court, Salem.

For Appellant(s): M/s.M.Devaraj

For Respondent(s): M/s.L.Rajendran [For R1 to R4]

Mr. M. Rajendiran,
Additional Government Pleader [for R5]



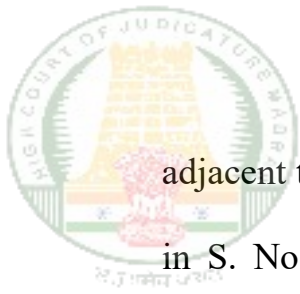
JUDGMENT

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The Second Appeal has been preferred as against the decree and judgment passed by the Subordinate Judge, Salem in A.S. No.4 of 2015 dated 08.06.2015. The appellants herein are the Plaintiffs, who filed the main Suit filed in O.S. No.840 of 2009 on the file of the II Additional District Munsif Court, Salem for the reliefs of declaration and permanent injunction in respect of the Suit property and the trial Court, decreed the Suit. Aggrieved by the said decree and judgment, the defendants have preferred an Appeal Suit in A.S. No.4 of 2015 on the file of the Principal Subordinate Judge, Salem. The First Appellate Court partly allowed the appeal and modified the decree in respect of declaration and dismissed the Suit for permanent injunction. Aggrieved by the said decree and judgment, the Plaintiffs have preferred this second appeal.

2. The brief averments of the Plaint are as follows:-

The Plaintiffs are brothers and sons of one Ranganathan and Arayee. The 1st defendant and one Sadaya Gounder are son and brother of one Kaliappan. The defendants 2 to 4 are sons of the said Sadaya Gounder. The 1st defendant is the paternal uncle of the defendants 2 to 4. Originally the Suit property is a cart track situated in S. No.181/5B of Muthampatti Village running east west from the said Arayee's lands in S. No.181/2B to the said Ranganathan's lands in S. No.185/4, 185/6 and 185/7. The said Arayee's land in S. No.181/2B is situated



adjacent to the Panchayath Road in S. No.184, but the said Ranganathan's lands in S. No.185/4, 186/6 and 185/7 have no access with the Panchayath Road.

Therefore, the said Ranganathan purchased the Suit property from one Kaliappan, the father of the 1st defendant for a valuable consideration through the Sale Deed dated 29.10.1984. At the time of sale of the property, the said Kaliappan reserved his right of cart track in the Suit property. Therefore, the said Ranganathan was in absolute possession and enjoyment of the Suit property and separate patta was granted in favour of the said Ranganathan. The said Ranganathan and Aarayi had settled all their properties including the Suit property in favour of the Plaintiffs through two registered Sale Deeds dated 11.12.2008 and the possession was also delivered on the same day. The Plaintiffs and their parents have been in possession and enjoyment of the Suit property continuously. The Suit property is the only pathway to reach the Plaintiffs' land from the Panchayat Road. The said Kaliappan died and the defendants 1 to 4, being the legal heirs of the said Kaliappan, have no right, title or interest over the Suit property, except the right to use cart track. Now the defendants are trying to interfere with the Plaintiffs' possession and enjoyment of the property. Therefore, the Plaintiffs filed the Suit.

3. *The brief averments of written statement and additional written statement filed by the 1st defendant, adopted by the 2 to 4 defendants, are as follows:-*



The allegations levelled in the Plaint are denied as false, except those, that are specially admitted herein. The allegation in respect of the cart track in S. No.181/5 is true and it leads to Ranganathan's land in Survey No.185/4, 185/6 and 185/7. But the said Aarayee had only one cent of land in Survey No.181/5 on the southern end of it. The Road was laid in Survey No.181/5 on the southern extremity measuring nine feet in width and 375 feet in length. Originally this Road was not in existence and only the right of foot path was in existence, as Plaintiffs' parents could not take cattle and cart on the eastern side to their lands, a nine foot cart track was agreed to be laid in Survey No.181/5. Later, without concurrence of these defendants, the Plaintiffs' father approached the Revenue department for subdivision of the cart track which was made in excess of a nine feet in width and the same was objected by these defendants. The Plaintiffs, very often started obstructing these defendants from passing through the Road to his lands in Survey No.181/5. The patta granted in favour of Ranganathan in respect of Survey No.181/5B, which is the cart track portion itself is not correct. The Plaintiff, at the instance of Ranganathan, are trying to snatch the property of these defendants and the defendants have no objection for decree being passed upholding the right of these defendants over the nine feet cart track. Therefore, the Suit is liable to be dismissed.

4. The **5th defendant filed his written statement** stating that he does not admit any of the allegations raised in the Plaint except those that are specifically



admitted herein and the Plaintiff is put to strict proof of all the allegations made therein. As per the revenue records, the Suit property has been sub-divided as

S. No.181/5B and patta issued in the name of the Plaintiffs' father Ranganathan.

The allegation, that under the influence of this 5th defendant, the other defendants are trying to change the patta of the Suit property in their favour without intimating the same to the Plaintiffs, is not correct. The 5th defendant is neither a necessary nor proper party to the Suit and the Suit is liable to be dismissed.

5. Based on the above said pleadings and after hearing both sides, the trial Court has framed the following *issues*:

Issues:

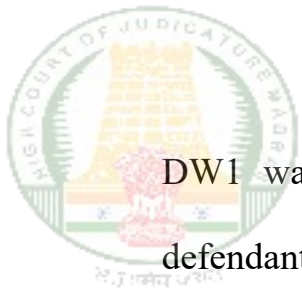
a. Whether the Plaintiffs are entitled to the relief of declaration as prayed for.

b. Whether the Plaintiffs are entitled to the relief of consequential permanent injunction as prayed for.

c. Whether the Plaintiffs are entitled to the relief of permanent injunction against the 5th defendant as prayed for.

d. To what other relief is entitled by the Plaintiffs?

6. Before the trial Court, on the side of the Plaintiff, PW1 and PW2 were examined and Ex.A.1 to Ex.A.8 were marked. On the side of the defendants,

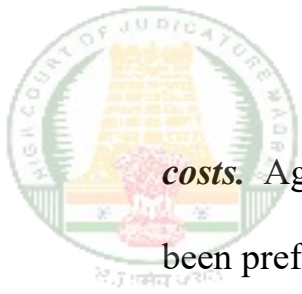


DW1 was examined and Ex.B.1 to Ex.B.13 were marked on the side of defendants. ***The trial Court***, after evaluating the oral and documentary evidences adduced on both sides, ***decreed the Suit***. Aggrieved by the said decree and judgment, the defendants have preferred an appeal Suit in A.S. No.4 of 2015 on the file of the Principal Subordinate Judge, Salem.

7. The First Appellate Court framed the following ***points for determination***:

- (i) ***Whether the finding of the trial Court that the Plaintiff is having access of 9 feet breadth of Suit property which amounts to 9 cents is correct.***
- (ii) ***Whether the finding of the trial Court that the Plaintiff is in the possession and enjoyment of the 9 cents of Suit pathway is correct.***
- (iii) ***Whether the finding of the trial Court that the patta issued by the 5th defendant in an extent of 9 cents in S. No.181/5B is correct.***
- (iv) ***Whether the decree and judgment of the trial Court is correct.***

8. After hearing both sides and perusing the records including the judgment and decree passed by the trial Court, ***the First Appellate Court partly allowed the appeal by declaring common right of pathway over the Suit pathway measuring 9 feet north south, 375 feet east west in S. No.181/5 in an extent of 7 ¾ cents and dismissing the relief of permanent injunction without***



costs. Aggrieved by the said decree and judgment, the present second appeal has been preferred.

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9. At the time of admitting the second appeal, this Court has formulated the following *substantial questions of law*:

1. Whether the appellate Court is right in passing a decree which was not sought for either of the parties to the Suit.

2. Whether the Appellate Court is right in holding that Ex.A.3 patta is not valid in the absence of any independent challenged or cross Suit by the defendant.

3. Whether the Appellate Court has properly appreciated the material evidence on record while modifying the decree passed by the trial Court.

10. For the sake of convenience and brevity, 'the parties' hereinafter will be referred to as per their status / ranking in the Trial Court.

11. The learned counsel appearing for the appellants would submit that the Suit property originally belonged to one Kaliappan, who is the father of the 1st defendant and grand father of the 2 to 4 defendants. The said Kaliappan sold the property to he Plaintiff's father Mr. Ranganathan through a Sale Deed dated 29.10.1984. The father of the Plaintiff had lands in S. Nos.185/4, 185/6 and 185/7 and there is no pathway to reach the said lands from the Panchayat Road, thereby in order to have access to the said properties from the Panchayat Road,



Ranganathan purchased the Suit property from Kaliappan. At the time of sale of the property, Kaliappan reserved his right of cart track in the Suit property.

Therefore, the Plaintiffs are entitled to the Suit property and the defendants have only right of pathway over the property and they cannot claim title over the property. Since the defendants interfered with the Plaintiffs' possession and enjoyment of the property and claiming right over the property, the Plaintiffs have filed the Suit for declaration and permanent injunction. Before the trial Court, in order to prove the case of the Plaintiff, they examined PW1 and PW2 and Ex.A.1 to Ex.A.8 were marked. On the side of the defendants, DW1 was examined and Ex.B.1 to Ex.B.13 were marked on the side of defendants. The Plaintiffs have categorically pleaded and had given evidence and proved their case through sufficient documents. Thereby, the trial Court has correctly decreed the Suit and the defendants are only having pathway rights and they have no any right over the land property. The First Appellate Court only modified the decree in respect of declaration that the Plaintiffs are only entitled to declaration with nine feet in width and 375 feet in length from the Panchayat Road. The property was purchased only for reaching the land from the Panchayat Road to the land of the father of the Plaintiffs Ranganathan and therefore, the Plaintiffs are entitled to 9 feet width from the Road till reaching the Plaintiffs' land irrespective of the length of the property. The defendants have also no objection to pass decree holding right over the 9 feet cart track. That being so, the First Appellate court set aside the decree in respect of



declaration and only granted decree in respect of land measuring 9 feet north south and 375 feet east west and also set aside the decree in respect of permanent injunction. Since the Plaintiffs' predecessor purchased the property and the seller has also retained his pathway right, the defendants have no objection for the enjoyment of the pathway rights. However, the First Appellate Court failed to consider the real dispute and erroneously modified the decree and judgment passed by the trial Court in respect of declaration and dismissed the Suit for permanent injunction. Therefore, the second appeal is liable to be allowed.

12. The learned counsel appearing for the respondents would submit that the respondents are the defendants in the Suit. The Plaintiffs' father purchased the property from the father of the 1st defendant and grand father of the 2 to 4 defendants to an extent of 9 feet width and 375 feet length. Therefore, they are entitled to that extent of property only. But the trial Court without considering the same, granted decree for the entire property. Whereas the First Appellate court, based on the documents and evidences adduced by both the parties, correctly modified the decree in respect of declaration and correctly dismissed in respect of permanent injunction. Therefore, the decree and judgments passed by the First Appellate Court are in accordance with law and the second appeal is liable to be dismissed and no substantial question of law involved in this case.



13. This Court heard both sides and perused the entire materials available on record.

14. In this case, there is no dispute that the Suit property is a pathway and the father of the Plaintiffs purchased the property from the father of the 1st defendant, who is the grand father of the defendants 2 to 4, through a Sale deed dated 29.10.1984 to reach the properties situated in S. No.185/4, 185/6 and 185/7 from the Panchayat Road. At the time of sale of the property, the vendor Kaliappan reserved his right in respect of cart track in the Suit property. Therefore, he is entitled to enjoy the cart track facilities. Now, the Plaintiffs filed the Suit alleging that the defendants are claiming right over the property and causing disturbance to use the cart track. The defendants have no objection to decree the Suit by declaring their right to use all the pathway.

15. Before the trial Court, on the side of the Plaintiffs, PW1 and PW2 were examined and Ex.A.1 to Ex.A.8 were marked. On the side of the defendants, DW1 was examined and Ex.B.1 to Ex.B.13 were marked on the side of defendants. The trial Court, after analysing the evidences adduced on both sides, came to a conclusion that the *defendants' father sold the property to the father of the Plaintiffs and the property was purchased to reach the lands belong to the father of the Plaintiffs situated in S.Nos.185/4, 185/6 and 185/7. Therefore, the Plaintiffs are entitled to decree for declaration that they are the*



owners of the lands and the defendants are entitled to pathway rights and right of cart track over the Suit property and the defendants are restrained from preventing the Plaintiffs' peaceful possession and enjoyment of the Suit property except to use the Suit property for the purpose of pathway and cart track and the 5th defendant was restrained from changing the Plaintiffs' predecessor's name in the Patta of the Suit property without sending notice to the Plaintiffs and conducting enquiry. The trial Court, came to a conclusion that the property was purchased by the Plaintiffs' father, while the defendants' father retained his pathway rights and therefore, decreed the Suit.

16. Aggrieved by the order of the trial Court, the defendants have preferred an appeal and the First Appellate Court, after elaborate discussions, came to a conclusion that *the Plaintiffs' father purchased the property to an extent of 9 feet x 375 feet and therefore, they are only entitled to declaration to that extent. But the revenue authorities, without considering the common right of pathway of the defendants, issued a separate patta exclusively in respect of the pathway in S.F. No.181/5 is not valid* and liberty was given to the defendants to approach the 5th defendant to cancel the patta and dismissed the Suit in respect of permanent injunction as against the 5th defendant. The appeal is silent in respect of permanent injunction as against the defendants 1 to 4. The First Appellate Court failed to consider that the property was purchased for reaching the Suit land of the Plaintiffs situated in S. No.185/4, 185/6 and 185/7



from the Panchayat Road. The defendants also agreed the same and they have not disputed the purpose of purchase of the property. Therefore, the First Appellate Court ought not to have modified the decree for 9 feet x 375 feet. Once the property purchased for reaching the Plaintiffs' land from the main road by mentioning 9 feet width, irrespective of the length of the property, the Plaintiffs are entitled to declaration over the property of 9 feet width from the road till reaching the Plaintiffs land. Therefore, the Plaintiffs are entitled to decree for declaration, since the defendants made attempts to interfere with the Plaintiffs' possession and enjoyment thereby they are also entitled for permanent injunction. Similarly, the defendants also have right to enjoy the property and according to the defendants, the Plaintiffs obtained patta for the excess land. Since the Suit property is purchased for pathway to reach the land of the Plaintiffs from the Panchayat Road to their land, whatever the property available from the Road till reaching the Plaintiffs land with the width of 9 feet, the Plaintiffs are entitled for separate patta in their favour. Therefore, the parties are at liberty to approach the 5th defendant in respect of patta over the above said extent of 9 feet width from the road point to the Plaintiffs land.

17. As far as the *substantial question of law (a) Whether the appellate Court is right in passing a decree which was not sought for either of the parties to the Suit is concerned*, the Plaintiff sought for the relief of declaration in respect of the pathway purchased by their father, from the road



till reaching the Plaintiffs' land. However, as per sale deed the Plaintiffs' predecessor had purchased the property for 9 feet x 375 feet. As per Patta No.712, acre 0.09 land is under enjoyment, therefore, the trial Court decreed the Suit for the entire property. The First Appellate Court based on the Sale Deed modified the decree and granted declaration in respect of the 9 feet north south and 375 feet east west approximately 7 $\frac{3}{4}$ cents. Since the property was purchased to reach the land as cart track, the Plaintiffs are entitled to pathway 9 feet width from the Road till reaching of their land, irrespective of the length of the running feet. The defendants have also no objection to decree the suit by restraining their right of pathway While so, the First Appellate Court ought not to have modified the decree only for 9 feet of width x 375 feet of length. The Plaintiffs are entitled to 9 feet width road from the Plaintiffs' land till reaching of the road. Thus, the ***substantial question (a) is answered.***

18. As far as the ***substantial question of law (b) Whether the Appellate Court is right in holding that Ex.A.3 patta is not valid in the absence of any independent challenged or cross Suit by the defendant*** is concerned, the Plaintiffs already applied for patta in Patta No.712 in an extent of 9 cents and no any relief sought for by the defendants by way of counter claim and the Plaintiffs also not sought for any relief in respect of the patta. Without any pleadings or counter claim the First Appellate Court has declared that the patta is not valid. The said observation is not in accordance with law. However, this



Court already held that the Plaintiffs are entitled to declaration in respect of 9 feet from the road till reaching the land of the Plaintiffs. Therefore, for that extent, the Plaintiffs are entitled for patta and the parties are at liberty to approach the concerned authorities to have patta to that extent. Thus, ***substantial question (b) is answered.***

19. As far as the substantial question (c) Whether the Appellate Court has properly appreciated the material evidence on record while modifying the decree passed by the trial Court is concerned, already the trial Court, based on the evidences and documents, granted decree in respect of the declaration and also declared rights and the defendants have entitlement of pathway rights and also granted permanent injunction as against the defendants from interfering with the possession and enjoyment of the Plaintiffs over the pathway and also granted permanent injunction as against the 5th defendant not to change patta without causing notice to the Plaintiffs and without conducting enquiry. As far as permanent injunction as against the 5th defendant is concerned, that relief is not required. Because it is the duty of the 5th defendant to conduct enquiry before making alterations in patta. Even if any party approach the 5th defendant, it is his duty to cause notice to the other side and to conduct enquiry and thereby without conducting any enquiry, the 5th defendant cannot pass any order. Therefore, permanent injunction as against the 5th defendant is an unnecessary one. Further the First Appellate Court, based on the recitals of



Ex.A.1, modified the order without any practical approach and also failed to discuss about the permanent injunction as against the defendants in respect of using pathway in respect of the enjoyment of Plaintiffs' rights. Further, without any relief sought for by the parties, held that patta is not valid. Therefore, the First Appellate Court has not appreciated the material evidences in a proper perspective manner while modifying the decree and judgment of the trial Court. Thus, the ***substantial question (c) is answered.***

20. In view of the above said discussions and answers to the substantial questions of law, this Court is of the opinion that the second appeal is to be partly allowed in respect of declaration and the appeal is dismissed in respect of the relief permanent injunction against the fifth defendant.

21. Accordingly, the Second Appeal is partly allowed and the decree and judgment passed by the appellate Court in AS No.4 of 2015 are set aside and the judgment and decree passed by the trial Court are restored. Except to decree for permanent injunction as against the fifth defendant.. There shall be no order as to costs.

10-02-2026

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

MJS



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To

The Tahsildar
Valappady Valapady Town, Valapady Tk, Salem Dt.

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P.DHANABAL, J.

MJS

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