



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-02-2026

CORAM

THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

SA No. 307 of 2013

and

M.P.No.1 of 2013

1. Raja Gounder
S/o Chinnamuthu Gounder,
Poochamarathukadu, Veppampatti,
Vadugapatti Post, Sankari Tk
2. Velayee
W/o Chinnamuthu Gounder,
Poochamarathukadu, Veppampatti, Vadugapatti
Post, Sankari Tk
3. Rajammal
W/o Seeranga Gounder, Periya Koottapalayam,
Tiruchengode Tk, Namakkal Dt.
4. Sellammal
S/o M.Subramani, Thuthipalayam Post,
Tiruchengode Tk, Namakkal Dt.

..Appellant(s)

Vs

1. Sellappan
S/o Ramasamy, Koottapallikadu, Veppampatti,
Vadugapatti Post, Sankari Tk
2. GURUSAMY(died)
S/o Kandasamy Gounder, Kattapallikadu,
Veppampatti, Vadugapatti Post, Sankari Tk,
Salem Dt.
3. Lakshmanan
S/o Sengottuvel, Kakkankadu, Veppampatti,
Vadugapatti Post, Sankari Tk, Salem Dt.



4. Sallammal
W/o Lakshmanan, Veppampatti, Vadugapatti
Post, Sankari Tk
5. Mani
S/o Natesan, Sathya Maligai,
Thangamapuripatnam, 36/15, Main Rd, Mettur
R.S.,
Salem Dt.
6. Pappayee
W/o Natesan, Kallankdu, Vadupgapatti,
Sankari Tk, Salem Dt.
7. Sarasu
W/o Manickam, Thandakkarankadu, Irugalur,
Pudupalayam, Thuthipalayam Post, Sankari
Tk, Salem Dt.
8. Pappathi
W/o. Late Gurusamy
9. Senthil
S/O. Late Gurusamy
10. Selvi
W/O Palanisamy

[R2 died, R8 to R10 are brought on record as lrs
of the deceased R2 vide court order dated
12/01/2024 made in CMP Nos. 5660, 5661 of
2018 in SA No. 307 of 2013]

..Respondent(s)

PRAYER: This Second Appeal is filed under Section 100 C.P.C., as against the judgment and decree dated 20.07.2012 made in A.S.No.27 of 2010 on the file of the learned Subordinate Judge of Sankari, confirming the judgment and decree dated 14.07.2009 made in O.S.No.89 of 1998 on the file of the learned District Munsif of Sankari.



PRAYER in MP: To grant an order of interim injunction restraining the respondents, their men, and agents from in any way interfering with out peaceful possession and enjoyment of the scheduled mentioned properties which is the subject matter in O.S.No.89 of 1998 on the file of the District Munsif, Sankari, pending disposal of this Second Appeal.

For Appellant(s):	Mr.N.Manokaran
For For R3 To R7 And R8 and R10	M/s.M.S.Palanisamy
For R1	No appearance
For R9	DIED (steps Due)

JUDGMENT

Heard.

2. This Second Appeal is against the judgment dated 20.07.2012 in A.S. No.27 of 2010 of the Subordinate Judge, Sankari, which confirmed the judgment dated 14.07.2009 in O.S. No.89 of 1998 of the District Munsif, Sankari.



3. For convenience, the parties are referred to as they were arrayed before the trial court.

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4. The plaintiffs filed the suit claiming a cart-track/right of way over the defendants' lands to reach their agricultural lands in S.Nos.30/7, 10A, 10B, 16A and 16 B. They stated that the suit pathway runs through the defendants' lands in S.Nos.30/5 and 30/18 from the Karumapuram–Veppampatty road to their lands, and that it is their only access. They pleaded that the pathway was originally 4 feet wide and was later widened to about 8 feet when it enters S.No.30/15. They alleged that the defendants obstructed and partly erased the pathway and also interfered with their attempt to lay an underground pipeline under it from their well (cause of action on 02.04.1998). They also complained that, during the suit, coconut saplings were planted on the pathway. They therefore sought (i) a mandatory injunction to restore the pathway to the pleaded width and remove the saplings, and (ii) a permanent injunction to protect their use of the pathway and prevent interference with the pipeline.

5. The defendants denied the plaintiffs' right and even denied that the suit pathway exists. They contended that the prayer for mandatory injunction



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was vague, barred by limitation, and did not give proper details of the alleged obstruction. They claimed that S.No.30/10A is part of an “Itteri” used as a common pathway by both sides and others. They also contended that the pipeline relief was not maintainable without seeking a declaration and sought dismissal of the suit with costs.

6. The trial court considered the oral and documentary evidence and the Advocate Commissioner’s report and plan. It held that the plaintiffs proved an easementary right over the suit pathway (by prescription and also by necessity). It rejected the argument that a separate declaratory relief was required. However, based on the Commissioner’s measurements and the condition of the pathway on ground, the trial court found that the proved width was only 3 feet (and not the wider width pleaded). It therefore partly decreed the suit by directing restoration of the pathway to 3 feet from A to E as shown in the Commissioner’s plan, and granted related reliefs, including permission to lay the underground pipeline beneath the pathway and removal of coconut saplings.

7. Aggrieved by the judgment, the plaintiffs preferred appeal. The first appellate court re-examined the evidence, agreed with the trial court that



the right of way was only to the extent of 3 feet, and dismissed the appeal, confirming the decree.

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8. In this Second Appeal, the plaintiffs challenge these concurrent findings.

They argue that limiting the cart-track to 3 feet is wrong because they need to take heavy vehicles to their lands and there is no other access.

They rely on Section 28 of the Indian Easements Act, 1882, to claim a wider pathway for reasonable and convenient enjoyment. They also contend that the courts below did not properly consider the evidence supporting their case. Learned counsel relied on Ex.A2, contending that it shows a cart-track of about 9 feet. He argued that the Commissioner measured only 3 feet because the pathway has narrowed over time. On that basis, the appellants claim the larger width.

9. The courts below mainly relied on the Advocate Commissioner's report and plan. The report showed that the pathway existed on ground, measured about 3 feet wide in most places and about 2 feet in one portion, and also showed signs of obstruction such as ploughing, pits, and plantations. Since there were no objections to the report, the courts accepted the existence of the right of way but limited its width to what



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was actually proved by measurement, and ordered restoration to 3 feet.

The first appellate court confirmed this. As regards Ex.A2, the courts noted that the plaint itself spoke of a width of 4 feet originally and about 8 feet later, with a restoration prayer for 4 feet (A–B) and 8 feet (D–E). In that setting, a claim in Second Appeal for 9 feet—unless it formed part of the pleadings and the issues tried—cannot be raised as a pure question of law. Further, Ex.A2 was only an arrangement among some defendants and did not amount to a grant in favour of the plaintiffs fixing any larger legal width. The claims about earlier wider width, later narrowing, and the need for heavy vehicles are factual issues already decided on evidence and does not require interference in Second Appeal.

10.The reliance on Section 28 of the Indian Easements Act, 1882, is misplaced insofar as it is used to justify widening the pathway. An easement of necessity is different from an easement claimed for convenient enjoyment. Necessity arises only when, without the right, the dominant land cannot be used at all; it must be strict, not based on convenience. A preference to use heavy vehicles or to improve access does not enlarge the right. Section 28 states that the extent of an easement depends on the terms of the grant or the circumstances of acquisition; for an easement of necessity, it is confined to what is strictly indispensable



and no more. It cannot be expanded for convenience, commercial advantage, or improved modes of use.

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11. Here, both courts, on the Commissioner's report and other evidence, have found that the pathway proved on ground is only about 3 feet wide. The request for a wider path to take heavy vehicles is a claim for better convenience, not a claim of strict legal necessity. Section 28 does not authorise this Court, in Second Appeal, to enlarge the easement beyond what the evidence establishes.

12. In view of the above, no substantial question of law arises under Section 100 CPC. The Second Appeal is dismissed at the admission stage. No order as to costs. Connected miscellaneous petition, if any, is closed.

25-02-2026

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

MFA



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SA No. 307 of 2



To

1. Subordinate Judge of Sankari
2. District Munsif of Sankari



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SA No. 307 of 2



DR.A.D.MARIA CLETE, J

MFA

**SA No. 307 of 2013
and
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