



WEB COPY

SA No. 288 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21-04-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 288 of 2026 and
CMP No.9919 of 2026**

J.Loganathan, S/o. Jayaraman
No. 71 (Old No. 40)
Panchali Amman Koil Street
Arumbakkam, Chennai 106

..Appellant(s)

Vs

1. Parimala, W/o. Late. Mani
2. Satheesh, S/o. Late. Mani
3. Saravanan, S/o. Late. Mani
Respondents are residing in No. 2/8A,
Mu.Va, Street (M.Varadarajan Street)
Arumbakkam, Chennai 106.

..Respondent(s)

Prayer: Second appeal is filed under section 100 of CPC to set aside the Judgement and Decree dated 15.10.2025 made in A.S. No. 166/2023 on the file of XX Additional Judge, City Civil Court, Chennai reversing the Judgement and Decree dated 02.01.2018 made in OS No. 6316/2013 on the file of XIV Assistant Judge, City Civil Court, Chennai.

For Appellant(s): Mr. V.K.Rajagopal



JUDGMENT

The plaintiff in a suit in O.S.No.6316 of 2013 is the appellant herein.

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2. The appellant/plaintiff filed the above said suit seeking declaration that he acquired easementary right in respect of air and light through two ventilators fixed in the ground and first floor wall on the eastern side of his building and also for mandatory injunction directing the defendants to remove the wall constructed by them obstructing free flow of air and light to the plaintiff's property. The said suit was decreed by the trial court. However, on the appeal filed by the defendants 1 and 3, the first appellate court reversed the findings of the trial court and dismissed the suit. Aggrieved by the findings of the first appellate court, the plaintiff has filed the present second appeal.

3. According to the appellant/plaintiff, he is the owner of the house and ground situated in door No.71 , Old No.40, Panchali Ammal Koil Street, Arumbakkam, Chennai-106. The defendants property is situated on the eastern side of the plaintiff's property with a door No.2/8A, Mu.Va.Street, Arumbakkam, Chennai-104. It is the case of the plaintiff that the land of the defendants' property belonged to Thiruvadurai Aadeenam and the building thereon was constructed by the defendants. The plaintiff also pleaded that on the eastern side main wall of his building, there is a ventilator in the ground

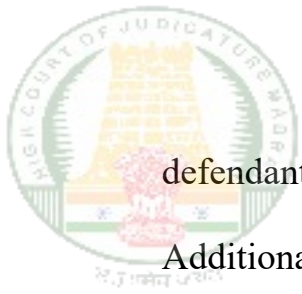


floor as well as first floor to facilitate air and light enter the property of the plaintiff. The plaintiff further pleaded that the defendants had put up a new construction, obstructing free flow of air and light to the property of the plaintiff. Therefore, he was constrained to file the suit.

4. The defendants filed a written statement claiming that they are only lessees under the Thiruvadurai Aadeenam, who is the absolute owner of the property. They also denied that they had put up a new building, obstructing the right of plaintiff in enjoying the free flow of air and light. The defendants specifically pleaded that the plaintiff could not claim easementary right of air and light against the defendants, as they did not put up the any construction. Further, the defendants sought dismissal of the suit for non joinder of Thiruvadurai Aadeenam, the owner of the property as party defendant in the suit.

5. before the trial court, on the side of the plaintiff, he examined himself as PW1 and 8 documents were marked as Ex.A1 to Ex.A8. Though the defendants filed written statement, subsequently, they remained exparte.

6. The Trial Court on appreciation of oral and documentary evidence let in by the plaintiff, came to the conclusion that he was entitled to the relief as prayed and decreed the suit. Aggrieved by the findings of the trial court, the



defendants 1 and 2 filed an an appeal in A.S.No.166 of 2023 on the file of XX Additional Judge, City Civil Court, Chennai and the first appellate court reversed the findings of the trial court and dismissed the suit. Challenging the findings of the first appellate court, the plaintiff has filed the present suit.

7. The learned counsel for the appellant/plaintiff would submit that the above said Thiruvadurai Aadeenam was owner of the ground alone and the defendants only constructed the building on the eastern side of the plaintiff's property, obstructing free flow of air and light and therefore, the suit filed by the plaintiff as against the defendants is very much maintainable. The learned counsel further submitted that the first appellate court committed an error in dismissing the suit on the ground of non joinder of above mentioned Aadeenam as party to the suit.

8. It is seen from the pleadings of the plaintiff that he sought for declaration regarding his easementary right of air and light through the ventilators fixed in the ground floor as well as first floor eastern side main wall of the building, since the defendant had put up a new construction on the western side of their property, obstructing the ventilators of the plaintiff. Admittedly, the site of the defendants' building belonged to Thiruvadurai Aadeenam. It is the case of the plaintiff that the building on the eastern side of his property was put up by the defendants. However, the defendants in their



written statement pleaded that Thiruvadurai Aadeenam was the owner of the premises in door No.2/8A, Mu,Va.Street, Arumbakkam. Since the plaintiff sought a declaration of an easementary right of air and light, the owner of the eastern side property, namely Thiruvadurai Aadeenam should have been made as a party/ defendant in the suit. In the absence of impleading the owner of servient heritage as a defendant, the plaintiff, the owner of dominant heritage, is not entitled to declaration of his alleged easementary right of air and light as prayed for the suit. The declaration of easementary right cannot be granted without hearing the owner of servient heritage. Hence, the suit is bad for non-joinder of necessary party. The first appellate court rightly appreciated the said position and dismissed the suit and I do not find any error in the findings of the first appellate court.

9. Accordingly, the second appeal stands dismissed. There shall be no order as to costs. Connected miscellaneous petition is closed. However, the dismissal of the second appeal will not come in the way of the appellant/ plaintiff in filing a fresh suit by impleading the owner of the property situate on the eastern side of his building.

21-04-2026

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

MST



To

1. The XX Additional Judge,
City Civil Court, Chennai.
2. XIV Assistant Judge,
City Civil Court, Chennai.



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S.SOUNTHAR, J.

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