



S.A. No. 681 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	03.11.2025
Pronounced on	02.02.2026

CORAM

**THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN
THILAKAVADI**

S.A.No.681 of 2023 and
C.M.P. No.20795 of 2025

V. Selvakumar

...Appellant

Vs.

1. S. Ravikumar
2. R. Praveen
3. R. Vishnu
4. The Commissioner,
Erode Corporation, Erode

...Respondents in S.A.681/2023

5. The Deputy Director,
Town and Country Planning Department,
Erode.

...proposed respondents in
C.M.P. No.20795/2025

Prayer in S.A. No.681 of 2023: Second Appeal filed under Section 100 CPC, 1908 to set aside the decree and judgment dated 10.02.2023 passed in A.S. No.28 of 2022, on the file of the I Additional Sub Judge, Erode, confirming the Judgment and decree dated 05.04.2022 passed in O.S. No.466 of 2019, on the file of the I Additional District Munsif Court, Erode.

Prayer in C.M.P. No.20795 of 2025: Civil Miscellaneous Petition is filed under Order 1 Rule 10(2) r/w Section 151 of CPC praying to implead the



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respondents 4 & 5 herein as proposed respondents 4 & 5 in the above
S.A.No.681 of 2023.

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For Appellant : Mr.C. Prabakaran

For Respondents: Mr. V.V. Sathya for R1 to R3.

Mr. M. Rajamathivanan

Standing Counsel for R4 in CMP No.20795 of 2025

Mr. V. Ramesh, Government Advocate for R5
in CMP No.20795 of 2025

JUDGMENT

The present Second Appeal is preferred against the judgment and decree dated 10.02.2023 in A.S. No.28 of 2022 on the file of I Additional Sub Court, Erode, confirming the judgment and decree dated 05.04.2022 passed in O.S. No.466 of 2019 on the file of the I Additional District Munsif Court, Erode.

2. The appellant as plaintiff filed the above suit in O.S. No.466 of 2019 for bare injunction restraining the defendants from interfering with the construction activities done by him in the suit property.



3. The same was resisted by the defendants questioning the validity of the plaintiff's sale deed.

4. The actual dispute between the parties is only with regard to the road lying to the south of the plaintiff's property. According to the plaintiff, he purchased the suit property vide sale deed dated 10.01.2012. The 1st defendant is the father of the defendants 2 and 3 respectively. The 1st defendant owns a portion of property in S.F. No.1364/4 at Erode Village and settled the same in favour of defendants 2 and 3. While so, the plaintiff proposed to construct a house in the suit property and when his father started to clear the bushes in the 1st week of August 2019, it was obstructed by the 1st defendant by stating that the suit property cannot be enjoyed as described in the sale deed and held that the east-west road shown as 23 feet in the sale deed ought to have been recited as 30 feet east-west road and thus the plaintiff ought to leave 7 feet frontage and utilize the balance portion for construction of the house. The contention of the plaintiff is that, as per the sale deed in his favour, the suit property is situate to the south of 23 feet wide east-west layout road and his vendor also conveyed 23 feet wide road to the Government of Tamil Nadu vide registered Gift deed dated 09.01.2012. The judgment and the decree obtained by the 1st defendant in respect of the said property will not bind



the plaintiff as he was not made a party in the above suit. Hence, the plaintiff was constrained to file the above suit.

5. On the other hand, the defendants would contend that the total extent of land in S.No.1364/4 is measuring 1 acre and 25 cents and out of the said land, the 1st defendant has retained 25 cents of land and sold remaining 69 cents by dividing into plots as early as 1990. At that time, the 1st defendant left 30 cents of land for the purpose of laying 30 feet width road running north to south and had executed several sale deeds to the purchasers. The Settlement deed dated 09.01.2012 relied by the plaintiff executed by one Mohanasundaram is no way connected to the suit property and it is not binding on the defendants. In the schedule of the sale deed dated 10.01.2012 in favour of the plaintiff, it has been shown as 23 feet width road, which was not supported by any parent document to substantiate plaintiff's claim. Furthermore, the 1st defendant filed a suit in O.S. No.551/2014 on the file of the District Munsif Court, Erode, for injunction restraining the defendants therein from encroaching or interfering upon the 30 feet road. The suit was decreed in favour of the 1st defendant. Therefore, the existence of 30 feet road was confirmed in the above suit. The plaintiff is *pendente lite* purchaser while the suit in O.S. No.551/2014 was pending and therefore, the decree and judgment passed



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in the above suit binds the plaintiff and he is estopped from denying the existence of 30 feet road.

6. The trial court and the first appellate court dismissed the suit filed by the plaintiff. Aggrieved by this, the present Second Appeal is preferred by the plaintiff.

7. The Second Appeal is admitted on the following substantial questions of law:

“(a) Whether the courts below are correct in holding that the sale deed under Ex.A2 derives right and title to the plaintiff only to an extent of 465 ft x 30 ft of common road and not 465 ft x 23 ft of common road on contrary to the registered document under Ex.A2?

(b) Whether the judgment in O.S. No.551 of 2014 is binding on the plaintiff who is not a party to the said suit, which is also an ex parte decree, wherein the issue was not extensively decided therein?

(c) Whether the defendant can disturb the possession and enjoyment of the plaintiff property claiming as a common



road, despite the regularization order and approval of the plan granted by the Erode Corporation by measuring a road as 465 ft x 23 ft?”

8. The learned counsel for the appellant / plaintiff would submit that the plaintiff has purchased the suit property for valuable consideration from a lawful owner under Ex.A2, followed by which, settlement deed was executed in favour of Erode Corporation and layout plan was approved for construction of building in the suit property under Ex.C1. The defendants have no right whatsoever over the suit property and the extent of road as per the settlement deed of the plaintiff was approved by the Corporation. Therefore, the defendants have no say in respect of the plaintiff's property especially when sale deed under Ex.A2 holds good. Moreover, the defendants have sold the property inclusive of the road even as per their written statement and there is no right retained by the defendants in respect of the road portion and it is only for the Municipal Corporation to make any objection if at all and not the defendants. Even as per the written statement the subject matter of the suit property and other properties were sold by the 1st defendant by forming an unapproved layout and the purchasers have independently obtained the regularisation for their respective site. In such view of the matter, the road portions have



also been approved to an extent of 23 feet width but not 30 feet width.

Therefore, the plaintiff has proved his case with regard to his title as well as possession and therefore, the courts below ought to have granted the relief of bare injunction in favour of the plaintiff. His further contention is that the judgment and decree in O.S. No.551/2014 filed against the neighbors of the plaintiff is not binding on the plaintiff since he was not made a party in the above suit, and it was only an *ex parte* decree. He would further submit that Sections 41 and 42 of the Evidence Act, are not applicable to the facts and circumstances of the case on hand and the title and right of the parties are not adjudicated extensively in the suit in O.S. No.551/2014. He would further submit that the courts below erred in holding that the sale deed under Ex.A2 derives rights and title to the plaintiff only to an extent of 465 feet x 30 sq. ft of common road, which is contrary to the registered document under Ex.A2. The recitals found in the adjacent sale deed, which was not even marked in the suit, cannot be relied upon to reject the claim of the plaintiff. The courts below erred in holding that the decree and judgment in O.S. No.551/2014 is binding on the plaintiff, who is not made a party to the said suit, which is an *ex parte* decree, wherein the issue was not extensively decided therein. The defendants cannot disturb the possession and enjoyment of the plaintiff's property, claiming as a common road, despite the regularisation order and



approval of the plan granted by the Erode Corporation by measuring the road as 465 feet x 23 feet. Moreover, the 1st defendant, who has sold the property in the year 1991 itself, is not entitled to make any objection in the suit property. Hence prayed for setting aside the judgment and decree passed by the courts below.

9. On the other hand, the learned counsel appearing for the respondents/ defendants would submit that, though in the plaintiff's sale deed dated 10.01.2012, 23 feet wide road is mentioned, the same is not supported by any parent document to support his claim. He would further submit that the judgment and decree in O.S. No.551/2014, injunction was granted in favour of the defendants restraining the defendants therein from interfering upon the 30 feet road. Moreover, in the said suit, the vendor of the plaintiff, namely Poosappan, was arrayed as the 5th defendant. The plaintiff herein being a *pendente lite* purchaser during the pendency of the above suit, the decree and judgment passed in the above suit is binding on the plaintiff and therefore, the plaintiff cannot deny the existence of 30 feet road. He would further contend that in the absence of evidence to show that final approval has been given and the property has been transferred to the local authority, the plaintiff cannot claim any absolute right over the property. His further contention is that when there is



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complicated question of title involved, the same could be examined only in a title suit, for declaration and consequential reliefs, and not in a suit for injunction simpliciter. Hence, he would submit that the courts below rightly rejected the claim made by the plaintiff, which warrants any interference by this Court.

10. Heard on both sides. Records perused.

11. Pending Second Appeal, the plaintiff has filed an application to implead the Commissioner of Corporation and Deputy Director of Town and Country Planning, Erode, as necessary parties. The same was objected by the defendants stating that, the plaintiff having failed to establish the existence of only 23 feet road before the court below, after lapse of 11 years, the present application has been filed with an intent to drag on the proceedings. Moreover, there is no document available on record to show that the layout is approved and therefore, even if the above proposed parties are impleaded, they will not support the case of the plaintiff. Hence, prayed for dismissing the above petition.



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12. As rightly pointed out by the learned counsel for the respondents/defendants, unless the existence of 23 feet road is established by the plaintiff, no purpose would be served by impleading the above proposed parties in the Second Appeal. The plaintiff must establish his case and cannot find loopholes in the defence set up by the defendants. At the outset, the plaintiff is relying upon the sale deed dated 10.01.2012 to state that there is only an extent of 23 feet width road and not 30 feet width road as claimed by the defendants.

13. The main dispute in the above suit is only with regard to the road lying to the south of the plaintiff's property. According to the plaintiff, it is only 23 feet width road, whereas, the defendants claim 30 feet width road. In the suit in O.S. No.551/2014 filed by the 1st defendant, the existence of 30 feet road was upheld and it is not in dispute that the vendor of the plaintiff, namely Poosappan, was arrayed as 5th defendant in the above suit. Though it was an *ex parte* decree, the same was not set aside and no appeal was preferred by the vendor of the plaintiff against the judgement and decree passed in the above suit. Moreover, in Ex.A2 sale deed dated 10.01.2012 in favour of the plaintiff, it has been shown as 23 feet width road, but the same is not supported by any parent document. On the other hand the defendants would contend that the father of the 1st



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defendant Sengoda Kounder was owning lands in S.No.1364 and on 04.10.1989 the properties were partitioned. On 04.01.1991, power was given to one Palanisamy in respect of 0.26 cents and subsequently on 01.02.1991, land measuring 0.43 cents was sold to one Ramasamy. After the said partition, the 1st defendant formed layout and left 30 cents of land for the purpose of laying 30 feet width road running north to south and had also sold the plots to various persons by showing the 30 feet width road in the sale deeds. Even in the sale deed executed by the said Palanisamy on 12.06.1991 in favour of one Nallathambi and Kannammal, the existence of 30 feet road was clearly mentioned. Since the above purchasers attempted to reduce the 30 feet width road, the 1st defendant filed a suit in O.S. No.551/2014, in which the existence of 30 feet width road was confirmed by granting the relief of permanent injunction. Hence, in the present suit by producing the above documents, the defendants have established the existence of 30 feet width road. On the other hand, the plaintiff failed to establish that there is only 23 feet width road as claimed by him. Moreover, there is nothing on record to show that final approval has been given and the property has been transferred to the local authorities. Therefore, the plaintiff cannot claim any absolute right over the disputed area. As rightly pointed out by the learned counsel for the respondent, the complicated question of title involved can be examined



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only in a title suit and not in a suit for injunction simpliciter. The courts below have concurrently held that the plaintiff is not entitled for the relief claimed by him in the suit. No perversity or infirmity is found in the judgments rendered by the courts below. Therefore, in view of the abovesaid reasons, all the substantial questions of law are answered against the appellant/plaintiff.

14. In the result,

i.the Second Appeal is dismissed. No costs. C.M.P. No.20795 of 2025 is also dismissed.

ii. The decree and judgment dated 10.02.2023 passed in A.S. No.28 of 2022, on the file of the I Additional Sub Judge, Erode, confirming the Judgment and decree dated 05.04.2022 passed in O.S. No.466 of 2019, on the file of the I Additional District Munsif Court, Erode, is upheld.

02.02.2026

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



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To

1. The I Additional Sub Judge, Erode.
2. The I Additional District Munsif Court, Erode.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.
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Pre delivery judgment in
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