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S.A.No.294 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.294 of 2026
and
C.M.P.No.10343 of 2026

L.Kannan

... Appellants

vs.

P.Saravanan

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 22.07.2025 passed in A.S.No.21 of 2024 on the file of the Subordinate Judge, Rasipuram, confirming the Judgment and Decree dated 10.01.2024 in O.S.No.99 of 2017 on the file of the District Munsif Court, Rasipuram and consequently, dismiss the original suit (O.S.No.99 of 2017).

For Appellant : Mr.Thangavelu
for M/s.T.Poornima Devi

J U D G M E N T

The unsuccessful defendant in the suit is the appellant. The respondent herein filed a suit seeking declaration that the Sale Deed



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executed in favour of the appellant/defendant dated 07.09.2015 was null and void and for consequential mandatory injunction directing the defendant to remove the construction and fence put up by the defendant in the suit property. The respondent/plaintiff also sought for permanent injunction restraining the defendant from interfering with his alleged possession over the suit property. The suit was decreed by the Trial Court and the findings of the Trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings, the defendant has come before this Court.

2. According to the respondent/plaintiff, the suit property was originally belonged to Karuppanna Padayatchi. After his death, the property devolved on his children Sethu Ramalingam and five others. The plaintiff's vendor P.Palanivel purchased the suit property on 30.09.1993 from Sethu Ramalingam and others. In the Sale Deed, there was a reference about 18 feet east-west pathway on the southern side of the property sold to P.Palanivel. Further, an easementary right of access has been granted to purchaser, the said P.Palanivel to use the pathway on the southern side. The said P.Palanivel enjoyed the suit property from the date of his purchase and thereafter, he sold the same to the plaintiff on 09.02.2001. From the date of purchase, the plaintiff has been in possession and enjoyment of the suit



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property by enjoying easementary right on the east-west pathway on the southern side and north-south pathway on the eastern side. The vendors of the defendant A.R.Mukathalikaan and others entered into the Sale Agreement with above mentioned Sethu Ramalingam and others and based on the said Sale Agreement, they got a Sale Deed through Court. The defendant purchased the property on the western side of the suit property from the above said persons on 07.09.2015. In the Sale Deed, the defendant suppressing the suit property mentioned wrong boundary as if, the property purchased by him situated on the west of north-south pathway. The defendant also suppressed the east-west 18 feet pathway situate on the southern side of plaintiff's property. The said Sale Deed executed in favour of the defendant would not bind the plaintiff. On 13.08.2017, the defendant attempted to demolish the house of the plaintiff in the suit property. He also put up construction in the 18 feet east-west pathway situate on the southern side of the suit property. Therefore, the plaintiff was constrained to file the above said suit.

3. The appellant/defendant filed written statement and denied the very existence of 18 feet east-west pathway as claimed by the plaintiff in his plaint. It was also claimed by the defendant that plaintiff's vendor



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P.Palanivel did not purchase the suit property from all the heirs of Karuppanna Padayatchi by including his wife-Nallammal in the Sale Deed.

Therefore, according to the defendant, the plaintiff cannot claim easement right over the suit property. The defendant denied the very existence of 18 feet east-west pathway and plaintiff's alleged right of enjoyment over the said pathway. The defendant also claimed that since the plaintiff's property situate on the north-east side of the defendant's property, the plaintiff's property has not been shown in the description of the property in his Sale Deed. The defendant also denied the allegation that he attempted to interfere with plaintiff's possession over the property purchased by him. On these pleadings, the defendant sought for dismissal of the suit.

4. Before the Trial Court, the plaintiff was examined as PW.1 and one Periyasamy was examined as PW.2. On behalf of the plaintiff, 12 documents were marked as Exs.A1 to A12. The defendant was examined as DW.1 and yet another witness was examined as DW.2. On behalf of the defendant, 2 documents were marked as Exs.B1 and B2. Apart from these exhibits, 2 documents were marked as Exs.C1 and C2 through CW.1.



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5. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff was entitled to relief sought for and decreed the suit. Aggrieved by the same, the defendant preferred first appeal in A.S.No.21 of 2024 on the file of the Subordinate Judge, Rasipuram. The First Appellate Court affirmed the findings of the Trial Court. Challenging the concurrent findings, the defendant has come before this Court.

6. The learned counsel appearing for the appellant submitted that the alleged east-west pathway claimed by the plaintiff was never in existence and therefore, even assuming there was easement by grant in favour of the plaintiff, the same was extinguished by abandonment. The learned counsel further submitted that the defendant's vendor purchased the property under Ex.A6 in the year 2006 and the suit filed by the plaintiff after 11 years is barred by limitation.

7. It is the specific case of the plaintiff that even in the Sale Deed in favour of the plaintiff's vendor P.Palanivel dated 30.03.1993, which was marked as Ex.A1, there was reference about the east-west suit pathway with a width of 18 feet. Therefore, according to the plaintiff, he is entitled to



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easement by grant and the defendant, who is a subsequent purchaser by giving wrong description in his Sale Deed suppressed the existence of east-west pathway and tried to claim right over the same.

8. In the Ex.A1 Sale Deed executed by children of Karuppanna Padayatchi in favour of the plaintiff's vendor P.Palanivel dated 30.03.1993 while describing the property covered under the Sale Deed southern boundary has been mentioned as 'எங்களால் விடப்பட்ட 18 அடி அகல கிழமேல் பாதைக்கும் (வடக்கு)'. Therefore, it is clear that the disputed 18 feet east-west suit pathway situate on the southern side of plaintiff's property and there is also recital in Ex.A1 giving right of access through the said pathway to the purchaser. Therefore, the claim made by the plaintiff that he is entitled to easement by grant in respect of the east-west property on the southern side of property purchased by him is well founded. It was contended by the learned counsel appearing for the appellant that the plaintiff abandoned the easement by grant.

9. Merely because, in Ex.A6-Sale Deed in favour of the defendant's vendor and Sale Deed in favour of the defendant Ex.A12, there is no reference about the disputed east-west pathway, we cannot come to a

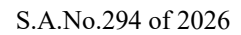


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definite conclusion that plaintiff abandoned his easementary right by grant.

The plaintiff was not party to Exs.A6 and A12. Those two documents are only self-serving documents of the defendant and absence of any reference to east-west pathway in those two documents will not adversely affect the easement by grant acquired by plaintiff's vendor under Ex.A1. When east-west pathway has been referred in Ex.A1, which was of the year 1993 and Ex.A2-Sale Deed in favour of the plaintiff, which was of the year 2001, coupled with oral evidence of PW.1 and PW.2, we can safely come to the conclusion that there was no abandonment of easementary right by the plaintiff. In the absence of concrete evidence on the side of the defendant to prove the abandonment of easementary right in favour of the plaintiff, the submission made by the learned counsel appearing for the appellant cannot be accepted.

10. It was submitted on behalf of the appellant that the Sale Deed in favour of the defendant's vendor was of the year 2006, the suit has been filed only in the year 2017, therefore, the suit prayer is barred by limitation. As mentioned earlier, in title documents of the plaintiff marked as Exs.A1 and A2, there is a reference about the disputed east-west pathway. The subsequent documents in favour of the defendant and his vendor to which



11. It is also argued by the learned counsel for the appellant that the plaintiff's vendor did not purchase the property from all the descendants of Subbanna Padayatchi. It is the specific case of the defendant that one of the heirs namely Nallammal was not joined as a vendor in the Sale Deed in favour of the plaintiff. Even if one of the heirs has not been joined, the plaintiff's vendor purchased the suit property from all the children of Subbanna Padayatchi. In such circumstances, the plaintiff will become co-owner of property purchased by him along with above said Nallammal. Therefore, as a co-owner, he is entitled to easement by grant recognised in



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his title document. Therefore, the said submission is also without any substance.

12. Both the Courts below on proper appreciation of evidence available on record came to the conclusion that plaintiff was entitled to the relief as prayed for in the plaint. I do not find any legal error or irregularity in the said conclusion. The Second Appeal is devoid of any substantial question of law and accordingly, the same is dismissed.

13. **In Nutshell:-**

- (i) The Second Appeal is dismissed.
- (ii) In the facts and circumstances of the case, there will be no order as to costs.
- (iii) Consequently, the connected civil miscellaneous petition is closed.

28.04.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

- 1.The Subordinate Court, Rasipuram.
- 2.The District Munsif Court, Rasipuram.

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S.SOUNTHAR, J.

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