



S. A(MD)No.107 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 27.03.2026

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

SA. (MD)No.107 of 2007 and CRP Nos.920 and 921 of 2005

SA(MD) No.107/2007

Senthil Vadivu

.. Appellant/Plaintiff

Vs.

1.Ponnusamy

2.Sadayappan

.. Respondents/defendants

Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 02.12.2004 in AS No.50/2003 on the file of the Subordinate Court, Tiruchirappalli, confirming the judgment and decree dated 02.12.2002 in OS No.52/1998 on the file of the District Munsif Court, Musiri.

For Appellant

: Mr.V.Rajakittu

For Respondents

: No appearance



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WEB COPY CRP(MD) Nos.920 and 921/2005

Senthil Vadivu

.. Petitioner in both petitions

Vs.

1.Ponnusamy

2.Sadayappan

.. Respondents in both petitions

Petitions filed under Article 227 of the Constitution of India against the order and decretal order dated 02.12.2004 in IA Nos.1044/2003 and 98/2004 in AS No.50/2003 on the file of the Subordinate Court, Tiruchirappalli.

For Appellant	: Mr.V.Rajakittu
For Respondents	: No appearance

JUDGMENT

The second appeal is filed against the judgment and decree dated 02.12.2004 in AS No.50/2003 on the file of the Subordinate Court, Tiruchirappalli, confirming the judgment and decree dated 02.12.2002 in OS No.52/1998 on the file of the District Munsif Court, Musiri.

2. The plaintiff is the appellant in the present second appeal.



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3. The plaintiff filed the suit on the ground that he has purchased the suit property from one Saradhambal through a registered sale deed dated 02.02.1998 and had constructed a building over the property. While so, the defendants were attempting to interfere with the possession and enjoyment of the property and had also filed a suit in OS No.80/1990 as if the property is a public pathway. It is under these circumstances, the suit came to be filed seeking for the relief of permanent injunction.

4.The defendants filed a written statement and they took a stand that Saradhambal had no right to sell the property in favour of the plaintiff. They took a further stand that the suit was filed in OS.No.80/1990 wherein the father of the plaintiff was a party and after contest, the suit was decreed by declaring that the property is a public pathway and with a mandatory injunction for restoring the suit property to its original position. The defendants took a stand that in order to defeat the said decree that was passed by the competent civil Court, the present suit has been filed. Accordingly, they sought for dismissal of the suit.



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5. The trial Court, after considering the facts and circumstances of the case and on appreciation of the evidence, came to a conclusion that the plaintiff has not made out a case and accordingly, the suit came to be dismissed by judgment and decree dated 02.12.2002 and the same was confirmed in appeal in AS No.50/2003 by judgment and decree dated 02.12.2004. Aggrieved by the same, the present second appeal has been filed before this Court.

6. When this second appeal was entertained, only notice regarding admission was issued and no substantial questions of law were framed. Notice has been served on the respondents and their names have been printed in the cause list and there is no appearance either in person or through counsel.

7. This Court heard the learned counsel for the appellant in order to ascertain if any substantial question of law is involved in the present second appeal.



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8. The learned counsel for the appellant submitted that the appellant was not a party in the suit filed in OS No.80/1990 nor was the vendor of the appellant a party and therefore the said judgment will not bind the appellant. The learned counsel further submitted that the appellant had clearly proved his title over the property through Ex.A1 sale deed. It was further submitted that IA No.1044/2003 and IA No.98/2004 were filed before the appellate Court for bringing in additional evidence to prove that the vendor had a title over the property and the same were rejected by the appellate Court and aggrieved by the same, CRP (MD) Nos.920 and 921 of 2005 have been filed before this Court.

9. It was further submitted that the earlier suit in OS No.9/1995 was filed only for bare injunction and it was only dismissed for default and the same does not bar the present suit. In the same manner, OS No.221/1995 was filed by the plaintiff's husband and that suit was also filed for the relief of permanent injunction and the same was dismissed as not pressed. This suit also cannot be put against the appellant. In view of the same, it was



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contended that both the Courts below had rejected the appeal only on the ground that there was an earlier decree passed in OS No.80/1990.

10. On carefully going through the judgment passed by the trial Court, it is seen that OS No.80/1990, OS No.9/1995, OS No.219/1995 and OS No.221/1995 have all been filed pertaining to the very same property. Insofar as OS No.80/1990 is concerned, it was a representative suit that was filed to declare that the property is a public pathway and for removal of the encroachment that has been made over the property. In that suit, the father of the plaintiff was the second defendant. That suit was decreed and it had become final.

11. The trial Court had also taken into consideration the fact that the vendor of the plaintiff, namely, Saradhambal also filed a suit in OS No. 9/1995 and it was dismissed for default. Two more suits were filed by none other than the husband of the plaintiff and those suits were also closed.



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12. Considering all the above facts, the trial Court came to the conclusion that the vendor did not have a right to deal with the property, which has been declared to be a public pathway and the decree that was passed in the suit in OS No.80/1990 will bind the plaintiff also since the father of the plaintiff was a party. It is under these circumstances the trial Court proceeded to dismiss the suit.

13. The lower appellate Court has also taken into consideration all these facts and has confirmed the judgment and decree passed by the trial Court. In the considered view of this Court, the plaintiff cannot be allowed to take a stand that the decree passed in OS No.80/1990 will not bind her. If the nature of the property has been declared by the competent civil Court as a public pathway, the same can never be dealt with through any document. Therefore, the plaintiff cannot claim right just because a sale deed has been executed in favour of the plaintiff.

14. This Court does not find any illegality or infirmity in the judgment passed by both the Courts warranting interference of this Court. That apart,



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no substantial questions of law are involved in the second appeal.

15. In the result, the second appeal is dismissed.

16. In view of the final judgment passed in SA(MD) No.107 of 2007, CRP(MD) Nos.920 and 921 of 2005 stand closed. No costs.

27.03.2026

NCC : Yes/No

Index : Yes/No

RR

To

1.The Subordinate Court, Tiruchirappalli

2.The District Munsif Court, Musiri

3.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.



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N.ANAND VENKATESH, J

RR

Judgment made in
**SA. (MD)No.107 of 2007 and
CRP Nos.920 and 921 of 2005**

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