



S.A.(MD).No.280 of 2007

THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 18.02.2026

PRONOUNCED ON : 18.03.2026

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

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Paramanandham ... Plaintiff/
1st respondent/Appellant

Vs

1.Valliammal (Died) ... 2nd Defendant /
Appellant / 1st Respondent

2.Pitchammal ... 1st Defendant /
2nd Respondent / 2nd Respondent

*(R2 was set ex parte through out. Hence no
notice is necessary for her)*

3.Mookandi ... Respondent
*(R3 is brought on record as LR of the deceased
R1 vide Court order dated 11.09.2023 made in
CMP(MD)Nos.8792 to 8794 of 2023 in
SA(MD)No.280 of 2007)*

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree made in A.S.No.171 of 2005 dated 14.10.2005 on the file of the learned Principal Sub Judge, Tirunelveli



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reversing the judgment and decree of the II Additional District Munsif Court, Tirunelveli made in O.S.No.653 of 2002 dated 01.12.2004, allow the appeal.

For Appellant : Mr.S.Kumar

For R3 : Mr.G.Prabhu Rajadurai

JUDGMENT

The second appeal is filed against the judgment and decree in A.S.No. 171 of 2005, dated 14.10.2005, on the file of the learned Principal Sub Judge, Tirunelveli, reversing the judgment and decree of the learned II Additional District Munsif, Tirunelveli, made in O.S.No.653 of 2002, dated 01.12.2004.

2.The suit property consists of two items. Item No.1 relates to house in S.No.300 2b situated in Urudaiyarpuram, Tachanallur, Tirunelveli District. Item No.2 relates to the common passage measuring three feet to eighty feet.

3.The plaintiff's case is that the suit properties originally belonged to one C.M.Karuppan and Gomu Ammal. Upon the death of C.M.Karuppan, his sons, namely, Olimuthu, Gurusamy, Thiyagarajan and Durairaj, inherited the property. The plaintiff claims right to the suit properties by virtue of the sale



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in his favour by the sons of C.M.karuppan and Gomu Ammal. The plaintiff states that on 19.09.1976, the aforesaid four persons executed a Sale Deed in his favour and in the said Sale Deed, specific mention was made about the common pathway, which was described as the second schedule property. The plaintiff further states that another portion of the suit property was purchased by the plaintiff from Gomu Ammal under a registered Sale Deed dated 20.10.1978. Even in the said Sale Deed, specific mention was made about the common pathway. The plaintiff states that the defendants have plots on the west of the plaintiff's property and that the common pathway lies South of the defendants's property and it runs towards East. The plaintiff, for better appreciation of the physical features of the property, filed a rough sketch along with the plaint. The plaintiff further states that since the defendants attempted to claim a right over the suit common pathway by obstructing the plaintiff's ingress and egress through the common pathway, the plaintiff, issued a lawyer's notice to the defendants. The first defendant acknowledged the receipt of notice, but the second defendant refused to even receive the same. The plaintiff states that except the suit common pathway, there is no other access to his property and as the defendants interfered with his peaceful



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possession and enjoyment of the common pathway, he filed the suit for declaration of his right over the suit common pathway and a consequential injunction restraining the defendants from interfering with his enjoyment of the same.

4.The second defendant filed a written statement denying the Sale Deed dated 19.09.1976 in favour of the plaintiff. The defendants contended that the four persons, namely, Olimuthu, Gurusamy, Thiyagarajan and Durairaj had no right or title to execute the sale in favour of the plaintiff, since, Durairaj and Gurusami had sold their 1/4th right in the plaint schedule property to one Madasami S/o.Muthu as early as in the year 1971, under two registered Sale Deeds dated 16.09.1971 and 20.12.1971. The defendants contended that Olimuthu executed a registered Sale Deed on 23.01.1974, in favour of his brother, Thiyagarajan. The defendants therefore contended that the alleged Sale Deeds of the plaintiff were invalid, false and fraudulent. The defendants contended that Thiyagarajan, never executed any Sale on 28.10.1978, in favour of the plaintiff, and therefore the plaintiff had no right over the common passage/pathway. The 2nd defendant contended that the suit



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pathway was his exclusive property and that the plaintiff's contention that it was a common pathway, was false and untenable. The defendants disputed the veracity of the rough sketch filed by the plaintiff along with the plaint and contended that the plaintiff filed the suit on the basis of fabricated documents. The defendants denied the plaintiff's contention that he had no other access to his property except the suit pathway. The defendants therefore contended that the suit had no merits and the same deserved to be dismissed.

5.The Trial Court, after framing necessary issues, decreed the suit as prayed for. The lower Appellate Court reversed the judgment and decree of the trial Court. Therefore, the plaintiff filed the present second appeal.

SUBMISSIONS:-

6.The learned counsel for the appellant/plaintiff submitted that the Lower Appellate Court failed to note that the suit pathway was mentioned in Exs.A1 and A2 and therefore, the Lower Appellate Court erred in rejecting Exs.A1 and A2 and relying on Ex.B5, for denying the relief of declaration of the suit II schedule property, common pathway, to the plaintiff.



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7.The learned counsel for the respondents submitted that the Lower Appellate Court has considered all the issues raised threadbare and had given logical reasons for its findings and hence, this Court exercising jurisdiction under Section 100 of CPC, ought not to interfere with the factual findings rendered by the Lower Appellate Court.

8.This Court, at the time of admission of the second appeal, framed the following substantial question of law.

“Whether the Lower Appellate Court is right in holding that the appellant has not proved his right over the pathway in the light of Ex.B-5?”

9.Heard both sides and perused the materials placed on record.

DISCUSSION OF FACTS:-

10.The facts necessary for deciding the substantial question of law, are briefly as follows:



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11.The plaintiff, relying upon Exs.A1 and A2, the Sale Deeds executed in his favour, contended that the suit pathway marked as ABCD in the Rough Sketch appended to the plaint was a common pathway. On that basis, he sought a declaration that the suit pathway is a common pathway and a consequential permanent injunction, restraining the defendants from interfering with his enjoyment of the same. The plaintiff also pleaded easement by necessity over the said common pathway to access his property. The defendants denied the existence of any common pathway to the West of the plaint schedule property. According to them, the western boundary formed part of the defendants' exclusive property and the Rough Sketch filed by the plaintiff was erroneous as the lie and location of the property shown therein were contrary to the title documents. The defendants further contended that the plea of easement by necessity, raised by the plaintiff was self contradictory averment and therefore, the suit was liable to be dismissed.

12.Upon consideration of the oral and documentary evidence, the Trial Court held that the plaintiff had purchased the suit schedule properties under Exs.A1 and A2, and that, as per the recitals in Ex.A2, he was entitled to use the common pathway on the western side of the property. The Trial Court



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rejected the defendants' contention that the pathway was their exclusive private pathway measuring an extent of 3x40 feet, particularly, in view of the recitals in Ex.B6 and the absence of specific boundaries in the parent documents of the defendants, namely Exs.B2 to B4. The Trial Court also found that the 1st defendant failed to explain how the pathway was conveyed to the 2nd defendant and drew an adverse inference from the fact that the first defendant remained exparte and the 2nd defendant did not enter the witness box. The Trial Court further held that description of the property in Ex.A2 was supported by the testimony of PW1 and that the allegation of fabrication of Ex.A1, was untenable, especially when the plaintiff's sale under Ex.A1 preceded the defendants document by nearly ten years. From the recitals in Exs.A1 and A2, the Court also inferred that there was no other access available to the plaintiff except the suit passage. Holding that the 1st defendant, had not right to alienate the said passage to the 2nd defendant under Ex.B5, the Trial Court concluded that the plaintiff was entitled to declaration and permanent injunction.

13.On appeal by the 2nd defendant, the Lower Appellate Court reversed



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the judgment and decree of the Trial Court. The Appellate Court held that the recitals in Ex.A2, were not in conformity with those in ExA1. It observed that though the plaintiff purchased the property under Ex.A1 on 19.07.1976, the western boundary in Ex.A2, was mentioned as ‘‘Karuppan Chettiyar’s’’,instead of the plaintiff. The Appellate Court, also found that under Ex.A1, the plaintiff had purchased 1 $\frac{3}{4}$ cents in S.No.300/2B and under Ex.A2, he had purchased 1 $\frac{3}{4}$ cents in S.No.300/1A1. Relying on the FMB Sketch, marked as Ex.B1, it concluded that the property in S.No.300/1A1, was situated to the south of the property in S.No.300/2B and that the boundary description in Ex.A1, showing the defendants’ property on the western side of plaintiff’s property, was incorrect. The Lower Appellate Court, further found that the plaintiff had failed to establish that the portion marked as EFGC in the plaint plan [Ex.A6], was in his enjoyment. It also found that the common passage referred to in Ex.A1, did not correspond to the pathway marked as ABCD in the Rough sketch [Ex.A6] and that the plaint plan was inconsistent with the documentary evidence on record, making the identification of the suit property difficult. On appreciation of the evidence of PW1, the Lower Appellate Court concluded that the plaintiff



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failed to prove that the east-west pathway from the defendants' property, extended upto his property. It also noted the admission of the plaintiff that the defendants had constructed a wall on the eastern side of the property, blocking the pathway. Consequently, the lower Appellate Court rejected the plaintiff's claim that the pathway marked as ABCD in Ex.A6, continued upto his property and also rejected the plea of easement by necessity on the ground that the plaintiff had taken mutually inconsistent pleas, relying on the decision reported in *2004 [1] Mad LJ 474 [Arunachalam Pillai Vs. Sorimuthu Pillai]*. Hence, the Lower Appellate Court reversed the judgment and decree of the Trial Court.

CONSIDERATION OF SUBSTANTIAL QUESTION OF LAW:-

14.The plaintiff claims title to the first item in the suit schedule property, under Exs.A1 and A2. According to the plaintiff, the second item of the suit property is a common pathway, and by virtue of the recitals contained in the said documents, he is entitled to use the pathway in common and consequently, sought for a declaration to the effect with consequential permanent injunction, restraining the defendants from interfering with such



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right. The defendants, however, disputed the said claim contending that the pathway measuring 3x40 feet forms part of the property purchased by the 2nd defendant under Ex.B5 and the plaintiff had no manner of right over the same. The lower Appellate Court placing reliance on Ex.B1-FMB sketch, held that the plan filed by the plaintiff under Ex.A6 was erroneous and did not correctly reflect the lie and location of the properties. It further held that the plaintiff's property could not be identified as claimed and consequently concluded that the pathway was not a common pathway available to the plaintiff. However, a close scrutiny of Ex.B1 would reveal that it merely shows the further sub-division of S.Nos.300/2B and 300/1A1 into smaller sub division. Significantly, the FMB Sketch [Ex.B1] does not indicate the directions of the respective survey numbers. In the absence of such directional details, the conclusion drawn by the Lower Appellate Court that S.No.300/1A1 lies to the south of S.No.300/2B cannot be sustained. It is also relevant to note that under Exs.A1 and A2 the plaintiff purchased properties both in S.No.300/2B and S.No.300/1A1. There is no dispute with regard to the plaintiff's title to the property in S.No.300/2B. The controversy pertains only to the property in S.No.300/1A1. The 2nd defendant claims title



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to the said property under Ex.B5. The Lower Appellate Court placed considerable reliance upon the boundary recitals contained in Ex.A2 and observed that the western boundary therein refers to the property of one Karuppan and not that of the plaintiff. On that basis, it concluded that the document was unreliable. In the considered view of this Court, such reasoning cannot be sustained. It is an admitted position that the entire property originally belonged to Karuppan, who was the father of the vendors of both the parties. Therefore, a mere reference to Karuppan in the boundary description cannot be construed as negating the plaintiff's title or possession over the property purchased under Exs.A1 and A2. The evidence on record would further disclose that the plaintiff had purchased the properties under Ex.A1 dated 19.07.1976 and Ex.A2 dated 22.10.1978, and that both the documents contain recitals conferring upon the plaintiff the right to enjoy the pathway. Significantly, it was only after a decade thereafter that the 2nd defendant purchased the property under Ex.B5. Even in Ex.B5, there is a clear reference to an east-west passage measuring 3x40 feet. In such circumstances, it is incumbent upon the 1st defendant, who sold the property to the 2nd defendant, to explain as to how the common pathway referred to in



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the earlier documents, came to be conveyed exclusively to the 2nd defendant.

The Trial Court therefore rightly drew an adverse inference against the defendants for remaining exparte and not entering the witness box.

15. In the absence of any satisfactory explanation from the defendants and in view of the consistent recitals contained in Exs.A1 and A2, the conclusion reached by the Trial Court that the pathway is a common pathway available to the plaintiff cannot be said to be erroneous. The Lower Appellate Court without properly appreciating the documentary evidence on record, proceeded on an erroneous assumption that there was a dispute regarding the identity of the property. On the contrary, even Ex.B5 acknowledges the existence of the pathway measuring 3x40 feet. Therefore, the identity of the pathway is not in dispute. For all the aforesaid reasons, this Court is of the view that the judgment and decree of the Lower Appellate Court suffers from a clear misappreciation of the documentary evidence and cannot be sustained. The findings of the Trial Court are well reasoned and supported by the evidence on record.



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16. Accordingly, the substantial question of law is answered in favour of the plaintiff/appellant. The judgment and decree made in A.S.No.171 of 2005 dated 14.10.2005 on the file of the learned Principal Sub Judge, Tirunelveli, is **set aside and the judgment and decree of the Trial Court, made in O.S.No.653 of 2002 dated 01.12.2004, is restored.** The plaintiff is entitled to the declaration that the suit pathway is a common pathway along with the consequential relief of permanent injunction. The Second Appeal is **allowed.** No costs.

18.03.2026

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
sn/AP

TO:

1. The Principal Sub Judge,
Tirunelveli.



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2.The II Additional District Munsif Judge,
Tirunelveli.

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3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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N.MALA, J.

Sn/AP

Judgment made in
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