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SA(MD)No.445 of 2007

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2026

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

S.A.(MD).No.445 of 2007

R.Srikrishnan

... Plaintiff/Respondent
Appellant

Vs

1.T.P.Raveendran
2.Asha Raveendran

... Defendants/Appellants
Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree of the learned Subordinate Judge, Palani dated 07.11.2006 passed in A.S.No.2 of 2006 and restore the decree and judgment of the District Munsif Court, Kodaikanal dated 21.09.2005 passed in O.S.No.79 of 1998.

For Appellant : Mr.S.Madhavan

For Respondents : Mr.S.Rajasekar



SA(MD)No.445 of 2007

JUDGMENT

The second appeal is filed against the judgment and decree in A.S.No.2 of 2006 dated 07.11.2006 on the file of the learned Subordinate Judge, Palani reversing the judgment and decree of the District Munsif Court, Kodaikanal, made in O.S.No. 79 of 1998 dated 21.09.2005.

2. For the sake of brevity, the parties will be referred to as per their rank in the Trial Court. The defendants are the appellants in the Second Appeal.

3.The suit property in TS.No.119, is a road belonging to the third defendant. It lies between S.No.120 and 121, belonging to the plaintiff and T.S.No.118 belonging to the defendants 1 and 2. There is no dispute between the plaintiff and the defendants regarding T.S.No.121 and 118. As far as T.S.No.120 is concerned, there is a dispute over the title, and the same is pending adjudication in O.S.No.1 of 1998, before the Sub Court, Palani. That the suit property is a pathway, is clear from the title documents of the defendants 1 and 2 dated 11.09.1995, wherein the western boundary of the property is described as Township road. Since the defendants 1 and 2 attempted to obstruct the plaintiff from accessing



SA(MD)No.445 of 2007

the suit township road by putting up constructions, the plaintiff filed the suit for declaration that the suit pathway is a public road and a for consequential injunction restraining the defendants 1 and 2 from obstructing his enjoyment of the same.

4.The defendants filed a written statement admitting the title of the plaintiff to T.S.No.118 and 120. The defendants also admitted that there was a suit pending in O.S.No.1 of 1998 on the file of the Sub Court, Palani, with regard to the title to the property in T.S.No. 120. The defendants contended that due to previous enmity, the plaintiff had falsely alleged that the defendants encroached upon the public road. The defendants contended that the suit pathway was not a pucca road and further the road was unused and fell into disuse due to growth of dense vegetation. The defendants further contended that it was the plaintiff who had encroached upon the suit road by constructing houses in T.S.No.119 and 122, causing hindrance to the defendants. Therefore, the defendants prayed for the dismissal of the suit.

5.Before the Trial Court, on the side of the plaintiff, plaintiff examined himself as P.W.1 and marked three documents as Ex.P.1 to



SA(MD)No.445 of 2007

Ex.P.3. On the side of the defendants, two witnesses were examined as D.W.1 and D.W.2 and no document was marked.

6.The Trial Court after framing necessary issues on the basis of the evidence placed before it decreed the suit as prayed for. Against the order of the Trial Court, the defendants filed an appeal in A.S.No.2 of 2006. The lower appellate Court by judgment dated 07.11.2006 reverse the judgment of the Trial Court. Aggrieved by the same, the plaintiff filed the present second appeal.

7.At the time of admission of the second appeal, this Court framed the following substantial questions of law:

“1.Whether on the face of admission of encroachment on the side of the defendant the decree given by the trial Court is reversible by the appellate Court only on ground of better evidence?

2.Whether the lower Appellate Court is correct in remarking that heaping of construction materials on the road could only be a temporary overlooking the fact that the defendant is a building contractor storing the same there?

3.Whether the lower Appellate Court is right in commenting that only from a report of the Commissioner a correct picture about encroachment can be seen forgets to note such a Commissioner ought not to be appointed for collection of evidence?

4.Whether the lower Appellate Court has not framed



SA(MD)No.445 of 2007

WEB COPY

proper point of discussion in the appeal as expected under Order 41 Rule 31?"

Consideration of the substantial questions of law 1 to 3:-

8.At the outset, the learned counsel for the appellant submitted that he was not pressing the fourth substantial question of law.

9.The learned counsel for the appellant submitted that the lower Appellate Court failed to note the categorical admission of DW2 that the defendants had encroached upon the public road by storing construction materials there. The learned counsel further submitted that the lower appellate Court erred in assuming that the defendants were contractors and therefore, storage of construction materials on the public road was only a temporary feature. The learned counsel submitted that the lower appellate Court erred in non-suiting the plaintiff for failure to appoint an Advocate Commissioner to prove the nature of encroachment made by the defendants, despite the defendants' own admission.

10.The learned counsel for the respondents submitted that the lower appellate Court was right in non-suiting the plaintiff for his failure to prove the nature of alleged encroachment by the defendants. The learned counsel fairly conceded that the pathway being a public pathway,



SA(MD)No.445 of 2007

nobody had a right to encroach upon the same and that the defendants had no objection to the pathway being used by the public without any encroachment. However, the learned counsel denied that the defendants had encroached upon the same. The learned counsel submitted that the suit pathway was used by the public without any hindrance. The learned counsel submitted that the second appeal had no merits and it deserved to be dismissed.

11.Heard both sides and perused the materials on record.

12.Admittedly, T.S.No.119 is a public pathway. The said pathway lies between the plaintiff's property in S.No.120 and 121. It is also an admitted fact that O.S.No.1 of 1998 is pending before the Sub Court, Palani, with regard to the title to the property in T.S.No.120. The plaintiff's specific case is that the defendants encroached upon the public pathway by storing construction materials, thereby obstructing the same.

13.The defendants' case on the other hand is because of natural growth of vegetation in the suit pathway, it has become inaccessible to the public. The defendants therefore stated that they had not encroached upon the suit pathway, that the plaintiff's case was entirely false and that



SA(MD)No.445 of 2007

it was filed due to previous enmity. The defendants contended that it was the plaintiff who had encroached upon the suit pathway by constructing a house.

14.From the materials on record, it is seen that the Trial Court in the light of the admitted case of the parties that the suit pathway in T.S.No.119, belonged to the Municipal Township and on the categorical admission of the defendants that they were storing construction materials in the suit pathway, found that the defendants had encroached the public way and therefore decreed the suit as prayed for. The lower Appellate Court reversed the judgment and decree of the trial Court by finding fault with plaintiff for not appointing an Advocate Commissioner to determine the nature of encroachment made by the defendants. The lower appellate Court further held that temporary storage of the construction materials by the defendants could not be considered as an encroachment. Against the reversing judgment, the plaintiff is before this Court.

15.It is an admitted case of both the parties that the suit property in T.S.No.119 is a common pathway. From the evidence on record, it is seen that D.W.2 in his cross examination categorically admitted that the



SA(MD)No.445 of 2007

WEB COPY

defendants encroached upon the suit pathway by storing construction materials. The assumption of the lower Appellate Court that the encroachment by way of storing construction materials was only temporary measure , is unacceptable. When the defendants admit that the suit property is a public pathway, they have no right to encroach upon the same. Even the assumption of the Lower Appellate Court that the encroachment is only temporary, cannot be accepted since the said assumption is made without considering the undisputed fact that the defendants are civil contractors engaged in construction business. Admittedly, the suit pathway is a public pathway. Hence, once the storage of construction materials is admitted, the appointment of an Advocate Commissioner becomes wholly unnecessary. In the view of this Court, the Trial Court has properly appreciated the entire evidence on record and rightly found that the suit property was encroached upon by the defendants. The Lower Appellate Court has reversed the well considered judgment of the Trial Court on assumptions and presumptions.



SA(MD)No.445 of 2007

WEB COPY

16. In view of the above discussions, this Court answers the substantial questions of law 1 to 3, in favour of the appellant. The judgment and decree of the lower Appellate Court is set aside. The judgment and decree of the Trial Court is confirmed. Accordingly, the Second Appeal Stands allowed. No costs.

18.02.2026

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

TO:

1. The Subordinate Court, Palani.
2. The District Munsif Court, Kodaikanal.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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SA(MD)No.445 of 2007

N.MALA, J.

Sn/AP

Judgment made in
S.A.(MD)No.445 of 2007

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