

S.A.(MD)Nos.594 of 2021 and 97 & 98 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 17.06.2026

DELIVERED ON : 24.06.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.(MD)Nos.594 of 2021 and 97 & 98 of 2022

and

C.M.P.(MD)No.12410 of 2022

V.M.Thangadurai

... Appellant in all Second Appeals

Vs.

L.Rajagopal

... Respondent in all Second Appeals

PRAYER in S.A.(MD)No.594 of 2021: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree passed in A.S.No.123 of 2014, on the file of the Sub Court, Thoothukudi dated 11.06.2019, by allowing the Appeal against the judgment and decree passed in O.S.No.64 of 2013, on the file of the Principal District Munsif Court, Thoothukudi dated 21.08.2014.



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PRAYER in S.A.(MD)No.97 of 2022: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree passed in A.S.No.18 of 2014, on the file of the Sub Court, Thoothukudi dated 24.04.2019, by confirming the judgment and decree passed in O.S.No.114 of 2011, on the file of the Principal District Munsif Court, Thoothukudi dated 09.11.2013.

PRAYER in S.A.(MD)No.98 of 2022: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree passed in A.S.No.19 of 2014, on the file of the Sub Court, Thoothukudi dated 24.04.2019, by confirming the judgment and decree passed in O.S.No.266 of 2011, on the file of the Principal District Munsif Court, Thoothukudi dated 09.11.2013.

For Appellant : Mr.S,Kadarkarai

For Respondent : Mr.B.Rajesh Saravanan

[In all Second Appeals]

COMMON JUDGMENT

S.A.(MD)No.594 of 2021, is at the instance of the defendant in O.S.No.64 of 2013, aggrieved by the concurrent findings rendered by the Trial Court as well as the First Appellate Court in A.S.No.123 of 2014.



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2.S.A.(MD)Nos.97 & 98 of 2022, arise out of a common judgment in A.S.Nos.18 & 19 of 2014, confirming the judgment and decree in O.S.No.114 of 2011 & O.S.No.266 of 2011 dated 09.11.2013. These appeals are also at the instance of the defendant, who is also the appellant in the other Second Appeal in S.A.(MD)No.594 of 2021.

3.I have heard Mr.S.Kadarkarai, learned Counsel for the appellant and Mr.B.Rajesh Saravanan, learned Counsel for the respondent in all these Second Appeals.

4.O.S.No.64 of 2013 was filed by the respondent for the relief of declaration that the plaintiff is the owner of the suit 'B' schedule property and for a permanent injunction as well as for mandatory injunction, to remove the offending construction put up by the defendant in 'B' schedule property and a permanent injunction restraining the defendant from interfering with the said 'B' schedule property. The Trial Court, on appreciation of the pleadings, oral and documentary evidence, decreed the suit and granted the relief of declaration, however, declined the relief of mandatory injunction. However, the First Appellate Court reversed the findings and granted the relief of mandatory injunction as well.



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5.It would be relevant at this juncture to note that the plaintiff had also filed an earlier suit in O.S.No.266 of 2011, on the file of the Principal District Munsif Court, Thoothukudi, for declaration that the plaintiff is the owner of the suit pathway. The appellant had filed a suit in O.S.No.114 of 2011, which was tried along with O.S.No.266 of 2011. In the said suit, the appellant sought for a relief of permanent injunction to restrain the respondent herein from interfering with his enjoyment of the suit property. Both these suits were tried together and the Trial Court, after elaborate trial, dismissed the suit filed by the appellant in O.S.No.114 of 2011 and decreed the suit filed by the respondent in O.S.No.266 of 2011, as against which S.A.(MD)Nos.97 and 98 have been filed.

6.These second appeals have not been admitted, till they were taken up for final hearing. In the presence of the learned Counsel for the parties, the following substantial question of law was framed on 17.06.2026 in S.A.(MD)No.594 of 2021:

“Whether the First Appellate Court was right in holding that the respondent came to know about the encroachment only after the Advocate Commissioner's report and not in the year 1985, thereby erroneously granting the



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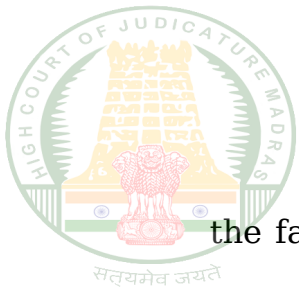


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relief of permanent injunction beyond the statutory period of limitation?"

7.Taking me through the evidence adduced by the parties, Mr.S.Kadarkarai, submits that the appellant has extracted admissions from the respondent / plaintiff that the construction was put up even in the year 1985 and that there is a gap of 10 feet between the appellant's compound wall and the plaintiff's property. It is therefore, the contention of Mr.S.Kadarkarai, learned Counsel for the appellant that the First Appellate Court ought not to have accepted the *ipsi dixit* of the respondent that he came to know about the encroachment only after the Advocate Commissioner's report before the Trial Court and consequently erred in granting the relief of mandatory injunction.

8.Though Mr.S.Kadarkarai, would also attack the finding regarding the declaratory relief, on going through the judgment of the Trial Court as well as the First Appellate Court, I find that the respondent / plaintiff has established his right to the suit property and at best, the respondent can be entitled to a declaratory relief as that there is no other pathway excepting the suit pathway to reach the respondent's property. At the same time, being an easement of necessity, the Courts should have been conscious of



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the fact that the person seeking easementary right cannot claim it as a luxury and the minimum extent that would be sufficient to enable a right of ingress and egress alone needs to be granted. Despite the construction put up by the appellant, the respondent is enjoying an access and only being an easement of necessity, the respondent cannot seek for removing the construction put up, when he has approached the Court belatedly.

9.In the facts of the present case, it has been brought out by the appellant in evidence that the construction put up over the suit pathway, no doubt being an encroachment, was even in the year 1985, which factum has been admitted by the plaintiff himself during trial. In such circumstances, the relief of mandatory injunction was hopelessly time barred and the First Appellate Court ought not to have reversed the well considered findings of the Trial Court in O.S.No.64 of 2013, especially with regard to the refusal to grant the relief of mandatory injunction, while declaring the right of the respondent / plaintiff to the easementary right.

10.Mr.B.Rajesh Saravanan, learned Counsel for the respondent would state that the Courts below have concurrently upheld the entitlement of the respondent / plaintiff and there is no perversity or infirmity in the findings of the courts below,



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warranting interference under Section 100 of CPC. With regard to the grant of mandatory injunction, he would contend that the First Appellate Court being the final Court of facts, the findings arrived by it, on facts, cannot be disturbed in Second Appeal.

11.As already discussed hereinabove, I see merit in the arguments of Mr.S.Kadarkarai, with regard to the mandatory injunction granted by the First Appellate Court, setting aside the findings of the Trial Court. Even before the Trial Court, the respondent / plaintiff has admitted to the existence of the encroachment and construction put up by the appellant even in the year 1985. In such circumstances, ignoring the material evidence, the First Appellate Court has proceeded to hold that the respondent / plaintiff came to know about the encroachment only after the Advocate Commissioner filed his report before the trial Court. The said finding is clearly perverse and a failure to appreciate the evidence available on record. In such circumstances, I am inclined to set aside the said findings of the First Appellate Court. However, at the same time, insofar as the concurrent findings rendered by the Trial Court as well as the First Appellate Court in O.S.No.114 of 2011 & O.S.No.266 of 2011, the Courts have rightly appreciated the pleadings as well as the oral and documentary evidence in granting the relief to the respondent /



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plaintiff and declining the relief to the appellant. I do not see any grounds warranting interference with such concurrent findings of facts rendered by the Courts below under Section 100 of CPC.

12.In fine, the substantial question of law is answered in faovur of the appellant and the S.A.(MD)No.594 of 2021, is partly allowed, setting aside the judgment and decree of the First Appellate Court in A.S.No.123 of 2014 and restoring the judgment and decree of the Trial Court, granting the relief of declaration alone. Insofar as other two Second Appeals in S.A.(MD)Nos.97 & 98 of 2022, I do not see any substantial questions much less substantial questions of law arising for consideration, warranting interference under Section 100 of CPC. Accordingly, S.A.(MD)Nos. 97 & 98 of 2022 are dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

24.06.2026

Index : Yes / No

Internet : Yes / No

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To

1.The Subordinate Judge,
Thoothukudi.

2.The Principal District Munsif,
Thoothukudi.

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



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P.B.BALAJI, J.

MR

PRE-DELIVERY COMMON JUDGMENT MADE IN
S.A.(MD)Nos.594 of 2021 and 97 & 98 of 2022

24.06.2026