



S.A.(MD)Nos.230 and 236 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	16.09.2025
Pronounced On	:	06.01.2026

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

S.A.(MD)Nos.230 and 236 of 2021
and
C.M.P.(MD).Nos.3312 and 3316 of 2021

S.A.(MD).No.230 of 2021

- 1.The State of Tamil Nadu,
Rep by the District Collector,
Kanyakumari District at Nagercoil.
- 2.The District Forest Officer,
Kanyakumari District at Nagercoil.
- 3.The Range Officer,
Azhagiapandiapuram Range,
Kanyakumari District.
- 4.The Tahsildar,
Thovalai Taluk,
kanyakumari district.

Appellants

Vs.

Bino Deva Kumar

Respondent



S.A.(MD)Nos.230 and 236 of 2021

PRAYER:- Second Appeal has been filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 25.10.2019 in A.S.No.49 of 2015, on the file of the learned Additional district and Sessions Judge, Nagercoil which partly reversed the judgment and decree dated 31.07.2015 passed in O.S.No.1 of 2014 on the file of the learned Special Court, (Forest Offence Cases), Nagercoil and allow this Second Appeal.

For Appellants :Mr.Veera Kathiravan
Additional Advocate General
assisted by
:Mr.M.Muthu Manikkam
Government Advocate (Civil Side)

For Respondent :Mr.K.P.Narayana Kumar for
: Mr.A.Balakrishnan

S.A.(MD).No.236 of 2021

- 1.The State of Tamil Nadu,
Rep by the District Collector,
Kanyakumari District at Nagercoil.
- 2.The District Forest Officer,
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Azhagiapandiapuram Range,
Kanyakumari District.
- 4.The Tahsildar,
Thovalai Taluk,



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kanyakumari district.

Appellants

Vs.

Bino Deva Kumar

Respondent

PRAYER:- Second Appeal has been filed under Section 100 of Code of Civil Procedure, against the judgment and decree dated 25.10.2019 in A.S.No.129 of 2018, on the file of the learned Additional district and Sessions Judge, Nagercoil confirming the judgment and decree dated 31.07.2015 passed in O.S.No.1 of 2014 on the file of the learned Special Court, (Forest Offence Cases), Nagercoil and allow this Second Appeal.

For Appellants :Mr.Veera Kathiravan
Additional Advocate General
assisted by
:Mr.M.Muthu Manikkam
Government Advocate (Civil Side)

For Respondent :Mr.K.P.Narayana Kumar for
: Mr.A.Balakrishnan

COMMON JUDGMENT

The Government, which is the second defendant in O.S.No.1 of 2014, has preferred the present appeal challenging the decree passed in O.S.No.1 of 2014 and the modified decree passed in A.S.No.129 of 2018.



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2.For the sake of convenience and to avoid repetition, the parties are hereinafter referred to according to their respective ranks as assigned before the trial Court.

3.The plaintiff is the owner of the suit property known as *Lower Victoria Estate*. The said estate is situated in R.S.No.781/1 and R.S.No.782/2 of Azhagiapandipuram Village, measuring an extent of 11 acres and 46 cents. In the said land, rubber trees, two sets of tea plantations, silver oak trees, and jack trees are standing. The suit property was acquired by the plaintiff under a registered settlement deed dated 16.03.2007. For the said property, *B-Schedule property* is a pathway known as **Nadugani Thadam**, also referred to as **Nadugani Thadam**. The said Nadugani Thadam has been in existence for more than **200 years** and has been used to reach the *A-Schedule property*. Even prior to the plaintiff's purchase, the pathway existed in the suit land and was the only means of access to the A-Schedule property. The plaintiff was employing about **90 workers along with their family members** in the estate. Except Nadugani Thadam pathway, there is **no other access** to reach the plaintiff's land.



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3.1.In the year **1991**, the entire B-Schedule pathway was washed away due to floods. Since then, the plaintiff has been trudging along the pathway with great difficulty and without any renovation. After the flood, the pathway became rugged and extremely difficult to use without maintenance. The Nadugani Thadam has a **width of 6 feet** and a **length of about 5.4 kilometres**.

3.2.Therefore, the plaintiff made representations to the Government authorities seeking to removal of Nadugani Thadam. As there was no response, the plaintiff issued a **statutory notice under Section 80 of the Code of Civil Procedure**, which evoked no reply. Consequently, the plaintiff filed the suit seeking the reliefs of declaration and mandatory injunction in respect of the B-Schedule pathway.

3.3.The defendants, namely, the Government officials including the Forest Department, filed a written statement admitting that a pathway had existed from time immemorial, and it is now known as Nadugani Thadam, but contended that its width was only **6 feet and not 10 feet**. It was further stated that the Forest Department had not used the pathway



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since **1961**, that it was not a public pathway, and that the plaintiff had no right to seek renovation. The defendants contended that the pathway was almost abandoned, unfit for use, and that the plaintiff was a trespasser with no legal right of easement or declaration against the Government.

3.4.Upon considering the pleadings and evidence, the trial Court framed necessary issues and **partly decreed the suit**, declaring the plaintiff's right to use the pathway, while granting a **mandatory injunction permitting renovation at the plaintiff's cost**.

3.5.Aggrieved by the same, both the Government and the plaintiff filed first appeals before the **Principal District Court, Nagercoil, Kanyakumari District**. The first appellate Court dismissed the Government appeal, confirmed the plaintiff's right of usage over the pathway, and upheld the decree of mandatory injunction, permitting renovation to the extent of **6 feet width and 2.5 kilometres length**.

3.6.Aggrieved thereby, the Government has preferred the present **Second Appeal**, which has been admitted on the following substantial



questions of law:

(1) Whether the Courts below were correct in holding that the B schedule property is in earth?

(2) Whether the Courts below were right in holding that the B schedule property is the only pathway to reach the plaintiff's property?

(3) Whether the Courts below were right in granting declaration in respect of B schedule property in favour of the plaintiff?

(4) Whether the Courts below were right in granting permanent injunction in respect of B schedule property in favour of the plaintiff?

(5) Whether the Courts below were right in granting the relief of mandatory injunction in favour of the plaintiff?

(6) Whether the Courts below were right in considering the correct extent of the B Schedule property by comparing the Advocate Commissioner's Report?

4.The learned **Additional Advocate General**, assisted by the learned Government Advocate, would contend that the plaintiff's claim is not legally sustainable as the suit property falls within a **Reserved Forest**. It is argued that the plaintiff himself admitted that the pathway



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was washed away in the floods in the year 1991 floods and therefore no declaration or mandatory injunction could have been granted.

4.1.It is further contended that the first appellate Court failed to consider that the area falls within a protected forest zone governed by the **Forest (Conservation) Act, 1980**, and that no individual can claim a right of pathway, including an easement, over forest land.

4.2.The learned counsel would further submit that in view of the provisions of the **Wildlife Protection Act, 1972**, the suit itself is not maintainable and therefore prays that the judgments of the Courts below be set aside and the suit be dismissed.

5.The learned counsel for the respondent submitted that the records of the **Land Revenue / Appeal Board** disclose that the pathway had been in existence even prior to **1961**, and that the said pathway got damaged during the floods in the year **1991**, after which it has been used without renovation. Representations were submitted to the District Administration, and under the **Right to Information Act**, the authorities



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replied that, subject to exigencies, renovation works would be undertaken.

5.1.These materials were considered by both the **Trial Court and the First Appellate Court**, which granted the relief of declaration and consequential injunction. Both the Courts, on proper appreciation of facts and documentary evidence, including the evidence of the Forest Department, recorded concurrent findings that the pathway existed prior to 1961 and that the plaintiff was entitled to use the same. It was further held that without access through the pathway, the plaintiff could not enjoy or manage the estate situated within the reserve forest.

5.2.It was further submitted that similar roads have been laid and maintained for other plantation units and estate holders, and that the authorities have adopted different standards for different persons. Taking into account the factual situation, the First Appellate Court permitted the plaintiff to carry out renovation work to the extent of **6 feet in width and about 2.15 kilometres in length**, and submitted that such findings were purely factual and did not warrant interference.



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5.3. With respect to the applicability of the **Wildlife Protection Act, 1972**, it was contended that even as per the grounds of appeal, vehicular usage within the reserve forest is permitted for purposes of maintenance and management of forest areas, and therefore there is no absolute bar to the petitioner using motor vehicles. It was also pointed out that several other persons similarly situated in the estate and reserve forest areas have been permitted such usage.

5.4. In reply, the learned **Additional Advocate General**, appearing for the appellants, contended that the plea of parity was never raised before the Trial Court, nor was there any pleading to that effect, and therefore the said contention is liable to be rejected. It was further submitted that in view of the provisions of the Wildlife Protection Act, the respondent cannot claim, as a matter of right, either for renovation of the pathway or for the use of motor vehicles within the reserve forest.

5.5. The learned counsel for the respondent, in rejoinder, submitted that without the use of motor vehicles, it would be impossible to manage



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and enjoy the forest land. It was further contended that for transporting agricultural and forest produce such as pepper and other yields, use of the road is indispensable. Hence, the respondent prayed for confirmation of the concurrent judgments passed by the Courts below.

6.This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

7.From the concurrent findings recorded by both the Courts below, on a careful appreciation of the evidence of the Forest officials as well as the plaintiff's witnesses, plaintiff clearly established that the **Nadugani Thadam** (pathway) exists throughout a stretch of about **2.5 to 3 kilometres with a width of approximately 6 feet to reach plaintiff's 'A' schedule property**. Both the Courts have categorically held that the pathway described as 'B' schedule property has been in existence for several decades and that there is **no alternative access** to the plaintiff's 'A' schedule property. Any obstruction to the pathway would cause serious prejudice to the plaintiff, as without the pathway, the plaintiff



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would be unable to enjoy or utilise the suit property.

8. The right to property, though no longer a fundamental right, is a **constitutional right under Article 300-A**, and the right of access is an instance of the right to property. The right to use a pathway is intrinsically connected with the effective enjoyment of property. The enactments relied upon by the learned Additional Advocate General, namely the **Wildlife Protection Act, 1972** and the **Forest (Conservation) Act, 1980**, regulate the use and conservation of forest land. In the present case, there is no question of conservation of forest land, but only **restoration and renovation of the existing pathway**. There is no alteration or extinguishment of any right. The narrowing of the pathway from 6 feet to 2–3 feet has occurred only due to the floods in the year **1991**, and the plaintiff now seeks merely the restoration of the original width.

9. The principal apprehension expressed by the learned Additional Advocate General is that the area falls within a **Tiger Reserve / protected forest**, and that permitting vehicular movement would disturb



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wildlife. This Court is unable to accept the said contention, particularly when the appellants themselves admit that **Forest Department vehicles are regularly used for supervision and administration** within the same area. In such circumstances, the contention that the use of the plaintiff's vehicle alone would disturb wildlife is untenable and misconceived.

10.It is also on record that during the course of the first appeal, a specific plea was raised that several other estate owners, factories, and plantations situated within the forest area have been permitted to lay and use roads. In such circumstances, singling out the plaintiff and denying him permission to renovate the pathway that too at his own cost would be arbitrary and legally unsustainable.

11.A pathway is jugular vein of land. When the said vein is severed, practically he would lose his bread and butter. The fruitful enjoyment of the plaintiff's property has been impeded for reasons extraneous to law and hence, the first appellate Court correctly granted decree for mandatory injunction to restoration of the pathway which had been damaged due to un proceeded rainfall happened in the year 1991 at



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his own costs and the concurrent findings of the Trial Court and the First Appellate Court relating to the existence of pathway as described in the “B” scheduled suit property and the decree of the learned first appellate judge to restore the pathway at the plaintiff's costs do not suffer from any perversity or legal infirmity warranting interference under Section 100 of the Code of Civil Procedure.

12. Accordingly, this Court finds no merit in these Second Appeals. All the substantial questions of law are answered **against the appellants**. The **Second Appeals are dismissed**. There shall be no order as to costs. Consequently connected miscellaneous petitions are closed.

06.01.2026

NCC : Yes/No
Index : Yes/No
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