

IN THE COURT OF THE SUBORDINATE JUDGE, METTUR

Present: Thiru. R.Saravana Babu,B.A., L.L.B,

Subordinate Judge, Mettur

Friday, the 31st day of July 2026

A.S.No. 10 / 2021

CNR.No: TNSA16-000347-2021

R. Rathinam

... Appellant

//Vs//

E. Kowsika Boobathy

... Respondent

On appeal against the Decree and Judgment in O.S.No.176/2012 dated 27.04.2021 on the file of District Munsif Court, Mettur,

Between:

R. Rathinam

... Plaintiff

//Vs//

E. Kowsika Boobathy

... Defendant

This appeal came up on 20.07.2026 before this Court for final hearing in the presence of Thiru.M.Jaganathan, learned counsel for the Appellant / Plaintiff and Thiru.L. Ganapathy Subramanian learned counsel for the Respondent / Defendant and upon hearing the both side arguments and on perusing the documents as well as oral testimony and having stood over for consideration till this day, this Court delivered the following:

APPEAL JUDGMENT

1) The appeal has been arising out of decree and judgment passed by the learned District Munsif, Mettur in O.S.No.176/2012 dated 27.04.2021.

2) The unsuccessful plaintiff has filed this appeal against the respondent/defendant in O.S.No.176/2012. For the sake of convenience, the parties are referred as like in the trial court as the plaintiff and defendant.

3) The Tersely facts of the plaint is as follows:-

The plaintiff has laid the suit for the relief of Declaration, Consequential Permanent injunction, Mandatory injunction and for other reliefs. According to the plaintiff, he is the absolute owner of the A schedule suit property as per the sale deed dated 08.03.2000 and it has been purchased from the defendant. A schedule of the suit property is a vacant site. It is further stated that there is a 12 feet breadth common road B schedule of the property is situated on the northern side of A schedule suit property. It is further stated that the defendant having lands on the western side of suit A schedule property. The plaintiff further stated that B schedule of the property is common road for the plaintiff, defendant and general public for the purpose of ingress and egress. It is further stated that the plaintiff and the defendant entitled to use the 12 feet common road to reach the Kunjandiyur to Nangavalli road for their ingress and egress and neither the plaintiff nor the defendant had title or right over the B schedule of the suit property. It is further stated that on 13.05.2012, the defendant and his men attempted to lay foundation in the 12 feet common road of B schedule property by leaving one foot space from the A schedule property. The act of the defendant has been prevented by the plaintiff with his well-wishers. The plaintiff further stated that the defendant have no right to put up a foundation in the B schedule of the property. Hence, the plaintiff have filed the suit for the relief of permanent injunction. Subsequent to the suit the petition has filed under Order 26 Rule 9 to note down the physical fitness of the suit property. By the order of the court the Advocate Commissioner has inspected the suit property and measured with the help of VAO and Surveyor and submitted his report and plan. On perusal of Commissioner Report it is found that there is a compound wall which blocked the usage of B schedule of the property by the plaintiff from the suit A schedule property. Therefore, the plaintiff has filed an amendment application in IA No. 833/2018 and it has been allowed to amend the plaint. Hence, the suit has been amended for the additional relief of declaration and mandatory injunction against the defendant.

4) Nutshell of the written statement of the defendant:

The defendant has stated that the suit is false, frivolous and vexatious on law and on facts. The defendant further stated that the schedule of the property mentioned as “A” schedule of the property has been sold by this defendant to the plaintiff. The defendant denied the suit “B” schedule property lies on the northern side of the suit “A” schedule property. The rough plan filed by the plaintiff is not true and it is imaginary one. The defendant has specifically stated that “B” Schedule of the suit property is originally belonged to the defendant and it is not a common pathway to all. The defendant further denied that on 13.05.2012 the defendant never attempted to put a foundation in the “B” suit schedule property by leaving one foot space to the “A” schedule property. There is no such occurrence took place on 13.05.2012 as alleged by the plaintiff. The suit has been filed with many suppression of facts. The plaint does not disclose the right of plaintiff in enjoying the “B” schedule of the suit property. The plaintiff does not paid correct court fees to the suit. The defendant further stated that the plaintiff is having alternative way to reach the Nangavalli- Kunjandiyur main road and suppressed this fact and filed the false suit. Hence, the defendant has prayed to dismiss the suit with cost.

5) Nutshell of the Additional written statement of the Defendant:

The defendant stated that the plaintiff is not entitled to file this suit. The defendant further stated that there is a road which runs north south direction abetting the suit property and it is used by the plaintiff to enter into the suit property by that road. At the time of sale the “B” schedule of the suit property has been shown as boundary to the “A” schedule suit property. There is no right has been granted to the plaintiff to use the “B” schedule suit property. Therefore, the defendant has constructed the compound wall in the year of 2012 and from 2012 to 2018, the plaintiff did not ask anything about the compound wall. The “A” schedule of the property is a vacant land and he did not come forward to construct the building in the “A” schedule property. The houses in and around the suit properties facing eastern side of the road. It is cleanly mentioned in the commissioner report and plan. It is further stated that only in order to get the illegal gain, the plaintiff has filed this suit. The

plaintiff has filed the suit only to prolong the matter and the suit is barred by limitation. The plaintiff is having access on the eastern side of the suit “A” schedule property to reach the road. The plaintiff is not entitled to the relief of declaration, permanent injunction and mandatory injunction. The court fees paid by the plaintiff is incorrect. Hence, the suit is liable to dismissed.

6) Based on the above pleadings the trial court has framed the following issues:

- 1) Whether the suit schedule property is correct?
- 2) Whether there is a common pathway of B schedule of the property as alleged by the plaintiff?
- 3) Whether the plaintiff is using the common pathway of B schedule of the property as alleged by the plaintiff?
- 4) Whether the court fees paid by the plaintiff is correct?
- 5) Whether the suit is barred by the limitation?
- 6) Whether the plaintiff is entitled to the relief of declaration as prayed for?
- 7) Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for?
- 8) Whether the plaintiff is entitled to the permanent injunction as prayed for?
- 9) What do other reliefs?

7. During trial proceedings, on the side of the plaintiff, the PW1 and PW2 were examined and marked Exhibits A1 to A4. On the side of defendant, the defendant himself examined as DW1, and no documents marked. On the side of court Ex.C1 to Ex.C3 were marked.

8. Trial court, after marshaling the evidence adduced by both parties, has dismissed the suit vide., its Judgment dated 27.04.2021, holding that the Appellant / Plaintiff is not entitled to relief as sought for. Feeling aggrieved by the judgment of the trial court, the plaintiff has preferred this appeal challenging the judgment of the trial court on raising various grounds factually and legally as stated in the appeal, that trial court failed to appreciate the evidences; that it failed to consider that the “B” schedule of the property is a common pathway and it has been prevented by the defendant by raising 12 feet compound

wall in the “B” schedule of the suit property. The suit is not barred by any limitation. The trial court itself gave a findings that one of the boundary mentioned in the A schedule of the property having 12 feet common road. The Ex.A1 also reveals about the presence of 12 feet common passage for the plaintiff, defendant and public at large. It is further stated that the trial court has failed to note down the vital points mentioned in the Ex.C1 to Ex.C3 and the admission in evidence of the defendant, that it failed to answer all the issues, that it failed to consider that the existence of common passage in B schedule of the suit properties and in all, the trial court’s finding suffers from material legal infirmity and perversity.

9. Whether the appeal filed by the Appellant / Plaintiff is deserves to be allowed or not?

10. This court has heard the learned counsels appearing for the both sides and perused the exhibits marked before the trial court and also perused the judgment of the trial court and grounds of appeal.

11) Points for determination:

11.1) It is the specific case of the plaintiff is that the plaintiff is the absolute owner of the suit “A” schedule property as per the sale deed dated 08.03.2000. At the time of purchase the “B” schedule of the suit property has been shown as northern side boundary of the “A” schedule property. The plaintiff further claimed that the “B” schedule of the property is 12 feet breadth common road and it has been left by the defendant for the purpose of ingress and egress to the suit properties. It is further stated that the plaintiff is using the 12 feet breadth “B” schedule property to reach the Kunjandiyur to Nangavalli road and he has no alternative common pathway to reach the main road. It is further stated that 13.05.2012, the defendant has attempted to put a compound wall to prevent the right of the plaintiff in using the common pathway. Hence, the plaintiff has laid the suit for permanent injunction. Thereafter, an Advocate Commissioner has been appointed by this court to note down the physical features of the property with the aid of VAO and Taluk Surveyor. It is

further stated that after the inspection of the suit property it has been came to know that there was compound wall which blocked the usage of common pathway of the plaintiff. Hence, the plaintiff has amended the suit for the relief of declaration, consequential permanent injunction and mandatory injunction. On the side of plaintiff PW1 and PW2 were examined and Ex. A1 to Ex.A4 were marked and Exhibit C1 to C3 were marked.

11.2) It is the specific case of the defendant is that he is the vendor of the plaintiff and the claim of the plaintiff is false and the suit is vexatious one. The defendant has denied the right of the plaintiff in using the “B” schedule of the property. The defendant has specifically stated that the “B” schedule of the property has been put up by the defendant to use his property as house site and there is no right for the plaintiff to claim as a common public pathway. It is further stated that before filing the suit itself the compound was has been raised and the suit filed by the plaintiff is barred by limitation. It is further stated that the compound wall has been raised in the year of 2012 itself and the same has been established through written statement and Commissioner’s plan and report in the year of 2012 itself. It is further stated that the plaintiff is having another access on the eastern side of “A” schedule of property to reach the north south main road. Therefore, the right of the plaintiff does not arise and the suit is liable to be dismissed. On the side defendant DW1 has examined.

11.3) On perusal of the case records, it is found that the plaintiff has claimed 12 feet breadth common pathway on northern side of the “A” schedule of the suit property. The disputed property is 12 feet common pathway and it is the “B” schedule of the suit property. It is found that the defendant denied the right of the plaintiff in the “B” schedule of the suit property. Both parties admitted that, the sale deed dated 08.03.2000 is the A Schedule of the property and it has been purchased by the plaintiff from the defendant. It is crystal clear from the evidence of the DW1 that he has sold the property to the plaintiff by showing that there was a 12 feet road on the northern side of the “A” schedule of the property. Hence, it is decided that there was 12 feet road on the northern side of the “A” Schedule of the property and it is the “B” Schedule of the property as claimed by both parties.

11.4) The plaintiff has claimed that he is enjoying the common pathway in “B” Schedule of the suit property from the date of purchase. It is already decided that there is a common pathway in the “B” Schedule of the property. The plaintiff has further admitted that there was a compound wall lying in the B Schedule of the property which obstructs the entry of the plaintiff in the “B” Schedule of the property. Therefore, it can be decided that the plaintiff did not enjoy the common pathway in B Schedule of the property.

11.5) At the time of filing of the suit the plaintiff has valued the suit property for the notional value of Rs.1000/- for her relief and paid a sum of Rs. 75.50 Under section 27© of Tamil Nadu Court Fees and Suits Valuation Act. On perusal of the plaint it is found that the plaintiff has filed the suit only in respect of “B” Schedule of the property for the relief of permanent injunction. Thus, it is decided that the court fees paid by the plaintiff is correct at the time of filing of the suit. Thereafter, the plaintiff has amended the suit for the relief of declaration and permanent injunction and he has paid the court fees as per the amended Tamil Nadu Court Fees and Suits Valuation Act. In the above discussions, it is decided that court fees paid by the plaintiff is correct.

11.6) The further defense took by the defendant is that the defendant has raised a compound wall in the “A” Schedule of the property but the plaintiff did not raise any objection from the year of 2012 to 2018, therefore, the suit is barred by the limitation. On perusal of case records, it is found that the suit has been filed for the relief of permanent injunction at initial stage. The interlocutory application has filed an IA No.833/2018 and same has been allowed by this court on 15.07.2019 for the relief of declaration, consequential injunction and mandatory injunction. It is crystal clear from the pleadings, that the written statement has been filed by the defendant on 02.11.2012 but the plaintiff did not take any steps from the date of knowledge to amend the plaint for the relief of declaration and other reliefs. On perusal of records, it is found that on 02.11.2012 itself, the presence of compound wall in the “B” Schedule of the property has been established by the defendant but the plaintiff did not take any steps to amend the plaint till the year of 2018.

Therefore, the suit is clearly barred under Article 58 of Limitation Act. It is further noted that from the year of 2012 itself the presence of compound wall has been established by the defendant but the plaintiff has failed to seek the relief of mandatory injunction from the date of knowledge. Therefore, the suit is barred under Article 113 of Limitation Act. Both the parties did not state about the date of construction of the compound wall in the B Schedule of the property. Therefore, the Article 113 of Limitation would apply for the above facts and case. On perusal of Exhibit C1 to C3 it is found that on 12.06.2012 itself, B Schedule of the suit property has been visited and it is crystal clear that compound wall has been already present in the “B” Schedule of the property. The plaintiff ought to have file the suit within the period of 3 years from the date of 12.06.2012 but he has filed the interlocutory application in IA No.833/2018 in the year of 2018 and it has been allowed to amend the plaint. As per the Article 113 of Limitation Act, the mandatory injunction has to be claimed from the date of knowledge, in this present case, the plaintiff failed to claim the right within the period of 3 years. Therefore, the relief of mandatory injunction is barred under limitation act. The claim of declaration and mandatory injunction is barred under law for the plaintiff. Therefore, it is decided that there is no chance for the plaintiff to enjoy the suit B schedule of the property as claimed in the plaint. Therefore, it is decided that the plaintiff is not entitled to the relief of permanent injunction in respect of “B” Schedule of the suit property. Therefore, this court does not find any infirmity in the conclusion arrived by the trial court.

12. By way of above said discussions there is no occasion arise to set aside the Judgment and decree of the trial court. The learned trial court has rightly held that the plaintiff is not entitled to the reliefs sought for by evaluating the evidences in proper and prospective manner. Hence there is no ground much less sufficient cause set out by the Appellant/Plaintiff to interfere with the Judgment and decree of the trial court. Point is answered accordingly.

13. In the result, this appeal is dismissed with no cost by confirming the Decree and Judgment dated 27.04.2021 passed by the learned District Munsif, Mettur in O.S.No.176/2012 on the file of District Munsif Court, Mettur.

Dictated by me to Typist and directly typed by her in computer, corrected and pronounced by me in open court, this the 31st day of July 2026.

**Subordinate Judge,
Mettur.**

Appellant side witness and Exhibits: - Nil
Respondent side witness and Exhibits:- Nil

**Subordinate Judge,
Mettur**