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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 18.02.2026

Judgment pronounced on : 10.04.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.Nos.131 of 2023 and 1124 of 2025 and
CMP(MD).No.5208 of 2023

A.S.No.131 of 2023

T.M. Thiruvenkatasamy

.. Appellant / defendant

Vs.

M.Sundararajan

. Respondent / plaintiff

Prayer: Appeal Suit filed under Section 96 of CPC against the Judgment and Decree passed in O.S.No.20 of 2018 dated 04.11.2022 on the file of the III Additional District and Sessions Judge, Erode at Gopichettipalayam.

For Appellant

: Mr.S. Ranjith Kumar

For Respondent

: Mr.V.C. Janarthanan
for Mr.Ma.Pa. Thangavel



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A.S.No.1124 of 2025

M.Sundararajan

.. Appellant / Plaintiff

Vs.

T.M. Thiruvengkatasamy

.. Respondent / defendant

Prayer: Appeal Suit filed under Section 96 of CPC, against the Judgment and Decree passed in O.S.No.20 of 2018 on the file of the III Additional District and Sessions Judge, Erode at Gopichettipalayam.

For Appellant : Mr.V.C. Janarthanan
for Mr.Ma.Pa. Thangavel

For Respondent : Mr.S.Ranjith Kumar

COMMON JUDGMENT

A.S. No.131 of 2023 is at the instance of the defendant in O.S. No.20 of 2018 on the file of the III Additional District and Sessions Judge, Erode at Gopichettipalayam, challenging the Judgment and Decree granting a declaration in favour of the plaintiff to use the suit “A” schedule cart track and, consequently, a mandatory injunction directing the defendant to



restore the said cart track.

WEB COPY A.S. No.1124 of 2025, on the other hand, is at the instance of the plaintiff in the very same suit, challenging the rejection of the reliefs of declaration, recovery of possession, and damages insofar as the “B” schedule property is concerned.

2. Pleadings in the plaint, in brief:

(i) The plaintiff and the defendant are brothers, the defendant being the elder brother of the plaintiff. The plaintiff, the defendant, their father T.K. Muthusamy Gounder, mother Vellammal, and another brother, who was the eldest, viz., T.M. Ayyasamy, divided their family properties under a registered partition deed dated 21.05.1984. Under the said partition deed, the plaintiff was allotted “D” schedule property and the defendant was allotted “C” schedule properties therein. The plaintiff and the defendant took possession of the respective schedule “C” and “D” properties under the said partition deed and were in enjoyment as absolute owners of their respective entitlements.



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(ii) Under the said partition deed, the plaintiff was allotted an extent of 1.27.0 hectares on the western side, and the defendant was allotted an extent of 1.26.5 hectares on the eastern side, abutting the Vaikkal road. Even at the time of partition, an east-west cart track was provided, connecting the Vaikkal road on the east and the plaintiff's land on the west. The said cart track is described as "A" schedule property in the plaint schedule. However, the partition deed did not mention about the said cart track. Nevertheless, right from the date of the partition deed dated 21.05.1984 till June 2016, the plaintiff was using the said cart track openly, continuously and uninterruptedly, with the necessary animus and to knowledge of the defendant. The plaintiff thereby, has perfected his right to use the said cart track as an easement by prescription and grant. The said cart track is the only access to the plaintiff's land and therefore, it is an easement of necessity.

(iii) The plaintiff issued a lawyer's notice dated 18.12.2017 regarding his right to use the cart track. However, the defendant sent a lawyer's notice on 12.01.2018 denying the claim of the plaintiff and stating that Government poramboke lands can be used by the plaintiff to reach his properties. The plaintiff contends that neither of the parties had



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ever used the Government lands as a cart track, and such a stand was taken in the reply notice only to deny the legitimate right of easement available to the plaintiff, through the defendant's property.

(iv) The plaintiff, being an M.Sc. graduate, joined in Union Bank of India as an Agricultural Finance Officer and, during his tenure, served in several places throughout India between 2002 and 2005. The plaintiff was employed in Mumbai, and in the year 2012, he intended to construct a house on the land allotted to him under the partition deed. In order to fulfil his desire, he constructed a two-storied RCC building, more fully described in the plaint “B” schedule property, on the eastern side of his land and to the south of the well. The construction was commenced in the year 2001 and finished within one year. The entire construction cost was met solely by the plaintiff. The defendant has not claimed any right over the construction put up on the plaintiff's land. After completion of the construction, six months later, the defendant approached the plaintiff and sought permission to occupy and enjoy the suit “B” schedule property, undertaking to vacate as and when the plaintiff required the property for himself. The plaintiff, considering the good relationship between them and the fact that the defendant had helped him during the construction of the house, permitted the defendant to occupy the “B” schedule property in



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November 2002. The defendant is only in permissive occupation of the property. After retirement on 01.02.2012, the plaintiff demanded that the defendant vacate the “B” schedule property, and the defendant also promised that he would vacate after the construction of a new house in his land was completed and he shifted to the new house. Considering the relationship between the brothers, the plaintiff did not pursue the demand for vacant possession thereafter. The defendant, however, did not take any steps to put up construction of a new house in his land as promised. Therefore, in June 2016, the plaintiff insisted that the defendant vacate the “B” schedule property forthwith and deliver possession. The defendant, allegedly influenced by his wife's advice, breached the promise, resulting in a breakdown of understanding between the brothers.

(v) The defendant even went to the extent of completely destroying the “A” schedule cart track in June 2016 in an attempt to intimidate the plaintiff. The obliteration of the “A” schedule cart track by the defendant and his refusal to vacate the “B” schedule property are per se illegal, and the plaintiff was constrained to take civil and criminal action against the defendant. However, the defendant regretted his actions and promised to restore the “A” schedule cart track and vacate the “B” schedule house and



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deliver possession to the plaintiff. Believing the representation of the defendant, the plaintiff did not take immediate action. Subsequently, the defendant neither vacated the house nor restored the cart track as promised. Hence, the plaintiff was constrained to issue a pre-suit notice on 18.12.2017 through his lawyer. The defendant resisted the claim by sending a reply notice with false and untenable allegations on 12.01.2018. The plaintiff, therefore, issued a rejoinder notice on 19.01.2018. Considering the false and untenable stand taken by the defendant, the plaintiff was constrained to file the suit seeking declaration of his rights in the suit property, including the cart track. The plaintiff has also sought damages, besides the relief of declaration and mandatory injunction.

3. Written Statement, in brief:

(i) The defendant admits the relationship between the parties as well as the registered partition deed dated 21.05.1984. However, he contends that no cart track is available in the “A” schedule property, and that it does not even find mention in the partition deed dated 21.05.1984. The defendant denies the claims of the plaintiff that, from 21.05.1984, the



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plaintiff has been using the suit cart track and that he has perfected easementary rights by prescription and grant. If it were an easement by grant, the same should have been mentioned in the partition deed dated 21.05.1984. The claim of easement of necessity is also denied. The defendant states that the identified land in S.F. No.460 is 4 feet higher in level than the Vaikkal road. From time immemorial, even the ancestors of the plaintiff and the defendant were using only the cart track in S.F. No.467 to reach their land in R.S.F. No.460, and even today the plaintiff is using only the access through R.S.F. No.467. The defendant denies having destroyed or obliterated the “A” schedule cart track, which, according to him, never existed in the first place. Even during his employment and after retirement in the year 2012, the plaintiff resided at Erode and used to visit the suit property several times. If the defendant had really destroyed the suit cart track in June 2016, the plaintiff would not have remained silent for more than two years before approaching the Court. Further, no police complaint has been given regarding the alleged obliteration of the suit cart track, prior to the pre-suit notice dated 18.12.2017. The plaintiff has not pleaded any inconvenience caused due to the alleged destruction of the said cart track in the “A” schedule.



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(ii) As regards the “B” schedule house, the defendant contends that it was not constructed by the plaintiff at his cost, under the impression that it was within the land allotted to him under the partition deed dated 21.05.1984. The defendant denies that he approached the plaintiff seeking permission to occupy the “B” schedule property. The “B” schedule property is not situated within the plaintiff’s land, and such claim is denied. Since the “B” schedule property does not belong to the plaintiff, the alleged grant of permission is false. In fact, the defendant performed his housewarming ceremony on 08.09.2003, and the plaintiff was aware of the same. The plea of permissive occupation has been made only to overcome the plea of limitation and ouster.

(iii) The defendant states that he put up the construction at his own cost after obtaining necessary sanction from Punjai Thuraiyampalayam Panchayat. The construction was commenced in the year 2002 and completed in September 2003 at a cost of Rs.20,00,000/-. The defendant also availed a loan of Rs.6,00,000/- from the State Bank of India, Thukkanaickenpalayam, and performed the housewarming ceremony on 08.09.2003. There was no necessity for the defendant to vacate the property, and all allegations to the contrary are denied. The house in the



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“B” schedule property is assessed to tax in the name of the defendant, and he has been in enjoyment of the same in his own right. He has constructed the house and has been in possession by ousting and excluding the plaintiff for more than the statutory period of 12 years, continuously and uninterruptedly. The plaintiff raised his claim for the first time only on 18.12.2017. By efflux of time, laches, and acquiescence, the plaintiff has lost all his rights over the “B” schedule property, if any existed. Even assuming that the “B” schedule property was constructed on land belonging to the plaintiff, by reason of ouster and perfection of title, the plaintiff has lost his right to recover possession of the same from the defendant. The plaintiff is not entitled to damages as claimed at Rs.5,000/- in the notice dated 18.12.2017. The suit has not been properly valued and is also barred by limitation. The cause of action alleged is false and invented.

4. Additional Written Statement filed by the Defendant, in brief:

Insofar as the “A” schedule cart track is concerned, the predecessors in title were using only R.S.F. No.467 to reach their lands, and the plaintiff



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cannot claim any right of easement of necessity. The claim of the plaintiff that he has perfected title over the “A” schedule property either by prescription or by grant is also not maintainable under law and is estopped by the deed, viz., the partition deed dated 21.05.1984, which does not mention the suit cart track. Insofar as the “B” schedule property is concerned, the claim of the plaintiff is barred by the law of limitation. To the knowledge of the plaintiff, the defendant had entered into the property and constructed the superstructure in October 2002, and ever since has been residing in the “B” schedule property openly, continuously, and without any interruption for the past 17 years and more, and has perfected his title by adverse possession and even in the year 2015, extinguishing all rights claimed by the plaintiff. Therefore, the defendant prayed for dismissal of the suit.

5. Issues framed by the Trial Court:

Based on the pleadings, the Trial Court framed the following issues:

1. Whether it is true that the suit cart track was in existence in the suit property?
2. Whether the plaintiff has perfected an easement by



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prescription over the suit cart track?

3. Whether the “B” schedule property belongs to the plaintiff?
4. Whether the plaintiff is entitled to the relief of declaration with regard to the suit cart track?
5. Whether the plaintiff is entitled to mandatory injunction in respect of the suit cart track?
6. Whether the plaintiff is entitled to the relief of declaration with regard to the “B” schedule property?
7. Whether the plaintiff is entitled to the relief of possession in respect of the “B” schedule property?
8. Whether the plaintiff is entitled to future damages with regard to the “B” schedule property?
9. To what other relief is the plaintiff entitled?
- 10.

The plaintiff examined himself as PW.1 and Exs.A1 to A2 were marked. The plaintiff examined three further witnesses as PW.2 to PW.4. On the side of the defendant, the defendant examined himself as DW.1 and marked Exs.B1 to B16. The defendant also examined three witnesses as DW.2 to DW.4. Exs.C1 to C5 and Exs.X1 to X3 were marked.



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6. Decision of the Trial Court:

The Trial Court, finding that the plaintiff was entitled to the right to use the suit cart track, decreed the suit and granted a declaration that the plaintiff was entitled to use the “A” schedule suit cart track and, consequently, granted a mandatory injunction directing the defendant to restore the said “A” schedule cart track. However, the Trial Court rejected the reliefs of declaration, possession, and damages insofar as the “B” schedule property is concerned.

7. Present Appeal:

(i) Aggrieved by the decree granted insofar as the “A” schedule property is concerned, the defendant has preferred A.S. No.131 of 2023. As against the “B” schedule property, the plaintiff has filed an appeal in A.S. No.1124 of 2025. Since both the appeals are arising out of the same suit, with the consent of the counsel for both sides, the appeals have been



heard together.

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ii). Heard Mr. S. Ranjith Kumar, learned counsel appearing for the appellant / defendant in A.S. No.131 of 2023 and the respondent / defendant in A.S. No.1124 of 2025, and Mr.V.C. Janarthanan for Mr. Ma.Pa. Thangavel, learned counsel appearing for the respondent /plaintiff in A.S. No.131 of 2023 and the appellant / plaintiff in A.S. No.1124 of 2025.

8. For the sake of convenience, the parties are referred to as per their ranking before the Trial Court.

9. Arguments of Mr. S. Ranjith Kumar:

(i) Mr. S. Ranjith Kumar, learned counsel appearing for the appellant/ defendant in A.S. No.131 of 2023 and the respondent/defendant in A.S. No.1124 of 2025, would firstly state that the claim of the plaintiff that he is entitled to an easement by grant is, on the face of the record,



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misconceived and unsustainable. The plaintiff has not been able to show any documentary proof with regard to any grant having been made or expressed in respect of the suit schedule cart track. He would further state that the omission of mention of the suit cart track in the registered partition deed would sufficiently estop the plaintiff from contending that there was such a cart track in the first place. He would further state that even according to the plaintiff, the Government lands situated on the western side have been used by adjoining landowners, including the ancestors of the plaintiff and the defendant, from time immemorial, and in such circumstances, the said land in R.S.F. No.467 being available, the plaintiff is not entitled even to claim easement by necessity. He would also state that the claim of the plaintiff that he has prescribed a right of easement by continuous usage from the date of the registration of the partition deed is also unsustainable, since the levels of the properties are not the same, and the lands in R.S.F. No.460 are at a level 4 feet higher than the Vaikkal road.

(ii) Mr.S. Ranjith Kumar, learned counsel would further states that the claim of the plaintiff for easement by prescription, grant, as well as by necessity cannot be accepted and declared by the Court. He would further



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state that the burden of proof to establish the existence of the alleged cart track lies on the plaintiff, and the plaintiff has miserably failed to discharge the said burden. He would further state that, when the plaintiff alleges obliteration of the said cart track in the year 2016, the plaintiff has neither clearly identified the said location nor he has been able to justify or explain the silence thereafter.

(iii) According to the learned counsel for the defendant, if the alleged suit cart track was the only available access to the plaintiff to reach his lands, then under no circumstances would the plaintiff have remained silent for two years, and there is no explanation as to how he accessed his lands after the alleged obliteration of the suit cart track. Mr. Ranjith Kumar, learned counsel would further state that the claim of the defendant regarding the usage of Government land in S.F. No.467 by the ancestors and predecessors of the parties is therefore, probable and acceptable. He would further state that the omission to mention any cart track in the partition deed Ex.A1, dated 21.05.1984 is conclusive proof that there was no such cart track carved out at the time of partition. He would also state that the revenue records, including FMB sketches and “A” Register - Ex.A10, do not evidence the existence of any cart track



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running through the defendant's lands, and that the plaintiff's plan is a self-serving document with no evidentiary value. He would further state that the first demand made by the plaintiff was only through the pre-suit notice in Ex.A2 dated 18.12.2017, and that the delay in raising the claim affects the credibility of the plaintiff's case. Despite alleging destruction of the suit cart track, the plaintiff remained inactive, which weakens his case. He would also rely on the evidence of PW.2, who, in cross-examination, admitted that the parties to the suit had been using Government poramboke land. He would further state that the said witness, being a Village Administrative Officer, has clearly stated that the parties were using Government poramboke lands, which implies that there was no suit cart track as claimed by the plaintiff. The learned counsel would further state that for more than three decades since the partition deed, the plaintiff has never raised any issue regarding the non-mention of the cart track, till 2018, and therefore, by acquiescence and laches, the plaintiff is estopped from claiming any right of easement. He would further state that the physical features of both properties for several decades negate the existence of any cart track running through the defendant's lands.

(iv) As regards A.S. No.1124 of 2025 Mr. S. Ranjith Kumar, learned



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counsel for the defendant, would state that the partition deed in Ex.A1 clearly demarcates the properties allotted to the plaintiff and the defendant, and contends that boundaries will prevail over extent. The Trial Court has rightly held that the partition was based on boundaries, and that land measurements cannot be relied upon to determine the location of the “B” schedule house. In this regard, he relies on the evidence of DW.3, Surveyor, who has stated that measurements can be taken only with reference to boundaries, and that boundaries determine extent, and not vice versa. Referring to the Advocate Commissioner’s evidence (DW.4) and Exs.C1 and C2, Mr. Ranjith Kumar, learned counsel invites attention to the findings in the report regarding the existence of fences and coconut trees on both sides, and that the house is situated within the “C” schedule property allotted to the defendant, based on boundaries. He would further state that the Commissioner has noted coconut trees which are more than 30 years old, and that the boundary features have been in existence ever since the 1984 partition deed.

(v) As regards proof of construction, the learned counsel relies on Ex.A4 - notice, which stands in the name of the defendant, which, according to him, establishes that the defendant put up the construction.



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He would further rely on Ex.B3 series and Exs.B5 to B39 series and state that the defendant has produced overwhelming documentary evidence to prove that he constructed the building himself and not the plaintiff.

(vi) Referring to Ex.B4, Mr. Ranjith Kumar would state that the defendant availed a loan of Rs.6,00,000/- for commencing construction of the house. He would also state that the defendant has produced Exs.B1 to B12 to establish the construction and existence of the building. Referring to Ex.X2, he would state that the electricity connection stands in the name of the defendant, and the evidence of PW.3, Junior Engineer of the Tamil Nadu Electricity Board, confirms that the electricity connection was temporarily provided to the defendant on 13.10.2002 and later converted into a permanent residential connection.

vii) On the other hand, according to Mr.S.Ranjith Kumar, learned counsel, the plaintiff has not filed a single document to establish that he put up the construction, as seen from the cross-examination of PW.1. The learned counsel would state that the plaintiff was not able to name the persons involved in the construction. He would also state that the plaintiff

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was not able to specify the dates on which the construction commenced and was completed. He has also not been in a position to state when the housewarming function was conducted. He would also state that, though the plaintiff claims that he had been maintaining accounts, he refused to produce the account books during cross-examination.

(viii) In such circumstances, Mr.S.Ranjith Kumar, learned counsel for the defendant, would submit that no adverse inference can be drawn against the defendant, and that the plaintiff has failed to establish his case. He would further state that during the period from 2000 to 2012, except between 2002 and 2005, the plaintiff was in service and posted in Dindigul District. The construction was commenced in 2001, and even according to both parties, the construction was completed within a year, which implies that the plaintiff was not present at the relevant time. The plaintiff has not been able to justify his absence during the period of construction, and his answers relating to the construction, dates, and persons involved clearly indicate that he did not put up the construction as claimed.

(ix) Placing heavy reliance on the evidence of DW.1 regarding the



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housewarming ceremony held on 08.09.2003, which was attended by the plaintiff along with many other relatives, the learned counsel would state that at least at that point of time, the plaintiff ought to have objected and called upon the defendant to vacate the property. Referring to the evidence of PW.4 - Chinnakannan, Mr.S.Ranjith Kumar, learned counsel would state that the said evidence is wholly unreliable, as the witness stated that the housewarming ceremony was in the year 2002 and could not remember the date or month of the function. According to him, only 10 persons attended the function, and being a childhood friend of the plaintiff, his evidence is interested and not credible. Finally, it is the submission of Mr.S. Ranjith Kumar, learned counsel for the defendant, that the finding of the Trial Court that the plaintiff permitted the defendant to occupy the property in November 2002 has been made only to circumvent the law of limitation. When the defendant has been in occupation of the house ever since its construction in September 2003 and has been paying taxes in his name, he has perfected title by way of adverse possession, and the plea of permissive occupation is therefore baseless. He would also state that the plaintiff has not been able to establish any such alleged permission granted to the defendant in respect of the “B” schedule property. In this regard, the learned counsel would further state



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that, though the plaintiff was a party to the partition deed, the “B” schedule property does not find place therein, which is fatal to the plaintiff’s claim. In support of his contention, the learned counsel for the defendant relied on the following decisions:

11.Division Bench Judgment reported in **85 LW 613– *Minor Ibramsa***

Rowther vs. Sheik Meerasa Rowther

12.Judgment reported in **2005 (3) LW 167 – *Pappayammal vs.***

Palanisamy and others

13.Judgment reported in **(2009) 12 SCC 310 – *Bonder and another***

vs. Hem Singh (dead) by LRs and others

14.Judgment reported in **2022 SCC OnLine SC 240 – *B.R. Patil vs.***

Tulsa Y. Sawkar and others

15.Judgment reported in **(2006) 11 SCC 600 – *Govindammal vs. R.***

Perumal Chettiar and others

10. Argument of Mr.V.C. Janarthanan:

Mr. V.C. Janarthanan, for Mr. Ma.Pa. Thangavel, learned counsel appearing for the plaintiff, would state that mere non-mentioning of the

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suit cart track in the partition deed - Ex.A1 cannot be fatal to the claim made by the plaintiff. He would further state that, even according to the defendant, when there is no other access to the plaintiff's properties except by usage of Government poramboke lands in S.No.467, the plaintiff's case has to be upheld. The usage of the Government poramboke lands by common villagers, as well as by the plaintiff and the defendant, is admitted. He would further state that any amount of usage of Government land can never be legalized or validated, and in any event, it cannot be a ground to deny the right of easement that is otherwise established by the plaintiff.

11. In this regard, Mr. V.C. Janarthanan, learned counsel, relied on Ex.C3, the Commissioner's report. He would also state that, having regard to the facts and circumstances of the case, the partition deed dated in the year 1984 was not by metes and bounds, but by rough division, and in this context, he relies on Section 8 of the Transfer of Property Act as well as Sections 13 and 15 of the Indian Easements Act, 1882, to contend that even if the partition deed did not recognize the suit cart track, the plaintiff's easementary rights cannot be denied. In support of his contention, the learned counsel for the plaintiff relied on the following



decisions:

WEB COPY 16. Judgment of this Court reported in **1997 (3) LW 644 – K.**

Jayalakshmi Ammal vs. S.M. Balasundaram and another

17. Judgment of this Court in **S.A. No.369 of 1963, dated 12.01.1967 –**

Palaniswami Naicker vs. Chinnaswami Naicker

18. Judgment of the Hon'ble Supreme Court reported in **2010 (2) SCC**

689 – Sree Swayam Prakash Ashramam and another vs. G.

Anandavally Amma and others

12. The learned counsel would therefore state that the Trial Court has rightly appreciated the oral and documentary evidence and declared the right of the plaintiff, despite the partition deed (Ex.A1) not mentioning the suit cart track.

13. As regards “B” Schedule Property Mr.V. C. Janarthanan, learned counsel for the plaintiff, would submit that the report of the Advocate Commissioner in Ex.C1 locates the “B” schedule property within the “D” schedule allotted to the plaintiff under Ex.A1 partition deed. He would further state that, the parties being brothers, and the plaintiff being away, the plaintiff trusted the defendant and provided finances for putting up

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construction, and the defendant has taken undue advantage of the absence of the plaintiff by putting up construction and having the property assessed in his name, behind the back of the plaintiff. He would further state that the documents produced by the defendant do not contain any particulars or nexus to the “B” schedule property, and therefore no reliance can be placed on the same, particularly Exs.A19, A21, and A22. The learned counsel would state that those documents are not relevant. However, the construction, admittedly even according to the defendant, was in the years 2002 to 2003, and therefore the bank passbook as well as loan papers produced after a lapse of five years have no relevance to establish that the defendant had put up the construction. Even as regards the planning permission, Mr. V.C. Janarthanan, learned counsel for the plaintiff, would submit that the planning permission was not in respect of the “B” schedule property, but relates to the defendant’s property as a whole. In this regard, he invites attention to the endorsement made in Ex.B4, being the approved plan for construction of a house issued to the defendant. The learned counsel therefore prayed that A.S. No.131 of 2023 be dismissed and A.S. No.1124 of 2025 be allowed.

14. Considering and noticing the arguments advanced by the
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learned counsel on either side, I frame the following points for consideration in these appeals:

19. Whether the suit cart track was in existence from the date of partition in the year 1984, and if so, whether the same was obliterated by the defendant in 2016, thereby entitling the plaintiff to the relief of declaration and mandatory injunction as prayed for?

20. Whether the “B” schedule house was constructed by the defendant, and whether the defendant has perfected title by adverse possession, or whether the plaintiff had only permitted the defendant to occupy the “B” schedule property, and consequently, whether the plaintiff is entitled to the reliefs sought for?

15. Analysis:

The relationship between the parties is not in dispute. The plaintiff is the younger brother of the defendant. It is also not in dispute that, under Ex.A1 partition deed dated 21.05.1984, the plaintiff and the defendant were respectively allotted “D” and “C” schedule properties, and that they



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have been in possession and enjoyment of the same ever since. The plaintiff claims that the east-west cart track marked as “ABCD” in the plaintiff plan existed even at the time of the partition deed in the year 1984 and was the only access to reach the plaintiff's land. Owing to disputes arising out of the defendant being called upon to deliver possession of the “B” schedule property, the defendant has obliterated the “A” schedule cart track, which necessitated the plaintiff to seek declaration of easementary rights. As rightly pointed out by Mr. S. Ranjith Kumar, learned counsel for the defendant, there is no mention of the alleged cart track in Ex.A1 partition deed, and therefore, I do not see how the plaintiff can claim an easement by grant or prescription. The plaintiff and the defendant were allotted 1.27.0 hectares and 1.26.5 hectares of lands respectively in Alamarathu Thottam. The plaintiff's allotment lies on the western side of the defendant's share. Access to the defendant's land is through the Vaikkal road running on the southern side and maintained by the T.N. Palayam Panchayat Union. According to the plaintiff, the only access to the said Vaikkal road was through the defendant's land.

16. From the oral evidence of DW.1, it is clear that except the Government poramboke land situated in R.S.F. No.467, there is no other



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pathway to enable the plaintiff to reach his land. As rightly pointed out by Mr.V.C. Janarthanan, no person can claim a right to use Government poramboke land as a matter of right. Further, as deposed by DW.1, even assuming that the plaintiff was using the Government poramboke land, such access could be denied by the Government at any point of time, which is contrary to the stand taken by the defendant. In fact, under Exs.A23 and A24, it is also noticed that the defendant himself was using the Government poramboke land. Therefore, the argument of Mr. S. Ranjith Kumar that since access existed through Government poramboke land, no easement can be declared in favour of the plaintiff cannot be accepted. Therefore, even though the plaintiff has not been able to establish the right of easement by grant or prescription, certainly, by way of necessity, the plaintiff is entitled to such easement.

17. Though it has been vehemently contended by Mr. S. Ranjith Kumar that, despite the alleged obliteration of the cart track from 2016, the plaintiff did not take immediate action, such as approaching the police authorities or issuing a notice, and that this delay falsifies the plaintiff's case, the same is not sufficient to reject the claim in entirety. However, DW.1, during cross-examination, in response to a question regarding the



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space between the newly constructed house and the coconut trees, has stated that there exists a 12 feet wide passage, which indicates the existence of a regular cart track or pathway. Therefore, when the defendant himself has clearly deposed about the existence of a pathway between the house and the coconut trees, the existence of the cart track has been established by the plaintiff. The report of the Commissioner along with plans Exs.C1 and C2 also supports the conclusion that the plaintiff has no other access to reach his land except through the “A” schedule cart track.

18. The Hon’ble Supreme Court, in *Sree Swayam Prakash Ashramam’s case*, held that when a pathway is not mentioned in the document concerned, it would not by itself imply a grant of pathway right. However, it was also held that an easement by grant can arise by implication. In the facts of that case, there was sufficient evidence to show continuous usage and absence of alternative access. However, in the present case, I do not find satisfactory evidence to establish either express or implied grant, since there is no mention in the partition deed and no clear evidence of such grant. This Court has also held that non-mention of a pathway in a document is not always decisive, and under Section 8 of the Transfer of Property Act, easementary rights may pass along with the



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property. However, in the present case, I do not find that Section 8 has any application, since there was no existing easementary right established at the time of partition.

19. Coming to Section 13 of the Indian Easements Act, it deals with easements of necessity and quasi-easements arising upon partition of joint property. It provides that where a property is partitioned, and a share cannot be enjoyed without certain easements, such easements arise by necessity. Section 15 deals with easement by prescription, which requires continuous, open, and uninterrupted enjoyment for 20 years. The plaintiff, though claimed on easement by prescription, has not established such continuous enjoyment for the statutory period so as to acquire an absolute easementary right. Therefore, while the plaintiff has failed to establish easement by grant or prescription, the materials on record clearly establish that the plaintiff is entitled to an easement of necessity over the “A” schedule property. In such circumstances, the plaintiff is entitled to an easementary right. I do not see any error in the Trial Court granting easementary right in favour of the plaintiff. Mere delay in approaching the Court, in my considered opinion, is not fatal to the case of the plaintiff considering the relationship between the parties and also admittedly, both



parties had the benefit of promboke lands to access their respective properties.

Point No.1 is answered in favour of the plaintiff and against the defendant.

20. Coming to the Schedule “B” house, the case of the plaintiff is that the defendant approached him and sought permission to occupy the Schedule “B” house situated in the lands allotted to him. The complaint of the plaintiff is that, despite repeated requests and reminders, the defendant has not come forward to deliver possession of the Schedule “B” house, and therefore the plaintiff has sought the relief of declaration and recovery of possession, as well as damages for use and occupation. In defence, the defendant contends that the plaintiff did not put up any construction or contribute towards putting up the construction of the Schedule “B” house, and that the defendant alone constructed the house and performed the house-warming function, and has been in absolute, continuous, and uninterrupted possession of the Schedule “B” property ever since 2004. The defendant claims right by way of adverse possession. In order to establish that the plaintiff had put up construction, I do not see any acceptable material produced on the side of the plaintiff in this regard.



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The plaintiff relies only on certain admissions said to have been taken from the documents on the side of the defendant, while claiming that the defendant had put up the construction. Even discounting Exs. B3 and B5 to B14, the plaintiff, having come to Court, carries the burden of proving that he is entitled to declaration, recovery of possession, and consequently damages for occupation. The plaintiff's evidence, as already discussed above is highly wanting in this regard. He claims that the defendant sought permission to occupy the Schedule "B" house and that he permitted the defendant, taking into account the relationship between the brothers. However, as put forth by the defendant, when the defendant had performed the house-warming ceremony in 2003, it is the specific case of the defendant that the plaintiff had knowledge, as he was invited, and also attended the house-warming ceremony of the Schedule "B" house, I am at a loss to understand how a person who claims to be the absolute owner of the said house would remain silent and not put the defendant on notice about his clear right and title over the Schedule "B" house. Further, it is the case of the plaintiff that in June 2013, when the plaintiff demanded that the defendant vacate the Schedule "B" house, the defendant went to the extent of destroying the Schedule "A" cart track. The same is alleged to have occurred in the year 2016 when the defendant refused to vacate



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the Schedule “B” house. However, such statements on the part of the plaintiff appear to have been made only out of necessity to overcome the delay in not immediately initiating legal proceedings against the defendant, at least from June 2016 onwards.

21. According to the plaintiff, the defendant went to the extent of destroying the Schedule “A” cart track and the same also projects a theory of permissive occupation. As rightly pointed out by the learned counsel for the defendant, the plaintiff has not been able to lead any acceptable or satisfactory evidence, either oral or documentary, to prove that permission was granted. Therefore, in the absence of proof of such permission, the plaintiff cannot rely upon such a plea. When the case of the plaintiff is asserting rights over the property from as early as 2003 onwards, the plaintiff has come up with the theory of permissive occupation only in order to overcome the law of limitation. It was also argued with reference to Exhibit B4, by the learned counsel for the plaintiff Mr. V.C. Janarthanan, that the same does not relate to the Schedule “B” property. However, it is not the case of the plaintiff that the defendant had put up construction in pursuance of Exhibit B4 in some other property.



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22. Admittedly, Exhibit B4 is a planning approval given by the Panchayat at Punjai Thuraiyampalayam, and the approval in Ex-B4 has been issued by the Panchayat for the relevant period. Therefore, when there is no dispute with regard to the identity of the property which is the subject matter of the dispute, and in the absence of any evidence on the side of the plaintiff to show that the planning approval does not relate to the Schedule “B” house, such a contention cannot be accepted. On perusal of Ex-B4, I find that the permission has been accorded by Thuraiyampalayam Panchayat and it relates to the very same period concerning the Schedule “B” house as well. In such circumstances, I am unable to countenance the submission of Mr. V.C. Janarthanan that the planning permission does not refer to the Schedule “B” house.

23. This argument, in fact, weakens the case of the plaintiff, as it is also his case that the defendant misused the trees belonging to the plaintiff by constructing the house using the plaintiff’s funds but obtaining approvals in his own name. In such circumstances, taking a stand that the property in respect of Ex-B4 does not relate to the Schedule “B” property does not advance the plaintiff’s case.



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24. On the contrary, the plaint itself states that the plaintiff requested the defendant to obtain certificates from the electricity department in his name. However, in evidence, the plaintiff takes a different stand stating that he himself signed the application form in this connection. Subsequently, in evidence, the plaintiff departs from his pleadings and contends that, by playing fraud, the defendant obtained certificates in his name. The plaintiff is not clear or consistent, and he has failed to establish his case. Further, the Advocate Commissioner's report and the evidence of the Advocate Commissioner examined as DW4 speak about the existence of the cart track as well as coconut trees on both sides of the road, which leads to the reasonable conclusion that the Schedule "B" house has been constructed only in the property belonging to the defendant. As rightly pointed out by the trial Court, the defendant has taken inconsistent stands in the written statement. At one breath, the defendant has stated that he has not encroached into the plaintiff's property and put up the Schedule "B" house, however, at another breath, he states that he has encroached into the Schedule "B" property and constructed the house at his own cost. As a defendant, he is at liberty to take inconsistent stands, and this does not in any way absolve the plaintiff of his primary burden of proof to establish the plaint averments. As



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already noticed and discussed, the plaintiff has not been able to establish his claim of having put up construction. The oral evidence of PW4 appears to be biased and interested. He has even stated that only about 10 persons attended the house-warming ceremony, which was informed at 5:00 a.m. sometime in the year 2002. The plaintiff himself has not been able to recollect the date on which he claims to have performed the house-warming ceremony. When he claims that he undertook the construction and intended to settle in his ancestral village, it is not believable that he is not in a position to recollect such basic details, including the persons engaged for putting up the Schedule “B” house. No plan or documentary evidence has been produced by the plaintiff to establish the construction of the Schedule “B” house. In such circumstances, I am unable to disagree with the findings of the trial Court, which, in my considered opinion, rightly declined to grant the relief of declaration and recovery of possession.

25. Coming to *Marudhanayagam Pillai’s* case relied upon by the learned counsel for the plaintiff, in so far as the law of limitation is concerned, Article 127 deals with limitation for partition, accounts, and separate possession, and also the claim of adverse possession among co-



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owners. The said judgment held that mere lapse of time is not a bar to partition and that limitation will operate only from the time when the plaintiff becomes aware of the denial of his rights. This Court further held that there can be no exclusion without a denial of the co-parcener's right to a share, and such denial may be express or implied. It has further been held that under Article 127, there must be awareness or acknowledgment of the existence of the right, and the claimant must be kept out of it. Clear and strong evidence is required to hold that a person has assented to his own exclusion and acquiesced in the continuance of such exclusion without asserting his rights. In such circumstances, this Court held that any amount of time would not bar the right to seek partition, and in order to constitute the defence of exclusion by adverse possession of a co-owner, there must be strong evidence of ouster. In the present case, the parties are already in divided status, and therefore the question of co-ownership does not arise for the application of Article 127.

26. Coming to the decision relied upon by the learned counsel appearing for the defendant, Mr.S. Ranjithkumar, the decision of the Division Bench in *Minor Ibramsa Rowther* would squarely apply to the facts of the present case, particularly regarding adverse possession as



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between strangers and ouster among co-owners. The Hon'ble Division Bench held that in the case of adverse possession against strangers, it is sufficient that the possession is open, continuous, and without any attempt at concealment, so that the person against whom time is running, ought, with the exercise of due diligence, to be aware of what is happening. It is not necessary that adverse possession should be brought to the knowledge of the owner. If his rights have been openly usurped and not secretly, he cannot be heard to complain that the fact of adverse possession was not brought to his knowledge. However, in the case of ouster of a co-owner, the position is entirely different. The possession of one co-owner is presumed to be on behalf of all co-owners in view of the unity of title and possession. Because of this presumption of joint ownership, the law requires proof of something more than mere exclusive possession and exclusive receipt of income. Along with exclusive possession, there must be ouster, namely a hostile, open denial and repudiation of the other co-owner's rights to his knowledge. A co-owner in exclusive possession cannot render such possession adverse merely by any secret hostile animus on his part. The Hon'ble Division Bench further held that the co-owner who has not been ousted or excluded should be expressly informed as such by the other co-owner. If other circumstances concur, the Court



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may legitimately infer from exclusive possession for a considerable length of time that the other co-owner has been excluded to his knowledge.

Admittedly, though the plaintiff and the defendant are brothers, they are not co-parcener and when the plaintiff himself pleads permissive occupation, this decision is not in any way helped to the plaintiff.

27. In *Mohammed Ismail's* case, the Hon'ble Division Bench, applying Section 90 of the Trust Act, held that when the appellant, along with the 6th defendant, took advantage of their position and acquired all the other properties, it was not necessary for the plaintiff to prove that the income from the properties belonging jointly to all the members was such as to yield a surplus. Section 90 of the Indian Trusts Act provides that where a co-owner, mortgagee, or any person in a fiduciary position takes advantage of such position and derives benefit in derogation of the rights of the plaintiff, he must dislodge such benefit in favour of the plaintiff. What was originally founded as a principle of equity in English law has now gained statutory recognition under Section 90 of the Trust Act. I do not see how Section 90 of the Indian Trusts Act applies to the facts of the present case. There is no co-owner, mortgagee, or person in a fiduciary



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capacity who has misused possession to derive any advantage. Even as regards the case of the plaintiff, he has come forward only on the footing that the defendant failed to deliver possession back to him on demand. Therefore, the case is based on an alleged breach of promise, and the mandate of Section 90 is certainly not applicable to the facts of the present case.

28. In *Papayammal's case*, this Court held that though inconsistent pleas may not be encouraged, there is no bar to making alternative pleas. This Court has also held that such a plea can be taken when the person does not admit the title of the other party. In the case of *Bonder and another*, the Hon'ble Supreme Court held that where the plaintiff entrusted the property to the defendant, his brother, the defendant cannot successfully assert absolute title by adverse possession unless properly proved. The Hon'ble Supreme Court further held that the High Court was not justified in interfering with the well-considered findings of the Courts below, which had held that the defendant failed to prove title by adverse possession. However, that decision was rendered on entirely different set of facts. I have already found in the present case that the plaintiff has not established his case, whereas, on the contrary, the defendant, by Ex-B4



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planning permission and evidence relating to the house-warming ceremony conducted by him, has clearly established that he has been in possession, asserting his rights ever since September 2003.

29. In **Lakshmi Reddy's** case, the Hon'ble Supreme Court held that limitation cannot begin to run against a person unless, at that time, such person is legally in a position to vindicate his title by action. In fact, I find that a suggestion was made to the defendant that he did not perform the house-warming ceremony as stated in his chief examination. However, there is an absence of any effective suggestion in this regard, especially in light of the chief examination of DW1 that the plaintiff himself attended the ceremony in September 2003. Clearly, in my considered opinion, especially in light of such evidence, the plaintiff was not only invited but also participated along with his family members, which can safely be taken as knowledge of the defendant's assertion of right, title, and interest over the property. Therefore, for 12 years thereafter, the plaintiff did not think it necessary to initiate any action and has clearly acquiesced in the enjoyment of the Schedule "B" property at the hands of the defendant. Therefore, having not questioned the same within a period of 12 years, I do not see how the decisions of this Court, referred to above, would be of



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any help to the plaintiff. Therefore, the decision in **Lakshmi Reddy's** case, rendered by the Hon'ble Supreme Court, in fact, only aids the defendant's case and not the plaintiff's case.

30. In **Govindammal's case**, the Hon'ble Supreme Court was dealing with ouster of a co-owner by a claim of adverse possession. The Hon'ble Supreme Court held that mere wrongful possession is not sufficient to constitute ouster against a co-sharer, but something more positive is required, namely hostile, open possession, denial, and repudiation of the rights of other co-owners, which requires definite evidence. This again was a case between co-owners, and I do not see this decision also coming to the aid of the plaintiff.

31. In **Selvaraj and another**, this Court held that, in the eye of law, an owner is deemed to be in possession of a property as long as there is no intrusion, and mere non-use of the property by the owner, even for a long time, would not affect his title. A party claiming adverse possession must prove that his possession is **nec-vi, nec-clam, nec-precario**, which implies that the possession must be peaceful, open, continuous, and adverse to the true owner. Again, this decision does not apply to the facts of the present case and, in fact, does not come to the aid of the plaintiff.



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32. Lastly, in *B.R. Patil's case*, the Hon'ble Supreme Court, in a suit for partition, relying on the ratio laid down in *Lakshmi Reddy's case*, held that possession of a co-owner over a long period will not constitute ouster, as a co-owner is presumed to possess the property on behalf of the entire body of co-owners, and even non-participation in rent and profits would not amount to ouster. In the case of co-owners, the requirements to establish ouster are much more stringent and stronger. This again deals with a partition action, which, as already discussed, will not be applicable to the facts of the present case, since the plaintiff and the defendant, though brothers, are already divided in status, even on the date of filing of the suit.

33. For all the above reasons, I do not see any merit in both the appeals, warranting interference under Section 96 C.P.C. Both the appeals stand dismissed accordingly. Considering the relationship between the parties, being brothers, there shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

10.04.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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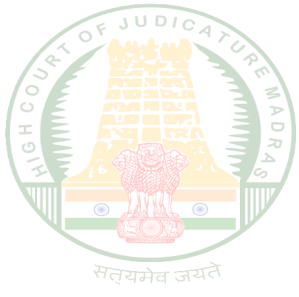


To

III Additional District and Sessions Judge, Erode at Gopichettipalayam.

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P.B.BALAJI.J,



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Pre-delivery Judgment made in
A.S.Nos.131 of 2023 and 1124 of 2025

10.04.2026