



WEB COPY

SA No. 652 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05-12-2025

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 652 of 2025

AND

CMP NO. 23336 OF 2025

1. Ponnappan (Deceased-Sole Plaintiff), Rajathi(Died), 1. Thavamani, W/o.Arumugham, Eriyur, Pennagaram Taluk, Dharmapuri District. and 4 Others

2. Valarmathy, W/o.Mohan, Kovil Street, Near Police Station, Kolathur Village and Post, Mettur Taluk, Salem District.

3. Selvam, W/o.Kumar, Eriyur, Pennagaram Taluk, Dharmapuri District.

4. Saradhaa, W/o.Thirumurthi, Residing at Palanimurugan Nagar, Pudur Post, Erode-2.

5. Balamurugan, S/o.Ponnappan, Kovil Street, Near Police Station, Kolathur Village and Post, Mettur Taluk, Salem District.

Appellant(s)

Vs

1. Pappathy, W/o.Kalimuthu, No.1/9-10, Vadarajaveedhi, Near Police Station, Kolathur Village and Post, Mettur Taluk, Salem District.



Respondent(s)

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PRAYER

To consider the above Grounds and the Substantial question of law for allowing the above Second Appeal and thereby to set aside the Judement and Decree dated 03.07.2023 in A.S.No.18 of 2016 on the file of the Subordinate Judge, Mettur, confirming the Judgement and Decree dated 08.03.2016 in O.S.No.35 of 2010 on the file of the District Munsif Court, Mettur and pass such other further orders and thus render justice.

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For Appellant(s): V. Sekar

For Respondent(s): M/s D.selvaraju
G.sabari Vishnu For Sole Respt

ORDER

Heard and considered the submissions of learned counsel for appellants and perused the records available on record.

2. Considering the facts and circumstances of the case, this second appeal is admitted on the following substantial questions of law.

i. Are the Courts below correct is holding that the plaintiff cannot rely of the 2nd advocate commissioner's report without scrapping the first commissioner's report, more particularly the second advocate commission was appointed by the learned District Munsif court at the instances of the plaintiff marking some defects in the first report ?



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ii. Are the courts below correct in holding that by not examining the advocate commissioner by the plaintiff is a failure to prove his case about the encroachment made by the defendant, more particularly, when the onus is on the defendant to examine the advocate commissioner for differing the report ?

iii. Are not the courts below perverse in holding that the plaintiff did prove the factum of encroachment made by the defendant after rejecting the 2nd advocate commissioner's report and other material evidences relied by the plaintiff

3. Registry is directed to call for records from the court below. Post the matter on 29.01.2026, till then, status quo is ordered to be maintained.

05-12-2025

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

T.V.THAMILSELVI J.

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