

SA(MD). No.294 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 08.04.2026

Delivered on : 05.06.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

**SA(MD). No.294 of 2023
and
CMP(MD)No.6787 of 2023**

Michael Nadar,

... Appellant / Appellant /Defendant

Vs.

1. Irudayaraj,

2. Arockiya Jebastin,

3. Michael Ammal(Died),

4. Thangamani,

5. Poongkani,

Raja Nadar (Died).

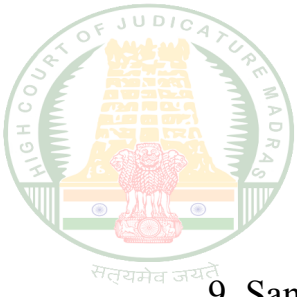
6. Paralogam,

7. Jesu Arockiam,

8. Muthukumar,

... Respondents / Respondents 1 to 5&7 to 9/
Plaintiffs

1/12



SA(MD). No.294 of 2023

WEB COPY

9. Santhana Mariammal

10. Lourdhu Mary

11. Anthony Micheal Sebasthiyal,,

12. Jeyaseelan, ... Respondents

(R9 to 12 are brought on record as LR's of the deceased R3 vide Court order dated 18.07.2024)

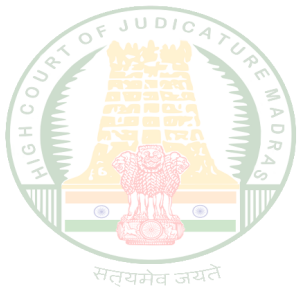
PRAYER :- Second Appeal filed 100 of under Section Civil Procedure Code, to set aside the judgment and decree dated 11-02-2019 passed in A.S.No.40 of 2014 on the file of Sub Court, Thoothukudi confirming the judgment and decree dated 06-01-2014 passed in O.S.No.54 of 2010 on the file of the learned Principal District Munsif Court, Thoothukudi.

For Appellant : Mr. M.P.Senthil,

For Respondents : Mr.S.Kadarkarai for R1,2 and 4 to 12

JUDGMENT

The defendant in O.S.No.54 of 2010 on the file of the Principal District Munsif Court, Thoothukudi, is the appellant herein, aggrieved by the concurrent findings in the said suit and confirmed in A.S.No.40 of 2014 on the file of the Sub Court, Thoothukudi



SA(MD). No.294 of 2023

2. The second appeal was admitted by this Court on 14.06.2023 on

the following substantial questions of law:

(i) Whether the plaintiffs have discharged their initial burden of proving that there is a common pathway in the suit schedule proeprty?

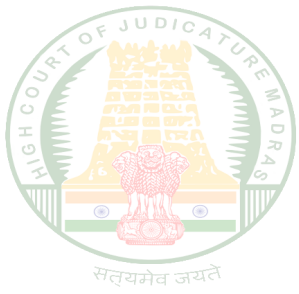
(ii) Whether the Courts below have overlooked the sale deed of the year 1963 (Ex.B1) standing in the name of the defendant?

(iii) Whether the Courts below were right in granting the relief of mandatory injunction especially when the appellant had put up a construction six years prior to the filing of the suit?

(iv) Whether the suit filed by the plaintiffs is barred by limitation as per Section 113 of the Limitation Act, 1963?

3. I have heard Mr.M.P.Senthil, learned counsel for the appellant and Mr.S.Kadarkadi learned counsel for the respondents 1, 2 and 4 to 12.

4. For the sake of convenience, the parties are referred to as per their rank before the trial Court.



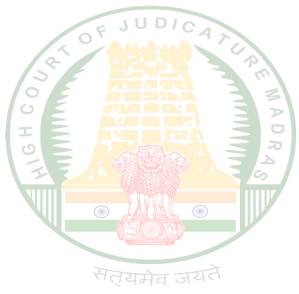
SA(MD). No.294 of 2023

WEB COPY

5. For better appreciation and adjudication of the questions that arise for decision in the second appeal, more specifically, the substantial questions of law, the following facts are necessary:

The plaintiff filed a suit for declaration and mandatory injunction alleging that the suit pathway is a common pathway and the only access to reach the plaintiff's house. The plaintiff also alleged that the defendant has encroached into the said common pathway and put up constructions. The suit was therefore instituted for the relief of declaration and for mandatory injunction to remove the constructions over the common pathway.

6. The appellant / defendant resisted the suit contending that the suit is not a common pathway and the construction put up is within the entitlement of the defendant. The defendant also contended that he had constructed the building even six years back and hence, the relief of mandatory injunction was hopelessly time barred.

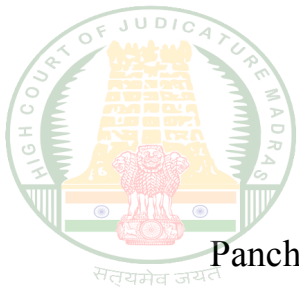


SA(MD). No.294 of 2023

7. The trial Court as well as the first appellate Court accepted the case of the plaintiff and decreed the suit concurrently. As against the said concurrent findings, the present second appeal has been filed.

8. Mr.M.P.Senthil, learned counsel for the appellant / defendant would firstly state that the plaint is bereft of particulars and even the extent of the alleged common pathway has not been properly set out and in such circumstances, it is the submission that decree for mandatory injunction or even the relief of declaration could not have been granted. He would further contend that though the documents of title mentioned only 5 links to be available, the plaintiff has without any substantiation claim 10 links and the Courts below have not appreciated the defence raised by the appellant that the plaintiff had miserably failed to prove his entitlement in the common pathway as set out in the suit schedule.

9. Referring to Ex.B6 to Ex.B9, Mr.M.P.Senthil, would further state that the title deed of the plaintiff himself were exhibited on the side of the appellant, which clearly established the entitlement of the plaintiff was only 5 Links and not 10 Links He would further state that the



SA(MD). No.294 of 2023

Panchayat official was also examined as D.W.4 and he had clearly deposed that the pathway was not handed over by the plaintiff. As regards the Commissioner's report marked as Ex.C1 and Ex.C2, Mr.M.P.Senthil, would state that the Commissioner proceeded to survey based on the FMB and not the title deeds of the respective parties and without noticing the same, the Courts below have erroneously accepted the reports of the Advocate Commissioner.

10. Mr.M.P.Senthil, learned counsel for the appellant, would further contend that the plaintiff attempted to get title declared over the common pathway based on field map, FMB records, which are not documents of title. In this regard, he relies on the decision of this Court in **SA.(MD)No.97 of 2017 (C.Arumugam (died) v. Alagappan)** dated 25.09.2024.

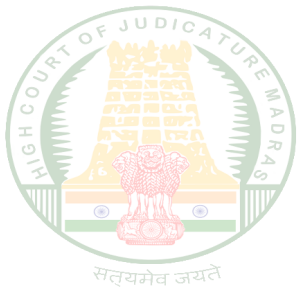
11. Per contra, Mr.S.Kadarkarai, learned counsel for the contesting respondents would invite my attention to the plaint averments and allegation and also the schedule portion. He would also take me through the written statement as well as the cross examination of the appellant /



SA(MD). No.294 of 2023

defendant and he would contend that the defendant had virtually accepted the existence of the pathway during trial. He would therefore, state that even invoking Order 12 Rule 6 CPC, the plaintiff is entitled to relief and therefore, the Courts below have not committed any error in granting relief, in favour of the plaintiff.

12. He would further state that though the appellant / defendant has raised the question of limitation and it has also been framed as one of the substantial question of law, he would invite my attention to the findings of the trial Court as well as the first appellate Court in this regard and state that the Courts have given a categorical findings that though the defendant put up construction six years back, he has not been able to prove the same and taking note of the nature of the construction and also the report of the Advocate Commissioner, the Courts have found the construction to be recently put up and rejected the objection with regard to the limitation. He would therefore pray that there is no merit in the second appeal and the same to be dismissed.

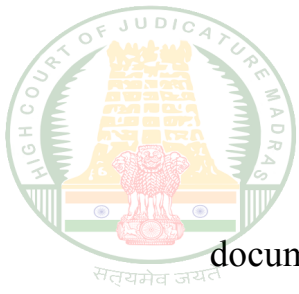


SA(MD). No.294 of 2023

WEB COPY

13. I have carefully considered the submissions advanced by the learned counsel for the parties.

14. Admittedly, the plaintiff and the defendant are neighbours. The plaint plan has been filed along with plaint, showing the lie of the properties. The suit common pathway is lying on the southern side of the plaintiff's property. Originally, the lands in survey No.22/18 and 22/39 were punja lands. However, admittedly, the lands were subsequently converted as Natham lands and during the Natham survey pathway has been shown as one measuring 2.8 meters. The appellant/ defendant during cross examination, admitted that he did not object to the survey while lands were converted. The sale deed in favour of the respondent / plaintiff clearly mentions the one of the boundaries as the suit common pathway. The report of the commissioner also indicates that except the suit pathway, there is no other access available to the plaintiff to reach his property on the northern side. Both the courts have rightly addressed the issue that arose for consideration and found from the oral and



SA(MD). No.294 of 2023

documentary evidence that the plaintiff had established existence of the common pathway and also found construction put up by the appellant / defendant to be an encroachment into the said common pathway. Though it has been contended by Mr.M.P.Senthil, that what was originally 5 Links could not have enlarged to 10 Links and no title document has been produced for the same, admittedly, the lands were originally agricultural lands and at the time of UDR survey, there has been a conversion into Natham lands and even during the said period, the suit pathway has been reflected in the revenue records as one of 2.8 meters. If at all the appellant had any serious objection with regard to the same, he had ample opportunity to object to the survey and ensure that his rights are not affected or taken away. Admittedly, he has not taken any steps and the survey has become final as well.

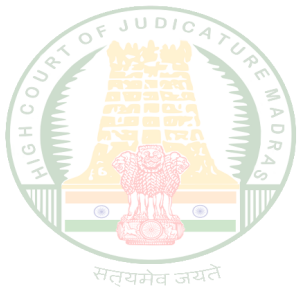
15. In such circumstances, I do not see how the Courts below fell in error in acknowledging the right of the plaintiff over the suit pathway. In fact, the Advocate Commissioner's report also refers to the revenue records, which evidences the existence of the common pathway. Hence, I do not see how the argument of Mr.M.P.Senthil that the plaintiff has not



SA(MD). No.294 of 2023

established the existence of the common pathway can be countenanced. I do not see any perversity in the appreciation of the evidence by the trial Court as well as the first appellate Court, to come to the conclusion that the plaintiff is entitled to a right in the suit pathway.

16. Insofar as the limitation, though it is vehemently contended by Mr.M.P.Senthil that a mandatory injunction cannot be granted on a prayer sought for belatedly and that the appellant / defendant had constructed his house even six years prior to the filing of the suit, this aspect has also been thoroughly examined by the trial Court as well as the first appellate Court independently and they have clearly found that there is absolutely no evidence to establish the construction having been put up six years back. In fact, the Courts have also noticed from the photographs exhibited and the report of the Commissioner that the construction was infact in progress at the time of inspection. In such circumstances, I do not see any illegality or perversity in the said findings also, warranting interference.



SA(MD). No.294 of 2023

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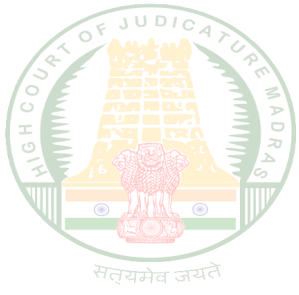
Substantial questions of law are answered against the appellant. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

05.06.2026

LS

TO

- 1.The Sub Court,
Thoothukudi.
- 2.The Principal District Munsif Court,
Thoothukudi.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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SA(MD). No.294 of 2023

P.B.BALAJI,J

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**Pre-delivery Judgment made in
SA(MD) No.294 of 2023**

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