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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 24 / 09 / 2024

JUDGMENT PRONOUNCED ON : 15 / 10 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

S.A.NO.224 OF 2021
AND CMP NO.4441 OF 2021

1.Gurrappa Naidu
2.Narassammal
3.G.Nagarajan
4.C.Malliga
5.G.Rathna
6.G.Saravanan
7.S.Kalpana
8.G.Govindaraj

... Appellants / Appellants /
Defendants

Versus

Munusamy Naidu

... Respondent / Respondent/
Plaintiff

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, 1908, praying to set aside the Judgment and Decree dated June 26, 2020 passed in A.S.No.4 of 2018 on the file of the Principal Subordinate Judge, Krishnagiri, confirming the Judgment and Decree dated February 13, 2017 passed in O.S.No.23 of 2013 on the file of the District Munsif Court, Krishnagiri.



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For Appellants : Mr.R.Ezhilarasan
For Respondent : Mr.P.M.Duraiswamy

J U D G M E N T

This Second Appeal is directed against the Judgment and Decree dated June 26, 2020 passed in A.S.No.4 of 2018 by the 'learned Principal Subordinate Judge, Krishnagiri' [henceforth 'First Appellate Court' for the sake of brevity and convenience] confirming the Judgment and Decree dated February 13, 2017 passed in O.S.No.23 of 2013 by the 'learned District Munsif, Krishnagiri' [henceforth 'Trial Court' for the sake of brevity and convenience].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

CASE OF THE PLAINTIFF:

3. One Appaiyan @ Munusamy and Pappammal are husband and wife. They have four sons, namely Munusamy (Plaintiff), Gurrappa Naidu (1st Defendant), Krishnan and Govindasamy. Appaiyan @ Munusamy passed away 60 years ago and his wife Pappammal passed away 30 years ago from the date of plaint (Date of plaint is January 26, 2013). After the demise

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of Appaiyan @ Munusamy and Pappammal, the aforesaid four sons entered into a Registered Partition Deed dated July 5, 1982 (registered on July 12, 1982 as Document No. 1161 of 1982) in respect of their ancestral and joint family properties. In the said Partition Deed, an extent of Acre 1.26 in Survey No.663 was allotted to the plaintiff and an extent of Acre 0.88 was allotted to the 1st defendant. According to the plaintiff, at the time partition, though extents were specified in the aforesaid Partition Deed, no measurement was made and lands were divided on the basis of boundaries. On and after the said Partition, the plaintiff and the 1st defendant were enjoying the lands allotted to them within the specific four boundaries mentioned in the said Partition Deed. Considering the possession and enjoyment, the lands of the plaintiff and the first defendant were sub-divided as Survey Nos.663/1 and 663/2 respectively under the 'Up-Dating Registry Scheme' ['UDR Scheme' for short]. Further, Patta was granted to the plaintiff for an extent of Acre 1.36 in Survey No.663/1 and to the 1st defendant for an extent of Acre 0.68 in Survey No.663/2 under UDR Scheme. The 1st defendant was very well aware of the above facts and never raised any objection nor claimed any right over the land

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allotted to the plaintiff. There is a well -formed ridge dividing the lands of plaintiff and first defendant. The Suit Property is Acre 1.36 of land in Survey No.663/1. Further, as per the Partition Deed dated July 5, 1982 the 1st defendant was permitted to use the east to west Cart Track in the Suit Property which proceeds from North-West Corner of the Suit Property and reaches first defendant's property. The plaintiff has not obstructed the 1st defendant for his access as per the terms of the Partition Deed.

4. The 2nd defendant is the wife of the 1st defendant and 3 to 8 defendants are the sons and daughters of the 1st and 2nd defendants. All of a sudden, the defendants created a Partition Deed dated January 25, 2010 among themselves including a portion of the Suit Property spanning 11 Cents. The said 11 Cents of land absolutely belong to the plaintiff. The 1st defendant is in possession and enjoyment of an extent of 68 Cents only. Hence, the defendants have no right to include in the Partition Deed more than the extent available in their possession. On the strength of the Partition Deed dated January 25, 2010, the defendants trespassed and encroached the said 11 Cents of land in the first week of October 2012. The plaintiff came to know

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about the alleged Partition Deed dated January 25, 2010 in the year 2012 only. The Partition Deed dated January 2010, in so far as the said 11 Cents of land in Survey No.663/1 is concerned, is not valid in law and not binding on the plaintiff. The first defendant has no manner of right in the Suit property. Hence, the Suit for declaration of title, permanent injunction and to declare the Partition Deed dated January 25, 2010 as null and void so far as the Suit property is concerned.

CASE OF THE DEFENDANTS:

5. The 1st defendant filed written statement and the same was adopted by the 2nd, 3rd and 6th defendants. The sum and substance of the written statement is that the Partition Deed dated July 5, 1982 is true and valid. As per the Partition Deed dated July 5, 1982, the 1st defendant was allotted an extent of Acre 0.88 and the plaintiff was allotted an extent of Acre 1.26 in Survey No.663 while the other 2 brothers were given share in other properties. The total extent of Survey No.663 is Acre 3.29. The 1st defendant and plaintiff divided an extent of Acre 2.14 in Survey No.663 and the remaining Acre 1.15 belonged to one Govindammal. Govindammal's



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successor Lakshmi sold an extent of Acre 1 within specific four boundaries to the 1st defendant as per the Registered Sale Deed dated June 1, 1998. Thus, the 1st defendant is entitled to an extent of Acre 1 in Survey No.663 besides the extent of Acre 0.11 in Survey No.663/1 and Acre 0.88 in Survey No.663/2 allotted to him under the Partition Deed dated July 5, 1982, making a total extent of Acre 1.99 in Survey No.663. The plaintiff created false entries in the revenue records with the connivance of Revenue Officials, without notice to the first defendant, with an ulterior motive to defeat and defraud the 1st defendant's rights. On the basis of the impugned revenue records, the plaintiff cannot claim more than Acre 1.26 in Survey No.663/1 allotted to him vide the said Partition Deed. The plaintiff is not entitled to the relief of declaration, injunction, and other reliefs. Accordingly, they prayed to dismiss the Suit.

TRIAL COURT:

6. At trial, the plaintiff was examined as P.W.1 and one R.Nagaraj was examined as P.W.2 and Ex-A.1 to Ex-A.8 were marked on the side of the plaintiff. On the side of the defendants, 1st defendant was

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examined as D.W.1 and Ex-B.1 to Ex-B.3 were marked.

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7. After completion of trial and after hearing both sides, the Trial Court came to the conclusion that four boundaries will prevail over extent; that the plaintiff is in possession and enjoyment of an extent of Acre 1.36 in Survey No.663/1 ; that, hence, the plaintiff is entitled to the relief of declaration and permanent injunction *qua* the Suit Property except for the Cart Track. Accordingly, the Trial Court decreed the Suit by declaring that the Partition Deed dated January 25, 2010 is null and void so far as the Suit property.

FIRST APPELLATE COURT:

8. Feeling aggrieved with the Trial Court's Judgment and Decree, the defendants preferred an appeal in A.S.No.4 of 2018 before the First Appellate Court. The First Appellate Court after hearing both sides and perusing the documents available on record, came to the conclusion that there is no rationale to allot a Cart Track to the first defendant if really he was allotted an extent of 11 Cents in the northern side of the Suit Property; that as per Ex-A.1 - Partition Deed, the first defendant was allotted 88 Cents, assuming that to be true and also assuming that the 10 Cents in question

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[First Appellate Court is referring to the said 11 Cents land] belong to the first defendant, the remaining 10 Cents remain unaccounted for; that, hence, the case of the defendants is not a plausible one; that there is no need to interfere with the findings recorded by the Trial Court. Accordingly, First Appellate Court concurred with the findings of the Trial Court and dismissed the appeal.

9. Feeling aggrieved with the First Appellate Court's Judgment and Decree, the defendants preferred this Second Appeal.

SUBSTANTIAL QUESTIONS OF LAW:

10. The Second Appeal was admitted on March 16, 2021 on the following substantial questions of law:

“(a)Whether the Lower Appellate Court was right in shifting the burden of proof on the appellants / defendants to disprove the case of plaintiffs contrary to Section 101 of the Indian Evidence Act?

(b)Whether the Lower Appellate Court was right in holding that northern side boundary is a poramboke land, when the respondent / plaintiff and their ancestors, specifically expressed north side boundary as 1st defendant land vide Ex.A1?”



ARGUMENTS:

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11. The learned Counsel for the appellants / defendants submitted that the respondent / plaintiff is entitled to an extent of Acre 1.26 and the 1st defendant is entitled to an extent of Acre 0.88 in Survey No.663 as per Ex-A.1 - Partition Deed dated July 5, 1982. The lands in Survey Nos.663 vary in topography (elevation); major portion of the land allotted to the first defendant is about 5 feet higher than the land allotted to the plaintiff. Evidence of D.W.1 supports the said fact. Hence, for the sake of convenience of enjoyment, instead of vertical / horizontal partition and allotment of land, out of the 88 Cents acquired by the first defendant under Ex-A.1 - Partition Deed, 11 Cents were allotted towards the northern end of the Survey No.663.

11.1. Further submitted that, it is true that boundaries prevail over extent. Referring to the description of property under Ex-A.1 - Partition Deed dated July 5, 1982, he would submit that northern boundary of the land allotted to the plaintiff has been shown as Gurrappa Naidu's (1st defendant) land and *poramboke* land, which makes it clear that the first defendant was allotted 11 Cents land in between the northern end of the land allotted to the



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plaintiff and the said poromboke land, for the purpose of convenient enjoyment.

11.2. Further he submitted that, it is true that in the description of property under Ex-A.1 - Partition Deed dated July 5, 1982, while describing the boundaries of land allotted to the first defendant, the plaintiff's land has not been described as the southern boundary. This is only because, as evident from Ex-A.5 - 'Field Measurement Book' ['FMB' for short], while considering the North-South measurement of the land in Survey No.663, the said 11 Cents of land is a meagre portion with less width located in the northern end. Therefore, the plaintiff's land was not described as a southern boundary.

11.3. Further submitted that, sub-division of Survey No.663 was effected behind the back of the first defendant without any notice to him. Hence, it would not bind the first defendant.

11.4. Further, he submitted that the plaintiff has no right to claim more than the land allotted to him in the Partition Deed *i.e.*, Acre 1.26. The First Appellate Court as well as the Trial Court failed to consider these facts and the evidence available on record in the right point of view. Accordingly,

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he prayed to allow the Second Appeal.

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12. Per contra, learned Counsel for the respondent / plaintiff submitted that as per Ex-A.1 - Partition Deed, the plaintiff was allotted an extent of Acre 1.26 and the first defendant was allotted an extent of Acre 0.88. However, Ex-A.1 - Partition Deed was not executed based on any measurement but on the basis of boundaries and topography; the land allotted to the first defendant under Ex-A.1 is 5 feet higher than the land allotted to the plaintiff under Ex-A.1. In such a scenario, when the legal position is that 'boundaries prevail over extent', it is not appropriate to rely primarily on extent.

12.1. As per the specific boundaries allotted to them, the plaintiff is in possession and enjoyment of Acre 1.36 while the first defendant is in possession and enjoyment of Acre 0.68. In view of the possession and enjoyment, Survey No.663 was sub-divided into Survey Nos. 663/1 and 663/2 under the UDR Scheme. The first defendant is well aware of the said sub- division and pursuant issuance of Patta. Hence, the defendants are estopped from contending otherwise.

12.2. In these circumstances, the defendants have no right to



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claim more than the extent contained in Survey No.663/2 i.e., Acre 0.68 and have no right in the said Acre 0.11 of land located in the northern side of the plaintiff's land. The Partition Deed among the defendants was created with a view to encroach the said 11 Cents of land. The Trial Court and the First Appellate Court concurrently held that the plaintiff is in possession and enjoyment of Acre 1.36 within the specific four boundaries described in Ex-A.1 - Partition Deed. Hence, there is no need to interfere with the concurrent findings of the Trial Court and the First Appellate Court. Accordingly, he prayed to dismiss the Second Appeal.

DISCUSSION:

13. This Court has considered the submissions made on both side and perused the materials available on record.

14. Admittedly, the Suit Properties were owned by Appaiyan @ Munusamy, who is the father of the plaintiff and the first defendant. After the demise of Appaiyan @ Munsusamy, the plaintiff and the first defendant entered into Ex-A.1 - Partition Deed dated July 5, 1982, under which "A" Schedule property was allotted to the plaintiff - Munusamy and "B" Schedule property was allotted to the 1st defendant - Gurrappa Naidu. As per the

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Partition Deed, an extent of Acre 1.26 in Survey No.663 was allotted to the plaintiff and an extent of Acre 0.88 was allotted to the first defendant.

Subsequently, under UDR Scheme, Survey No.663 was sub-divided into Survey No. 663/1 containing Acre 1.36 and Survey No.663/2 containing Acre 0.68 and pursuantly, Patta was issued in the name of the plaintiff for Survey No.663/1. Case of the plaintiff is that, as per the specific four boundaries under Ex-A.1 - Partition Deed dated July 5, 1982, the plaintiff is entitled to an extent of Acre 1.36 which is beyond the extent of land allotted to him under Ex-A.1. Case of the defendants is that the plaintiff is entitled to only Acre 1.26 and that no notice was served on them with regard to the measurement, sub-division, and issuance of Patta under UDR Scheme and hence it is not binding on them.

15. Admittedly, the western side of the property in Survey No.663 was allotted to the plaintiff and the eastern side of the property was allotted to the 1st defendant. On the northern side of Survey No.663, there is a *poramboke* land. As per Ex-A.1-Partition Deed, the four boundaries of the plaintiff's land is as follows:

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“... சர்வே 663 ல் புஞ்சை 3.29 . 4.51 இதில் கோவிந்தம்மாள் பாக நிலத்திற்கு வடக்கு குறப்ப நாயுடு பாக நிலத்திற்கும் புறம்போக்கு நிலத்திற்கும் தெற்கு சர்வே 661/3ல் K.கோவிந்தசாமி நாயுடு நிலத்திற்கும் குறப்ப நாயுடு பாக நிலத்துக்கும் மேற்கு இதில் மத்தியில் 1.26க்கு 1.73 நீ தீர்வை பெற்ற நிலம் பூராவும் இந்த பாக நிலத்திற்கும் பொது சிலர் ஒன்றில் பூரா பாத்தியமும் இந்த கிணற்றில் அமர்த்தியுள்ள மின்சாரமும் வகைராக்களின் பூரா பாத்தியமும் இதிலிருக்கும் ... 7.8 வரிகளினால் கி, முதல் துவளை புத்தல் வேலியில் இந்த அடித்தல் ... இளம் தெள்ளகு.... பூரா பாத்தியமும் இந்த பாக நிலத்தில் வடபுறம் மேற்கிலிருந்து கிழக்காக தனிப்பட்ட வரி பாக நிலம்வரை இரட்டை மாட்டு குட்டை வண்டி போகவா ... பாகத்தார் தடை செய்யக்கூடாது...”

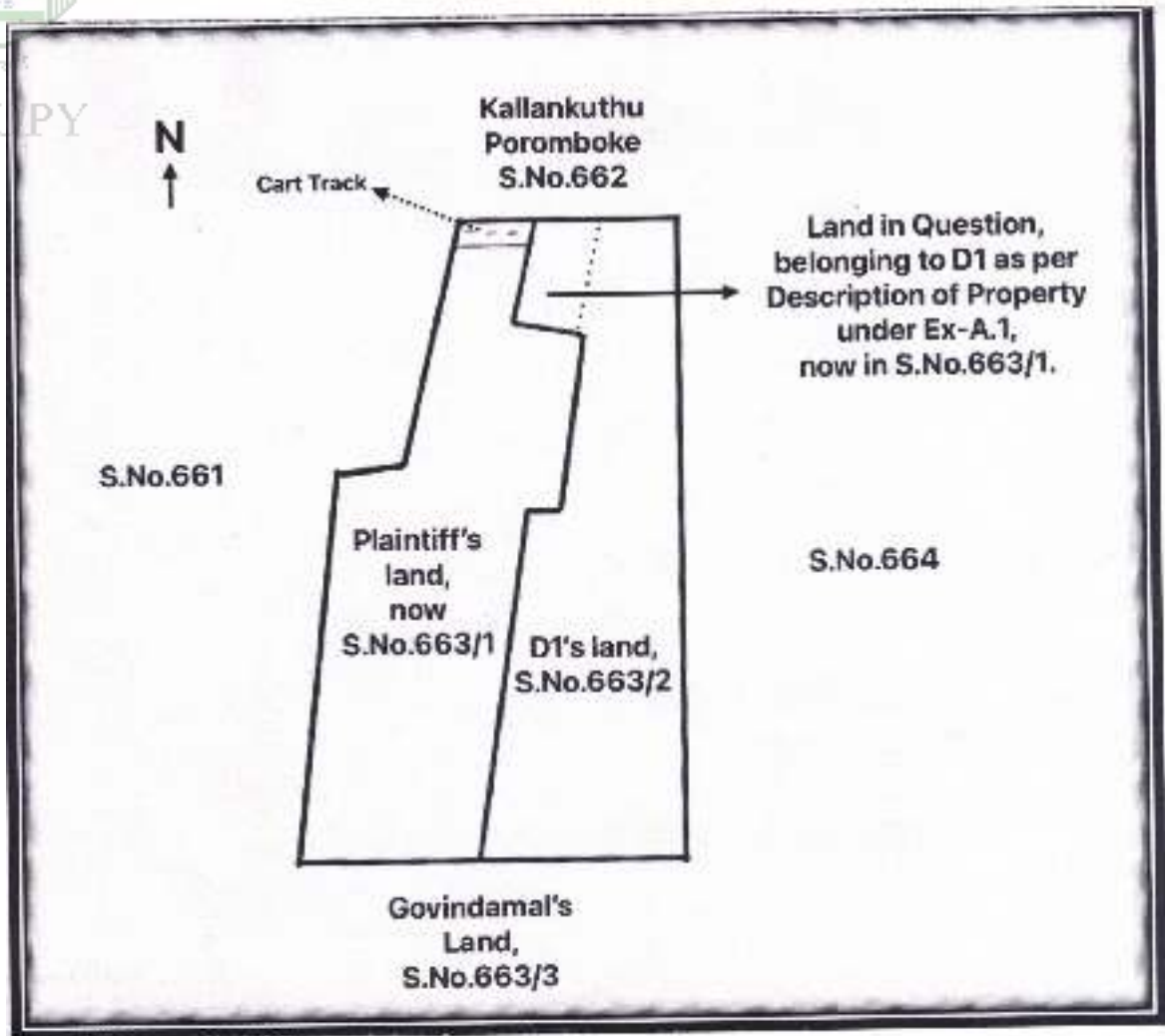
(Emphasis Supplied)

15.1. The following diagram drawn based on the aforementioned four boundaries helps better appreciation of the facts of the case:

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15.2. From the above, it is seen that in Ex-A.1 - Partition Deed, the first defendant's land and the *poramboke* land have been described as northern boundary for the plaintiff's land. This makes it clear that the first defendant has a piece of land above the plaintiff's land (now Survey



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No.663/1). Further, it shows that the first defendant has access to the land allotted to them by way of the Cart Track located in the northern portion of the plaintiff's land. Notably, the easementary right of the defendants over the said Cart Track has been admitted by the plaintiff in the plaint.

16. Perusal of Ex-A.5 - FMB would show that the north-south boundary of Survey No. 663/1 is 108 meters on the eastern side and 116.2 meters on the western side. It would further reveal that the northern boundary of Survey No.663/1 is only 25.6 meters. As per the above description of property in Paragraph No.15, it is possible only that Cart Track and a portion of the first defendant's land lie in the northern end of Survey No.663/1 next to each other, as illustrated in the diagram in Paragraph No.15.1. Given that the Cart Track lies on the side of the portion of first defendant's land (now) lying in Survey No.663/1, the west to east measurement of the said portion of first defendant's land must be way lesser than 25.6 meters, making its width a meagre one. Considering the smaller width (east to west measurement) of the said portion of first defendant's land (now) in Survey No.663/1, as rightly pointed out by the learned Counsel for the appellant / defendant, it is highly

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probable that the plaintiff's land was not described as one of the southern boundaries for the land allotted to the first defendant under Ex-A.1.

17. Admittedly, the first defendant's land is lying 5 feet higher than the plaintiff's land. A pure vertical / horizontal partition based on extent is not convenient owing to the huge difference of 5 feet in topography. This could be the reason for primarily dividing the property based on topography and allotting some land for the first defendant on the northern side of the plaintiff's land. Just because the land was primarily partitioned based on topography, it would not mean that the extents mentioned in Ex-A.1 pale into insignificance, especially when one of the northern boundaries of the plaintiff's land has been described as the first defendant's land.

18. The plaintiff was allotted a specific extent of Acre 1.26 under Ex-A.1 - Partition Deed. The plaintiff cannot claim more than the extent allotted under Ex-A.1 especially when the four boundaries indicate that some land belonging to the first defendant exists on the northern side of plaintiff's land. If the plaintiff claims more extent, as such, he could have acquired title over it either by adverse possession and/or by transfer between *inter vivos* and/or transfer by operation of law. In this case, from a bare perusal of the

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plaint pleadings, it is easily discernible that the plaintiff did not plead adverse possession. Admittedly, the plaintiff did not acquire the property by way of any mode of transfer. In these circumstances, the plaintiff cannot claim more extent than Acre 1.26 allotted to him in the Partition Deed. In this case, the plaintiff's claim to title is primarily based on the strength of measurement, sub- divisions of Survey No.663 and Patta issued under UDR Scheme allegedly with the knowledge of the first defendant. The defendants contend that they had no notice of the same. Now the onus is upon the plaintiff to prove that the measurement, sub-division and the issuance of Patta under UDR Scheme were all done with the notice / knowledge of the defendants. There is no evidence to discharge the onus. Hence, the measurement, sub-division and the Patta effected/issued under UDR Scheme would not affect the legitimate rights of the first defendant and people claiming through him.

19. The learned Counsel for the respondent / plaintiff would vehemently contend that as per Ex-A.1 - Partition Deed, the western portion of Survey No. 663 within the specific four boundaries was allotted to the plaintiff. There is a *poramboke* land on its northern side. In Ex-A.1, instead of mentioning *poramboke* land alone as the northern boundary, Gurrappa

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Naidu's land (first defendant's land) has been wrongly included as a boundary. Hence, the same should be ignored. According to the plaintiff side, the plaintiff has been in possession and enjoyment of an extent of Acres 1.36 situated within the specified four boundaries mentioned in Schedule 'A' of Ex-A.1 and since boundaries prevail over the extent, the plaintiff is entitled to the said Acres 1.36 instead of Acres 1.26. Further contention is that, even assuming that the defendants are totally entitled to 88 Cents and that the 11 Cents (now) in Survey No.663/1 belong to the defendants, there is no account for the remaining portion of land.

20. This Court has considered the said submission. There is not even an iota of evidence on record to suggest that the first defendant's land was inadvertently mentioned as a boundary for the plaintiff's land. Further, the plaintiff need not shed crocodile tears (on a lighter note) for the shortage on the defendants' land. The remaining extent might probably be on the southern side of the first defendant's land viz., Govindammal's land in S.No.663/3. The facts and circumstances such as the extents specified in Ex-A.1, topography, and lack of notice to the defendants before surveying the land under UDR Scheme as stated *supra*, favour the case of the defendants.

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Hence, the above contentions of the learned Counsel for the respondent / plaintiff deserves to be rejected.

21. The total extent of Survey No.663/1 is Acres 1.36, out of which, the plaintiff is entitled to Acre 1.26. From the description of property in Ex- A.1, it could be evinced that the Cart Track is situated in the plaintiff's land, over which the first defendant has an easementary right. The same is admitted by the plaintiff in the plaint. There is only Acre 0.10 remaining in Survey No. 663/1. The defendants entered into Ex-A.6 - Partition Deed dated January 25, 2010 wherein an extent of Acre 0.11 in Survey No.663/1 were allotted to the 8th defendant. Since, there is only 10 Cents remaining, the defendants are entitled to only Acre 0.10 in Survey No.663/1 and not Acre 0.11. To that extent alone, the Partition Deed is not binding on the plaintiff. In all other aspects, there is no infirmity with Ex-A.6 - Partition Deed.

22. The Trial Court as well as the First Appellate Court has not properly appreciated the evidence available on record and failed to apply the concept of 'four boundaries prevail over extent' rightly to the facts of this case. The Trial Court and the First Appellate Court miserably failed to consider the fact that the northern side boundary is mentioned as *poramboke*

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land and Gurrappa Naidu's land; that the 1st defendant's land is 5 feet higher than the plaintiff's land; that the portion of first defendant's land (now) in Survey No. 663/1 is a meagre portion, due to which, the plaintiff's land may not have been mentioned as a southern boundary for the first defendant's land. The Trial Court shifting the burden on the appellants / defendants to disprove the case of the plaintiff is contrary to Section 101 of the Indian Evidence Act, 1872. Accordingly, the substantial questions of law are answered in favour of the appellants/defendants. The plaint prayer is *inter alia* for declaration of title of the plaintiff over the entire extent of Acre 1.36 in Survey No.663/1. But, as stated *supra*, since the plaintiff is entitled only to an extent of Acre 1.26 in Survey No. 663/1, this Court is inclined to grant the relief of declaration of title in favour of the plaintiff for the said Acre 1.26 in Survey No. 663/1.

RESULT:

23. In fine, the Second Appeal is partly allowed in the following terms:

- (i) The plaintiff is entitled to an extent of Acre

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1.26 alone within the specific four boundaries described in Ex-A.1 - Partition Deed dated July 5, 1982. To that extent a decree of declaration of title and permanent injunction is granted;

(ii) The defendants have right of easement over the Cart Track to access their property as per Ex-A.1 - Partition Deed dated July 5, 1982;

(iii) Ex-A.6 - Partition Deed dated January 25, 2010 entered among the defendants is valid only in respect of 10 Cents in Survey No. 663/1 and binding on the plaintiff to that extent alone;

(iv) Considering the facts and circumstances of the case, the parties shall bear their own costs.

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking Order
TK

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To

- 1.The Principal Subordinate Judge
Krishnagiri.
- 2.The District Munsif Court
Krishnagiri.



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R.SAKTHIVEL, J.

TK

PRE-DELIVERY JUDGMENT MADE IN
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