



S.A.Nos. 461 & 469 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.12.2024

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

S.A. Nos.461 & 469 of 2012

S.A.No.461 of 2012

Malli's Resorts (P) Ltd.,
Rep. By its Managing Director,
A.V.Vinod Kumar Reddy
Flat No.3, Marer Estate,
102 South West Boag Road,
T.Nagar, Chennai – 600 017.

... Appellant / Plaintiff

Vs.

L.Leela
rep. By her Power Agent
Mr.M.B.Prakash
Devaneri village,
ECR Road,
Thirukkalikundram.

...Respondent / Defendant

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree dated 30.05.2011 in A.S.No.30 of 2010 on the file of the Additional Subordinate Judge, Chengalpattu, confirming the judgment and decree dated 31.08.2010 in O.S.No.43/2002 on the file of the District Munsif cum Judicial Magistrate, Thirukkalikundram.



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1. V.Ganesan
2. Silviya Sharma
3. Minor Prem
4. Minor Nithra
3 and 4th appellants are represented by their
mother Mrs.Silviya Sharma

... Appellants / Defendants

Vs.

L.Leela
rep. By her Power Agent
Mr.M.B.Prakash
Devaneri village,
ECR Road,
Thirukkalikundram.

...Respondent / Plaintiff

Second Appeal is filed under Section 100 of Civil Procedure Code, 1908, against the judgment and decree dated 30.05.2011 in A.S.No.32 of 2010 on the file of the Additional Subordinate Judge, Chengalpattu, confirming the judgment and decree dated 31.08.2010 in O.S.No.87/2001 on the file of the District Munsif cum Judicial Magistrate, Thirukkalikundram.

In both appeals:

For Appellants : Mrs.R.V.Gayathri
for Mr.P.B.Ramanujam
For Respondents : Mrs.V.Srimathi



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COMMON JUDGMENT

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The plaintiff is the appellant. A suit in O.S.No.43 of 2002 has been filed by the plaintiff against the defendant for seeking the relief of permanent injunction and the same was dismissed by the trial Court and the First Appeal preferred by the plaintiff also got dismissed by confirming the judgement of the trial Court. Hence the plaintiff has filed this second appeal.

2.The facts leading to the case of the plaintiff as pleaded in the plaint are as under:

The suit property was originally belonged to one Saraswathy Ammal and Munusamy who had sold the same in favour of one Maya Krishnan and Pattammal through a registered sale deed dated 21.05.1993. The said Maya Krishnan and Pattammal had sold the suit property in favour of the plaintiff through a sale deed dated 24.01.1996. The plaintiff has purchased the lands in Survey Number in S.Nos.55,56,57,60, 61, 62 and 63 which comprises nearly 27 Acres in one block. The plaintiff had converted 27 Acres which is inclusive of the suit property into farm resorts measuring 11 Cents each. The Farm Nos.20 and 33 as shown in the layout sketch forms part of the suit property in Survey No.60/20. The total extent purchased by the plaintiff from



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Maya Krishnan and another in S.No.60/20 was 13 cents. Out of the same the plaintiff has sold 0.07 cents to the third parties and retained 0.06 Cents. He has got a separate patta in respect of the remaining 6 Cents, which is being used as a pathway. The plaintiff has been in possession and enjoyment of the same without any disturbance. All of a sudden the defendant gave out a threat for forcible dispossession of the plaintiff. The defendant is a total stranger who has got no interest in respect of the suit property. The plaintiff had perfected title to the suit property by long continuous and uninterrupted possession for more than the statutory period. Since the defendant caused trouble over the plaintiff's possession, the plaintiff has filed a suit for permanent injunction against the defendants.

3. The averments in the written statement filed by the 1st defendant in brief :

The defendant is the absolute and exclusive owner of the suit property. She purchased the suit Survey No.60/20 which comprised an extent of 17 Cents which is inclusive of suit property measuring of 0.06 cents, from Ranganathan and others through a registered sale deed dated 30.12.1987. From then onwards the defendant is in possession and enjoyment of the same. The original patta has been standing in the name of the defendants



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predecessors in title. Later the defendant got it transferred in his name. By virtue of a long, continuous and uninterrupted possession and enjoyment over the suit property, the defendant and her predecessors had perfected title in the suit property. The alleged vendors of the plaintiff namely Maya Krishnan and Pattammal have no title or possession or interest in the suit property. Hence, they cannot pass any title in favour of the plaintiff. The plaintiff has filed a suit in O.S.No.108/2001 against the defendant and her husband in respect of the suit property and subsequently had withdrawn the same. The said fact was suppressed in the suit. The suit property has not been described properly. The suit is bad for non-joinder of necessary parties and it is barred by Res judicata.

4. On the basis of the above pleadings, the Trial Court has framed the following issues:

" 1.வழக்குரை அட்டவணைச் சொத்து தாவா தேதியில் வாதியின் கவாதீன அனுபவத்தில் உள்ளதா?

2, வாதி கோரியுள்ள நிரந்திர உறுத்துக்கட்டளை பரிகாரம் வாதிக்கு கிடைக்கக்கூடியதா?

3,வேறு என்ன பரிகாரம்? "



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5. During the course of the trial, on the side of the plaintiff, one witness has been examined as PW.1 and Exs.A1 to Ex.A11 were marked. On the side of the defendant, two witnesses have been examined as D.W.1 and D.W.2 and Ex.B1 to Ex.B13 were marked.

6. After the conclusion of the trial and on considering the materials available on records, the trial Court has dismissed the suit and the first appeal preferred by the plaintiff also dismissed by confirming the judgement of the trial Court. Now the plaintiff has filed the Second Appeal.

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7. The other suit in OS.No.87/2001 has been filed by the defendants in other suit in O.S.No.43 of 2002. The appellants are the defendants. The plaintiff had filed the suit against the defendants for declaration and permanent injunction in respect of the suit property and the same was decreed by the trial Court. The First Appellate Court also dismissed the first appeal preferred by the defendants by confirming the judgement and decree of the trial Court and hence, the defendants have preferred this Second Appeal.



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8. *The averments made in the plaint filed by the defendants in brief.*

The plaintiff is the absolute owner of the suit property by purchase through a registered sale deed dated 30.12.1987 from one Ranganathan and others and he in enjoyment of the same from the date of its purchase. The original patta was standing in the name of Munusamy Nayakkar who is the father of the plaintiff's vendor. After the purchase, the patta has been transferred in the name of plaintiff. The plaintiff has been in possession and enjoyment of the suit property by virtue of long, continuous and uninterrupted enjoyment over the suit property. The plaintiff has perfected the title through adverse possession also. The plaintiff had executed a power of attorney deed in favour of M.B.Prakash on 12.09.2001. The defendants do not have any right or title or interest over the suit property. They have never been in possession of the suit property. The defendants 1 and 2 have claimed false claim over the suit property and tried to disturb the plaintiffs possession and enjoyment, hence the plaintiff has filed the suit for declaration and permanent injunction.

9. *The averments made in the written statement filed by the 1st defendant and adopted by the 2nd defendant and the legal heirs of the*



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deceased 1st defendant who have been subsequently impleaded as D3 to D5, in brief:

It is denied that the suit property was purchased by Leela and Ranganathan and others under a sale deed dated 30.12.1987. The description of the property is not correct. The defendants are not in possession and enjoyment of the same. The suit property has been in possession and enjoyment of the defendants vendors for several years and they have now passed title in favour of the defendants through sale deeds dated 15.05.2000 and 05.03.1999 respectively. Subsequent to the purchase, the defendants 1 and 2 have taken possession and they were in enjoyment of the same. The 1st defendant had put up a farm house and living there by paying house tax and the 2nd defendant has been enjoying the farm resorts. The suit property is not vacant as alleged by the plaintiff. The vendors of the defendant had purchased the suit property which is 13 cents in Survey Number in S.No.60/20 which has a different boundary. Out of 13 cents in S.No.60/20, the farm lands and roads were laid. The extent of 17 cents in the boundary given in the sale deed dated 30.12.1987 is not omitted and it will not represent the suit property and the suit property is situated in different survey number in S.No. 57/4. The defendants and his predecessors have perfected their titled by long, continuous and uninterrupted enjoyment of the suit



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property. Hence the suit should be dismissed.

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11. On the basis of the above pleadings the trial court has framed the following issues:

- " 1.வாதி கோருவதுபோல் வழக்குச் சொத்தினைப் பொறுத்து விளம்புகை பரிகாரமும். அதனை தொடர்ந்து நிரந்தர உறுத்துக்கட்டளை பரிகாரமும் வாதிக்கு கிடைக்கத்தக்கதா?
- 2, வழக்கு சொத்து சர்வே எண் மற்றும் சொத்து விவரங்கள் சரிவர வழக்குரையில் குறிப்பிடப்பட்டுள்ளதா?
- 3,தரப்பினர்களுக்கு கிடைக்கக்கூடிய இதர பரிகாரம் என்ன? "

12. During the course of the trial, on the side of the plaintiff, two witnesses have been examined as PW.1 and PW.2 and Ex.A1 to Ex.A13 were marked. On the side of the defendants, three witnesses have been examined as D.W.1 to D.W.3 and Ex.B1 to Ex.B10 were marked.

13. After conclusion of the trial and on considering the materials available on record, the trial Court decreed the suit and the appeal preferred by the defendants also got dismissed by confirming the judgment of the trial Court. Now the defendants have preferred this second appeal.



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common substantial questions of law are framed:

“a) Whether both the Courts below erred in not properly considering Ex.A1 which relates to a different survey number (i.e.) that is Survey No.57/4?

b) Whether both the Courts below went wrong in declaring the title of the plaintiff to the suit property for which not even boundaries have been given by the plaintiff?

c) Whether both the Courts below failed to consider the fact that the defendant did not enter the witness box and the evidence was deposed only by the Power Agent, who did not have the personal knowledge about the earlier transactions?

d) Whether the findings of both the Courts below can be termed as perverse due to improper appreciation of the oral and documentary evidence? ”

15. For the sake of convenience, the parties are referred to their original ranking in the original suits filed before the trial Court.

16. Mrs.R.V.Gayathri, the learned counsel for the appellants submitted that the suits have not been filed clearly. The description of the property



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do not have clear boundaries which has no relevance to the issues raised in these suits. The survey number in S.No.60/20 comprises 17 cents, but the plaintiff has pleaded that it is only 13 cents. The plaintiff's title deed Ex.A1 itself would show an extent of 17 cents with specific boundaries, but it does not tally with the description of the property shown in the plaint. The First Appellate Court has also made an observation in its judgement that the plaintiff had executed a general power of attorney in favour of one Prakash through Ex.A13 dated 12.09.2001 in which, the description of the property is shown with the similar boundaries but with different survey number in S.No.57/4. That would only show that the plaintiff has got rights only in survey number in S.No.57/4 and not in S.No.60/20 which was purchased by the defendants. The defendants' documents Ex.B2 and Ex.B9 which are pattas for the suit property standing in the name of the defendants have not been considered by the Courts below. The plaintiff has got no clarity as to the property for which he is seeking the relief of declaration, as he has improperly described the property and the suit schedule without any boundaries and the power of attorney document Ex.A13 also has a different survey number but with the same boundaries in Ex.A1.



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17. Mrs.V.Srinithi, the learned counsel for the respondents, submitted that the plaintiff has filed the suit without proper description of the suit property. As it is seen in the property details, the particulars of the property in the plaint did not have any boundary details. So it is claimed by the appellant / defendant that the boundary details would correlate to only Survey Nos.57/4 which is away from the suit property. But the defendant's purchaser Vinoth Kumar has already filed a suit in O.S.No.108/2001 in respect of the same property claiming that the same has been withdrawn. D.W.2 has further stated that in respect of the suit property patta has been originally granted in the name of Munusamy Naicker in Patta No.447.

18. The plaintiffs have purchased the suit property from the legal heirs of Munusamy Naicker through Ex.A1 sale deed. The defendants who are the purchasers from D.W.2 can get title only if P.W.2 himself has got title to the suit property. The defendants relied upon Ex.B5 which is said to be the Power of Attorney executed in favour of the plaintiff from one Renganathan and others in respect of Survey No.57/4 and the boundaries for the said property are also similar to that of the boundary details of the particulars of property in Ex.A1. By citing the above details it is claimed by the defendants that the plaintiff had actually purchased the property in S.No.57/4 but



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claiming title in respect of S.No.60/20. The plaintiff's predecessor in title Munusamy had the patta for the property in S.No.60/20 in Patta No.447 which has been subsequently converted in the name of the plaintiff in Patta No.544.

19. So far as D.W.2 Vinoth Kumar is concerned, the patta number for the property which he transacted relates to Survey No.446. One pertinent observation that has been made by the trial Court assumes more relevance. It has been observed that the defendant's predecessor Maya Krishnan had purchased 19 cents from one Saraswathi, Ramalingam and Mani through a registered sale deed dated 25.09.1993 which has been marked as Ex.B6. In the said sale deed though the extent has been shown as 19 cents, in the particulars of the property, the survey number has been corrected. The trial Court observed that the survey number has been corrected from S.No.60/30 to S.No. 60/20 and the boundary details of the said sale deed does not tally with the boundaries with the suit property.

20. The learned counsel for the appellant submitted that without a clear boundary the plaintiff cannot file a suit for declaration. The Commissioner who has been appointed in this case had visited the suit



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property and stated in his report that the property has been identified by the parties and he had also given the boundary details for the property. In his report it is seen that there are some make belief arrangements made in the suit property in order to show that it has been planted with saplings and bordered with pillars fixed on the ground. For the reasons best known to the defendants they did not chose to mark the Commissioner's report, through the Commissioner has been appointed at their instance. In the property details of the plaintiff's predecessor in title, the difference in the patta number, cannot make a better case for the defendant in respect of his right over the suit property.

21. However the learned counsel for the appellant submitted that it is the plaintiff who had filed the suit for the declaration and permanent injunction and hence the burden lies upon the plaintiff to prove the same by pleading positive evidence. It is true that the plaintiff has the burden to prove the suit property belongs to him. So far as the survey number and the extent is concerned, that tallies with Ex.A1. Though the general principle that boundaries will prevail over the survey number, the contradiction with respect to the extent has arisen in this suit. So far as the plaintiff is concerned, he is very much definite about the extent and survey number that



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he had purchased 13 cents in S.No.60/20.

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22. Whatever may be the case the plaintiffs have proved preponderance in their favour by producing Ex.A1 sale deed which pertains to S.No.60/20 for an extent of 13 cents and his predecessor in title namely Munusamy also had the patta for the suit property in Patta No.447. So far as the defendants are concerned the title deed of their predecessor mentions about an extent of 19 cents and Survey Number also appears to have been altered from S.No.60/30 to 60/20. So while applying the principle that boundaries would prevail over survey number and extent, the above preponderance in favour of the plaintiff cannot be overlooked. Had the defendants proved a better case by showing any concrete proof in respect of the suit property which matches with the extent and survey number, the same could have been taken into consideration.

23. From the materials available on record the courts below have come to an inevitable conclusion that the defendants' predecessor had actually purchased an extent of 19 cents in S.No.60/30 but later executed sale deed in favour of P.W.2 (Ex.B7). Though the plaintiff did not come with specific boundaries he had proved a better title than the defendants as he could



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produce patta in favour of his predecessor in title. His sale deed Ex.A1 also tallies with S.No.60/20 and the extent of 13 cents. S.No.60/20 has been subdivided and the field map is available to identify the location of S.No.60/20 and that it measures only 13 cents. In fact that forms part of the Commissioner's report which was not marked by the defendants.

24. The defendants have claimed that there are 17 cents in S.No.60/20. In reality S.No.60/20 only has 13 cents and it is a single property. The above facts has been admitted by D.W.2 also in his evidence. So the courts below have adopted the rule of preponderance which is the standard of proof for the civil disputes. Even though the appellant have raised certain technicalities as to non-mentioning of the boundaries, that do not impact the whole material available on record.

25. As the documents only reveal that Ex.A1 reflects S.No.60/20 and not S.No. 57/4 as stated in the substantial question of law, that will not go in favour of the appellant.



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26. As the lower court has gone with the documentary evidence of the patta standing in the name of the predecessor of the plaintiff and the plaintiff's title deed and also the Commissioner's report, in arriving at the conclusion that the suit property belongs to the plaintiff, I do not find any factual or legal infirmity. As the trial Court had adopted the principle of preponderance of probabilities as the standard proof for decreeing the suit in favour of the plaintiff, the substantial questions of laws are answered against the appellant.

27. In the result, these Second Appeals are dismissed and the judgment and decree of the lower appellate Court is confirmed. No costs.

18.12.2025

Index:Yes/No

Speaking Order / Non-speaking order

Neutral Citation Case : Yes / No

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R.N.MANJULA, J.

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To:

1. The Additional Subordinate Judge, Chengalpattu.
2. The District Munsif cum Judicial Magistrate, Thirukkalikundram

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