



S.A.No.528 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 05.03.2024

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

S.A.No.528 of 2022  
and C.M.P.Nos.13073 and 13075 of 2022

Chinnathayi

...Appellant

Vs

S.M.Syed Khader

...Respondent

**Prayer:** Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 17.03.2022 made in A.S.No.11 of 2019 on the file of the Subordinate Court, Harur confirming the judgement and decree dated 10.01.2019 made in O.S.No.99 of 2013 on the file of the District Munsif Court, Harur and allow this appeal consequently decree the suit.

For Appellant : Mr.B,Manoharan

For Respondent : Mr.Prabhakar  
for Mr.J.Pradeep



S.A.No.528 of 2022

WEB COPY

## **JUDGMENT**

The defendant in a suit for bare injunction is the appellant before this Court. The facts are briefly set out herein below and the parties are referred to in the same ranking as before the trial Court.

2.It is the case of the plaintiff that the suit property and other properties had been purchased by his paternal grandmother, Fathima Beevi under a Sale deed dated 07.11.1939. The suit property has been described as follows in the plaint.

### **தாவா சொத்து விவரம்**

தருமபுரி மாவட்டம், அரூர் வட்டம், மோப்பிரிப்பட்டி  
தரப்பு, சிக்காம்பட்டி கிராம சர்வே எண்.207/30A1A,  
செக்குபந்தி விவரம்: சைதானி வீட்டிற்கு வடக்கு,  
கிழமேலாக போகும் 10 அடி, பொது பாதைக்கு  
தெற்கு, சின்னத்தாய் வேறு ஜாகாவிற்கு கிழக்கு,



S.A.No.528 of 2022

காவலர் குடியிருப்பிற்கு மேற்கு, இதன் மத்தியில் கிழமேல் 60 அடி, தென்வடல் 50 அடி ஆக 3000 சதுரடி கொண்ட காலிமனையும், மேலும் சர்வே எண். 207/30A1A செக்குபந்தி விவரம்: தென்வடலாக போகும் 7 அடி பொது சந்திற்கு கிழக்கு, சையத்மஸ்தான் வேறு காலி ஜகாவிற்கு மேற்கு, ஆரோக்கியராஜ் வீட்டிற்கு தெற்கு, கிழமேலாக போகும் 10 அடி பொது பாதைக்கு வடக்கு, இதன் மத்தியில் கிழமேல் 30 அடி, தென்வடல் 50 அடி ஆக 1500 சதுர அடிகள்.

3. It is the contention of the plaintiff that after the death of Fathima Beevi, his father, Syed Masthan, who was the son of Fathima Beevi, had inherited her property and was in enjoyment of the same. He had got the patta in respect of the suit property mutated in his name on 20.03.1991. Barring the suit property, Syed Masthan had sold the other properties to third parties. Thereafter, a joint patta bearing No.531 in the name of the plaintiff's father and others came to be

3/15



S.A.No.528 of 2022

issued. Syed Masthan died on 21.08.2006, leaving behind the plaintiff, who inherited and was in enjoyment of the same. The defendant is a third party to the suit property. The defendant had purchased the properties near the suit property from the plaintiff's father. The plaintiff had made an application on 26.11.2012 to have the patta mutated in his name in respect of the suit property. The defendant wanted the plaintiff to sell the property for a low price to her which was refused by the plaintiff. Therefore, incensed by the response, the defendant on 27.04.2013, attempted to trespass into the suit properties and dump stones. However, the plaintiff had with the help of the neighbours prevented this attempt. Therefore, the plaintiff has come forward with the suit in question.

4. The defendant had filed a written statement denying the claim of the plaintiff. The defendant would submit that there is no property, as described in the suit schedule, existing on site. The defendant would



S.A.No.528 of 2022

submit that the plaintiff has given false boundaries for the property.

This has been made to usurp the property of the defendant. The defendant would submit that Syed Masthan had sold the property to one Sendaraya Chetty, who in turn had sold the same to one Abdul Wahab. Abdul Wahab had sold the property to the defendant on 21.01.1982. Since the date of the sale in her favour, the defendant has been in possession and enjoyment of the property. The defendant would submit that the plaintiff has no right, title or interest to the suit property. He would submit that the plaintiff was harassing the purchasers from his father and attempting to grab the money from them. The defendant was using the suit property to draw water from the bore well to her house. It is her property that the plaintiff was attempting to grab. A similar suit had been filed by the defendant against one Raman, who had also taken out a similar defense that the suit property as shown in the suit was not there on site, and the suit was dismissed, upholding the claim of the defendant. Therefore, this

5/15



S.A.No.528 of 2022

appears to be a modus operandi of the plaintiff to grab the property.

Therefore, the defendant sought to have the suit dismissed.

5. The trial Court had framed the following issues:

(1) வாதி கோரியுள்ள நிரந்தர

உறுதித்துக்கட்டளை பரிகாரம் தாவா சொத்து குறித்து

பெற தகுதியானவரா?

(2) வாதிக்கு கிடைக்கக்கூடிய இதர

பரிகாரங்கள் என்ன?,

6. The plaintiff had examined himself as P.W1 and marked Exs.A1 to A6. He had also examined one Markoni as P.W2. The defendant had neither entered the box nor marked documentary evidence. The trial Court ultimately decreed the suit. Challenging the same, the defendant had filed A.S.No.11 of 2019 on the file of the



S.A.No.528 of 2022

Subordinate Court, Harur. The lower appellate Court had also confirmed the judgement and decree of the trial Court and dismissed the appeal. Challenging this concurrent judgement and decree, the plaintiff is before this Court.

7. The appeal was admitted on the following substantial questions of law:

*“i. Whether the Courts below are correct in law in granting a decree for injunction overlooking the admission of P.W.1 and P.W.2 regarding the possession of the suit property by the defendant?*

*ii. Whether the Courts below are correct in granting a decree for bare injunction especially when it is admitted that the defendant had put up construction and the plaintiff has not sought for recovery of possession?*

*iii. Whether the Judgement and Decree of the Lower Appellate Court is perverse in as much as the Lower Appellate Court being the final Court of fact has not*



S.A.No.528 of 2022

*considered the evidence on record from its correct perspective?*

8. Heard the learned counsel on either side and perused the materials on record.

9. The plaintiff has come to Court stating that he is in possession and enjoyment of the suit property. While hearing the arguments by both counsels, one more substantial question of law is framed, namely,

*“iv. Whether the plaintiff has proved their exclusive possession to the property which has been described in the suit schedule”.*

As set out supra, the first item of the suit property has been described as an extent of 3000 sq.ft,

East West – 60', North-South -50' situate in S.No.207/30A1A within four boundaries which are:



S.A.No.528 of 2022

South by Saidani Beevi House

North by East-West 10' common pathway,

West by other property of Chinnathayi,

East by Police quarters.

The second item of the suit property is described as an extent of 1500 sq.ft.

East-West – 30' and North-South 50' within the following boundaries

West by 7 feet on common path proceeding North-South

East by other lands of Syed Masthan

North by Arokiyaraj House

South by East-West – 10 feet common pathway

To prove the title as well as the possession to these two items of properties, the plaintiff has produced Ex.A1, which is a certificate of the Village Administrative Officer wherein it is stated that an extent of 0.90.5 ares in S.No.207/30A1A of Chikkampatti Village, Dharmapuri patta stood in the name of Syed Mastahan and 50 others. This

9/15



S.A.No.528 of 2022

document does not describe the suit property. Ex.A2 is the patta bearing No.531. A perusal of this document would indicate that apart from the plaintiff's father's share, 56 others are joint patta holders. The patta refers to other survey numbers as well. Ex.A3 is the 'A' register which once again describes the ownership as joint pattadhars. Ex.A4 is the application made by the plaintiff on 26.11.2012 ( four months prior to the suit) to the Tahsildar, Harur for mutating the revenue records in respect of the properties measuring 3600 sq.ft in S.No.207/30A1A in his name. Ex.A5 is the certified copy of the sale deed in favour of the plaintiff's paternal grandmother. Ex.A6 is the very same certificate of the Village Administrative Officer as found in Ex.A1.

10. A perusal of these documents does not throw light on the fact as to whether the suit property is a part of the above documents and if so, whether the plaintiff is in exclusive possession of the same. On the contrary, these documents clearly show that property in

10/15



S.A.No.528 of 2022

S.No.207/30A1A is jointly held by 57 persons including the plaintiff and the property of each party has not been independently demarcated.

It is also seen that though an application under Ex.A4 had been made by the plaintiff to the Tahsildar for mutating the revenue records in respect of the suit property in his name, the said application has been dismissed, which was admitted by P.W1 in his cross examination. The plaintiff who has come to Court seeking protection of his possession has to first establish that he is in possession of the property. However, in the instant case, the plaintiff neither through oral nor documentary evidence was able to establish the existence of the suit property, its location and that the same in the exclusive possession of the plaintiff. Taking note of Exs.A1 and A2, it is clear that there are 57 co-owners in the same survey number and the plaintiff is yet to demarcate the property in his possession. Therefore, the plaintiff having failed to prove the possession of the property described in the suit schedule, both the Courts below have erred in coming to the conclusion that the

11/15



S.A.No.528 of 2022

defendant's name does not feature in the joint patta. Therefore, the Courts below, taking into account Exs.A2 and A6, which show the plaintiff's father is a joint pattadhar have adopted the principle of possession follows title, as the property is vacant and have proceeded to decree the suit. The Courts below have also drawn adverse inference on account of the defendant not entering the witness box. However, P.W2 has clearly admitted the possession of the suit property by the defendant. The witness has stated as follows:

“வழக்கு சொத்து 6 ஆயிரம் சதுரடி இருக்கும். தென்வடல் கிழமேல் எவ்வளவு இருக்கும் என்று தெரியாது. அந்த நிலத்தில் ஒரு போர் உள்ளது. போர்வேல் சின்னதாய் போட்டார். போர்வேல் போட்டு 7,8 வருடம் இருக்கும். போர்வேல் இருந்து தண்ணீர் சின்னதாய் வீட்டிற்கு செல்கிறது. வாதி குடியிருக்கும் வீட்டிற்கு எதிர்புறம் உள்ள கிழமேல் பாதை தாவா சொத்து வரை 10 அடி சென்று வடக்கு புறம் 7 அடியாக திரும்பி பாதை செல்கிறது. வடக்கு



S.A.No.528 of 2022

புறம் சின்னதாயக்கு 2 அடுக்கு மாடி உள்ளது  
என்றால் சரிதான். போர்வெல் போட்டுள்ள பகுதியை  
சுற்றி கால்பவுண்ட் சுவர் கட்டப்பட்டுள்ளது.  
கால்பவுண்ட் சுவர் சின்னதாய் கட்டினார் என்றால்  
சரிதான்.”

This admission of P.W2 has not been taken into consideration by the Courts below. Therefore, the substantial questions of law Nos.1 and 2 are answered in favour of the defendant. The lower appellate Court, being the final Court of fact, ought to have examined the evidence on record independently. The plaintiff who has come to Court seeking a decree of possession has to prove possession and further, documents that have been filed on his behalf does not relate to the description of the suit property in the suit schedule. This factor has been overlooked by the Courts below. The substantial question of law No.3 is also held in favour of the defendant. Accordingly, the second appeal is allowed. The judgments and decrees of the Courts below are set aside. No costs.



S.A.No.528 of 2022

Consequently, **C.M.P. No. 13073 of 2002** is closed.

WEB COPY

11. Considering the fact that the second appeal has been allowed on the basis of the available documents, there is no necessity to allow this application. **Accordingly, C.M.P.No.13075 of 2022 is dismissed.**

**05.03.2024**

Index: Yes/No

Speaking order/non-speaking order

srn

To

1. The Subordinate Court, Harur
2. The District Munsif Court, Harur
3. The Section Officer, V.R.Section, High Court, Madras.



WEB COPY



S.A.No.528 of 2022

**P.T.ASHA, J.,**

srn

S.A.No.528 of 2022  
and C.M.P.Nos.13073 and 13075 of 2022

**05.03.2024**