

S.A.(MD).No.361 of 2009

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

S.A.(MD).No.361 of 2009

- 1.Arumugam (Died)
- 2.Rakkammal
- 3.Ramakrishnan
- 4.Banumathi
- 5.Jeevanandem
- 6.P.Radhalaxmi
- 7.Venthamarai Selvi

... Appellants

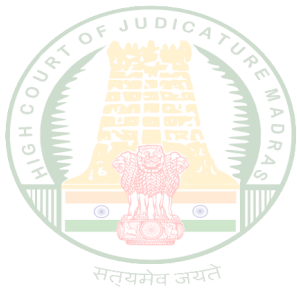
(Appellants 2 to 7 are brought on record as LR's of the deceased sole appellant as per Court order dated 14.09.2018 in CMP(MD)No.5563 of 2018 in SA(MD)No.361 of 2009)

/Vs./

- 1.Soundarammal (Died)
- 2.Vellaisamy (Died)
- 3.Rukmani
- 4.Nagajothi
- 5.Kalidasan
- 6.Suseela
- 7.Senthil
- 8.Ramu

...Respondents

(R1 deceased memo USR No.3353/14 is recorded vide order dated 04.09.2014 made in SA(MD)No. 361 of 2009)



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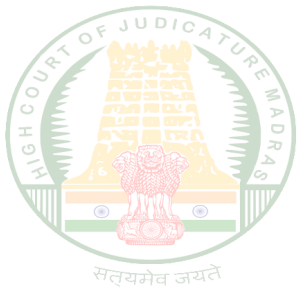
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(Respondents 6 to 8 are brought on record as LR's of the deceased 2nd respondent vide Court order dated 09.08.2023 made in CMP(MD)Nos.4084 to 4086 of 2019 in SA(MD)No.361 of 2009)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, aggrieved by the Judgment and Decree dated 23.01.2009 made in A.S.No.52 of 2008 on the file of the Subordinate Court, Ramanathapuram, confirming the Judgment and Decree dated 27.03.2008 made in O.S.No.16 of 2002 on the file of the District Munsif Court, Ramanathapuram.

For Appellants	: Mr.S.Vellaichamy
R1 and R2	: Died (Steps taken)
For R3 to R5	: Mr.K.N.Thampi
For R6	: M/s.Suseela
For R7	: Mr.Senthil
For R8	: Mr.Ramu
Advocate Commissioner	: Mr.K.Pragash Ganapathy

JUDGMENT

The present second appeal is filed by the plaintiff against the Judgment and Decree dated 23.01.2009 passed in A.S.No.52 of 2008 on the file of the Subordinate Court, Ramanathapuram, confirming the Judgment and Decree



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dated 27.03.2008 passed in O.S.No.16 of 2002 on the file of the District Munsif Court, Ramanathapuram.

2. The plaintiff in the suit is the appellant herein and the defendant in the suit is the respondent herein. Pending suit appeal the plaintiff and defendant died and their legal heirs are impleaded as parties. For the sake of convenience, the parties are referred as plaintiff and defendants, as per the ranking in the suit.

3. The suit is filed for declaration injunction restraining the defendants from interfering in the suit property. The suit was dismissed, aggrieved over Appeal Suit was filed by the plaintiff and the same was dismissed. Hence the present second appeal is preferred. The present second appeal was admitted on the following substantial questions of law:

“A) Whether the Courts below are right in dismissing the suit of the appellant when he establishes the existence of suit lane through the report of the Advocate Commissioner?

B) Whether the Courts below are right in dismissing the suit of the appellant when his vital right to the water would be lost when the suit is not decreed?”



4.The brief facts as stated in the plaint is that the suit property was purchased through sale deed, dated 08.01.1993 marked as Ex.A1 wherein the measurement and the four boundaries are stated as under:

“சொத்து விபரம்

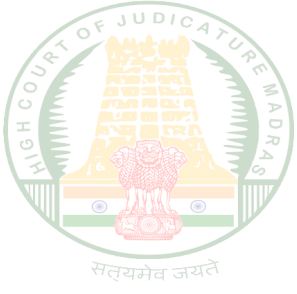
இராமநாதபுரம் ரிடி, இராமநாதபுரம் டி, ஷை தாலுகா, இராமநாதபுரம் 2 நிர் இணை சார் பதிவகம் தேவி பட்டணம் குருப் தேவிபட்டணம் கிராமத்தில் ஷை கிராமம், சர்வே நம்பர் 321/1க்கு புஞ்சை மொத்த விஸ்தீர்ணம் 2.41.0 ஹெக்டேருக்கு ஏக்கர் 5 ஐந்து, சென்டு 95ல் தற்போதைய சட்டிவிஷன்படி சர்வே நம்பர் 321/1.A- க்கு புஞ்சை விஸ்தீர்ணம் 2.09.5 ஹெக்டேருக்கு ஏக்கர் 5 ஐந்து சென்டு 17-ல் தங்களுக்கு கிரையம் கொடுத்திருப்பது வடபக்கம் நடுப்புரம், 15 நம்பர் பிளாட் 1 ஒன்றுக்கு வடபுரம் கிழமேல் அடி 66 அறுபத்தாறு தென்புரம் கிழமேல் அடி 66 அறுபத்தாறு, கீழ்புரம் தென்வடல் அடி 62 அறுபத்தி இரண்டு, மேல்புரம் தென்வடல் அடி 59, ஐம்பத்தொன்பது அளவுள்ளதுக்கு மொத்தச் சதுர அடி 3993 க்கு சென்டு 9 சதுர அடி 69 ஒன்பது சென்டும், அறுபத்தொன்பது சதுர அடியும் நான்குமால் விபரம்

வடக்கு ... ரெத்தினம் சேர்வை தென்னந்தோப்பு

கிழக்கு ... சத்திரத்திற்கு பாத்தியமான ஷை சர்வே எண்.321/1A-ன் பகுதிப் புஞ்சை

தெற்கு ... ஷை சத்திரத்திற்குப் பாத்தியமான சர்வே எண்.321/1A-ன் பகுதிப் புஞ்சை

மேற்கு... எங்களால் விடப்பட்டிருக்கும் கிழமேல் 10 பத்து அடி



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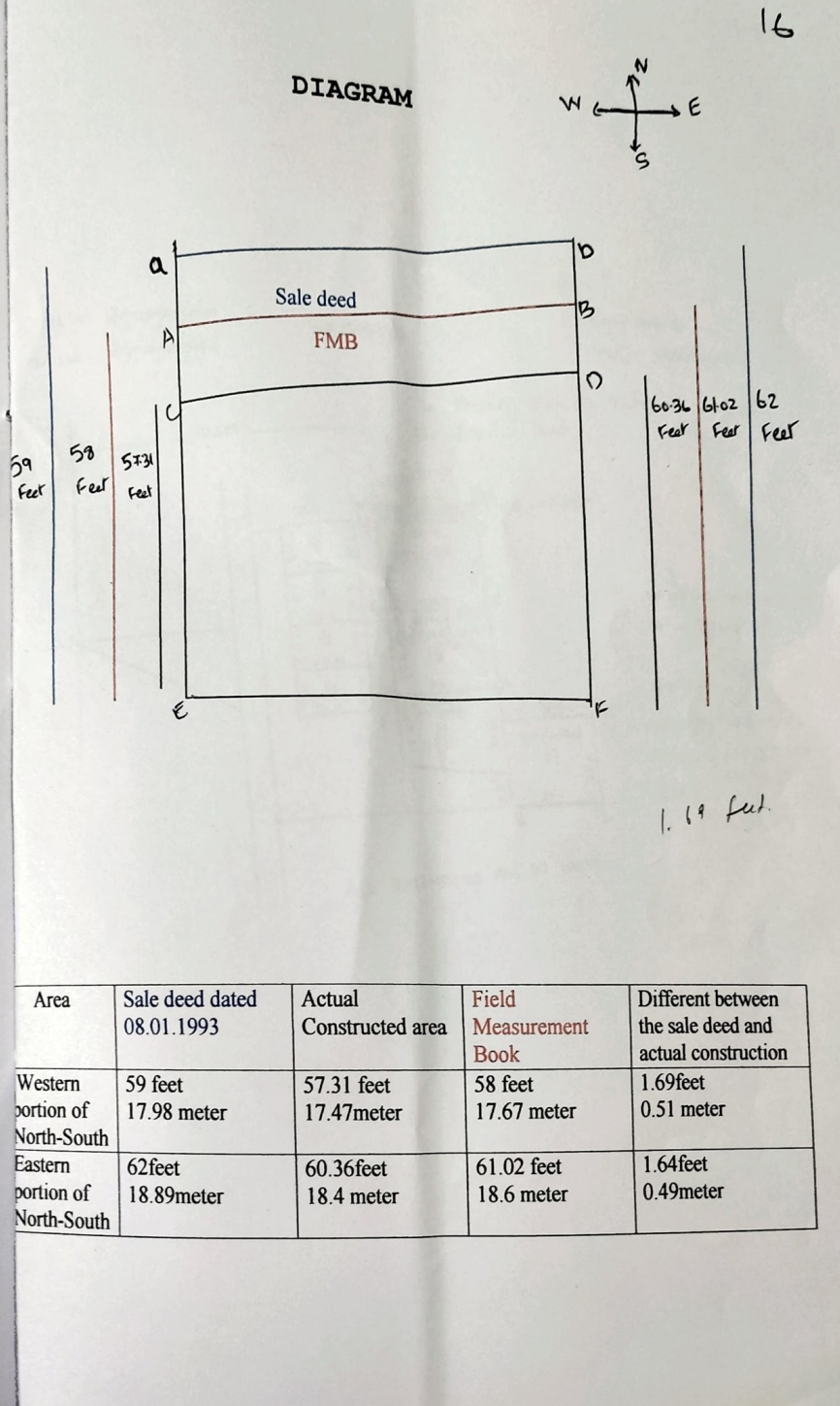
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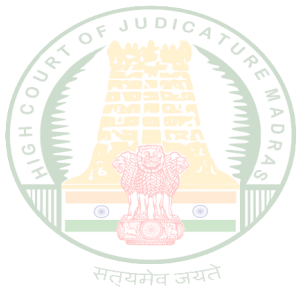
அகலமுள்ள தென்வடலோடிய பொதுப்பாதையும் சத்திரத்துக்கு பாத்தியமான ஷை சர்வே எண். 321/1A-ன் பகுதிப் புஞ்சையும் இதற்குள்பட்டது. ஷை நிலம் விவசாயத்துக்கு லாயக்கில்லாத மனை நிலம். மேல்கண்ட கிரையச் சொத்தின் தற்கால மதிப்பு ரூ.27512.00”

5. In the measurement, it is stated that on the Northern side, East-West Road is 66 feet, on the Southern side East West Road is 66 feet, on the Eastern side North South Road is 62 feet and on the western side North South Road is 59 feet. The plaintiff is claiming the aforesaid extent based on the sale deed 08.01.1993. On the other hand, the defendant has claimed that the small strip of portion belongs to him. In fact, the defendant has claimed on the southern end boundary of the defendant property, wherein he has planted palm trees. Since there is dispute in measurement of the property, therefore, this Court appointed an Advocate Commissioner afresh. In the Advocate Commissioner's report, the following sketch is shown:



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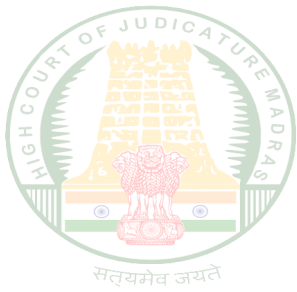


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6. As on the field the plaintiff is in enjoyment of 60.36 feet on the eastern side. As per FMB, on the eastern side 61.02 feet is there for Survey No. 321/14. But as per the sale deed, 62 feet was sold to the plaintiff. Likewise on the western side, on the field, the plaintiff is in enjoyment of 57.31 feet. As per the FMB, the plaintiff is entitled until the 58 feet but as per the sale deed, an excess of 1 foot is granted, thereby, 59 feet was granted to the plaintiff.

7. On perusal of the 1st Advocate Commissioner's report and the present Advocate Commissioner's report, (X) marked portion in the 1st Advocate Commissioner's report would indicate palm trees planted by the defendant. In the said Advocate Commissioner's report, there is a space between the B-C. Likewise, there is a space in between C-D on eastern side and one Kovalan was in enjoyment of the property. A strip from C-D until (X) marked portion belongs to the plaintiff. Even the present Advocate Commissioner's report also says there is a lane on the northern boundary of the plaintiff's lane. However, the revenue records shows that a portion is classified as anadheenam, that is why in the FMB sketch on the western side 1 foot from 59 feet is shown as anadheenam. Likewise, in the eastern side from FMB, it is 1.02 feet until 62 feet and in the FMB, it is



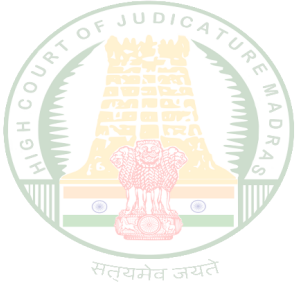
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WEB COPY shown as anadheenam.

8. Therefore, this Court is of the considered opinion that in the sale deed, the excess portion is sold to the plaintiff, which is classified as anadheenam, which the plaintiff is not entitled to. The plaintiff is entitled to on the western side until 58 feet which coincides with the FMB sketch on the eastern side. The plaintiff is entitled to 61.02 feet which coincides with the FMB sketch. This Court is of the considered opinion that admittedly the plaintiff is entitled to land but not the extent the plaintiff is claiming but a lesser extent as explained supra. Consequently the plaintiff is entitled to declaration and injunction for the extent as stated supra. Therefore, the substantial questions of law are answered in favour of the plaintiff to the extent stated supra.

9. Since, the plaintiff is no more, the legal heirs of the plaintiff shall be entitled to the property as stated supra.

10. With the above said observations, the second appeal is disposed of. The Judgment and Decree dated 23.01.2009 passed in A.S.No.52 of 2008 on



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the file of the Subordinate Court, Ramanathapuram and the Judgment and Decree dated 27.03.2008 passed in O.S.No.16 of 2002 on the file of the District Munsif Court, Ramanathapuram is modified as stated supra. No costs.

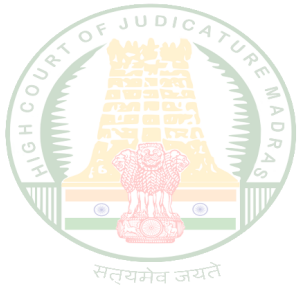
23.10.2024

Index : Yes / No
NCC : Yes / No

Tmg

TO:

1. Subordinate Court, Ramanathapuram.
2. District Munsif Court, Ramanathapuram.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
S.A.(MD)No.361 of 2009

Dated:
23.10.2024