



S.A.No.1825 of 2003

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 02.12.2024

PRONOUNCED ON : 19.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

S.A.No.1825 of 2003

and

C.M.P(MD)Nos.14136 & 14139 of 2024,

C.M.P.Nos.19892 & 16619 of 2003

1.O.Krishnan(Died)

...Appellant/Appellant/Defendant

2.Azhagu Soundari

3.Sivakumar

4.Jegadeesan

5.Parimala

*(Appellants 2 to 5 are brought on record as
LRs of the deceased sole appellant vide order of the
Court, dated: 28.01.2009 made in M.P(MD)Nos.1 to 3 of 2008)*

-Vs-

M.Palaniyayee

...Respondent/Respondent/Plaintiff

Prayer : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree of the learned Additional District Judge, Pudukottai, dated 21.02.2003 and made in A.S.No.46 of 2001 confirming the



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judgment and decree of the Court of the Principal District Munsiff of Pudukottai dated 18.09.2001 passed in O.S.No.176 of 1999.

For Appellants : M/s.Vijayakumari Natarajan
For Respondents : Mrs.S.Prabha
for M/s.S.Deenadhayan

JUDGMENT

This Second Appeal has been filed against the judgment and decree of the learned Additional District Judge, Pudukottai, dated 21.02.2003 and made in A.S.No.46 of 2001 confirming the judgment and decree of the Court of the Principal District Munsiff, Pudukottai, dated 18.09.2001, passed in O.S.No.176 of 1999.

2. For the sake of convenience, the parties are referred to as per their rankings in the Trial Court.

3. The defendant in the suit in O.S.No.176 of 1999 on the file of the Principal District Munsif, Pudukottai is the appellant herein. The respondent is the plaintiff.



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4. The substance of the plaintiff's case is that the plaintiff had purchased a plot No.4 at Sri Nagar, Pudukkottai, on 17.02.1992, for valuable consideration from one Malaiyandi, the extent of the said plot is 59 feet on East West and 39 feet and 4½ of inches on South North in total 2324 sq.feets., and on the southern side of the appellant/defendant is having a plot in Plot No.5. The respondent/plaintiff put up a compound wall during the year 1988, at that time the appellant/defendant did not raise any objection. All of sudden on 21.09.1999 with help of henchman the appellant/defendant demolish the same and interfere the peaceful possession and enjoyment of the Respondent/Plaintiff which constrained to file the said suit.

5. The defendant filed a written statement and contested the suit stating that the appellant/defendant is in possession and enjoyment of the plot No.5, the Respondent/Plaintiff put up a compound wall by encroaching the plot No.5. Hence, the Respondent/Plaintiff is not entitled for the claim of permanent injunction as well as damage. He denied the allegations happened on 21.09.1999. The Respondent/Plaintiff approached the appellant/defendant to purchase the plot No.5, the same was refused by him. Due to such motive the plaintiff filed a vexatious suit with false averments.



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6. On the basis of the above said pleas set out by the respective parties, the following issues were framed by the Trial Court for consideration:-

“1.Is the plaintiff entitled to the relief of permanent injunction, against the defendant?

2. Is the plaintiff entitled to damages of Rs.5,000/- from the defendant, as prayed for?

3. Is the suit had for non joinder of the owner of the plot No.3 on the north of the suit property?

4. To what else relief is the plaintiff entitled?”

7. Before the trial Court, in support of the plaintiff's case, the plaintiff's husband was examined as P.W.1 and Arockiasamy and Arandhai Annadurai were examined as P.W.2 and P.W.3 and 1 document was marked as Ex.A1. On the side of defendants, the defendant himself examined as D.W.1 and one document was marked as Ex.B.1. The Advocate Commissioner was appointed by the Court. He inspected the property and filed a report as Ex.C1 to Ex.C4.

8. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court dismissed the suit by a judgment and decree dated 18.09.2001. Aggrieved over the same, the



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defendant filed an appeal in A.S.No.46 of 2001 on the file of Additional District Judge cum Chief Judicial Magistrate, Pudukkottai. The first appellate Court by its judgment dated 21.02.2003, confirmed the judgment and decree passed by the trial Court and dismissed the appeal. Aggrieved over the same, the defendant has filed Second Appeal before this Court.

9. This Court while admitting the Second Appeal has framed the following substantial question of law:

“a) In the facts and circumstances of the case, whether the relief of bare injunction can be granted without the prayer for declaration of title of land over which the alleged compound wall rests as claimed by the plaintiff?”

(b) When the owner of northern plot No.3 has occupied more portion encroaching the northern portion of the plaintiff's plot No.4 as is evidenced from the commissioner's report and plan, whether the prayer for the given schedule encroaching into the northern portion of the defendant's plot No.5 and claim to put up construction on the defendant's plot No.5, could be sustained?

c) Whether the suit is maintainable without impleading the owner of plot No.3 who is a necessary party to decide the measurements of the plot Nos.3 and 4 and whether the suit suffers due to non joinder of necessary parties?”



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10. The learned Counsel appearing for the appellants submits that the judgment of the trial Court and the first appellate Court are against the evidence on record and against the law. The Advocate Commissioner and the Taluk Surveyor have not measured the property and not followed the Tamil Nadu Survey and Boundaries Act. There is a clear evidence of encroachment made by the plaintiff. The trial Court and the first appellate Court failed to appreciate the evidence on record properly. The finding is perverse one. Therefore, it is liable to set aside and he pleaded to allow the Second Appeal. He further contended that the suit is not maintainable without a prayer for declaration of title of land over which the alleged compound wall rest as claimed by the plaintiff.

11. The learned Counsel appearing for the appellants further contended that in the Advocate Commissioner's report, it is mentioned that the owner of the plot No.3 has occupied the more portion. Encroachment made in the northern portion of the plaintiff's Plot No.4, he was not impleaded as a party in the suit. The suit is hit by non-joinder of necessary parties. The trial Court and the first appellate Court have failed to appreciate the fact and decreed the suit and pleaded to allow the Second Appeal.



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12. To support his arguments, the learned Counsel appearing for the appellants has relied upon the following judgments:-

1) Anathula Sudhakar Vs. P.Buchi Reddy(Dead) by LRs. & others reported in 2008 (6) CTC 237;

2) State of Rajasthan and others Vs. Shiv Dayal and another reported in 2019 (5) CTC 843;

3) V.R.Shanmugham(deceased) and 6 others Vs. Baskar and 4 others reported in 2020 (1) CTC 427; and

4) Sivasankaran Vs. S.B.Raman reported in 2020 (2) CTC 690.

13. The learned Counsel for the respondents support the judgment and decree of the Courts below. According to the learned Counsel for the respondent, he put up a compound wall during the year 1988 in his plot. At that time, the appellant/defendant did not raise any objection. All of a sudden, on 21.09.1999 with a help of henchman, the appellant/defendant demolished the same and interfered the peaceful possession and enjoyment of the respondent/plaintiff.

14. I have considered the matter in the light of the submissions made by the learned counsel on both sides and perused the materials available on records.



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15. On perusal of the records, it is seen that the plaintiff has purchased a Plot No.4 at Sri Nagar, Pudukottai District from one Malaiyandi on 17.02.1992 for the valuable consideration of Rs.76,300/- to an extent of 59 feet on East West and 39 feet and 4 ½ feet inches on South North, totally 2324 sq.ft. It is evident by the sale deed Ex.A1, dated 17.02.1992. It is also not disputed that the defendant is the owner of the Plot No.5 on the Southern side of the plaintiff Plot.

16. There is no cloud upon the title of the plaintiff property. It is evident by Ex.A1 sale deed. Further, the defendant claims that the plaintiff encroached his property and constructed the compound wall. Under these circumstances, the plaintiff need not pray for declaration of title of the land over which the alleged compound wall rest. Further, there is no allegations that the owner of Plot No.3 encroached the plaintiff's property. There is no dispute between the owner of the Northern Plot No.3. Therefore, he is not a necessary party as dispute is on the southern portion of the plaintiff and Northern side of the defendant. Therefore, the suit is not hit by necessary parties and the suit is well maintainable.



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17. This Court during the course of arguments on the submission of the learned Counsels for both sides, directed the Taluk Surveyor, Pudukottai to measure the plots and find out any encroachment. In pursuance of this Court order, the Tashildar, Pudukottai has submitted a report after surveying the plots with a help of Taluk Surveyor by proceedings No.Na.Ka.A1/109/2024, dated 19.01.2024.

18. The survey report of the plots with measurement and for better appreciation, the report is re-produced as follows:-

“புதுக்கோட்டை மாவட்டம் மற்றும் தாலுகா, புதுக்கோட்டை தெற்கு கிராமம் புல எண்கள்.369/5, 369/6, 369/7 மற்றும் 369/8(பிளாட் எண்கள்.3,4,5,6,7 மற்றும் 8) ஆகியவற்றில் ஆக்கிரமணம் தொடர்பாக ஜெகதீசன் த/பெ.கிருஷ்ணன் என்பவர் மாண்பும சென்னை உயர்நீதிமன்ற மதுரை கிளை வழக்கு (வழக்கு எண்.S.A.No.1825 of 2003) தொடர்ந்தது தொடர்பாக, 19.09.2024 அன்று நில அளவைப்பணி மேற்கொண்டு புதுக்கோட்டை குறுவட்ட நில அளவர்(பொ) பின்வருமாறு அறிக்கை செய்துள்ளார்.

மாண்பும சென்னை உயர்நீதிமன்ற மதுரை கிளை வழக்கு (வழக்கு எண்.S.A.No.1825 of 2003) – வழிகாட்டுதலின்படி, மனுதாரர் ஜெகதீசன் த/பெ.கிருஷ்ணன் மற்றும் எதிர்மனுதாரர் பழனியாயி க/பெ.மலைச்சாமி ஆகியோர்களுக்கு 18.09.2024 அன்று அளவைப்பணி செய்வதற்கு தகவல் அறிவிப்பு நோட்டீஸ் வழங்கப்பட்டது எனவும், அதன் அடிப்படையில், 19.09.2024 அன்று மனுதாரர் ஜெகதீசன் த/பெ.கிருஷ்ணன் மற்றும் எதிர்மனுதாரர் பழனியாயி க/பெ.மலைச்சாமி ஆகியோர் முன்னிலையில், புதுக்கோட்டை தெற்கு கிராம நிர்வாக அலுவலர், கிராம உதவியாளர் ஆகியோர் கிராமக்கணக்குகளுடன்



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ஆஜராகி அளவைப்பணி செய்ததில், பிளாட் எண்.3-இல் ராஜகோபால் என்பவர் வீடு கட்டி அனுபவம் செய்து வருகிறார் எனவும், பிளாட் எண். 4-இல் பழனியாமி க/பெ.மலைச்சாமி என்பவர் வீடு கட்டி குடியிருந்து வருகிறார் எனவும், பிளாட் எண்.5 மற்றும் 6-களில் மனுதாரர் ஜெகதீசன் த/பெ.கிருஷ்ணன் என்பவரது வீடு மற்றும் காலியிடமாக அனுபவம் செய்து வருகிறார் எனவும், பிளாட் எண்.7-இல் மாடி வீடு ஒன்று உள்ளது எனவும், மேற்படி அளவைப்பணி செய்ததில் எவ்வித ஆக்கிரமிப்புகளும் இல்லை எனவும் தெரிவித்துள்ளார்.

எனவே, புதுக்கோட்டை தெற்கு கிராமம் புல எண்கள்.369/5, 369/6, 369/7 மற்றும் 369/8(பிளாட் எண்கள்.3,4,5,6,7 மற்றும் 8) ஆகியவற்றில் அளவைப்பணி மேற்கொண்டதில் எவ்வித ஆக்கிரமிப்புகளும் இல்லை என்பதைத் தெரிவித்துக்கொள்கிறேன்.”

19. In view of the above report, it is seen that there is no encroachment by any persons upon any other plots. The trial Court and the first appellate Court have gone into the evidence and have appreciated the same and came to the conclusion that the plaintiff has constructed his southern side compound wall within his extent purchased by him and the compound wall was within his boundary. Under these circumstances, the defendant damaged the property. Therefore, the trial Court and the first appellate Court based on evidence on record, decreed the suit as prayed for. These are finding of fact by the trial Court besides this Court also got the report through the Taluk Surveyor to confirm if any encroachment made by any parties in the Plot purchased by them. The concurrent findings of fact is unquestionable in the Second Appeal. The Judgments produced by the Counsel for the plaintiff, is not helpful to support



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this case. Therefore, there is no merits in the Second Appeal and is liable to be dismissed accordingly. The substantial question of law framed by this Court is answered accordingly.

20. In the result, the Second Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are also closed.

19.12.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
RJR



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V.SIVAGNANAM . J,

RJR

To

- 1.The learned Additional District Judge, Pudukottai.
- 2.The Principal District Munsiff of Pudukottai.
- 3.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

Pre-delivery judgment made in
S.A.No.1825 of 2003

19.12.2024