



S.A.No.1256 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.07.2025

CORAM:

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No.1256 of 2009

and

M.P.No. 1 of 2009

Appadurai (Deceased)

1. Lakshmi
2. Kaliyaperumal
3. Veerapandian
4. Balasubramanian

.. Appellants

Versus

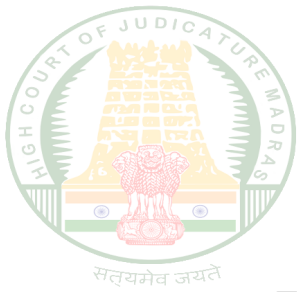
1. Periyasami
2. Paramasivam
3. Pazhanivelu

.. Respondents

Second Appeal is filed under Section 100 of Civil Procedure Code against the judgment and decree dated 31.03.2009 passed in A.S. No. 74 of 2001 by the learned Sub Judge at Ariyalur, confirming the judgment and decree dated 09.08.2001 passed in O.S.No. 220 of 1996 by the learned Additional District Munsif, Ariyalur.

For Appellants : Mr. R. Narayanan
for Mr.C.Parthiban

For Respondents : No appearance



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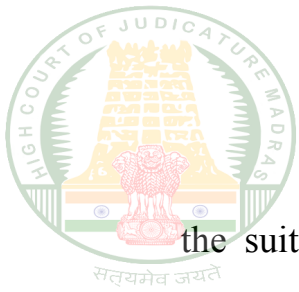
JUDGMENT

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This Second Appeal had been filed against the the judgment and decree dated 31.03.2009 passed in A.S. No. 74 of 2001 by the learned Sub Judge at Ariyalur, confirming the judgment and decree dated 09.08.2001 passed in O.S.No. 220 of 1996 by the learned Additional District Munsif, Ariyalur.

2. The averments in the plaint are briefly as follows:

2.1. The suit property belonging to the Plaintiff. The Plaintiff along with his family members had been in continuous possession of the suit property. The father of the Plaintiff Pitchaipillai Mudaliar had purchased the suit property through two sale deeds dated 26.03.1945 and 11.07.1946. The sale agreement deed was registered in the office of the Sub Registrar. The Plaintiff's father had been in enjoyment and possession of the suit property for more than statutory period till his death. After his death, he left behind his second wife and four sons viz., the Plaintiff herein/Periyasamy, Perumal, Kasinathan and Ramalingam. The Plaintiff claims that the Defendants had encroached into the property in the absence of the Plaintiff when he attend to treatment of his father's ailments at Chennai. While so, the Defendants had encroached on the portion of the suit property and attempted to put up construction. On coming to know about the same, the Plaintiff had filed the suit. Since the Defendants 1 to 4 are colluding together and attempting to grab



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the suit property of the Plaintiff without any legal basis, the Plaintiff had approached the Court seeking relief of declaration of title to the Plaintiff, seeking mandatory injunction restraining the Defendants 1 and 2 from putting up construction in the suit property and also granting injunction against the Defendants.

2.2. The contents of the written statement filed by the first Defendant is that the suit schedule property as mentioned in the plaint is disputed by the first Defendant. There is no correlation between the suit property as mentioned in the plaint and as mentioned in the Plaintiff's documents. The Plaintiff had filed the suit with false claim. The suit of the Plaintiff is silent regarding recovery of possession from the second Defendant and the first Defendant. The Northern part of the suit property belonging to the Plaintiff is the property belonging to the Defendants. The Plaintiff had sought declaration of title to the suit property which is not in enjoyment of the Plaintiff based on the false claim.

2.3. The contents of the written statement filed by second Defendant are briefly as follows:

- (i) The extent of the property claimed by the Plaintiff has not been



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accepted by the Defendants. The Plaintiff had filed the suit with exaggerated measurements and boundaries. The suit is filed by suppressing the facts.

Therefore, the suit is not maintainable.

(ii) The property belonging to the second Defendant is on the Northern portion of the Plaintiff's house. The dispute is with regard to the narrow strip of land between the Plaintiff's property and the Defendants' property.

2.4. Based on the pleadings and the Defendants 1 to 4, the learned Additional District Munsif, Ariyalur, had framed the following issues:

- (i) Whether the Plaintiff is entitled to the relief of declaration of title to the suit property?
- (ii) Whether the Plaintiff is in possession of the suit property?
- (iii) To what relief the Plaintiff is entitled to?

2.5. The Plaintiff Periyasami as Manager of the Plaintiff's family examined himself as P.W-1 and marked documents under Ex.A-1 to Ex.A-11. The first Defendant Paramasivam examined himself as D.W-2 and one Kaliyaperumal was examined as D.W-1. On the side of the Defendants, the



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certified copy of the sale deed dated 18.05.1908 was marked as Ex.B-1. The report and plan of the Advocate Commissioner appointed by the Court on application by the Plaintiff was marked as Ex.C-1 and Ex.C-2.

2.6. On appreciation of evidence, the learned Additional District Munsif, Ariyalur, had decreed the suit of the Plaintiff.

2.7. Aggrieved, the Defendants had preferred Appeal in A.S.No.74 of 2001 before the learned Sub Judge, Ariyalur. The learned Sub Judge, Ariyalur, after hearing both parties, dismissed the Appeal, by judgment dated 31.03.2009 in A.S.No.74 of 2001, preferred by the Defendants and confirmed the judgment of the learned Additional District Munsif, Ariyalur in O.S.No.220 of 1996, dated 09.08.2001.

2.8. Aggrieved, the Defendants before the learned Additional District Munsif, Ariyalur in O.S.No.220 of 1996 and the Appellants before the learned Sub Judge, Ariyalur in A.S.No.74 of 2001 had preferred this Second Appeal.

3. The learned Counsel for the Appellants have already filed written arguments on 21.04.2025. The case was posted daily in the list as “Part-

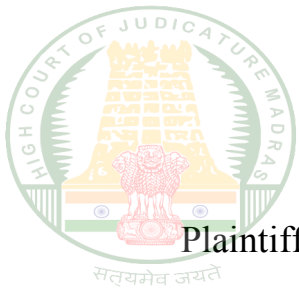


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heard” to hear the learned Counsel for the Respondents with a direction to file written submissions on behalf of the Respondents. Even though the case was posted as “Part-heard” with specific direction to the Respondents to file written submission, till the end of the roster viz., 30.04.2025 the Respondents had not filed written submission, the case was reserved for judgment by the end of the roster. Even after end of the roster, there was a direction to the Respondents that they can file written submissions in the Registry, if it is not filed, the matter will be decided based on the materials available before this Court.

4. The learned Counsel for the Appellants submitted that the first Appellant is wife and the Appellants 2 to 4 are sons of the second Defendant (Appadurai) in O.S.No.220 of 1996 filed by the first Respondent herein as Plaintiff on the file of the learned Additional District Munsif, Ariyalur. The original second Defendant is the owner of the property being land and tiled house located on the Southern side of the property owned by the Plaintiff. The Plaintiff alleged encroachment by the first Defendant on the Northern side and by the second Defendant on the Southern side. The Plaintiff filed suit in O.S.No.220 of 1996 seeking permanent injunction to restrain the Defendants from interfering with his peaceful possession of the suit property. The



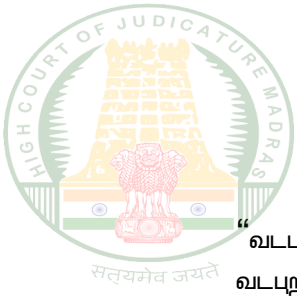
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Plaintiff stated that the Defendants attempted to trespass into the suit property, however, he had not mentioned as to the extent of encroachment made by the Defendants. The description of the suit property is vague and is not complete as can be seen from the plaint. The survey numbers of the property are not mentioned. The learned Counsel for the Appellants submitted that as per the plaint, the description of the suit property is as follows:

“In Trichy District, Sendurai Taluk, Unjini Village, Natham house-site, consisting of tiled house and vacant site measuring South to North 36 feet, and east to west 135 feet, on the Northern side and 150 feet on the Southern side bounded by East of Street, South of Paramasivam house, West of street and Palanivel house and North of Appadurai house.”

Whereas as per the report of the Advocate Commissioner dated 23.08.1999 marked as Ex.C-1 and the plan describing the layout marked as Ex.C-2, the Northern boundary described in the plaint as “South of Paramasivam's house” is actually a 15 feet 6 Inches wide (North to South) lane between the Plaintiff's property and Paramasivam's house. The Plaintiff claims 2 feet 6 inches North to South out of the lane between his house and Paramasivam's house. While the Plaint is silent about this claim which can be seen from the evidence of the Plaintiff as P.W-1 wherein he had deposed as follows:



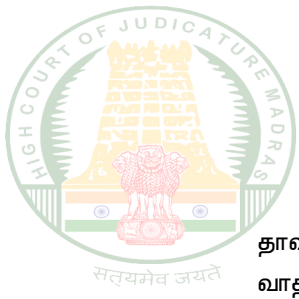
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“வடபுற சுவருக்கு வடபுறத்தில் எனக்கு சொந்தமாக இரண்டரை அடி நிலம் உள்ளது. வடபுறம் சுவற்றிற்கு வடபுறத்தில் எனக்கு சொந்தமான இரண்டரை அடி நிலத்திற்கும் இடையில் சந்து உள்ளது அதில் ஒன்றரை அடி சாரமாகவும், 1 அடி காலியாகவும் உள்ளது.”

5. The learned Counsel for the Appellants submitted that in order to prove that the Plaintiff has right over 2 feet 6 inches of land on the Northern side, he has not furnished any documentary evidence. In other words, the Plaintiff does not have any evidence to show the exact point of commencement of his Northern boundary and in absence of which, it cannot be decided where does his Western boundary running North to South commences and where does it end. In such circumstances, the learned Additional District Munsif, Ariyalur, has failed to see that the Plaintiff did not have any idea whatsoever about the exact location of the boundaries to the suit property and that he had taken the information only out of the Advocate Commissioner's report as well as the plan and had deposed evidence based on it. If at all the Plaintiff had all the measurements at the time of filing the Plaint, he would have mentioned the same in the Plaint itself. While the Advocate Commissioner has conducted the inspection on 21.08.1999 and submitted his report and plan before the learned Additional District Munsif on 23.08.1999, the Plaintiff had deposed evidence only on 10.07.2001. The Advocate Commissioner, in paragraph 3 of his report, had observed as follows:

“என்னுடைய வரைபடத்தில் கண்டுள்ள வாதி ஓட்டு வில்லை வீட்டிற்கும், தெற்கிலும் இரண்டாம் பிரதிவாதி ஓட்டு வில்லை வீட்டிற்கு வடக்கிலும் உள்ள கிழ மேல்



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தாவா சந்து வாதி தாக்கல் செய்துள்ள ஆணையர் நியமன மனுவினாலே அல்லது
வாதியின் ப்ராதிலோ வழக்கிடை சொத்தான சந்தின் கீழ்மேல் மற்றும் தென்வடல்
அளவுகள் கொடுக்கப்படவில்லை.”

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Thus the Advocate Commissioner's report and plan has only recorded measurements of the suit property and the distance between the suit property and the neighbouring properties of the 1st and 2nd Defendants. The measurements are not in relation to or with reference to the FMB sketch of the survey numbers constituting the suit property as per the revenue records. Therefore, the learned Additional District Munsif had failed to appreciate the fact that the Advocate Commissioner's report cannot be the basis for concluding the title and possession of the suit property by the Plaintiff. The learned Judge, without considering the fact that the Plaintiff had filed to prove his title over the 2 feet 6 inches of land on the Northern side, based on presumptions and surmises had erroneously concluded that the Plaintiff has right over the 2 feet 6 inches of land on the Northern side, as the 1st Defendant Paramasivam, has failed to prove his right and title over the said 15 feet 6 inches land. It has be well established by the decisions of various High Courts and the Hon'ble Supreme Court that it is for the Plaintiff to prove his case and the weakness in evidence of the Defendants cannot be the basis for conclusion in favour of the Plaintiff.

6. The learned Counsel for the Appellants further submitted that the



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learned trial Judge had failed to properly consider the deed of sale of the year 1908 marked as Ex.B-1 by the second Defendant. As per the said document, the second Defendant is entitled to the land with Western boundary of 43 ft. 6 inches running North to South which is calculated as follows:

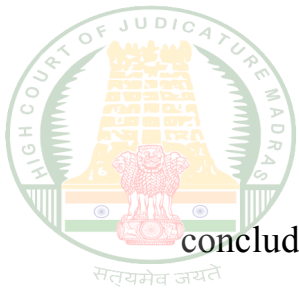
CD as per plan of Advocate Commissioner: 35 ft. 3 inches

CB as per plan of Advocate Commissioner: 5 ft. 6 inches

Land entitlement on the Southern side : 2 ft. 9 inches

Total : 43 ft. 6 inches

7. The learned Counsel for the Appellants submitted that the learned trial Judge had failed to consider that the Advocate Commissioner has not taken the North to South measurement of the land on the Southern side between the house of the second Defendant and Gangadhara Mudaliar and presumed that the second Defendant is only entitled to an extent of 1 ft. 9 inches indicated as DD by the Advocate Commissioner and concluded that the measurements as per Ex.B-1 does not match with Advocate Commissioner's report and that the second Defendant has failed to prove his entitlement. Further, the learned trial Judge ought to have followed the dictum "Possession follows title" on the basis of the Sale Deed in favour of the second Defendant's predecessor-in-title and ought to have held that the possession is with the second Defendant and dismissed the suit. The learned trial Judge erred in



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concluding that the second Defendant is not likely to be in possession of the disputed lane with a width of 5 ft. 6 inches (North to South) on the Northern side of his house just because there are no windows or doors on the Northern wall of the house belonging the second Defendant.

8. The learned Counsel for the Appellants submitted that it is a fact that there is a live cactus fence running East-West along the Northern wall of the second Defendant's house which has been erected to prevent cattle from other side entering the garden area and it is for the convenience of the second Defendant rather than as a means for demarcating the boundary between his land and that of the Plaintiff. However, the learned trial Judge had erroneously concluded based on presumptions and surmises that this live fence is not a fence for preventing cattle entry, but a fence for demarcating boundary just because, (1) there is no fence on the Southern side of the second Defendant's property, (2) The second Defendant is using the lane on his property's Southern side to go to his garden on the Eastern side.

9. Further, the learned Counsel for the Appellants submitted that learned trial Judge had erroneously concluded that the said suit lane could be in possession of the Plaintiff, even though the Plaintiff had failed to clearly



prove his title to the property, particularly, the lane CB having width of 5 ft. 6 inches (North to South). Instead, the learned trial Judge ought to have held that the Plaintiff must have sought for declaration of title and not for bare injunction when the title is in cloud and is not clearly established.

10. The learned Counsel for the Appellants further submitted that the Appellate Court had framed the following issues for determination:

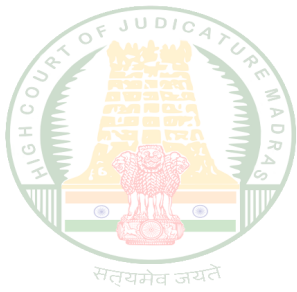
“இம்மேல்முறையீட்டு வழக்கில் தீர்மானிக்கப்பட வேண்டிய பிரச்சினைகள்

1. கீழமை நீதிமன்றம் பிறப்பித்த தீர்ப்பும், தீர்ப்பாணையும் நீக்கரவு செய்யப்பட வேண்டுமா-
2. மேல்முறையீட்டாளருக்கு கிடைக்கக்கூடிய வேறு பரிகாரம் என்ன-

11. The Appellate Court ought to have framed the following questions of law:

1. Whether the title to the Plaintiff to the suit property is disputed?
2. Whether the suit for bare injunction was maintainable?
3. Whether the second Defendant has possession following the title based on deed of sale dated 18.05.1908?

Thus the Appellate Court had failed to frame all the necessary issues to be determined and therefore, did not comply with the requirements of order. The Courts below have grossly erred by granting the relief of permanent injunction in favour of the Plaintiff.



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WEB COPY12. In support of his contention, the learned Counsel for the Appellants relied on the decision of the of the Hon'ble Supreme Court in ***Gurunath Manohar Pavaskar & others vs. Nagesh Siddappa Navalgund & others*** reported in ***2008-2-LW 497***, wherein it was held as follows:

"It is one thing to say that the Courts could pass an interlocutory order in the nature of mandatory injunction in exercise of its jurisdiction under Sec.151 of CPC but it is another thing to say that the Courts shall exercise the same power while granting a decree of permanent injunction in mandatory form without deciding the question of title or having the same open".

13. Therefore, the learned Counsel for the Appellants prayed this Court to set aside the judgment and decree dated 31.03.2009 passed in A.S. No. 74 of 2001 by the learned Sub Judge at Ariyalur, confirming the judgment and decree dated 09.08.2001 passed in O.S.No. 220 of 1996 by the learned Additional District Munsif, Ariyalur.

14. On 14.12.2009 while admitting this Second Appeal, this Court had framed the following substantial questions of law:-

- (i) Whether the Defendants' title deed (Ex.B-1) dated 18.05.1908 is over 100 years old, the Court below ought to have drawn the presumption under Section 90 of the Indian Evidence Act?**
- (ii) Whether when the title of the Plaintiff to the suit property**



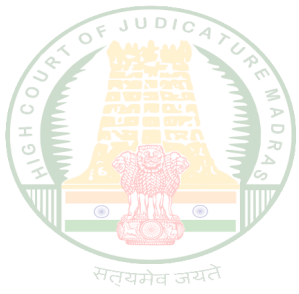
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is disputed, the suit for bare injunction was not maintainable?

(iii) Whether the Courts below following the Dictum that Possession follows title ought to have on the basis of the sale deed in favour of the Defendants' Predecessor-in-title (Ex.B-1) dated 18.5.1908 ought to have held that the possession of the suit property was with the Defendants and dismissed the suit?

15. Heard the learned Counsel for the Appellants Mr.R.Narayanan for Mr.C.Parthiban and perused the records available before this Court.

16. On perusal of the records, it is the case of the Plaintiff that the Defendants are interfering with the peaceful possession and enjoyment of the suit property. The case of the Defendants is that the Defendants' ancestors purchased the property in the year 1908 through Ex.B-1 sale deed whereas the Plaintiff's sale deed was 26.03.1945 and 11.07.1946. The measurement and the description of the property as given in the plaint are not correct. It is disputed by the Defendants in the written statement. It is the contention of the Defendants in the written statement that the description of the property by the Plaintiff is vague. The Plaintiff failed to establish the right of the Plaintiff and the correct description of the property in enjoyment of the Plaintiff. Therefore, the suit of the Plaintiff has to be dismissed.



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WEB COPY17. During cross-examination, the Plaintiff as P.W-1 was confronted regarding the title of the Defendants, how the Defendants got their land or site, he claims ignorance of the same. The document of title of the Defendants was marked as Ex.B-1, which specifically states that the suit property was purchased by the Defendants' ancestors in the year 1908, prior to the sale deed of the Plaintiff's parents. The Plaintiff's father had purchased the property under Ex.A-1 and A-2 in the year 1945 and 1946. Therefore, the earlier deed is that of the Defendants. During cross-examination, the Plaintiff had asserted that he has right beyond his house site on the Southern side, which was challenged by the learned Counsel for the Defendants. The suggestion of the learned Counsel for the Defendants that the Plaintiff by filing the suit attempted to lay a claim over the Southern portion of the Plaintiff's property for which he does not have any right beyond his land was denied by him. He also denied the suggestion that he had not clearly stated the dispute and the details of the property in enjoyment of the Plaintiff. He does not have any right beyond his property either on the North or on the South was denied by him. Also it was suggested that only on the basis of the Advocate Commissioner's report under Ex.C-1 and Ex.C-2, he had attempted to seek a decree in his favour. Without reference to the respective sale deeds, the Advocate

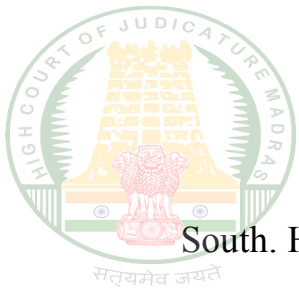


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Commissioner had visited the property and filed his report based on the dispute mentioned to him by the parties to the suit Plaintiff and Defendants.

The rough sketch Ex.C-2 is based on the identification of the property by the respective parties. Therefore, the suggestion that the Plaintiff wanted to use property beyond his vacant site encroaching on the Defendants' property on the North as well as on the South based on the Advocate Commissioner's report and he is letting in evidence only after Advocate Commissioner report had been filed, was denied by him.

18. On perusal of the evidence of D.W-1-Kaliya Perumal, the son of the second Defendant-Appadurai, he had in his cross examination admitted that he is residing on the Southern side of the Plaintiff's property. He admits that during rainy season, the water flowing from the roof towards the ground hits the Northern wall of the adjacent property. He admits that there is no windows or doors on the Northern side wall of his house. From the documents it is found that the measurements of the Plaintiff are given in Kaani. Whereas, the measurements of the Defendants in the year 1908 is given clearly in feet. Therefore, the claim of the Plaintiff is not clear. As suggested by the learned Counsel for the Defendants, the Plaintiff is attempting to lay a claim over the property, in which he does not have any right, either on the North or on the



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South. He is letting in evidence based on Advocate Commissioner's report.

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19. It is a settled principle of law that the parties have to let in evidence based on the contention raised by the parties to the dispute and either the Plaintiff or the Defendant is not permitted to collect evidence through Advocate Commissioner's report. Here, on perusal of the Complaint, it is found that the Defendants are attempting to encroach on the Plaintiff's property viz., 135 ft. x 150 ft. The learned District Munsif had granted decree based on the Advocate Commissioner's report which is found unacceptable when there is dispute regarding claim of the property, the Plaintiff has to seek declaration of title.

20. The Defendants title is earliest to the Plaintiff's document. Therefore, the report of the Advocate Commissioner without reference to the documents of the Plaintiff and Defendants is not found helpful to the Plaintiff's case. The earliest document (1908) is that of the second Defendant, the Defendants are enjoying the properties to the North and the South of the Plaintiff's property, as per their sale deed of the year 1908.

21. The suit for bare injunction laid by the Plaintiff is found not maintainable, as the Plaintiff is unable to establish his claim. The Plaintiff is



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unable to answer, how the Defendants claim their property. On both sides of the Plaintiff's property, the Defendants properties are situated, as per the Advocate Commissioner's report and therefore, the evidence of the Plaintiff, based on the Advocate Commissioner's report is unacceptable, when he has not clearly stated the cause of action. It is the clear case of the Defendants that the Plaintiff has not stated clearly, the case of the Plaintiff, as per the documents of the Plaintiff, with clear description of property. Therefore, the Plaintiff is not entitled to decree for permanent injunction. The documents of the Plaintiff is not found helpful to enforce a suit for injunction against the Defendants.

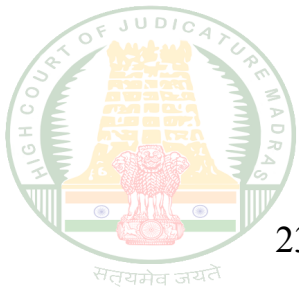
22. The Defendants properties are situated on both sides of the Plaintiff's property. The Defendants' document is the earliest document of the year 1908. While so, the evidence of the Plaintiff is based on Advocate Commissioner's report, which is not based on title of both parties. The Advocate Commissioner's report is just based on identification of the properties by the parties themselves, in the disputed property. Therefore, grant of injunction based on Advocate Commissioner's report is found unacceptable in law. Therefore, the Advocate Commissioner's report is a collecting evidence, and not as per the documents of title of both parties. Therefore, the



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Plaintiff has to seek remedy by measuring the same with the help of revenue records of both parties. Merely filing a suit for injunction without clearly defining the cause of action is found not maintainable, in the light of Ex.B-1, the document of title of the Defendants, which is the earliest document. The Plaintiff claims ignorance of the claim of title of the Defendants, the Defendants' title is the earliest to that of the Plaintiff's title. Under those circumstances, the parties to the dispute are to seek their remedy by establishing their title through revenue records. The grant of injunction by the learned District Munsif, based on the Advocate Commissioner's report is found unacceptable, in the light of the oral evidence let in by the Plaintiff as well as the Defendants. The Advocate Commissioner was used to collect evidence, which is against the settled principles of law. Therefore, the grant of injunction by the learned Additional District Munsiff, Ariyalur, and the confirmation of the decree by the first Appellate Court is found erroneous. The grant of injunction in favour of the Plaintiff against Ex.B-1 document (of the year 1908) of the title of the Defendants, is found unacceptable. Therefore, the judgement of the learned Additional District Munsiff, Ariyalur, confirmed by the learned first Appellate Court, learned Sub Judge, Ariyalur is found erroneous and the same are to be set aside.



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23. In the light of the above discussion, the title deed of the

Defendants under Ex.B-1, dated 18.05.1908 is more than 100 years old.

Therefore, both the trial Court as well as the first Appellate Court ought to have drawn presumption under Section 90 of the Indian Evidence Act. Both the Courts failed to draw presumption under Section 90 of the Indian Evidence Act against Ex.B-1. **The Substantial Question of Law-1 is answered in favour of the Defendants and against the Plaintiff in O.S.No.220 of 1996 on the file of the learned first Additional District Munsif, Ariyalur.**

24. In the light of the above discussion, when the title of the Plaintiff to the suit property is disputed by the Defendants, the suit for bare injunction filed by the Plaintiff is not maintainable. **The Substantial Question of Law-2 is answered in favour of the Defendants and against the Plaintiff in O.S.No.220 of 1996 on the file of the learned first Additional District Munsif, Ariyalur.**

25. In the light of the above discussion, the Courts below following the dictum that “Possession follows title” ought to have held on the basis of the sale deed in favour of the Defendants' Predecessor-in-title under Ex.B-1, dated 18.5.1908 ought to have held that the possession of the suit property was



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with the Defendants and ought to have dismissed the suit. **The Substantial**

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Question of Law-3 is answered in favour of the Defendants and against the Plaintiff in O.S.No.220 of 1996 on the file of the learned first Additional District Munsif, Ariyalur.

In the result, **this Second Appeal is allowed.** The judgment and decree dated 31.03.2009 passed in A.S. No. 74 of 2001 by the learned Sub Judge at Ariyalur, confirming the judgment and decree dated 09.08.2001 passed in O.S.No. 220 of 1996 by the learned Additional District Munsif, Ariyalur are set aside. Consequently, the connected miscellaneous petition is closed.

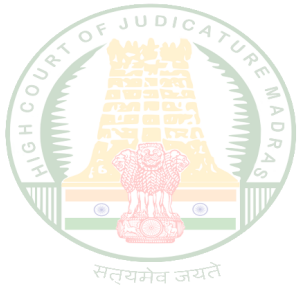
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Internet : Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J

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To

1. The Sub Court,
Ariyalur.
2. The Additional District Munsiff,
Ariyalur.
3. The Section Officer,
V.R. Section,
High Court Madras.

Judgment made in
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