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S.A.No.1349 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.07.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No.1349 of 2013

P.Gunasekaran

... Appellant

Versus

1. Dhanraj
Ramachandran (Died)
2. Mrs. Thamizharasi
3. Mrs.Tamilselvi
4. Malarkodi

... Respondents

Prayer:- Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree of the learned Principal District and Sessions Judge, Ariyalur made in A.S.No.111 of 2012 dated 27.11.2012 confirming the Judgment and Decree of the learned District Munsif, Jayankondam made in O.S.No.23 of 2002 dated 28.01.2010.

For Appellants : Mr.P.Valliappan
Senior Counsel for
Mr.J.Ramakrishnan

For Respondents : Mr.S.Subbiah for R1
No Appearance – R2 to R-4

J U D G M E N T



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WEB COPY This Second Appeal has been filed to set aside the Judgment and Decree of the learned Principal District and Sessions Judge, Ariyalur made in A.S.No.111 of 2012 dated 27.11.2012 confirming the Judgment and Decree of the learned District Munsif, Jayankondam made in O.S.No.23 of 2002, dated 28.01.2010.

2. The brief facts, which are necessary for the disposal of this Second Appeal, are as follows:-

2.1. The Plaintiff in O.S.No.23 of 2002 on the file of the learned District Munsif, Jayankondam is the Appellant in the Second Appeal. The Plaintiff had purchased the suit property which is an extent of 4 and ½ cents with specific boundaries in Survey No.80/3. The suit property was part of the property in Survey No.80/3 which was originally a zamin land then converted into a Ryotwari land. In the 'A' register, the land in Survey No.80/3 stood in the names of Swaminathan and Marimuthu. Marimuthu owned half portion of the land to an extent of 4 and ½ cents. After his demise, the land was enjoyed by his legal heirs Mehanadhan and Chandrasekaran. The Plaintiff purchased the above 4 and ½ cents of land, which is the western ½ portion, through a registered sale deed dated 22.09.2000. From the date of purchase, the Plaintiff



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had been in possession and enjoyment of the suit property. The Plaintiff had purchased the land from its true owners. The patta and adangal were transferred in the name of the Plaintiff. The Plaintiff paid kist for the suit property thereby except the Plaintiff, no other person has any right over the suit property. After purchase of the said site, the Plaintiff had constructed a shed in the suit property and has been enjoying the same as cattle shed. The Eastern portion of the Survey No.80/3 belongs to the Defendants, and the further East portion belongs to one Kaliyaperumal. There are demarcation between the lands of the above parties. While so, the Defendant attempted to trespass into the suit property of the Plaintiff without any right. The Plaintiffs with much difficulty thwarted the same, however, the threat of dis-possession still continues. Therefore, the Plaintiff had instituted the suit seeking declaration of title of the suit property and for permanent injunction restraining the Defendants from interfering with the peaceful possession and enjoyment of the suit property. The written statement filed by the Defendants disputed the claim of the Plaintiff. As per the written statement filed by the Defendants, the said Swaminathan and Marimuthu were not brothers and they did not belong to the same family. The above Marimuthu did not at all have any right or interest over the suit properties, thereby, after his demise none of his legal heirs had any right or interest over the suit property as well. The entire suit



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property mentioned as 'A,B,C,D' in the plaint originally belongs to Arumugam and Kannusamy. Mahalingam is the son of Arumugam. He and another person executed an Exchange deed in 1951 and one portion was taken into possession by Mahalingam and another portion was taken into possession by Thangavelu. Kannusamy and Swaminathan executed an Exchange deed in 1951 and with Thangavelu. Marimuthu had no rights over the suit property at any point of time. The land purchased by Marimuthu is situated near the suit survey number in another place. After the 1960 Survey, certain mistakes were committed by the Revenue Officials wherein they mentioned wrong person's name as owner of the property for Survey No.80/3 by by mistake and they wrongly included the name of Marimuthu in 'A' Register. The said Marimuthu had land in S.No.80/4 only and not in Survey No.80/3. Even during the life time of Marimuthu, partition took place in his family through registered partition deed, in that partition deed Survey No.80/4 alone was mentioned and not Survey field No.80/3, so Survey No.80/3 did not belong to Marimuthu at any point of time. Survey No.80/3 actually belongs to one Nallusamy and Swaminathan. The portion owned by Swaminathan was purchased by the 4th Defendant, and the portion owned by Nallusamy devolved upon his daughter Govindammal from whom the 1st Defendant purchased the property. One Kamachi and another filed a suit questioning the purchase of the property by



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the 4th Defendant from Swaminathan.

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2.2. The 4th Defendant had encroached the entire extent in Survey field 80/3. Therefore, dispute arose between the 1st and 4th Defendant. Therefore, the 1st Defendant filed suit for partition in O.S.No.114 of 78 before the learned District Munsif, Ariyalur. The 2nd Defendant in this case was also the party to the said suit. Preliminary decree for partition was granted in that suit. The appeals preferred by the 3rd and 4th Defendants were dismissed. Thereafter, the suit was filed by the 2nd Defendant and the same was dismissed. One Kaliaperumal also filed the suit claiming right over the property, that suit was also dismissed. In the final decree proceedings in O.S.No.90/24, the suit property was allotted to the share of the 1st Defendant and ultimately the final decree was passed on 29.03.1981. The 4th Defendant filed appeal against the final decree and the same was dismissed. While things stood thus, the 1st Defendant had succeeded to the suit property through the decree of the Court. While so, one Kaliyaperumal had instigated this Plaintiff to create some false documents. Accordingly, the sale deed dated 20.09.2000, without any basis and without any right, came into existence.

2.3. They alleged that Marimuthu and his sons Mehanathan and



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Chandrasekaran had nothing to do in the suit property. They did not have any title or right over the same. Therefore, the sale deeds are fraudulent. The Plaintiff with the help of the said Kaliyaperumal trespassed into the suit property on the western side and put up a temporary shed, however due to the proper steps taken by the 1st Defendant, the encroachment was removed. The second appeal preferred by Kaliyaperumal was dismissed at the stage of taking possession of the suit property by the 1st Defendant through the Court. The Plaintiff and his men have been making attempts to prevent the same from 1978 without any success. The Plaintiff has neither title nor possession or enjoyment over the property. He is only a trespasser and hence, the suit has to be dismissed. One Chandrakasan, the 4th Defendant in the suit expired after filing the written statement. With the above pleadings, the learned District Munsif framed the following three issues:-

- "1. Whether the Plaintiff is entitled to the relief of declaration of title to the suit property?*
- 2. Whether the Plaintiff is entitled to declaration as prayed for?*
- 3. To what other relief?"*

2.4. During trial, the Plaintiff was examined as P.W.1 and marked documents as Ex.A-1 to Ex.A-21. The Defendants had marked documents as



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Ex.B-1 to Ex.B-19.

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2.5. On assessment of evidence, the learned District Munsif, Jayankondam by judgment dated 28.01.2010 dismissed the suit in O.S.No.23 of 2010.

2.6. Aggrieved, the Plaintiff in O.S.No.23 of 2002, preferred an appeal in A.S.No.111 of 2012 seeking to set aside the judgment of the learned District Munsif, Jayankondam in O.S.No.23 of 2002 dated 28.01.2010 and to grant a decree declaring title to the suit property and consequential permanent injunction.

2.7. After hearing both the Appellant and the respondents, the learned Principal District and Sessions Judge, Ariyalur by judgment dated 27.01.2012 dismissed the appeal in A.S.No.111 of 2012. Thereby, confirmed the judgment of dismissal by the learned District Munsif, Jayankondam in O.S.No.23 of 2002, dated 28.01.2010.

2.8. Aggrieved, the Plaintiff before the learned District Munsif, Jayankondam and the Appellant before the learned Principal District and



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Sessions Judge, Ariyalur had preferred this second appeal against the concurrent findings by raising the following substantial questions of law:

1. Whether the Courts below were right as per law in dismissing the suit based on the judgment and Decree in O.S.No.90 of 1984 on the file of the learned District Munsif, Jayankondam, when the same is not admissible under the provisions of the Indian Evidence Act, 1872 since, neither the plaintiff/appellant nor his predecessor were parties to that proceedings as that suit is not inter parties suit ?

2. Whether the judgment and decree of the Courts below have any legal sanctity in the eyes of law as the same stands against the principle of "judgment in personam?"

3. Mr.P.Valliyappan, learned Senior Counsel appearing for the Appellant submitted that the Appellant in the second appeal is the unsuccessful Plaintiff before the learned District Munsif, Jayankondam and before the 1st Appellate Court, learned Principal District Judge, Ariyalur.

4. The learned Senior Counsel furnished the genealogy of the family of vendor of the Plaintiff. The learned Senior Counsel invited the attention of this Court to the genealogy of the family of the vendor of the Plaintiff. The property in Survey No.80/3, measures to an extent of 9 cents, in which the



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western 4 and ½ cents devolved upon Govinda Padayachi and his son, Marimuthu. From Marimuthu, it devolved to his sons, Mehanathan and Chandrasekar. The Survey No.80/3 corresponds to old Survey No.9520/part as per the settlement Register extracted of the year 1941 as hereunder:

"The property in 80/3 stood in the name of Nallusamy Padayachi and Govinda Padayachi. The Respondents here in traced their claim to eastern half of S.No.80/3 belongs to Kannusamy Padayachi. Kannusamy Padayachi had two sons Nallusamy Padayachi and Saminathan Padayachi, Nallusamy Padayachi executed sale deed dated 04.12.1970 to the 1st Defendant Dhanraj. Saminathan Padayachi executed the sale deed dated 14.03.1968 in favour of Chandrakasan/4th Defendant. The sale deed in the name of Chandrakasan/4th Defendant is marked as Ex.B.2 the sale deed in the name of the 1st Defendant/Dhanaraj dated 04.12.1917 marked as Ex.B.1."

5. The claim of the Plaintiff herein is through the sons of Marimuthu, Chandrasekaran and Mehanathan. The Plaintiff had obtained two sale deeds, one through Mehanathan under Ex.A-2 dated 20.09.2000, and another through Chandrasekaran under Ex.A-3 dated 22.09.2000. The Plaintiff in O.S.No.23/2002 had purchased the western end of S.No.80/3. Therefore, the properties are different. The learned Senior Counsel invited the attention of this Court to the description of the property marked as Ex.B-1 and Ex.B-2. Ex.B-1 is the sale deed executed in favour of the 1st Defendant/Dhanraj on 14.12.1970 by Govindammal wherein, the details of the property are given as



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bounded on the west by Marimuthu site. The property purchased by the 1st

Defendant/Dhanraj on 14.12.1970 clearly mentions the western boundary of his property as the property belonging to Marimuthu, that shows the claim made by the Defendants in the written statement are not true as their own sale deed mentions the western boundary site belonging to Marimuthu. Also it is the contention of the learned Senior Counsel that the measurements given in Ex.B-1 is a larger extent than what is the extent on ground. It is mentioned as

கிழக்கு மேல் ஜாதியடி 72 , தென் வடல் ஜாதியடி 100 .

6. The learned Senior Counsel further submitted that ஜாதியடி measurement in Tamil was interpreted by the Honb'le Judge of this Court, His Lordship Mr.Justice Jayachandran as 3/4th of a foot. If that is calculated, the extent would be more than what is available on the ground; in fact it would exceed 9 Cents, which is not true. There is no such property as per the measurements in Ex.B-1. The learned Senior Counsel for the Appellant also invited the attention of this Court to the partition deed in the family of the Appellant's vendor as claimed by the Respondent which was marked as Ex.B.12. During trial it was the contention of the learned Senior Counsel for the Appellant that, after the family partition the house sites were not included. Therefore, reliance cannot be placed on the partition deed marked as Ex.B.12.



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The learned Senior Counsel invited the attention of this Court to the 1946 settlement register in which the suit property is shown as belonging to Kannu Padayachi's son Saminathan and Govindasamy's son Marimuthu, which is part of the old Survey No.9520/part. Therefore, the claim of the Plaintiff and his vendor was naturally proved. Also, the learned Senior Counsel invited the attention of this Court to the decree marked on the side of the Defendants in O.S.No.58 of 2001 which was marked on the side of the plaintiff as Ex.A-11 in which the Plaintiff and his vendors were not parties to the suit in O.S.No.58 of 2001. Ex.B-1 and Ex.B-2, even though, marked before the learned District Munsif, Jayankondam, the parent document for Ex.B-1 and Ex.B-2 were not marked previously, The village was identified as 'Enam Village'. Therefore, Ex.A-14 filed by the Plaintiff shows that the ancestors of the Plaintiff's vendor were in enjoyment of the properties as per settlement register of Angarayanallur Village for the year 1946, which was marked as Ex.A-14. Ex.A-13 is the ground rent register of Angarayanallur Village wherein, it is clearly stated that S.No. 80/3 stood in the name of Swaminathan, son of Kannu Padayachi and Marimuthu, son of Govinda Padayachi. Therefore, the claim of the title by the plaintiff had been established through cogent evidence before the trial Court. If the measurement in Ex.B-1 is considered 'ஜாதிபடி' as given in the sale deed, it will be an extent



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of 12.40 cents, which is not true, as the original record as per register is 9 Cents for the entire S.No. 80/3. Therefore, the documents under Ex.B-1 is not a true sale deed. The Defendants failed to prove prior title. As per the earlier records, Ex.A-13 and Ex.A-14 are of the year 1946, Kadastal surveyed areas, and ground rent register maintained by the Revenue Department shows a total extent of 9 cents of land in Survey No.80/3 was in the enjoyment and possession of 2 families, Swaminathan, S/o Kannu Padayachi and Marimuthu, S/o Govinda Padayachi. The total extent of 9 cents was equally divided between them. It is only the house site. That was not included in the family partition with regard to agricultural loans. Therefore, the claim of the Defendants in the family partition between the members of the Appellant's vendor as per partition dated 19.03.1971 under Ex.B-12 that the property does not form part of the Plaintiff's vendor cannot be accepted as truth.

7. The learned Senior Counsel for the Appellant also invited the attention of this Court to the Plaint in O.S.No.58 of 2001 wherein it was stated as executed by one Ramachandran against the 1st Defendant herein in which neither the Plaintiff nor the vendors of the Plaintiff were parties to the suit. The Plaintiff had filed Interlocutory Application seeking to stay the Execution Proceedings. That was dismissed. The learned Senior Counsel

invited the attention of this Court to the cross examination of D.W.1 which

read as follows:

“சர்வே எண்.80/1ற்கு பழைய சர்வே எண் எது என்று காண்பதற்கு ஆதரவுகள் எதுவும் நீதிமன்றத்தில் தாக்கல் செய்யவில்லை. வாதி தரப்பில் தாக்கல் செய்த ஆதரவுகளை நான் பார்க்கவில்லை. பட்டா எண் 1142 வாதி பெயரிலும் சாமிநாதன் பெயரிலும் இருந்தன என்றால் சரியல்ல. தாவா சொத்தை பொறுத்துதான் பட்டா வாங்குவதற்கு முன் யார் பெயரில் பட்டா இருந்தது என்று எனக்கு தெரியாது. நான் நீதிமன்றத்திலிருந்து சுவாதீனம் எடுக்கும்வரை தாவா சொத்தில் அனுபவம் வாதியிடம் இருந்தது என்றால் சரிதான். தாவா சொத்து வாதி கிரயம் வாங்கிய விவரம் எனக்கு தெரியாது. வாதி 2000ல் கொட்டாய் போட வந்தபோதுதான் எனக்கு தெரியும். வாதி கிரயம் பெற்ற விவரம் நான் காவல்நிலையத்தில் மனு கொடுத்து விசாரணையின்போது தெரியவந்தது. அப்போது சின்னதாக ஒரு கூரை கொட்டகை போட்டிருந்தார். நீதிமன்றத்திலிருந்து எனக்கு சுவாதீனம் தந்தபோதுதான் கூரை கொட்டகை எடுக்கப்பட்டது. நான் 2000த்திலேயே சுவாதீன மனு தாக்கல் செய்தேன். நான் சுவாதீன மனு தாக்கல் செய்த அசல் வழக்கான 90/84ல் வாதி ஒரு தரப்பினர் இல்லை O.S.No.116/78 வழக்கிலும் வாதி ஒரு தரப்பினர் இல்லை, எனக்கும் என் சகோதரருக்கும் ஏற்பட்ட வழக்கிலும் வாதி ஒரு தரப்பினர் இல்லை. நான் தாவா சொத்தை பொறுத்து தாக்கல் செய்த முன் வழக்குகள் எதிலும் வாதி ஒரு தரப்பினர் இல்லை என்றால் சரிதான். பிராது வரைபடத்தில் ஏ பி சி என்று உள்ளது தாவா சொத்து என்றால் எனக்கு தெரியாது. சுவாதீன மனுவில் வாதி ஒரு நபராக சேர்த்தோம். நீதிமன்றத்திலிருந்து அழைப்பாணை அவருக்கு செல்லவில்லை. வாதி வழக்கறிஞரை வைத்து கட்சி செய்தார்,

ஈ.ஏ.98/2002 என்ற எண்ணில் தாவா வழக்கை சுட்டிக்காட்டி இந்த வழக்கு முடியும் வரை நிறைவேற்று மனு நடவடிக்கை நிறுத்தக்கோரி ஸ்டே மனு தாக்கல் செய்திருந்தார். அந்த மனு தள்ளுபடி ஆகி சென்னை உயர்நீதிமன்றத்திற்கு சென்றார். சென்னை உயர்நீதிமன்றத்தில் சீராய்வு மனு தாக்கல் செய்து நிலையில் இருந்தபோது ஸ்டே கிடைக்காத காரணத்தினால்



நிறைவேற்று மனுவில் மறு விசாரணை முடித்து எனக்கு சுவாதீனம் தரப்பட்டது. நான் சுவாதீனம் எடுத்தது 16.7.2003 சென்னை உயர்நீதிமன்றத்தில் ஸ்டே உத்தரவானது 18.7.2003 என்றால் எனக்கு தெரியாது. சென்னை உயர்நீதிமன்றத்தில் நடந்த சீராய்வு மனுவில் நான் வழக்கறிஞர் மூலம் ஆஜர் ஆனேன். அதன்பிறகு மனு தள்ளுபடி ஆனது என்றால் சரிதான். நான் கிரயம் வாங்கியிருக்கும் நபரின் பெயர் கோவிந்தம்மாள். கோவிந்தம்மாள் அப்பா பெயர் நல்லுசாமி. கோவிந்தம்மாள் நல்லுசாமிக்கும் அடுத்து சகோதரர் சாமிநாதனுக்கும் பாகம் பிரியாத காலத்திலேயே தாவா சொத்தை எனக்கு கிரயம் கொடுத்தார் என்றால் சரிதான். அந்த கிரயத்தில் தாவா சொத்தும் வேறுசில சொத்துக்களும் கிரயம் வாங்கியுள்ளேன். தாவா சொத்தின் சர்வே எண்ணின் மொத்த விஸ்தீரணம் 9 சென்ட் தான். எக்சிபிட் பில் கண்டுள்ள அளவு தாவா சர்வே எண்ணிற்கான அளவு விஸ்தீரண அளவு தோராயமாக எழுதப்பட்டதுதான். எக்சிபிட் பில் கண்ட தாவா சொத்தின் அளவு தவறு என்றால் சரியல்ல. நான் கிரயம் வாங்கிய காலத்தில் தாவா சொத்தை நான் அளந்து பார்க்கவில்லை. இவ்வழக்கில் உள்ள சந்திரகாசன் சாமிநாதனிடமிருந்து கிரயம் வாங்கினார். அவர் 4 1/2 சென்ட் கிரயம் வாங்கியுள்ளார், எக்சிபிட் பி2ல் தாவா சர்வே எண் பொறுத்துள்ள கீழ்மேல் தென்வடல் அளவுகள் தவறு என்றால் எனக்கு தெரியாது. தாவா சொத்தை பொறுத்து நான் பட்டா மாற்றம் செய்த காலத்தில் யார் பெயரில் பட்டா இருந்தது என்று எனக்கு தெரியாது. பரிவர்த்தனை பத்திரத்தின் சான்றிட்ட நகல் நான் நீதிமன்றத்தில் தாக்கல் செய்யவில்லை"

8. Ex.A-11 in the earlier suit was filed by one Ramachandran, 2nd Defendant against the 1st Defendant, Dhanraj in O.S.No.58 of 2001 in which the suit property in O.S.No.58 of 2001 was identified with boundaries as குணசேரன் நிலத்துக்கு கிழக்கு ஜாதியடி referring to this plaintiff. In the earlier suit between the 1st Defendant and 2nd Defendant in this case, the 1st Defendant died during the pendency of the appeal in which his legal heirs



were impleaded as respondents 2 to 4 in this second appeal. The learned District Munsif failed to appreciate those facts while assessing the evidence, and misdirected and dismissed the suit.

9. The learned Senior Counsel for the Appellant invited the attention of this Court, Section 105 of C.P.C which reads as under:

"(1) Save as otherwise expressly provided, no appeal shall lie from any order made by a Court in the exercise of its original or appellate jurisdiction; but where a decree is appealed from any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground for objection in the memorandum of appeal.

(2) Notwithstanding anything contained in sub-section (1), where any party aggrieved by an order of remand from which an appeal lies does not appeal therefrom, he shall thereafter be precluded from disputing its correctness."

10. The learned Senior Counsel for the Appellant relied on this to grant decree in this second appeal on the basis that the judgments of the trial Court and the 1st Appellate Court were erroneous. Therefore, invoking this provision to set aside the grant of decree and its consequent execution in O.S.No.58 of 2001 in which neither the Plaintiff herein nor his predecessors in title were parties to the earlier proceedings. The learned Senior Counsel also invited the attention of this Court to Order 7, Rule 7 of CPC which reads as



"Relief to be specifically stated.- Every plaintiff shall state specifically the relief which the plaintiff claims either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given as the Court may think just to the same extent as if it had been asked for. And the same rule shall apply to any relief claimed by the defendant in his written statement."

11. Therefore, the learned Senior Counsel for the Appellant sought to set aside the concurrent judgment of the learned District Munsif, Jayankondam and the learned Principal District Judge, Ariyalur and to grant decree declaring title to the suit property in favour of the Plaintiff and consequential injunction herein against the Respondents herein, the Defendants before the learned District Munsif, Jayankondam.

12. In support of this contention, the learned Senior Counsel for the Appellant relied on the following judgments:

12.1. In the case of ***K.R.Kamalraj v. C. Sridharan*** reported in **2021 (2) CTC 650** wherein this Court has observed as follows:

"13. At this juncture, it is relevant to observe that in the said judgment passed in C.R.P.(PD).Nos.1869 and 1870 of 2016, this Court at paragraph Nos.4 and 5 has held as follows:- "4. Further, the contention that the Exs.C.3, C.4 and C.5 do not render any aid to the Court for proper adjudication is liable to be rejected as it is falling in the domain of this Court to decide it. 5. By way of an additional proof affidavit dated 08.06.2015, the



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plaintiff had informed concurrence therewith. The case stood posted for judgment on 05.11.2015 when I.A.Nos.1626 and 1627 of 2015 have been moved towards reopening of the cases for the purpose of reappointment of the very same Advocate Commissioner. Though the case was last posted for judgment on 24.06.2016, the Court below was precluded from passing judgment on such date since as a consequence of entertaining the present revisions, an order of interim stay was passed on 22.06.2016."

14. In other words, the earlier application filed for reopen was dismissed and consequently, the application filed for appointment of Advocate Commissioner was also dismissed. While dismissing the request for appointment of Advocate Commissioner to revisit the suit property, the trial Court has observed that the contention that Exs.C.3, C.4 and C.5 do not render any aid to the Court for proper adjudication, is liable to be rejected as it is falling within the domain of this Court to decide it. The said finding has been confirmed in the above said Civil Revision Petition Nos.1869 and 1870 of 2016. Thereafter, the suit argument was heard and judgment was pronounced on 08.08.2016. In the said judgment passed in O.S.No.195 of 2010, the learned District Munsif, Kangayam, has observed as follows:-

"10. Thus, it appears from Exs.C.3 to C.5 that the property of the plaintiff is encapsulated with kiluvan fence on four sides. The said canal to an extent of 18 cents is running West to East on the plaintiff's property and to an extent of 15 cents running in the 1st defendant's property. The Advocate/Commissioner as well as the surveyor has not given any measurements falling in excess in the 1st defendant's land. In other words there is no encroachment has been pointed out on the immediate west of the 1st defendant's land and also on the immediate east of the plaintiff's property. 14. For the reason that he has failed to bring on record the exact measurements of the suit property before this court even otherwise by way of Exs.C1 and C2. What has been brought under Exs.C1 and C2 is totally contra to the facts brought forth under Exs.C2 to C5.



On the conjoint analysis of Exs.C1, C2 and C3 to C5 this court would be able to find out only the existence of kiluvan fence on all the four sides of plaintiff's property. In the absence of exact measurements of the suit property brought before this Court it is very hard to believe the version of the plaintiff."

15. On the dismissal of the suit, the plaintiff has preferred an appeal in A.S.No.13 of 2017. Pending the said appeal, he has preferred an Interlocutory Application in I.A.No.143 of 2018 for appointment of an Advocate Commissioner to revisit the property and to give measurement, since there is a contradiction between Exs.C.1 to C.5 with regard to the margin or boundary between the two parties. That is the dispute. The learned Subordinate Judge, Kangayam, has allowed the said application and hence, the present civil revision petition has been filed by the defendants."

22. In view of the above decisions, even at the appellate stage, in appropriate facts and circumstances of the case, the appellate Court can appoint an Advocate Commissioner and appointment of Advocate Commissioner at the appellate stage is not barred."

12.2. In the case of **K.M.Srinivasa Gopalan Vs. V.Siva Sankaran** reported in **(2002) 2 MLJ 210** this Court has observed as under:

"15. So far as items 2 and 3 are concerned, the plaintiff's case is that they were the ancestral joint family properties. To substantiate that they were ancestral joint family properties, Ex.A.28/Settlement Register has been produced. It is seen from Ex.A.28 that these items have been shown as the properties of the ancestors Gopalachariar and four others, Gopalachariar being the plaintiff's grandfather. In respect of ancestral properties, one cannot have regular title deeds. This has been totally lost sight of by the lower appellate Court. The case of the defendant is that items 1 and 2 were purchased by his father from Rangammal, wife of Bashyachariar. The sale deed/Ex.B.1, dt.22.12.1943 deals only with the present suit Item 1. Suit Item 2 is not the subject matter of Ex.B.1. There is nothing to show that Vadivelu



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Mudaliar ever owned suit item 2. Ex.B.2, dt.5.1.46 is a sale deed by one Rukmani to Vadivel of 1.25 acres, but the survey number given is 66/1. That has nothing to do with suit item 2. So far as suit item 3 is concerned, the defendant claims to have purchased 1.14 acres on 27.9.1943 under the original of Ex.B.3. It is in S.No.69/1. In Ex.B.48/Patta issued on 28.3.1978 an extent of 1.15 acres in S.No.69/1 has been shown to be Vadivelu Mudaliar's property. Suit Item 3 is only an extent of one cent and from the Plan, Ex.A.27, it appears that this property is the only access to the plaintiff's other two items, and it is also found in Ex.A.28/Settlement Register. Suit item 3 is shown in Ex.A.28 as cart track and it has not been shown by the defendant that apart from the patta issued to him which was in respect of 1.15 acres though he had bought only 1.14 acres on 27.9.1943 under the original of B.3 that he had any right in suit item. Thus, in my considered view, title to all the three items in the suit has been clearly established in favour of the plaintiff."

Therefore, the first Defendant as D.W.1 clearly admitted that the Plaintiff was in possession of the suit property until he was evicted through the execution of the decree in O.S.No.90 of 1984.

13. Mr.S.Subbiah, the learned Counsel for the first Respondent submitted that the Respondents in the Second Appeal are the Defendants in the Suit in O.S.No.23 of 2002 on the file of the learned District Munsif, Jayankondam. The Defendants in the written statement had clearly stated that they purchased 4 ½ cents from two vendors through two sale deed in the years 1968 and 1990. The first Defendant in O.S.No.23 of 2002 had filed the Suit for partition in O.S.No.90 of 1984 in which part of the claim of the Plaintiff in O.S.No.23 of 2002 was that he had purchased the property from the legal heirs of Marimuthu from whom the vendor of the Plaintiff purchased. The vendor



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of the Plaintiff is none other than Kaliyamoorthy, as though Marimuthu had title to the property in S.No.80/3. Kaliyamoorthy had filed written statement in the earlier Suit in O.S.No.90 of 1984 where he had specifically admitted that he did not claim title to S.No.80/3. Therefore, no order was passed against him in the earlier Suit in O.S.No.90 of 1984. After preliminary decree was passed, Kaliyaperumal filed cross-appeal. The second Defendant in O.S.No.90 of 1984 filed Appeal in A.S.No.107 of 1989 before the Sub Court, Ariyalur. Kaliyaperumal filed Second Appeal before the High Court in S.A.No.1441 of 2001, which was dismissed on 22.01.2001 at admission stage. In continuation of the earlier partition Suit, the first Defendant in O.S.No.23 of 2002, who was the Plaintiff/Decree Holder in O.S.No.90 of 1984 filed final decree application and based on the final decree application filed in E.P.No.174 of 2000, he took possession of the property. After exhausting all the remedies, the father-in-law of the Plaintiff in O.S.No.23 of 2002 and brother-in-law of the Plaintiff had by creating documents instigated the Plaintiff to institute the Suit. The brother-in-law and father-in-law of the Plaintiff had filed execution applications in E.P.No.174 of 2000 which were also dismissed after proper enquiry. All these facts had been mentioned by the first Defendant in the written statement in O.S.No.23 of 2002. Also, during trial, the Defendant had marked documents under Ex.B-1 to Ex.B-19 as proof of the claim made in the written statement



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regarding previous litigations. The Execution Application Nos. 98 and 99 of 2002 filed by the intervenors in E.P.No.174 of 2000 was dismissed; against which they preferred Civil Revision Petition. Civil Revision Petition was also dismissed and delivery of possession was granted only on 16.07.2003. After taking delivery of possession, the Plaintiff sought amendment of the Plaint and filed a petition which was dismissed by the learned District Munsif; against which CRP.No.143 of 2009 was filed which was also dismissed. Another Application was filed in I.A.No.468 of 2009 seeking to withdraw the Suit with liberty to file a fresh Suit on the same course of action. After due enquiry, I.A.No.468 of 2009 was also dismissed. After dismissal of the cross-appeal filed by Kaliya Perumal, he filed a Suit in O.S.No.237 of 1987, which was also dismissed as per the Judgment dated 24.10.1989. Having failed in all his acts, Kaliya Perumal had instigated this Plaintiff, who is none other than the son-in-law of Kaliya Perumal to claim 4 ½ cents in S.No.80/3. The partition in the family of Marimuthu is marked as Ex.B-12, which is the partition deed dated 19.03.1971, where Marimuthu and his sons had partitioned the properties. Nowhere in the partition deed, S.No.80/3 has been mentioned. Marimuthu had lands in S.Nos. 80/4 and 80/08. Marimuthu had sold the property in S.No.80/3 to Kaliya Perumal. It is the duty of the Plaintiff to prove that he derived a title in S.No.80/3. No title in the name of Marimuthu,



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Chandrasekharan or Mehanadhan was found in S.No.80/3 as per the documents marked by the Plaintiff under Ex.A-1 to Ex.A-19. The learned District Munsif had on proper appreciation of both oral and documentary evidence under Ex.A-1 to Ex.A-19 and Ex.B-1 to Ex.B-21, by the Judgment dated 28.01.2010 dismissed the suit of the Plaintiff. The Plaintiff did not have title. His claim was based only on error that had taken place in updating the revenue records in the year 1960, where Marimuthu's name was entered in S.No.80/3 by mistake. Patta or revenue records are not documents of title. This is the settled position of law as laid down by the Hon'ble Supreme Court. As per the Contract Act, based on the principle of "buyer beware" the Plaintiff in O.S.No.23 of 2002, before purchasing the property ought to have been careful and ought not to have purchased a property from a person having no title. The Plaintiff was not cautious. Had he been vigilant, he would not have purchased the property from a person having no title. The first Defendant as Plaintiff in O.S.No.90 of 1984 had filed the Suit for partition, which was partly contested, which culminated in the passing of the preliminary decree. Based on preliminary decree, he had preferred final decree, and based on final decree, he had preferred E.P for possession of the property. At that stage, the vendor of the Plaintiff had filed Execution Application as though he had claim over the property, and thereby delayed execution of the decree in favour of the



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Plaintiffs in O.S.No.90 of 1984. Kaliya Perumal failed in his attempts and therefore, he instigated his son-in-law as though Gunasekaran derived title from the legal heirs of Marimuthu through Kaliya Perumal. Both the Courts below, the trial Court as well as the first Appellate Court arrived at a conclusion rejecting the claim of the Plaintiff and observed that the Plaintiff does not have title to the property in S.No.80/3. Therefore, this Court cannot once again go into the question of the earlier proceedings and demolish the earlier proceedings which culminated in favour of the Plaintiff in O.S.No.90 of 1984. In the light of the above circumstances, the Second Appeal ought to be dismissed at the earliest as it has neither merits nor any substantial questions of law to be answered.

14. Heard the learned Senior Counsel for the Appellant and the learned Counsel for the first Respondent.

15. Perused the records and the Judgment and Decree of the learned Principal District and Sessions Judge, Ariyalur made in A.S.No.111 of 2012 dated 27.11.2012 and also the Judgment and Decree of the learned District Munsif, Jayankondam made in O.S.No.23 of 2002 dated 28.01.2010 in O.S.No.23 of 2002 and A.S.No.111 of 2012.



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WEB COPY 16. From the records, it is found that the subject matter of the Suit property is Survey No.80/3 with an extent of 4½ cents, with specific boundaries: bounded on the North by Bakkirisamy property, on the South by Street, on the East by Chandrababu Padayatchi property, and on the West by Govindraj property.

17. The claim of the Appellant as Plaintiff before the learned District Munsif, Jayankondam was rejected based on appreciation of evidence. The Defendants in O.S.No.23 of 2002, the Defendants 1 and 2 in their written statement clearly stated that by inadvertence, the name of Marimuthu was entered in the revenue records by the revenue authorities. The claim of the Plaintiff in Appeal that the learned trial Judge rejected the evidence of the Plaintiff on the ground that Patta is not title to the Suit property is perverse, cannot be accepted. It is a well-settled principle that revenue records does not confer title to the property. Those are documents to collect revenue from persons in possession of the property.

18. The claim of the Defendants 1 and 2 is based on the sale deed from the rightful owners of the property who had been in enjoyment of the



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Gramanatham lands.

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19. The property that was in enjoyment of Marimuthu was S.No.80/4. Marimuthu's son Chandrasekaran and Meganathan in the partition deed executed in the year 1971 had clearly identified the property belonging to Marimuthu as S. No. 80/4. Therefore, Marimuthu had no title to the property bearing S.No.80/3. In S.No.80/3, an extent of 9 cents belongs to Nalluswami and Swaminathan. $4\frac{1}{2}$ cents of the property in S.No.80/3 was sold by Swaminathan's legal heirs to the fourth Defendant and another $4\frac{1}{2}$ cents of the property belonging to Nalluswami was purchased from the daughter of Nalluswami by name Govindammal by the first Defendant in the year 1970. Out of $4\frac{1}{2}$ cents $2\frac{1}{4}$ cent is in enjoyment of the first Defendant and $2\frac{1}{4}$ cent is in enjoyment of the Second Defendant. Therefore, both the first and second Defendant are enjoying $4\frac{1}{2}$ cents. The fourth Defendant filed the Suit seeking a declaration of title as though the entire property in S.No. 80/3, measuring 9 cents belongs to the fourth Defendant. Therefore, the Plaintiff had filed a Suit in O.S.No.58 of 2001 seeking partition. The Suit in O.S.No.58 of 2001 for partition was dismissed as per Judgment dated 27.10.2009.

20. O.S.No.90 of 1984 was filed by the Defendants 1 and 2 seeking



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partition in which the property in S.No.80/3 was subject matter of the partition in the Suit in O.S.No.116 of 1978 which was decreed in favour of the Plaintiff by granting preliminary decree for partition of half share. In continuation of the same, the Defendants in the Suit in O.S.No. 90 of 1984 had preferred the Appeal in A.S.No.107 of 1989 before the learned Sub Judge, Ariyalur which was dismissed by Judgment dated 15.09.2000. In continuation of the decree passed in O.S.No.90 of 1984, the first Plaintiff Dhanraj had filed E.P.No.174 of 2000 in O.S.No.90 of 1984 before the learned District Munsif, Jayankondam in which the Defendants 3 and 4 in O.S.No.23 of 2002, were the Defendants 1 and 2. The Defendants as Respondents in the E.P had filed E.A.Nos.98 and 99 of 2002 to contest the same. After due enquiry, both E.As were dismissed. Decree for partition was ordered in favour of the first Plaintiff in O.S.No.90 of 1984. Accordingly, possession was ordered. The proceedings in the E.P were marked as Ex.A-18 in the Suit in O.S.No.23 of 2002. The learned District Munsif had on proper appreciation of evidence noted that the Plaintiff in O.S.No.23 of 2002 had filed I.A.No.474 of 2003 in the said Suit, which was dismissed. Against this, the Plaintiff had preferred CRP.No.143 of 2009. That was dismissed on 06.03.2009. Subsequently, the Plaintiff in O.S.No.23 of 2002 filed I.A.No.468 of 2009, seeking permission of the Court to withdraw the Suit with liberty to file a fresh Suit on the same cause of

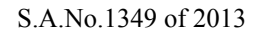


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action, that was dismissed on 10.08.2009. The Plaintiff was cross-examined on behalf of the Defendants in which the Plaintiff had admitted all these facts.

Based on the assessment of evidence, the learned District Munsif, Jayankondam had dismissed the Suit in O.S.No.23 of 2002, by Judgment dated 28.01.2010. The claim of the Plaintiff is based only on the entry in the revenue records to which the Defendants 1 and 2 in their written statement had clearly stated that in updating the revenue records in the year 1960 by mistake, the name of the father of the vendor/Marimuthu was found in the revenue records. The name of Marimuthu was entered in 'A' Register by mistake, based on which the Suit had been preferred by the Plaintiff in O.S.No.23 of 2002. The Plaintiff was confronted regarding previous litigations and the decree in favour of Defendants 1 and 2 in earlier proceedings in O.S.No.90 of 1984 on the file of the learned District Munsif, Jayankondam which had culminated in execution of the E.P. Therefore, the submissions of the learned Senior Counsel for the Appellant in the Second Appeal (Plaintiff in O.S.No. 23 of 2002) that the finding of the learned District Munsif and the learned Sub Judge, Ariyalur are erroneous and the Judgment of the learned Sessions Judge, cannot be accepted.

21. The learned Principal District Sessions Judge had on reassessment



22. As per of the Code of Civil Procedure, the Court, after granting a decree and based on the decree, having executed the decree cannot give a



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contradictory finding. The claim made by the Plaintiff in O.S.No.23 of 2002 was analysed by the learned District Munsif in the light of the materials available before the learned District Munsif in which the E.P in the earlier proceedings had been marked as Ex.A-18. The Plaintiff is none other than the son-in-law of the fourth Defendant in O.S.No.90 of 1984. It is the claim of the Defendants 1 and 2 in O.S.No.23 of 2002 that Marimuthu, the father of the vendor of the Plaintiff in O.S.No.23 of 2002 has title to the property only to S.No.80/4 and not 80/3. Therefore, the claim made over the property in S.No.80/3 is only based on the error that was caused during updating the registers in the year 1960. The learned Judge had considered the claim of the Plaintiff in the light of the documents made available, which are marked under Ex.B-1 to Ex.B-19.

23. The submission of the learned Senior Counsel for the Appellant cannot be accepted in the light of the well-reasoned Judgment of the learned District Munsif, Jayankondam in O.S.No.23 of 2002 dated 28.01.2010. The claim of the Plaintiff is based on sale deed dated 20.09.2000 from the legal heirs of Marimuthu. It is a specific case of the Defendants 1 and 2 that Marimuthu's name was found in the updated survey in the year 1960. In the earlier adjudication in O.S.No.90 of 1984, father-in-law of the Plaintiff in



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O.S.No.23 of 2002 was the fourth Defendant. It was in evidence that he did not have any claim over S.No.80/3. Therefore, the earlier Suit culminated in granting preliminary decree in favour of the Plaintiff in O.S.No.90 of 1984. Subsequently, the fourth Defendant in O.S.No.90 of 1984 created documents based on which there had been many litigations. In order to prevent the Plaintiff in O.S.No.90 of 1984 from enjoying the property, even at the stage of EP, there were interferences by filing E.A through different persons. Therefore, the learned District Munsif had on proper appreciation of evidence, accepted the evidence of the Defendants 1 and 2 in O.S.No.23 of 2002 which culminated in granting of possession in E.P in continuation of final decree for partition in O.S.No.90 of 1984. Therefore, there cannot be any other option for any Civil Court to discard the previous litigations. The claim of the Plaintiff in O.S.No.23 of 2002 is long after the execution of the decree, wherein Plaintiff in O.S.No.90 of 1984 was granted possession through execution in E.P.No.174 of 2000. The claim of the Plaintiff that the Plaintiff or his predecessor were not parties to the earlier proceedings cannot at all accepted. A decree from a competent Civil Court had to be considered by the Court, exercising discretion under the Code of Civil Procedure under the principles of fairness, equity and good conscience. The claim of the Plaintiff in O.S.No.23 of 2002 is long after the execution proceedings which granted possession of



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A.S.No.111 of 2012. The learned Judge had clearly observed that there cannot be any title based on entries in the revenue records. The Plaintiff in O.S.No.23 of 2002, long after the execution of decree in O.S.No.90 of 1984 through execution proceedings in E.P.No.174 of 2000, cannot expect any Civil Court to come to his rescue jua based on the sale deed of the year 2000. No Court would demolish the case of the Defendants who had obtained proper decree after hot contest and also the decree had been executed in E.P.No.174 of 2000.

25. The ruling relied on by the learned Senior Counsel for the Appellant in *Natarajan Vs. Kalimuthu* against which is the Judgment in Second Appeal 1963 of 2010 against the concurrent finding of the trial Court as well as the first Appellate Court will not help the Plaintiff in this case as discussed in his Judgment. The other rulings relied upon by the learned counsel for the Appellant viz., (i) *MANU/SC/1849/1997* in the case of *Rebti Devi Vs. Ram Dutt and Ors*; (ii) *S.A.(MD).No.963 of 2010* in the case of *Natarajan Vs. Kalimuthu*; (iii) *2021 (2) CTC 650* in the case of *K.R.Kamalraj & another Vs. C.Sridhara, and* (iv) *(2002) 2 MLJ 210* in the case of *K.M.Srinivasa Gopalan Vs. V.Siva Sankaran* also will not hold good in the light of the well-reasoned Judgment of the learned District Munsif as well as the learned Principal District Judge where both the Courts had held



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that the claim of the Plaintiff is not based on proper title. It is only based on the entry in the revenue records which crept in by error of the Officials of the Revenue Department. The partition deed in the family of Marimuthu which was marked as Ex.B-12 does not contain the Sub Division of S.No.80/3. This is the concurrent finding of the learned District Munsif and the learned Principal District Judge. Therefore, against the concurrent finding arrived on proper appreciation of evidence, the claim of the Plaintiff cannot be accepted. Above all, in the previous litigation in O.S.No.90 of 1984, the vendor of the Plaintiff in O.S.No.23 of 2000 had been a party, the father-in-law of the Plaintiff was also a party to the suit as the fourth Defendant. Therefore, the claim of the Plaintiff in O.S.No.23 of 2002 that the vendor of the Plaintiff was not a party has to be rejected. It is a specific case of the Defendant in O.S.No.23 of 2002 that the fourth Defendant in O.S.No.90 of 1984 is the person behind this litigation, cannot be rejected lightly. The Civil Court is bound to protect the decree which had been executed in earlier proceedings. Therefore, the Court has duty to protect the earlier decree which culminated in execution of decree whereby possession was handed over to the Decree Holder in the earlier Suit and the same cannot be demolished long after execution of the decree. The claim of the Appellant in the Second Appeal that the judgment and decree in O.S.No.90 of 1984 is not admissible under the Indian Evidence



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Act, 1872 as neither the Plaintiff/Appellant nor his predecessors were parties to the proceedings as the suit is not inter party suit will not hold good. The Plaintiff is none other than the son-in-law of the Defendant in the earlier suit. The present suit was instituted to defeat the earlier suit which cannot be appreciated by any court of law. Therefore, the claim made by the Appellant that the judgment of the learned District Munsif, Jayankondam, is based on appreciation of the earlier decree in O.S.No.90 of 1984 which is inadmissible cannot at all be accepted. The litigant who lost the earlier round of litigation had instigated the second round of litigation to defeat the decree in earlier suit which cannot be encouraged and appreciated by any Civil Court which will amount to defeat the earlier decree, negating the earlier decree. The ruling cited by the learned Senior Counsel for the Appellant will not be applicable to the facts of this case, particularly in the light of the execution in O.S.No.90 of 1984.

26. In the light of the above discussions, **the substantial questions of law are answered against the Plaintiff in O.S.No.23 of 2002/Appellant herein and in favour of the Defendants/Respondents herein.**

In the result, this *Second Appeal is dismissed.* The Judgment and



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Decree of the learned Principal District and Sessions Judge, Ariyalur made in A.S.No.111 of 2012 dated 27.11.2012 confirming the Judgment and Decree of the learned District Munsif, Jayankondam, made in O.S.No.23 of 2002, dated 28.01.2010 is confirmed. No costs.

01.07.2025

vsn/dh

Index : Yes/No

Internet: Yes/No

Speaking/Non-speaking order

To

1. The Principal District and Sessions Judge,
Ariyalur.
2. The District Munsif, Jayankondam.
3. The Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.,

dh

Judgment made in
S.A.No.1349 of 2013

01.07.2025