



S.A.No.858 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	25.08.2025
<i>Pronounced on</i>	21.11.2025

Coram:

The Honourable Mrs. Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.858 of 2019
and C.M.P.No.17734 of 201

1.Chinnaraj
2.Tamil
3.Sathish
4.Devaraj

..Appellants

versus

Kaliammal (died)

1.K.Palanisamy
2.Loganathan

.. Respondents

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the decree and judgement dated 15.02.2019 made in A.S.No.24 of 2018 on the file of the learned Sub Judge, Sathyamangalam, Erode District confirming the judgment and decree dated 16.04.2018 made in O.S. No. 11 of 2015 on the file of the learned District Munsif, Sathyamanagalam,Erode



S.A.No.858 of 2019

District by allowing the Second Appeal.

WEB COPY

For Appellants : Mr. I.C.Vasudevan
For Respondents : Mr. A.Sundaravadhanan
for Rr1 and R2

JUDGMENT

The above second appeal arise out of the judgment and decree dated 15.02.2019 made in A.S.No.24 of 2018 on the file of the learned Sub Judge, Sathyamangalam, Erode District confirming the judgment and decree dated 16.04.2018 made in O.S. No. 11 of 2015 on the file of the learned District Munsif, Sathyamanagalam, Erode District.

2.The unsuccessful defendants have preferred this second appeal.

The plaintiff's case is that the suit property originally belong to her father Suppanna Goundar vide partition deed dated 09.10.1975, who executed a Will in favour of the plaintiff on 11.02.1993 and after his demise the plaintiff became the absolute owner of the suit property. The plaintiff is cultivating in the suit property. Therefore, the plaintiff is alone in



S.A.No.858 of 2019

possession and enjoyment of the suit property. The defendants are possessing land on the south of the suit property. While so, the defendants were attempting to plough their land by crossing through the plaintiff's land and the same was successfully prevented by the plaintiff. Since the attempt of the defendants to purchase the suit land failed, the defendants on 28.01.2015 stored the materials in the suit property for installing an iron fence in the suit property. After the suit, an Advocate Commissioner was appointed to note down the physical features in the suit property. While so, on 29.01.2015 before the Advocate Commissioner visited the suit property, the defendants have encroached an extent of 0.47 cents in the suit property without any authority. Hence, the plaintiff was constrained to file the above suit for declaration of title and for permanent injunction. After the alleged encroachment, the plaintiff amended the plaint, including the prayer for recovery of possession of the 'B' schedule property directing the defendants to remove the iron fence from the suit property and hand over the encroached portion to the plaintiff.



S.A.No.858 of 2019

WEB COPY

2.1.The claim of the plaintiff was resisted by the defendants stating that originally the father of the 4th defendant namely Chenna Naicker and one Palaniappan son of Chinna Naicker jointly purchased a specific extent of Hc.1.86.5 in S.F.No.256 along with an extent of Hc.1.40.0 in S.F.No.228/2 of Sathyamangalam Village under the sale deed dated 04.07.1984. In a subsequent oral partition between them, the northern 2.30 acres, corresponding to T.S.Nos.7/2 and 7/3 was allotted to the share of Chenna Naicker and the southern 2.31 acres, corresponding to T.S.No.7/4 was allotted to Palaniyappan.

3.Thereafter, the said Chenna Naicker and the sons of Palaniyappan namely Muthuraj and Mohanraj entered into a registered cart track agreement dated 01.07.2009 measuring 226 ft. in length and 15 feet width within the western and northern portions of T.S.No.7/2. It is further submitted that the plaintiff's land in old S.f.No.283A, corresponding to new S.F.No.256/1 and T.S.No.7/1 is situate to the north of the above mentioned cart track in T.S.No.7/2. The plaintiff suppressing the existence of the said cart track in T.S.No.7/2 and by omitting to furnish the town Survey number



S.A.No.858 of 2019

of her property has filed the present suit which is liable to be dismissed.

WEB COPY

4.It is further submitted that on 16.07.2010 the 4th defendant and his father Chenna Naicker along with his brother and sisters entered into a registered partition deed with regard to their family properties. In the said partition deed, an extent of 2.08 acres in T.S.No.7/2 & 7/3 was allotted to this defendant's father Chenna Naicker under 'A' schedule, who in turn executed a registered Will on 16.07.2010 and in the said Will, the northern 1.04 acres in T.S.No.7/2 and T.S.No.7/3 was bequeathed to the 4th defendant and the southern 1.04 acres was bequeathed to the 1st defendant. On 08.09.2014, the said Chenna Naicker died and the Will came into force. Hence, the 4th defendant became absolute owner of the northern 1.04 acres in T.S.No.7/2 & T.S.No.7/3 and the 1st defendant became owner of the southern 1.04 acres in the said survey numbers. It is submitted that there is no demarcation ridge between the plaintiff's land in T.S.No.7/1 and this defendant's land in T.S.No.7/2 as alleged by the plaintiff. The 15 feet width east west cart track is in T.S.No.7/2 which is lying to the south of plaintiff's land. Hence, the allegation of the plaintiff that the defendants attempted to



S.A.No.858 of 2019

plough the plaintiff's land beyond the alleged ridge is absolutely false. This defendant is alone cultivating commercial crops in T.S.No.7/2 & 7/3 and where as, the plaintiff's land is a dry rain fed land. In the 1st week of January 2015, for the purpose of protecting the crops in his land, the 4th defendant has put up wire fences along the western and northern boundaries of his land which is to the south of the said cart track. While so, on 07.01.2015 the plaintiff attempted to obliterate the east west cart track by making false claim over it for which the defendant lodged a complaint in the police station.

5.In the additional written statement it is stated that the allegation made in the amended plaint that before the visit of the Advocate Commissioner on 30.01.2015, the 4th defendant unlawfully encroached an extent of 0.47 cents in the suit property is totally false. The interim report dated 05.02.2015 submitted by the Advocate Commissioner stating that this defendant encroached upon the suit property is also false and factually incorrect. It is submitted that none of the defendants have made any encroachment in the suit property as alleged by the plaint. The defendants



S.A.No.858 of 2019

WEB COPY

are in possession and enjoyment of their properties as per their title deeds.

Moreover, the said cart track was formed within the western and northern portion of T.S.No.7/2. Hence, no new cart track was formed before the visit of the Advocate Commissioner on 30.01.2015 as alleged by the plaintiff. Therefore, the report of the Advocate Commissioner stating that out of 4.86 acres in old S.F.No.283A, 3.95 acres is in new S.F.No.256/1, 0.56 acres is in New S.F.No.256/2 and 0.40 acre is in new S.F.No.228/1A are only imaginary and incorrect. Hence, the plaintiffs' claim for declaration of title with regard to the 'A' schedule property and delivery of possession of the 'B' schedule property on the basis of the report and the plan of the Advocate Commissioner is unsustainable. It is submitted that without measuring S.F.No.283A and fixing its boundaries, the suit property measuring 83 cents cannot be identified. Hence, prayed for dismissal of the suit.

6.Considering the oral and documentary evidence adduced the trial Court decreed the suit in favour of the plaintiff. The First Appellate Court also dismissed the appeal filed by the defendants.

7.The second appeal is admitted on the following substantial



S.A.No.858 of 2019

questions of law:

1. Whether the courts below are correct in holding that the survey measurements taken by the Commissioner based in Re-survey without verifying the same with the corresponding old survey proceeding are correct and decreed the suit?

2. Whether the courts below are correct in relying on the measurements taken in a piece meal manner by the surveyor that too on Resurvey instead of either the Town survey stones which is available at present or old survey proceedings as mentioned in parental deeds?

3. Whether the courts below are correct in relying on the commissioner's report especially when there is a total contradiction between the interim report and the final report filed by the commissioner?

8. The learned counsel for the appellants/defendants would submit that the defendants have traced their title over 'B' schedule property based on Exs.B1 to B.3 Revenue records. The Advocate Commissioner has identified the suit property based on the boundaries of the adjacent land and not by measuring the property from the boundary stone and therefore, the



S.A.No.858 of 2019

WEB COPY

report and plan of the Advocate Commissioner ought not to have been accepted by the Courts below. It is further submitted that the First Appellate Court erred in holding that the appellant's predecessor in title did not purchase any land in old S.F.No.283/A from one Rangasamy Goundar under Ex.B.1 especially when the said Rangasamy Goundar was allotted 'A' schedule property in the partition took place on 05.03.1965 and he was allotted 0.44 cents and the same was also not denied by the plaintiffs. The Courts below have failed to consider that the plaintiff's have no right in the suit property and the defendants alone have clear title over the 'B' schedule property and that the defendants did not encroach any land of the plaintiffs. The measurements taken by the Advocate Commissioner based on resurvey without verifying the same with the corresponding old survey proceedings is incorrect. Moreover, the interim report filed by the Advocate Commissioner is contrary to his final report. The surveyor ought to have measured the properties from the town survey stones or based on old survey proceedings as mentioned in the parent documents. The findings of the trial Court that boundaries would prevail over the measurement is incorrect and



S.A.No.858 of 2019

WEB COPY

the same was not considered by the lower Appellate Court by framing necessary points for consideration in this regard. The Courts below failed to consider the parent title deed marked as Ex.B.1 on the side of the defendant. Hence, prayed for allowing the second appeal.

9.On the other hand, the learned counsel for the respondent would submit that the Courts below, upon considering the oral and documentary evidence led by the plaintiff and the report of the Advocate Commissioner rightly found that the defendants have encroached upon the plaintiff's 'B' schedule property and accordingly decreed the suit granting the declaratory relief and recovery of possession which warrants any interference by this Court.

10.This Court carefully considered the submissions of the learned counsel on both sides and perused the material papers placed on record.

11.Originally the suit was filed for an extent of 83 cents in old S.No.283A corresponding to new survey Nos. 256/1 to 256/3 for the relief of declaration of title and for injunction. After filing of the Advocate



S.A.No.858 of 2019

WEB COPY

Commissioner's report and plan, the plaint was amended, deleting survey No.256/3 and by adding new S.No.228/1A, T.S.No.7/1, 7/2 and 8/1, shown as 'B' schedule property, sought for recovery of possession in respect of 'B' schedule property. It is the specific contention of the defendants that without measuring the land in S.No.283A, the suit property cannot be identified based on the survey numbers given in the plaint.

12. Admittedly, the plaintiff is tracing her title through the deeds dated 05.03.1965 and 09.10.1975 and through the Will dated 11.02.1993. According to the plaintiff, his father Suppanna Goundar and one Rangasamy Goundar owned 5.30 acres of land in S.No.283/A. They divided the property in which Suppanna Goundar was allotted 4.86 acres of land and Rangasamy Goundar was allotted 0.44 cents and the same is established through Ex.A1 partition deed. Thereafter, the said Suppanna Goundar and his Son Palanisamy Goundar divided the property in which Suppanna Goundar was allotted 83 cents and Palanisamy Goundar was allotted 4.03 cents which is evident from Ex.A2 partition deed. The said Suppanna Goundar under Ex.A3 had given his 83 cents of land to the plaintiff. The



S.A.No.858 of 2019

WEB COPY

Advocate Commissioner inspected the suit property, measured the same with the help of surveyor and filed his report and plan marked as Exs.C.1 to C.4 respectively. In Exs.C.3 and C.4 report and plan, it is shown that the suit property is comprised in survey Nos.256/1, 256/2 & re-survey No.228/1A. After the said report, the plaint is amended accordingly. The same was objected on the side of the defendants stating that the survey ought to have been conducted in respect of 5.30 acres of land as mentioned in Ex.A3 Will and therefore, the survey conducted in respect of the land measuring 4.86 acres lying to the north of 5.30 acres of land and identifying the suit 83 cents of land is incorrect. It is submitted that, the suit land ought not to have been identified on the basis of Exs.C3 and C4. However, Ex.C1 to C4 would reveal that the old survey No.283A is part of resurvey no.256 and that the re-survey No.256 was sub divided into 256/1 to 256/3. Further, it is also mentioned that the above three survey numbers are connected with survey No.283/A. Likewise, the old survey No.283B is part of Survey No.228/1 and the same has been subdivided as survey No.228/1A and 228/1B and that the old survey No.283B includes the above two



S.A.No.858 of 2019

subdivisions. The above report and plan confirms that the suit 83 cents of land is comprised in S.No.283A with specific boundaries.

13.Though it is contended on the side of the defendants that the survey number mentioned in the suit is incorrect and the measurements done based on the incorrect survey Number cannot be accepted, the defendants have not raised any objections to the boundaries described in the suit. It is well established general principles of law that the boundary descriptions shall prevail over survey number, extent, side measurements etc. The Hon'ble Apex Court in **Subhaga vs. Shoba, 2006 -5 SCC 466** observed as under:

"That a property can be identified either by boundary or by any other specific description is well established. Here the attempt has been made to identify the suit property with reference to the boundaries and the Commissioner has identified that property with reference to such boundaries. Even if there was any discrepancy, normally, the boundaries should prevail."



S.A.No.858 of 2019

Notably in, ***The Church of South India Trust Association Vs.Raja Ambrose*** , (1978) 2 MLJ 620, it is further laid down as under:

"Where the deed sets out the extent and measurements correctly, there can be no difficulty in determining the subject matter of the grant. But where no measurements are given or the extent mentioned in the deed is either vague or is only a rough and ready approximation, one has to look to other indications in the deed in order to fix the identity of the property which is the subject of the grant. If the deed in question sets out the boundaries of the property conveyed, then these boundaries will have to be accepted as a clear reflection of the intention of the grantor and they will conclude not only the exact position of the property conveyed, but also its true extent. The boundaries given in the deed will also in such cases, prevail over the measurements given in the deed, if these are given as approximations."

14.Hence, it is settled law that boundaries prevail over extent and survey numbers as also measurements, because they are considered a more reliable and precise way to identify a property on the ground, especially



S.A.No.858 of 2019

WEB COPY

when there are discrepancies. When a conflict arises between the two, the physical, locatable boundaries are given precedence by Courts. The Commissioner's report reveals that the suit property is measured based on the boundaries.

15. On the side of the defendants, it is contended that without measuring the entire land of 5.30 cents in S.No.283A the suit property cannot be identified. In this regard, the evidence of land surveyor examined as D.W.3 is relevant and the same is extracted as hereunder:

*jhth g{kpia ePjpkd;w Mizah; brhd;dgo jhd;
mse;njd;/ jhth brhj;ij giHa kw;Wk; uP rh;nt
vz; mog;gilapy; mse;njd;/ jhth brhj;jpd;
giHa ru;nt vz;/283?d; uP rh;nt vz;/256-1.
256-2. 256-3 kw;Wk; 228-1A/ ru;nt
vz;/256-1 Kjy; 256-3 g{kpfspy; bkhj;jk;
g[/V/15/67 brz;l; g{kpia mstPL bra;njd;/
me;j bkhj;j g{kpapy; ePkrhM/4?y;
,s;"rptg;gl tu;zkpl;l Vf;fh; 5/30 brz;l; g{kpia*



S.A.No.858 of 2019

milahsk; fhzg;gl;lJ/ me;j g{kpf;Fs; tlglwkhf
Vf;fh; 4/86 brz;l; g{kpia mse;J milahsk;
fhl;ondd;/ ehd; giHa kw;Wk; uP/rh;nt
rk;ke;jg;gl;l Mtz';fis itj;J jhd; mstPL
bra;njd;/ msg;gjw;F Kd;gl vy;iyf; fw;fis
rhp gh;h;j;J cWjp bra;J bfhz;l gpwF jhd;.
MizaUld; nrh;e;J mstPL bra;njd;/
mg;bghGJ ,U jug;gl tHf;fwp"h;fSk;
cldpUe;jhh;fs;/ mstPl;od; bghGJ ,Ue;j
\$';rd; fy;yhdJ giHa ru;nt kw;Wk; uP
rh;ntapd; bghGJk; ,Ue;j fy;ny jhd;/ giHa
kw;Wk; uP rh;ntapy; rh;nt vz;/256-1?d;
tlglw vy;iyapy; ve;j khw;wKk; ,Uf;ftpy;iy/
brhj;ij mse;j bghGJ giHa rh;nt fw;fs;
epiyapy; ,Ue;jJ/ uP rh;nt fw;fSk; ,Ue;jJ/
me;j giHa kw;Wk; uP rh;nt fw;fis mUfpy;
,Ue;j g{kpapy; cs;s fw;fspypUe;J mse;J
cWjp bra;J bfhz;nld;/ Kjy; Kiw msf;f brd;w



*bghGJ mUfpy; ,Ue;j g{kpapd;
 chpikahsh;fs;. mth;fs; g{kpf;Fs; brd;W
 fw;fis fz;lwptjw;fhf msf;f tplhjhy;. Mizah;. fhty;
 JiW cjtp bgw;W te;jjd; mog;gilapy;. kPz;Lk;
 mstPL bra;J giHa kw;Wk; uP rh;nt fw;fis
 cWjpg;gLj;jpf; bfhz;nld;/ uP rh;nt vz;/255?d;
 giHa rh;nt vz;fs; 281 A. 281 B. 282 A. 282 B/
 me;j giHa rh;nt vz;/255?d; m gjpntL kw;Wk;
 g[y tiuglj;jpd; rhd;wpl;l efiy ePjpkd;wj;jpw;F
 vLj;J te;jpUf;fpnwd;/ me;j Mtz';fis ePjpkd;wj;jpy;
 jhf;fy; bra;jpUf;fpnwd;/ mit Kiwna rhjrh/M15
 kw;Wk; rhjrhM/16/ uP rh;nt vz;/255?f;Fk;
 giHa rh;nt vz;/283?f;Fk; rk;ke;jk; ,y;iy/
 mjdhy;. rh;nt vz;/256-1?d; tlq[w vy;iyapy;
 rhjrhM/12?y; Fwpq;gplg;gl;l yp';!; mstpW;Fk;. giHa
 rh;nt vz;/283?d; tlq[w vy;iyapy; rhjrhM/6 y;*



S.A.No.858 of 2019

Fwpq;gplg;gl;l yp';!; mstpW;Fk; ,ilapy;
tpj;jpahrkhd 96 yp';!; msth dJ rh;nt
vz;255?y; tuhJ vd;why; rhpjhd;/ KJy;
tprhuziapd; bghGJ kPl;lh; mst[fspypUe;J
yp';!; mst[fiS khw;wp nfl;lhy; FHg;gkile;J
me;j tpj;jpahrkhd 96 yp';!; mst[rh;nt
vz;/255?y; tUk; vd;W brhy;yptpl;ljhF rhl;rp
jd;dpr;irahfnt brhy;fpwhh;/ giHa rh;nt
vz;/283?d; xU gFjpahdJ uP/rh;nt vz;/228-
1A g{kpf;Fs; tUfpwJ/ mjdhy; rh;nt
vz;/255?I ms;f;fhknyna rh;nt vz;/256-1
mse;J. jhth brhj;ij milahsk; fhl;oapUg;gJ
rhpahdJ jhd;/ ePkrhM/4?y;. kDjhuhpd;
mDgt gFjp kw;Wk; vjph;kDjhuh;fspd;
Mf;fpukpg;gl gFjpia Fwpj;J
fhl;lg;gl;oUf;Fk; mst[fs; rhpahdJ jhd;/

16.From the above evidence of D.W.3, the alleged encroachment by the defendants is established. The Courts below after analysing the above



S.A.No.858 of 2019

facts have rightly granted the relief of declaration of title and recovery of possession which warrants any interference by this Court.

17.In the result,

(i) the second appeal is dismissed. No costs.

(ii) the judgment and decree dated 15.02.2019 made in A.S.No.24 of 2018 on the file of the learned Sub Judge, Sathyamangalam, Erode District confirming the judgment and decree dated 16.04.2018 made in O.S. No. 11 of 2015 on the file of the learned District Munsif, Sathyamanagalam, Erode District is upheld. Consequently, connected miscellaneous petition is closed.

21 .11.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order

To

- 1.The Sub Judge, Sathyamangalam, Erode District
- 2.The District Munsif, Sathyamangalam, Erode District.
- 3.The Section Officer, VR Section, High Court, Madras

19



WEB COPY



S.A.No.858 of 2019

K.GOVINDARAJAN THILAKAVADI,J.

vsn



WEB COPY



S.A.No.858 of 2019

**Pre-delivery judgment made in
Second Appeal No.858 of 2019
and and C.M.P.No.17734 of 2019**

21.11.2025