



S.A. No.118 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 03.11.2025

PRONOUNCED ON : 02.02.2026

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A. No.118 of 2025 and

C.M.P. No.3571 of 2025

D.Renuka Devi Ammal

... Appellant

Vs.

N.Santhakumar (Died)

1.S.Shanmugavalli

2.S.Meenakshi Shankar

3.Vijayalakshmi

... Respondent

Prayer: This Second Appeal is filed under Section 100 of the code of Civil Procedure, against the Judgment and Decree of the learned Subordinate Judge, Alandur dated 02.12.2024 in A.S.No.216 of 2021 confirming the Judgment and Decree of the learned Additional District Munsif, Alandur dated 27.01.2017 in O.S.No.40 of 2005.

For Appellant : Ms.S.Anuradha Balaji

For R1 to R3 : Ms.P.Rajalakshmi



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JUDGMENT

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This Second Appeal is filed against the judgment and decree dated 02.12.2024 made in A.S.No.216 of 2021 passed by the learned Subordinate Judge, Alandur, confirming the judgment and decree dated 27.01.2017 made in O.S. No.40 of 2005 passed by the learned Additional District Munsif, Alandur.

2. The parties are referred to as arrayed in the suit. The respondent/plaintiff filed the above suit in O.S.No.40 of 2005 for the reliefs of mandatory injunction directing the defendant to remove the construction put up in the 'B' schedule property and for recovery of vacant possession of the 'C' schedule property after ejecting the defendant there from and after removing the superstructure put up by the defendant in the 'A' schedule property and for cost.

3. The case of the plaintiff is that the suit 'A' schedule property was purchased by the plaintiff from S.Sabdharishi and S.Vaidyanathan under a registered sale deed dated 18.10.1973. The vendors of the plaintiff purchased the schedule property under a registered sale deed dated 06.02.1963 from one



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Sitharaman, who purchased the 'A' schedule property under a registered sale deed dated 09.06.1962 from one R.Thanikaimalai. Ever since the date of purchase, the plaintiff is in possession and enjoyment of the 'A' schedule property. Further, contention of the plaintiff is that, to the east of the 'A' schedule property lies 'B' schedule property which is a battai and the plaintiff and his predecessors in title were using the same as battai more than the statutory period. The said battai is in existence from time immemorial and it is through the said battai the plaintiff is having ingress and egress to the 'A' schedule property. The defendant appears to have purchased the property adjacent to the 'B' schedule property and is now trying to put up construction in the 'B' schedule property. The 'B' schedule property is only a battai and the same cannot be used by anybody for the purpose of putting up any construction. Therefore, the defendant cannot interfere with the right of the plaintiff using the 'B' schedule property as battai. Hence, the plaintiff is constrained to file the above suit for the relief of permanent injunction restraining the defendant and her men from interfering or putting up any construction in the 'B' schedule property and thereby obstructing the plaintiff's right to use the 'B' schedule property as battai.



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4. Further contention of the plaintiff is that pending suit and in spite of the order of interim injunction, the defendant has put up pucca construction in the 'B' schedule property taking advantage of the fact that the plaintiff is away from India in connection with his employment. She would submit that the 'B' schedule battai is connecting Bharathiyar Street on the northern side and Vembuli Amman Koil Street on the southern side. The said construction was put up in a portion of the 'A' schedule property, and the same is described as 'C' schedule property in the plaint schedule. Hence, the plaintiff after amendment sought for the relief of mandatory injunction to remove the construction put up in the 'B' schedule property and recovery of vacant possession of the 'C' schedule property.

5. The claim of the plaintiff is resisted by the defendant/appellant stating that the plaintiff and his predecessors were totally entitled for 0.20 cents out of a total extent of 0.23 cents and not more than that as mentioned in the plaint as per the sale deed obtained by Ramaswamy Naidu from Parthasarathy, the original land owner from whom the defendant's father entered into an agreement for sale for the land admeasuring 0.03 cents and put up thatched hut therein. Subsequently, the defendant obtained a registered sale



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deed in her favour. Further contention of the defendant is that, neither the plaintiff nor the predecessors-in-title never enjoyed the 'B' schedule as common battai or for their ingress and egress to 'A' schedule land at any point of time. The said 'B' schedule property is only a private property of the plaintiff's vendor's vendor and was never allowed to enjoy the same by the plaintiff's predecessors-in-title. It is further contended that the plaintiff is in possession and enjoyment of the plaintiff 'A' schedule property as on date and never used the 'B' schedule property as ingress and egress to the same. Except the defendant's thatched house and the vacant site around the same the remaining surrounding land including the suit property are low lying area, unfit for construction as on date. The 'B' schedule property is not in existence and in use. The same was already converted into garden by raising plants which was well known to the plaintiff prior to the filing of the suit and that there is no cause of action in the suit.

6. The defendant and her father as power agent of one Parthasarathy, is now in possession and enjoyment to an extent of 0.05 cents, which is bounded on north by plaintiff's 'A' schedule, south by Venkatachalam Pillai, east by Brindavan Nagar and west by Ramaswamy Naidu's land. The



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measurements and existence of 'B' schedule property as narrated in the plaint is denied. The defendant alone is in possession and enjoyment of the 'B' schedule property which is described as battai therein, by putting up thatched hut and also raising plants. Hence, prayed for dismissal of the suit.

7. The Trial Court, upon framing necessary issues, partly decreed the suit by holding that the plaintiff is entitled to the relief of recovery of vacant possession of the 'C' schedule property after ejecting the defendant there from and after removing the superstructure put up by the defendant in the 'A' schedule property and dismissed the suit in respect of the relief of mandatory injunction in the 'B' schedule property.

8. Aggrieved by the said Judgment and Decree, the defendant preferred an appeal suit in A.S.No.216 of 2021. The First Appellant Court, after appreciating the materials on record, dismissed the appeal filed by the defendant and confirmed the judgment and decree in O.S.No.40 of 2005 on 27.01.2017 passed by the learned Additional District Munsif, Alandur. Challenging the same, the defendant has preferred the present second appeal.



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9. The learned counsel appearing for the appellant/defendant would submit that the Courts below have gravely erred in granting a mandatory injunction for removal of construction and recovery of vacant possession of the 'C' schedule property without proper appreciation of the documentary evidence, particularly Ex.B2 to Ex.B4, which unequivocally establish the defendant's valid title to the 0.03 cents of land forming the 'C' schedule property. She would submit that the findings of the Courts below are based on a flawed Advocate Commissioner's report, which was objected by both parties, and a misinterpretation of the term 'Battai' in the parent document and that the recent Corporation survey report, filed as additional evidence, conclusively demonstrates that the defendant's 0.03 cents are distinct and the plaintiff's 20 cents are intact, thereby negating any alleged encroachment. Further, she would submit that the plaintiff failed to discharge his burden of proving his title and specific encroachment and the relief of recovery of possession has been granted without a declaration of title, rendering the impugned judgment and decree unsustainable in law and on facts.

10. The learned counsel would submit that originally, the land in survey No.37/2 of Pazhavanthangal Village measured 1.42 acres, out of which



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71 cents was allotted to one Ammani Ammal, i.e., the sister of P.S.Parthasarathy Pillai and others, and the remaining 71 cents was partitioned between the three brothers, viz., P.S.Parthasarathy Pillai, P.S.Venkatesa Pillai and P.s.Radhakrishna Pillai. An extent of 23 cents was allotted to each of the brother and the remaining 2 cents was left out commonly for the purpose of “Battai” and “Pananjalai” thus totalling to 71 cents under a family arrangement cum Koorchit, dated 15.02.1950 marked as Ex.B3, during the cross examination of P.W.1. She further submitted that the said P.S.Parthasarathy Pillai, the common predecessor in title of the defendant and the plaintiff was allotted 23 cents of land out of 71 cents on the southern side along with right of access in the battai measuring 2 cents and referred to as Sl.Nos.5 & 6 of schedule ‘B’ under Ex.B3. The boundary for 23 cents of land allotted to S.Parathasarathy Pillai is as follows :

“A.M.R.முருகப்ப செட்டி கிராம நத்த மனைக்கு கிழக்கு,
உ ழ நம்பரில் கீழண்டை பொதுவாய் வைத்திருக்கும் வழி நடை
பனை சாலை நிலத்திற்கு மேற்கு இதன் மத்தியில் 23 சென்ட்
நிலமும்....”

2. சென்ட் பாட்டையின் எல்லைகள் பின்வருமாறு



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உ/ பழுவந்தாங்கல் கிராமத்தில் உ/ சர்வே 37/2ல் கீழண்டை வழி நடையும், மரந்தளை பாகமானது P.S.ராதாகிருஷ்ண பிள்ளை, P.S.வெங்கிடாசல பிள்ளை, உயார் இவர்கள் பட்டா நிலங்களுக்கு கிழக்கு, A.M.R.முருகப்ப செட்டி நிலத்திற்கு மேற்கு, காலஞ்சென்ற பார்த்தசாரதி பிள்ளை காலி மனைக்கு வடக்கு, அம்மணியம்மாள் மரந்தளை மனைக்கு தெற்கு, இதன் மத்தியில் பொதுவில் 2 செண்டு, விஸ்தீரணமுள்ள மனையில் 3/1 பாகமும், 16 பனை மரங்களும்.”

11. Therefore, it is evident that the said deed being the common parent deed for the defendant and the plaintiffs that 23 cents of land and 2 cents of battai or common passage was owned by the predecessor in title viz., S.Parthasarathy Pillai. Out of the said 23 cents of land, P.S.Parthasarathy Pillai sold 20 cents of land to one S.Ramasamy under a sale deed dated 26.09.1959, marked as Ex.B2. In the said deed, it is clearly stated that after selling 20 cents of land he retained 3 cents of land along with right of access in battai and pananjalai, which schedule from Ex.B2 is extracted hereunder :

“பஞ்சை சர்வே நெ.37/2ல் தென்புறம் 0.71 சென்ட் நிலத்தில் முருகப்ப செட்டி, பொன்னுசாமி முதலி மனைகளுக்கு வடக்கு வெங்கிடாசல பிள்ளை நிலத்திற்கு தெற்கு சுப்புராய பிள்ளை காலி மனைக்கு கிழக்கு, நாங்கள் அனுபவிக்கும் 23 சென்ட் நிலத்தில் தங்களுக்கு சுத்த விக்ரியம் செய்யும் 20 சென்ட் நிலம் போக



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மீதி எங்கள் வசம் இருக்கும் 0.3 சென்ட் நிலத்திற்கும், அதில் இருக்கும் பனஞ்சாலைக்கும் பாட்டைக்கும் மேற்கு இதன் மத்தியில் 20 சென்ட் நிலமும் அதில் உள்ள மரங்களை இந்த சொத்து பழுவந்தாங்கல் பஞ்சாயத்து போர்டு எல்லைக்குட்பட்டது.”

12. Whereas in the subsequent documents marked as Ex.B1 by which Ramasamy sold to one Thanigaimalai, unfortunately there is no mention about the remaining 3 cents of land retained by P.S.Parthasarathy Pillai, which mistake was carried forward in the subsequent documents under Exs.A1 to A5 and taking advantage of the same, the plaintiff is obstructing the right of the defendant. The defect in the registered documents affects the rights of the interested parties. The said Ramasamy cannot convey better title than what he has acquired under Ex.B2. The Trial Court ought to have rejected the plea of the plaintiff and accepted the plea of the defendant as to the ownership of 0.03 cents of land. The learned counsel would submit that the the pananjalai means the places where palm trees are planted and battai means passage and both are distinct. She further contended that the said P.S.Parthasarathy Pillai sold the remaining 3 cents of land and Jarbu Land to the defendant under a registered sale deed dated 13.12.1985, in which the boundaries are measuring as follows :

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“பஞ்சை சர்வே நெம்பர் 37/2ல், 0.20 சென்ட் கிரயப் பத்திரம் செய்தது போக மீதி எங்கள் வசம் இருக்கும் 0.3 சென்ட் நிலத்திற்கு ஜர்பு, நிலத்திற்குள் அடங்கியது பிருந்தாவன் நகர் மலையாளத்தார் கோபால கிருஷ்ணன் வால்கவர் பிளாட்டிற்கு மேற்கு சப்த ரிஷி வைத்தியநாதன் நிலத்திற்கு கிழக்கு, வெங்கடாஜலபதி பிள்ளை மனைக்கு வடக்கு, வெங்கடாஜலபதி நிலத்திற்கு தெற்கு இதற்கு மத்தியில் 0.3 சென்ட் நிலமும், ஜர்பு நிலமும் அடங்கியது.” “”

13. In the last line of the schedule in Ex.B4 clearly shows that the sale under Ex.B4 was only for 0.03 cents of land with Jarbu land which means in Telugu as garden land or its produce. From Ex.B3, being the common parent document to the defendant as well as the plaintiff, it is evident that S.P.Parthasarathy Pillai not only owned 23 cents of land and he was also entitled to the common passage of 0.02 cents of land, the right in which was also conveyed by himself directly to the defendant under Ex.B4. The learned counsel would further submit that, in fact, the plaintiff examined as P.W.1 has admitted in the cross examination that, the eastern portion of 0.23 cents is battai and pananjalai. Therefore, the land abutting 0.23 cents of land on the eastern side is battai which is independent of 0.23 cents land.



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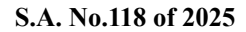
14. The learned counsel for the appellant/defendant would further submit that, P.W.1, during his cross examination, admitted that neither the preliminary report nor the final report of the Advocate Commissioner discloses about the difference in the physical feature in the property of the plaintiff with that of the defendant. P.W.1 himself admitted that at the time of purchasing the 0.20 cents of land there was 6 feet pit in the said property and the same is still in existence. She further submits that the defendant has put up construction and dug a well in the property which is a flat land. Even in the plaint pleadings, the plaintiff has admitted that the defendant appears to have purchased the property adjacent to the 'B' schedule property and is now trying to put up construction in the 'B' schedule property. It shows that the defendant owned and possessed the property purchased by her which is adjoining the 'B' schedule property shown as battai in the plaint. She would submit that the plaintiff has not approached this Court with clean hands as there are inconsistent pleas taken by him with regard to the alleged encroachment.



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15. The learned counsel would further submit that the description of the schedule 'C' property as vacant land is also patently wrong as the defendant is residing in a construction put up thereon. In the plaint, though it was mentioned that the defendant had encroached into the 'A' schedule property and put up construction, which is described in the 'C' schedule property and also put up construction in the B schedule property, but in the proof affidavit, the plaintiff has mentioned that the said construction was hurriedly and allegedly made by the defendant when the plaintiff was out of station due to his employment. Therefore, there is complete contradiction in his pleadings and evidence and further there is no period or time mentioned with regard to the alleged encroachment that was allegedly made by the defendant. Therefore, it is crystal clear that the construction was made by the defendant prior to the filing of the suit in the property purchased by her and the plaintiff has completely suppressed about the existence of the structure and filed the suit and thereafter amended the plaint for the relief of recovery of possession by inventing the cause of action, which is unsustainable.



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warranting interference by this Court. The learned counsel would further submit that where the plaintiff's title is under a cloud and he does not have possession, the suit for injunction simpliciter would not be sufficient and the remedy is suit for declaration and possession, with or without consequential injunction. It is further submitted that the weakness of the defence cannot be a justification to decree the suit in favour of the plaintiff. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence.

17. In support of her contention, she relied upon the following Judgments ;

1. ***(2008) 4 SCC 594*** in the case of ***Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs and others.***
2. ***1965 SCC Online SC 111*** in the case of ***Bhagwati Prasad Vs. Chandramaul.***
3. ***2023 SCC Online SC 9*** in the case of ***Smriti Debbarma (Dead) through Legal Representative Vs. Prabha Ranjan Debbarma and others.***



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18. Ms.P.Rajalakshmi, the learned counsel appearing for respondent / plaintiff, on the other hand, submits that, the denial of title of the respondent / plaintiff to the 'A' schedule property by the appellant / defendant is not bonafide. Mere denial without supporting evidence cannot defeat a registered conveyance supported by long possession. The courts below, after appreciating the materials on record including Ex.A1, Ex.A4 and Ex.B2 which is corroborated by the commissioner's report, found that the respondent / plaintiff is having absolute title in the 'A' schedule property and that he is in possession over the same. The courts below also found that, the denial of title by the appellant / defendant is evasive and contradictory. She would further submit that the appellant / defendant admitted that, the 'B' schedule property is a battai and the suit and the appeal suit in O.S. No.1246/1986 and A.S. 58/96 filed by her was in respect of 'B' schedule property and that the said suit and the appeal suit were dismissed. She would further submit that the Advocate Commissioner's report and plan were prepared after joint inspection with the Taluk surveyor only after verifying the town survey and revenue records. The report correlates precisely with the documents of title (Ex.A1 and Ex.A4) and identifies encroachment of only 26 sq. meters by the appellant / defendant.



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The appellant / defendant failed to file any objections to the commissioner's report. The courts below have used the commissioner's report and plan as corroborative evidence to establish the title of the plaintiff in the 'A' schedule property which was already established by documentary evidence and therefore, the report and plan of the Advocate Commissioner was not considered as an independent source of title. Hence, the reliance of the commissioner's report is proper and lawful. Both the courts below have concurrently held that the respondent / plaintiff has valid title, based on lawful conveyance and that the appellant / defendant is in unauthorised occupation of a portion of road land (battai) forming part of the 'B' schedule property. The courts below also observed that the appellant / defendant's sale deed marked as Ex.B4 is invalid as it purports to transfer of public land. Having lost in the earlier proceedings, the appellant / defendant is obstructing the lawful rights of the plaintiff. Therefore, the concurrent findings of the courts below, based on evidence and law, warrants any interference and the Second Appeal is liable to be dismissed as devoid of merits.

19. Heard on both sides. Records perused.



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20. The appellant / defendant has challenged the judgment and decree of the courts below, claiming right over a portion of the land comprised in the 'A' schedule property, which has been described in the plaint as 'C' schedule property. According to the appellant / defendant, originally the land in S.No.37/2 of Palavanthangal village, measured 1.42 acres, out of which 0.71 cents was allotted to Mrs. Ammani Ammal, sister of Mr. Parthasarathy Pillai and others and the remaining 0.71 cents was partitioned between the three brothers namely Parthasarathy Pillai, Venkatesa Pillai and Radhakrishnan Pillai. The further contention of the appellant / defendant is that an extent of 0.23 cents was allotted to each of the brothers and remaining 0.02 cents was left out commonly for the purpose of battai and pananchalai under a family arrangement cum koorchit, dated 15.02.1950 marked as Ex.B3. The said Parthasarathy Pillai, common predecessor in title of the appellant / defendant and the respondent / plaintiff was allotted 0.23 cents of land out of 0.71 cents on the southern side with right of access in the battai measuring 0.02 cents. Out of the said 0.23 cents of land, Parthasarathy Pillai sold 0.20 cents of land to one Ramasamy under Ex.B2 sale deed dated 26.09.1959 and he had retained 0.03 cents of land along with right of access in battal and Pananchalai. The said Ramasmy sold the above 0.20 cents of land under



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Ex.B1 to one Thanikaimalai and unfortunately, there is no mention about the remaining 0.03 cents of land retained by Parthasarathy Pillai, which mistake was carried forward in subsequent documents under Ex.A1 to A5 and the respondents / plaintiffs are taking advantage of the same. The further contention of the appellant / defendant is that the said Parthasarathy Pillai sold the remaining 0.03 cents of land and Jarbu land (garden land) under Ex.B4 dated 13.12.1985 to the appellant / defendant. Therefore, the appellant / defendant would contend that Ex.B3 family arrangement deed is the common parent document to the appellant / defendant as well as the respondent / plaintiff and from it, it is evident that the said Parthasarathy Pillai not only owned 0.23 cents of land but also a common passage of 0.02 cents of land, which was conveyed by him to the appellant / defendant under Ex.B4.

21. A plain reading of the schedule of property in Ex.B4 would show that, the entire sale deed was executed for 0.03 cents of land described as battai in Ex.B2 parent document. Even in Ex.B4 sale deed in favour of the appellant / defendant, it is recited that, out of 0.71 cents, 0.20 cents of land had already been sold under the sale deed dated 26.09.1959 by Ramasamy Naidu and the remaining 0.03 cents, earmarked as battai was only conveyed by



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Parthasarathy Pillai to the appellant / defendant. Therefore, as per the schedule of property described in Ex.A1 sale deed and Ex.B2 parent document it is made clear that, the 0.03 cents of land is mentioned as battai, a common access and not as private alienable property. In Ex.B2, which is a parent document of Ex.A1, the eastern boundary is clearly mentioned as battai, which is detailed as 'B' schedule property in the plaint and the same is also admitted by the appellant / defendant in her proof affidavit. Moreover, it is admitted fact that, the above mentioned battai was taken over by the Chennai Corporation as public road pursuant to the directions of this Court in W.P. No.8854 / 2017. However, in Ex.B4, the eastern boundary is not mentioned as battai and no linear measurements were also not given in the above sale deed in favour of the appellant / defendant. It only goes to show that the appellant / defendant had only purchased the battai portion, which forms part of the public pathway. Moreover, it is not the case of the appellant / defendant that her vendor Parthasarathy Pillai originally owned more than 0.23 cents of land. The appellant / defendant also admitted during her cross examination that her vendor was owning only 0.23 cents of land, out of which, 0.20 cents of land was sold to the respondent / plaintiff's predecessor in title, while the remaining 0.03 cents of land was sold to the appellant / defendant. Therefore, the above



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admissions, in corroboration with the documentary evidence, it is made clear that the appellant / defendant has purchased the 0.03 cents of land identified as battai. Therefore, the appellant / defendant's claim over 'C' schedule property which form part of 'A' schedule property is unsustainable. Moreover, the appellant / defendant herself admitted that she had previously filed a suit against the Alandur Municipality claiming ownership over the same battai portion and that such claim was dismissed by the competent Civil Court. Moreover, the appellant / defendant has not disputed the respondent / plaintiff's title to the 'A' schedule property. Even after amending the plaint by including 'C' schedule property, which forms part of the 'A' schedule property, the appellant / defendant did not file any additional written statement by claiming title and possession in the 'C' schedule property. It is well settled proposition that pleading cannot be improved or supplemented by oral evidence, and in the absence of any specific pleadings, denying the respondent / plaintiff's ownership or possession over the 'A' and 'C' schedule properties, at belated stage, the appellant / defendant cannot be permitted to contend that she is having absolute ownership and possession over the 'C' schedule property. Moreover, the Advocate Commissioner's report and plan establishes the alleged encroachment by the appellant / defendant in the 'A' schedule



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property. The report and plan submitted by the Advocate Commissioner is relied by the courts below, since it has corroborated the title and boundaries already established by documentary evidence produced on the side of the respondent / plaintiff. Moreover, the courts below have rightly rejected Ex.B6 to Ex.B9 documents, stating that they are subsequent to the suit. The appellant / defendant failed to establish that she was residing in the disputed portion at the time of earlier litigation. Therefore, mere denial of the respondent / plaintiff's title by the appellant / defendant without supporting documents cannot be accepted. The courts below have concurrently held that the respondent / plaintiff is having valid title in 'A' and 'C' schedule property, based on lawful conveyance such as Ex.A1, A4 and B2 and also based on the commissioner's report and rightly held that the appellant / defendant has encroached upon the respondent / plaintiff's property. No perversity or infirmity is found in the findings of the courts below, which warrants interference by this Court.

22. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.

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ii. The Judgment and Decree dated 02.12.2024, passed in A.S.No.216 of 2021, on the file of the Subordinate Court, Alandur, confirming the Judgment and Decree dated 27.01.2017, passed in O.S.No.40 of 2005, on the file of the Additional District Munsif Court, Alandur, is upheld.

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Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To

1. The Subordinate Judge, Alandur
2. The Additional District Munsif, Alandur
3. The Section Officer,
VR Section, High Court, Madras.



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S.A. No.118 of 2025

K.GOVINDARAJAN THILAKAVADI, J.

Lpp/bga

**Pre-delivery Judgment in
S.A. No.118 of 2025 and
C.M.P. No.3571 of 2025**

02.02.2026