



WEB COPY

SA No. 1154 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-08-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**SA No. 1154 of 2012
and M.P. No.1 of 2012**

M.Prabhu S/o Mukundhan,
No.1 Thiruvalluvar Street,
VOC Nagar, Pammal,
Chennai – 600 075.

..Appellant(s)

Vs

1. C.Arjunan (died)
S/o Chinnakannan Naicker No29 Veeraperumal
Koil St Mylapore Chennai-600 004.
2. Loganathan
Panchayat Colony Pammal Chennai-600 075.
3. Elumalai S/o.C.Arjunan,
No.29, Veeraperumal Koil Street, Mylapore,
Chennai - 600 004.

[The 1st respondent died and the 3rd respondent
has been brought on record as legal
representative of the deceased / 1st respondent
vide Court order dated 21/08/2025 made in
C.M.P. No.17182 of 2025].

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, as
against the Judgment and Decree of the learned Subordinate Court, Tambaram
in A.S.No.46 of 2010 dated 30.04.2012 confirming the Judgment and Decree of
the learned Principal District Munsif, Alandur in O.S.No.523 of 1998 dated
15.03.2010.



For Appellant(s):

Ms. T. Jayalakshmi for M/s.paul And Paul

For Respondent(s):

M/s.V.Manisekaran [for R3]

R1 – Died.

R2 – Served – No appearance.

JUDGMENT

The Second appeal has been preferred as against the decree and judgment passed by the Subordinate Judge, Tambaram in A.S.No.46 of 2010 dated 30.04.2012. The appellant herein is the 2nd defendant in the main Suit filed by the deceased 1st respondent herein in O.S. No.523 of 1998 on the file of the Principal District Munsif, Alandur for the reliefs of declaration and recovery of possession of the Suit schedule properties. The Said Suit was decreed by the trial Court vide order dated 15.03.2010. Aggrieved by the said decree and judgment passed by the trial Court, the 2nd defendant has preferred an appeal before the First Appellate Court and the said appeal was dismissed by confirming the judgment and decree passed by the trial Court. Aggrieved the said decree and judgment, the present second appeal has been filed.

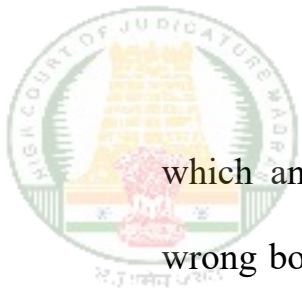
2. The *case of the Plaintiff* before the trial Court is that the ‘A’ schedule property belongs to the Plaintiff through a Sale Deed dated 27.03.1965. The entire property, belonged to the vendors of the Plaintiff, was formed into a layout and the Plot Nos.9 and 10 were purchased by the Plaintiff. Patta was also granted in favour of the Plaintiff and he also paid kist to the Suit property.



While so, the defendants have encroached the poromboke land, which was earmarked as approach road on the western side of the 'A' schedule property by putting up some superstructure. While putting up the superstructure on the encroached portion, the defendant trespassed into the portion of the 'A' Schedule property on its western side measuring 5 feet east to west on the southern side and 10 feet East to west on the northern side, and the entire width and has annexed the same with his rest of the encroached portion. The defendants have dug foundation for the purpose of putting up walls for the superstructure and have fenced it. The Plaintiff is the resident of Mylapore. The defendants are proceeding with unlawful activities in spite of objections raised by the Plaintiff, taking advantage of his absence. The defendants are liable to deliver the vacant possession of 'B' schedule property. Therefore, the Plaintiff has filed the Suit.

3. The brief averments of the *written statement filed by the 2nd defendant are as follows:*

The Suit is not maintainable and the same is liable to be dismissed. There is no property available on land in Survey No.131/1 of Pammal Village, which has been assigned as Plot Nos.9 and 10 and even the boundaries and descriptions given in the Plaint Schedule -A are wrong. The Plaintiff has a land in Survey No.131/1, Pammal Village, but the western boundary of the said property could only be the land referred as shop site in Survey No.140/3, in



which an approved layout has been formed and now the Plaintiff is giving wrong boundary on the western side so as to encroach the same along with his property to claim advantage. The plot, which the Plaintiff possesses, is formed out of an unapproved layout in the land situated in S.F. No.131/1 and even if his sale deed or any other document refers the western boundary as road, ignoring the existence of a plot in Survey No.140/3 in an approved layout, the Plaintiff cannot claim any right over the property in S. No.140/3. The Plaintiff purchased the properties in Plot Nos.9 and 10 having access towards 20 feet wide road provided in the Layout and the said layout is not extended till the tank bund street and hence even if the western boundary is given as tank bund street, the same is not acceptable. Even as per the Sale Deed dated 27.03.1965, the Plaintiff has given wrong measurement for his advantage and referred the 20 feet layout road as 30 feet layout road. The land in S. No.140/3, which was the western poromboke land in the hands of Pammal Town Panchayat, had been reclassified and developed as layout approved through Proceedings dated 04.10.1973. The defendant purchased the property through a Registered Sale Deed dated 12.12.1984 and he is in lawful possession and enjoyment of the property. Therefore, the Plaintiff is not the owner of the entire 'A' Schedule property, since he sold almost major extent of the property to Mr. Sampath, Mr. Paulraj and Mr. Nagaraj and without impleading those purchasers, the Suit is bad for non-joinder of necessary parties. Therefore the Suit is liable to be dismissed.



4. Based on the above said pleadings and after hearing both sides, the trial court has framed the following *issues and additional issues* for trial:-

Issues:

1. *Whether the Plaintiff's property is situated in S.No.130/1 and the defendant's property is situated in S.No.140/3?*
2. *Whether the 'B' schedule property is a street?*
3. **Whether the Plaintiff is the owner of 'B' Schedule property?**
Whether the defendant has to deliver vacant possession of the 'B' schedule property to the Plaintiff?
4. **To what other reliefs, the Plaintiff is entitled to?**

Additional Issues:

1. **Whether the boundaries and descriptions given in the Plaintiff 'A' Schedule are wrong as alleged by the defendant in his written statement?**
2. **Whether the Suit is bad for non-joinder of necessary parties as alleged by the 2nd defendant in his written statement?**

5. Before the trial court, on the side of the plaintiffs, witnesses P.W.1 was examined and marked exhibits, Exs.A.1 to A.9. On the side of the defendants, witnesses D.W.1 was examined and marked exhibits, Exs.B.1 to B5. The Court witness CW1 was examined and Ex.C.1 and Ex.C.2 were also marked. The trial court after considering the evidences adduced on both sides and perusing the records, decreed the Suit and granted two months' time for



handing over vacant possession of the property. Aggrieved by the said decree and judgment, the 2nd defendant has preferred an appeal before the First Appellate Court in A.S. No.46 of 2010 on the file of Sub Court, Tambaram on various grounds.

5.1. The First Appellate Court has framed the following *points for determination*:

(i) Whether the Plaintiff in O.S. No.523 of 1998 is entitled to the reliefs, as prayed for in the Suit?

(v) Whether the judgment and decree passed by the trial Court are liable to be set aside?

6. After hearing both sides and after evaluating the oral and documentary evidences adduced on either side, the First Appellate Court dismissed the appeal through a judgment and decree dated 30.04.2012 by confirming the judgment and decree passed by the trial Court. Aggrieved by the said decree and judgment, the present second appeal has been preferred by the appellant / 2nd defendant.

7. For the sake of convenience and brevity, the parties herein are referred as plaintiff and defendants, as referred before the trial Court.



8. The learned counsel appearing for the appellant would submit that the Plaintiff has filed a Suit for the reliefs of declaration and recovery of possession by alleging that the alleged properties have been purchased by the Plaintiff through a Sale Deed dated 27.03.1965 and he has been in possession and enjoyment of the property, while so, the appellant / 2nd defendant had encroached the western side of the property. The case of the Plaintiff is that the encroached portion in the property is in the 'A' Schedule property on its western side measuring 5 feet east to west on the southern side and 10 feet East to west on the northern side, whereas the Commissioner's report shows that one small portion was encroached. Therefore, the Plaintiff failed to prove the alleged encroachment. In fact, the 1st respondent / Plaintiff purchased the property in S.F. No.131/1. Whereas the appellant / 2nd defendant has purchased the property in S.F. No.140/3. In S.F. No.131/1, no any encroachment is made by the appellant / 2nd defendant. However, the Plaintiff has failed to prove and identify the property by appointing a qualified Surveyor. Though before the trial Court, an Advocate Commissioner was appointed to inspect the property with the help of a qualified surveyor, as the Surveyor was not available, the Commissioner has inspected the property in the absence of the Surveyor and thereby, the property has not been properly identified, as to whether the alleged construction was made in S.F. No.131/1, which is said to have belonged to the 1st respondent / Plaintiff. Only based on the Commissioner's report and without identifying the property by a qualified Surveyor, the trial Court has



decreed the Suit. Therefore, the Courts below have rendered perverse findings that the property belonged to the Plaintiff and there is an encroachment in the property in S.F. No.131/1. In fact, the said property belongs to the defendants through a registered Sale Deed dated 12.12.1984 and the same is situated in S.F. No.140/3. When the defendants take a categorical plea that they constructed a building in the land belonging to the defendants in S.F. No.140/3, without identifying that as to whether the above said building is situated within the property in S.F. No.131/1, the Suit has been decreed by the trial Court in favour of the Plaintiff. Therefore, the appeal has to be allowed by setting aside the judgments and decrees of the Courts below by allowing this second appeal.

9. The learned counsel appearing for the respondents would submit that the Plaintiff filed a Suit for declaration and recovery of possession. The Plaintiff purchased the Suit property through a Sale Deed dated 27.03.1965 and the appellant / 2nd defendant encroached upon the poromboke land on the western side of the said property of the Plaintiff in S.F. No.131/1. An Advocate Commissioner was also appointed in this case and he has also inspected the Suit property and filed his report. As per the report of the Advocate Commissioner, there is an encroachment by the 2nd defendant, thereby, the Courts below have rendered concurrent findings that the defendants encroached the property of the Plaintiff, thereby decreed the Suit.



10. Heard both sides and perused the entire materials available on record.

After hearing both sides and perusing all the records, this Court is inclined to dispose of the case at the stage of admission itself, as there are no substantial questions of law involved in this case.

11. On a careful perusal of records, it is seen that the Plaintiff filed a Suit in respect of the Property in S.F. No.131/1 alleging that the property purchased by him through a Sale Deed dated 27.03.1965. In the western side of the property, the defendants encroached the property to an extent of 1875 ssq. ft., but the defendants denied the alleged encroachment in the Plaintiff's property and according to the defendants, the property purchased by them through a registered Sale Deed dated 12.12.1984 and they were permitted to make a construction in S.F. No.140/3. Therefore, the defendants never encroached the property of the Plaintiff.

12. Both sides have filed the documents in respect of their respective title deeds. Since the Plaintiff filed a Suit for declaration and recovery of possession, he has to prove his case by identifying the property. In order to identify the property, which is said to be encroached, an Advocate Commissioner was appointed and the Commissioner also inspected the property, but the Commissioner failed to identify the property through a



Surveyor as to whether the alleged encroachment is situated within the property of the Plaintiff in S.F. No.131/1. When the defendant categorically denied the existence of encroachment in S.F. No.131/1, it is the duty of the Plaintiff to establish that there is an encroachment in S.F. No.131/1. Though the Commissioner was appointed, the Commissioner has not taken the assistance of a qualified Surveyor to identify the Survey number. Therefore, the Plaintiff failed to prove the identity of the property. However, the defendant has not claimed any right over the property situated in S.F.No.131/1. According to the defendant, he purchased the property in S.F. No.140/3 through a registered Sale Deed dated 12.12.1984. Therefore, even without identifying the property through Surveyor, the Commissioner has noted out the encroachment. The defendant also not disputed the Suit property in S.F. No.131/1, but his claim is only in respect of S.F. No.140/3 and he did not encroach the property in S.F. No.131/1. The Suit property is also mentioned as Survey number 131/1, if any encroachment is made in the said S.F. No.131/1, the Plaintiff is entitled to decree for that particular property only. The Courts below on available evidences, came to conclusion that the property in S.F. No.131/1 belongs to the Plaintiff and if any encroachment is available in S.F. No.131/1, the Plaintiff is entitled to remove the encroachment. If the property is available in S.F. No.140/3, the Plaintiff has no right and thereby as per the submissions made by the appellant that he has not encroached the property, recording the same, this second appeal can be *disposed of*. If any encroachment is made in S.F.



No.131/1, the same can be removed as per the decree and judgments of the Courts below and if the property is situated in S.F. No.140/3, the decree cannot be executed, as the Suit is filed in respect of the property in S.F. No.131/1 and the appellant / 2nd defendant is at liberty to take appropriate steps to protect his rights in the manner known to law in respect of his property situated in S.F. No.140/3.

14. Since there are no substantial questions of law involved in this case, recording the above said submissions, the Second appeal is *disposed of*. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

07-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

MJS

To

1. The Subordinate Judge, Tambaram.
2. The Principal District Munsif, Alandur.



WEB COPY

SA No. 1154 of 2



P.DHANABAL, J.

MJS

SA No. 1154 of 2012

07-08-2026