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S.A. No.544 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.02.2026
PRONOUNCED ON : 06.08.2026

CORAM:

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

S.A.No.544 of 2014

1. Abdul Muthalif (Died)
2. Taj Nisha
3. Sahul Ameen
4. Shajahaan
5. Jehangir
6. Jebarullah
7. Sherbudin
8. Sheik Abdullah

(Appellants 2 to 8 brought on record as legal heirs of the deceased sole appellant vide order dated 18.07.2022 made in C.M.P.Nos.894, 899, 904 of 2022)

..Appellants/ Plaintiffs

Vs



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1. Ramasamy Padayachi (Died)

2. Chellammal (Died)

(Appellants 2 to 8 are exempted from substituting the legal representatives of R2, vide court order dated 23.08.2022 made in C.M.P.No.893 of 2022)

3. Rajendran

4. Rajah

5. Chandra

6. Shanthi

(R1 died – RR3 to 6 brought on record as legal heirs of the deceased R1 vide order dated 04.08.2022 made in C.M.P.Nos.888, 890 & 901 of 2022)

..Respondents/
Defendants

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908 against the Judgment and Decree dated 16.08.2013 in A.S.No.5 of 1989 on the file of the Sub Court, Ariyalur, reversing the Judgment and Decree dated 20.11.1987 in O.S.No.79 of 1981 on the file of the District Munsif Court, Jayankondam.

For Appellants : Mr.N.Manokaran

For Respondents : Mr.P.Balamurugan



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J U D G M E N T

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This Second Appeal is filed against the Judgment and Decree dated 16.08.2013 in A.S.No.5 of 1989 on the file of the Subordinate Court, Ariyalur, which reversed the Judgment and Decree dated 20.11.1987 in O.S.No.79 of 1981 on the file of the District Munsif Court, Jayankondam.

2. The appellant was the plaintiff and the respondents were the defendants in O.S.No.79 of 1981. The suit was originally instituted as O.S.No.15 of 1977 on the file of the District Munsif Court, Ariyalur. Upon transfer, it was renumbered as O.S.No.79 of 1981 on the file of the District Munsif Court, Jayankondam.

3. By judgment dated 19.08.1981 in O.S.No.79 of 1981, the Trial Court partly decreed the suit, awarding the plaintiff an extent less than claimed. Aggrieved thereby, the plaintiff preferred A.S.No.99 of 1982. By judgment dated 04.04.1984, the Subordinate Court, Ariyalur, set aside the decree and remanded the suit for fresh disposal, primarily to enable the proper identification of the properties covered by the mortgage, the Court auction, and the delivery proceedings.



4. After remand, the warrant issued to the Advocate Commissioner was reissued. The Commissioner conducted a fresh inspection and submitted an additional report linking the descriptions in the mortgage deed, the sale certificate and the delivery receipt to the village revenue records. Thereafter, by judgment dated 20.11.1987, the Trial Court decreed the suit as prayed for in the amended plaint.

5. The second defendant preferred A.S.No.5 of 1989. By judgment dated 16.08.2013, the First Appellate Court modified the decree. While permitting the correction of certain survey numbers for the proper identification of the properties, it confined the plaintiff's declaration of title to the extent specified in the Court-auction sale certificate. Aggrieved by that modification, the plaintiff has preferred this Second Appeal.

6. The plaintiff's case is that Items Nos.1 to 8 of the suit properties originally belonged to defendants 1 and 2. They mortgaged those properties in favour of one Kumarasamy Padayachi under a registered usufructuary mortgage deed, dated 05.02.1962. The mortgagee thereafter instituted O.S.No.710 of 1966 and obtained a decree. In execution of that decree, the mortgaged properties were sold by court auction. The plaintiff became the successful bidder for



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Rs.4,880/- on 12.06.1968. The sale was confirmed, and the sale certificate was issued in his favour on 05.08.1968. Delivery of possession was effected by the Court on 07.10.1968.

7. According to the plaintiff, the sale certificate and delivery of possession vested title to Items Nos.1 to 8 in him, and he has remained in possession and enjoyment of those properties since then. Items Nos. 9 to 15 were purchased separately by him under registered sale deeds executed between 1970 and 1975. He further pleaded that he had been paying kist and house tax in respect of the properties and that the defendants, who had lost title at the court auction, obstructed him on 17.01.1977, while he was harvesting the ragi crop. On that cause of action, he instituted the suit seeking a declaration of title and a permanent injunction, or, in the alternative, recovery of possession.

8. The defendants resisted the suit by filing a written statement, and after the plaint was amended, an additional written statement was filed. Their principal defence was that the survey numbers, extents, and boundaries set out in the plaint did not match those in the mortgage deed, the sale certificate, and the delivery receipt. According to them, S.F.No.164/2 measured only Ac.0.87 and stood in Patta No.48 in the first defendant's name, so the plaintiff could



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claim only the extent covered by the sale certificate in that survey field.

S.F.No.164/10 had a total extent of Ac.1.31, but the plaintiff was not entitled to the whole extent. They further contended that S.F.Nos.164/5 and 164/7 were their ancestral properties, while S.F.Nos.164/6 and 235/11 had been independently purchased by the second defendant, and that none of those properties formed part of the mortgage or the Court-auction sale.

9. The defendants also pleaded that the plaintiff had orally agreed to reconvey Items Nos. 1 to 8 to them for Rs.4,700/- in 1968. They claimed that Rs.5,000/- had been paid and that an electric pump set had been delivered to the plaintiff, and therefore asserted that they had continued in possession of the properties under that arrangement.

10. Based on these pleadings, the Trial Court framed issues on the correctness of the survey numbers and boundaries, the plaintiff's entitlement to the additional extents claimed, whether S.F.Nos.164/11, 164/6 and 235/11 were part of the mortgage and the Court-auction sale, and whether the plaintiff was entitled to a declaration of title, a permanent injunction and recovery of possession.



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11. On the plaintiff's side, the plaintiff examined himself as P.W.1, and P.Ws.2 to 4 were also examined, including after remand. Exs.A1 to A16 were marked. Ex.A1 is the sale certificate, Ex.A2 is the delivery receipt, and Ex.A3 is the house tax receipt. Ex.A4 to A8 are the registered sale deeds relating to Item Nos.9 to 15, while the others are kist receipts, some of which were marked after remand.

12. On the defendants' side, D.Ws.1 and 2 were examined, and Exs.B1 to B7 were marked. Ex. B7 is the usufructuary mortgage deed dated 05.02.1962, registered as Document No.295 of 1962 in the file of the Sub-Registrar, Udayarpalayam. The reports and plans submitted by the Advocate Commissioner were marked as Exs.C1 to C7. Ex.C1 is the original report dated 03.04.1978, filed before remand. Ex.C7 is the additional report dated 21.01.1986, filed after remand, following the reissue of the commission warrant and a fresh inspection on 04.01.1986.

13. By judgment dated 19.08.1981, the Trial Court held that the plaintiff had failed to establish that the boundaries described in Exs.A1 and A2 enclosed only the properties belonging to defendants 1 and 2, as lands belonging to third



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parties were also found within the larger boundary block claimed by him. It therefore declined to apply, without qualification, the principle that boundaries prevail over extent, and decreed the suit only to a limited extent. It further held, among other things, that S.F.No.164/11 did not form part of the mortgage or the Court-auction sale, and that the plaintiff had not established title to 21 cents in S.F.No.164/6.

14. Aggrieved by that judgment, the plaintiff preferred A.S.No.99 of 1982. The First Appellate Court found that the disputed properties required proper identification in relation to the mortgage deed, the sale certificate and the delivery proceedings. Accordingly, by judgment dated 04.04.1984, it set aside the decree and remanded the suit to the Trial Court for fresh disposal after such identification.

15. After remand, the Advocate Commissioner conducted a fresh inspection and submitted the additional report referred to above. Relying primarily on that report, the Trial Court held that, although the survey numbers in the original plaint were erroneous, the four boundaries substantially corresponded to the properties identified on the ground. On that basis, it accepted the amended plaint schedule and, by judgment dated 20.11.1987, decreed the suit as prayed for.



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16. Aggrieved by the decree dated 20.11.1987, the second defendant preferred A.S.No.5 of 1989. The First Appellate Court accepted that certain survey numbers required correction to properly identify the properties. It held, however, that the plaintiff, as a Court-auction purchaser, could not claim any extent beyond what had been brought to sale under Ex. A1 and delivered under Ex. A2 in respect of items 1-B, 3 to 5 and 8. It further held that the Advocate Commissioner's report could be relied upon to identify the properties and correct erroneous survey numbers, but not to enlarge the subject matter of the Court-auction sale or confer title over land not covered by the sale certificate. Accordingly, by judgment dated 16.08.2013, it modified the decree. It held that the plaintiff was not entitled to a declaration of title or a permanent injunction in respect of any extent exceeding that covered by Ex. A1.

17. This Second Appeal was admitted on 09.06.2014 on the following substantial questions of law:

- (i) Whether or not the lower appellate Court have misread the evidence, which have lead to miscarriage of justice?
- (ii) Whether or not that the lower appellate Court have committed error in not considering the materials



or relevant evidence, which considered would have lead to an opposite conclusion?

(iii) Whether or not the lower Court have committed error in not considering and advertng to the reasons assigned by the trial Court, before setting aside the findings and reversing the judgment and decree of the trial Court?

(iv) Whether or not the findings recorded by the lower appellate Court is supported by evidence or the findings reached by drawing inference in a far-fetched manner constituted perverse finding, warranting the interference of this Court?

18. Learned counsel for the appellants submitted that the appeal is confined to Item Nos.1-B, 3, 4, 5 and 8, with no dispute regarding the remaining items. According to him, after remand, the Trial Court rightly relied on the Advocate Commissioner's report, which identified the suit properties with reference to Exs.B7, A1 and A2 and found that the four boundaries corresponded with the properties on the ground. It was contended that the discrepancies related only to the survey numbers and extents, and that the amendment of the plaint schedule merely brought the description of the properties into conformity with the Commissioner's findings. Learned counsel



further submitted that, since the defendants had admitted the four boundaries, the settled principle that boundaries prevail over extent ought to have been applied. In support of these submissions, reliance was placed on ***Dharmakanny Nadar v. Mahalingam Nadar*** reported in AIR 1963 Mad 147; ***Roohnisha Beevi v. A.M.M. Mahudu Mohamed*** reported in 1998-1-L.W. 244; ***Subhaga v. Shobha*** reported in (2006) 5 SCC 466; ***A. Chandran v. Periyammal*** reported in 2011 (1) CTC 663; ***S. Lakshmi v. M. Tamilselvi*** reported in 2013 (1) MWN (Civil) 206, ***R. Radhakrishnan v. R. Nagarajan*** reported in 2014-2-L.W. 919; and ***Natarajan v. Sathiyavani*** reported in 2016-1-L.W. 127.

19. Learned counsel for the respondents submitted that the plaintiff traces his title exclusively to Exs.A1 and A2, and that, as a Court-auction purchaser, he could acquire only the right, title and interest of the judgment-debtors in the properties that were actually mortgaged, brought to sale and sold in execution. According to him, Ex. B7, the execution proceedings, the sale certificate and the delivery receipt constitute a continuous chain of title, beyond which the plaintiff cannot claim any property. It was argued that the Advocate Commissioner's report could be used only to identify the properties and correct errors in the survey numbers, but not to enlarge the plaintiff's title. It was further submitted that S.F. Nos.164/6 and 235/11 were independent properties claimed by the second defendant and had not been shown to form part of the mortgage or the



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Court-auction sale. The plaintiff could not, therefore, claim those properties merely because they fell within a wider boundary description. Learned counsel also contended that the principle that boundaries prevail over extent is only a rule of construction for identifying property conveyed under a private instrument and cannot be invoked to enlarge the scope of a judicial sale or defeat the independent title of a person who was not a party to that sale. Learned counsel further submitted that, if the plaintiff was aggrieved by an incorrect description of the survey number or extent in the sale certificate, his proper remedy was to seek correction or amendment of the sale certificate itself in the execution proceedings, and not to institute a suit against the defendants, who were strangers to that sale.

Substantial Questions of Law 1 to 4

20. The controversy in this Second Appeal is narrow. There is no dispute about the plaintiff's title to Item Nos.9 to 15, which were purchased under separate registered sale deeds, or to the undisputed extents covered by the Court auction. The only question is whether, in Item Nos.1-B, 3, 4, 5 and 8, the plaintiff can claim an extent greater than that described in Exs.A1 and A2 by relying on the boundaries mentioned therein and the identification made by the Advocate Commissioner.



21. It is well settled that where a document of title describes property both by extent and by boundaries, and the two descriptions are inconsistent, the boundaries will ordinarily prevail, as they are generally regarded as a more reliable indication of the property intended to be conveyed. None of the decisions relied upon by the appellants lays down any different principle.

22. In *Dharmakanny Nadar's* case, the Court considered a private conveyance and examined the parties' subsequent conduct to identify the property actually sold. *Roohnisha Beevi's* case concerned settlement and gift deeds, in which the boundary description was preferred to an erroneous survey number. In *Subhaga's* case, the Supreme Court, in a suit for injunction, held that identification of property through a commission issued under Order XXVI Rules 9 and 10 of the Code of Civil Procedure, 1908 should ordinarily be accepted, and that it was unnecessary to survey all adjoining lands merely to test such identification. *A.Chandran's* case concerned successive sale deeds executed by a common vendor, and the Court cautioned the principle that boundaries prevail over extent cannot be applied mechanically and must depend on the facts of each case. *S. Lakshmi's* case and *R.Radhakrishnan's* case arose out of settlement or partition arrangements among family members and turned on the intention of the settlor or the parties to the partition. *Nagarajan's* case



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was a suit for injunction in which the extent found on commission did not tally with the sale deed, and the boundary description was preferred.

23. The common feature of all these decisions is that the title arose under a private and voluntary instrument, such as a sale deed, gift deed, settlement deed or partition deed, executed by a person capable of determining and recording the property intended to be conveyed. In such cases, the boundaries may provide the more reliable indication of that intention, and an erroneous statement of extent may yield to them.

24. A court auction sale stands on a different footing. The property passing to an auction purchaser is not determined by the intention of a vendor or settlor, but by the decree under execution and by the property actually attached, proclaimed, brought to sale, purchased and confirmed. Section 65 of the Code of Civil Procedure, 1908 provides that, upon the sale becoming absolute, the property sold vests in the purchaser from the date of sale. What vests is only the right, title and interest of the judgment-debtor in the property sold. An auction purchaser cannot acquire an interest greater than that held by the judgment-debtor or any interest in property that was never brought to sale. The rule that boundaries prevail over extent, being primarily a rule for ascertaining the



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intention underlying a private conveyance, cannot therefore be applied mechanically to enlarge the subject matter of a judicial sale. In such a case, the controlling consideration is the record of what the executing Court actually brought to sale and sold.

25. The Commissioner's own reports support this distinction. Neither in the original report, Ex.C1, nor in the additional report, Ex.C7, did the Commissioner determine the rival claims regarding S.F.Nos.164/6 and 235/11. On each occasion, he recorded the defendants' objection that those lands were their independent properties and did not form part of the mortgage or the Court-auction sale, leaving that issue to be proved before the Court.

26. A Commissioner appointed under Order XXVI Rules 9 and 10 of the Code of Civil Procedure, 1908 cannot adjudicate title. His function is limited to assisting the Court in identifying and describing the property; his report cannot enlarge the subject matter of the suit or confer title over property not otherwise established. When the Commissioner left the disputed claims to be proved by the parties, his report cannot be treated as conclusive proof of the plaintiff's title to those additional extents.



27. Turning to the disputed items, the plaintiff's claim in Item No.1-B depends on including S.F.No.164/11 within the property sold at the court auction. In contrast, the defendants contend that it is a separate and distinct property. In Item No. 3, the plaintiff claims a larger extent in S.F.No.164/10, though the descriptions in the mortgage deed and the sale certificate, read with the boundaries, correspond more closely to a smaller, definite extent.

28. Item No.4, relating to S.F.No.164/5, stands on a different footing. The Commissioner found that the actual extent available within the boundaries was Ac.0.09, which was larger than the extent earlier decreed, and there is no substantial dispute that this extent formed part of the mortgaged and auctioned property.

29. In Item No.5, the total extent of Ac.0.34 comprises Ac.0.13 in S.F.No.164/7 and Ac.0.21 in S.F.No.164/6. The dispute is confined to S.F.No.164/6, which, according to the defendants, was separately purchased by the second defendant. Likewise, in Item No.8, the total extent of Ac.2.42 comprises Ac.2.02 in S.F.No.235/2 and Ac.0.40 in S.F.No.235/11. The dispute is confined to S.F.No.235/11, which the defendants claim originally belonged to a third party, Govindasamy, and was later purchased independently by the second defendant outside the mortgage transaction.



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30. In respect of the genuinely disputed portions, namely S.F.No.164/11, S.F.No.164/6 and S.F.No.235/11, the plaintiff has produced no document and has elicited no admission from the defendants establishing that those specific survey fields formed part of Ex.B7 or were brought to sale under Ex.A1. At best, the evidence shows that they lie within or adjoining the outer boundaries relied upon by the plaintiff. That circumstance, by itself, is insufficient to prove that those lands were mortgaged, brought to sale and delivered to the plaintiff.

31. The correction of survey numbers is on a different footing from the enlargement of the extent sold, and the First Appellate Court rightly distinguished between the two. Where the boundaries correctly identify the mortgaged and sold property but the survey number is incorrectly stated or has since changed in the revenue records, correcting that survey number merely gives effect to the property already covered by the sale. The Commissioner's report may legitimately be used for that limited purpose.

32. It cannot, however, be used to extend the plaintiff's title to additional survey fields merely because they fall within a wider boundary description, unless it is independently established that those fields were also mortgaged and



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brought to sale. Such an exercise would not amount to identifying the property sold, but to enlarging the Court-auction sale. The principle that boundaries prevail over extent in construing private conveyances cannot be invoked to produce that result.

33. To sum up, the plaintiff purchased the property at a court auction, obtained the sale certificate dated 05.08.1968, and was delivered possession under E.P. No.747 of 1968 on 07.10.1968. His title is therefore confined to the property that was actually attached, proclaimed, auctioned, confirmed, and delivered to him.

34. Where there is a minor discrepancy between the extent or survey number and the definite boundaries, the boundaries may prevail for the limited purpose of identifying the property conveyed. However, this rule is only a rule of interpretation. It cannot be invoked to enlarge a court-auction sale or to include independent lands situated in survey numbers that were neither mentioned in the sale proclamation and sale certificate nor covered by the Amin's delivery report.

35. In the present case, although the extent now claimed is said to be



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approximately similar to that mentioned in the sale certificate, the plaintiff has included portions situated in additional survey numbers not found in the sale certificate or the Amin's report. Mere similarity in total extent cannot establish that those additional survey-number lands were auctioned and delivered. An auction purchaser acquires only the judgment-debtor's right, title and interest in the property actually put up for sale.

36. Further, an application under Sections 151 and 152 of the Code of Civil Procedure, 1908 to correct the sale certificate would be maintainable only if the incorrect survey number was an accidental or clerical error and the identity of the property actually auctioned is otherwise beyond dispute. A civil suit for declaration may technically be maintainable where an independent dispute of title exists against third parties. Nevertheless, the plaintiff cannot obtain a declaration over additional survey-number lands merely on the "boundaries prevail" principle without proving that those lands formed part of the attachment, sale proclamation, auction and delivery. If the dispute is essentially between the parties to the execution concerning the property sold or delivered, it must ordinarily be decided under Section 47 of the Code of Civil Procedure, 1908 rather than by a separate suit.



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37. The claim is sustainable only in respect of the property covered by the sale certificate and Amin's delivery report. Including additional survey numbers by declaration or amendment would be impermissible unless the plaintiff establishes that their omission was purely accidental and that those very lands were actually attached, auctioned and delivered. Otherwise, the suit, though maintainable in form, is liable to be dismissed on the merits in respect of the additional lands.

38. For the foregoing reasons, the judgment and decree dated 16.08.2013 in A.S.No.5 of 1989, on the file of the Subordinate Court, Ariyalur, which modified the judgment and decree dated 20.11.1987 in O.S.No.79 of 1981, on the file of the District Munsif Court, Jayankondam, are confirmed.

39. Accordingly, the Second Appeal is dismissed. In the circumstances of the case, no order as to costs is made. Consequently, the connected miscellaneous petitions, if any, are closed.

06.08.2026

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

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- 1) The Subordinate Court,
Ariyalur.
- 2) The District Munsif Court,
Jayankondam.
- 3) The Section Officer,
V.R.Section,
High Court,
Madras – 600 104.



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DR.JUSTICE A.D.MARIA CLETE, J.,

sts

Judgment made in
S.A.No.544 of 2014

Dated:
06.08.2026

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