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S.A.No.380 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No.380 of 2020

Ramesh

... Appellant/Respondent/Defendant.

Vs.

Mrs.Vijayalakshmi

... Respondent/ Appellant/Plaintiff.

**PRAYER:** Second Appeal filed under Section 100 of the Code of Civil Procedure against the Judgement and Decree dated 20.02.2019 passed in A.S.No.19 of 2015 on the file of Subordinate Court, Gingee reversing the judgement and decree dated 30.01.2015, passed in O.S.No.6 of 2012 on the file of the Principal District Munsif, Gingee.

For Appellant : M/s.Gayatri

For Respondent : Mr.R.Agilesh



WEB COPY

S.A.No.380 of 2020



## **JUDGMENT**

The defendant in a suit for declaration and injunction is the appellant before this Court. The facts in brief necessary for disposing of the above Second appeal is herein below narrated and the parties are referred to in the same array as before the Trial Court.

2. The plaintiff had filed the suit O.S.No.6 of 2012 on the file of the Principal District Munsif, Gingee for the aforesaid reliefs. It is her case that the suit properties belonged to Thandavamoorthy and Dharmalingam from whom the plaintiff had purchased the property under a sale deed dated 22.11.1982. After the purchase, she had constructed a house thereon and has been in possession and enjoyment of the same. The plaintiff had set apart a vacant property on the southern portion of the suit property measuring 6 feet in length and 32 feet in width for keeping her cattle and their fodder. This site is situate on the southern side of the compound wall erected by the plaintiff. There is also an opening in the compound wall into the vacant site which was being used by the plaintiff.



WEB COPY



S.A.No.380 of 2020

3. The plaintiff would submit that there was an old tree in the vacant site which the plaintiff attempted to remove on 30.12.2011. At that time, the defendant had physically prevented the plaintiff from cutting the tree on the ground that he had a right to the vacant site. Earlier, the defendant had filed a suit OS.No.564 of 1995 for a declaration and recovery of possession against this plaintiff on the file of the Principal District Munsiff, Gingee. This suit was dismissed on 29.11.2015 by the Principal District Munsiff, Gingee. Despite the dismissal of the said suit the defendant is continuing to prevent the plaintiff from peacefully enjoying the property, therefore, the plaintiff is come forward with the suit in question.

4. The defendant had filed a written statement inter alia denying the allegations contained in the plaint and staking a claim to the suit property. The defendant would contend that the property belonging to the plaintiff was situate within the compound wall put up by her and any land beyond the compound wall did not belong to the plaintiff. The defendant would submit that his earlier suit was with reference to the property north of the compound wall and the present suit is with reference to the land south of the compound wall. This land according to the defendant was in his possession



and the plaintiff had no right to the same. Therefore, he sought for the dismissal of the suit.

5. On the basis of the pleadings the Trial Court had framed the following issues:

*"1 Whether the plaintiff entitle to portion of properties situated on the southern side of the wall as pleaded in para no.1 of the plaint?*

*2. Whether the portion of properties situated on the southern side of the wall was in possession of the plaintiff or still in her possession?*

*3. Whether the suit is hit by principle of resjudicata?*

*4. Whether the plaintiff entitle to the relief of declaration of title as prayed?*

*5. Whether the plaintiff entitle to the relief of permanent injunction as prayed for?*

*6. To what other relief the plaintiff entitled?"*

6. On the side of the plaintiff P.W.1 and P.W.2 were examined and 14 documents were marked. On the side of the defendant, D.W.1 and D.W.2



were examined and 11 documents were produced on their side.

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7. The Trial Court had dismissed the suit on the ground that the plaintiffs have failed to describe the suit property with the present survey number and also that the earlier suit would not operate as res judicata against the defendant herein.

8. Challenging the said judgment and decree the plaintiff had filed A.S.No.19 of 2015 on the file of the Sub Judge, Gingee. The learned Sub Judge on considering the evidence on record allowed the appeal and set aside the judgment and decree of the Trial Court. Aggrieved by the same the defendant is before this Court.

9. The Second Appeal has been admitted on the following Substantial Questions of law.

*"1. Whether the First Appellate Court was right in applying the doctrine of Res-Judicata, when the cause of action, i.e, the property in question is itself different in the two suits?"*



*2. Whether the appellate Court was right in ignoring material evidences, viz., Exhibits B.3 to B.5 to which clearly prove the possession and ownership of the defendant? "*

10. M/s. Gayatri, the learned counsel appearing on behalf of the defendant/appellant would submit that the plaintiff as P.W.1 had in his oral evidence clearly admitted that Survey No.84/12 totally measured 32 cents and portions of it has been sold to several persons and that it is not possible to identify which portion has been allotted to which sharer and that she had not ascertain the same before filing the suit. Therefore, she would submit that the description of property that has been given in the plaint is not available on site. She would submit that the property which stands in the name of the plaintiff has been sub-divided and allotted a new survey no.84/12A and comprises of 2 cents. On the other hand the land belonging to the defendant is sub-divided as Survey No.84/12C also with an extent of 2 cents. She would also draw the attention of the Court to the description of property contained in Ex.A.3, the sale deed under which the plaintiff had purchased the property in which the property shown on the north of the



property that has been purchased by the defendant under Ex.B.3, sale deed. and she would further submit that Ex.B.3 to Ex.B.5 under which the defendant had purchased the property with different boundaries would show that the property is not bounded by the land of the plaintiff on the northern side. On the contrary it was bounded by the land of Venkatanadiyar. Therefore, it is her contention that the plaint schedule does not contain the true facts. That apart, the property in question is the property which is lying between the plaintiff's property and the defendant's properties which falls within the boundary of the defendant. It is also her case that the plaintiff has not come forward with the exact measurement of the encroachment and the Trial Court has rightly dismissed the suit.

11. Per contra, Mr.Agilesh, learned counsel appearing on behalf of the plaintiff would submit that the plaintiff had purchased the property as early as in the 22.11.1982 under Ex.A.3 and the defendant had purchased the properties in the year 1997. That apart, the plaintiff had put up the compound wall. He would further submit that the defendant had earlier filed a suit O.S.No.564 of 1985 on the file of the District Munsif, Gingee, for a declaration of his title over the B schedule property and that it belongs to him. He would therefore submit that the Appellate Court has rightly decreed



the suit and no exception can be taken to the same.

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12. Heard the counsel on either side.

13. A perusal of the records and the description of property would show that the earlier suit and the present suit are in respect of the same properties. The defendant had lost in the earlier suit wherein, he had filed a suit for recovery of possession, permanent injunction and declaration. By this judgment and decree, the Court has clearly held that the defendant has nothing to do with the suit property.

14. Be that as it may, in the earlier suit the defendant has filed a suit for recovery of possession which clearly shows that he is not in possession of the property. An argument was put forward by the counsel for the defendant that there was no pleading with reference to the extent of land encroached and its measurement and since the plaintiff has come with a vague allegations, the suit is liable to be dismissed. This argument cannot be countenanced since it is the defendant who has filed the suit for recovery of possession which implies that the defendant has recognized the possession by the plaintiff. Therefore, considering the fact that the present



S.A.No.380 of 2022

suit is filed only to protect the possession of the plaintiff by an order of injunction, the Substantial questions of law are answered against the appellant. Therefore, the Second Appeal stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed, if any.

**18.10.2022**

Index : Yes/No  
Internet : Yes/No  
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To

- 1.The Subordinate Court, Gingee
- 2.The Principal District Munsif, Gingee.



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S.A.No.380 of 2020

**P.T. ASHA, J,**

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