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**THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 14.02.2024**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**S.A.(MD).No.438 of 2021**  
**and**  
**C.M.P(MD)No.5918 of 2021**

Govindharasu

... Appellant

/Vs./

S.V.Murugayya

...Respondent

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree, dated 09.12.2020 made in A.S.No.19 of 2018 on the file of the Subordinate Court, Pattukkottai, reversing the Judgment and Decree dated 18.07.2018 made in O.S.No. 112 of 2010 on the file of the Judicial Magistrate cum District Munsif Court, Orathanadu.

For Appellant : Mr.C.Kannan

For Respondent : M/s.S.Deenadhayalan



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## **JUDGMENT**

This Second Appeal is filed against the Judgment and Decree, dated 09.12.2020 in A.S.No.19 of 2018 on the file of the Subordinate Court, Pattukkottai, reversing the Judgment and Decree, dated 18.07.2018 in O.S.No.112 of 2010 on the file of the Judicial Magistrate cum District Munsif Court, Orathanadu.

2. The Plaintiff is the Appellant and the Defendant is the Respondent herein. For the sake of convenience, the contesting parties shall be referred to as Plaintiff and Defendant.

3. The suit in O.S.No.112 of 2010 was filed by the plaintiff for permanent injunction restraining the defendant from interfering the peaceful possession of the suit properties. The Trial Court has allowed the suit. Against the same, the Defendant has preferred an appeal in A.S.No.19 of 2018 and the same was allowed and dismissed the suit. Against the same, the present Second Appeal is filed by the plaintiff in the suit.



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4. The second appeal was admitted on the following questions of law:

1. Whether the First Appellate Court was right in holding that the suit for permanent injunction is not maintainable, when a prayer for declaration of title there is no cloud over the title of the plaintiff?

2. Whether the interpretation of the boundary recitals in Exhibits A1 and A2 by the First Appellate Court are correct?

5. The plaintiff has purchased the suit property from one Natesakonar through a registered sale deed, dated 25.08.1998 to the extent of 16 cents in S.No.8/2B and to the extent of 68.5 cents in S.No. 7/1 and the sale deed executed in favour of the plaintiff is marked as Ex.A.1. The said Natesakonar had purchased the property from one Ameerdeen Rowthar through registered sale deed dated 23.07.1984, which is the parent document of the vendor is marked Ex.A.2. The plaintiff to prove his possession had filed Ex.A3 to A47.



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6. The defendant had accepted the sale deed of the plaintiff, but the defendant claiming right over a portion of the property to an extent of 0.25.25 Ares, which the defendant claims through unregistered sale agreement, dated 22.08.1992 marked as Ex.B1. The defendant has claimed right over the property based on the sale agreement only. Both the Courts below have disbelieved the unregistered sale agreement which the defendant had claimed.

7. As far as the claim of the plaintiff is concerned, the Trial Court had allowed the suit but the First Appellate Court has held that when the defendant has raised cloud over the suit property then the suit for declaration ought to have filed. Since the plaintiff had filed the suit for bare injunction, the appellate Court declined the relief of permanent injunction. It is seen that the defendant had accepted the plaintiff's sale deed but only claims right over the portion of land to an extent of 0.25.25 Ares through an unregistered sale agreement. A sale agreement will not give right over the property since there is no transfer of title in an agreement to sale. In such circumstances, there is no cloud over the suit property at all and the objection is not legally sustainable objection. The



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objection is for the sake of case and there is no genuineness in the objection.

8. The plaintiff has claimed right over the suit property based on the sale deed dated 25.08.1998. The defendant has claimed right over the suit property based on the sale agreement dated 22.08.1992. Admittedly the sale agreement is prior to the sale. But the defendant had not taken any steps to further process the sale agreement and he had lost right over the suit property. The First Appellate Court had rightly held that the defendant had not taken effective steps to get the sale deed executed in his favour based on the sale agreement. As held supra then there is no transfer of any right over the property in sale agreement. When there is no transfer of any right then the defendant objection cannot be considered as defendant had raised cloud over the suit property.

9. Further the sale agreement was executed on 22.10.1992 but the stamp papers were purchased in the year 2010 and hence the alleged sale agreement is false. And on this ground also the sale



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agreement cannot be entertained. When the sale agreement has no legal validity, then the objection over the title of the plaintiff has no legal validity. Consequently, there is no cloud over the title over the suit property. In such circumstances, the suit is maintainable for bare injunction and the plaintiff need not file any suit for declaration. The first substantial question of law is answered in favour of plaintiff / appellant.

10. The next substantial question of law is that there are differences in the four boundaries in Exhibits A1 and A2 as well as suit schedule property. The First Appellate Court had held that the plaintiff had not stated the reason why the patta stands in the name of the one Sethuraman and Ayyadurai. Even they were not added as party. Further the paddy field located on the southern portion was not properly pleaded and proved. During cross examination the plaintiff had specifically admitted that there is a Kanni Vaikkal adjacent to the fish pond and therefore there may not be any paddy field in the said location. The plaintiff is silent about the coconut trees and plantain trees available in the suit property and there is no proper explanation from the side of the plaintiff in this regard.



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11. This Court is of the considered opinion that such discussion is unnecessary. The plaintiff is having legally valid title under the sale deed. And the defendant is not having any title under the sale agreement. In such circumstances, the plaintiff is entitled to injunction based on the sale deed and parent document marked as Ex.A1 and Ex.A2. Moreover, the Lis is between the plaintiff and the defendant. And the Lis is not between the plaintiff and Sethuraman or Ayyadurai and raising question why the plaintiff has not arrayed the said Sethuraman and Ayyadurai are unnecessary and erroneous.

12. The contention of the defendant when the boundaries are not clear there is a cloud over the title of the suit property and the plaintiff is not entitled to injunction. The said preposition cannot be accepted. When the properties are clearly identifiable based on the extent of the properties, then it cannot be stated that the boundaries are not clear, consequently there is a cloud over the suit property. The Learned Counsel appearing for the plaintiff relied on the Judgment reported in **2019 (1) CTC 739, in the case of R.Thangam Vs. P.T. Ram Mohan and Others.** The relevant portion is extracted here under:



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*“20. On perusal of Case-law pressed into service and relevant Paragraphs of Case-law which have been extracted supra, this Court does not have the slightest hesitation in accepting the submission that Principle that Boundaries prevail over extent is not an absolute doctrine, but is a Doctrine of Principle which will come into play only when there are doubtful of varying extents in the document of title relating to the property. Three conditions necessary for this principle to come into play as set out in Dina Malar Case in Paragraphs 9 of the Case-law which has been extracted supra is very elucidative and lucid.”*

13. For applying the principle of boundaries would prevail over the extent of the properties three principles are laid down and they are;

(1) In case of doubtful or varying extents in the documents of title relating to the property, boundaries should be preferred to the extent;

(2) Only in the absence of definite material to show the actual extent intended to be sold the boundaries should outweigh the doubtful extent



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mentioned in the document;

(3) If the recitals in the documents and the circumstances of the case show that a lesser extent only was conveyed than the area covered by boundaries, and there is clear evidence as to the intention of the parties with reference to the extent conveyed, then the extent should prevail over the boundaries.

14. In the present case, the adjudication between the parties is not above variation in extent of the property. In such circumstances, the principle that boundaries would prevail over the extent need not gone into. Therefore the next substantial question of law is also answered in favour of the plaintiff / appellant.

15. Hence, both the substantial questions of law are answered in favour of the plaintiff.

16. Accordingly, this Second Appeal is allowed. The Judgment and Decree, dated 18.07.2018 in O.S.No.112 of 2010 on the



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file of the Judicial Magistrate cum District Munsif Court, Orathanadu, is hereby confirmed by setting aside the Judgment and Decree, dated 09.12.2020 rendered in A.S.No.19 of 2018 on the file of the Subordinate Court, Pattukkottai. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

**14.02.2024**

Index : Yes / No

NCC : Yes / No

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**TO:**

1. The Judicial Magistrate cum District Munsif Court,  
Orathanad.
2. The Subordinate Court,  
Pattukkottai.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SRIMATHY, J.**

KSA

Judgment made in  
**S.A.(MD)No.438 of 2021**

Dated:  
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