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S.No.64 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	15.07.2025
<i>Pronounced on</i>	12.09.2025

Coram:

The Honourable Mrs. Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.64 of 2020
and C.M.P.No.1250 of 2020

Saravanan

.. Appellant

versus

1.Murugan

2.Ravi

.. Respondents

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgement and decree dated 17.08.2019 made in A.S.No.86 of 2017 on the file of the I Additional Subordinate Judge at Salem reversing the judgement and decree dated 14.09.2017 passed in O.S.No.953 of 2012, on the file of the Principal District Munsif, Salem.

For Appellant : Ms.V.M.Venkatramana

For Respondents : Ms.R.Marudhachalamurthy

For R1 and R2



S.No.64 of 2020

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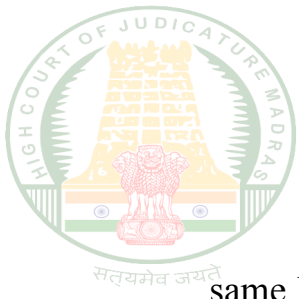
JUDGMENT

This Second Appeal is preferred challenging the judgment and decree dated 17.08.2019 made in A.S.No.86 of 2017 on the file of 1 Additional Sub Court Salem, reversing the judgment and decree dated 14.09.2017 made in O.S.No.953 of 2012 on the file of the Principal District Munsif Court, Salem.

2. The plaintiff is the appellant in this second appeal.

3. For the sake of clarity and brevity party shall be referred in accordance with their litigative status in the plaint.

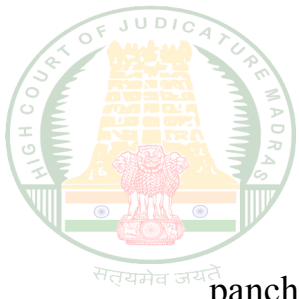
4. According to the plaintiff, the The suit property is a house property in S.No.233/9-A of Erumapalayam Village and plaintiff is the absolute owner of the same. The plaintiff purchased the suit property as vacant site under a registered Sale deed dated 25-10-2011 through the Power of Attorney S. Gowry, W/o. Subramani of its original owners Sengodan and others for a valid consideration and is in possession and enjoyment of the



S.No.64 of 2020

WEB COPY

same by constructing a terraced building after getting proper approval from Erumapalayam Panchayat dated 25-01-2012. After construction of house, plaintiff has effected name transfer in his name. Subsequently, plaintiff pledged the sale deed with LIC Housing Finance, Salem and obtained a Housing Loan and family members are residing in the said house. Plaintiff along with the wall around his house, removed the north-south wire fence on the eastern side while constructing a compound wall for the suit property. Except the plaintiff, nobody has any right or interest over the suit property. The defendants are strangers to the suit property and they are residing at Sanyasigundu Village at Katumarangkuttai odai water course. The defendants have no right or any interest over the suit property. While the plaintiff starting partly to construct a compound wall in his patta land on 23-07-2012 the defendants came to the suit property under the influence of alcohol and obstructed the construction. Further, the defendants declared that they are belonging to Indhia Jananayaga Valibar Sangam and demanded the plaintiff's father to part with Rs.50,000/- as not to oppose or prevent the construction. On 23-07-2012 the plaintiff's father convened a local



S.No.64 of 2020

WEB COPY

panchayat including the vendor of the suit property and taken a decision that the defendants have no right to interfere with the construction work. But the defendants for their personal gains, brought the revenue and police officials to the suit property and in their presence the plaintiff surveyed the property and the revenue officials declared that the plaintiff is in lawful possession of the suit property. Dissatisfied with the same, the defendants while leaving the place proclaimed that they will give all kinds of troubles and disturbance to the plaintiff. While so, on 12-08-2012 when the plaintiff and his family members were in the suit property the defendants along with two rowdy elements came to the suit property and attempted to remove the compound wall constructed therein. The defendants are having muscle power and money power. Unless the defendants' illegal and unlawful acts are restrained by means of court order, the plaintiff and his family members will be put into irreparable loss and hardship in enjoying the suit property. Hence the suit.

5.The defendants resisted the claim of the plaintiff in the written statement:



S.No.64 of 2020

WEB COPY

The proposed compound wall construction is not within the boundaries of plaintiff's property: There are about 35 families are living permanently in the Kattumarakuttai village. All the residents have only one access of 16 feet east-west public road which is shown in the description of suit property. The plaintiff has obstructed the pathway and by closed it by trying to construct the compound wall illegally. The plaintiff is not the owner of the entire property shown in Description of property. The plaintiff has no right to construct a compound wall on the eastern end of the 16 feet breadth public road as shown in his plan. The property shown as 2nd thakku in the description of property is not belonged to the plaintiff and his vendor. In order to prove that the plaintiff only encroached the 16 feet public road steps are being taken to measure the property in the presence of Tahsildar, Revenue Inspector, Village Administrative Officer, Surveyor and Police officials with the help of related documents. Further, in order to confirm by the concerned Government Officials that the 16 feet breadth public road is not belong to the plaintiff and acquire the same from the hands of plaintiff, steps are being taken through the Harijan Welfare Department. To divert the



S.No.64 of 2020

WEB COPY

Government's attention on the public property, plaintiff has filed this suit only against the defendants is not correct. The pathway dispute is connected with 35 families. The suit is not maintainable for non-joinder of necessary parties i.e., the said 35 families, Revenue Department, Harijan Welfare Department, Police Department and Erumapalayam Panchayat. The revenue and police department are giving security to put the road for public use. The 35 families in the Kattumarakuttai have no other way except the suit pathway. The suit pathway absolutely belonged to Erumapalayam Panchayat. The survey number of the field at the eastern end of the 16 feet breadth road is different and its owner is different. The defendants are not 3rd parties to the suit. The suit pathway is the only pathway leading the residents of the defendants. Indhia Jananayaga Valibar Sangam is a nationalist party. Due to the plaintiffs unlawful activities the school going children are unable to go to school from their houses, aged persons could not go to hospitals, ladies could not go to town side. The suit has no merits. The 16 feet breadth public road is not in exclusive possession and enjoyment of the plaintiff. The plaintiff has given all disturbances to the



S.No.64 of 2020

WEB COPY

defendants and the residents of Kattumarakuttai Village. The other plot owners in the layout are also having right on the 16 feet breadth public pathway. The plaintiff has filed this suit without impleading the other plot owners as parties and without seeking the declaration relief is liable to be dismissed. The plaintiff alone is giving all interference to the public of Kattumarakuttai for the past one year. There was no such occurrence which took place on 12-08-2012. The suit pathway never belonged to the plaintiff and the plaintiff never in possession and enjoyment of the same. Hence, prayed for dismissal of the suit.

6. Before the trial Court, on the side of plaintiff, P.W.1 to P.W.3 were examined and 10 documents were exhibited. On the side of defendants, D.W.1 to D.W.3 were examined and 6 documents were exhibited.

7.The trial Court having considered all the above came to a conclusion that the plaintiff is in possession and enjoyment of the suit property and decreed the suit in favour of the plaintiff by granting the relief of permanent injunction against the defendants. Aggrieved by this, the



S.No.64 of 2020

WEB COPY

defendants preferred the appeal suit in A.S.No.86/2017 before the I Additional Sub Court, Salem. The 1st Appellate Court reversed the judgment of the trial Court holding that Ex.A.1 sale deed is executed beyond the measurements given in Ex.B1 and the plaintiff failed to establish his actual possession over the suit property. Assailing the said judgment and decree passed by the 1st Appellate Court the plaintiff has preferred the present second appeal.

8.This Court has formulated the following substantial questions of law at the time of admitting the second appeal:

1.Whether the first appellate Court was right in determining the title of the appellants based on Ex.B.2 (05.05.2008) which is subsequent in point of time than the parent document (20.02.2008) of Ex.A.1?

2. Whether the first appellate Court was right in interfering with the findings of trial Court without insisting for the production of a document which the appellate Court observed that the trial Court failed to insist for production of the same?"



S.No.64 of 2020

WEB COPY

9.The learned counsel for the appellant/plaintiff submits that the 1st Appellate Court has wholly relied upon Exs.B.1 and B.2 and admissions made by P.W.1 and P.W.3 with respect to the plot numbers 26 and 27. Without insisting for the production of the sale deed in the name of the plaintiff's vendor and without appreciating the evidence of D.W.1, the 1st Appellate Court erroneously held that the description of the property given in Ex.A1 sale deed is incorrect. His further submission is that the 1st Appellate Court erred in determining the title of the plaintiff based on Ex.B.2 gift deed dated 05.05.2008 which is subsequent in point of time than the parent document, namely the sale deed dated 20.02.2008 under Ex.A1 in favour of the plaintiff. He would also submit that the 1st Appellate Court ought to have allowed the application in I.A.No.4 of 2019 filed under Order 41 Rule 27 of CPC for receiving additional documents which are essential to prove the title and possession of the plaintiff over the suit property. Hence, prayed for setting aside the judgement and decree dated 17.08.2019 passed by the 1st Appellate Court in A.S.No.86 of 2017 on the file of I Additional Sub Court, Salem.



S.No.64 of 2020

WEB COPY

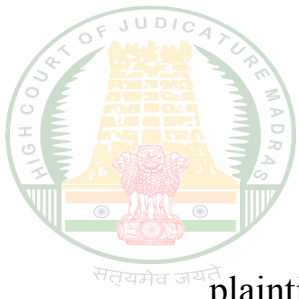
10. On the other hand, the learned counsel for the respondents/defendants would submit that the description of property is wrongly stated in the plaint. The plaintiff is attempting to construct the compound wall in a common pathway which do not belong to the plaintiff. It is further submitted that the 35 residents of Kattumarakuttai are using the 16 feet pathway from time immemorial to reach their residents. While so, the plaintiff ought to have included the above persons in the suit. Hence, the suit is bad for non-joinder of necessary parties. He would further submit that, the revenue authorities along with the police officials have visited the suit property and found that the plaintiff is attempting to trespass into the disputed area which is a common pathway for constructing a compound wall and the revenue authorities are taking steps to prevent the same. Considering the above facts and circumstances of the case, the 1st Appellate Court rightly dismissed the suit filed by the plaintiff which warrants no interference by this Court.

11. Heard on both sides, records perused.



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12.The dispute is only with respect to plot Nos.26 and 27 respectively. According to the plaintiff, the total extent of suit property is about 2902 sq. ft, shown as 1st and 2nd item in the suit schedule and the same was purchased by him under Ex.A1 sale deed. The above properties according to him is the plot nos.26 & 27 respectively. The 1st item in the suit schedule is shown as 2262 sq. ft., and the 2nd item is shown as 640 sq. ft. However, in the description of property, the plot numbers are not mentioned. According to the defendants, the 2nd item of the property measuring 640 sq. ft., do not belong to the plaintiff as per Ex.B1 plan and that the same was bequeathed to the Erumapalayam Panchayat under Ex.B2 settlement deed dated 05.05.2008. Though, the above settlement deed was subsequent to Ex.A1 sale deed dated 20.02.2008 in favour of the plaintiff in respect of the entire suit property, the plaintiff failed to produce his vendor's title deed to establish the fact whether the vendor had right or title over the 2nd item of the suit property to convey the same in favour of the plaintiff. The plaintiff's vendor's husband was examined as P.W.3. In his evidence he has deposed that his wife Gowri sold the plot numbers.26 and 27 to the



S.No.64 of 2020

WEB COPY

plaintiff as per Ex.B1 plan. Moreover, the location of 16 feet width road was not properly identified. In Ex.A1 sale deed it is mentioned that the above 16 feet width road lies on the south of the suit property. Whereas, the case of the defendant is that the above 16 feet width road is the second item of the suit property as per Ex.B1 plan. Therefore, when discrepancies are found in the measurements and identification as per Ex.B1 plan and Ex.A1 sale deed, the plaintiff ought to have taken steps to measure and identify the property by producing the parent documents. The validity of Ex.B.2 settlement deed which is subsequent to Ex.A1 sale deed cannot be adjudicated in a suit for bare injunction. Moreover, when the plaintiff's title is under a cloud, a finding on title cannot be recorded in a suit for injunction, since the matter involves complicated questions of fact and law relating to title. Hence, the parties are relegated to find out a remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.



S.No.64 of 2020

WEB COPY

In the result, the second appeal is dismissed. No costs.

i.The judgement and decree dated 17.08.2019 made in A.S.No.86 of 2017 on the file of the I Additional Subordinate Judge at Salem is upheld.

ii.The judgement and decree dated 14.09.2017 passed in O.S.No.953 of 2012, on the file of the Principal District Munsif, Salem is set aside. Consequently, connected miscellaneous petition is closed.

12.09.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order

To

1. The I Additional Subordinate Judge at Salem
- 2.The Principal District Munsif, Salem
- 3.The Section Officer, VR Section, High Court, Madras



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S.No.64 of 2020

K.GOVINDARAJAN THILAKAVADI,J.

vsn

**Pre-delivery judgment made in
Second Appeal No.64 of 2020
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12.09.2025