



S.A.Nos.148 & 1027 of 2022

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>29.08.2025</i>
<i>Pronounced on</i>	<i>21.11.2025</i>

Coram:

The Honourable Mrs. Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal Nos.148 & 1027 of 2022

and C.M.P.Nos.2981 & 22064 of 2022

Second Appeal Nos.148 of 2022

Vasantha

..Appellant

versus

Irudayaraj

..Respondent

Second Appeal Nos.1027 of 2022

Irudayaraj

..Appellant

versus

Vasantha

..Respondent



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Prayer in S.ANo.148 of 2022

Second Appeal is filed under Section 100 CPC, praying to set aside the decree and judgement dated 27.08.2021 made in A.S.No.5 of 2021 on the file of the learned Principal Sub-Ordinate Judge at Pondicherry partly allowing the judgment and decree dated 12.12.2019 made in O.S. No. 912 of 2007 on the file of the learned I Additional District Munsif, Pondicherry.

Prayer in S.ANo.1027 of 2022:

Second Appeal is filed under Section 100 CPC, praying to set aside the decree and judgement dated 27.08.2021 made in A.S.No.5 of 2021 on the file of the learned Principal Sub-Ordinate Judge at Pondicherry, reversing the judgment and decree dated 12.12.2019 made in O.S. No. 912 of 2007 on the file of the learned I Additional District Munsif, Pondicherry.

S.A.No.No.148 of 2022

For Appellant : Mr. S.Sudharshan

For Respondent : Mr.R.Sreedhar



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S.A.No.1027/2022

For appellant :Mr.R.Sreedhar

For Respondent : Mr.s.Sudharshan

COMMON JUDGMENT

The Second Appeal in S.A.No.148 of 2022 is preferred by the defendant in O.S.No.912 of 2007 challenging the judgment and decree dated 27.08.2021 made in A.S.No.5 of 2021 on the file of the learned Principal Sub-Ordinate Judge at Pondicherry partly allowing the judgment and decree dated 12.12.2019 made in O.S. No. 912 of 2007 on the file of the learned I Additional District Munsif, Pondicherry.

2.The Second Appeal in S.A.No.1027 of 2022 is preferred by the plaintiff defendant in O.S.No.912 of 2007 challenging the judgment and decree dated 27.08.2021 made in A.S.No.5 of 2021 on the file of the learned Principal Sub-Ordinate Judge at Pondicherry, reversing the judgment and



3. For the sake of convenience, the parties are referred to as per their ranking in the trial Court.

4. The case of the plaintiff is that plaintiff in O.SNo.912 of 2007 had purchased the suit property from his vendors Lakshmanan and Arumugam vide sale deed dated 30.08.1988. From the date of purchase he is in possession and enjoyment of the 'A' schedule property without any disturbance. He has taken effective steps for raising construction in the 'A' schedule property. During the 1st week of May 2007, the defendant who is the owner of the adjacent property, tried to encroach upon the 'B' schedule property, which is a part of 'A' schedule property and the same was resisted by the plaintiff. Thereafter, the plaintiff took steps to measure his property with the help of a surveyor. The defendant despite informed by the plaintiff



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regarding the date of surveyor's visit for measuring the properties, did not give assistance for measuring the property. The defendant gaining knowledge about the representation given by the plaintiff for measuring the property, under the ill advice of her husband, encroached into the 'B' schedule property to an extent of 2x43 feet and started to raise construction over the same without any right whatsoever. He had reported the matter to the SHO, Villianur Police station, but the police officials after enquiry advised the plaintiff to approach the Civil Court. Hence, the suit.

5.The claim of the plaintiff was resisted by the defendant. The defendant would contend that the property in R.S.No.67/3 belonged to one Krishnaraj and he has sold the said property to one Nagamuthu by a registered sale deed dated 26.07.1988 and the said Nagamuthu who also had the right over the adjacent properties in R.S.Nos. 70/4, 70/7,166/3, 166/7 and 166/8 developed the same by dividing into 65 plots by a lay out. The



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defendant has purchased an extent of 1279 sq.ft in plot No.61 A in R.S.No.67/3 through a registered sale deed dated 04.09.2006 under Ex.B5. The defendant took possession of the said property and made arrangements to start the construction in the year 2007 by investing huge amount. While so, the plaintiff is claiming a portion of the said property without any right. Hence, prayed for dismissing the suit.

6. Considering the oral and documentary evidence adduced, the trial Court decreed the suit in favour of the plaintiff granting the relief of declaration of title and directed the defendant to handover vacant possession of encroached portion in 'B' schedule property to the plaintiff, against which the defendant preferred the appeal suit in A.S.No.5 of 2021. The first Appellate Court partly allowed the appeal suit directing the plaintiff to sell the encroached portion to an extent of 49 sq. feet to the defendant at the rate of Rs.450/- per square feet along with the interest at the rate of 9% from June 2007 till the date of execution of sale deed within a



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period of three months. Aggrieved by this, the defendant has preferred the second appeal in S.A.No.148 of 2022 and the plaintiff has preferred the second Appeal in S.A.No.1027 of 2022.

7.The learned counsel for the appellant/defendant in S.A.No.148 of 2022 would contend that the plaintiff failed to prove the title of his predecessor who sold the property to the plaintiff and the extent of land that was delivered to the plaintiff. In this circumstance, a legal duty is cast upon the plaintiff to examine his predecessor in title which he failed to do so. He would submit that, in a suit for ejectment the burden of proof is upon the plaintiff alone and the weakness in the case of the defendant cannot be the basis for granting such a relief to the plaintiff. The learned counsel would further submit that, the plaintiff has relied upon Ex.A1 sale deed dated 31.08.1988, to prove his title over the 'A' schedule property. A perusal of Ex.A1 sale deed would show that the plaintiff has purchased the 'A' schedule property from one Lakshmanan and Arumugam, sons of Thangavel



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pillai and that the property is comprised in R.S.No.70/6 in Plot No.18 & 19 with linear measurements 52 feet on the northern side, 43 feet on the southern side, 63 feet on the eastern side and 54 feet on the western side and that the total extent is stated to be 2785 sq. feet. The learned counsel further submits that neither the plaintiff nor his vendors have measured the property before their purchase and the same is also admitted by the plaintiff during his cross examination. Therefore, the burden rests heavily on the plaintiff to prove the extent of the property which was purchased from his vendors. Unless the same is proved, the plaintiff cannot seek for declaratory relief. He would further submit that the variation in the extent between the linear measurements and the total extent given in Ex.A1 is fatal to the case of the plaintiff. Where as, the defendant has proved her title over the property purchased by her measuring to an extent of 1279 sq. feet by producing Exs.B3 to B5 documents and also by examining her vendor as D.W.3. While so, the Courts below erroneously held that the property of the defendant lies in R.S.No.67/3 lying on the south of the plaintiff's property in R.S.No.70/6,



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based on the stray admission made by the defendant during her cross examination, which is contradictory to the well settled principles of law laid down by three member Bench of Hon'ble Supreme Court of India in ***Ambika Prasad Thakur & ors., Vs. Ram Ekbal Rai (dead) & ors.***, in 1965 ***SCC Online SC 52*** in which it is held that ***"Title cannot pass by mere admission"***. In the present case, a stray sentence that the defendant's property lies to the south of the plaintiff's property could in no way amount to an admission of plaintiff's title. As held in the above cited case, title cannot pass by mere admission and the plaintiff has to independently prove by cogent and convincing evidence to prove his title. The learned counsel placing reliance on the decision of the Hon'ble Supreme Court in ***Smriti Debbarma (dead) through legal representative vs. Prabha Ranjan Debbarma & ors.***, in 2023 19 SCC 782 would submit that, the defendant cannot be dispossessed unless the plaintiff has established a better title and right over the entire 'A' schedule property. Therefore, a decree of possession cannot be passed in favour of the plaintiff on the ground that the defendant



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is unable to establish her title in the portion of 'A' schedule property. The defendant being in possession of the property is entitled to protect her possession unless the plaintiff who seeks to dispossess her has a better title. The learned counsel further relied upon the judgment of the Hon'ble Supreme Court in **1964 SCC Online SC 313** in ***Brahmanand Puri vs. Neki Puri & Anr.***, and submitted that, the suit being one for ejectment, the plaintiff has to succeed or fail on the title he establishes and if he cannot succeed on the strength of his title, his suit must fail notwithstanding that the defendant in possession has no title to the property. His further submission is that though consent given by a party for marking a document does not dispense with either the proof of contents of the document or the truth or otherwise of the contents. To support his contention, he has relied upon the judgement reported in **1996 2 LW 637**. His further contention is that the Courts below have erroneously placed reliance upon the Commissioner's report which itself defective, relating to the physical features of the suit property. The Commissioner's report has been prepared



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without measuring the property of the defendant. Unless the properties of the plaintiff and the defendant is surveyed and measured it cannot be found out whether there is any encroachment in the plaintiff's property. The Commissioner during his examination has categorically admitted that he has measured only the property of the plaintiff and therefore, the findings of the Courts below on the basis of such incomplete and untenable report, that the defendant has encroached upon the plaintiff's property is perverse. His further contention is that the 1st appellate Court is wrong in fixing value for the alleged encroached portion and directing the defendant herein to purchase the same from the plaintiff. The first appellate Court has no jurisdiction to mould such a relief which is neither pleaded nor prayed by any of the parties to the suit. He would submit that it is settled principle of law that the parties to the suit cannot travel beyond the pleadings so also the Court cannot record any finding on the issues which are not part of the pleadings. In other words, the Court has to record the findings only on the issues which are part of the pleadings on which parties are contesting the



8. On the other hand, the learned counsel for the appellant/plaintiff in S.A.No.1027 of 2022 submits that the First Appellate Court erred in moulding the relief in the appeal, directing the plaintiff to sell his property which was encroached by the defendant, which relief was not sought by the plaintiff in the suit. He would submit that the plaintiff has clearly proved the encroachment made by the defendant by oral and documentary evidence along with the Advocate Commissioner's report. While so, the First Appellate Court cannot regularize the said encroachment by directing the plaintiff to sell the encroached portion to the defendant. The trial Court by its well reasoned judgment concluded that the defendant has encroached upon the property of the plaintiff and rightly passed a decree in favour of



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the plaintiff which the first Appellate Court ought not to have interfered.

Hence, prayed for allowing the second appeal in S.A.No.1027 of 2022 by setting aside the judgment and decree passed by the first Appellate Court. In this regard.

9.The second appeal in S.A.No.1027 of 2022 is admitted on the following substantial question of law:

Whether the First Appellate Court is right in partly allowing the appeal filed under Section 96 CPC in the absence of any specific plea by the respondents in terms of seeking benefit under Section 51 of Transfer of Property Act?

10.Heard on both sides and records perused.

11.Notably, Section 51 of the Transfer of Property Act deals with improvements made by a bonafide holder under a defective title. If a person who has made improvements on a property in the good faith belief that they were the absolute owner, is later evicted by a person with a better title, the



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evicted transferee has the right to either demand compensation for the improvements or to buy the property from the true owner at the current market value. The protection applies to a transferee who genuinely believed they had absolute ownership and acted in good faith, even if their title is later found to be defective. The belief must be based on sufficient grounds. In such a case, the law provides him with two options in the alternative generally that is in the nature of relief to the transferee. First, he can require the owner to pay him the value of the improvements effected by him on the property and in the alternative, he can require the real owner to transfer the interest in the property to him at the market value. The option is with the person who evicts the transferee. Transferee has to select any one of the reliefs given to him by the evictor. Transferee cannot compel the evictor to give any particular relief to him. [Ref: *Moti Chand V. British India Corporation Ltd., Cawnpore and others* reported in *1931 SCC Online All 202*.

12.The fundamental principle on which this Section is based is the



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maxim -"one who seeks equity must do equity". The equity enacted in this Section gives relief to the transferee of an immovable property who believes himself to be absolutely entitled to make improvements. Where the transferee who purchased a property was given possession of a larger area than he was entitled under the deed and who made improvements on excess land under a mistaken belief that he was entitled to do so. However, a specific plea is generally required to invoke Section 51 of the Transfer of Property Act, as the person claiming the right to compensation must be a transferee who acted in good faith and made improvements while believing themselves to be the absolute owner. This right is not automatically granted and must be pleaded in Court as a defence or a counter claim to a suit for eviction, along with proof that the requirements of the Section have been met.

13.The Hon'ble Supreme Court in *Baini Prasad Vs. Durga Devi*, reported in **(2023) 6 SCC 708** has brought the application of Section 51 into sharp focus. It has reaffirmed the stringent pre-requisites for invoking



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Section 51, emphasising that the status of a bonafide "transferee" is pivotal for its applicability. In essence, Section 51 of the Transfer of Property Act aims to protect the rights of transferees who, acting in good faith, enhanced the value of immovable property they believe they are rightfully entitled to. Therefore, this provision serves to balance the interests of all parties involved in property transactions and upholds the principles of justice and equitable treatment in such situations.

14. In the present case, at first it must be noted whether the defendant has encroached upon the plaintiff's property and such encroachment is done by the defendant believing in good faith that she is the absolute owner of the said property. Since it is a suit for possession, the burden is heavily on the plaintiff to prove his title in the said property. From the bare perusal of the impugned judgments, it is seen that the Courts below relying upon the Commissioner's report, came to the conclusion that the defendant has encroached upon the plaintiff's property. Admittedly, the Commissioner's report and plan are prepared based on the measurements of the plaintiff's



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property, without measuring the property of the defendant. It is the specific contention of the defendant that she has purchased 1279 sq. feet under Ex.B.5 sale deed and by examining her vendor as D.W.3 confirms the same. While so, the Courts below have held that the property of the defendant lies in R.S.No.67/3, and the same lies to the south of the plaintiff's property in R.S.No. 70/6 based on the stray admission made by the defendant during her cross examination, without perusing any revenue records. Moreover, the Commissioner and Surveyor reports are based on FMB and lay out. While so, the Courts below ought to have called for the FMB and lay out pertaining to the disputed property, for proper identification of the said property. Further, the report of the Advocate Commissioner and surveyor sketch would not depict the correct lie of the properties without measuring the defendant's property. The Commissioner ought to have insisted the surveyor to measure the defendant's property also before arriving at a conclusion that the defendant has encroached upon the plaintiff's property. Therefore, if any order is pronounced without a perfect sketch, it is not



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possible to find out whether the plaintiff's property is encroached by the defendant. Moreover, without establishing the factum of encroachment and without analyzing whether such encroachment is done in good faith, the first appellate Court ought not to have invoked Section 51 of Transfer of Property Act.

15. Therefore, there is no option for this Court except to remit the matter to the trial Court for reissuing the Commissioner's warrant to the same Commissioner if available or to any competent Advocate Commissioner with the aid of qualified Surveyor for measuring the properties of the plaintiff and the defendant and to file a fresh sketch along with this report and also to direct the Revenue Authorities to produce the FMB and lay out for the said properties. The parties are at liberty to file necessary applications before the First Appellate Court for reception of the Commissioner's report and sketch as additional documents apart from relevant other documents to be produced for the purpose of enabling the Court to have a fair adjudication on the issue. Therefore, it has become



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necessary for this Court to set aside the judgement and decree passed by the First Appellate Court and the trial Court and to remand the matter for fresh disposal as per the directions indicated above.

16. For the forgoing discussion, I am of the considered view that the judgment and decree passed by the Courts below have to be set aside and accordingly, set aside. The parties are given opportunity to adduce further evidence by way of filing applications regarding the production of documentary evidence and also to file necessary application for re-issue of warrant to the same Commissioner if available, or to appoint any other Commissioner, to measure the properties once again and produce necessary sketches with actual measurements along with this report and such report shall be received by way of additional evidence and pass a judgment in accordance with law. If the Court finds that the defendant has encroached upon the plaintiff's property as bonafide transferee, the trial Court can invoke the



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provision under Section 51 of the Transfer of Property Act, if the same is opted by the respective parties. The trial Court is directed to complete the above exercise within a period of three months from the date of receipt of copy of this order.

17. Accordingly, these second appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

21.11.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order

NB : The Registry is directed to issue order copy on or before 15.12.2025 and to send back their records to the trial Court.

To

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

K.GOVINDARAJAN THILAKAVADI,J.



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**Pre-delivery judgment made in
Second Appeal Nos.148 & 1027 of 2022
and C.M.P.Nos.2981 & 22064 of 2022**

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