



S.A.No.150 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	19.06.2025
Pronounced on	28.07 .2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A. No.150 of 2019 and
C.M.P. No.2771 of 2019

P. Sengkottuvelu

...Appellant

Vs.

1. Sakthivel
2. Muthusamy

... Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 to set aside the judgment and decree dated 05.09.2018 passed by the Additional Subordinate Judge, Namakkal in A.S. No.2 of 2018, reversing the judgment and decree dated 26.10.2017 passed by the Additional District Munsif, Namakkal, in O.S.No.108 of 2014.

For Appellant : Mr.T.S. Vijaya Raghavan
For Respondents : Mr.C. Kulanthaivel

JUDGMENT



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The Second Appeal is at the instance of the Plaintiff in O.S.No.108/2014. The said suit was laid by the plaintiff seeking the relief of Permanent Injunction against the defendants restraining them from trespassing into the suit property and annexing the 'P' schedule property with "D' schedule property and further not to interfere or disturb the possession and enjoyment of the 'P' schedule property of the suit in 0.04 cent owned by the plaintiff.

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

3. The case of the plaintiff is that the suit property is the ancestral property of the plaintiff. Initially, the entire suit property belongs to his maternal grand father, namely, Periyanna Gounder, by virtue of a sale deed dated 20.06.1952. Pavayee is the wife of Periyanna Gounder. They had four daughters, namely, Nallammal, Perumayee, Thangammal and Palaniammal. Perumayee is the first wife of the plaintiff's father. Since



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they had no children, the sister of Perumayee, namely, Palaniammal, was married to the plaintiff's father. She had two children, namely, Sengottuvel, the plaintiff herein and Mallika.

3.1. The maternal grand father of the plaintiff died intestate 35 years ago. Thereafter, the entire property of Periyanna Gounder was succeeded by his wife and four daughters,. In the year 1959, the wife of Periyanna Gounder, namely, Pavayee and her daughters Nallammal, Thangammal and Palaniammal sold their $\frac{3}{4}$ share to Periyanna Gounder (it is significant to note that the name of the plaintiff's father and the name of his maternal grand father are one and the same, namely, Periyanna Gounder). The said Periyanna Gounder, died intestate in the year 2004 leaving behind his wife Perumayee, Mallika and the plaintiff as the legal heirs . After the death of Periyanna Gounder on 21.05.2004, his wife Perumayee and his daughter Mallika executed a release deed in favour of the plaintiff. Then onwards, the plaintiff was in possession and enjoyment of the suit property. In the plaint plan, the properties of the plaintiff are shown as P, P1,P2 and P3 and the properties of the defendants were



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shown as 'D' in Survey No.150/1A, which is an extent of Punjai Hec.0.26.0 and its corresponding measurement in acre is 0.64 cents. Out of that, the defendants own 0.60 cents and the plaintiff owns 0.04 cents. The land of the defendants is situated on the eastern side of the plaintiff's land. While so, the defendants demanded the plaintiff to sell the suit property for a meagre price. Since the plaintiff refused to sell, the defendants attempted to trespass into the suit property and tried to destroy the Sapodilla tress. Hence the plaintiff was constrained to file the present suit seeking a relief of permanent injunction.

3.2. The suit was resisted by the defendants contending that Perumagounder, grand father of the 2nd defendant herein, had self acquired properties at Thathiripuram village in survey No.25/A an extent of 3.79 acres, in survey No.53 an extent of 0.07 cents and in Survey No.150/1A an extent of 0.64 cents. After the death of Peruma Gounder, during the UDR updation, Patta No. 74 and 75 were issued in the name of Sellappa Gounder, father of the second defendant. The said Sellappa Gounder executed a settlement deed in favour of the 1st defendant on



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22.02.2008. At the time of execution, the 1st defendant was a minor and therefore, the 2nd defendant was appointed as a guardian of the first defendant. The 1st defendant has now attained majority and presently he is the absolute owner of 0.64 cents of land comprised in Survey No.150/1A for which patta No.75 was issued in the name of Sellappa Gounder. While so, the plaintiff herein has obtained joint patta No.500 as if the plaintiff has 0.04 cents of land in survey No.150/1A. Hence, the defendants filed a petition before the Tahsildar, to remove the name of the plaintiff in Patta No.500. Considering the representation made by the defendant, the plaintiff's name was removed from patta No.500 and a patta was issued exclusively in the name of the 1st defendant in Patta No.75 on 24.12.2013.

3.3. Before the trial court, the plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A8. On the side of the defendant D.W.1 and D.W.2 were examined and Ex.B1 to Ex.B10 were marked. Ex.C1 and Ex.C2 were marked as court documents.



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3.4. The trial court, after considering the materials on record, vide its order dated 26.10.2017, partly decreed the suit granting injunction in respect of 0.2 cents in survey No.150/1A. Aggrieved by the judgment and decree of the trial court, the defendants preferred an appeal suit before the learned Additional Subordinate Judge, Namakkal, in A.S. No. 2/2018. The lower appellate court held that there is cloud over the extent and enjoyment of the suit property and that the plaintiff is not entitled for any relief, in particular, the injunction restraining the defendants. On the above conclusions, the lower appellate court allowed the appeal reversing the judgment and decree of the trial court.

4. Aggrieved over the same, the plaintiff has come up with this Second Appeal.

5. Heard Mr.T.S. Vijaya Raghavan, learned counsel for the appellant and Mr.C. Kulanthaivel learned counsel for the respondents.

6.The learned counsel for the appellant/plaintiff submits that the



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suit property is the ancestral property of the plaintiff and the same was purchased by the maternal grandfather of the plaintiff namely Periyanna Gounder under Ex.A1 sale deed dated 20.06.1952 in old survey No.25 and New survey No. 150/1A to an extent of 4 cents in the total extent 0.260 Hectare which is equal to 0.64 cents. The defendants have purchased 0.62 cent in the said survey number under Ex.A8 and therefore, the claim of the defendants that they owned 0.64 cents in the said survey number is utter false. It is submitted that the plaintiff alone planted trees in the 4 cents of land and he is in absolute possession of the same. While so, the defendants were requesting the plaintiff to sell the 4 cents of land to them and since they could not succeed, the defendants were attempting to annexe their land along with the suit land and hence the plaintiff was constrained to file the above suit in O.S.No.108 of 2014 before the District Munsif Court, Namakkal for permanent Injunction restraining the defendants from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the suit property measuring 4 cents. The trial court, based on the materials placed on record rightly granted the relief of permanent injunction to the plaintiff.



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7. On the other hand, the counsel for the respondent submits that the revenue records for 0.64 cents in survey number 150/1A stands in the name of the first defendant. Under Ex.B9, Government has assigned the property in favour of the first defendant. Since there is a cloud cast upon the title of the plaintiff, the plaintiff ought to have filed the suit with declaratory relief and consequential permanent injunction. The first appellate court has rightly rejected the claim of the plaintiff and the Commissioner's report and plan which warrants no interference by this Court.

8. Heard on both sides. Records perused.



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9. The plaintiff has filed the above suit for the relief of permanent injunction against the defendants claiming that the suit property is the ancestral property of the plaintiff and that he is in absolute possession and enjoyment of the suit property to an extent of 0.4 cents in the total extent of 0.64 cents in survey number 150/1A, land situate in Thathiripuram Village, Namakkal Taluk, Namakkal District. Whereas, the defendants' contention is that they are owning 0.64 cents in survey number 150/1A as absolute owner and the defendants are in possession and enjoyment of the same.

10. It is not in dispute that the vendors in Ex.A1 and Ex.A8 is one and the same. As per Ex.A1 sale deed, the predecessor in title of the plaintiff has purchased 0.4 cents of land in survey number 25, Thathiripuram Village, Namakkal District. On a perusal of Ex.A8 sale deed, it reveals that the grandfather of the first defendant has purchased 0.62 cents in survey number 150/1A. The trial court and the first appellate court came to the conclusion that the corresponding new survey



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number of the old survey number 25 is 150/1A based on the revenue records marked as Ex.B2, Ex.B4 and Ex.B5. The plaintiff also relied upon Ex.A6 certificate issued by the Village Administrative Officer in which it is mentioned that the new survey number for Inam survey number 25 is 150/1A. However, no other documents were produced on the side of the plaintiff to prove that the corresponding new survey number for old Inam survey number 25 is 150/1A.

11. Be that as it may, now it has to be seen that what extent of property the plaintiff and the defendants are owning. On perusing Ex.A8 sale deed, it is seen that only 0.62 cents in survey number 150/1A was sold. Moreover, D.W.1 himself admitted that Ex.B6 settlement deed in favour of the second defendant was executed based on the revenue records. The said settlement deed is executed for 0.64 cents in survey number 150/1A. Whereas, under Ex.A8 sale deed, only 0.62 cents was purchased by the defendants' grand father. Moreover, D.W.1 himself admitted that in the year 1952, only 62 cents of land was purchased by his grand father. He further admitted that there is no irrigation facilities in



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his property. Whereas, the Commissioner's Report and Plan reveals that trees were found in the disputed land and that the same is irrigated from the lands of the plaintiff. Therefore, from the materials on record the trial court has rightly held that the defendants are entitled only for 0.62 cents in survey number 150/1A. While so, the first appellate court ought not to have dismissed the suit of the plaintiff in entirety. Moreover, it is pertinent to note that, during the second appeal, an Advocate Commissioner was appointed by this Court. He has filed his Report and sketch after inspection. In the said report, he had stated that though as per the revenue records, the land in survey number 150/1A shows only as 0.64 $\frac{1}{4}$ cents, but, in the ground 0.68 $\frac{1}{4}$ extent of land was found to be in existence in survey number 150/1A. The Commissioner has measured the property with the help of surveyor in the presence of Village Administrative Officer. Hence, this Court deem it fit to remand the matter to the trial court with certain directions, in the interest of justice.



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WEB COPY 12. In the result, the judgment and decree dated 05.09.2018 passed by the Additional Subordinate Judge, Namakkal in A.S. No.2 of 2018 is set aside and the matter is remitted back to the trial court with following directions in the matter.

1. The trial court shall appoint Taluka Inspector of Land Records/District Inspector of Land Records as a Commissioner under Order XXVI, Rule 9 of the Code of Civil Procedure, 1976.
2. The commissioner so appointed shall take measurements of the land in survey number 150/1A with the aid of a qualified Taluk/District surveyor in the presence of the parties and their respective counsel and in the presence of the concerned Village Administrative Officer. The Commissioner shall ensure that the Inam survey Number 25 is corresponding to survey number 150/1A. The Commissioner shall prepare authentic measurement map showing the actual extent of land available in the said survey number.



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3. The Commissioner shall also prepare his report and file it on the record of case and thereafter the trial court would give opportunity to the parties to lead evidence and on considering the evidence as well as the report of the Commissioner, shall decide the suit afresh in accordance with law as expeditiously as possible, preferably within six months of the receipt of this order. No order as to costs. Consequently connected miscellaneous petition is closed.

28.07.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Additional Subordinate Judge, Namakkal.
2. The Additional District Munsif, Namakkal.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
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Predelivery Judgment in
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