



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.11.2025

CORAM:

THE HONOURABLE DR.JUSTICE R.N.MANJULA

S.A.No.1137 of 2009

1.Sjamtja Devi, W/o.C.G.Jain

2.G.C.Jain, S/o.Gulan Jain

Both residing at No.
Bangalore Main Raod,
Sunguvar Chatiram,
Sriperumbudur Taluk.

... Appellants / Defendants

Vs

K.A.Abdul Jabar Ravuthar,

S/o.Syed Ahmed,

Residing at No.37-50, Bangalore High Road,
Sunguvarchatiram, Sriperumbudur Taluk.

... Respondent/plaintiff

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed by the learned Subordinate Judge, Kancheepuram in A.S.No.85 of 2007 dated 31.10.2008 reversing the judgment



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and decree of the District Munsif, Kancheepuram, made in O.S.No.463 of 2003 dated 16.08.2007.

For Appellants : Mr.K.M.Balaji

For Respondent : No appearance

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree passed by the learned Subordinate Judge, Kancheepuram in A.S.No.85 of 2007 dated 31.10.2008 reversing the judgment and decree of the learned District Munsif, Kancheepuram, made in O.S.No.463 of 2003 dated 16.08.2007.

2. Heard Mr.K.M.Balaji, learned counsel appearing for the appellants and perused the materials available on record. There is no representation for the respondent.



3. The appellants are the defendants. The suit has been filed for the of permanent injunction. The trial Court dismissed the suit and on the first appeal preferred by the plaintiff, the first appellate Court allowed the first appeal and reversed the judgment of the trial Court. Aggrieved over that, the defendants have preferred the present second appeal.

4. The short facts pleaded in the plaint are as follows:

The plaintiff, who is the owner of the suit mentioned property has acquired the same from his father Shayed Ahmed Ravuthr, in pusuant to the settlement deed 12.02.1991. Prior to him, his father was the owner of the suit property. After the settlement, the plaintiff had been in possession and enjoyment of the property and he had also obtained patta in his name. The defendants, who have no matter of right in the suit property are attempting to interfere with the peaceful possession of the plaintiff. Hence, he had filed the suit for permanent injunction.

5.1 The written statement in brief are as follows:



The suit is not maintainable as it is hit under section 11 of Co

Civil Procedure [barred by resjudicata]. The defendants had purchased the property in Survey No.37/5A to an extent of 1.02 acres and Survey No.37/5D to an extent of 0.83 cents with the defined boundaries under the registered sale deed dated 24.8.1982 from one Ahmed Ravutha and Abdul Jabar, the plaintiff and Abdul Gaffoor for Rs.37,000/-. The vendors have not retained any portion in the said two survey numbers. To the west of the two survey numbers, there was a channel running and it was not in use. After purchase, the defendants measured the properties covered by the sale deeds within four boundaries. At that time, they came to know that there is excess of land within the measurement. At the time of measurement, his vendors were also present. The vendors have got no manner of right to sell the excess extent found at the time of survey. After the defendants had purchased the suit properties on 24.08.1982, they had filed a suit against the vendors by including one Veerabathira Naicker, who was about to purchase a portion of the suit property from the plaintiff. As the plaintiff have attempted to sell the excess land found during survey, the defendants had filed a suit against the vendors by including



the proposed purchaser Veerabathira Naicker in O.S.No.597 of 1986. The suit was decreed as prayed for.

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5.2 The plaintiff and Abdul Gafoor had filed CMP.No.4 of 1992 to condone the delay in filing an appeal against the decree dated 21.09.1990. The said petition was dismissed on 23.09.1993. Further, a revision petition has been filed challenging the Order passed in the above petition. During the pendency of the above Civil Revision Petition, a compromise has been entered into between the plaintiffs and the defendants. In view of the compromise, the Civil Revision Petition was closed. As per the terms of the compromise, out of excess land of 4 cents, 2 cents, which is on the western side of the plaintiff's house has been given to the plaintiff and the remaining 2 cents have been given to Abdul Gafoor and to that effect, the second defendant had executed a sale deed in favour of the plaintiff and his brother Abdul Gafoor and thereafter, the plaintiff and Abdul Gafoor have sold the said property to third persons. Having done so, the plaintiff cannot claim that he had obtained a settlement deed from his father.



5.3 The defendants had divided the survey Nos.37/5D into house plots through layout plan and part of it has also been gifted to Sriperumbudur Panchayat for road purpose and the property gifted in favour of the panchayat has been subdivided as survey No.37/5D[2]. The plaintiff had filed the suit by creating false documents. Hence, the suit has to be dismissed.

6. On the basis of the above pleading, the trial Court has framed the following issues :

1. Whether the plaintiff is entitled to get permanent injunction as prayed for?

2. To what relief?

7. During the course of trial, on the side of the plaintiff, the plaintiff was examined as P.W.1 and Exs.A1 to A8 were marked. On the side of the defendants, the second defendant was examined as D.W.1 and Exs.B1 to B5 were marked.



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8. At the conclusion of the trial, the suit has been dismissed. The first appeal filed challenging the above judgment has been allowed by reversing the judgment of the trial Court. Hence, the defendants have filed this second appeal, which has been admitted on the following questions of law :

"1) Whether the first appellate Court is correct in holding that Ex.A.1 is a valid settlement deed executed by the plaintiff's father in favour of the plaintiff, when the plaintiff's father was not having any legal right over the said property?

2) Whether the judgment of the first appellate court is vitiated by failure to appreciate the relevant materials on record and non-application of the correct principles of law?

9. For the sake of convenient discussion in the Second Appeal, the parties are referred as per their rank in the plaint.

10.1 The crux of the issue revolves around the excess 4 cents which was found after the purchase by the defendants by virtue of sale deed dated 24.08.1982. It



is not in dispute between the parties that at the time when the survey was conducted,

there was an excess of 4 cents in measurement. Later the appellants filed a suit

against their vendors including the proposed purchaser in O.S.No.597 of 1986

claiming the relief of injunction. The suit was decreed on 21.09.1990. The

defendants in that suit had preferred an appeal along with a petition to condone

the delay in filing the appeal in CMP.No.4 of 1992 before the Sub Court,

Kancheepuram [the plaintiff in this suit and his brother]. However, the above

petition has been dismissed. The Order of dismissal made in CMP.No.4 of

1992 dated 21.09.1990 has been challenged before this Court by way of a Civil

Revision Petition in SR No.46368 of 1994. During the pendency of the above

proceedings, the parties had entered into a compromise. Pursuant to that, the

Civil Revision Petition has been closed by observing that the parties have

entered into a compromise. The observation of the learned first appellate Court

is that, even though Ex.B.2 claims to be a compromise based on which the

Civil Revision Petition has been closed, the compromise has not been acted

upon. But the contention of the learned counsel for the appellants is that the

above terms of compromise has been reduced into writing and the same has



been marked as Ex.B.2. As per Ex.B.2 agreement, the defendants have agreed

to give two cents each, to the plaintiff and his brother. Ex.B.2 is not denied by the respondent also. The only observation that has been made by the first appellate Court to reverse the judgment of the trial Court is that the above agreement has not been acted upon and there was no sale deed executed by the defendants in favour of the plaintiff or his brother.

10.2 In Ex.B.2, which was marked during the cross examination of P.W.1, his admission is available on record. But unfortunately, this document has been listed in the description of the document by the trial Court as certified copy of the judgment made in O.S.No.597 of 1986 and the very same Ex.B.2 number has been given to both the documents. Had it been exhibited rightly and given proper exhibit number, the sale deed dated 03.11.2000 would have found place in the list of documents. The sale deed was very much available on record and endorsement has been made on the agreement dated 30.06.1995, which was instrumental for the closure of the pending Civil Revision Petition as Ex.B.2 and subsequent sale deed dated 03.11.2000 were not properly listed

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in the list of documents. This faulty arrangement of documents had resulted in wrong appreciation of merits of the record by the first appellate Court.

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10.3 Having got the sale deed as per the compromise between the parties, the respondent cannot be allowed to be benefited once again by claiming that his father had also executed a settlement deed Ex.A.1 in his favour in respect of the very same property, which was found to be excess during the survey measurement as stated already. The plaintiff had not even disclosed the execution of the settlement deed Ex.A1 at the time when Ex.B2 terms of compromise and Ex.B.3 sale deed were executed in favour of the plaintiff and his brother. This only shows that Ex.A.1 settlement deed is superseded by the virtue of the subsequent documents, namely the terms of compromise and the sale deed Ex.B.2 and it can only be concluded that Ex.A.1 settlement deed has not been acted upon. As Ex.A1 was not within the knowledge of the appellants at the time when the Civil Revision Petition was closed and the subsequent sale deed has also been executed pursuant to Ex.B.2.

The first Appellate Court ought to have considered Ext.A1 as a nominal
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document that had not been acted upon. As the confusion has arisen in

of the wrong description of the document and assigning exhibit number,

essential evidence available on record was omitted to be noted. As the

appellants have proved that the plaintiff is not entitled to the property conveyed

to him in view of the subsequent arrangements and developments as detailed

earlier, the judgment of the first appellate Court has to be set aside and the

judgment of the trial Court has to be restored. The substantial questions of law

have been answered in favour of the appellants.

11. In the result, the second appeal is allowed and the judgment and decree of the Subordinate Judge, Kancheepuram, dated 11.09.2008 in A.S.No.85 of 2007 is set aside and the judgment and decree of the District Munsif, Kancheepuram, dated 16.08.2007 in O.S.No.100 of 1999, is confirmed. No costs.

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Index : Yes

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Speaking order

Neutral Citation : Yes

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To :

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



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Dr.R.N.MANJUL

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Judgment in
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