



S.A.No.161 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No.161 of 2009

B.Chandra

... Plaintiff/Appellant/Appellant

Versus

1.Amanullah

2.C.Bhavani

3.C.Ramesh

... Defendants/Defendants/Respondents

PRAYER Second Appeal Suit filed under Section 100 of Code of Civil Procedure, against the fair order and decretal order passed in A.S.No.483 of 2007 dated 02.04.2007 on the file of the learned VII Additional Judge, City Civil Court, Chennai, confirming the judgment and decree passed in O.S.No.1053 of 2005 dated 22.12.2006 on the file of the learned XVIII Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.T.S.Rajamohan

For R1 & R3 : Dismissed vide
Court order dated 15.12.2022

For R2 : Mr.C.Rajan



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J U D G M E N T

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2. For the sake of convenience, the parties are referred to as Plaintiff and Defendants as referred in the suit.

3. The averments in the plaint filed by the Plaintiff are as follows:-

The Plaintiff purchased the suit property to an extent of 2184 sq.ft. situated at Plot No.10, Adhipuri Jai Nagar, School Road, Kodungaiyur Village, Chennai - 118, comprised in S.No.54/1 Part from M/s.Baheeradan and his sons and one Devirathan represented by their Power of Attorney, A.S.Balasubramaniam by registered sale deed, dated 26.04.1985. She has been enjoying the same in her absolute possession from the date of purchase and also obtained Patta No.2994 in her name. The Plaintiff's owners had sold the remaining area by dividing the property into residential plots without getting any approval from the competent authority



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for creation of lay out. The Plaintiff is residing at Kodambakam, away from the suit property. During October 2001, she found that construction work was going on abutting her property, when she enquired the 1st defendant, he informed that he sold the property to Defendants 2 and 3 and they told that they are doing the construction work well within their boundaries. After that the Plaintiff preferred an application before the Tahsildar, Fort Tondiarpet for re-survey and they sent reply on April 2002 stating that there is a shortfall of 721 sq.ft. in respect of her patta and called upon the Plaintiff to submit an affidavit. Then only she came to know about the fact that the 1st Defendant illegally and unlawfully sold the Plaintiff's property to an extent of 721 sq ft. to Defendants 2 and 3. The Defendants 2 and 3 without verifying the records, title and documents had taken the risk of purchasing the property from the 1st Defendant which is illegal and the sale is invalid. When the Plaintiff had taken steps to measure the property, the Defendants 2 and 3 have constructed the superstructure on the encroached portion of the Plaintiff's property and they also threatened the Plaintiff. Hence the Plaintiff issued a legal notice on 07.05.2003 to the Defendants to remove the illegal and unlawful construction and to restore the Plaintiff's property to its original position. Even after receiving the same, they did not send any reply. Hence the



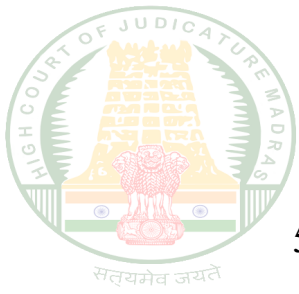
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Plaintiff was constrained to file this suit for declaration and permanent injunction and the same may be decreed as prayed for.

4. The brief averments made in the written statement filed by the 2nd

Defendant are as follows:-

The Defendant deny all the allegations made in the plaint except those that are specifically admitted herein. The Defendant is not aware of the Plaintiff's title over the suit property. This Defendant is in actual physical possession of her own property and she has not trespassed into the 720 sq.ft. of land that belongs to the Plaintiff as stated in the plaint. The contention of the Plaintiff that she is in enjoyment of the suit property as per sale deed, dated 26.04.1985 is false as she was never in possession of the alleged 720 sq.ft. and she has no title over the same. Even though she is fully aware of the shortage of 720 sq.ft. from the date of purchase, she did not question this Defendant about the same. The Plaintiff is not entitled to any relief as claimed in the plaint and the suit barred by limitation. The suit is not properly valued and court fees paid is not correct. Hence the suit may be dismissed with costs.



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5. From the facts of the case it is found that the Plaintiff had purchased the property in Plot No.10, having an extent of 2184 sq.ft., comprised in S.No.54/1 Part, forming part of total extent of 0.33 cents at “Aadhipuri Jai” Nagar, No.31, Kodungaiyur Village purchased by the Plaintiff from M/s.Baheerandan, his sons, Mani Sundaramurthy, Karthikeyan, Ramakrishnan and Devirathan, s/o.late Arumuga Mudaliar, rep. by their General Power of Attorney, A.S.Balasubramaniam, by registered sale deed dated 26.04.1985, registered before the SRO vide No.1475/85, which is the scheduled property and she had been in enjoyment of the same. During October 2001, when she visited the suit property, she found that construction activity was going on her property and she enquired the 1st Defendant and the 1st Defendant informed the Plaintiff that the 1st Defendant sold his property to Defendants 2 and 3 and they have stated that the construction was well within the boundaries and did not encroach upon the Plaintiff's property. The Plaintiff preferred a complaint before the Tahsildar, Fort Tondiarpet for re-survey. The Tahsildar sent reply dated April 2002, which was received by her in June 2002 that there is a short fall of 721 sq.ft., in respect of the patta issued in her favour. Therefore, she had filed the suit for declaration. The 2nd Defendant had filed a written statement and disputed the claim of the



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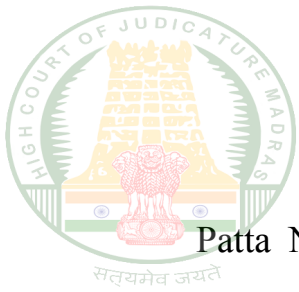
Plaintiff.

WEB COPY 6. The following issues were framed for the trial of the case:

1. Whether the Plaintiff is in possession of the suit property?
2. Whether the suit is barred by limitation?
3. Whether the Plaintiff is entitled for the relief of declaration?
4. Whether the Plaintiff is entitled for the relief of possession?
5. To what other relief the Plaintiff is entitled?

7. Mr.A.S.Balasubramaniam, Plaintiff's husband was examined as P.W-1 and Ex.A-1 to Ex.A-6 were marked. The 2nd defendant has adduced the evidence of D.W-1 and Ex.B-1 & Ex.B-2 were marked on the side of the 2nd defendant. Court documents Ex.C-1 to Ex.C-3 were marked suo-motu.

8. During trial, the husband of the Plaintiff who is the General Power of Attorney of the original land owner who had sold the property to the Defendants 2 and 3 had examined himself as P.W-1. Ex.A-1 is the authorisation by the Plaintiff to her husband. Ex.A-2 is the Sale Deed of the Plaintiff dated 26.04.1985. Ex.A-3 is the patta issued by the Zonal Deputy Tahsildar, Fort-Tondiarpet Taluk in favour of the Plaintiff bearing

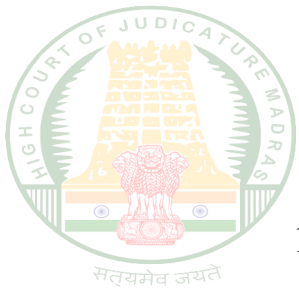


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Patta No.2994. Ex.A-4 is the letter from the Tahsildar, Fort-Tondiarpet Taluk, in which it is stated that there is a shortage of 724 sq.ft. Ex.A-5 is the letter sent by the Plaintiff to the Tahsildar, Fort-Tondiarpet Taluk. Ex.A-6 is the legal notice issued by the Plaintiff to the Defendants. Ex.B-1 is the Sale Deed executed by the 1st Defendant in favour of the 2nd Defendant. The prior Sale Deed in favour of the Defendants' father is not marked during evidence.

9. On appreciation of evidence, the learned Judge dismissed the suit claiming that there is no correlation. The learned Judge ought to have directed the Commissioner to take assistance of the Surveyor to measure the properties as per the documents of both parties. But the Advocate Commissioner had not carried out the warrant as per the request of the Plaintiff with the relevant documents from the Tahsildar, Fort-Tondiarpet Taluk. Therefore, the Plaintiff had filed objection to the Commissioner's report. The learned XVIII Additional Judge, City Civil Court, Chennai by judgment in O.S.No.1053 of 2005 dismissed the suit. Aggrieved by the same, the Plaintiff had preferred an appeal in A.S.No.483 of 2007.

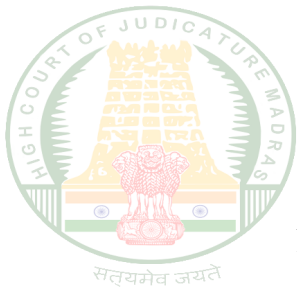


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10. After hearing the arguments of both the parties, the learned VII Additional Judge, City Civil Court, Chennai, had dismissed the appeal raising the ground that the learned Trial Judge misread the evidence and failed to consider the materials available before him. Even though there was no material claiming that patta issued in favour of the Plaintiff is defective or that the S.No.54/11 is the new patta No.54/1, there is no such evidence. In the absence of such evidence, the learned XVIII Assistant Judge, City Civil Court, Chennai, misdirected himself and dismissed the suit of the Plaintiff which is erroneous.

11. The learned First Appellate Judge dismissed the claim of the Plaintiff that there are no specific boundaries, is erroneous. It is to be noted that the sale deed of the Plaintiff had given specific boundaries which are vacant house sites in the same survey number. After sale deed the Tahsildar had issued patta for the vacant house site that old S.No.54/11 which is correlated as S.No.54/1 as per the letter of the Tahsildar under Ex.A3 and Ex.A-4. Challenging the judgment passed in A.S.No.483 of 2007 dated 02.04.2007 on the file of the learned VII Additional Judge, City Civil Court, Chennai, the Plaintiff approached this Court raising the substantial questions of law.



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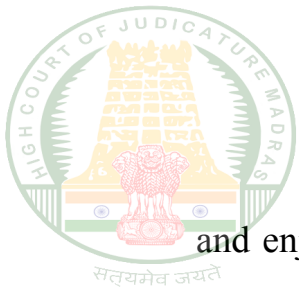
12. The Second Appeal was admitted on the following substantial

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i) Whether the Plaintiff/Appellant has purchased the suit property covered in survey No.54/1 of the sale deed dated 26.04.1985 admissibly an extent of 2184 sq.ft of vacant land of Plot No.10 of Aadhipuri Jai Nagar, Kodungaiyur Village, Chennai inspite of the report filed by the Advocate Commissioner stating that the first Defendant, Mrs.C.Bhavani's Plot No.42, S.A. Colony, Kodungaiyur, Chennai, is forming part of survey No.54/1 (T.S.No.2/44)?

ii) Whether the Courts below can misread the evidence to prove the title of the Plaintiff/Appellant particularly when the Plaintiff/Appellant is not having the entire 2184 sq.ft in the sale deed dated 26.04.1985?

13. Learned Counsel for the Appellant submits that the immovable property situated at Plot No.10, having an extent of 2184 sq.ft. comprised in S.No.54/1 Part, forming part of total extent of 0.33 cents at "AADHIPURI JAI" Nagar, No.31, Kodungaiyur village was purchased by the Plaintiff from M/s.Baheeradan, his sons Mani, Sundaramurthy, Karthikeyan, Ramakrishnan and Devirathan, S/o.late Arumuga Mudaliar, rep. by their General Power of Attorney A.S.Balasubramaniam, by registered sale deed dated 26.04.1985, registered before the SRO vide No.1475/85, which is more fully described in the schedule hereunder. The Appellant/Plaintiff has been exercising absolute right of possession, title



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and enjoyment in respect of the above property since the date of purchase

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ie., 26.04.1985. He has further obtained patta in his name as early as on

29.11.1993 vide No.2994. The owners of the property had sold the

remaining area forming part of S.No.54/1 by dividing the property into

residential plots. Even though, residential plots were created from and out

of the above total extent of 0.33 cents, the owners of the property stated

supra did not obtain any approval from the competent authority for

creation of lay out. Since the Appellant is residing at Kodambakkam which

is more than 20 kilo meters away from the suit property, he was not able to

maintain constant vigil over the above property and see that no third party

encroaches into the above property. During October 2001, when the

Appellant/Plaintiff visited the above property, she found that construction

activity was going on abutting her property. At that juncture when the

Appellant/Plaintiff enquired the 1st Respondent, the 1st Respondent seems

to have informed her that the 1st Respondent had sold his property to the

Respondents 2 and 3 and further the Respondents 2 & 3 have informed her

that the construction activity which was going on was well within the

boundaries and that Appellant/Plaintiff property is not encroached upon

nor transgressed. Since, Respondents 2 & 3 have trespassed into

Appellant/Plaintiff property, she preferred an application with the

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Tahsildar, Fort Tondiarpet for re-survey. The Tahsildar sent reply dated

April 2002 which was received by her in June 2002 stated that there is a

short fall of 721 sq.ft. in respect of the patta issued in her favour and therefore since discrepancy has arisen in regard to the area of the property when compared with the patta, she was called upon to submit an affidavit.

Only thereupon the Appellant/Plaintiff came to know that the 1st

Respondent had illegally and unlawfully conveyed the Appellant's property

to an extent of 721 sq.ft. to the 2nd and 3rd respondents. When

Appellant/Plaintiff was initiating proceedings to call upon the Tahsildar to

have proper measurement and to prevent the encroachment into her

property, the Respondents 2 & 3 have in a drastic manner constructed

superstructure encroaching an extent of 721 sq.ft. into her property. When

she informed the Respondents 2 & 3 that they have encroached into her

property, the Respondents 2 & 3 turned on deaf ear and started threatening

her with dire consequences. The 1st Respondent had in the most illegal and

unlawful manner sold an extent of 721 sq.ft. by encroaching into the

Appellant/Plaintiff property and misrepresenting that the suit property

belongs to him. Therefore, the 1st Respondent has played fraud and by

misrepresentation the Respondents 2 & 3 executed sale deed conveying

Appellant/Plaintiff property to Respondents 2 & 3. The Respondents 2 & 3

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without verifying the records, title and documents had taken the risk of

purchasing the property from the 1st Respondent which is per-se illegal.

Such a sale is *void abinitio* and will not stand judicial scrutiny. The sale deed alleged to have been executed by the 1st Respondent to and in favour of the Respondents 2 & 3 are unregistered and does not contain true and correct facts. The Appellant/Plaintiff have perfected title in respect of an extent of 2184 sq.ft. since 1985 and is exercising a right in rem. Therefore, all the above defendants have no manner of right to title or interest to enter into her property. Therefore, the conduct of the Respondents amounts to trespass, and illegal and unlawful aggrandizement of her title and possession over the above property. The appellant/plaintiff has now come to understand that the 1st Respondent had drawn a plan showing distorted and incorrect measurement of plots and the Respondents 2 & 3 have purchased property from the 1st Respondent, believing the same to be true. Anyhow, it is the bounded duty on the Respondents 2 & 3 to verify with the records before the Registrar for assurance and also the Revenue records before venturing into such sale deed.

14. Under these circumstances, the Appellant/Plaintiff sent notice to all the Respondents by RPAD on 7.5.2003, calling upon the Respondents



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to remove the illegal and unlawful construction, (both permanent and semi

permanent) and restore her property to its original position. Having

acknowledged receipt of the said notice, the Respondents have not

complied with the demand of Appellant/Plaintiff till date. since the

Respondents 2 & 3 proceeded to put up a pucca permanent construction in

the enclosed area of 721 sq.ft., thereby, the Appellant/Plaintiff was

constrained to file the above suit O.S.No.1053 of 2005, before the XVIII

Assistant Judge, City Civil Court, Chennai. The above suit O.S.No.1053 of

2005 was taken on file and the Respondents 1 and 3 herein remained *ex*

parte. The 2nd Respondent alone contested the above suit. Unfortunately,

the Court below was pleased to dismiss the above suit O.S.No.1053 of

2005, on erroneous grounds, by judgment and decree dated 22.12.2006.

Aggrieved against the judgement and decree passed in O.S.No.1053 of

2005, the Appellant/Plaintiff filed A.S.No.483 of 2007. The Judgment and

Decree was passed on 02.04.2007 confirming the Judgment and Decree

passed in O.S.No.1053 of 2005 dated 22.12.2006. Challenging the same

the above S.A.No.161 of 2009 was filed. Admittedly in the plaint schedule,

the Appellant/Plaintiff relied upon the sale deed dated 26.4.1985,

registered as Document No.1475/1985 and has also referred to Patta

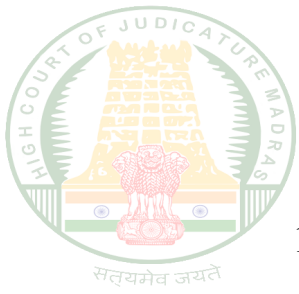
No.2994. Thus these 2 documents, being public documents, are referred to



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in the plaint schedule. The findings of the Courts below that the Appellant/Plaintiff has not given the descriptions of the suit property is totally erroneous and incorrect.

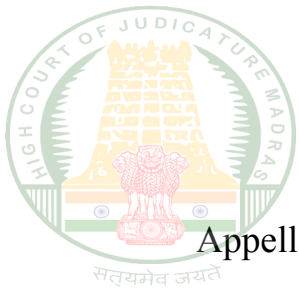
15. The findings of the Courts below that there is no correlation between S.Nos.54/1 or 54/11 which are found in Ex.A2 Sale deed with that of the Commissioner's report and its supporting sketch, wherein only Town S.No. given as T.S.No.2/44 is absolutely without appreciation of record. It is further submitted that S.No.54/1 or 54/11 are mutual S.Nos. at the time of preparation of the layout. It is the normal procedure adopted by the Revenue authorities to carry out Town Survey again. Thus the original S.No. will not be carried over to that of the revised S.No. Therefore the Town Survey is bound to change. This factual aspect is the normal procedure adopted by the Revenue Authorities. Thus it could be seen that there is proper correlation in respect of the S. Nos. Therefore, the finding to the contrary by the courts below is totally erroneous and is without proper appreciation of records. and documents. Thus the findings of the courts below pointing out that it is the duty of the Appellant/Plaintiff to correlate the survey number is perverse.



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16. The finding of the Courts below that as there is no correlation between S.Nos.54/1 or 54/11 with T.S.No.2/44 as mentioned in the Commissioner's Report and Sketches and thus rejecting the plea of the Appellant/Plaintiff amounts to failure to exercise judicial discretion by calling upon the respective parties to clarify on the issue. Pertinently, the Report of the Advocate Commissioner does not say that the Patta in favour of the Appellant is wrong or that S.No.54/1 or 54/11 does not belong to the appellant. Therefore, the finding of the Court below is just an exercise without proper appreciation of records. When the Court below goes to the extent of giving a finding, casting duty upon the Appellant/Plaintiff to correlate the Survey Number, it is to be seen that at no point of time was the Appellant/Plaintiff called upon to clarify such doubts which had arisen in the mind of the Courts below. The entire doubt or otherwise, the finding of alleged discrepancy would have been clarified had at any point of time did the courts below come open with such doubts. Atleast the Courts below ought to have clarified with the learned Advocate Commissioner, which was also not done. The provisions under Order XVI Rule 2 CPC empowers the Courts to seek such suo moto clarification. Both the Courts below ignored Ex.A-2, Ex.A-3, Ex.A-4 besides Ex.C-1 to Ex.C-3 being the report of the Advocate Commissioner. When title is proved by the



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Appellant/Plaintiff in the manner known to law, when admittedly there were discrepancy in revenue entry, the concurrent findings of the Courts below have virtually shaken the title of the Appellant/Plaintiff resulting in serious miscarriage of justice.

17. Learned Counsel for the 2nd Respondent submits that the suit itself is not maintainable for want of identification of the property in question, as there is no description set forth to understand where the Plaintiff's property is located or how it is being claimed that there is an encroachment. Hence the suit is without any substance for any further progress or contentions. Both the Courts below have categorically held that there is no proof to show any encroachment over the property nor has the Plaintiff been able to locate her property in order to consider her approach. In the said factual finding there is no material shown to entertain any second appeal as it is probable to contest only on the question of law. There is no question of law much less any legal issue involved in the matter of the Plaintiff approach to give any consideration to the case of the Plaintiff. Both the Courts concurrently held that the Plaintiff has not proved her occupation or possession in the identified property to complaint about an encroachment, and more so, when the Tahsildar had pointed out



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the discrepancy about the non availability of the total extent of purchase.

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The Plaintiff had not taken any steps to locate the left out property; furthermore when the Plaintiff could not pinpoint as to which side of the property of the Plaintiff was left to third party's occupations these make it clear that the allegations set forth against these Defendants are only based on presumptions and assumption of the Plaintiff without locating the exact variations and boundaries as to which side of the property was left to third party's occupation makes it worse for the Plaintiff to pursue any case against the Defendants. The overall description of the property includes every property of the un-approved layout including the Defendants land. By relying on such a boundary, how the Plaintiff assumed there is an encroachment has not been made clear making it difficult to embark on the case of the Plaintiff. Such approach is not permissible either in law or on facts to entertain any case of this nature for declaration and for possession. When the Plaintiff could not divulge appropriate Survey number, boundaries, or the subsequent T.S. Numbers, she cannot accuse the Defendants as encroachers, since the Plaintiff herself is not aware which property belongs to her. Blaming others for a shortfall in the extent of her property is not a valid ground to agitate the issue in the Court, especially against persons who own lands in accordance with their documents. More



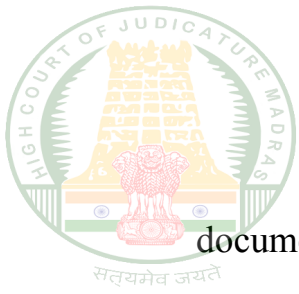
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so when the Defendants property was supported by valid flow of titles supported by appropriate documents and revenue records, The Plaintiff has to dislodge by establishing that every documents, records and enjoyment are wrong and no attempt to that effect was attempted either in her pleadings or in the evidence or through appropriate documents. It is pertinent to point out that the Commissioner report filed at the instance of the Plaintiff also does not support the case of the Plaintiff as the property could not be identified with the particulars furnished. On the other hand, the extent of land which is being held by the Defendants also does not match the extent attributed by the Plaintiff and does not tally with the occupational extent to the claim of short fall by the plaintiff. Further the Plaintiff purposefully have not taken any initiative to verify the layout or plotting to locate her property before attributing encroachment to the Defendants, as is required in this nature of case.

18. Heard the learned counsels on either side and perused the original records in O.S.No.1053 of 2005 and A.S.No.483 of 2007.

19. The document No.1475/1985 shows specific boundaries that vacant site with extent and measurement on all the four sides whereas the



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document of the Defendants executed by Power Agent, Amanullah indicates a different survey number. The purchaser of the property 2nd

Defendant examined herself as D.W-1. Ex.B-1 is the sale deed dated 11.10.1999 executed by Amanullah as Power Agent in favour of the 2nd Defendant on behalf of Kadhar Moideen, claiming that the property belongs to Shyamalabai, W/o.Arumugam, regarding Plot No.7 and S.Nos.54/3 and 54/4 and Patta No.2773, and bearing New S.No.54/9 and 54/10, Plot No.8. All the properties have been clubbed together for total extent of 2250 sq.ft., and sold to the 2nd Defendant under Plot No.42 of S.A Colony measuring 650 sq.ft., which is nothing but an encroachment on the Plaintiff's land, as the measurements had been reduced. The report of the Advocate Commissioner was not considered by the learned XVIII Assistant Judge, City Civil Court, Chennai. Also, upon reassessment of evidence, the learned Judge failed to appreciate the evidence available before him. The seller of the property, Amanullah is the competent person to speak about the original extent and original survey number and identify the property. The 2nd Defendant (purchaser) had not examined her vendor Amanullah. The evidence of the purchaser in the cross-examination indicates that she was not aware of her father's title and without verifying the father's title she had purchased the property. The property is enclosed



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within the Plaintiff's property, specifically Plot No.10, which had specific measurements and was vacant land at the time. The Commissioner's report indicates there is encroachment although the town survey number is said to correlate the learned Judge failed to consider those aspects and dismissed the claim of the Plaintiff despite the evidence available before the Court that there is a reduction in the measurement of the Plaintiff's property, which had been identified by the Plaintiff.

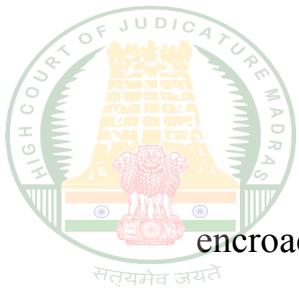
20. It is the case of the Plaintiff that the Advocate Commissioner did not measure the entire extent of the property including the property encroached upon. Therefore, she had raised objection. The revenue records are clear regarding grant of patta. The vacant site was granted patta under Ex.A-3. The learned Judge failed to appreciate these facts and rejected the evidence of the Plaintiff, despite the Defendants not being able to demolish the case of the Plaintiff. There are materials available before the Court through Ex.A-1 to Ex.A-13. The sale deed of the Plaintiff is the earliest point in time, wherein the boundaries and vacant site numbers are clearly identified. The father of the vendor of the Defendants, Amanullah, is the competent person to speak about encroachment or lack of encroachment and to identify the Defendants' property, as per the sale deed of the



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Defendants under Ex.B-1. He also gave an indemnity to the purchaser that he will undertake to face any allegation that may arise in future based on this sale deed under Ex.B-1 but he had not been examined by the Defendants as the competent witness. The recitals in Ex.B-1 itself is confusing whereas the Plaintiff's case is the clear case on appreciation of evidence. The learned Judge failed to consider these aspects and misdirected the evidence available on record and dismissed the case of the Plaintiff, which is found unacceptable. When the Plaintiff had issued notice to the Defendants, the Defendants instead of replying to the notice of the Plaintiff, she had completed the construction fully aware that she has been putting up construction on a disputed property. Therefore, she had take the risk. The claim of the Plaintiff is proved through Ex.A-1 to Ex.A-6 and the Commissioner's report under Ex.C-1 to Ex.C-3. The report of the Tahsildar indicates that there is shortfall in the extent of the land as per the patta issued to the Plaintiff under Ex.A-3. The patta issued in favour of the Plaintiff gives out clear measurement, while whereas the patta letter from the Tahsildar under Ex.A-4 indicates that there is a shortfall to an extent of 724 sq.ft., based on the sale deed of the Plaintiff. This is sufficient to arrive at a conclusion that there is encroachment. The learned Judge failed to consider these aspects and rejected the evidence of the Plaintiff proving



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encroachment, which is found unfair on the part of the learned Judges in appreciating the evidence carefully. The Plaintiff's document has clear measurements indicating the boundaries which are vacant sites at the time of the sale deed 1985. On the other hand, the recitals in Ex.B-1 is found confusing it mentions Plot No.42 of S.A Colony measuring 650 sq.ft., extent had been sold to the Defendants. The 2nd Defendant alone entered the witness box and did not examine her father, Amanullah, who is the competent person to speak about the recitals under Ex.B-1. Therefore, the Court has to draw an adverse inference against the Defendants. In the cross-examination, the Defendants were unable to explain as to why she had denied the suggestions put to her that she had purchased the property without verifying the title. The evidence available before the Court is contrary to her claim. Therefore, she cannot claim title to her property based on Ex.B-2. The Plaintiff is entitled to a decree and substantial questions of law is in favour of the Plaintiff.

21. It is the specific case of the Plaintiff that she found out there was indeed encroachment. The evidence from the Taluk Surveyor through the Tahsildar under Ex.A-3 claims that there is encroachment to an extent of 721 sq.ft. The Defendants had not taken any steps to mark the prior title



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deed of Defendants 2 and 3 when marking earlier document. The dismissal of the suit by the learned Judge is found erroneous. The Plaintiff was able to prove her case by marking documents under Ex.A-1 to Ex.A-6. Ex.A-3 is the patta for the suit property, showing an extent of 5 cents. Upon measurement, it was found out that there is a shortfall in measurement, clearly indicating that there is encroachment.

22. It is the claim of the Plaintiff that the Defendants had created documents by falsely including the part of the Plaintiff's property in favour of Defendants 2 and 3. The earliest document is the Plaintiff's document under Ex.A-3 and without verifying the prior title deed, Defendants 2 and 3 had purchased the property, for which evidence is available. Instead of ordering the Commissioner to carry out the warrant with the help of the Sale Deeds and revenue records, the learned Judge had dismissed the suit which is found erroneous. The document of the Plaintiff in which the survey number is given, the measurements are also given instead the learned Judge ignored the evidence available before the Trial Court and rejected the evidence of the Plaintiff stating that there is no correlation.

23. On filing the Appeal, the learned First Appellate Judge



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dismissed the Appeal. The 2nd Defendant alone examined herself as D.W-1

and she was not able to assert her claim in the written statement and her evidence during cross-examination clearly indicates that she had put up construction without obtaining permission from the Authority concerned. The Sale Deed of the 2nd Defendant itself is found to be not supported with the document of the title of her father. Therefore, the suit ought to have been decreed by granting appropriate relief. There is sufficient materials available before the Court, including the Commissioner's Report which establishes that an extent of 2184 sq. ft. is not available as per the sale deed dated 26.04.1985. In the light of the materials available before the Trial Court, both the Trial Court as well as the First Appellate Court misrepresented the evidence and dismissed the suit of the Plaintiff particularly when the Defendants had not obtained permission from the authority concerned before putting up construction.

24. In the light of the above discussion, **substantial questions of law are answered in favour of the Plaintiff and against the Defendants.**

The suit is decreed in favour of the Plaintiff. The Plaintiff is directed to file appropriate petition before the Trial Court and seek remedy against the Defendants. The Defendants are directed to remove the encroachment,



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failing which the Plaintiff can move the Execution Court.

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In the result, the **Second Appeal stands allowed with costs throughout**. The Judgment of dismissal in O.S.No.1053 of 2005, dated 22.12.2006 by the learned XVIII Assistant Judge, City Civil Court, Chennai and the judgment of dismissal of Appeal in A.S.No.483 of 2007, dated 02.04.2007 by the learned VII Additional Judge, City Civil Court, Chennai are set aside. The suit in O.S.No.1053 of 2005 is decreed as prayed for. The Plaintiff, in continuation of the decree for removal of obstruction, shall file execution petition to remove the encroachment before the learned Execution Court.

27.06.2025

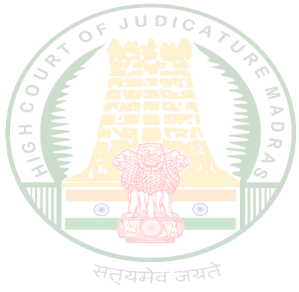
cda

Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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S.A.No.161 of 2009

SATHI KUMAR SUKUMARA KURUP, J.,

cda

To

- 1.The XVIII Assistant Judge,
City Civil Court, Chennai.
- 2.The VII Additional Judge,
City Civil Court, Chennai.
- 3.The Section Officer,
VR Section, High Court,
Chennai.

Judgment made in
S.A.No.161 of 2009

27.06.2025