



S.A.Nos.409 of 2009 and 506 of 2010

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 10.10.2025

CORAM

**THE HONOURABLE Dr. JUSTICE R.N.MANJULA**

**S.A.Nos.409 of 2009 and 506 of 2010 and**  
**M.P.Nos.1 of 2009 & 1 of 2010**

**S.A.No.409 of 2009**

Venkatesan

...

Appellant

Vs.

1.Anjalai

2.Jayalakshmi

3.Samiyabevi

4.Noorinisa

5.Allapitchai

6.Sellatchi

7.Barakathunissa

8.Ansari

9.Raji

10.Hasan

...

Respondents

Respondents 3 to 10 are given up  
since they remained exparte.

**Prayer :-** Second Appeal has been filed under Section 100 of CPC against the  
Judgement and Decree dated 19.01.2009, in A.S.No.52 of 2006, on the file of



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the Sub Court, Chidambaram, confirming the Judgment and Decree dated

25.02.2005, in O.S.No.116 of 2006, on the file of the Principal District Munsif

Court, Chidambaram.

|               |                                      |
|---------------|--------------------------------------|
| For Appellant | : M/s.A.Nilapher<br>for M/s.R.Meenal |
| For R1 & R2   | : No appearance                      |
| For R3 to R10 | : Remained exparte                   |

**S.A.No.506 of 2010**

A.Venkatesan ... Appellant

Vs.

1.Anjalai

2.Jayalakshmi

Vanamayil (Died)

3.Subramanian

4.Durai ... Respondents

Respondents 3 and 4 are given up  
as they remained exparte.

**Prayer** :- Second Appeal has been filed under Section 100 of CPC against the  
Judgement and Decree dated 14.08.2009, in A.S.No.21 of 2008, on the file of  
the Sub Court, Chidambaram, reversing the Judgment and Decree dated  
29.02.2008 in O.S.No.126 of 2000, on the file of the Principal District Munsif  
Court, Chidambaram.

|               |                                      |
|---------------|--------------------------------------|
| For Appellant | : M/s.A.Nilapher<br>for M/s.R.Meenal |
|---------------|--------------------------------------|



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For R1 & R2

: No appearance

For R3 & R4

: Remained exparte

### **COMMON JUDGMENT**

The appellant is the plaintiff. The suit in O.S.No.126 of 2000 has been filed by the plaintiff seeking relief of declaration of title in respect of the suit property and consequential permanent injunction.

2. The Trial Court decreed the suit and when the defendants 1 to 3 filed the First Appeal challenging the judgment of the Trial Court, the First Appellate Court allowed the First Appeal by reversing the judgment of the Trial Court. Hence, the plaintiff has preferred the Second Appeal.

### **3. O.S.No.126 of 2000:-**

#### **The short facts pleaded in the plaint:-**

The suit property originally belongs to one Marimuthu Padaiyachi, who sold the same to one Govindasamy Padayachi, son of Manikam Padaiyachi under a registered Sale deed dated 11.04.1968. The said Govindasamy Padayachi has been in possession and enjoyment of the property subsequent to these parties. In view of a suit filed in O.S.No.403 of 1971 and decree obtained by one Abubakkar, the suit property was brought for sale during the



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execution of a decree. The said Abubakkar has purchased the property in a public auction sale on 18.11.1974 and his sale had also been confirmed by the Court on 23.12.1984. Delivery was also effected in favour of Abubakkar through Court on 30.04.1975. Thus, Abubakkar was in enjoyment of the suit property. The hut in the suit property is dilapidated and it was useless. Subsequently, Abubakkar sold the suit property to the plaintiff on 03.07.1999 and handed over possession. The defendants 4 and 5 were trying to purchase the suit property, but Abubakkar was not amenable. Out of purchase, the plaintiff has constructed a small hut and residing with his family. He is also paying house tax. The defendants 4 and 5 threatened the plaintiff and instigated the defendants 1 to 3 to raise dispute in respect of the suit property. No one has got any right over the property, which was purchased by him legally. Hence, the plaintiff has filed the suit for declaration of title in respect of the suit property and consequential permanent injunction.

4. The defendants 4 and 5 remained ex-parte and the written statement filed by the 1<sup>st</sup> and 2<sup>nd</sup> defendants was adopted by the 3<sup>rd</sup> defendant.

5. The written statement of the defendants 1 to 3 in brief:-

It is admitted that the suit property belongs to one Govindasamy



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Padayachi by virtue of a Sale Deed dated 11.04.1968. But, it is false to say that the property was brought for Court auction sale for executing a decree in O.S.No.403 of 1971 and that one Abubakkar has purchased the suit property through Court auction. It is also false to state that Abubakkar sold the suit property to the plaintiff and the plaintiff has constructed a small hut in the suit property and he was in the occupation of the plaintiff and his wife and he has been paying house tax as well. There is no such property available on the ground as stated by the plaintiff. The property in RS.No.145/26 measuring 0.06 cents with the site and the house thereon is the ancestral property of the said Govindasamy. He was in possession and enjoyment of the same by constructing a hut. Patta for the property also stands in his name and he has been paying kist for the land and house tax for the superstructure.

5.1.Even while he was alive, he had also dealt with the property in 1989 under an Agreement to sell which was later cancelled. After the death of Govindasamy, his wife Nagammal and daughters Anjalai and Jayalakshmi inherited the property. While the defendants 1 and 2 were living with their respective husbands, their mother Nagammal lived in the suit property. The said Nagammal died during January, 2000 leaving behind the defendants 1 and 2 alone as legal heirs. Hence, the defendants 1 and 2 have inherited the right



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and possession over the suit property. The defendants 1 and 2 have permitted their maternal aunt Vanamayil to reside in the property. The 3<sup>rd</sup> defendant is living in the hut and also having her cattle in her estate in the suit property. There is also a Tamarind tree and that is also enjoyed by the defendants 1 and 2.

5.2. The plaintiff is the neighbour of the defendants 1 and 2 and he has no right over the suit property. Since the defendants 1 and 2 after their marriage are living with their husbands, the plaintiff expressed a desire to purchase the property. For the past 7 to 8 months, the plaintiff is giving all sorts of troubles to the defendants. The plaintiff attempted to purchase the property in RS.No.145/26 by making false charges. Govindasamy and the defendants 1 and 2 were in possession and enjoyment of the suit property for several decades. Since the plaintiff attempted to trespass into the suit property, the defendants 1 and 2 have filed a suit for permanent injunction in O.S.No.116 of 2000.

5.3. In the said suit, an Advocate Commissioner was appointed to inspect the suit property. The plaintiff was also present at the time when the Commissioner visited the suit property. The suit property had never been given in sale to one Abubakkar as pleaded. The suit proceedings in O.S.No.403 of 1971 are false proceedings and in pursuant to that, the said



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Abubakkar has not been given with the possession of the suit property. Hence,

the suit should be dismissed.

6.On the basis of the above pleadings, the Trial Court has framed the following issues:

1. வாதி வழக்குரையில் கோரும் நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வாதிக்கு கிடைக்கக்கூடாதா?
2. வேறு என்ன பரிகாரம்?

7.During the course of Trial, on the side of the plaintiff, four witnesses were examined as PWs 1 to 4 and Exs.A1 to A18 were marked. On the side of the defendants, two witnesses were examined as DWs 1 & 2 and Exs.B1 to B31 were marked.

8.On conclusion of the Trial and on considering the evidence available on record, the Trial Court has decreed the suit as prayed.

9.The defendants 1 to 3 filed the First Appeal in A.S.No.21 of 2008 and the First Appellate Court allowed the First Appeal by reversing the judgment of the Trial Court. Aggrieved over the same, the plaintiff has filed the second



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appeal in S.A.No.506 of 2010.

WEB COPY 10. O.S.No.116 of 2000:-

Brief facts pleaded by the plaintiffs:

The plaintiffs of this suit are the defendants 1 & 2 of the other suit in O.S.No.126 of 2000. The plaintiffs claim that the suit schedule property belong to their father Govindasamy and he was in possession of the same. Patta for the property also stands in the name of Govindasamy and the house tax is being paid for the superstructure therein. After the death of Govindasamy, his wife Nagammal and his daughters, who are the plaintiffs herein have inherited the suit property and were in enjoyment of the same. After the death of Nagammal in the year 2000, the plaintiffs being the only legal heirs have inherited the suit property. They have been residing in the suit property along with their Maternal Aunt Vanamayil. The said Vanamayil is living in a hut and having her cattle and haystack in the site adjoining the hut. There is a Tamarind Tree and another Murungai Tree and the usufruct from the trees also are being enjoyed by the plaintiffs.

10.1.The first defendant is the neighbour of the plaintiffs and he has no right, interest or possession over the suit property. As the first defendant was desired of purchasing the property, he has tried to influence the plaintiffs to



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sell away the same. As the plaintiffs refused to sell the suit property, the defendants were giving all sorts of troubles. The first and second defendants do not have any right in the suit property. As they caused trouble to the peaceful enjoyment of the plaintiffs over the suit property, the suit has been filed by the plaintiffs seeking the relief of permanent injunction.

10.2.As the second defendant Abubakkar died during the pendency of the suit, his legal heirs are impleaded as defendants in the suit.

11.Written statement filed by the first defendant:

The suit property originally belonged to one Marimuthu Padayachi. He sold the same to one Govindasamy Padayachi through a registered sale deed dated 11.04.1968 and he had been in enjoyment of the same. The suit property was brought to Court auction sale for executing the decree of title by one Abubakkar (second defendant in O.S.No.116/2000) in O.S.No.403 of 1971. He declared to be a successful purchaser at the Court auction on 18.11.1974 and the sale has also been duly confirmed by the Court on 23.12.1974. Delivery was also given by the Court to the second defendant on 30.04.1975. The second defendant was in possession and enjoyment of the property. The second defendant sold the site under a registered sale deed dated 03.07.1999



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and handed over the possession. The first defendant has also right over the trees standing in the suit property. The plaintiffs have no right or title over the suit property and they only tried to interfere with the first defendant's peaceful possession and enjoyment of the suit property. Hence, the suit should be dismissed.

12.On the basis of the above pleadings, the Trial Court has framed the following issues:

1. தாவா சொத்துக்கள் வாதிகளின் வசத்திலும் அனுபவத்திலுமுள்ளதென்ற கூற்று சரியா?
2. வாதிகள் வழக்குரையில் பிரதிவாதிகளுக்கு எதிராக கோரும் நிரந்தர உறுத்துக்கட்டளை பரிகாரம் வாதிகளுக்கு கிடைக்கக்கூடா?
3. வழக்குரையில் சொல்லப்பட்ட சொத்துவிபரம் சரியானதல்ல என்ற கூற்று சரியா?
4. உபய பார்டிகளுக்கு கிடைக்கக்கூடிய பரிகாரம் என்ன?

13.During the course of Trial, on the side of the plaintiffs, PWs 1 to 3 were examined and Exs.A1 to A25 were marked. On the side of the defendants, DWs 1 to 5 were examined and Exs.B1 to B13 were marked.

14.On conclusion of the Trial and on consideration of the evidence on



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record, the Trial court has decreed the suit. The First Appeal preferred by the first defendant in A.S.No.52 of 2006 was also dismissed by confirming the judgment of the Trial Court, by judgment dated 19.01.2009.

15. Aggrieved over that, the first defendant in that suit has filed the second appeal in S.A.No.409 of 2009. Even though the appellant has stood as plaintiff in O.S.No.126 of 2000, he was the first defendant in the other suit filed by the respondents.

16. The appeal in S.A.No.506 of 2010 has been admitted on the following substantial question of law:

*“Whether the Lower Appellate Court is correct in reversing the Judgment and Decree of the Trial Court holding that the appellant herein/plaintiff had not properly identified the property when the description had been correctly given in the sale deed by which the appellant herein had purchased the property?”*

16.1. The following substantial question of law arises for consideration in S.A.No.409 of 2009:

*(i) Whether in law the Courts below was right in confirming of the decree of the trial Court*



*inspite of the decree for declaration of title and injunction in favour of the appellant in O.S.No.126/2000 before the Principal District Munsif's Court, Chidambaram which would operate as res-judicata?*

17. The learned counsel for the appellant submitted that the suit property pertaining to this suit is situated in R.S.No.145/15, measuring 0.05 acre (2180 sq.ft) with a thatched hut and Tamarind tree situated in Lalpuram Village, Chidambaram Taluk, with specific boundaries shown as below:

*South of Boorasamy's property,*

*North of Krishna Padayatchi house,*

*East of Kulam,*

*West of street.*

17.1. Ex.A3 would confirm that the property has been sold in a Court auction sale in favour of Abubakkar in pursuance to the execution of the decree obtained by Abubakkar in O.S.No.403 of 1971 and in support of the above contention, the appellant/plaintiff has produced Ex.A3 sale certificate, dated 23.12.1974. The delivery endorsement of the Court has also been produced as Ex.A4. PW3 is a witness for the delivery made in favour of Abubakkar and he has stated the above facts in his evidence. Pursuant to the delivery, the house



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tax assessment also stands in the name of Abubakkar and that would show that

he is in possession of the suit property. The house tax receipts produced by the defendants are Exs.A5 and A6. The defendants' documents which have been marked as Exs.B6 to B23 have got no relevance to the suit property and the defendants' documents pertain to the property situated in some other survey number. Abubakkar has sold the suit property in favour of the plaintiff through Ex.A7, dated 03.07.1999 and from then onwards, the plaintiff is in enjoyment of the same by paying the house tax etc. The other suit that has been filed by the defendants in O.S.No.116 of 2000 pertaining to S.A.No.409 of 2009 relates to some other property. During the course of Trial in the other suit in O.S.No.116 of 2000, the second defendant in the suit, who was examined as DW1 has admitted about the Court sale proceedings under which, the Court auction sale was made in favour of Abubakkar. As the plaintiff has proved the title and possession of his vendor Abubakkar over the suit property and from whom he purchased the property through Ex.A7 sale deed, he has regular valid title over the same. Even though the Trial Court had rightly appreciated the evidence, the First Appellate Court had omitted to make note of the fact that the defendants' documents produced to show their enjoyment would relate to some other property and not the suit property and hence, the second appeals should be allowed.



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18. Though arguments advanced on the side of the appellant in both appeals, the first contention of the learned counsel for the appellant is that the suit property involved in O.S.No.126 of 2000 is different from the other suit property involved in O.S.No.116 of 2000.

19. For the sake of clarity, the property particulars in both suits as seen from the plaint can be extracted below:

*Schedule of Property (O.S.No.126 of 2000)*

*In Chidambaram Registration District,  
Chidambaram Sub-Registry, Chidambaram Taluk,  
Lalpuram Village, R.S.No.145/15 Acre 0.05 cents (2180  
Sq.feet thatched hut therein tamarind including in tree).*

*Boundaries*

*South of Boorasamy's property,  
North of Krishna Padayatchi house,  
East of Kulam,  
West of street.*

*Schedule of Property (O.S.No.116 of 2000)*

*In Chidambaram Taluk, Lalpuram Village  
R.S.No.145/26 : 0.05 – ½ cents – the site and house  
thereon including a tamarind tree, a neem tree, and a*



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*murungai tree. Total extent : 0.02.50 Ares.*

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20. By indicating that there is a change in Survey Number of both suit schedule properties, it is claimed by the appellant that both the properties are different. The plaintiffs in the other suit filed in O.S.No.116 of 2000 are the legal heirs of the original owner Govindasamy Padayachi. Even the plaintiff in O.S.No.126 of 2000 also admits that the original owner of the suit property is Govindasamy Padayachi and that he has purchased the suit property through the registered sale deed dated 11.04.1968 from one Marimuthu Padayachi.

20.1.The appellant has claimed that his vendor, namely, Abubakkar has brought the larger extent of the property of Govindasamy Padayachi in Court auction sale in pursuant to executing a decree obtained by him in O.S.No.403 of 1971 against Govindasamy Padayachi. The suit in O.S.No.403 of 1971 is said to have been filed by Abubakkar and he himself has purchased the property also in the public auction and the xerox copy of the sale certificate to that effect is marked as Ex.A3 in O.S. No.126 of 2000 by the appellant. Ex.A4 is said to be the xerox copy of the delivery receipt issued by the Court to Abubakkar. The property subjected to the Court auction sale is described in Ex.A3 sale certificate as under:



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அயன்பஞ்சை R.S.No.145/15 0.05- ம், அதில்

உள்ள காலிமனையில் உள்ள கூரை வீடும், கிழக்கு

மேற்கு ஜாதியடி100, தென்வடல் ஜாதியடி150 பூராசாமி

படையாச்சி வீட்டுக்கும் தெற்கு, கிருஷ்ணன்

படையாச்சி வீட்டுக்கும் வடக்கு, குளத்துக்கும் கிழக்கு,

தெருவுக்கும் மேற்கு.

20.2.From the above description it is seen that a house in 5 cents along with 15,000 sq.ft. vacant site is subjected in Ex.A3. However, the respondents contended that no delivery of possession has been given in favour to Abubakkar and the Court auction sale proceedings is vitiated by fraud. The appellant/plaintiff has examined the Court Amin as PW3, who has stated in his evidence that delivery has been given to Abubakkar in pursuant to Ex.A3 sale certificate, for the larger extent of property said to have been sold to Abubakkar through Court auction purchase also the same boundary details as shown in the suit property involved in O.S.No.126 of 2000, has been given.

21. If the appellant claims that he has purchased a smaller extent from Abubakkar, vide Ex.A7, the particulars of property should be specific as to the



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East to West and North to South measurements and within which of the specific boundaries, the small bit of five cents was purchased by the appellant.

Both the sale certificate and the delivery receipts are xerox copies, which are marked as Exs.A3 & A4. The property particulars as seen in the above documents would describe the house property in 5 cents along with vacant site measuring 100 x 150 sq.ft. (15,000 sq.ft.). Though the appellant has claimed that the five cents purchased by him would measure 2180 sq ft. in R.S.No.145/15, the delivery receipt Ex.A4 does not show R.S.No.145/15. In fact, in Ex.A4 delivery receipt, there is an alteration appears to have been made and it appears that R.S.No.145/10 has been attempted to be changed into R.S.No.145/15. Unless the original delivery receipt is produced before the Court, it cannot be ascertained whether the property subjected to Court auction is in R.S.No.145/15 or not. Even though the appellant is said to have purchased 5 cents vide Ex.A7, it is not shown whether any sub division has taken place. In order to identify which portion of the property in the larger extent was sold to him by Abubakkar, it would not be possible for the appellant to examine Abubakkar, because he died. In the field map Ex.B31, a shaded portion which might represent the house is shown inside S.No.145, but without any sub division number and the same is not supported by any sub – division proceedings.



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22. Ansari, who was examined as PW4 on the side of the appellant has stated that he did not know any of the suit proceedings, in which, the Court auction sale was conducted. So the evidence of PW4 is also not useful to the case of the plaintiff.

23. The learned counsel for the appellant submitted that the first defendant who was examined as PW1 in O.S.No.116 of 2000 has admitted in her evidence that the suit property involved in O.S.No.126 of 2000 is different from O.S.No.116 of 2000 and hence, there cannot be any difficulty in decreeing the suit of the appellant as claimed.

24. In the absence of any sub division proceedings, field map or survey records to show that any particular extent within the definite boundary of the property has been purchased by the appellant, and that it was with specific North to South, East to West measurements, it cannot be presumed that R.S.No.145/15 is different from the suit filed by the original owners in O.S.No.116 of 2000. In O.S.No.116 of 2000, the Survey Number has been mentioned as R.S.No.145/26 and that is also described as the same house which has Tamarind trees and other trees. There is no sub division



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proceedings available atleast in respect of R.S.No.145/26 to show that the house property is distinct and different property from that of the property claimed by the appellant in O.S.No.126 of 2000. Even the field map Ex.B31 which has been discussed in earlier paragraph 21, does not make any reference or relevance to R.S.No.145/26 or any other sub divided number.

25. In the evidence of the first defendant in the other suit where she was examined as PW1, she has stated that R.S.No.145/15 belongs to 4<sup>th</sup> and 5<sup>th</sup> defendant and that has got nothing to do with the present one.

26.The defendants 4 and 5 remained ex-parte and they did not dispute with the appellant for having shown the suit property by mentioning the survey number as R.S.No.145/15.

27.If the defendants 4 and 5 are in enjoyment of the property without any trouble from the appellant except the mentioning of his survey number in the suit. The defendants 4 and 5 cannot be expected that they would seriously contest the suit filed by the appellant. It is only the appellant, who has purchased the suit property from Abubakkar, should establish that Abubakkar has got possession from the legal heirs of the original owner Govindasamy



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Padayachi and only after that Abubakkar has sold a definite and identifiable extent in his favour vide Ex.A7. As stated already, the property involved in Ex.A7, which is the suit property in O.S.No.126 of 2000 does not have any specific measurements and it has the boundaries of larger extent of 15000 sq.ft involved in Ex.A3. The specific contention of the respondents is that neither the house property in 5½ cents nor the site in 15000 sq.ft. has been delivered to Abubakkar.

28.No document has been produced to show that the patta in respect of the property involved in Court auction sale has been transferred in the name of Abubakkar in order to evidence his alleged possession. Ex.A6 relates to some xerox copies of Fasli receipts and they are not house tax receipts. The house tax receipts produced by the appellant/plaintiff were relevant to a period subsequent to his purchase. The one and only house tax receipt Ex.A5, dated 04.03.1976, prior to his date of purchase also does not correlate with other revenue documents.

29.The respondents/defendants have also produced documents in respect of the house tax from the year 1977 to 2000 and thereafter. The appellant has



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filed the suit only in the year 2000. Prior to that, he has not filed any suit against his vendor Abubakkar to claim partition. If he considers that the property purchased by him was an undivided larger extent, even that stand cannot be taken by the appellant because what he has purchased is only the house along with the site measuring 5½ cents. So the property for which both the appellant and the contesting respondents dispute only relates to the same house of Govindasamy Padayachi, which alleged to have been brought for Court auction sale. Just because the appellant has given different survey number and the respondents have given a different survey number, it cannot be presumed that the properties are two different properties, when both claim the same predecessor in title and contest on the same antecedents of the title of property.

30.The categorical contention of the respondents is that the appellant is the neighbour of the defendants and he has got no right, interest and possession. It is further stated that Abubakkar has got no right or title in the suit property and the appellant is a close associate of Abubakkar. They are trying to produce documents to set up title in the suit property. Ex.A4 appears to be a paper delivery. If really Abubakkar has been put in actual delivery, the patta for the property would have changed in his name and proceedings for the house tax assessment would have also changed in the name of Abubakkar. For



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the reasons best known to the appellant, he has not demarcated his property even while Abubakkar was alive with the help of a Surveyor and get a separate patta in his name. As the appellant has not come out with a definite case by producing relevant documents, but the respondents have produced patta and all other tax receipts continue to be standing in the name of the original owner Govindasamy Padayachi, the natural inference would be that the sale deed in favour of the appellant/plaintiff is just a sham and nominal document.

31.In fact, the Commissioner has been appointed in the other suit filed by the respondents in O.S.No.116 of 2000 and he has visited the property and filed his report. The Commissioner has given a report saying that at the time when he visited the suit property, the first respondent and her grand mother were cooking there. The First Appellate Court has properly analyzed the evidence on record and has arrived at the conclusion that the plaintiff has not proved that the survey number mentioned as 145/15 and the other survey number mentioned by the respondents as 145/26 are actually not related to one and the same property, which is said to have involved in the Court auction sale. Even though S.No.145/15 might be relevant to the defendants 4 and 5, it is for the appellant/plaintiff to prove that 145/15 do not relate to defendants 4 and 5,



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but only pertains to the property of the Govindasamy Padayachi purchased by Abubakkar in the Court auction proceedings. As the appellant has not proved that there is a suit property as alleged by him is situated in R.S.No.145/15 and that was the property purchased by Abubakkar in the Court auction proceedings and Abubakkar was in actual possession of the same along with the larger extent, it is right for the First Appellate Court to allow the appeal filed in A.S.No.21 of 2008 and to dismiss the other appeal filed in A.S.No.52 of 2006. Thus, the substantial questions of law are answered against the appellants.

32.In the result, the second appeals are dismissed and the judgment and decree of the First Appellate Court made in A.S.No.21 of 2008 and A.S.No.52 of 2006, on the file of the Sub Court, Chidambaram are confirmed. No costs. Consequently, connected miscellaneous petitions are closed.

**10.10.2025**

Index : Yes/No  
Speaking order : Yes/No  
NCC : Yes/No  
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**Dr.R.N.MANJULA, J.**

sli

To

- 1.The Sub Court,  
Chidambaram.
- 2.The Principal District Munsif Court,  
Chidambaram.
3. The Section Officer,  
V.R. Section,  
High Court, Madras.

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**and**  
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