



S.A.No. 800/2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.06.2025

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

S.A.No. 800 of 2009

P.Gopal

... Plaintiff/Appellant/Appellant

Vs.

1. Pachayapillai

2. Jayalakshmi

**3. Kasi
S/o. Kuppan**

**4. Kasi
S/o. Murugan**

5. Krishnan ... Defendants/Respondents/Respondents

PRAYER: This Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree dated 30.08.06 passed in A.S.No. 3 of 2006 on the file of the Court of the Subordinate Judge, Madurantakam by dismissing the Regular Appeal and confirming the Judgment and Decree dated 11.08.04 passed in O.S.No. 121 of 1997 on the file of the Court of the District Munsif Court, Madurantakam.

For Appellant : Mr. P.Santhosh



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for Mr.K.Govi Ganesan

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For Respondents : Mr. S.Krishnaswamy

JUDGMENT

The plaintiff in O.S.No. 121 of 1997 on the file of the District Court at Madurantakam, who suffered an order of dismissal of the suit and an order of dismissal of the First Appeal filed in A.S.No. 3 of 2006 before the Sub Court at Madurantakam is the appellant herein.

2. The suit had been filed initially seeking permanent injunction restraining the defendants from interfering with the peaceful possession of the properties by the plaintiff. In the schedule to the plaint, two separate properties had been described. The first schedule measured 8 cents in S.No. 216/5 and specific boundaries had also been given. The second property measured 0.5 cents again in S.No. 216/5 but boundaries had not been given. Subsequently, the plaint had been amended so far as the relief is concerned by giving up the relief of permanent injunction but seeking the relief of mandatory injunction to demolish the construction said to have been put up by the defendants over the property. The pleadings had



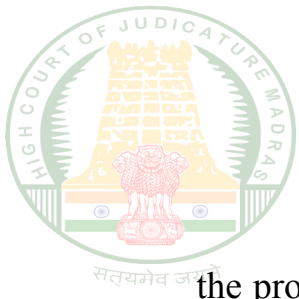
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however not been amended to give the date on which the defendants had entered into the property and put up the said construction.

3. There is yet another issue which had been pointed out by the learned trial Judge, namely, that originally the plaint was filed for two schedule properties, one measuring 0.8 cents and the other measuring 0.7 cents and subsequently the area had been reduced from a total of 15 cents to a total 13 cents. The fact that both the properties had the same Survey number, but the boundaries had also been amended during the course of the suit, had also been noted by the learned trial Judge. Noting all these discrepancies, the suit came to be dismissed, since the plaintiff had not proved the actual area of land and since the description of the properties were in divergence to the schedule given in Ex.A-1 which is the sale deed under which the plaintiff claimed title and also since the plaintiff had not given the date on which the defendants had entered into the properties of the plaintiff and put up construction and the nature of the construction.

4. Once the plaintiff had admitted that the defendants had entered into



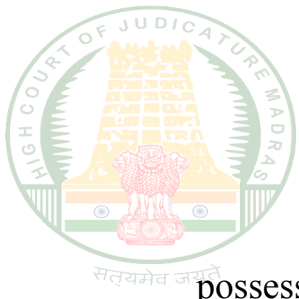
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the properties and had put up construction then quite part from seeking the relief the demolish the construction portion, the plaintiff should also seek recovery of possession. The plaintiff had not sought such relief and had not amended the plaint nor the relief sought to include that particular relief. Both the Courts below had returned a consistent and concurrent finding that the plaintiff had not come to court with clarity relating to the description of the properties.

5. The learned counsel for the appellant however argued that there is no actual discrepancy between the schedule mentioned in the plaint and the schedule given under Ex.A-1 and that only discrepancy was with respect to one of the boundaries and that will not materially affect the identity of the properties. The learned counsel further argued that there is no dispute over the fact that the plaintiff claims title under Ex.A-1 and that the defendants were the neighbours and therefore, the issue of identity of the properties or the discrepancy in the boundaries need not have been taken up by the learned trial Judge.

6. The primary issue is about the failure to seek the relief of recovery of



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possession. The relief sought by the plaintiff can never be granted. The suit suffers from a formal defect.

7. On a perusal of the Judgment of the trial Court and also the first Appellate Court since concurrent findings had been returned relating to the discrepancies in the description of the properties, the area of the properties and also the variation in the area and in the boundaries as stated in the plaint and as stated in Ex.A-1 sale deed, which are all issues on fact, I hold that no substantial question of law arises for consideration. But however let me reiterate that the suit suffers from a formal defect and the plaintiff can take advantage of that particular finding by this Court.

8. Since no substantial question of law arises for consideration, this Second Appeal stands dismissed. No costs.

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Index : Yes/No
Internet: Yes/No
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C.V.KARTHIKEYAN, J.

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To

1. Sub-Court, Madurantakam

2. District Munsif Court, Madurantakam.

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