



SA No. 638 of 2010



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-11-2025

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

SA No. 638 of 2010

1. Kaliasammal W/o. Palanisamy
No 10-b 1 As Pettai Ist Street Namakkal
Dist.

Appellant(s)

Vs

1. KANDASAMY @ Kailasam
S/o. Chinniah As Pettai Ist Street
Namakkal Dist.

2.P. Thiyagarajan
S/o. Late R Perumal Act Nagar
Aniyapuram Village Namakkal Dist.

Respondent(s)

PRAYER

The Second appeal is filed under Section 100 of CPC, against the judgment and decree dated 31.12.2009 made in AS.No.144 of 2006 passed by the Subordinate Judge, Namakkal district confirming the Judgement and decree dated 30.06.2006 made in OS.NO.41 of 2003 passed by the Principal District Munsif, Namakkal, Namakkal District.



For Appellant(s): Mr.S.Senthil Nathan

For Respondent(s): Mr.I.Abran Mohammed Abdullah for
Mr.S.Kamesh For R1

JUDGEMENT

The second appeal has been preferred challenging the judgment dated 31.12.2019 made in A.S. No.144 of 2006 on the file of the Sub Court, Namakkal District.

2.The appellant is the plaintiff in the suit. The plaintiff had filed the suit seeking the relief of permanent injunction . The trial court dismissed the suit, and the first appeal preferred by the plaintiff challenging the judgement of the trial court was also dismissed, confirming the judgement and decree of the trial court. Aggrieved by the same, the plaintiff has filed this second appeal.

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

The suit property belongs to the plaintiff by virtue of a settlement deed dated 05.06.1974 . The plaintiff has been residing there along with her husband and son and is in exclusive possession and enjoyment of the same.



3.1. The plaintiff had sold portions of the said property to one Appusamy, Dharmalingam, Komathi, and Natarajan in parts. She had also executed a settlement deed in respect of a portion of the suit property in favour of one Manimegalai by executing a settlement deed. The plaintiff retained the remaining extent of 5300 sq. ft. of house site, measuring 100 feet from North to South on both sides and 53 feet from East to West on both sides. The said extent of 5300 sq. ft. has been retained by the plaintiff for her own use and enjoyment, and she has not alienated the same in favour of anyone.

3.2. It is further stated that the defendants had attempted to purchase the said property from the plaintiff, but she was not willing to sell the same. In order to coerce the plaintiff into selling the remaining extent of 5300 sq. ft. of the house site, the defendants lodged a false complaint against the plaintiff and her daughters. Hence, the plaintiff has filed the present suit seeking the relief of permanent injunction.

4. The written statement of the defendants, in brief, is as follows:

The suit property belongs to the first defendant, who is in possession and enjoyment of the same. The plaintiff's claim of title in respect of the suit property is false. The suit plan filed by the plaintiff is incorrect, and the plaintiff is not entitled to the relief as prayed for.

5. The additional written statement filed by the defendants, in brief, is as follows:

The defendants state that they are in possession and enjoyment of a house site measuring East–West $33\frac{3}{4}$ feet and North–South 100 feet, enclosed by a compound wall surrounding the property. There is no property measuring 5300 sq. ft. available on the ground, as falsely claimed by the plaintiff. The second



defendant had executed a power of attorney in favour of the first defendant to manage the said property, and the said portion has been let out to one Kalaiselvan on a monthly rent. It is further stated that the plaintiff had demolished the eastern wall and a portion of the southern wall and, thereafter, filed this frivolous suit with false allegations.

6. On the basis of the above pleadings, the trial court has framed the following issues:

- “1.வழக்குச் சொத்தில் முழுவதும் வாதியின் சுவாதினத்தில் உள்ளதா?
2. வாதி கோரியுள்ளவாறு நிரந்தர நிலையுறுத்துக்கட்டளை பரிகாரம் கிடைக்கக்கூடா?
2. 3. வாதிக்கு கிடைக்கக்கூடிய வேறு பரிகாரம் என்ன?”

7. During the course of the trial on the side of the plaintiff, one witness was examined as PW.1 and Ex.A1 to A5 were marked. On the side of the defendants no oral evidence and one document has been marked as Ex.B1.

8. After the conclusion of the trial and upon consideration of the materials available on record, the trial court dismissed the suit. The first appeal preferred by the plaintiff challenging the judgement of the trial court was also dismissed, confirming the findings of the trial Court. Aggrieved by the same, the plaintiff has filed the present second appeal, raising the following questions of law, claiming them to be substantial questions of law :

1. *Whether the Courts below erred in law in holding that without the report of the Advocate Commissioner the issues in the case cannot be decided when documents are available?*
2. *.Whether the findings of the first appellate Court are self-contradictory and such findings are sustainable in law?*
3. *Whether the courts below erred in law in going into the issues of title instead of possession in a suit for injunction?*
4. *Whether the findings of the courts below are perverse?”*

9. The learned counsel for the appellant submitted that the plaintiff had

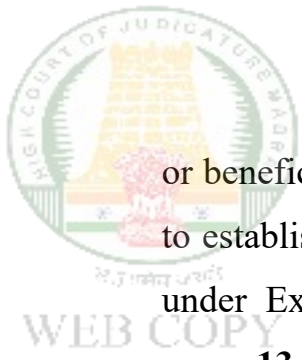


produced a settlement deed (Ex.A1) dated 05.06.1974 , which shows that the suit property, along with a larger extent, had been settled in her favour by her husband. It is contended that the trial court failed to properly appreciate the said document as well as the suit plan filed on behalf of the plaintiff, and erroneously dismissed the suit.

10. On a perusal of the judgement of the trial court, it appears that neither the plaintiff nor the first defendant had produced any document to show the specific extent of 5300 sq.ft. of the house site claimed by them. In respect of Ex.A1 settlement deed , it contains two items of property — the first item measuring 90 feet $\times$ 155 feet = 13,950 sq.ft. , and the second item measuring 50 feet $\times$ 55 feet = 2,750 sq.ft. The trial court has observed that the plaintiff failed to identify or locate the house site measuring 5300 sq.ft. within the larger extent covered under Ex.A1, and that no sub-division had been effected in respect of the same.

11. During the cross-examination of PW1 , she admitted that there existed a stone wall partition between the plaintiff's and the defendant's properties. Having admitted the existence of such a permanent feature, the plaintiff has claimed that an additional extent of 12 feet on the eastern side of the wall also belongs to her. However, there are no pleadings in the plaint in respect of such a claim.

12. The plaintiff, who instituted the suit claiming title to an extent of 5300 sq.ft. , has not provided any clear description or demarcation of the said property. On a perusal of the schedule to the plaint, it is seen that the plaintiff has claimed right only in respect of 1200 sq.ft. , with specific boundaries mentioned therein, whereas the pleadings in the plaint do not make any reference to this 1200 sq.ft. Even according to the plaintiff, she had sold several portions of the larger extent of the property in favour of third parties such as Appusamy, Dharmalingam, Komathi, and Natarajan , and had also settled another portion in favour of Manimegalai . However, none of those purchasers



or beneficiaries were examined as witnesses, nor were any documents produced to establish the precise portions alienated by her out of the total extent covered under Ex.A1.

13. Without furnishing any clarity as to the specific extent and location of the suit property claimed, the plaintiff cannot expect a decree to be granted in her favour. Both the trial court and the first appellate court have rightly appreciated the materials available on record and have correctly held that the evidence adduced by the plaintiff is inadequate to sustain her claim.

14. In the above circumstances, this Court finds that no question of law, much less any substantial question of law, arises for consideration in this second appeal.

Accordingly, the second appeal stands **dismissed**. The Judgement and decree dated 30.06.2006 made in OS.NO.41 of 2003 passed by the Principal District Munsif, Namakkal, Namakkal District is confirmed. No costs.

07-11-2025

jrs

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No



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To

1. The Subordinate Judge, Nammakkal District.
2. The Principal District Munsif, Namakkal, Namakkal District.



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Dr.R.N.MANJULA J.

jrs

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