

S.A.No.841 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 10.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No.841 of 2010

and

M.P.No.1 of 2010

Karuppannan

...

Appellant

Versus

Nanjappan

...

Respondent

Second Appeal had filed under Section 100 of Code of Civil Procedure, against the decree and judgment dated 26.02.2010 passed in A.S.No.42 of 2009 by the learned Principal Sub Judge, Gobichettipalayam, Erode District, confirming the decree and judgment dated 17.02.2009 passed in O.S.No.42 of 2005 by the learned District Munsif, Gobichettipalayam, Erode District.

For Appellant

: Mr.I.C.Vasudevan

For Respondent

: No appearance



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J U D G M E N T

WEB COPY This Second Appeal has been filed to set aside the decree and judgment dated 26.02.2010 passed in A.S.No.42 of 2009 by the learned Principal Sub Judge, Gobichettipalayam, Erode District, confirming the decree and judgment dated 17.02.2009 passed in O.S.No.42 of 2005 by the learned District Munsif, Gobichettipalayam, Erode District.

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

The suit property was purchased by the Plaintiff on 30.11.1998 and from the date of purchase, the Plaintiff had been in peaceful possession and enjoyment of the suit property. The suit property originally belonged to one Sadhasivam, S/o.Chokkalingam Chettiyar and Meenatchi Sundarambal, W/o.Kuzhanthaivel Chettiyar. From whom, Komarasamy Gounder had purchased it on 18.08.1968, through a registered sale deed. After the death of Komarasamy Gounder, the Plaintiff had purchased the property from the legal heirs of Komarasamy Gounder. The Defendant has a property adjacent to the Northern and Eastern portion of the suit property purchased by the Plaintiff. Before the Plaintiff purchased the property, the Defendant have attempted to purchase the property from the seller of the



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Plaintiff. However, since the terms were not amenable, the Defendant was

unable to complete the purchase. Aggrieved, the Defendant is attempting

to dispossess the Plaintiff, claiming that he had purchased the property for

valuable consideration. Considering the Plaintiff's age and the absence of

any other persons to assist the Plaintiff in resisting the Defendant's

interference, the Defendant had been continuously interfering with the

peaceful possession and enjoyment of the suit property by the Plaintiff.

The attempt of the Defendant to encroach upon the suit property of the

Plaintiff was resisted by the elder people of the Village, and through

intervention, there was an amicable settlement when the Plaintiff filed an

earlier suit. The suit filed by the Plaintiff on earlier instances was

dismissed as the parties to the suit settled the matter in the village due to

the involvement of the elders in the village. Believing the words of the

Defendant, the Plaintiff had withdrawn the suit. The suit was dismissed as

withdrawn. Subsequent to the dismissal of the suit, the Defendant had

once again started harassing the Plaintiff. He attempted to encroach upon

the property of the Plaintiff. Therefore, the Plaintiff had decided to

institute the suit against the Defendant seeking declaration of title of the

Plaintiff to the suit property and for permanent injunction restraining the

Defendant. Also the Plaintiff prayed the Court to appoint an Advocate



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Commissioner to measure the suit property with the help of revenue records and then declare the Plaintiff's possession and enjoyment of the property.

3. **The brief averments made in the written statement filed by the Defendant are as follows:-**

The suit instituted by the Plaintiff is not maintainable. The Plaintiff had purchased the property with old survey number. The vendor was not aware of the new survey number. In the plaint, the Plaintiff had mentioned only the old survey number with four-side boundaries. The suit property, as per new Survey No.248/3, comprises $8\frac{3}{4}$ cents purchased by the Plaintiff. The earlier suit filed by the Plaintiff in O.S.No.428 of 2000 was dismissed for non prosecution. In O.S.No.428 of 2000, the Plaintiff had $8\frac{3}{4}$ cents in S.No.248/3. In earlier suit, the Plaintiff had not identified the property with correct survey number and measurements. Therefore, he had left it for dismissal. Again, on the same cause of action, the Plaintiff had filed the present suit which is not maintainable. When the Plaintiff is unable to identify his property with new survey numbers, he cannot seek remedy from the Civil Court without giving correct particulars. The property measuring $8\frac{3}{4}$ cents alleged to have been purchased by the



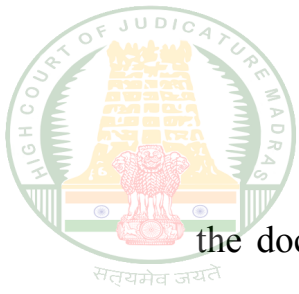
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Plaintiff, shows the boundaries as the property of the Defendant, bearing S.No.598C on the North. However, S.Nos.599 & 600 exist, and there is no survey number as 598C. Therefore, without specifying the boundaries and extent with the correct survey number, the suit filed by the Plaintiff is not maintainable.

4. Based on the pleadings of both parties, the learned District Munsif, Gobichettipalayam, Erode District, had framed the following issues:

1. Whether the Plaintiff is entitled to the declaration of the suit property as prayed for?
2. Whether the Plaintiff is entitled to the relief of permanent injunction as prayed for?
3. Whether the Plaintiff is in possession and enjoyment of the suit property?
4. To what other relief?

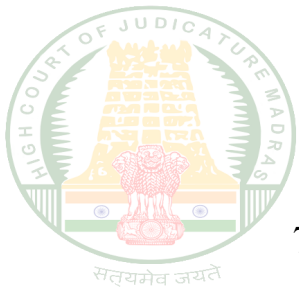
5. On the side of the Plaintiff, the Plaintiff was examined as P.W-1 and examined one Ponnusamy as P.W-2 and marked the documents Ex.A-1 to Ex.A-6. On the side of the Defendant, the Defendant was examined as D.W-1 and Ponnusamy was examined as D.W-2 and marked



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the documents, Ex.B-1 to B-5. The Advocate Commissioner's report and plan were marked as Ex.C-1 to Ex.C-3.

6. On assessment of evidence, the learned District Munsif, Gobichettipalayam, Erode District, had decreed the suit based on the finding of the Advocate Commissioner, who visited the property, verified the documents of both the Plaintiff and the Defendant with help of revenue records and the revenue officials. The Surveyor measured the property with the help of revenue records. Based on these, the Advocate Commissioner had filed his report along with the Surveyor's report whereby the property of the Plaintiff was identified. In the course of the trial, the Plaintiff had stated that the dispute is regarding the purchase of the property from the same vendor of the Plaintiff and the Defendant. The Defendant's claim is with regard to the property purchased by the Defendant's father in the year 1965 under Ex.B-1 from the same vendor. Whereas the Plaintiff's claim is based on the sale deed marked as Ex.A-1 dated 30.11.1998 from the same vendor as that of the Defendant under Ex.B-1. During cross-examination, P.W-1 admitted that he does not know the new survey number and that what was sold to him was with reference to the old survey number.



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7. The Defendant as D.W-1 in his cross-examination admitted

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that he has no claim over 8 $\frac{3}{4}$ cents property purchased by the Plaintiff.

The dispute is not with regard to the property purchased by the Plaintiff but the boundaries of their respective properties. He has no objection to the Commissioner's report under Ex.C-1 and Ex.C-2. Therefore, the learned District Munsif Court, Gobichettipalayam, Erode District, had decreed the suit on the basis of the admission made by both the Plaintiff and the Defendant with regard to the survey number and the extent purchased by the Plaintiff in 8 $\frac{3}{4}$ cents. Therefore, the learned District Munsif Court, Gobichettipalayam, Erode District, had decreed the suit of the Plaintiff by which he had ordered that the Commissioner's report along with Surveyor's report under Ex.C-1 to Ex.C-3 shall form part of the decree. Aggrieved, the Defendant had preferred an appeal before the learned Principal Sub Court, Gobichettipalayam, Erode District, in A.S.No.42 of 2009.

8. After hearing both parties and on reassessment of evidence, the learned Principal Sub Judge, Gobichettipalayam, Erode District, had dismissed the Appeal by the Defendant in A.S.No.42 of 2009.

9. Aggrieved, the Defendant as Appellant has preferred this



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Second Appeal.

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10. The learned Counsel for the Appellant submitted that the Defendant before the learned District Munsif, Gobichettipalayam in O.S.No.42 of 2005 and the Appellant before the learned Principal Sub Judge, Gobichettipalayam in A.S.No.42 of 2009 is the Appellant in this Second Appeal. He had preferred this Second Appeal against the concurrent findings of the learned District Munsif and the learned Principal Sub Judge, Gobichettipalayam.

11. The learned Counsel for the Appellant submitted that the Plaintiff in O.S.No.42 of 2005 had filed the Suit for declaration of title, permanent injunction and for demarcating the boundaries of the property. There are four properties in the Suit O.S.No.42 of 2005, out of which the dispute is confined to Item No. 3 alone. He invited the attention of this Court to the Plaint schedule regarding details of Item No.3. He invited the attention of this Court to the discussion of evidence by the learned Sub Judge even though the trial Court had framed four issues, the learned Judge had raised points for determination as if there are five issues when actually there are only two issues which reads as follows:-



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பிரச்சனை	1	விசாரணை	நீதிமன்றம்
எழுவினாக்கள்	1,3ல்	கண்டுள்ள	தீர்வுகள்
சரியானதா?			
பிரச்சனை	2	விசாரணை	நீதிமன்றம்
எழுவினாக்கள்	4,5ல்	கண்டுள்ள	தீர்வுகள்
சரியானதா?			

12. The learned Counsel for the Appellant invited the attention of this Court to the discussion of evidence by the learned Principal Sub Judge in Paragraph No.8 whereby the learned Principal Sub Judge dismissed the Appeal and confirmed the Judgment of the learned District Munsif, Gobichettipalayam in O.S.No.42 of 2005.

13. The learned Counsel for the Appellant also invited the attention of this Court to the discussion of the evidence by the learned District Munsif, Gobichettipalayam. The learned District Munsif had placed reliance on revenue records to declare the title of the Plaintiff which is against the accepted settled position of law. Therefore, the judgments of the Courts below are perverse in law and they are liable to be set aside.

14. After arguments were made by the learned Counsel for the Appellant/Defendant, the case was repeatedly adjourned to hear the learned Counsel for the Respondent/Plaintiff and notices were also sent. However,

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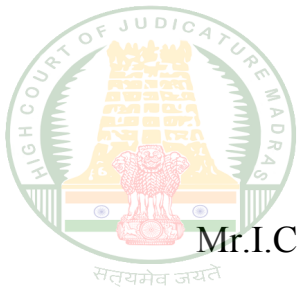
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the Respondent/Plaintiff in O.S. No. 42 of 2005 did not appear before this Court either in person or through Counsel. Finally, on 24.04.2025, the case was “Reserved for Judgment”, with a direction to the Respondent to file written submission, if any. In spite of such directions, no written submission was filed on behalf of the Respondent. Therefore, this Appeal is disposed of by perusing the plaint averments in O.S.No.42 of 2005 filed by the Respondent herein as Plaintiff, the written statement filed by the Defendant and upon perusal of the judgment of the trial Court as well as the Appellate Court.

15. The Appellant had raised the following substantial questions of law:

- a) Whether it can be presumed that the Respondent is in actual physical possession of the suit properties to the extent mentioned in the sale deed alone without taking measurement especially when there is no specific measurement given in the sale deed and boundaries are fixed?*
- b) Whether the earlier suit filed by the Respondent in O.S.No.428 of 2000 on the file of the District Munsif Court, Gobichettipalayam on same cause of action, which was dismissed for default, would operate as res judicata, which makes the present suit as not maintainable?*

16. Heard the learned Counsel for the Appellant



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Mr.I.C.Vasudevan.

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17. Perused the typed set containing plaint, written statement, the judgment dated 17.02.2009 passed in O.S.No.42 of 2005 by the learned District Munsif, Gobichettipalayam, Erode District and the judgment dated 26.02.2010 passed in A.S.No.42 of 2009 by the learned Principal Sub Judge, Gobichettipalayam, Erode District.

18. It is the case of the Plaintiff that he had earlier filed a suit. After filing of the suit, the Defendant admitted possession of the Plaintiff and due to interference by the elders in the village, there was an amicable settlement reached between the parties. Therefore, he did not proceed with conducting the trial in the suit. In the plaint, he had not mentioned about the earlier suit number. It is a clear case that after the dismissal of the suit, the Defendant once again started to interfere with the possession of the Plaintiff with an intention to grab the property.

19. From the written statement filed by the Defendant, it is stated that the Plaintiff had filed the suit with the old survey number. He has not filed the suit with the latest survey number. Therefore, the suit filed is not



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maintainable. Also, he would submit that the earlier suit was left unattended. Therefore, the Plaintiff filing subsequent suit on the same cause of action is hit by *res judicata*.

20. On perusal of the plaint, it is found that the correct survey number is given viz., S.No.248/3 but regarding the boundaries, it is referred with old survey numbers. Therefore, he was aware that he could not seek a declaration with the old survey number. Therefore, he had sought for a prayer for appointment of an Advocate Commissioner to fix the boundaries of the property with the help of revenue records. Before proceeding with the trial, the learned District Munsif, Gobichettipalayam, based on the application filed by the Plaintiff, appointed an Advocate Commissioner with the direction that the Advocate Commissioner shall visit the suit property after due notice to both parties. The Advocate Commissioner was further directed to measure the suit property with the help of a Surveyor as per the revenue records and sale deed of both parties. Accordingly, the Advocate Commissioner visited the property with the assistance of the Surveyor, and on taking into account the revenue records and sale deeds of both parties, had identified the specific dispute. The report of Advocate Commissioner were marked as Ex.C-1 to Ex.C-3.

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WEB COPY 21. During evidence, the Defendant admitted possession of the property of the Plaintiff for 8¾ cents of the property in new S.No.248/3. The Plaintiff during his evidence had clearly admitted that he was not aware of the new survey number. The Plaintiff is an illiterate person and the Defendant is a Teacher as per his admission. The Plaintiff had affixed his thumb impression in the plaint that shows he is an illiterate person. The sale deed relied by the Plaintiff is Ex.A-1. On perusal of Ex.A-1, it is found that the Plaintiff had purchased the property from the very same vendor from whom the Defendant purchased the property in the year 1965. The sale deed under Ex.B-1 refers to old survey number only. Ex.A-1 was purchased on 30.11.1998 by the Plaintiff. The new survey number is given as S.No.248/3 while the boundaries are identified with old survey number. Therefore, the Plaintiff sought clarification through the Court by appointment of an Advocate Commissioner to measure the property with the help of revenue officials and to demarcate the boundaries between the Plaintiff and the Defendant. Accordingly, Ex.C-1 to Ex.C-3 had been marked. The learned Judge had on appreciation of evidence narrowed down the dispute between the parties on the basis of admission in the cross-examination. The Defendant had admitted the purchase of the



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property by the Plaintiff, i.e., 8¾ cents in S.No.248/3. After filing of the report by the Advocate Commissioner, the Defendant had raised an objection by way of clarification. Therefore, the Advocate Commissioner had filed his clarification report as Ex.C-3. Since the Defendant had not sought to measure his property with the help of the survey number and with the help of revenue records, the suit of the Plaintiff seeking measurement of the property with the help of revenue records was adhered to as per the direction of the Court. Therefore, the objection of the Defendant that his property was not measured was conceded by the Advocate Commissioner by his report under Ex.C-3. The new survey No.248/3 and old survey No.598/C belonged to the Plaintiff. 8¾ cents property is within S.No.598/C and as the new S.No.248/3 was identified by the Advocate Commissioner. Therefore, the learned District Munsif, Gobichettipalayam, Erode District had decreed the suit of the Plaintiff by granting declaration of title to the Plaintiff as per the Advocate Commissioner's report under Ex.C-1 to Ex.C-3 and stated that the Commissioner's report shall form part of the decree.

22. The submission of the learned Counsel for the Appellant was that the learned District Munsif, Gobichettipalayam, Erode District as well

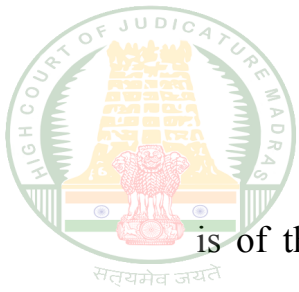


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as the learned Principal Sub Judge, Gobichettipalayam, Erode District

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decreed the suit of the Plaintiff based on revenue records and without considering the evidence of the Plaintiff and the Defendant. Therefore, the same is perverse and cannot be accepted by this Court. The Plaintiff is an illiterate person, he had purchased the property, by a sale deed under Ex.A-1 wherein it has been recorded based on the old survey number with specific boundaries which was disputed by the Defendant when the earlier suit was filed by the Plaintiff. However, after filing of the suit due to the intervention of the village elders, the Defendant agreed and admitted to the purchase of the property and agreed not to interfere with the property of the Plaintiff. Therefore, based on the intervention of the village elders, the Plaintiff had withdrawn the suit as dismissed. However, after dismissal of the suit, the Defendant once again started to interfere with the property as the Plaintiff is an elderly person and has no male members in the family to resist the Defendant. Therefore, he had filed a subsequent suit seeking the relief of declaration of title. Before seeking declaration of title, he had sought for appointment of an Advocate Commissioner to measure the property with the aid of revenue records. Therefore, the disputed property was inspected and surveyed with the help of revenue records and the sale deeds of both the parties which are marked as Ex.A-1 and Ex.B-1. Ex.A-1



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is of the year 1998 and Ex.B-1 is of the year 1965, which also had old survey number as reference. Therefore, the Plaintiff wanted to clarify it with the help of revenue records and rightly he had sought appointment of an Advocate Commissioner to visit the suit property, to inspect the property, measure the same with the help of the revenue records and the documents of title of the Plaintiff and the Defendant. Accordingly, the Advocate Commissioner had filed his reports which are marked as Ex.C-1 to Ex.C-3.

23. In the evidence during trial, the Defendant had admitted possession of the Plaintiff and stated that he had no objection in enjoyment of the suit property (an extent of $8\frac{3}{4}$ cents) by the Plaintiff. Now the boundaries had been clearly demarcated by the Advocate Commissioner under Ex.C-1 to Ex.C-3 giving out the latest survey number which has been clearly spelt out in the decree granted by the learned District Munsif, Gobichettipalayam, Erode District based on the Advocate Commissioner's report. Therefore, the submission of the learned Counsel for the Appellant in this Second Appeal that the learned District Munsif, Gobichettipalayam, Erode District as well as the learned Principal Sub Judge, Gobichettipalayam, Erode District, had decreed the suit based on the



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revenue records cannot be sustained by this Court. The dispute was narrowed down on the request of the Plaintiff to appoint an Advocate Commissioner, to identify the property with the help of Plaintiff's and the Defendant's document and measure the same. It had been done, and accordingly the suit of the Plaintiff was decreed based on the Advocate Commissioner' reports marked as Ex.C-1 to Ex.C-3, which also form part of the decree. There cannot be any objection now at this stage that the suit was decreed based on the revenue records. It is to be noted that the Plaintiff is an illiterate person. However, even though he is an illiterate, he was aware of the property's measurements and boundaries since he came to understand that the sale deed contained only old survey number. He had sought appointment of an Advocate Commissioner to measure the property and to demarcate the boundaries. The Defendant in the trial had admitted possession of the Plaintiff to the suit property with regards to measurements and the dispute was regarding the extent and boundaries only. There was dispute regarding identification of the property due to the re-survey number. Now that the objection of the Defendant had been addressed by the Court and decree has been granted, there cannot be any grievance for the Defendant. Therefore, the submission of the learned Counsel for the Appellant is rejected that the learned Trial Judge as well as



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learned Appellate Judge decreed the suit of the Plaintiff based on revenue records. The dispute was narrowed down to revenue records, since the revenue authorities are competent persons to survey the land and grant a new survey number. Accordingly, the same had been clarified through the Advocate Commissioner's report.

24. The claim of the learned Counsel for the Appellant that the suit is not maintainable as earlier suit was dismissed and therefore, *res judicata* is attracted will not be applicable to the facts of the present case. To attract the bar of *res judicata* under Section 11 of the CPC, there must be a finding on issues that are directly and substantially the same in both the former and the subsequent suits. Here, the earlier suit was dismissed as withdrawn as per the Plaintiff. As per the Defendant, the Plaintiff left it for dismissal for non-prosecution. Therefore, he cannot file subsequent suit. There is no such bar to institute a fresh suit. The claim of the Plaintiff is that the earlier suit was dismissed as the Defendant conceded the possession of the Plaintiff and the elders in the village amicably settled the dispute between the parties. Therefore, he left the earlier suit for dismissal. Whereas subsequent to the dismissal of the suit, the Defendant once again started to interfere with the possession of the Plaintiff which forced the



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Plaintiff to file a fresh suit. Therefore now he was aware that there is a dispute between Plaintiff and Defendant regarding the old survey number and new survey number. Therefore, rightly, the Plaintiff had filed a subsequent suit seeking declaration of title and also seeking indulgence of the Court to appoint an Advocate Commissioner to demarcate the boundaries based on the sale deed of both the Plaintiff and the Defendant, and the revenue records. Therefore, dismissal of the earlier suit for default will not bar the subsequent suit, as a cause of action exists between the Plaintiff and the Defendant. The cause of action mentioned by the Plaintiff is not disputed by the Defendant. The dispute of the Defendant is with regard to purchase of the property from the same vendor with same old survey number by which another extent of the property belonging to the same vendor was sold to the father of the Defendant in the year 1965.

25. The objection by the learned Counsel for the Appellant regarding the Advocate Commissioner's report was that the Defendant's property was not measured. The Advocate Commissioner had given his clarification stating that the Court had only issued the warrant to Advocate Commissioner to identify the property of the Plaintiff with reference to the documents of both the Plaintiff and the Defendant such as sale deeds along

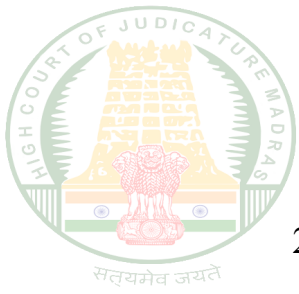


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with the revenue records and thereby demarcate the boundaries between them.

26. The Defendant as witness in the witness box admitted possession of the Plaintiff and admitted the report of the Advocate Commissioner. Therefore, the learned Trial Judge granted the decree whereby he had ordered the Advocate Commissioner's report under Ex.C-1 to Ex.C-3 to form part of the decree. To the claim of the learned Counsel for the Appellant that the subsequent suit by the Plaintiff is on the same cause of action and thus attracts *res judicata*, is not applicable to the facts of this case. There is no judgment or decree marked by the Defendant to prove that the earlier suit was dismissed after appreciation of evidence. When there is evidence that the earlier suit was disposed of after the framing of issues, the issues ought to have been addressed by the learned judge to attract *res judicata*. Since the earlier suit was dismissed for default, the issues were not identical in the earlier suit and in the subsequent suit. The present suit for declaration of title and for permanent injunction has been decreed based on the report of the Advocate Commissioner, where the request of the Plaintiff to narrow down the dispute was justified.



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27. In the light of the above discussion, **the substantial questions of law 1 and 2 are answered against the Appellant/Defendant and in favour of the Respondent/Plaintiff.**

In the result, the **Second Appeal stands dismissed as devoid of merits.** The judgment and decree dated 26.02.2010 passed in A.S.No.42 of 2009 by the learned Principal Sub Judge, Gobichettipalayam, Erode District, confirming the judgment and decree dated 17.02.2009 passed in O.S.No.42 of 2005 by the learned District Munsif, Gobichettipalayam, Erode District is upheld. No costs. Consequently, connected Miscellaneous Petition is closed.

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cda

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No

To

- 1.The Principal Sub Court,
Gobichettipalayam, Erode District.
- 2.The District Munsif Court,
Gobichettipalayam, Erode District.
- 3.The Section Officer,
VR Section, High Court,
Chennai.



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SATHI KUMAR SUKUMARA KURUP, J.,

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Judgment made in
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