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A.S. No.68 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.06.2025

PRONOUNCED ON : 04.07.2025

CORAM

THE HON'BLE DR. JUSTICE G. JAYACHANDRAN

**A.S. No.68 of 2023
and C.M.P. No.3565 of 2023**

M. Dhanraj

... Defendant/ Appellant

-VS-

N. Gnanasekar

... Plaintiff/ Respondent

Prayer: This appeal filed under Section 96 read with Order 41 Rule 1 of the Code of Civil Procedure, 1908 to set aside the Judgment and Decree in O.S.No.22 of 2019 dated 07.11.2022, on the file of I Additional District Court, Tiruvallur.

For Appellant : Mrs. V. Srimathi

For Respondent : Mr. K. Balaji



JUDGMENT

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This Appeal Suit is preferred by the aggrieved defendant in the suit filed for declaration in respect of the A schedule property, relief of recovery of possession in respect of the B schedule property and for permanent injunction.

The brief facts leading to filing of this appeal is as follows:

2. The case of the plaintiff is that he is the absolute owner of the schedule mentioned properties pursuant to the settlement deed dated 23.07.2009 executed by the grand mother of the plaintiff Krishnaveni Ammal. Since then, the plaintiff is in possession and enjoyment of the property absolutely without any let or hindrance. The defendant, who is the resident of the western side of the schedule mentioned property arbitrarily and illegally attempted to trespass into the A schedule property on 25.05.2013 in order to annexe the suit property with his property. His illegal attempt was resisted with the help of the village elders, however, the defendant being politically powerful, he has proclaimed to grab the property



at any cost. Therefore, the suit for permanent injunction was sought initially. Later the plaint was amended and additional relief of declaration of title also prayed in respect of A schedule property.

3. The defendant resisted the suit as a vexatious litigation filed with an intention to harass the neighbour. The settlement deed dated 23.07.2009 relied by the plaintiff without measurement, location and identity was questioned as a fraudulent deed. No title is conferred on the plaintiff over the A schedule property from the said deed to seek declaration of title and injunction. The allegation of attempt to trespass into the land of the plaintiff is also denied.

4. According the defendants, the plaintiff's predecessors came to the suit village only in the year 1998, whereas the defendant and his elders are in possession of the jari side from the year 1985 onwards. The house site of the plaintiff and the house site of the defendant is separated by a 8 feet wall, which is presently dilapidated due to effex of time. On the west of the said wall, the defendant's cattle shed with 4 pegs to tie the cattles is located, a bathroom and toilet is constructed with washing stone touching



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the north-south wall of the plaintiff and the same is in use for more than twelve years. A bore well, six feet west of the compound wall is in existence. While so, near the compound wall on the southern end touching the Bajanai Koil Street, the defendant has put up a new bathroom and toilet. The plaintiff has put up compound wall along the Bajanai Koil Street and the said compound wall takes a bend in which there is 'Pathirippu' and there is no compound wall for about 20 feet. By suppressing the physical feature on the line, the plaintiff had filed the suit without cause of action.

5. In the additional written statement filed by the defendant, he has contended that the amendment to the plaint by including the relief of declaration, after obtaining interim injunction with false averments is a mischievous and fraudulent attempt by the plaintiff. The bore well, bathroom and toilet of the defendant was constructed 18 years ago. The plaintiff aware of the same and had not protested at any point of time. The suit property is a Grama Natham and the patta issued by the Revenue department about 27 years ago comprising the land in old Survey No.288/6 (New Survey No.592/17), after due enquiry and verification of the possession. Issuance of patta not challenged by the plaintiff, which would



prove that the B schedule property is enjoyed by the defendant for a long time and the plaintiff never objected the possession and enjoyment of the defendant and the super structure in the B schedule property. The documents relied by the plaintiff where denied as fraudulent documents.

6. Based on the pleadings, the issues were reframed by the Trial Court whereas under:

- 1. Whether the plaintiff is entitled to the relief of declaration in respect of A schedule property?*
- 2. Whether the plaintiff is entitled to the relief of recovery of possession in respect of B schedule property?*
- 3. Whether the suit is barred by Limitation?*
- 4. Whether the plaintiff is entitled to the relief of permanent injunction in respect of A schedule property?*
- 5. To what other relief, the plaintiff is entitled to?*

7. To prove the case, on the side of the plaintiff, three witnesses were examined and 21 documents were marked as Exs.A1 to A21. In defence, one witness was examined and 3 exhibits were marked as Ex.B1 to B3. The Commissioner's report, sketch, Surveyors Report and plan with photographs were marked as Exs.C1 to C4.



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8. The Trial Court allowed the suit, declaring the plaintiff as the owner of the A schedule property, issued a mandatory injunction to the defendant to remove the encroachments as shown in Ex.C3 - Surveyor's plan and to deliver the vacant possession and also granted injunction against the defendant from interfering into the peaceful possession of the plaintiff of his A schedule property.

9. The appeal is filed on the specific ground that, the Trial Court having concluded that the A schedule property not been properly described and its western boundary shown erroneously, it ought not to have granted the decree of declaration in favour of the plaintiff. The Trial Court after holding in Exs.A3 to A5 suffers improper description of its boundaries and measurements, obviously the identity and location of the property. While so, it should not have fixed the location of the property by assumption. The learned Trial Judge on his own has fixed the boundaries of the property, contrary to the documents and arrived at an erroneous conclusion that the defendant had encroached upon the property of the plaintiff. Admittedly, the old dilapidated compound wall is separating the property of the plaintiff



and the defendant, while so, when the Trial Court has categorically found that the measurements in the title deeds as well as the boundaries are not reliable, the suit should have been dismissed instead of relying upon the Revenue documents and field measurements to decide the possession of the disputed portion of the land.

10. The learned counsel appearing for the appellant/ defendant drew the attention of this Court to the paragraph Nos.28 and 35 of the impugned judgment and submitted that these observations go to show that the Trial Court has miserably failed to apply the law to the given facts properly. The judgment of the Hon'ble Supreme Court in ***Anathula Sudhakar vs. P.Bhuchi Reddy (Dead) by LRs. & Ors. [2008 (5) S.C.R. 331]*** relied to emphasize that when there is a cloud in the title, suit for permanent injunction instead of seeking declaration of title is not maintainable. In this case, initially the suit was only for prohibitory injunction, later amended for declaration of title, however the documents relied does not carry the right description of the property, as admittedly recorded by the Trial Court, hence the impugned judgment need to be set aside and further having failed to establish the owner-ship, the decree of



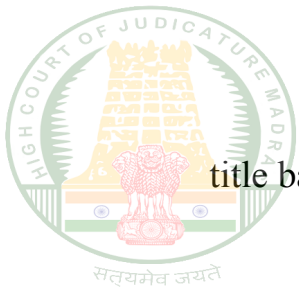
declaration ought not to have been granted.

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11. Per contra, the learned counsel appearing for the respondent/plaintiff would submit that, no doubt there are some discrepancies in the measurements and the boundaries found in the document relied on by the palintiff, however the Trial Court after examining the documents in detail had found that through the oral evidence of the plaintiff as well as the admission of the defendant, the doubt regarding the location and identity of the property is clear. In addition, the Commissioner's report along with the Surveyor's report had given a clear picture about the encroachment and hence the Trial Court has rightly decreed the suit based on Ex.C.3 - Surveyor's report and plan, which forms part and parcel of the decree.

12. Heard the submissions made by the learned counsels on either side and perused the materials available on record.

13. The point for determination is that, whether the Trial Court after its categorically finding that the descriptions of the A schedule property in the plaint is wrong, nonetheless granted decree of declaration of



title based on the Surveyor's report.

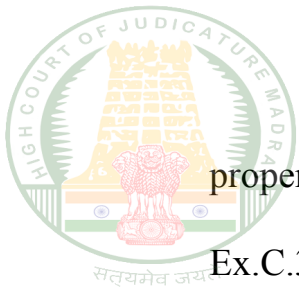
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14. The case of the plaintiff is that he got the property from Krishnaveni Ammal, who along with her daughter Sargunam purchased the suit property and the adjacent properties between 1987 to 2008. The specific case of the plaintiff in his proof affidavit is that he got the property through a settlement deed dated 23.07.2009 and the said settlement deed is marked as Ex.A.1. This deed is in favour of the plaintiff, which shows that he obtained the property from his grand mother Krishnaveni Ammal and mother Sargunam, the settlors trace their title through various documents registered between 1977 to 2008 and also the FMB sketch, to show apart from these documents acquired through sale deeds, they were also enjoying a larger extent by occupying the same. This settlement deed mentions four items of properties and in item No.3 the Survey No.288/6 (New Survey No.592/18), the property of the defendant and the plaintiff is shown as western boundary, the total extent of all the three items is shown as 5523 square feet, the FMB sketch referred in the settlement deed (Ex.A.1) is marked as Ex.A.16.



15. The plaintiff has relied Ex.A.2, to show that his predecessors got the third item of property shown in the settlement deed from one Narayanan S/o Pattu Naidu on 21.04.1979 through Ex.A.2 and in this document Ex.A.2, the defendant's property is shown as western boundary, this document covers 5852 square feet in the old Survey No.288/6.

16. The Trial Court having found that the description of the A schedule property in the plaint, wrongly describes the western boundary and no material to show that the property comprises in Ex.A.2 would denote the suit property, ought not to have ventured further to declare that the plaintiff is the owner of the A schedule property. Obviously, the Court below after examining the documents had observed in paragraph No.11 that, "the Natham Survey Nos.592/17 and 592/16 are situated on the western side of the Survey No.592/18, which is the A schedule property. While describing the western side boundary of the A schedule property, the plaintiff not to have described it as the property belong to one defendant and Ranganathan". Having failed to describe the boundaries properly in the plaint it should have been cured by amendment of the plaint. The Trial Court without making necessary amendment in the description of the



property had granted decree of declaration and also injunction based on Ex.C.3 - Surveyor's report and plan, which is only an opinion and not a conclusive prove. For the above said reason, this Court finds that the Trial Court had gone beyond the scope of the pleadings and evidence. He had substituted new facts regarding the boundaries of the suit property, which is not bound by the record.

17. As a result, this appeal stands allowed. The judgment and decree of the Trial Court in O.S.No.22 of 2019 dated 07.11.2022 is hereby set aside. Consequently, connected civil miscellaneous petition stands closed. There shall be no order as to costs.

04-07-2025

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
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Dr. G. JAYACHANDRAN, J.,

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To

1. The I Additional District Court,
Tiruvallur.
2. The Section Officer,
VR Section,
High Court of Madras.

**Pre-delivery Judgment made in
A.S. No.68 of 2023
and C.M.P. No.3565 of 2023**

04.07.2025