



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2025

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CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

S.A.No.1231 of 2011 and
M.P.No.1 of 2011

1.C.Periyasamy
2.P.Vembu

... Appellants /
Defendants 4 & 5

Vs.

1.Smt.Sarasu Alias Saraswathy (died)

... First respondent /
Plaintiff

2.The State of Tamil Nadu,
Rep by the District Collector,
Perambalur Taluk and District.

3.The Tahsildar,
Kunnam Post and Taluk,
Perambalur District.

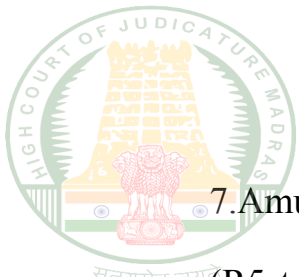
4.The Village Administrative Officer,
Nochikulam Group,
Kunnam Taluk,
Perambalur District.

... Respondents 2 to 4 /
Defendants 1 to 3

5.Annadurai

6.Maharajan

1/12



7.Amusu

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(R5 to R7 are impleaded as the legal heirs of the deceased R1 vide order dated 07.07.2023 made in CMP.No.14169 of 2017)

... LR's of 1st Respondent

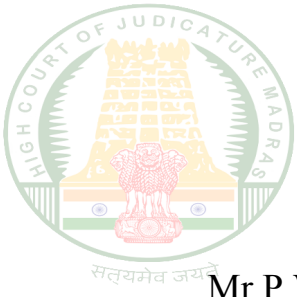
Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree in A.S.No.44 of 2010 dated 29.03.2011 on the file of the learned Sub Ordinate Judge at Perambalur which confirmed the judgment and decree in O.S.No.360 of 1999 dated 23.06.2010 on the file of the learned District Munsif Court at Perambalur.

For Appellant : Mr.B.Gopalakrishnan

For Respondents : Mr.P.Valliappan, Senior Counsel for
Mr.K.M.Hareesh for RR5 to 7
Mr.D.Gopal, GA for R2 to R4

JUDGMENT

This Second Appeal has been filed to set aside the judgment and decree in A.S.No.44 of 2010 dated 29.03.2011 on the file of the learned Sub Ordinate Judge at Perambalur which confirmed the judgment and decree in O.S.No.360 of 1999 dated 23.06.2010 on the file of the learned District Munsif Court at Perambalur.



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2. Heard Mr.B.Gopalakrishnan, learned counsel for the appellants, Mr.P.Valliappan, learned Senior Counsel for RR5 to 7 and Mr.D.Gopal, learned Government Advocate for R2 to R4 and perused the materials available on record.

3. The appellants are the defendants 4 and 5. The plaintiff has filed a suit against the defendants for declaration and permanent injunction and the Trial Court has decreed the suit. The First Appeal preferred by the defendants 4 and 5 was also dismissed by confirming the judgment and decree of the Trial Court. Aggrieved over the same, the defendants 4 and 5 have preferred this Second Appeal.

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

The suit property has been purchased by the plaintiff by virtue of the sale deed dated 22.09.1960 executed by the fourth defendant's father for himself and as a guardian for the fourth defendant. Subsequent to the said sale deed, the plaintiff took possession of the suit property and it has also been sub-divided as S.No.173/1 and for which, the plaintiff has also obtained patta in her name in Patta No.357. Even though the boundaries for



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the suit property has been rightly shown in the sale deed of the plaintiff, the extent has not been mentioned rightly. But the patta has been granted in favour of the plaintiff. As per the sub-division and the extent of the property within the boundaries shown in the sale deed, the plaintiff has put up a construction over the portion of the suit property and has been in enjoyment of the same. The fourth defendant has got no right over the suit property. Colluding with the fifth defendant, the fourth defendant claims right over the suit property and disturbs the plaintiff's enjoyment over the suit property. Hence, the plaintiff has sent a legal notice to the Government defendants 1 to 3. But the defendants 1 to 3 also attempting to re-survey the property. Hence, the plaintiff has filed this suit by claiming the relief of declaration and permanent injunction.

5. The written statement filed by the second defendant and adopted by the defendants 1 to 3 are as follows:

After the plaintiff has purchased the suit property, the plaintiff has got patta under UDR scheme. The fourth defendant has raised objection and sent a petition to the second defendant. The second defendant perused the title deed of the plaintiff and came to know that the sale deed involves only



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16 cents. Hence, a joint patta has been given in favour of the plaintiff and the fourth defendant. There is no cause of action against the defendants 1 to 3.

6. The written statement filed by the defendants 4 and 5 are as follows:

The sale deed dated 22.09.1960 will not bind the interest of the fourth defendant. Had the plaintiff purchased the suit property, she could have verified the boundaries and the extents at the time of his purchase. Hence, the sale deed dated 22.09.1960 is a nominal one and will not bind the fourth defendant. Hence, the consequential patta change in the name of the plaintiff also will not bind the fourth defendant. Even before UDR scheme, the patta for the suit property stood in the name of the fourth defendant's father Chinnayan in patta No.464. The plaintiff has concealed the same and obtained patta in her name. The plaintiff has not come to the Court with clean hands and hence, the suit should be dismissed.

7. On hearing both sides and on the basis of the above pleading, the Trial Court has framed the following issues:



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மட்டுமே என்பது சரியா?

- "1. 22.09.1960 தேதியிட்ட கிரையப் பத்திரம் செல்லத்தக்ததா?
2. மேற்படி கிரையப் பத்திரத்திற்கு கட்டுப்பட்டது 16 செண்ட்
- 3.தாவா சொத்து முழுவதும் வாதியின் அனுபவத்தில் உள்ளதா?
- 4.வாதி கோரும் பரிகாரம் வழங்க இயலுமா?
- 5.வேறு என்ன பரிகாரம் வழங்க முடியும்?"

8. During the course of the trial, on the side of the plaintiff, P.W.1 to P.W.3 have been examined and Exs.A1 to A13 were marked. On the side of the defendants, D.W.1 to D.W.4 have been examined and Exs.B1 to B10 were marked. Exs.C1 to C4 were also marked.

9. At the conclusion of the trial and on considering the evidence available on record, the Trial Court has decreed the suit as prayed. The First Appeal preferred by the defendants 4 and 5 was also dismissed by confirming the judgment and decree of the Trial Court. Now, the Second Appeal has been preferred by the defendants 4 and 5 by raising the following substantial questions of law:

"Whether the Courts below were right in granting the decree in respect of 23 cents when the respondent / plaintiff purchased the property only for 16 cents?"



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10. The learned counsel for the appellants / defendants 4 and 5 submitted that the Courts below have arrived at a conclusion on the basic principle that boundaries will prevail over the extent. But the said principle is applicable only when the sale deed does not mention about the extent. But in the instant case, Ex.A1 mentions that within the boundaries specified in the sale deed, an extent of 1/2 *kaalkaani nilam* is subjected to conveyance. Hence, the general principle that the boundaries will prevail over the extent will not be applicable to this case. Reliance was placed on the judgment of this Court in the case of ***Kolandasamy Gounder Vs. Thirumalai Gounder***, ***reported in 2007 1 L.W. 706.***

11. The learned Senior Counsel for the respondents 5 to 7 / legal heirs of the deceased plaintiff submitted that the fourth defendant did not deny the boundaries and the defendants' witnesses also have stated that the plaintiff is in enjoyment of the property within four boundaries stated in the sale deed. Since the extent has not been properly stated, but the boundaries have been specifically stated, the Courts below have rightly applied the principle of law and decreed the suit. The fact that the fourth defendant's father for himself and as a guardian for the then minor the fourth defendant,



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had executed a sale deed in respect of the suit property on 22.09.1960 is not denied. Subsequently, the deceased plaintiff has effected patta in her name in Patta No.357 under UDR scheme and only from that time, it is found that within the boundary details given in the sale deed the extent of the property measured 23 cents.

12. The plaintiff has been in enjoyment of the extent within the boundaries mentioned in the sale deed without any hindrance. The fourth defendant has claimed that the plaintiff is entitled to only 16 cents as per the sale deed and she cannot obtain patta for the whole of 23 cents. The claim of the fourth defendant is based upon the word "*1/2 Kaalkaani nilam*" which according to the fourth defendant is equivalent to 16 cents. The fourth defendant's father died in the year 1962 i.e., after two years from the date of execution of the sale deed. At no point of time subsequent to the death of the fourth defendant's father, he was seen to be in enjoyment of any of the portion of the suit property. When the fourth defendant was examined as D.W.1 he has also stated in his evidence that from the date of the sale deed in the year 1960 till his father's demise in the year 1962, there is no patta crystalised to show that the fourth defendant's father had been in enjoyment



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of the 7 cents out of the suit property. Even though the plaintiff has subdivided the suit property subsequent to the sale deed, the fourth defendant's father did not raise any objection stating that the plaintiff has obtained the patta for the entire extent of 23 cents and that he had sold only 16 cents.

13. The judgment cited by the learned counsel for the appellants is distinguishable on facts. In the said judgment involved in ***Kolandasamy Gounder Vs. Thirumalai Gounder***, the recitals in the sale deed would show that what is being conveyed was only 1/2 share. But the party therein had taken advantage of the boundaries and claimed that he is entitled to the larger extent. In the instant case, there is no mention in the sale deed and the vendor of the sale deed had chosen to retain the portion of the property and the property which was under sale is a portion within the larger boundary. The recitals of the sale deed would only denote that the property subjected to the sale deed is within four boundaries stated therein. But for the word *1/2 Kaalkaani nilam* there is nothing is mentioned to show that the plaintiff has been given with only 16 cents and that the vendor has retained the rest of the lands within the alleged larger boundary.



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14. Had the boundary recitals stated in Ex.A1 is a larger boundary, then the vendor would have mentioned the portion retained by him as one of the boundaries for the portion under sale. In the instant case, the recitals of the sale deed does not disclose any such specific details. Neither it is seen that the sale deed is intended in respect of the portion of the larger extent either on the western, eastern, southern and northern side. The fourth defendant could not produce any document to show that the portion of the property within the larger boundary has been retained by his father and thereafter by him and that he being in enjoyment of the same. It is seen from the evidence of D.W.1 that he has gone to Bangalore in order to make out his livelihood and he has returned after several years. All of a sudden, the fourth defendant has tried to make out a title in respect of the portion of the property within the property subjected in the boundaries mentioned in the sale deed Ex.A1.

15. The Courts below have rightly applied the principle that the boundary will prevail over the extent and confirmed the title of the plaintiff and she has obtained patta and has been paying the kists. In the absence of any evidence to show that the fourth defendant or his father retained the



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portion of the suit property or 7 cents in the suit property and that the plaintiff has been given with only a portion of the suit property, the Courts below cannot find fault to apply the principle 'boundaries will prevail over the extent'. Hence, I do not find any merits in the argument of the appellants. Hence, the substantial question of law is answered against the appellants.

16. In view of the above stated reasons, this Second Appeal is dismissed and the judgment and decree in A.S.No.44 of 2010 dated 29.03.2011 on the file of the learned Sub Ordinate Judge at Perambalur is confirmed and the suit is decreed in favour of the plaintiff. No costs. Consequently, connected miscellaneous petition is closed.

07.01.2025

Speaking order / Non Speaking Order

Index : Yes / No

Neutral Citation : Yes / No

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R.N.MANJULA, J.

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To

- 1.The Sub Ordinate Judge,
Perambalur.
- 2.The District Munsif Court,
Perambalur.

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