



S.A.No.1170 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

S.A.No.1170 of 2012

and

M.P.No.1 of 2012

Kanagavalli

... Appellant / Defendant

vs.

Gowri

... Respondent / Plaintiff

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.116 of 2008 passed by the Principal District Court, Villupuram dated 30.11.2011, reversing the Judgment and Decree in O.S.No.288 of 2005 passed by the Principal District Munsif, Villupuram, dated 08.09.2008.

For Appellant : Mr.A.M.Venkatakrisnan

For Respondent : Mr.A.Nilopher

for Mrs.R.Meenal

JUDGMENT

Aggrieved the plaintiff herein preferred the appeal in A.S.No.116 of 2008 and upon consideration, the First Appellate Court held that though the plaintiff did not take any steps and the property delivered to the defendant before the First Appellate Court, an application to appoint Advocate Commissioner was filed by the plaintiff and based on the report

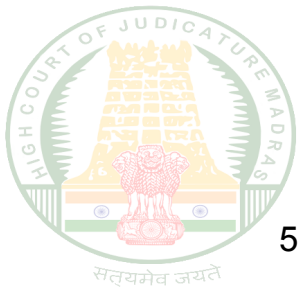


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and sketch of the Advocate Commissioner, the properties claimed by the plaintiff and by the defendant are different properties and granted reliefs in favour of the plaintiff as prayed for in the suit. Against this judgment and decree passed by the First Appellate Court in the above said First Appeal, the defendant has preferred this Second Appeal.

3. The learned counsel for the appellant/defendant would strenuously argue that the plaintiff did not produce any field map or sketch to show that the suit schedule property is different from the property allotted to the appellant/defendant. The First Appellate Court has misconstrued the fact that the plaintiff is in possession of the suit schedule property by over looking the fact that no document was produced by the appellant/defendant to prove her possession. He would further contend that the theory of *res-judicata* is misinterpreted by the First Appellate Court.

4. In fact, the suit is barred by *res-judicata* in view of the judgment rendered in O.S.No.129 of 1997. The suit schedule property was allotted to the appellant/defendant in O.S.No.129 of 1997. The report of the Advocate Commissioner was not clear and sought for dismissal of the suit.



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5. Per contra, the learned counsel for the respondent/plaintiff would argue that the plaintiff purchased the suit property namely Plot No.12, Vill Nagar, Salamedu Village, to an extent of 30' x 60', for a total extent of 1800 Sq.ft., with a given boundaries by a sale deed dated 13.10.1990 from the power agent of her vendor G.Lakshmi Narayanan and since then the plaintiff has been in peaceful possession and enjoyment of the suit property. On the application made by the plaintiff, she has been in possession of the suit property, she has been granted patta in No.1695 in respect of the suit property. He would further contend that the defendant who does not have any right or title in the suit property has been denying the title of the plaintiff. The plaint averments are not properly appreciated by the trial Court, whereas, the First Appellate Court on the petition of the plaintiff, appointed the Advocate Commissioner and he has identified the suit property as well as the defendant's property (0.09 cents in S.No.282/4). The First Appellate Court having appreciated the contents of the report of the Advocate Commissioner has held that the defendant has no right or title over the suit property and based on the oral and documentary evidence of the plaintiff, concluded that the plaintiff is entitled for declaration of title in respect of the suit property and the defendant was restrained from interfering with the peaceful possession and enjoyment of the suit property.



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6. Following substantial questions of law arises for consideration:

1) Whether the suit filed by the respondent/plaintiff is barred by *res-judicata*?

2) Whether the lower Appellate Court is justified in relying upon the report of the Advocate Commissioner when it is vague, unclear and devoid of material particulars and whether such report is valid under law?

7. The case of the plaintiff is that S.No.282/4, acre 0.54 cents originally performed to the joint family of Nagarathinam and his sons Rajendran. They had been in possession and enjoyment of the said property. Patta stood in the name of Nagarathinam and kist was being paid for the same. The above said two persons alienated the property in favour of Muthukannu and Gengaiyan of Vazuthareddy Village through the registered sale deed dated 21.07.1978. Patta for the said property was originally in the name of Muthukannu in patta No.619. The said Muthukannu along with his property, Kandhasamy gave General Power by means of executing General Power of Attorney Deed dated 23.08.1989 in favour of G.Lakshmi Narayanan, Govindhan of Villupuram.



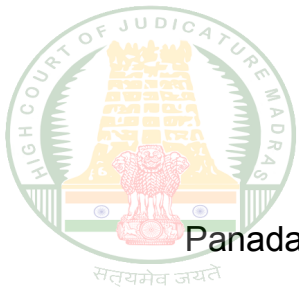
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8. The plaintiff states that she has purchased a plot to an extent of 1800 sq.ft., in the layout of house sites formed in the said property (under the name of Vill Nagar).

9. The defence of the defendant is that she filed a suit for partition in O.S.No.129 of 1997 against Rajendran, Muthukannu, predecessor in title of the plaintiff one Sudhakar, realtors and other parties. After final decree proceedings was over, she filed execution petition for the delivery of the property as she has been allotted 1/6th share. The property was delivered on 06.11.2003. The said delivery receipt is Ex.B3 (certified copy).

10. It is relevant to note that in the written statement, it has not been stated the Survey number details of the property delivered to her, however, DW1 in her proof affidavit, would state that in S.No.282/4, 0.09 cents of land was delivered to her. As regards lie and location of the property she would state that the property delivered to her was situated in the western side. When she was posed a question as to the details of the plaintiff's averments, she was invariably answered in negative. From the cross-examination of DW1, it appears that defendant's father name is Vel Pandaram, when the question posed her that the name of the sons of Vel



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Panadaram, Nagarathinam (one of the vendor under Ex.A1) is answered in negative. Therefore, the lie and location of the suit property delivered to the defendant has to be ascertained. As per Ex.B3, 0.09 cents in S.No.282/4, the earmarked portion as AEFG in the Commissioner's plan with the boundaries namely south of Munusamy land, East of Allimuthu Land, West of Mannangatti's Land and North of Lake Channel is delivered to her.

11. As per the Advocate Commissioner's report Exs.C1 and C2 filed in A.S.No.116 of 2008, the Advocate Commissioner has earmarked Ex.B3 property. As rightly pointed out by DW1, Ex.B3(0.09 cents) property is situate on the western side. Whereas, the suit property namely Plot No.12, is marked as ABCD in the Commissioner's Plan. As per Ex.A4, (sale deed in the name of plaintiff), the plot is situated to the south of road, to the West of Plot No.11, to the East of Plot No.13 and to the North of Plot No.3. The boundary details found in the Commissioner's plan, exactly tallies with the boundary details found in Ex.A4. It is pertinent to note that for the Commissioner's report and plan, the appellant/defendant did not file any objection at all. From the conjoint reading of both sides evidence coupled with Ex.B3 delivery receipt, Ex.C1 Advocate Commissioner's Report, Ex.C2 Plan, it is made clear that the property delivered to the defendant



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through Ex.B3 delivery receipt is entirely different property and the suit property is different property. Under Ex.A2 out of 54 cents in S.No.282/4, only 47 cents is dealtwith.

12. As the properties are different, it should not lie in the mouth of the defendant that the suit property is the property which was delivered to her. Therefore, the contention of the defendant that the suit is hit by *res-judicata* is incorrect.

13. The decision of a Court of limited jurisdiction on an issue within the competence of such Court would operate as *res-judicata* in a subsequent suit. The principles of *res-judicata* means that an issue or a point decided and attaining finality should not be allowed to be reopened and re-agitated twice. Section 11 contains rule of conclusiveness of the judgment who is passed partly on the maxim "interest reipublicae ut sit finis litium" (which means it concerns the state that there should be an end to law suits) and also based on the maxim "Nemo debet bis vexari pro una et eadem causa" (which means no man should be vexed twice for the same cause). It is a principle of equity, good conscience and justice. Therefore, it is a manner of procedure that as per Section 11 CPC, it bars any Court to try any suits or issue in which, the matter directly and



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subsequently in issue has been directly and subsequently in issue in a former suit between the same parties or between parties under whom they are getting any of the claim under the same title, in a Court competent to try such an issue has been subsequently raised and has been heard and finally decided by such Court. *Res-judicata* means the thing adjudicated. In the earlier proceedings, the defendant was allotted different property. This suit is filed by one Gowri on the ground that she purchased a plot to an extent of 1800 sq.ft., in S.No.282/4 with the specific boundaries as mentioned supra for the relief of declaration of title and for permanent injunction.

14. The property delivered through Ex.B3 delivery receipt to the defendant is entirely different property. When the properties are different then, doctrine of *res-judicata* never comes into play and therefore, this issue is answered against the appellant/defendant.

Point No.(ii):

15. Of course, the plaintiff being known the details of the written statement either should have taken out an application for appointment of Advocate Commissioner or in order to explain the lie and location of the property should have been examined by the revenue official. Because of



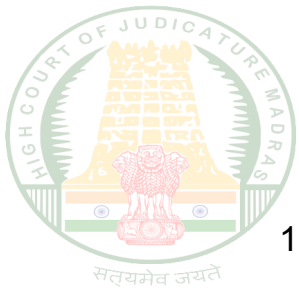
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these lapses, the plaintiff omitted to give a clear picture about the lie and location of the suit property and the property delivered to the defendant through Ex.B3 delivery receipt. Whereas, this defect was cured by filing the application before the First Appellate Court by the plaintiff herein under Order 26 Rule 9 CPC. In obedience to the order passed by the First Appellate Court in I.A.No.393 of 2009 in A.S.No.116 of 2008, the learned Advocate Commissioner filed his clear report with a detailed plan (not drawn to scale) and delineated the suit property and Ex.B3 property.

16. For a better understanding, Order 26 Rule 9 of CPC is extracted hereunder:

"9. Commissions to make local investigations— In any suit in which the Court deems a local investigation to be requisite or proper for the purpose of elucidating any matter in dispute, or of ascertaining the market-value of any property, or the amount of any mesne profits or damages or annual net profits, the Court may issue a commission to such person as it thinks fit directing him to make such investigation and to report thereon to the Court:

Provided that, where the State Government has made rules as to the persons to whom such commission shall be issued, the Court shall be bound by such rules."



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17. The object behind this provision is that the Judge can conduct the investigation himself or he can issue a commission in a suitable case.

The object of local investigation under Order 26 Rule 9 CPC is to obtain evidence from the spot, which enables the Court to properly understand and assess the evidence on record.

18. The object of the appointment of Advocate Commissioner is not to collect evidence, but to elucidate matters which are local in character and which could be done only by the local investigation at spot (Saraswathy vs. Viswanathan reported in 2002 (2) CTC 199. In Thakur Singh Chettri v. Dharma samsher Basnett reported in AIR 2015 SIKK 27.

19. Therefore, in order to elucidate matters which are local in character, the Advocate Commissioner is appointed. The appellant/defendant having omitted to file any sort of objection to the Commissioner's report cannot raise his little finger as to the contents of the report of the Advocate Commissioner that it is vague, unclear and devoid of material particulars. In such a view of the matter as the report of Advocate Commissioner is in clear terms has come to the aid of the First Appellate Court and it has come to the right conclusion that the suit property and the property delivered to the defendant through Ex.B3



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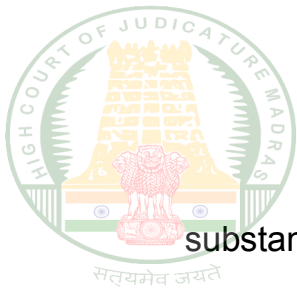
delivery receipt are in entirety different properties.

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20. Therefore, this issue also stands answered in favour of the respondent / plaintiff.

21. The plaintiff having examined herself as PW1 has also marked her sale deed Ex.A4 and the earlier title deeds namely Exs.A1, A2 (copies) has established the fact that she has purchased the suit property by way of registered sale deed on 13.10.1990.

22. On her application, the Tahsildar of Villupuram after conducting enquiry has passed an order for grant of patta in favour of plaintiff on 12.01.1998 (Ex.A5). Pursuant to the same, after a long period, patta for the suit property was granted in the name of plaintiff on 06.08.2004 in Patta No.1695(Ex.A6). The above said documents are clinching evidence to state that the plaintiff as the owner of the property has been in possession and enjoyment of the suit property till date. Therefore, the First Appellate Court based on the oral and documentary evidence has concluded that the plaintiff is entitled for the relief of declaration of title and for permanent injunction. This Court does not find any good reason to upset the well considered judgment of the 1st Appellate Court. The



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substantial question of law are answered in favour of the plaintiffs.

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23. In the aforesaid observations and discussions, the substantial questions of law are answered in favour of the plaintiff and necessarily this second appeal has to be dismissed and thereby stands dismissed. Sequel to this judgment and decree granted by the First Appellate Court in A.S.No.116 of 2008 by Principal Sub-Court, Villupuram is confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

24.04.2025

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Sub-Court,
Vaniyambadi.
2. The Principal District Munsif Court,
Vaniyambadi, Vellore District.
3. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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