



S.A.No.460 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	17.09.2025
<i>Pronounced on</i>	28.11.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.460 of 2023
and C.M.P.No.21170 of 2023

Haji Naziruddin (Deceased)
represented by his legal heirs

1.Rafia Begum
2.Mohammed Mustafa
3.Karimunnissa

.. Appellants

versus

Nagamani (died)

1.The Commissioner,
Corporation of Chennai,
Chennai

2.The Inspector of Police,
E2, Royapettah Police,
Chennai.



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3.Palayam
4.N.Karthik
5.N.Kutty
6.N.Velan.

.. Respondents

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 23.09.2022 made in A.S.No.291 of 2011 on the file of learned I Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 18.03.2010 made in O.S.No.782 of 2005 on the file of the learned III Assistant Judge, City Civil Court, Chennai.

For Appellants : Mr.P.Bhaskaran

For Respondents : Ms.Ashwini Devi,

Standing Counsel for R1

Mr.V.Ramesh,

Govt. Advocate for R2

R3 to R6 -No appearance



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JUDGMENT

The above second appeal arise out of the judgment and decree dated 23.09.2022 made in A.S.No.291 of 2011 on the file of learned I Additional Judge, City Civil Court, Chennai, confirming the judgment and decree dated 18.03.2010 made in O.S.No.782 of 2005 on the file of the learned III Assistant Judge, City Civil Court, Chennai.

2. The legal heirs of the original plaintiff in O.S.No.782 of 2005 on the file of the learned III Assistant Judge, City Civil Court, Chennai, are the appellants in the second appeal. The deceased plaintiff filed the suit to declare that the superstructure put up by the 1st defendant in the suit property is illegal, unauthorised and liable to be removed and for consequential injunction.

3.The case of the deceased plaintiff is that, he is the owner of the premises in Door No.126/1, Avvai Shanmugam road, Gopalapuram post,



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Chennai 600 086, consisting of 11 huts. The entire area is called "Diwan Sahib Garden". According to the plaintiff, the huts were let out for rents and since there was default of payment of rents by the tenants, they were evicted from the suit property and as such the huts were lying vacant for a long time. When the tenants were evicted through rent control proceedings, some unruly elements tried to trespass and occupy the huts which was prevented by the plaintiff. While so, on 03.12.2004 the huts were set fire in which the huts were destroyed. The same was informed to the 2nd defendant, the Commissioner of Corporation, Chennai vide letter dated 10.12.2004. In the meantime, the persons who set fire to the huts started collecting funds from the public and gathered building materials on the road side and when the same was questioned by the plaintiff they threatened him with dire consequences. Thereafter, they have trespassed into the suit property and put up unauthorised construction. Hence, the plaintiff was constrained to file the above suit.



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4.The claim of the plaintiff was resisted by the 1st defendant stating that he is residing only in a portion of the property and there are more than 20 owners consisting of nearly 70 families living in different portions in the suit property and hence, the suit is liable to be dismissed for non-joinder of necessary parties. The defendant and other families ancestrally are living in the suit property in different portion for more than 100 years and therefore, they have prescribed title in the suit property by way of adverse possession. Hence, prayed for dismissal of the suit. The contention of the 2nd defendant is that it had not assigned any door No.126/1 for suit property as alleged in the plaint and that there are only huts in existence in the area bearing door No.126/1 by the plaintiff. The 2nd defendant further states that the plaintiff has put up the Asbestos sheet roof without any authority after the fire accident. The 2nd defendant further submits that there is no cause of action for filing the above suit against the 2nd defendant and prayed for dismissal of the suit.



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5.The trial Court framed the necessary issues and on the oral and documentary evidence held that none of the documents produced on the side of the plaintiff stands proved to substantiate that the superstructure put up by the 1st defendant is illegal. The Trial Court further held that the plaintiff failed to prove his possession and enjoyment in the suit property and concluded that the 1st defendant is in possession in a portion of the suit property. So holding by judgement and decree, dated 18.03.2010, the trial Court dismissed the suit. The plaintiff filed appeal in A.S.No.291 of 2011 before the I Additional City Civil Court, Chennai. The learned I Additional Judge, City Civil Court, by judgment and decree dated 23.09.2022 confirmed the decision of the trial Court and dismissed the appeal. It is as against this, the present second appeal has been filed.

6.At the time of admission, the following substantial questions of law were formulated for decision in the second appeal:

i. Whether the dismissal of I.A.No.5 of 2022 is sustainable as per Order 41 Rle 27 (1)(aa) of CPC.



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ii. Overlooking the provisions contained in Order VII Rule 3 CPC whether the Courts below are right in holding that the suit property is unidentifiable?

iii. Whether the findings of the 1st Appellate Court is perverse in holding that the 1st defendant is in possession of the property while the 1st defendant himself never claim to be a tenant under the plaintiff?

7.The appellants, who are the legal heirs of the deceased plaintiff preferred the present second appeal challenging the concurrent findings of the Courts below. The learned counsel appearing for the appellant would submit that the respondents 3 to 6 are trespassers and the 1st defendant claiming right in the suit property was not examined. While so, the Courts below ought not to have rendered a finding that the 1st defendant is in possession of the suit property for more than 100 years without any evidence on record. The findings of the Courts below are based on



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assumption, which is liable to be set aside. He would further submit that the first Appellate Court ought to have allowed the petition filed by the appellants under Order 41 Rule 27 (1) CPC seeking permission to produce additional documents, which are very much relevant to prove the title of the appellants in respect of the suit property. He would further submit that the defendants 1 & 2 have categorically admitted the constructions in the suit property is put up by the plaintiff. The appellants are in possession of the valid title deeds pertaining to the suit property and that the 1st defendant is in wrongful possession. He would further submit that the old Survey number and new survey number of the suit property was not properly considered by the Courts below thereby violating the provisions under Order 7 Rule 3 CPC, erroneously held that the suit property is not identifiable. His further contention is that, the settlement deed dated 17.03.1944 is the oldest document to prove the title of the appellants and therefore, the appellants are entitled for legal presumption under Section 90 of the Indian Evidence Act, 1872. To support his contention, he has relied



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upon the judgments in

i. ***Kunturu Venkata Reddy (died) by Lrs., & Others vs. Kunuthuru Akkamma & Another*** reported in ***Manu/AP/0966/2005***

ii. ***Shyam Gopal Bindal V. The Land Acquisition Officer*** reported in ***(2010) 2 SCC 316***

iii. ***Sanjay Kumar-Singh Vs. The State of Jharkand*** reported in ***(2022) 7 SCC 247***

8.His further contention is that when proper description and boundaries with survey numbers are available, the property could not be held as unidentifiable. To support his contention, he has relied upon the judgments in

i.***Azad Singh and others vs. Priya Vart Tyagi and Others*** reported in ***Manu/DE/2022 (Delhi)***

ii. ***Hero Vinoth (Minor) Vs. Seshammal*** reported in ***2006 (5) SCC 545***

iii. ***Bhanshraj Vs. Ram Naresh*** reported in ***2020 SCC Online All***



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9.The further contention of the learned counsel is that when the findings of the Courts below is perverse, the same can be interfered in the second appeal. To support his contention, he has relied upon the judgement in ***T.Panneerselvam Vs. Natesa Mudaliar*** reported in ***Manu/TN/3121/2020***

10.The learned counsel further submits that if the defendant failed to get into the witness box, adverse inference could be drawn. To support his contention, he has relied upon the judgement in ***Kamakshi Builders Vs. Ambedkar Educational Society and Others*** reported in ***AIR 2007 (SC) 2191*** and ***Vidyadhar vs. Manick Rao and Another*** reported in ***1999 (3) SCC 535***

11.While so, the First appellate Court ought to have remitted the matter to the trial Court for fresh consideration by accepting the additional documents produced on the side of the appellants, to prove their title in the suit property.



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12. On the other hand, the learned counsel for the 2nd defendant/2nd respondent Corporation submits that no specific door number is assigned as D.No.126/1 as alleged by the plaintiff. There are only huts in the suit property and the plaintiff has put up asbestos sheet roof unauthorisedly after the fire accident. The Courts below after analysing the facts and circumstances of the case rightly dismissed the suit which warrants any interference by this Court.

13. Heard on both sides and records perused.

14. The plaintiffs' claim is that the 1st defendant has trespassed into the suit property without any legal right. Per contra, the 1st defendant disputed the title and possession of the plaintiff in the suit property. Pending the appeal suit in A.S.No.291 of 2011, the plaintiffs have filed an application in I.A.No. 5 of 2022 under Order 41 Rule 27 CPC to receive additional documents. The above petition was dismissed by the first appellate Court holding that the documents mentioned in the above petition are of no use either to enable the Court to pronounce judgment effectively or for any



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other substantial cause and that it is not related to the suit property. The learned counsel for the appellants/plaintiffs would submit that all the above documents are pertaining to the suit property for arriving at a fair decision. It is further submitted that the present appellants were impleaded only in the appeal suit and therefore, they had no opportunity to file the above documents in the trial Court. Hence, the first appellate Court ought to have allowed the petition filed under Order 41 Rule 27 (1) (aa) CPC. The contention of the learned counsel for the appellants/plaintiffs is that one Gulam Ahmed Mohideen became the owner of the suit property to an extent of one ground 1507 sq. feet in survey No.1155/13, R.S.No.115/20 under a settlement deed dated 17.08.1944 and the same is the subject matter of the present suit. He died in the year 1946 as bachelor, his brothers and sisters jointly owned the suit property and the same is established by revenue records. After the death of other sharers without any issues, the original plaintiff Naziruddin Mohamed and his sister Ameena Bi inherited the suit property. Thereafter, the said Ameena Bi settled the suit property by way of



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family arrangement in favour of his brother Naziruddhin Mohamed. He then became the absolute owner of the suit property. While so, the first appellate Court failed to consider the above documents as additional evidence. Upon perusal of the impugned judgment passed by the First Appellate Court, it is seen that the above documents were rejected by the first appellate Court on the following grounds:

- a. The additional documents were not produced before the trial Court.
- b. The appellants failed to establish that notwithstanding the exercise of due diligence, such evidence was not within their knowledge or could not, after the exercise of due diligence, be produced by them at the time when decree appealed.
- c. Since the documents are not pertaining to the suit property, they are of no use to enable the Court to pronounce judgment effectively.



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and ownership of the suit property. The boundaries mentioned in the above documents must tally with the suit property. The first Appellate Court after perusing the above documents has held that there is no correlation between the boundaries of the suit property and the above documents. Further, the Courts below concurred that the plaintiffs failed to establish their possession in the suit property. The legal heirs of the deceased 1st defendant would contend that they are residing in the suit property ancestrally for more than 100 years. The plaintiffs failed to establish their right over the suit property and that the superstructure was illegally constructed by the 1st defendant. In fact, the deceased plaintiff himself admitted in his proof affidavit about the existence of 11 huts from the year 1958. Moreover, the said plaintiff having stated that the 1st defendant is putting up construction in the suit property, admits his possession. Therefore, it is not necessary for the 1st defendant to establish his possession in the suit property. While so, it is for the plaintiff to prove that the 1st defendant is in wrongful possession in the suit property, which he failed to do so. There is no warrant for assuming



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that the 1st defendant construction in the suit property is unauthorised. Since the additional documents were not relevant to the suit property, the first Appellate Court rightly dismissed the petition filed under Order 41 Rule 27 (1) (aa) of CPC. Order 7 Rule 3 of CPC requires that a plaint must contain a description of the immovable property that is sufficient to identify it. This includes specifying boundaries or survey/settlement numbers if the property can be identified by them. The purpose is to ensure the property is clearly defined for the Court to adjudicate and to execute any potential decree. In the present case, the 2nd defendant Corporation has specifically stated that door No. 126/1 was assigned to the suit property. While so, the plaintiff ought to have proved that the suit property bears the door No.126/1. The Courts below taking into consideration of all the above facts, rightly dismissed the suit filed by the plaintiff. No perversity or infirmity found in the judgment and decree passed by the Courts below. All the substantial questions of law are answered against the appellants.



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16.In the result

(i) the second appeal is dismissed. No costs.

(ii) the judgment and decree dated 23.09.2022 made in A.S.No.291 of 2011 on the file of learned I Additional City Civil Judge, Chennai, confirming the judgment and decree dated 18.03.2010 made in O.S.No.782 of 2005 on the file of the learned III Assistant Judge, City Civil Court, Chennai is upheld. Consequently, connected miscellaneous petition is closed.

28.11.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order

To

- 1.The I Additional City Civil Judge, Chennai,
- 2.The III Assistant Judge, City Civil Court, Chennai
- 3.The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.

vsn

**Pre- delivery judgment made in
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28.11.2025