



S.A.No.634 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.10.2025

CORAM

THE HONOURABLE DR.JUSTICE R.N.MANJULA

S.A. No.634 of 2012

1.V.Indira

2.B.Varalakshmi

3.N.Kowsalya

4.V.Bharathi

... Appellants

Vs.

C.Radhakrishnan

... Respondent

Prayer:Second Appeal filed under Rule 1 and 2 read with Section 100 C.P.C. against the judgment and decree made in A.S. No.39 of 2011 dated 07.02.2012 on the file of the Principal Subordinate Judge, Tindivanam, which was in the nature of confirming the order and decree made in O.S. No.270 of 2008 dated 28.06.2011 on the file of the Principal District Munsif Judge, Tindivanam.

For appellants : Mr.N.Kathiresan

For respondent : No appearance

JUDGMENT



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This Second Appeal has been filed by the appellants against the judgment and decree made in A.S. No.39 of 2011 dated 07.02.2012 on the file of the Principal Subordinate Judge, Tindivanam, confirming the judgment and decree made in O.S. No.270 of 2008 dated 28.06.2011 on the file of the Principal District Munsif Judge, Tindivanam.

2.The appellants are the plaintiffs. The suit in O.S. No.270 of 2008 has been filed by the plaintiffs against the defendant for claiming the relief of permanent injunction. The suit was dismissed by the Trial Court and the first appeal in A.S. No.39 of 2011 preferred by the plaintiffs was also got dismissed by confirming the judgment of the Trial Court.

3.The short facts pleaded by the plaintiffs in their plaint are as follows:

a)The plaintiffs are the owners of a larger extent of land measuring 5 acres and 47 cents. The above property was acquired by the first plaintiff through purchase on various dates by virtue of various Sale Deeds. The first plaintiff had executed a Deed of Exchange to an extent of 3 acres and



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0.96 cents to some third parties in the year 1984. The vendor of the first plaintiff had executed a Sale Deed in favour of one Angamuthu Naicker, S/o.Govindasay Naicker on the same date. A Deed of Exchange was executed on 24.04.2001 between the first plaintiff and Angamuthu Naicker. Pursuant to the Deed of Exchange and subsequent to the division of properties in the family of the husband of the first plaintiff, a land measuring 0.59 cents in Survey Number 4/6 was settled in favour of the first plaintiff by her husband. So, the first plaintiff became entitled to a total extent of 5 acres and 47 cents, which is inclusive of the property settled in her favour by her husband;

b)The above property has been settled in favour of plaintiffs 2 to 4, who are the daughters of the first plaintiff, by the first plaintiff under a Settlement Deed dated 15.11.2007. The plaintiffs 2 to 4 sold an extent of 1 acre and 0.51 cents in favour of the defendant on 26.11.2007. However, the defendant is trying to interfere with the portion of the suit property, which has not been sold to him, but he was in enjoyment of the portion of the property of plaintiffs 2 to 4;

c)The defendant claimed that the plaintiffs had been in enjoyment of 0.91 cents in excess of their purchase and hence, 0.45 cents from such



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excess lands, should be given to him along with the portion of the property sold to him. The plaintiffs did not agree for the same. Upon examination, the plaintiffs came to understand that in the Sale Deed executed by Sanjeevi Gounder in favour of Angamuthu Naicker, there were some typographical errors in the corresponding survey numbers of the schedule of property. However, the mistakes were rectified in the subsequent assessment by granting patta. Hence, the subsequent transactions made by the first plaintiff were on the strength of the new survey number assigned in the patta granted to her;

d)Despite the plaintiffs' tried to persuade the defendant to understand the ground reality, he did not listen. He started to damage the standing crops in the suit property in their absence. Hence, a police complaint was given on 15.12.2007 and on which, a C.S.R. number was given in C.S.R. No.0439187 dated 16.12.2007. When the police enquired, the defendant gave an undertaking that he will not indulge in any such act in future. Despite the same, the defendant again destroyed the crops on two more occasions. Hence, the plaintiffs were compelled to file the suit seeking permanent injunction.



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4.The defendant in his written statement has pleaded as follows:

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a)His father's name is Sitarama Naidu, who had seven children, by name, Venkatachalam, Devarajulu, Bhaktavatsalu, Bharathi, the defendant Radhakrishnan, Chaitanya Prakash and Madan Mohan Malavika. They were living as a joint family by enjoying the joint family properties. The father of the defendant and his children entered into a family partition on 14.06.1989. An extent of 3.58.0 hectares in Survey No.4/1 belonged to one Sanjeevi. Out of the same, an extent of 3 acres and 0.96 cents was purchased by one Angamuthu and the remaining 3 acres and 0.96 cents was purchased in the name of the first plaintiff by the defendant's father on 08.10.1964;

b)The first plaintiff is the daughter-in-law of the defendant's father and wife of his brother Venkatachalam. The plaintiffs 2 to 4 are the children of the first plaintiff and Venkatachalam. On 24.04.2001, the first plaintiff and Angamuthu had entered into a Deed of Exchange. Out of the total extent of 8 acres and 0.84 cents, Angamuthu and the first plaintiff have purchased 3 acres and 0.96 cents each. Thus, a remaining 0.92 cents was in the enjoyment of the defendant;



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c) Since the first plaintiff had demanded a share in the 0.92 cents, the defendant gave 0.46 cents out of the 0.92 cents to the first plaintiff, who was also in enjoyment of 0.46 cents. One Ganapathi Udayar purchased 2 acres and 0.95 cents from Angamuthu and the remaining 1 acre purchased by the defendant from Angamuthu was in enjoyment of the defendant;

d) In the family partition, an extent of 0.60 cents in the suit property was allotted to the first plaintiff's husband. As per the partition, 3 acres and 0.96 cents purchased in the name of the first plaintiff along with 0.59 cents shown in the partition deed can be enjoyed by the first plaintiff's husband. As stated already, out of the remaining 0.92 cents, 0.46 cents was also allotted to the share of the first plaintiff's husband;

e) The defendant had purchased the first plaintiff's share of 0.59 cents. The plaintiffs 2 to 4 had sold 1 acre and 0.51 cents out of 3 acres and 0.96 cents and 0.59 cents, i.e. out of total 4 acres and 0.55 cents to the defendant. But, the plaintiffs had encroached into 0.46 cents allotted from 0.92 cents to the defendant and claimed that also as part of the property involved in the Settlement Deed;

f) On perusal of the Settlement Deed, it appears that the plaintiffs had mentioned an excess extent in the Settlement Deed dated 15.11.2007 than



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what was their entitlement. Hence, the defendant had issued a notice to the plaintiffs to rectify the Settlement Deed;

g)The plaintiffs are entitled only to 3 acres and 96 cents purchased in the name of the first plaintiff along with 0.59 cents allotted to the husband of the first plaintiff in the family partition. So, their entitlement is only for 4 acres and 55 cents. As the defendant had purchased 1 acre and 51 cents, out of the same, the plaintiffs are entitled to the remaining 3 acres and 04 cents. But the plaintiffs claimed as though they were entitled to 92 cents in excess of 3 acres and 04 cents and created a document. Therefore, the suit of the plaintiffs is not maintainable in respect of the claim made for 0.92 cents. Moreover, the other legal heirs of Sitarama Naidu are also necessary parties, but they were not impleaded as parties to the suit. Hence, the suit of the plaintiffs is liable to be dismissed.

5. Based on the above pleadings, the following issues were framed by the Trial Court:

- 1) 15.11.07 செட்டில்மெண்ட் பத்திரத்தில் வாதிக்கு கூடுதல் விஸ்தீரணம் எழுதப்பட்டுள்ளது என்பது சரியா?
- 2) பிரதிவாதி 0.92 சென்டை தொடர்ச்சியாக அனுபவித்து வருகிறார் என்பது சரியா?



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3)வாதி கோரியுள்ளபடி நிரந்தர தடையுத்தரவு பெற
வாதி உரியவரா?

4)வாதிக்கு கிடைக்கத்தக்க இதர பரிகாரங்கள்
யாவை?

6.On the side of the plaintiffs, 2 witnesses were examined as PW1 and PW2 and Exhibits A1 to A18 were marked. On the side of the defendant, 2 witnesses were examined as DW1 and DW2 and Exhibits D1 was marked. At the conclusion of the trial and on considering the evidence available on record, the Trial Court dismissed the suit. The first appeal preferred by the plaintiffs in A.S. No. 39 of 2011 was also dismissed on 07.02.2012. Aggrieved over the same, the appellants have preferred this second appeal.

7.On hearing the submission of the learned counsel for the appellants, this Second Appeal has been admitted on the following substantial question of law:

“Whether the doctrine of 'boundaries prevail over the extent' was not properly applied by the Courts below in the above case?”



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8.Learned counsel for the appellants submitted that even as per the statement of the defendant, out of the total extent of 8 acres and 84 cents, the defendant has been in enjoyment of 92 cents and on demand for partition of the suit property also, 46 cents was allotted to the first plaintiff. The first plaintiff has purchased 3 acres and 96 cents, which is not in dispute. The other purchase in favour of Angamuthu in respect of 3 acres and 96 cents, out of the total 8 acres and 84 cents, is also not in dispute. In the family partition deed, apart from 3 acres and 96 cents, an extent of 59 cents was allotted to the share of the first plaintiff's husband. So, the plaintiffs' enjoyment, after deducting the total extent of property allotted to the first plaintiff's husband would be 5 acres and 01 cents (3 acres and 96 cents + 59 cents + 46 cents). After having sold 1 acre 51 cents to the defendant, the remaining would be 3 acres and 50 cents, but the defendant has stated that the plaintiffs are entitled to 3 acres and 4 cents only. In fact, 92 cents was not in the enjoyment of the defendant and that was also in the enjoyment of the plaintiffs and hence, the plaintiffs are actually entitled to 3 acres and 96 cents. Despite the appellants have produced the patta, the Trial Court has not properly appreciated the same. The Trial Court did not



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consider the defendant's allegation that he was in enjoyment of 92 cents and there was no finding as to who was in enjoyment of 92 cents.

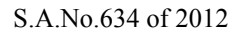
9.The one and only point that was made by the learned counsel for the appellants is that the plaintiffs' Sale Deed of the year 1984, though shows the measurement of the property as 3 acres and 96 cents, the boundaries will show that the property subjected to conveyance in the above said sale deed is inclusive of 92 cents also. In fact, the first plaintiff had been given with a patta for the entire extent of 4 acres and 88 cents. However, in the partition deed also, the very same extent of 3 acres and 96 cents only has been mentioned and hence, the appellants cannot claim that there is an error in describing the measurement in each and every title deed of the plaintiffs' family. The first plaintiff is the wife of Sitarama Naidu's eldest son, Venkatachalam. As the properties were subjected to family partition between Sitarama Naidu and his sons, the above property was allotted to the share of the eldest son. This can only would show that despite the property was purchased in the name of the first plaintiff in the capacity of the daughter-in-law of the family, the property was maintained



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as joint family property only. What was conveyed in the first plaintiff's Sale Deed would also get merged in the subsequent partition deed.

10.It is not denied by the plaintiffs that the property was purchased in the name of Sitarama Naidu. Subsequent to the Partition Deed entered into between Sitarama Naidu and his sons, an extent of 59 cents was allotted to the first plaintiff's husband, who had settled the same in favour of the first plaintiff. The first plaintiff had settled the property, which was purchased by her in the year 1994 by virtue of a Sale Deed and the property was acquired by her through a Settlement Deed executed by her husband in the year 2007, in favour of her daughters/plaintiffs 2 to 4 even in the year 2007 vide Ex.A6. Even without getting any rectification in respect of the first plaintiff's Sale Deed of the year 1984, the first plaintiff had increased the measurement by 92 cents in Ex.A5 Settlement Deed executed by her in favour of her daughters/plaintiffs 2 to 4. No document has been produced to show that the first plaintiff had been in enjoyment of 3 acres and 96 cents + 92 cents i.e. 4 acres and 88 cents. Even the patta produced by the plaintiffs as Ex.A8 is subsequent to the Sale Deed executed in favour of the defendant vide Ex. A7. Without producing any evidence to show the title



and enjoyment in whole of 92 cents, it cannot be presumed that the first plaintiff is entitled to 92 cents as claimed by her.

11. Though the proposition that 'boundaries would prevail over the measurement' is correct, it should also be shown to be applicable on that ground as well. Had it been a mere mistake of mentioning the extent, then the boundaries can be looked to rightly construe the measurement. Till the year 2008, the first plaintiff had never raised any objection as to the measurement shown in her title deed Ex.A2. The first plaintiff's husband had not raised any claim for whole of 92 cents by claiming that the said property also forms part of Ex.A2 Sale Deed. Therefore, the proposition that 'boundaries will prevail over measurement' can be applicable only if it tallies with the actual enjoyment of the plaintiffs also. If the documents supporting actual enjoyment does not show any larger extent in accordance with the boundaries, it can only be presumed that the boundary has been wrongly mentioned for the larger extent despite a portion in the larger extent has been conveyed in the Sale Deed.



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12.In the instant case also, the appellants have not produced any documents supporting their enjoyment to substantiate their submission that there is a mistake in mentioning the measurement in the title deed Ex.A2 and that she had been in exclusive enjoyment of 92 cents along with 3 acres and 96 cents as mentioned in the Sale Deed Ex.A2. Since another 3 acres and 96 cents has been sold in favour of one Angamuthu also by the very same vendor of the first plaintiff, I don't find any difficulty in claiming that there is no mistake in mentioning the measurement as 3 acres and 96 cents in each of their Sale Deeds.

13.Naturally, the remaining 92 cents could have been in joint enjoyment as claimed by the defendant. However, the defendant has not filed any counter suit to declare his enjoyment in respect of 46 cents out of 92 cents. Sofaras the plaintiffs are concerned, they are the claimants, as they have filed the suit by raising a claim in respect of the whole of 92 cents. But the claim has not been substantiated by producing any acceptable evidence. As stated already, the patta Ex.A8 is also subsequent to the defendant's Sale Deed Ex.A7. Hence the plaintiffs cannot claim that there was a mistake in the measurement and that the boundaries will prevail over



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the measurement. The question of law is answered accordingly. The Courts below have rightly appreciated the evidence on record and have chosen not to grant the relief as prayed for by the plaintiffs.

14.In the result, the Second Appeal is dismissed and A.S. No.39 of 2011 dated 07.02.2012 on the file of the Principal Subordinate Judge, Tindivanam and O.S. No.270 of 2008 dated 28.06.2011 on the file of the Principal District Munsif Judge, Tindivanam are confirmed. No costs.

23.10.2025

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

To

1.The Principal Subordinate Judge,
Tindivanam.

2.The Principal District Munsif Judge,
Tindivanam.



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DR.R.N.MANJULA ,J.

vga

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