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S.A.No.167 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.10.2025

CORAM:

THE HON'BLE Mr.JUSTICE **P.DHANABAL**

S.A.No.167 of 2015

E.Bharatheedasan
Secretary of Mamallan Nagar
Residence Association,
having its office at No.23,
KTS Main street, Mamallan Nagar
Kancheepuram District

... Appellant

[E.Bharatheedasan substituted as a
secretary vide court order dated
24.03.2022 made in C.M.P.
No.3534 of 2022 in S.A. 167 of 2015
by NAVJ]

Vs.

1. Jayachandran [died]
2. Rangasamy [died]
3. Kalyani
4. S.Sivalingam
5. R.Vikram
6. R.Ramani
7. R.Kumaravelu
8. R.Thangavelu
9. R.Arunmozhi
10. R.Gangabai
11. Devarajan
12. Thiagarajan
13. Sangeetha
14. Sareetha
15. Anitha

[R1 died, R11 to R15 brought on record
as legal heirs of the deceased R1 vide
Court order dated 08.04.2022 made in
C.M.P.No.6368 of 2022 in S.A.No.167
of 2015 by NAVJ]

... Respondents



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Prayer:

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Second Appeal filed under Section 100 of Civil Procedure Code to set aside the confirming Judgment and Decree of the Lower Appellate Court and to set aside the Judgment and Decree of the trial court in O.S.No.12 of 2004 by allowing the appeal with costs of the appellant.

For Appellant : Mr.C.T.Prabhakar

For Respondents : Ms.Mamta Pandey for
R3, R4, R6 & R8
R1 and R2 – Died
R5, R7, R9 and R10 – Notice dispense
with by order dated 24.03.2022
R11, R13, R14 and R15 – Notice
served – No appearance
R12- Notice refused.

JUDGMENT

This Second Appeal has been preferred as against the Decree and Judgment passed in A.S.No.71 of 2012 on the file of learned Subordinate Judge, Kancheepuram dated 25.07.2014, wherein the appellant herein has preferred the said appeal as against the Decree and Judgment passed by the learned Additional District Munsif, Kancheepuram in O.S.No.12 of 2004 dated 30.09.2010 and before the learned Additional District Munsif, Kancheepuram, the appellant herein,



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being the plaintiff, filed a suit for the relief of recovery of possession and to remove the huts or construction in the suit plot and the said suit was dismissed.

2. The brief averments of the plaint are as follows:-

The suit properties were allotted to the plaintiff in pursuance to the allotment order dated 03.04.1986 by the society, namely, Mamallan Nagar, Residents Association for the purpose of constructing an office building for its association. The suit properties are part and parcel of Town Survey Numbers 2871 and 2873. Adjacent to the suit property, on the northern side of the adjoining suit plot, the Government poramboke Land is situated in Town Survey no.2872 [old no.106/5]. The defendants are the encroachers of the above said Government poramboke land in Town Survey No.2872. The defendants while constructing their house in the poramboke land, slowly encroached the plaintiff's land situated in Town Survey No.2871 and 2873 and put up huts. While so, the 1st defendant, one Thirunakukarasu and one S.Kanniammal have filed a suit in O.S.No.787 of 1986 on the file of the District Munsif Court, Kancheepuram for the relief of declaration and permanent injunction against the plaintiff/Society. The said suit was dismissed on 20.12.1991 and in the said suit the court below upheld that the plaintiffs in the said suit had tress passed in the plaintiff's patta



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land, without any right and title over the property. The plaintiff herein demanded the defendants to handover the vacant possession, but they have not vacated the premises. Per contra, the defendants, demanded the subject plot to sell them, therefore, the plaintiff filed suit for recovery of possession.

3. The brief averments of the written statement filed by the defendants are as follows:-

(I) The allegation levelled in the plaint are all denied as false, specifically the purchase of property by the plaintiff's society for construction of office building to the members of the society. The survey numbers are corresponding old survey nos.76 and 106/2, on northern side of the adjacent side of the plot, the Government poramboke land is situated in survey no.2872 and the defendants while encroaching the poramboke land, they slowly started to encroach the plaintiff's land, are all denied as false.

(ii) In the suit in O.S.No.787 of 1986 on the file of the District Munsif Court, Kancheepuram, all the defendants are not parties to the said suit, the 1st defendant alone was party to that suit and the said judgment and decree is not binding upon the defendants. In fact, the said suit was decreed holding that the plaintiffs in O.S.No.787 of 1986



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were entitled to remain in possession of the suit property and the decree was granted against the plaintiffs. In fact, each of the defendants encroached about three cents each in respect of channel poramboke situated in Survey no.2872 and they encroached the same about thirty years ago. They had also put up super structures by raising brick walls, property tax was also assessed by the local board and electricity service connection was also granted to those houses. The defendants are also paying property taxes and to the knowledge of the plaintiff and these defendants have been in actual possession and enjoyment of the suit property without any hindrance continuously for more than 30 years.

(iii) The defendants are in occupation of the lands situated in Town Survey No.2872, nevertheless, these defendants did not admit right, title and interest of the plaintiff in respect of T.S.No.2871 and 2873. There has been no survey measurement operations made and there is no notice given to the persons, who are in occupation of the property. Moreover, the government have not initiated any action as against the encroachment of these defendants and they are entitled to remain in possession. The claim of recovery of possession without declaration of title is not maintainable and the suit is liable to be dismissed.

4. Based on the above said pleadings, upon hearing both sides



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and perusing the documents, the trial court framed the following issues for determination:-

(1) Whether the plaintiff is entitled to the recovery of possession as prayed for ?

(2) To what relief?

In order to prove the case before the trial court on the side of the plaintiff, P.Ws.1 and 2 were examined and marked Exhibits A.1 to A.17. On the side of the defendants, no witnesses were examined and no exhibits were marked. After analysing the oral and documentary evidence adduced on either side, the trial court has dismissed the suit holding that the encroached portion has to be specifically stated whether north, south, west or east of the total extent of the encroached portion and what is the extent of the encroachment and the plaintiffs averments are vague.

5. Aggrieved by the said decree and judgment passed by the trial court dated 30.09.2010, the unsuccessful plaintiff has preferred an appeal before the Sub Court, Kancheepuram in A.S.No.71 of 2012. After hearing both sides and perusing the records, the first appellate court framed the following points for determination:

(i) Whether the decree and Judgment passed by the trial court is correct or not?



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(ii) Whether the appellant is entitled to allowing the appeal?

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(iii) To what other relief?

The first appellate court after considering the arguments, grounds of appeal and the documents placed on record, dismissed the appeal by confirming the decree and judgment of the trial court passed in O.S.No.12 of 2004 dated 30.09.2010. Aggrieved by the said Judgment and Decree passed by the first appellate court, the appellant has preferred the present Second Appeal on various grounds, including the Substantial questions of law. This Court, on 24.02.2022, admitted the Second Appeal on the following substantial questions of law:-

a) Whether both the Courts below failed to appreciate the earlier judgment and decree passed in O.S.No.787 of 1986 concerning the very same property and erred in not granting the relief as sought for by the plaintiff Association?

b) Whether both the Courts below failed to appreciate the fact that the defendants admitted that they are encroachers in the property and inspite of the same, the Court below proceeded to dismiss the suit on mere technicalities?

c) Whether the findings of both the Courts below can be termed as perverse due to improper appreciation of oral and documentary evidence?



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6. The learned counsel appearing for the appellant would submit that the appellant / association is the owner of the property and they purchased the property through the sale deed dated 03.04.1986. The said property was purchased for construction of the building for the society. In the meantime, the northern side of the suit property, viz., poramboke land in Survey No.2872 was encroached by the third parties. The respondents / defendants, who are encroachers of the said government poramboke land, subsequently, encroached the suit schedule property and the appellant/ plaintiff had requested the respondents / defendants to vacate the premises and remove the encroachment, but they have failed to vacate the premises and hand over the possession of the property to the appellant / plaintiff and therefore, the appellant / plaintiff filed the suit for recovery of possession and the respondents / defendants have not denied the title of the property of the appellant / plaintiff. However, the respondents / defendants intended to purchase the property and they failed to vacate the premises, therefore, the appellant / plaintiff filed the suit before the trial court.

7. The learned counsel for the appellant further submits that though the appellant / plaintiff marked exhibits and examined the witnesses, the respondents / defendants have not examined any



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witnesses and failed to mark exhibits. However, the trial court failed to consider the evidence in a proper perspective and erroneously dismissed the suit by holding that the encroached property has not been identified. Thereafter, the appellant / plaintiff preferred an appeal before the Sub Court, Kancheepuram in A.S.No.71 of 2012. The First Appellate Court also without considering the real facts, erroneously dismissed the appeal. Both the courts have failed to appreciate that when the respondents / defendants failed to put forth the case before the trial court, the court below ought to have decreed the suit in favour of the appellant / plaintiff. Already, some of the encroachers, viz., 1st defendant and others have filed the suit in O.S.No.787 of 1986 and the same was dismissed and there is a finding that the respondents / defendants are encroachers, but both the courts failed to consider the same. That apart, when the defendants themselves admitted that they are encroachers in the private land of the appellant / plaintiff, both the courts below failed to consider the same and erroneously dismissed the suit. Both the courts have not appreciated the facts and evidence in a proper perspective manner and therefore, the decree and judgment passed by the trial court as well as first appellate court are liable to be set aside and suit has to be decreed by allowing the present Second Appeal.



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8. On the contrary, the learned counsel for the respondents / defendants would submit that the respondents / defendants have encroached the Government poramboke land for more than 30 years and they are in possession and enjoyment of the property by paying property tax, water tax, electricity consumption charges and to other demands of the Government. Though the respondents / defendants have encroached the government poramboke land in S.No.2872 and they also denied the title and right of the appellant / plaintiff in S.Nos. 2871 and 2873, the appellant has failed to seek the relief of declaration and without declaration, the appellant has filed the suit for recovery of possession and therefore, the suit is not maintainable. Though the defendants have not examined any witnesses before the trial court, the appellant / plaintiff has to prove the case by adducing sufficient evidence and the appellant has failed to prove his case and not even identified the property and the encroachment. Therefore, the trial court has correctly dismissed the suit. The first appellate court also after considering the evidence adduced on both sides, correctly applied the law and facts and dismissed the appeal.

9. Besides the above, the learned counsel for the defendants also submits that as far as the suit in O.S.No.787 of 1986 is concerned, the 1st defendant alone is a party and other defendants are not parties to



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the suit and therefore, the said judgment and decree is not binding over other defendants. The appellant failed to prove the extent of the property, which was allegedly encroached by the defendants. The appellant failed to prove the identification of the encroached property and therefore, the appellant is not entitled to any reliefs as prayed in the present Second appeal and the same is liable to be dismissed.

10. This Court heard the learned counsel on either side and perused the documents placed on record.

11. The Substantial Question of Law : a) *Whether both the Courts below failed to appreciate the earlier judgment and decree passed in O.S.No.787 of 1986 concerning the very same property and erred in not granting the relief as sought for by the plaintiff Association?*

(i) In this case, the appellant, who is the plaintiff before the trial court and appellant in the First Appellate Court filed a suit for the relief of recovery of possession. According to the appellant / plaintiff, the property was purchased by the appellant/society through a sale deed dated 03.04.1986. The suit property is a plot and on the northern side of the property, some third parties have encroached the Government poramboke land, while so, slowly, they encroached the appellant's / plaintiff's suit property, which is situated in survey nos.2871 and 2873. The government poramboke land is situated in S.No.2872, therefore,



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the respondents / defendants have to be evicted and thereby filed a suit for recovery of possession. The first point raised by the respondents / defendants is that without seeking a relief of declaration, the suit seeking mere relief of recovery of possession is not maintainable. The respondents / defendants have denied the title of the plaintiffs and according to respondents / defendants, they encroached the government poramboke land in T.S.No.2872. The appellant / plaintiff has also produced documents, viz., sale deed in the name of the appellant/ society and there is no dispute in that regard.

(ii) According to the appellant / plaintiff mere denial of title itself is not sufficient to seek a suit for declaration and there should be cloud over the property and respondents / defendants having any right over the property, can deny the title and without any documents for the title, the respondents / defendants cannot deny the title of the property, in those circumstances, the prayer for declaration of title is not essential and without prayer for declaration, the suit for recovery of possession is maintainable. In this context, the learned counsel for the appellant relied on the Judgment of the **Hon'ble Supreme Court in Civil Appeal No.4816 of 2016 [Arising out of SLP (Civil) No. 13076 of 2007] [Muddasani Venkata Narsaiah (D) Th.Lrs. Vs. Muddasani Sarojana] wherein the Hon'ble Supreme Court** wherein at Paragraph No.13, it is held as follows:-

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“13. We are fortified in our aforesaid conclusion by a decision in Kurella Naga Druva Yudaya Bhaskara Rao v. Galla Jani Kamma (2008) 15 SCC 150, wherein this Court has examined the question of maintainability of suit for possession without prayer for declaration of title. This Court has referred to its earlier decision in Anathula Sudhakar v. P. Buchi Reddy (2008) 4 SCC 594, wherein the plaintiff had purchased the suit land under registered sale deed dated 10.4.1957 and the defendant did not claim the title with reference to any document but claimed to have perfected title by adverse possession. It was held by this Court that the said plea did not prima facie put any cloud over the plaintiff's title calling him to file suit for declaration of title. Unless there is serious cloud over the title of the plaintiff there is no need to file suit for declaration of title. The 7 Page 7 8 suit for possession was maintainable. This Court laid down as follows:

“16. The plaintiff had purchased the suit land under registered sale deed dated 10.4.1957. Defendant did not claim title with reference to any document but claimed to have perfected title by adverse possession. A mere claim by the defendant that he had perfected his title by adverse possession, does not mean that a cloud is raised over plaintiff's title and that the plaintiff who is the owner, should file a suit for declaration of title. Unless the defendant raises a serious cloud over the title of the plaintiff, there is no need to file a suit for declaration. The plaintiff had title and she only wanted possession and therefore a suit for possession was maintainable. We are fortified in this view by the following observations of this Court in Anathula Sudhakar v. P. Buchi Reddy (2008) 4 SCC 594:

“14. We may however clarify that a prayer for declaration will



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be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property.

A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration.....

(iii) On a careful perusal of the above said judgment it is clear that unless there is a serious cloud over the title of the appellant / plaintiff, there is no need to file a suit for declaration and mere suit for possession is maintainable. In the case on hand also, the plaintiff purchased the property for valuable consideration through sale deed dated 03.04.1986 and the respondents / defendants have also admitted that they encroached the government property along with the appellant's property, therefore, without any documents, the respondents / defendants cannot deny the title of the appellant and the appellant need not seek relief of declaration of title.

(iv) According to the appellant / plaintiff, already the 1st respondent / 1st defendant and two others have filed a suit in



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O.S.No.787 of 1986 and in the said suit, the court below held that the 1st defendant and two others, who are plaintiffs in the said suit, have no right to encroach the property of the appellant / plaintiff herein, inspite of the same, the courts below have failed to grant relief of recovery of possession. In fact, in this case, the appellant / plaintiff has filed a suit for recovery of possession and the appellant / plaintiff failed to identify the portion of the encroached property, who are all the parties encroached the property and what is the specific extent encroached by particular party have not been mentioned in the plaint. In the plaint, the appellant has simply mentioned northern side of the property was encroached. The appellant had not even taken steps for appointment of commissioner to prove the alleged encroachment. Moreover, no prayer was sought for mandatory injunction for the removal of alleged encroachments. It is settled law that the appellant, who filed a suit for recovery of possession has to identify the particular encroachment and without any identification of property, it is not proper to grant decree of recovery of possession. Though the appellant / plaintiff is the owner of the property, without identifying the portion of encroachment, the appellant is not entitled to the relief of recovery of possession.

(v) As far as the Judgment in O.S.No.787 of 1986 is concerned, the 1st defendant, namely, Jayachandran and two others, namely,



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Thirunavukarasu and Kanniammal have filed a suit for permanent injunction as against the appellant/plaintiff herein and as against Mamallan Co-operative Housing Society limited, for the relief of permanent injunction and the same was decreed in respect of the Government poramboke land situated in T.S.No.2872 and there is a finding that plaintiffs in that suit cannot encroach the property belongs to 1st defendant, namely, Mamallan Co-operative Housing Society. There is no finding in respect of the property of the 2nd defendant, viz., Mamallan Nagar Residents Association, in that suit, who is the appellant in this appeal. The defendants in the suit in O.S.No.787 of 1986 are two different parties and the findings before the court below is that property of the 1st defendant was encroached by the plaintiffs therein, but not the properties of the 2nd defendant, who is the appellant / plaintiff herein. The said suit was filed in respect of T.S.No.2872 Government poramboke land and no reference about T.S.Nos.2871 and 2873, which are the suit properties in this instant case. While so mere passing reference about the encroachment of the lands belonging to other persons is not sufficient to hold that the property of the plaintiff herein was encroached by the defendants herein.

(vi) The suit property is situated in T.S.Survey Nos.2871 and 2873 and except the 1st respondent / 1st defendant, other defendants in the present suit are not parties to the suit in O.S.No.787 of 1986 and



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therefore, the judgment and decree passed in O.S.No.787 of 1986 has no relevance to this suit property and there is no finding in the said suit as against the appellant / plaintiff in this case, therefore, the courts below have not erred in not granting the relief sought for by the plaintiffs/ association, thus the Substantial Question of Law No.(a) is answered accordingly.

12. The Substantial Question of Law (b) : *Whether both the Courts below failed to appreciate the fact that the defendants admitted that they are encroachers in the property and inspite of the same, the Court below proceeded to dismiss the suit on mere technicalities?*

(i) In this case, it is admitted fact that the respondents / defendants encroached the Government poramboke land situated in T.S.No.2872 and there is no evidence as to what portion of the patta land of the appellant / plaintiff was encroached by the respondents / defendants. There are two survey numbers mentioned in the plaint as T.S.Nos.2871 and 2873, there are no specific particulars that in which survey number, as to what extent and which respondents / defendants encroached which portion of the property and the encroached property has not been identified. In order to grant recovery of possession, the appellant must prove that the particular portion of the property was



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encroached by the particular person. Moreover, the appellant / plaintiff has failed to seek appropriate relief of mandatory injunction, therefore, the courts below correctly appreciated the evidence and the respondents/ defendants have not admitted that they are encroachers in the suit property and they admitted that they encroached the Government poramboke land. While so, it is the duty of the appellant / plaintiff to prove that which portion of the suit property has been encroached by a particular person, in order to seek recovery of possession, it is the duty of the appellant / plaintiff to establish particulars of the encroachment, but, in this case, the appellant miserably failed to prove the alleged encroachment with appropriate identification, therefore, the courts below have correctly proceeded to dismiss the suit. Thus, the Substantial Question No.(b) is answered.

13. The Substantial Question of Law No.(c): *Whether the findings of the courts below can be termed as perverse due to improper appreciation of oral and documentary evidence?*

(i) In this case, there is no dispute that the appellant/ plaintiff purchased the property through sale deed dated 03.04.1986 and the respondents / defendants encroached the northern portion of the property, which is a Government poramboke land and another suit in



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O.S.No.787 of 1996 was filed by the encroachers, i.e., 1st defendant and others in respect of the poramboke land situated in T.SNo.2872 and the same was decreed. Where there is a finding that the appellant / plaintiff in the suit encroached upon the land of 1st defendant, namely, Mamallan Cooperative Housing Society, where the appellant / plaintiff has been added as 2nd defendant, the said suit was disposed of on 20.12.1991. Even after knowing the above said encroachment made in the property by the encroachers, the appellant / plaintiff have not taken any steps till the filing of the present suit. Moreover, the courts below have relied upon the documents and evidence adduced on both sides and rendered findings that the appellant / plaintiff has prayed for removal of huts or construction and possession has to be handed over and the plaint does not disclose which of the defendant had put up the huts and which of the defendant had put up construction.

(ii) When the suit is for recovery of possession, the encroached portion or the portion to be recovered must be specifically mentioned in the schedule of the property. The encroached portion has to be specifically stated with extent and the plaint averments are vague in that regard. The First Appellate Court also in the Judgment had stated that as per the plaint, the respondents / defendants encroached the suit property on 10.11.2002, but in the judgment in O.S.No.787 of 1986, it is



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stated that as 30 years ago. There is no explanation on what basis the encroachment was made by the encroachers. In the above said judgment, the encroachment portion has not been specifically mentioned and the appellant / plaintiff has not explained whether the respondents / defendants encroached and put up construction for the entire suit property or the portion of the suit property. When the respondents / defendants disputed the identity of the encroached portion of the suit property before the trial court, the appellant ought to have taken steps to prove the identity and extent of the alleged encroached portion, but failed to do so, therefore, the encroached portion has not been properly identified. Hence the findings of both the courts below cannot be termed as perverse and the courts below have properly appreciated the oral and documentary evidence, in fact, both the courts below have applied the Law appreciated the evidences correctly, thus the Substantial Question of Law No.(c) is answered.

In view of the above said answers made to the Substantial Questions of Law, the appellant / plaintiff is not entitled to succeed in this Second Appeal and the present Second Appeal is liable to be dismissed and accordingly, the same is dismissed. No costs.

23.10.2025

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Internet:Yes/No
Speaking / Nonspeaking order
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To

1. The Subordinate Judge,
Kancheepuram
2. The Additional District Munsif,
Kancheepuram



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P.DHANABAL, J.

ssd

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