



S.A.No.249 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.11.2025

CORAM:

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

S.A.No.249 of 2015

Gopal Pillai

... Appellant

Vs.

1. Jayaraman
Subramani (Deceased)
2. Gengan
3. Mottai @ Shanmugham (died)
4. Krishnan
5. Ramu Ammal
6. Muni Ammal
7. Rani
8. Shanthi
9. Jayanthi
10. Chitra
11. Palani
12. Prema
13. Lalitha
14. Kasthuri
15. Murugan

[R3 died, R13 to R15 brought on record
as legal heirs of the deceased R4 vide
Court order dated 28.06.2022 made in
C.M.P.Nos.9310, 9311, 9312 of 2017
in S.A.No.249 of 2019 by TVTSJ]

... Respondents

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code to
set aside the Judgment and Decree made in A.S.No.36 of 2005 made
on 06.11.2014, reversing the finding of the learned District Munsif,



S.A.No.249 of 2015

Ranipet made in O.S.No.329 of 1990 dated 31.12.2002 by the learned District Munsif, Ranipet.

For Appellant : Mr.K.Thangavelu

For Respondents : Mr.T.P.Prabakaran for R1, R6 and R8

JUDGMENT

This Second Appeal has been preferred as against the Decree and Judgment passed by the First Appellate Court, namely, the learned Subordinate Judge, Ranipet in A.S.No.36 of 2005 dated 06.11.2014, wherein the respondents herein have preferred the First Appeal as against the Decree and Judgment passed in O.S.No.329 of 1990 on the file of the District Munsif Court, Ranipet and the said appeal was allowed by setting aside the Decree and Judgment of the trial court dated 11.12.2002. Aggrieved by the said Decree and Judgment passed by the First Appellate Court, the plaintiff, who is the respondent in the First Appeal and plaintiff in the main suit, has preferred the present Second Appeal.

2. For the sake of convenience and brevity, the parties in this Second Appeal are referred as plaintiff and defendants as referred in the trial court.



3. The averments of the plaint are as follows:-

(i) The plaintiff is the absolute owner of the 'A' schedule property and he purchased the said property through a sale deed dated 24.07.1985 from his father and brother, namely, Veerasamy Pillai and Vijayakumar, in fact, the father of the plaintiff, namely, Veeerasamy Pillai had purchased the 'A' Schedule property from one Chinnasamy Naidu, who is none other than the maternal grand father of the 1st defendant and father of the defendants 2 to 5 and 7th defendant and husband of the 6th defendant, through registered sale deed dated 11.04.1963. Pursuant to the purchase of the property, the plaintiff and his predecessors have been in possession and enjoyment of the property. The defendants have no manner of right or title of 'A' Schedule property. While so, the defendants tress-passed and encroached into the 'B' schedule property, which is part of 'A' schedule property owned by the plaintiff on 22.01.1990 to grab the said property from the plaintiff and they also constructed a terraced house inspite of objections made by the plaintiff.

(ii) The plaintiff was unable to prevent the defendants from tress-passing into 'B' schedule property and they illegally constructed the terraced house, therefore, the plaintiff issued notice to the 1st defendant dated 24.03.1990 calling upon the 1st defendant to demolish the house



constructed in the 'B' Schedule property and after receipt of the same, they issued a reply notice with false averments on 29.03.1990, therefore, the plaintiff filed the suit for declaring his title over the 'B' Schedule Property, which is a part of 'A' schedule property.

4. The brief averments of the Written Statement filed on behalf of the 6th defendant, which was adopted by the defendants 1,3, 4 and 7 are stated as follows:-

(i) The suit is not maintainable either in law or on facts and the plaintiff is to put to strict proof of the averments made in the plaint, except those that are specifically admitted in the written statement. The 6th defendant is not aware of the sale by her husband, viz., Veerasamy Pillai to the plaintiff's father and also was not aware about the sale in favour of the plaintiff by his father. There is no 'B' Schedule property as described in the plaint schedule, therefore, the question of tress-passing into the property on 22.01.1990 is an imaginary one. The 6th defendant's husband had built a terraced house more than 15 years ago to the knowledge of the plaintiff and his father. On the eastern side of the built portion, she has left 2 ½ feet breadth open space for maintaining the wall and for the purpose of periodical whitewash and for free ventilation. The said 2 ½ feet breadth portion is being used by her and her family members for more than 15 years.



(ii) The 6th defendant's husband had not built any building as stated in the plaint and in her own property nearly 15 years ago, the terrace house was built and prayer for mandatory injunction is untenable. The plaintiff has already issued notice to the 1st respondent and a suitable reply was given to him and the claim of the plaintiff is barred by limitation and he has not raised any objection for the last 15 years. If there is any shortage of measurement in the property, he has to satisfy himself because he has not measured the property at the time of purchase by his father. There were many panchayats in the village at the instance of the plaintiff and being not satisfied with the said panchayat, the plaintiff filed this vexatious suit, therefore, the suit is liable to be dismissed.

5. Based on the above said pleadings and after hearing both sides and perusing the records, the trial court has framed the following issues:-

“1. Whether the plaintiff is entitled for the reliefs as prayed for in the plaint?

2. Whether the contention of the defendants that with the knowledge of the plaintiff, the defendants have built the building 15 years long back, thereby the plaintiff estopped from filing this Suit.



3. Is it true that due to the plaintiff without measurement purchased the property, is entitled to the alternate property and since it was enjoyed by the defendants for more than 15 years, the plaintiff cannot claim right?

4. To what other reliefs, the parties are entitled to?”

Thereafter, the trial court framed following additional issue on 25.07.1995:-

“1. Whether the suit is maintainable against the minor defendants?”

6.In order to prove the case of the parties, on the side of the plaintiff, P.Ws.1 to 4 were examined and marked Exhibits A.1 to A.4. On the side of the defendants, D.W.1 was examined and no documents were marked. The Commissioner Report, Plan and FMB Sketch have been marked as Exs.C.1 to C.6. After analysing the oral and documentary evidence adduced on either side, the trial court decreed the suit by holding that the plaintiff is entitled for decree of declaration in respect of 'B' schedule property and entitled for mandatory injunction in respect of 'B' Schedule property. Aggrieved by the said Decree and Judgment passed by the trial court, the defendants have preferred the First Appeal before the First Appellate Court in A.S.No.36 of 2005 on the file of the Subordinate Judge, Ranipet. The First Appellate Court, after



hearing both sides and perusing the records, framed the following points for determination:-

1. Whether the claim of the plaintiff is hit by principle of acquiescence.

2. Whether the Judgment and Decree dated 11.12.2002 on the file of the District Munif Court, Ranipet is liable to be set aside.

3. To what other reliefs, the appellant is entitled to?

After analysing the evidences and documents, the First Appellate Court allowed the appeal by setting aside the decree and judgment passed by the trial court by holding that the defendants' property is situated in Survey No.155 and the plaintiff's property is situated in Survey No.156. The plaintiff has filed the suit only in respect of Survey No.156 and not on Survey No.155, therefore, set aside the Judgment and Decree passed by the trial court. Aggrieved by the said Judgment and Decree of the First Appellate Court, the plaintiff has preferred this Second Appeal.

7. This Court at the time of admitting the Second Appeal on 09.06.2015, framed the following substantial questions of law:-

“a. Whether the finding of the learned lower Appellate Court that the respondents are residing in S.No.155 and not in S.No.156 without any pleading or evidence in this regard is sustainable in law?



b. The respondents claims ownership of the property as well as adverse possession of the appellant's land, without admitting the ownership of the appellants in such a legal and factual position, whether the finding of the Hon'ble Lower Appellate Court that the plaintiff not entitled for mandatory injunction and delivery possession is perverse, erroneous and unsustainable in Law or not?"

8. The learned counsel appearing for the appellant / plaintiff would submit as follows:-

(i) The plaintiff is the owner of the 'A' Schedule property and 'B' schedule property is a part of 'A' schedule property. The plaintiff purchased the property through a sale deed dated 24.07.1985 from his father and his brother. In fact, originally the suit property belong to one Chinnasamy Naidu, who is the maternal grand father of the 1st defendant and father of defendants 2 to 5 and 7 and husband of the 6th defendant.

(ii) The said Chinnasamy Naidu sold the property to the father of the plaintiff, namely Veerasamy pillai through sale deed dated 11.04.1963 and thereafter, the said property has been enjoyed by the plaintiff's predecessor and after purchase of the plaintiff through sale deed dated 24.07.1985, he has been in possession and enjoyment of



the property. While so, the defendants, who are the adjacent land owner to the western side, encroached the 'B' schedule property to an extent of 7X69 feet and raised construction. Thereafter, the plaintiff issued notice to the defendants to remove the construction constructed by them and the same was replied by false allegations and therefore, filed the suit for declaration and mandatory injunction in respect of 'B' schedule property. In order to prove the case before the trial court, on the side of the plaintiff, P.Ws.1 to 4 were examined and marked Exhibits A.1 to A.4. On the side of the defendants, D.W.1 was examined and no documents were marked. The Commissioner Report, Plan and FMB Sketch have been marked as Exs.C.1 to C.6 and in this case, the Advocate Commissioner was appointed to note the physical features and he also filed a report along with surveyor's plan and the trial court after analysing evidences on either side, decreed the suit.

(iii) The defendant aggrieved by the said decree and judgment of the trial court preferred an appeal in A.S.No.36 of 2005. The First Appellate Court, without considering the real facts, erroneously concluded that the defendants are residing in the property in Survey No.155 and the plaintiff's property is situated only in Survey No.156 and thereby the plaintiff is not entitled to mandatory injunction and the plaintiff has failed to identify the property and thereby he is not entitled for declaration of the property. The plaintiff's side witnesses



categorically deposed existence of the property and the encroachment made by the defendants and the Commissioner has categorically stated about the encroachment of the 'B' schedule property by the defendants and therefore, the First Appellate Court has erroneously allowed the appeal and set aside the Decree and Judgment passed by the trial court, therefore, the plaintiff preferred the Second Appeal.

(iv) As far as the substantial questions of law are concerned, without any pleadings or evidence, the First Appellate Court came to a wrong conclusion that the respondents are residing in S.F.No.155 and not in S.F.No.156. The respondents / defendants also without admitting ownership of the appellant/plaintiff raised a plea of adverse possession, therefore, the finding of the First Appellate Court that plaintiff is not entitled for mandatory injunction is erroneous and the second Appeal is liable to be allowed.

9. The learned counsel appearing for the respondents would submit as follows:-

(i) The plaintiff has not properly identified the property and according to the plaintiff, he purchased the property from his father and his father purchased the property from Maternal grand father of the 1st defendant and father of 2 to 5 and 7 defendants and husband of the 6th



defendant. The plaintiff purchased the property without proper measurements and the 6th defendant's husband had put up construction long back, viz., 15 years back to the filing of the suit and the plaintiff has not raised any objection at the time of raising construction, for a considerable period, now filed the suit.

(ii). Further, before filing of the suit, the plaintiff had issued notice to the 1st defendant and the 1st defendant also replied suitably, inspite of that, without proper identification of the property, the suit has been filed. However, the trial court without considering the evidences adduced by the defendants and without any identification of the property granted relief of declaration and mandatory injunction in respect of 'B' schedule property to the plaintiff. These defendants have preferred the First Appeal before the Appellate court and the First Appellate Court after analysing the evidences correctly allowed the appeal by setting aside the decree and Judgment passed by the trial court on the ground that the property has not been properly identified and there is no evidence that the property was purchased with proper measurement. There is no substantial question of law involved in this case and therefore, the Second Appeal is liable to be dismissed and the Judgment and Decree of the First Appellate Court is to be confirmed.

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



11. In this case, according to the plaintiff, he purchased the suit 'A' schedule property from his father and brother, Veerasamy Pillai and Vijayakumar through a sale deed dated 11.04.1963. Further, the plaintiff's father purchased the property from Chinnasamy Naidu and the said Chinnasamy Naidu is none other than the maternal grand father of the 1st defendant and father of the defendants 2 to 5 and 7 and husband of the 6th defendant. Thereafter, the plaintiff purchased the said property from his father and brother through sale deed dated 24.07.1985 and thereafter, he has been in enjoyment of the property without any interruption. While so, on 22.01.1990, the defendants tress-passed into the said property, encroached the 'B' schedule property and inspite of objection made by the plaintiff, they constructed a terrace house and therefore, he filed a suit for declaration and mandatory injunction in respect of 'B' schedule property.

12. The defendants have not denied the sale of property by Chinnasamy Naidu to the father of the plaintiff, namely, Veerasamy pillai and there is no dispute with the sale by Veerasamy Pillai to the plaintiff. The property of the plaintiff 'A' schedule property has been measured as East-West 25 Feet, North-South – 69 feet, in total 1.725 square feet, and 'B' schedule property East-West – 25 feet and North south – 69 Feet, vacant site consisting of East-West – 7 ½ feet, north-South – 69 feet.



13. Besides the above, according to the plaintiff, the said 'B' schedule property was encroached by the defendants and made constructions. In this case, before the trial Court, an Advocate Commissioner was appointed and he inspected the property and filed the report and plan. Apart from that Revenue Surveyor also filed a plan and FMB sketch and 'A' Register and those documents has been marked as Ex.C.1 to C.6. The trial court decreed the suit holding that the plaintiff has purchased the property from his father. The father of the plaintiff has purchased the property from one Chinnasamy Naidu, who is maternal grand father of the 1st defendant and father of defendants 2 to 5 and 7 and husband of 6th defendant and the defendants also not disputed the same and the defendants have only pleaded that before 15 years, they constructed the construction. There is no evidence to prove the defendants' case and thereby the trial court decreed the suit by declaring 'B' schedule property and directed the defendants to remove the encroachment. Moreover, the trial court also relied upon Ex.C4, Sketch referred by the Taluk Surveyor. The First Appellate Court allowed the appeal on the ground that the plaintiff's property is situated in S.F.No.156, whereas the defendants are residing in Survey No.155 and the plaintiff failed to prove the measurements and boundaries correctly and there are measurement dispute, therefore, seeking declaration of mandatory injunction and delivery of possession



is not made out and thereby set aside the decree and judgment of the trial court.

14. First of all, the plaintiff, who filed the suit for declaration and permanent injunction and for a recovery of possession has not filed any sketch to identify the property and the portion of encroachment made by the defendants. There is no dispute in respect of 'A' schedule property, according to the plaintiff, 'B' schedule property shall form part of 'A' schedule property and the same has been encroached by the defendants by putting up construction in that property. In the plaint, the plaintiff mentioned about the construction put up by the defendants, but failed to mention about the construction in the 'B' schedule of the plaint schedule property and simply stated that North-south – 69 Feet; East-West – 7 ½ feet was encroached by the defendants. The plaintiff, who filed the suit has to specify the property properly. The plaintiff was examined P.W.1 and he purchased the property and he marked Ex.A.1 and A.2, the copies of the sale deeds in favour of his father dated 11.04.1963 and in his favour dated 24.07.1985. On a careful perusal of those documents, they revealed that the plaintiff purchased the property to an extent of 1725 North-South – 69 feet; East -West -25 Feet. There is no dispute in respect of four boundaries between the parties.



15. Besides the above, according to the plaintiff, the 'B' Schedule property was encroached by the defendants, but the defendants denied that encroachment and according to them, they already constructed Pucca construction 15 years back. Though the plaintiff has filed the documents, A.1 and A.2, which reflect that the plaintiff purchased the property North-South -69 Feet; East – West – 25 feet in Chettihangal Village, North Arcot Ambedkar District, Wallajah Taluk, he failed to identify the property. However, in this case, the Advocate Commissioner was appointed by this Court and the Commissioner also filed the report and plan, as per the Commissioner's report and plan, the Eastern side portion of the property belongs to plaintiff and the western side property belongs to the defendants and there is no dispute in respect of the boundaries of East, South and North. The only dispute is in respect of the Western Boundary, where the alleged encroachment was made by the defendants.

16. As per the plan drawn by the Advocate Commissioner, Ex.C.2 the property of the plaintiff was identified as ABCD The defendants' property was identified as EFGH. ABCD property of 25 feet is in existence from the eastern boundary and thereafter, some space is available and thereafter only the property of the defendants is situated. There is no dispute that the plaintiff purchased the property only to an



extent of 25X69 feet, therefore, there is no evidence available to show that the property of the plaintiff was encroached by the defendants.

17. Now, the Court has to see the plan drawn by the surveyor. Ex.C.4 According to the Sketch, ABCD property was purchased through document no.1458/1960 and EBC1F had been purchased by the plaintiff through the document No.2300 /1985 and ALMD is the Lane belongs to the defendants. H1 and H2 are boundaries of Survey Nos.155 and 156 and GJKH is the property, now under enjoyment by the plaintiff. AGHD belongs to the house enjoyed by the defendants. OP is the compound wall. GG1N.O is the one feet Lane. EGHF1 is the alleged encroachment made by the defendants. As already pointed out by this Court, there is no dispute in respect of the boundaries East, North and South of the plaintiff's property and only dispute is in respect of the Western Boundaries of the plaintiff and eastern boundaries of the defendants.

18. Firstly, the surveyor identified the ABCD Portion as purchased under Document No.1458/1960 and there is no records as to how he fixed that property. When there is no dispute in respect of the eastern boundary, the surveyor failed to measure the property from the end of eastern boundary, i.e, JK portion of Ex.C.4 and started to measure from the ABCD Portion and BJKC1 portion has been left out by the surveyor



and there is no explanation as to why that portion has been omitted and how he fixed the ABCD portion in his plan, Ex.C.4. In this context, the Surveyor was also examined as P.W.3 and in his evidence, he categorically stated that he has not drawn the sketch in terms of existence of the property and based on the document only he filed his report and plan.

19. In addition, there is no explanation from the surveyor that when there is no dispute in respect of the eastern boundary of the plaintiff's property, how he left the BJKC1 Portion, in his report. Moreover, the width between BJ northern side is 15 feet from BG is 10 feet totally northern side 25 feet and HC1 Southern Side Portion is 25 feet. Therefore, from the perusal of Ex.C.4- Surveyor Plan, from the eastern end of the plaintiff's property, the 25 feet would come from J to G Northern Side (i.e., 15 feet + 10 feet). Similarly from K to H, on southern side, 25 feet is available. There is no dispute that plaintiff purchased the property only 25 feet X 69 feet. Therefore, in the absence of any documents filed by the plaintiff in respect of the identification of the 'A' Schedule property, this Court can infer from Commissioner's report and plan and Ex.C-4 – Surveyor Sketch that GJKH Portion to the measurement of 25 Feet, East – West and North-South 69 feet belong to the plaintiff, but without considering the same,



the surveyor drawn the sketch and measured the property from BEC1F and identified the property as 'A' Schedule property purchased by the plaintiff.

20. Even assuming if it is true that as per Ex.C.4 from B to G on the northern side, the width of the property is 10 feet and G to F width of the property is 7 feet, similarly southern side, from C to H, the property is 10 feet, and H to F, width is 7 feet, therefore, in total, B to E, width would come to 17 Feet, if so, where the remaining 8 feet available to the plaintiff. Therefore, the EBC1F of Ex.C.4 property has not been purchased by the plaintiff and that it does not belong to the plaintiff. Per contra, the available documents shows that GJKH to the width of 10 to 15 feet of northern side and 25 feet on the southern side 25 feet and north south 69 feet belongs to the plaintiff. The said measurement also tallied with the document in respect of GJKH properties.

21. Further the surveyor also in the sketch Ex.C.4 stated that GJKH is now available with the plaintiff, while so, how he fixed the EBC1F has been purchased by the plaintiff has not been explained and the said finding of the surveyor to that regard are not correct. Therefore, the above said identification of the property is misconceived by the surveyor. The trial court also failed to consider the same, even



assuming that EBC1F property belong to the plaintiff, the width of the property has not been tallied and if the property GJKH is taken as plaintiff's property, the same is tallied. When there is no dispute in respect of the East, North and South boundaries, the measurement has to be taken from the eastern boundaries and 25 feet comes up to J to G on Northern side and K to H on southern side. From J to K – 69 feet is available whereas from C to B the length is 72 feet but as per plaintiff sale deed the eastern boundary measurement is 69 feet, therefore, the GJKH portion alone tallied with the sale deed of the plaintiff in all respects, i.e., identification and measurement. Therefore, this Court can easily come to a conclusion that the plaintiff's property is situated as found in Ex.C.4 from G to J, on northern side and on southern side H to K, on eastern side, J to K and on western side – G to H.

22.The alleged seven feet land does not belong to the plaintiff. The above said measurement between GJKH are tallied with Exs.A1 and A2 and therefore, the Court can safely come to a conclusion that the plaintiff is entitled to GJKH property. If the property measured from northern side B to F, it is only 17 feet on eastern side 72 feet and the same is not tallying with the measurements of Exs.A.1 and A.2. Therefore, the EBC1F is not the property purchased through Ex.A.1 and A.2. As per the documents, Ex.A.1 and A.2 property situated only in



Survey No.156, whereas, in the Surveyor plan, shows that the properties situated in Survey Nos.156 and 155, part of the plaintiff's property situated in Survey no.156 and part of the property situated in Survey no.155. H1 and H2 are the boundary lines between the Survey Nos.156 and 155, while so, the trial court failed to consider that there is no encroachment made by the defendants as alleged by the plaintiff.

23. As rightly contented by the defendants, there is no existence of 'B' schedule property as alleged in the plaint. Even according to the plaintiff, he is entitled to 25 feet X 69 feet, from east -West 25 feet and 69 feet from South to North. There is no dispute in respect of North-South – measurement - 69 feet and only dispute is east - west width of 25 feet and therefore, from the available evidence, this Court can infer that there is no encroachment as alleged in the 'B' schedule property. The trial court has granted the relief of declaration and mandatory injunction, though the plaintiff has not clearly identified property. Now from the available evidence it is made clear that GJKH in the Ex.C4 plan, property belongs to plaintiff and the defendants also have not claimed right over the said property and therefore, the question of declaration would not arise at all. According to the plaintiff, since the defendants encroached the property, he is seeking relief of declaration in respect of the 'B' schedule property. This Court already decided that



there is no existence of 'B' schedule property as alleged in the plaint and not a piece of land encroached by the defendants, therefore, the decree and judgment passed by the trial court that the plaintiff is entitled for the declaration in respect of 'B' schedule property and for mandatory injunction for demolition of superstructure made by the defendants to the extent of east west 7 feet and north south 69 feet in the 'B' Schedule property and that the plaintiff is entitled for delivery of vacant possession of 'B' Schedule property, are unsustainable and the same are liable to be set aside and accordingly set aside.

24. As far as the Judgment of the First Appellate Court in A.S.No.36 of 2005 is concerned, the First Appellate Court allowed the appeal and set aside the Decree and Judgment of the trial court on the ground that the defendants are residing in Survey No.155 and whereas the plaintiff claims rights over the property, viz., Survey No.156. The above said findings of the First Appellate Court is totally erroneous. The sketch drawn by the surveyor in respect of Ex.C4 is clear that part of the property of the plaintiff is situated in Survey No.155 and part of the property is situated in Survey No.156. In fact, larger extent of the property is situated in S.No.155 and only small portion alone situated in S.No.156. The surveyor plan clearly indicates that line H1 and H2 are the boundaries between Survey Nos.155 and 156 and S.No.155 is



situated eastern side to the S.No.156 and the plaintiff's property is situated in both the survey nos. 156 and 155, whereas the defendants property situated only in S.No.156. Therefore, the First Appellate Court without considering the same, erroneously held that the defendants are residing in S.No.155 and the plaintiff's property is situated in S.No.156. Therefore, the above findings of the First Appellate Court are unsustainable and the same is liable to be set aside and accordingly set aside.

25. Further, the First Appellate Court has rendered findings that 'B' schedule property has not been properly identified. In fact, this Court in the previous paragraphs discussed that there is no existence of 'B' schedule property and the property belongs to the plaintiff as shown in Surveyor plan, Ex.C-4 as GJKH, i.e., from GJ – 25 feet; KH – 25 Feet; JK – 69 Feet; GH – 69 Feet . Therefore, there is no encroachment as alleged by the plaintiff. The plaintiff has not filed the suit for declaration of 'A' Schedule Property and he has filed only reliefs as against 'B' schedule property as if 7X69 feet has been encroached by the defendants. Since this Court in the previous paragraphs decided that there is no encroachment and there is no existence of 'B' schedule property is available as stated by the plaintiff, the plaintiff is not entitled to any relief.



26. As far as the substantial Question of Law (a): *'whether the finding of the lower appellate court that the respondents are residing in Survey No.155 and not in Survey No.156 without any pleading or evidence in this regard is sustainable in law'* is concerned, already this Court in previous paragraphs elaborately discussed and decided that the plaintiff is entitled to the GJKH property mentioned in Ex.C4 and no existence of 'B' schedule property and the properties are situated in S.F.Nos.155 and 156. It is true that there is no pleadings and evidence that the defendant is residing in S.F.No.156. The plaintiff has not pleaded that the defendant is residing in S.F.155 and the defendant also no where mentioned about the S.F.No.155, however the First Appellate Court without any pleadings and evidence and without perusing the Ex.C.4 came to such wrong conclusion. Whereas the Ex.C.4 clearly shows that the plaintiff's property situated in both the survey numbers 155 and 156 and the defendants are residing in Survey No.156, but the First Appellate Court without any documents and any evidence erroneously came to the conclusion that the defendants are residing in S.F.No.155 and plaintiff's property in S.F.No.156. According to the plaintiff, the suit property situated in S.F.No.156 and the property was purchased through Exs.A.1 and A.2 from the predecessors of the defendants. The defendants also not denied the purchase of the land by the plaintiff and his father. As per documents, Ex.A.1 and A.2, the



property situated in S.F.No.156 and the plaint schedule property also mentioned as S.F.No.156. But on inspection made by the Advocate Commissioner along with Surveyor, the plaintiff enjoys the property in S.F.Nos.155 and 156.

27. There is no dispute in respect of the eastern boundary of the plaintiff, while so, the plaintiff's property starts with 25 feet from the eastern boundary. As per Ex.C2 and C.4, plans it is clear that between western boundary of the plaintiff and eastern boundary of the defendant there is a vacant land available and no any construction made in the said plan. The eastern boundary of the plaintiff is situated in S.F.No.155 and western boundary is situated in S.F.No.156. In the said circumstances, it is the duty of the plaintiff to identify the property and to establish that the entire suit property is situated in S.F.No.156, but the Exs.C.2 and C.4 shows that the suit property exists in S.F.Nos.155 and 156. The plaintiff has not denied the Exs.C.2 and C.4 and he accepted the said documents. Therefore, the available evidences amply proved that the suit property is situated in both the Survey Numbers 155 and 156. The above said aspects have not been considered by the First Appellate Court and without considering the said documents erroneously held that the plaintiff's property is situated in S.No.156 and defendants are residing in Survey No.155. In fact the entire property of



the defendants is situated in Survey No.156 and the plaintiff property is situated in both the survey numbers 155 and 156. thus the Substantial Question of Law 'a' is answered.

28. As far as the Substantial Question of Law (b), viz., “*The respondents claims ownership of the property as well as adverse possession of the appellant's land, without admitting the ownership of the appellants in such a legal and factual position, whether the finding of the Hon'ble Lower Appellate Court that the plaintiff not entitled for mandatory injunction and delivery possession is perverse, erroneous and unsustainable in Law or not?*” is concerned, the defendants claim ownership of the property stating that they are in enjoyment of the property for more than 15 years and also claimed adverse possession without admitting ownership of the plaintiff. However, the plaintiff, who filed the suit for declaration and mandatory injunction and recovery of possession has to prove his case independently and he cannot take advantage of the weakness of the defendants case and further, the appellant failed to prove the existence of the 'B' schedule property. This Court in the previous paragraphs elaborately discussed and decided that there is no existence of 'B' schedule property and the plaintiff failed to identify the plaintiff's property. Though the First Appellate Court erroneously decided that the defendants are residing in



S.F.No.155 and the plaintiff's property is spread through S.F.No.156, this Court already set aside the findings. However, the First Appellate Court came to a fair conclusion that the property has not been identified properly and thereby decided to set aside the decree and Judgment of trial court and accordingly set aside the decree and judgment of the court and the suit was dismissed. Even according to Ex.C.2 and Ex.C.4, the plaintiff has been enjoying the property to an extent of 25X69 in both the Survey Nos.155 and 156, but the Ex.A.1 and A.2 reveal the property was purely in S.F.No.156 alone. Therefore, finding of the First Appellate Court that the plaintiff is not entitled to mandatory injunction and delivery of possession is not perverse and not erroneous and the First Appellate Court has correctly declined to grant the reliefs and set aside the decree and Judgment of the trial court.

29. At this juncture, the learned counsel appearing for the plaintiff would submit that the defendants have not denied the title of the property and according to them, they constructed the property 15 years back and laches alone would not amount to acquiescence and estoppel by acquiescence can be deduced from properly pleaded and proved facts, but the defendants have not properly pleaded and proved their case, therefore, the defendants are estopped from fighting the title of the plaintiff, when the predecessor sold the property to the plaintiff. He also



relied on the **(i) Judgment of Hon'ble Supreme Court in Bains Prasad(D) through Lrs. Vs. Durga Devi reported in 2023 SCC Online SC 101.** **(ii)** Judgment of this Court in Bodi reddy Vs. Appu Goundan reported in 1970 SCC Online page 101, **(iii)** Judgment of this Court in K.S.Chidambaram Vs. Gomathi Ammal and other in S.A.No.333 of 1983.

30. On a careful perusal of those Judgments, it is clear that equity will follow the law and it would tilt in favour of law and further to claim equity, the party must explain previous conduct. The mere fact after making objection, the plaintiff took some reasonable time to approach the Court for recovery of possession cannot be a reason to deny the relief of recovery of possession of the encroached land and also clear that laches alone would not amount to acquiescence and estoppel by acquiescence can be deduced from properly pleaded and proved facts. It is also clear that in case of trespass, where the plaintiff sues for possession of their property encroached by the defendants, the plaintiff is entitled to the relief of possession and the Court has no discretion to award damages instead of granting relief for possession, unless equitable estoppel is applicable.



31. In the case on hand, the plaintiff failed to prove that 'B' schedule property had been encroached by the defendants and this Court in the earlier paragraphs stated that the plaintiff's property East – West – 25 feet; North-South – 69 Feet available with him and the defendants have not encroached the property and the above said cases referred by the plaintiff are no way helpful to decide the case in favour of the appellant / plaintiff. Further, the First Appellate Court came to the conclusion that the plaintiff failed to identify the property and to prove his case through documents and not dismissed the suit on the ground of adverse possession as claimed by the defendants. Therefore, the findings of the First Appellate Court are not perverse, thus the substantial Question of Law is answered.

In the result, with the said findings the Judgment of the First Appellate Court in A.S.No.36 of 2005 dated 06.11.2014 is confirmed and the present Second Appeal is dismissed. No costs.

10.11.2025

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd



S.A.No.249 of 2015

To

1. The Subordinate Judge, Ranipet

2. The District Munsif, Ranipet.

P.DHANABAL, J.

29/30



S.A.No.249 of 2015

ssd

S.A.No.249 of 2015

10.11.2025