



S.A. No.349 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2025

CORAM :

THE HONOURABLE MR.JUSTICE P.DHANABAL

S.A. No.349 of 2015

and M.P. 1 of 2015

Y. Robinson ... Appellant / Respondent / Plaintiff

Vs.

Daniel Joseph (late)
S/o. Late John Daniel

1. Daniel Aloysius S/o. Late John Daniel
2. D. Lily Angeline W/o. Late Joseph Daniel
3. D. Charles Antony S/o. Daniel Joseph
4. C. Vimala Margaret D/o. Daniel Joseph
[respondents 1 to 4 are the legal representatives of
deceased Daniel Joseph] ... Respondents / Appellants / Defendants

PRAYER: The Second Appeal is filed under Section 100 of Civil Procedure Code against the Judgment and decree dated 22.01.2014 partly allowing the Appeal in A.S. No.411 of 2011 passed by the V Additional Judge, City Civil Court, Chennai [i/c] I Additional Judge, City Civil Court, Chennai reversing

Page No.1 of 35



S.A. No.349 of 2015

the judgment and decree in O.S. No.6248 of 2005 passed by the VI Assistant Judge, City Civil Court, Chennai and to set aside the same.

For Appellant : Mr. S. Parthasarathy, Senior Counsel
for M/s. P. Bhuvaneswari

For Respondents: Mr. P.N. Radhakrishnan

JUDGMENT

The Second Appeal has been filed as against the decree and judgment passed by the I Appellate Court in A.S. No.411/2011 on the file of the I Additional Judge, City Civil Court, Chennai dated 22.01.2014, wherein the respondent herein, has filed an appeal as against the decree and judgment passed by the Trial Court in O.S. No.6248 of 2005 dated 10.08.2011. The I Appellate Court partly allowed the appeal and dismissed the Suit in respect of declaration and declared the right of entitlement to the easementary and directed to remove the five sunshades in the Suit lane within 2 months from the date of the judgment. Aggrieved by the same, the second appeal has been



S.A. No.349 of 2015

preferred.

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

The Plaintiff purchased a property from one Najeema Beevi through her Power of Attorney agent K.S. Sheik Abdul Cader to an extent of 945 sq. ft. The property measuring about 45' x 4' i.e., 180 sq. ft. was used as a common passage left for reaching the backside portion. The Plaintiff purchased the Northern side passage marked as DEFA in the sketch filed along with the Complaint from the legal heirs of Mr. V. Rangasamy through a Sale Deed dated 17.06.2005. Therefore, the Plaintiff is enjoying the property to the extent of 1125 sq. ft.. Thereafter, the defendant had purchased the back portion described in Item-II of the Settlement Deed dated 20.03.1963 with separate passage through a Sale deed dated 15.10.1969 from one Murugaiyah @ Murugesan and Ethiraj amma. In fact, the said passage is situated at Survey No.3184/4 bounded on the North by House site of V. Rangasamy, South by R.S. No.3184/3 belonging to Pottayya, East by R.S. No.3183/2 and West by the property belonging to Kuppammal. But the defendants are under



S.A. No.349 of 2015

the mistaken identity as if the above said passage is situated on the Northern side of the Plaintiff's property leading from Baracah Road to his property.

The 2nd item of the property described in the Sale Deed executed by Murugaiah and Ethiraj amma in the name of the defendant is far away from the 2nd item of the Plaint schedule property. Therefore, the defendant has no right or title or interest over the passage described in the Item-II of the schedule. But the defendant has now come forward to claim absolute right over the passage belonging to the Plaintiff and attempting to erect compound wall preventing the Plaintiff to have ingress and egress through the said passage.

2.1. Further the defendant had issued a Legal Notice dated 14.06.2005 directing the Plaintiff to remove the five existing windows erected by Mr. V. Rangasamy in the year year 1968 claiming absolute ownership over the said passage. Already the Plaintiff gave a complaint before the Ayanavaram Police Station, but no action was taken. The Plaintiff has been getting light and air only through five windows marked as 'W' in the sketch and situated on his



S.A. No.349 of 2015

Northern wall existing from 1968. Therefore, the defendant has no right to put any compound wall blocking the passage, light and air or to remove the said windows as the Plaintiff has prescribed easementary right. Therefore, the Plaintiff filed a Suit for declaration and for permanent injunction.

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

The averments made in the Plaint are denied as false. In fact, the defendants along with their father Mr. John Daniel purchased the property bearing Old Door No.147, New No.10, Baracah Road, Nammalwarpet, Purasaiwalkam, Chennai under a Sale Deed dated 15.10.1969 and the defendants also inherited their father's share . The Plaintiff is the owner of the property bearing Old Door No.149, New No.11, Baracah Road. The Plaintiff's property situated just before the defendants' property and the Plaintiff's property has the direct access to the Road. The defendant's property is located just behind the Plaintiff's property and the four feet passage, belonged

Page No.5 of 35



S.A. No.349 of 2015

to the defendants as shown in the sketch, is the only way which connected the

defendants building and the Road. The defendants purchased the back side

property along with the 4 feet passage land and the the entire four feet

passage was conveyed to the defendants under the Sale Deed dated

15.10.1969. In fact the Plaintiff's property and the defendants' property

originally belonged to one Mrs. Muliki Seethamma, who settled the two

properties to one Mr. V. Rangasamy under a Settlement Deed dated

20.03.1963. The 1st item of the property was the house site and the 2nd item

of the property was the ground and premises. The first item of the property

located in the main road and the second item of the property located just

behind the first item of the property. The 2nd item of the property did not

have direct access to the main Road at that time. Thereafter, the said Mr. V.

Rangasamy sold the above said 2nd item of the property and a portion of the

front side property measuring $4 \times 45 = 180$ sq. ft. vacant passage land which

was the subject matter of the Suit Item-II property. The suit land was sold by

the said Mr. V. Rangasamy, during his life time, to the vendors of the

Page No.6 of 35



S.A. No.349 of 2015

defendants.

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3.1. Even according to the Plaintiff, they purchased only 945 sq. ft. of land out of the total extent of 1125 sq. ft.. The above said facts show that the disputed 4 feet passage was sold to the defendants and they have also got separate patta for the disputed passage land and they are the absolute owners of the property. The said land is not a common land and it was specifically purchased by the defendants. After the sale, the legal heirs of said Mr. V. Rangasamy have no right or title to convey once again the passage land to the Plaintiff. Therefore, the said Sale Deed in the name of the Plaintiff is not valid as per law. The Plaintiff, without any right unlawfully put up windows and installed sun shades in their northern side wall and encroached the Plaintiff's passage land and therefore, the defendants issued a Legal Notice and took appropriate action to remove the sun shades. The defendants also decided to put up compound wall and gate to their passage land and the same was objected by the Plaintiff. Thereafter, the defendants approached the Police Station and they referred the matter to Tahsildar. The Surveyor and

Page No.7 of 35



S.A. No.349 of 2015

the Tahsildar conducted enquiry and visited the property, but the Plaintiff did not produce any documents. Therefore, the Tahsildar passed an order in favour of the defendants. The Plaintiff did not file any appeal as against the said order and now they forged the Sale deed dated 17.06.2005 and filed this false and vexatious Suit. Therefore, the Suit is liable to be dismissed.

4. Based on the above said pleadings, upon hearing both sides and perusing the records, the trial Court had framed the following issues:-

(i) Whether the Plaintiff is entitled for declaration as prayed for.

(ii) Whether the Plaintiff is entitled for permanent injunction as prayed for.

(iii) To what relief.

5. In order to prove the case, on the side of the Plaintiff, he examined PW1 and marked Ex.A.1 to Ex.A.13 and during the cross examination of PW1, Ex.B.1 and Ex.B.2 were also marked. On the side of defendants, they

Page No.8 of 35



S.A. No.349 of 2015

examined DW1 and DW2 and Ex.B3 to Ex.B.12 were marked through DW1.

After analysing the oral and documentary evidences adduced on either side, the trial Court has decreed the Suit as prayed for. Aggrieved by the said decree and judgment, the defendants in the Suit had preferred an Appeal before the I Appellate Court and the first Appellate Court, after hearing both sides, framed the *point for determination* that *whether the appeal has to be allowed on point of law or on facts*. The I Appellate Court allowed the appeal in part and dismissed the Suit in respect of declaration and granted relief in favour of the Plaintiff that he is entitled to the easementary right of light and air through the five windows on his northern side wall, but he has to remove the five sunshades erected in the Suit lane within two months, in order to entitle the appellants / defendants easementary right of ingress and egress through the Suit lane to Barach Road. Aggrieved by the said decree and judgment, the present Second Appeal has been preferred on various grounds.

6. This Court, at the time of admitting the second appeal, has framed



S.A. No.349 of 2015

the following substantial questions of law:

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a. Whether the lower Appellate Court is correct in directing the appellant to remove the five sunshades erected by him in the Suit lane on or before 22.03.2014 in order to entitle the respondents / defendants' easementary right of ingress and egress through the Suit lane to Baracah Road while infact there is no counter claim on the part of the respondents / defendants.

b. Whether the lower Appellate Court is correct in relying upon a Patta which is not a document of title and which is under challenge before the Collector of Chennai.

c. Whether the respondents / defendants are entitled to lay claim over the Suit lane while it is admitted by the defendants themselves that the boundaries found in their Sale Deed Ex.A.8 / B5 are wrong and not rectified.

d. Whether the respondents / defendants are entitled to lay claim over the Suit lane belonging to the Plaintiff taking advantage of the wrong



S.A. No.349 of 2015

description in Ex.A8 / B5.

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6.1. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the Trial Court.

7. The learned counsel appearing for the appellant would submit that the Plaintiff had purchased the property mentioned as Item-I through a Sale Deed dated 29.04.2002 and the 2nd Item of the property was purchased by the Plaintiff through a Sale Deed dated 17.06.2005. At the time of purchase of the Item-I of the property, which is a residential flat, the Item-II property was left as common pathway. The defendants have property at the backside of the Plaintiff's house and they have alternative pathway and now they are claiming the 2nd item of the property as a public pathway under mistaken identity. The pathway mentioned in the Sale Deed of the defendants in Doc. No.8767 of 1969 is far away from the Item - II of the Suit schedule properties. But now the defendants are claiming right over the Item-II of the properties.

Page No.11 of 35



S.A. No.349 of 2015

Therefore, the Plaintiff filed the Suit for declaration to declare that the defendants have no absolute right over the passage described in Item II of the Schedule, to grant permanent injunction restraining the defendants from interfering with the Plaintiff's easementary right of light and air through the five windows on his northern side wall. The case of the defendants is that they purchased the property in the year 1969 itself and the same property was purchased by the Plaintiff in the year 2005. The Suit property was used as pathway and therefore, prayed to dismiss the Suit. The defendants themselves admitted that in the Sale Deed, the boundaries are given incorrectly, so far they have not taken any steps to rectify the said deed.

7.1. To prove the case of the Plaintiff, PW1 was examined and Ex.A.1 to Ex.A.13 were marked. On the side of defendants, they have examined DW1 and DW2 and marked Ex.B.1 to Ex.B.12. The trial Court, after considering the oral and documentary evidences, has correctly decreed the Suit that the Plaintiff purchased the Item II of the property through Ex.A.6

Page No.12 of 35



S.A. No.349 of 2015

and the defendants purchased the property with wrong boundaries and so far

they have not taken any effort to rectify the same. Therefore, they cannot

claim any right over the property purchased through wrong 4 boundaries and

therefore, the trial Court decreed the Suit. Thereafter, the defendants

preferred an appeal before the I Appellate Court, where the I Appellate Court

partly allowed the appeal and dismissed the Suit in respect of the prayer of

declaration and confirmed the easementary rights and enjoyment of the

Plaintiff over the Item II of the property, however directed the Plaintiff to

remove the five sunshades erected in the Suit land. In fact, once the I

Appellate Court came to a conclusion that the Plaintiff is entitled for the

easementary right of light and air through the five windows on the northern

side wall, the I Appellate Court ought not to have directed to remove the

sunshades specifically, even without any prayer sought for by the defendants.

The defendant have not filed any counter claim in respect of those sunshades

and without any prayer for mandatory injunction, the I Appellate Court

directed the Plaintiff to remove the sunshades. The I Appellate Court also

Page No.13 of 35



S.A. No.349 of 2015

failed to consider the evidence adduced on the side of the appellant / Plaintiff

and erroneously set aside the decree passed by the trial Court in respect of

declaration relief sought by the appellant / Plaintiff in the Suit in O.S.

No.6248 of 2005. Therefore, the decree and judgment passed by the I

Appellate Court is liable to be set aside.

8. The learned counsel appearing for the respondents / defendants would submit that the defendants along with their father Late Mr. Daniel Joseph had purchased the property through a Sale Deed dated 15.10.1969 and after his demise, they inherited the share of their father for the property in Old Door No.147, New No.10, Baracah Road, Nammalwarpet, Purasaiwalkam, Chennai. In fact, the Plaintiff is the owner of the property bearing Old Door No.149, New Door No.11, Baracah Road. The plaintiff's property situated just before i.e., just in front of the defendants' property and the Plaintiff's property has the direct access to the Road. Since the defendants' property is located just behind the Plaintiff's property, the said 4 feet passage, which

Page No.14 of 35



S.A. No.349 of 2015

belongs to the defendants, is only a pathway available to access the

defendants' property and the road. The defendants purchased the backside of

the Suit property along with 4 feet passage lane and the entire 4 feet was

conveyed to the defendants under a Sale Deed dated 15.10.1969. The

properties of both the Plaintiff and defendants are originally belonged to one

Mrs. Mulliki Seethamma, who settled the said two properties to one Mr. V.

Rangasamy under a Settlement Deed dated 20.03.1963. The Item-I of the

property is the house site bearing Survey No.3184/4, Old Door No.168,

measuring 1125 sq. ft. and Item-II of the property, a ground and premises,

bearing Survey No.3185/10, Door No.149, Baracah Road, Nammalwarpet,

Purasaiwalkam measuring 1220 sq.ft. The Item-I property is located in the

main Road and the Item-II of the property is just behind the Item-I property.

The Item-II property did not have direct access to the main Road at that time.

The said Mr. V. Rangasamy, the original owner of the Suit property, sold the

above said Item-II property ie. backside of the Item-I property measuring to

an extent of 1220 sq. ft. and a portion of the front side property measuring 4 x

Page No.15 of 35



S.A. No.349 of 2015

45 sq. ft. = 180 sq. ft., the subject matter of the Item-II of the Suit property through a registered document dated 17.07.1965. The said disputed passage was mentioned as Schedule-B in the Sale Deed. Therefore, the said 4 feet passage was sold by the said Rangasamy during his life time itself.

8.1. Even according to the Plaintiff, they purchased only 945 sq. ft. of land from the total extent of 1125 sq. ft. and the disputed 4 x 45 sq. ft. = 180 sq. ft. was specifically excluded in the Sale deed and thereafter, again they purchased the property in the year 2005 from the legal heirs of the said Mr. V. Rangasamy. Therefore, the Plaintiff has no any right over the Item-II of the Suit property. However, the Plaintiff has not filed the Suit for declaration of his right and title over the property. Per contra, prayed to declare that the defendant has no absolute right over the passage and to grant permanent injunction from interfering with the easementary right of light and air through five windows on the northern side wall. Such prayer is not maintainable. However, the trial Court decreed the Suit. The trial Court failed to consider

Page No.16 of 35



S.A. No.349 of 2015

the evidences adduced on the side of the defendants and the documents

marked by them. When the defendants purchased the property in the year

1969, taking advantage of the typographical errors in four boundaries in the

document while translating the same from English to Tamil language, it has

been considered as if the defendants have purchased the property, after the

said property was sold to the Plaintiff. However, the trial Court, erroneously

came to a conclusion that the defendants have not taken any steps to rectify

the sale deed. Per contra, the Plaintiff has purchased the property in the year

2005, thereby, the Plaintiff is entitled to the said property. Therefore, the

defendants have preferred an appeal and the I Appellate Court has correctly

allowed the appeal by dismissing the prayer in respect of declaration and also

directed the Plaintiff to remove the sunshades. Therefore, the I Appellate

Court has passed a reasoned order based on the records and evidences and

hence the second appeal is liable to be dismissed.

9. Heard both sides and perused the entire materials available on

Page No.17 of 35



S.A. No.349 of 2015

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10. This is the case where the Plaintiff has filed a Suit for declaration declaring that the defendant has no absolute right over the passage marked ADEF and shown yellow in colour in the sketch and described in Item-II of the Schedule and for granting a decree of permanent injunction restraining the defendant from interfering the Plaintiff's easementary right of light and air through the five windows on the northern side wall and to direct the defendant to pay the Plaintiff, the cost of the Suit.

11. According to the Plaintiff, he purchased the Item-I of the property through a Sale Deed dated 29.04.2002 and thereafter he purchased the Item-II of the property through a Sale deed dated 17.06.2005. Therefore, he is the absolute owner of the Item I & II properties. According to the respondents, originally the entire properties of the defendants belonged to one Mrs. Muliki Seethamma and the same was settled in favour of one Mr. V. Rangasamy

Page No.18 of 35



S.A. No.349 of 2015

through a Settlement deed dated 20.03.1963. In fact, there are two items of the properties settled in favour of the said Mr. V. Rangasamy and the Item-I was sold to the vendor of the Plaintiff Mr. Murugaiyah @ Murgesan and Mrs. Ethiraj Amma through a Sale Deed dated 17.07.1965 and another item was sold to the vendors of the defendants. The vendors of the defendants purchased the property from the said Mr. V. Rangasamy through a Sale Deed dated 15.10.1969, where the four feet lane was shown as Schedule B. The defendants purchased the property through a Sale Deed dated 15.10.1969 through vendors. Therefore, the property was already sold to the defendants. The Plaintiff also purchased the same Item-II of the property from the legal heirs of the said Rangasamy after his demise through a Sale Deed dated 17.06.2005.

12. At this juncture, it is relevant to refer the prayer sought in the Suit.

In the prayer, the Plaintiff has not sought for declaration declaring that the Item-II of the property belongs to him. Per contra, the prayer is to declare

Page No.19 of 35



S.A. No.349 of 2015

that the defendant has no absolute right over the Item-II property. It shows

that the defendant has no absolute right, but has some right. As far as another prayer, to grant a decree of permanent injunction restraining the defendant from interfering the Plaintiff's easementary right of light and air through the five windows of the Northern side wall, is concerned, once the Plaintiff has purchased the property, then why he claimed easementary right over the property purchased by him. In this context, it is an admitted fact that the defendant has purchased the property situated in the backside of the Plaintiff's property and he also produced the documents, Ex.B.5. In that document, there are some typographical error in respect of four boundaries and the four boundaries have been wrongly mentioned. Therefore, the trial Court came to a conclusion that "the defendants have not rectified the deed by correcting the four boundaries, therefore, the document is not valid and the subsequent purchaser of the Plaintiff through a Sale deed dated 17.06.2005 is valid". The above said findings are erroneous and once the property was purchased in the year 1969 itself and the same is under the enjoyment of the defendants, mere

Page No.20 of 35



S.A. No.349 of 2015

wrong mentioning of the four boundaries are not sufficient to render the document as invalid, when the Plaintiff said to be purchased the same property in the year 2005. The identification of the property is not in dispute. The Plaintiff is also not sure about his right over the Item-II of the property. That is why, he has not filed the Suit for declaration, per contra, filed Suit for declaring that the defendant has no absolute right over the Item-II property and also claimed easementary right over the Item-II property. These aspects have not been considered by the trial Court.

13. As far as the decree and judgment of the I Appellate Court is concerned, the I Appellate Court after relying the evidences and documents, fairly came to a conclusion that the Plaintiff is not entitled to decree for declaration as against the defendants. However, directed the Plaintiff to remove the sunshades and declared the plaintiff's easementary right of light and air. It is not the case of the defendants to remove the sunshades and the defendants have not filed any Suit or any counter claim in respect of the

Page No.21 of 35



S.A. No.349 of 2015

above said pathway and the above said windows. Without any specific prayer for mandatory injunction to remove the windows, the I Appellate Court has passed an order to remove the windows. In this background, this Court has to answer for the substantial questions of law.

14. a) *Whether the lower Appellate Court is correct in directing the appellant to remove the five sunshades erected by him in the Suit lane on or before 22.03.2014 in order to entitle the respondents / defendants' easementary right of ingress and egress through the Suit lane to Baracah Road while infact there is no counter claim on the part of the respondents / defendants.*

In this case, the Plaintiff has filed the Suit to declare that the defendant is not an absolute owner of the Item-II property and to grant permanent injunction by restraining the defendants from interfering with the Plaintiff's easementary right of light and air through five windows on the Northern side

Page No.22 of 35



S.A. No.349 of 2015

wall. That being the case of the Plaintiff, the defendants denied the title of the property of the Plaintiff and have not filed any counter claim to remove the sunshades of the windows. According to the defendants, the property was purchased by them through Sale Deed and they are using that pathway to reach their land. It is an admitted fact that the windows have been raised long back and no any legal steps were taken to remove those windows and only issued a Legal Notice to the Plaintiff. After filing of the Suit by the Plaintiff, in respect of the said land, the defendants have not taken any steps to remove the sunshades of the windows and without any prayer, the I Appellate court has directed the Plaintiff to remove the sunshades of the windows. According to the Plaintiff, he is not sure about the title of the Item II property and not prayed to declare the title in his favour and according to the defendants, they purchased the Suit lane property. But nobody has sought for relief of the declaration with respect to Item-II of the property. Therefore, without any prayer for mandatory injunction, the I Appellate Court cannot grant relief to the defendants by directing the Plaintiff to remove the sunshades.

Page No.23 of 35



S.A. No.349 of 2015

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14.1. Further the DW1 in his cross examination stated that " வாதி இடத்தில் யார் கட்டிடம் கட்டினார்கள் எனத் தெரியாது. நான் வாங்குவதற்கு முன்பே அதில் கட்டிடம் இருந்தது. வாதி வாங்கிய பிறகு எந்த மாற்றமும் செய்யவில்லை". Therefore, from the above evidence it is clear that at the time of purchase of the property by the defendant, the house of the Plaintiff was in existence and no any improvements made by the Plaintiff. When the construction was made before the purchase of the property by the defendant, he cannot question about the construction. Moreover, the Plaintiff filed the Suit to declare that the defendant is not the absolute owner of the property, but the defendant's case is that he purchased the Suit lane 2 items of the property through Sale Deed, but no counter claim or separate Suit was filed by the defendant to declare his right over the Suit lane. Moreover, the I Appellate Court in the Suit filed by the Plaintiff, without any counterclaim by the defendant, passed a decree for mandatory injunction by directing the Plaintiff to remove the sunshades. There are no pleadings in respect of removal of window's sunshades and no

Page No.24 of 35



S.A. No.349 of 2015

issue has been framed by the trial Court in respect of the removal of sunshades. It is well settled law that the Courts cannot go beyond the Pleadings and the relieves sought for. In this case, the defendant had knowledge about the sunshades of the Plaintiff even at the time of purchase itself, but has not taken any legal steps to remove the sunshades. Even after the Suit filed by the Plaintiff, no any counter claim filed by the defendant to remove the sunshades, while so, without any pleadings, evidences and prayer, grant of mandatory injunction by the I Appellate Court is impermissible in law.

14.2. As far as the relief granted by the I Appellate Court in respect of easementary right to the Plaintiff is concerned, the defendants have not challenged that decree and judgment either by a separate appeal or any cross objection. Therefore, the order of the I Appellate Court directing the appellant / Plaintiff to remove the five sunshades is against law and it is not sustainable and the same is liable to be set aside.

Page No.25 of 35



S.A. No.349 of 2015

15. The next substantial question of law that ***b) Whether the lower***

Appellate Court is correct in relying upon a Patta which is not a document

of title and which is under challenge before the Collector of Chennai is

concerned, the I Appellate Court has not only relied upon the patta, but based

on the title deeds only, came to a conclusion that the defendants have

purchased the property from Rangasamy along with Item-II of the Suit

property. The I Appellate Court has also relied upon other documents such as

sale deeds etc., It is true that Patta is not a document of title, but the

I Appellate Court has not solely relied upon the patta. The I Appellate Court,

in Para Nos.13 and 14 of the judgment has elaborately discussed about the

documents Ex.B.1, Sale Deed dated 17.07.1965, Ex.A8 / Ex.B.5, Sale Deed

dated 15.10.1969 and along with those documents, relied the Ex.B.2

Proceedings of Tahsildar and Ex.B.8 Patta and came to a conclusion that the

findings of the trial Court that the appellants have not got title to the Suit lane

until the Sale Deed Ex.A8 / Ex.B.5 in respect thereof is rectified is not

correct, since the appellants have purchased the property from the original

Page No.26 of 35



S.A. No.349 of 2015

owner Mr. V. Rangasamy, wherein the respondent has purchased the Suit lane from his legal heirs and purchase is also belated to that of the appellants.

Therefore, the said findings are not based on the Patta, but after discussing all the documents, the I Appellate Court rendered the findings. Moreover, the I Appellate Court elaborately discussed about the errors in four boundaries in the Tamil deed, while transferring the English deed and after relying the judgment of this Court in ***Mahalingam v. A.S.Narayanaswamy Iyer and others reported in 1996(1) MLJ 542.*** Therefore, I Appellate Court has relied the title deeds and not decided the case by relying the Patta alone. Thus, the 2nd substantial question of law is answered.

16. The next substantial question of law that (c) ***Whether the respondents / defendants are entitled to lay claim over the Suit lane while it is admitted by the defendants themselves that the boundaries found in their Sale Deed Ex.A.8 / B5 are wrong and not rectified*** is concerned, it is an admitted fact that in the defendants' sale deed, the four boundaries have been

Page No.27 of 35



S.A. No.349 of 2015

wrongly mentioned. The northern side is mentioned as southern side, the southern side is mentioned as northern side, eastern side is mentioned as western side and western side is mentioned as eastern side, while translating the Sale deed from English to Tamil language. Generally these types of mistakes would occur. Merely because there are some discrepancies in the four boundaries in the document, it cannot affect the title of the property and the four boundaries are only to identify the property and in this case, there is no dispute regarding identification of the property. The four boundaries alone cannot render the sale deed as invalid, when the Survey number is very clear in nature and that too four boundaries have been wrongly mentioned while translating the document from English to Tamil language.

16.1. Therefore, the I Appellate Court came to a conclusion that
"*....However, it is crystal clear that it is the same two items of properties that have been conveyed under both the documents and cannot be any other property and Survey number is same*" and relied upon judgment of this Court
Page No.28 of 35



S.A. No.349 of 2015

in ***Mahalingam v. A.S.Narayanaswamy Iyer and others reported in 1996(1)***

MLJ 542, wherein this Court held that *when the Survey Number is given in the Will and the extent of property is also given, mistake in the description, will not affect the Will*". In the case on hand, the vendors of the defendants have purchased the property from the original owner with correct four boundaries and correct identification and thereafter, the defendants purchased the property and mistake occurred in the four boundaries and therefore, the property was already conveyed to the vendors of the defendants with correct boundaries and thereafter, the defendants purchased the property from the vendors. Even assuming that there are discrepancies in the four boundaries in the defendants' sale deed. The Plaintiffs purchased the property after the sale in favour of the defendants' vendors. Therefore, the Plaintiff once again cannot purchase the property, which was already sold to the vendors of the defendants. Therefore, the said document, defendants' sale deed, cannot be stated as it is invalid. The trial Court failed to consider that the property was sold by the father of the Plaintiff's vendor to the vendors of of the defendants,

Page No.29 of 35



S.A. No.349 of 2015

thereby the Sale Deed in favour of the Plaintiff executed by the legal heirs of original owner, who sold the property during his life time is not valid in the eye of law and wrongly held that the defendants have not taken any steps to rectify the mistakes made in the Sale deed. Therefore, the I Appellate Court has fairly come to a correct conclusion and thus the substantial question of law (c) is answered.

17. The next substantial question of law that (d) *Whether the respondents / defendants are entitled to lay claim over the Suit lane belonging to the Plaintiff taking advantage of the wrong description in Ex.A8 / B5 is concerned*, in fact, the defendants have established through oral and documentary evidences that they purchased the property from the vendors. The vendors of the defendants have purchased the property as early as in the year 1969 from the original owner namely Tr. V. Rangasamy. Once if the sale deed was executed by the original owner Tr. V. Rangasamy in favour of the vendors of the defendants and the property was conveyed to the

Page No.30 of 35



S.A. No.349 of 2015

vendors of the defendants, after sale the said Tr. Rangasamy has no any right over the property. The defendants purchased the property from the vendors of the defendants. The Plaintiff purchased the property from the legal heirs of the said Mr. Rangasamy, who had no right and title over the property after the sale of the property to the vendors of the defendants. The Plaint 'B' schedule property was conveyed to the vendors of the defendants with correct boundaries in the year 1969. When the defendants purchased the property from their vendors, the boundaries were wrongly mentioned.

18. In fact, the Plaintiff purchased the II schedule of the Suit property in the year 2005, but prior to that, the father of vendors of the Plaintiff namely Mr. V. Rangasamy sold the same property to the vendors of the defendants in the year 1969. Therefore, the title of the property was conveyed to the vendors of the defendants by the original owner. Thereafter, the legal heirs of Mr. V. Rangasamy, who are the vendors of the Plaintiff have no right over the property. The defendants have purchased the property from the persons who

Page No.31 of 35



S.A. No.349 of 2015

obtained Sale Deed directly from the original owner. Therefore, the Plaintiff

cannot take advantage of the wrong four boundaries mentioned in the sale deed of the defendants. On the date of Sale deed in favour of the Plaintiff, his vendors have no title or rights over the property, therefore, the Plaintiff who purchased the property without any title from his vendor cannot question the validity of the defendants' document and the Plaintiff filed the Suit for declaration, he ought to have proved his case independently and cannot take advantage of the defendants documents. Therefore, the Plaintiff cannot take advantage of the wrong description of boundaries of property by the defendants. Therefore, the substantial question of law (d) is answered accordingly.

19. In the result, the **second appeal is partly allowed**. The decree and judgment of I Appellate Court in respect of dismissal of declaration is **confirmed**. However the relief granted in respect of mandatory injunction to remove the sunshades of the Plaintiff is **set aside**.

Page No.32 of 35



S.A. No.349 of 2015

There shall be no order as to costs. Consequently, the connected

miscellaneous petition is closed.

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09.10.2025

Index : Yes/No

Speaking Order : Yes/No

mjs

To

1. I Additional Judge, City Civil Court, Chennai
2. VI Assistant Judge, City Civil Court, Chennai



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S.A. No.349 of 2015

P.DHANABAL.,J

mjs

S.A. No.349 of 2015



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S.A. No.349 of 2015

09.10.2025