



WEB COPY

SA No. 360 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-11-2025

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 360 of 2015

1. REVATHI
W/o Gnanasekaran Both Are Res At 365
Jangamar St, Bhavani Town And Tk Erode Dist
2. Gnanasekaran(died)
S/o P.Kandasamy -do-
3. G.Vijayalakshmi
,d/o Late Gnanasekaran,
4. G.Gayathiri,
D/o Late Gnanasekaran,
5. G.Lokeshwaran,
S/o Late Gnanasekaran,
6. K.Jayalakshmi,
W/o P.Kandasamy,m/o Late Gnanasekaran, All
Are Residing At 365 Jangamar Street,bhavani
Town And Tk,erode District.

..Appellants/defendants

Vs

1. MANICKARAJ(died)
S/o Sidha Pandaram 375, Jangamar St, Bhavani
Town And Tk, Erode Dist
2. M.Vijayakumar
S/o Late Manickaraj, Res At 375, Pasuveswarar



Street, Bhavani Town And Tk, Erode District

3. PUNIDHAVATHI

D/o Late Manickaraj, Res At 375 Pasuveswarar Street, Bhavani Town And Tk, Erode Dist

4. VENKADASALAPATHY

S/o Late Manickaraj, Late Manickaraj, Res At 375 Pasuveswarar Street, Bhavani Town And Tk, Erode Dist.

[R1 Died, R2 To R4 are brought on record as legal heirs of the deceased R1 vide order of this Court dated 27/10/2025 Made In CMP.Nos.22988, 22992 and 22994 of 2019 in S.A.No.360 of 2015]

..Respondents/plaintiffs

Prayer: Second appeal filed under Section 100 of Code of Civil Procedure seeking a direction to set aside the judgment and decree dated 25.10.2013 made in A.S.No.12 of 2012 on the file filed of the learned Sub Court, Bhavani confirming the judgment and decree dated 18.11.2011 made in O.S.No.234 of 2009 on the file of the learned First Additional District Munsif Court (In-charge), Bhavani by allowing this Second Appeal.

For Appellant(s): Mr.N.Manokaran

For Respondent(s): Mr. P.Chandrasekaran (for R1 and R2)
R1 - Died (steps Taken)
R4 - Died He Has No Legal Heirs
Memo Recorded
(vide Court Order Dt.27/10/2025)

JUDGMENT

This second appeal has been preferred as against the judgment and decree passed by the first appellate Court/Sub Court, Bhavani in A.S.No.12 of 2012



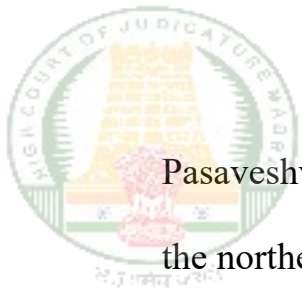
dated 25.10.2013. In fact, the respondents/plaintiffs herein has filed original suit in O.S.No.234 of 2009 on the file of I Additional District Munsif Court,

Bhavani for the relief of demarcation and permanent injunction and for costs.

The trial Court decreed the suit. Aggrieved by the said decree and judgment, the appellants/defendants herein has preferred the first appeal before the Sub Court, Bhavani in A.S.No.12 of 2012. The first appellate Court also dismissed the appeal suit and confirmed the decree and judgment passed by the trial Court. Aggrieved by the said decree and judgment, the defendants have preferred this second appeal.

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

(i) The suit property and other properties originally belonged to plaintiffs' father Sidha Pandaram. The 1st defendant is the wife of the 2nd defendant. The father of the plaintiffs, while he was in sound disposing state of mind, out of his own and free will executed a registered Will dated 25.08.1943. The 1st plaintiff's mother Veerammal has got three daughters viz., 1) Siddammal, 2) Sarasu @ Sinnammal and 3) Sagunthala. Through the Will, Veerammal was given life estate and absolute right to her daughters. If Veerammal, during her life time given birth to a male child, the property would devolve on the male child of Veerammal. The father of the 1st plaintiff Sidha Pandaram died and after his death, the Will came into effect. The property bequeathed by the father of the plaintiffs is situated in T.S.No.83 of formerly Jangamar street, now



Pasaveshvarar street, Bhavani, Erode district. The defendants have property on the northern side of the suit property and they have no right, title or interest over the suit property. The plaintiffs and their predecessors have been in peaceful possession of the property. However, by mistake Bhavani Municipality issued patta for T.S.No.83 in the name of the defendants and T.S.No.84 in the name of the plaintiffs. While so, on 30.08.2009 the defendants damaged the northern side wall of the plaintiffs and attempted to encroach upon the property making false claims as if the said wall belongs to them. The northern side of the east-west wall is dividing the property of the plaintiffs and defendants. Therefore, the plaintiffs filed a suit for fixation of boundaries and for permanent injunction.

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

(i) The suit is filed for demarcation and permanent injunction and the averments made in the plaint have to be proved by the plaintiffs except those that are admitted by the defendants.

(ii) It is false that the plaint scheduled property is situated in T.S.No.83. However, it is true that T.S.No.84 is situated in the northern side of the suit property.

(iii) The defendants have a property in T.S.No.84 and the said property belongs to Arthanaariammal W/o. Arumuga Pandaram. The said



Arthanaariammal executed a registered Will on 10.06.1966 in favour of her only son Subramaniam and after demise of the said Arthanaariammal, the said Subramaniam had been in peaceful possession of the property. In turn, the said Subramaniam on 25.02.1981 executed a settlement deed in favour of his elder son Palanisamy. After settlement deed, the said Palanisamy had been in possession of the property. Thereafter, the said Palanisamy sold the property to the 1st defendant through sale deed dated 01.11.2007 for a sum of Rs.1,90,000/-. After purchase of the property, the 1st defendant constructed a house and the registered number is 847/4. The extent of the property is east-west 33 feet and north-south 20 feet, totally 660 sq.ft. At the time of purchase of the property, it was a tiled house but now the defendants have demolished the said house for constructing a new house.

(iv) Now the plaintiffs filed the suit only to grab the property of the defendant. The plaintiffs have property on the southern side, northern side and western side. Therefore, the plaintiffs want to purchase the property from the defendants. But the defendants refused to sell the property to the plaintiffs, therefore now filed this suit.

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

a) Whether the plaintiff is entitled to decree for permanent injunction?



b) To what relief the plaintiff is entitled to ?

Additional Issues:

a) Whether the plaintiff is entitled to mandatory injunction as prayed for?

And therefore, again the following issues have been framed by the trial court at the time of judgment.

b) Whether the plaintiff is entitled to fix boundaries as prayed for?

5. Before the trial Court to prove the case of the parties, on the side of the plaintiffs, PW1 and PW2 were examined and marked exhibits Ex.A1 to Ex.A3. On the side of the defendants, examined DW 1 and DW2 and marked Ex.B1 to B4 and court documents, Commissioner's report along with the plan and surveyor's sketch were marked as Ex.C1 to Ex.C3. After evaluating oral and documentary evidences adduced on both sides, the trial Court decreed the suit. Aggrieved by the said decree and judgment, the defendants have preferred first appeal in A.S.No.12 of 2012 on the file of the Sub Court, Bhavani.

6. The first appellate Court after hearing both sides, perusing the records including the judgment of the trial Court framed the following points for determination:

(a) Whether the decree and judgment passed by the trial Court in O.S.No.234 of 2009 dated 18.11.2011 are sustainable?

(b) Whether the appeal is to be allowed or not?



After perusing the records and hearing both sides the first appellate Court dismissed the appeal by confirming the decree and judgment passed by the trial Court through judgment and decree dated 18.11.2011. Aggrieved by the said decree and judgment of the first appellate Court, the present second appeal has been preferred by the defendants.

7. This Court at the time of admitting the second appeal, framed the following substantial questions of law:

- I. Whether the courts below erred in decreeing the suit on the basis of a Will dated 25.08.1943 particularly when the plaintiffs has miserably failed to prove his claim by proving the Will under Section 63 of the Indian Succession Act r/w Section 68 of the Indian Evidence Act?
- II. Whether the Courts below committed an error in arriving at a conclusion for decreeing the suit of the present nature simply on the basis of the Commissioner's report and plan marked as Ex.C1 to Ex.C3 in the absence of any other oral or documentary evidences in support of the plaintiffs's claim?
- III. Whether the Courts below erred in wrongly placing the burden of proof on the defendants, in the absence of any title deeds for the plaintiffs to discard the title of the defendants under Ex.B1 to Ex.B3?



For sake of convenience and brevity the parties will be referred as plaintiffs and defendants as per the rank in the trial Court.

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8. The learned counsel appearing for the appellants/defendants would submit that the plaintiffs have filed a suit for mandatory injunction to remove the encroachment and for permanent injunction without seeking relief of declaration of title and the defendants are seriously disputing the title of the plaintiffs when the plaintiffs neither established the Will dated 25.08.1943 marked as Ex.A1 nor proved the actual extent of the suit property by correlating the extent of Ex.A1. The Will has not been proved in accordance with law.

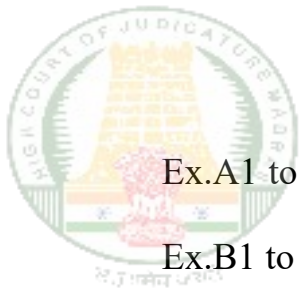
8.1. Per contra, the defendants established their right as title over the suit property under Ex.B3 dated 01.11.2007 and also produced parent documents dated 10.06.1966 and 25.02.1981, which are marked as Ex.B1 and Ex.B2. The plaintiffs claim is based on the Commissioner's report and plan marked as Ex.C1 to Ex.C3 and the said Commissioner's report will not confer title to the plaintiffs to sustain the suit. Even though the plaintiffs failed to prove the case by adducing proper evidence, the Courts below have shifted the burden of proof on the defendants. Therefore, the decree and judgment passed by the Courts below are erroneous. The Commissioner's report and plan can be used for identifying physical features of the property and cannot be held for deciding the rights and rival claims of the parties over the suit property.



8.2. The plaintiffs failed to produce any supportive documents for the claim through Ex.A1 dated 25.08.1943, therefore the plaintiffs miserably failed to prove the case and the suit is not maintainable without seeking declaration of title. Both the Courts below have failed to consider the same and erroneously decreed the suit, therefore, prayed to allow this second appeal.

9. The learned counsel for the respondents/plaintiffs would submit that originally the property belonged to plaintiffs' father and he executed a Will dated 25.08.1943 in favour of his wife and daughters. The wife was given life estate and after her demise, the children of Veerammal are entitled to the properties. If the Veerammal has any male child, then after her demise, the entire property has to go to the male child. The said testator/Sidda Pandaram, father of the plaintiffs died and after his demise, the 1st plaintiff being the male child of the Sidda Pandaram born through Veerammal is entitled to the property.

9.1. The defendants are adjacent land owners having land in T.S.No.84 and they are no way connected to the suit property. The defendants are making attempts to interfere with the plaintiffs possession at northern side east-west wall which exclusively belong to the plaintiffs. The defendants attempted to interfere with the enjoyment of the plaintiffs in the northern east-west wall and they also tried to put up a construction there. Therefore filed this suit. In order to prove the case of the plaintiffs, they examined PW1 and PW2 and marked



Ex.A1 to Ex.A3 and the defendants have examined DW1 and DW2 and marked Ex.B1 to Ex.B4.

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9.2. To note down the physical features of the property, the Commissioner has also filed his report and plan along with the surveyor sketch. The trial Court correctly appreciated the evidences and decreed the suit. The first appellate Court also have appreciated the evidences in a proper perspective and dismissed the appeal by confirming the decree and judgment of the trial Court. Therefore, the second appeal is liable to be dismissed.

10. This Court heard both sides and perused the records available in this case.

11. The plaintiffs have filed their suit for relief of mandatory injunction and to fix the boundaries to the suit property and a permanent injunction restraining the defendants from trespassing and encroaching the plaintiffs' property and putting up construction.

12. According to the 1st plaintiff, he entitled to the suit property through Will dated 25.08.1943 executed by his father Sidda Pandaram. The copy of Will dated 25.08.1943 has been marked as Ex.A1, Town surveyor sketch has been marked as Ex.A2 and property tax receipt has been marked as Ex.A3. The defendants denied the title of the property to the plaintiffs and according to the defendants, they purchased the property through sale deed dated 01.11.2007. In



fact, the said property originally belongs to one Arthanaariammal. The said Arthanaariammal executed the Will in favour of her only son Subramaniam on 10.06.1966. The said Subramaniam executed settlement deed in favour of his son Palanisamy on 25.02.1981 and thereafter, the said Palanisamy sold the property to this 1st defendant through sale deed dated 01.11.2007. The defendants marked the said sale deed as Ex.B3, registered Will dated 10.06.1966 has been marked as Ex.B1 and the settlement deed dated 25.02.1981 is marked has been Ex.B2. The encumbrance certificate has been marked as Ex.B4.

13. The 1st plaintiff who filed the suit has to prove that the property belongs to the plaintiffs and he was also examined as PW1 and deposed that the property belongs to him by Will, but not proved the said Will in accordance with law. The plaintiffs are mainly relying upon Ex.A1, but the attesting witnesses of the Will have not been examined to prove the Will. There is no evidence as to whether the attesting witnesses are alive or not on the date of production of the Will before the Court. It is the duty of the plaintiffs to examine the attesting witnesses, but they have not taken steps to examine the witnesses to prove the Will. As per Section 68 of Evidence Act, at least one of the attesting witnesses has to be examined to prove the execution of the Will, subject to the Court's process and capable of giving evidence. But the plaintiff who relied the Will has not taken steps to summon the witnesses and the Ex.A1



Will is not original Will produced from proper custody, to invoke presumption under Section 90 of the Evidence Act.

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14. There is no dispute in respect of the entire property and the dispute between the parties is in respect of the wall between the plaintiffs' northern side and southern side of the defendants' property.

15. According to the plaintiffs, the said wall exclusively belongs to them. According to the defendants, the said wall is exclusively belongs to defendants. Therefore, the plaintiffs has to prove that the said wall is exclusively belongs to them and has not proved the same as there is no evidence produced by the plaintiffs.

16. Per contra, the defendants have produced title deeds Ex.B2 and Ex.B3. There is no mention about the northern side wall either in the documents filed by the plaintiffs or in the documents filed by the defendants. The defendants also admitted that T.S.No.84 belongs to them and T.S.No.83 belongs to the plaintiffs. Before the trial Court, the Commissioner was appointed and he filed a report and plan. As per Commissioner's report, there are some encroachments on the northern side of the properties and the Commissioner mentioned the measurements in centimetres instead of mentioning in the metres. Though Commissioner mentioned encroached portion, failed to mention in which survey number those encroachments are



available. The southern side portion of the suit property belongs to the plaintiffs and the northern side property belongs to the defendants. While so, the encroached portion have been mentioned as 0.55 metre that is 1 foot and 8 inch. The plaintiffs has not mentioned in the plaint as about the alleged encroached portion and only in the Commissioner's report the said encroached portion has been identified.

17. When there is a dispute between the parties in respect of the encroachment, the plaintiffs ought to have filed a suit for declaration and without declaration, the plaintiffs are not entitled to the relief of permanent injunction. Even according to the plaintiffs, the first prayer is to fix the boundaries, thereby the plaintiffs are not sure about their property in respect of the identity as well as the extent of the property. The trial Court placed the burden on the defendants to prove that the property belongs to them and that the defendants have not produced any blue print or any plan approved by the concerned authority for the construction of the property.

18. As per the plaint, the measurements of the property east-west is 42 feet and north-south is 39 feet but in the Commissioner's plan there is no mention about the north-south measurements and east-west measurements. It is admitted fact that without measuring the property situated in T.S.No.83, the measurements have been mentioned in the surveyor plan. There is no reference in Ex.C3 plan encroached portion from which point to which point. Therefore



the trial Court, only based on the Commissioner's report and plan and rough sketch filed by the surveyor decreed the suit. When the defendants specifically denied the rights of the plaintiffs in respect of the said Will, it is the duty of the plaintiffs to prove that the said property has been encroached and they ought to have sought for the relief of declaration. Without declaration, the plaintiffs cannot maintain the suit for the relief of mandatory injunction and for permanent injunction in respect of the disputed title.

19. The above said aspects have not been considered by the trial Court. The defendants case is that, they purchased the property east-west 33 feet and north-south 20 feet. The Commissioner's plan as well as the plan submitted by the surveyor did not reveal the exact measurement of the property in T.S.No.84. The Court below have fastened the burden on the side of the defendants and the same is erroneous and therefore, the plaintiffs failed to prove their case and are not entitled to the relief.

20. As far as substantial questions of law No.I, whether the courts below erred in decreeing the suit on the basis of Will dated 25.08.1943, particularly when the plaintiffs have miserably failed to prove their claim by proving the Will under Section 63 of the Indian Succession Act r/w Section 68 of the Indian Evidence Act is concerned, the plaintiffs relied upon Will dated 25.08.1943, but there is no mention about the attesting witnesses, whether they are alive or not and when the plaintiffs have not taken any steps to examine the attesting



witnesses and in the absence of the attesting witnesses, if they are not alive, then they have to examine witnesses to prove the signature of the testator and the attesting witnesses under Sections 68 and 69 of the Evidence Act, 1872. The plaintiffs have not taken any steps to prove the alleged Will. It is true that the said Will is a registered document, but, however, registered document has not been produced from the proper custody and only produced the certified copy of the Will. Therefore, Section 90 of the Evidence Act is not applicable to this case and thereby, the plaintiffs have miserably failed to prove their claim in accordance with Section 63 of the Indian Succession Act r/w Section 68 of the Indian Evidence Act. Thus, this substantial question of law is answered.

21. Substantial question of law No.II, Whether the Courts below committed an error in arriving at a conclusion for decreeing the suit of the present nature simply on the basis of the Commissioner's report and plan marked as Ex.C1 to Ex.C3 in the absence of any other oral or documentary evidences in support of the plaintiffs's claim?

The Courts below arrived at a conclusion for decreeing the suit on the basis of the Commissioner's report and plan marked as Ex.C1 to Ex.C3 and there is no oral or documentary evidences in support of the plaintiffs' claim and the plaintiffs' who filed the suit have to prove their case with sufficient documents but have not produced any documents. Particularly the plaintiffs claim is that the disputed wall belongs to them and the defendants attempted to encroach



their property. Whereas, the Commissioner's report and plan shows that already the wall was constructed and the defendants purchased the property through sale deed. Therefore, plaintiffs ought to have sought for declaration of disputed property and without declaration, the suit cannot be maintained and the Courts below have only relied upon the Commissioner's report and plan marked as Ex.C1 to Ex.C3. Therefore, the Courts below committed an error in arriving at a conclusion for decreeing the suit simply based on the Commissioner's report and plan without any oral or document evidences. Thus, this substantial question of law is answered.

22. Substantial question of law No.III, whether the Courts below erred in wrongly placing the burden of proof on the defendants, in the absence of any title deeds for the plaintiffs to discard the title of the defendants under Ex.B1 to Ex.B3?

The Courts below have placed the burden of proof on the defendants that they failed to prove the construction by way of producing the plan and other documents. It is a well settled law that the plaintiffs' who filed the suit claiming right over the property through Will have to prove the case but they failed to prove the Will and therefore further have not produced any documents to show their possession and peaceful enjoyment and they are the absolute owner of the property. Per contra, defendants filed the documents to prove their title and in the absence of any title deed in favour of the plaintiffs, the Courts wrongly



placed the burden of proof on the defendants. Therefore, the Courts below failed to consider the title of the defendants under Ex.B1 to Ex.B3. Therefore in view of the said discussions this Court is of the opinion that, the Courts below wrongly placed the burden of proof on the defendants, in the absence of title deeds in the favour of the plaintiffs by discarding the title of the defendants under Ex.B1 to Ex.B3. Thus, this substantial question of law is answered.

23. In view of the above said discussions made supra, the trial Court placed the burden of proof on the defendants and committed an error in arriving a conclusion for decreeing the suit relying upon Ex.C1 to Ex.C3 and plaintiffs miserably failed to prove the Will in the manner known to law and the plaintiffs also failed to seek declaration in respect of the property and without seeking declaration, they filed the suit for mandatory injunction and for permanent injunction. Therefore, the suit is not maintainable.

24. Therefore, the decree and judgment of the first appellate Court dated 25.10.2013 made in A.S.No.12 of 2012 confirming the judgment and decree of the trial Court dated 18.11.2011 is liable to be set aside and the suit in O.S.No.234 of 2009 is to be dismissed.

25. In the result, this second appeal is allowed and the decree and judgment passed by the trial Court by decreeing the suit and confirmed by the first appellate Court in A.S.No.12 of 2012 through judgment and decree dated



25.10.2013 are set aside and the suit in O.S.No.234 of 2009 is dismissed. There shall be no order as to costs.

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25-11-2025

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

1. The Sub Court, Bhavani
2. The First Additional District Munsif Court,
Bhavani.



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P.DHANABAL J.

mpl

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