



SA No. 1440 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 03-06-2025

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal No. 1440 of 2013
and
CMP.No.13616 of 2022

S. Gnanasekar (Died)
1. G. Kalaiselvi
2. G. Sangma Chandran
3. G. Sudarshan

.. Appellants

Versus

1. A.M. Ramakrishnappa
2. Jayamma
3. Malleesh

.. Respondents

(Cause title accepted vide orders of Court dated 16.09.2013 made in M.P.No.1 of 2013 in S.A.SR.No.61069 of 2013 by RSRJ, dated 16.09.2013)

Second Appeal is filed under Section 100 of C.P.C., to set aside the Judgment and decree dated 31.07.2012 made in A.S. No. 10 of 2011 on the file of the Subordinate Judge, Hosur reversing the Judgment and Decree dated 22.10.2010 made in O.S. No. 163 of 2001 on the file of the learned District Munsif, Hosur.

For Appellants	:	Mr. J. Nandagopal
For Respondents	:	Mr. N.C. Thirumalai Balaji for Mr. P. Subba Reddy

JUDGMENT



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The deceased Gnanasekar, Son of Sangappa Chetty has filed the suit in O.S. No. 163 of 2001 before the learned District Munsif, Hosur against the Respondents/Defendants herein for the relief of declaration to declare his right, title and interest in the suit schedule property and for a consequential injunction restraining the Defendants from interfering with his possession over the said property. By Judgment dated 22.10.2010, the suit was decreed against which an Appeal in A.S. No. 10 of 2011 was filed by the Respondents herein. The First Appellate Court, by the impugned judgment dated 31.07.2012 in A.S. No. 10 of 2011, reversed the judgment and decree passed by the trial Court. Aggrieved by the same, the present Second Appeal is filed.

2. It is seen from the records that after the first Appeal was allowed by the First Appellate Court on 31.07.2012, on 17.11.2012, the sole Plaintiff Gnanasekaran died. Therefore, his legal heirs have come up with the present Second Appeal.

3. For the sake of convenience, the parties shall be referred to as 'Plaintiff' and 'Defendants' as has been referred to in the suit.

4. The Plaintiff had filed the suit in O.S. No. 163 of 2001 by contending that he is the absolute owner of the property described in the suit.

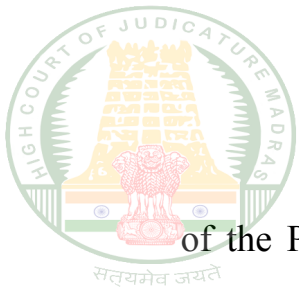


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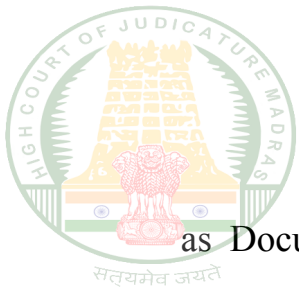
It is further stated that the first Defendant owns his house on the Western side of the suit property. It is also stated that the second Defendant is the wife of the first Defendant and the third Defendant is his son. The Plaint further proceeds to state that on 03.10.1929, the father of the Plaintiff, Sangappa Chetty purchased the suit property for a valuable sale consideration and from that date onwards he was in possession and enjoyment of the property. It is also stated that the suit property in Survey Numbers 1106/7 and 1106/8 in Hosur Village was allotted to his share in the year 1990, when a partition took place among the family members of the Plaintiff. According to the Plaintiff, he mutated the revenue records and obtained patta in his name. The Plaintiff also put up a compound wall on the Western side of his property 20 years back and was in peaceful possession and enjoyment of the property as an absolute owner. While so, during the third week of May 2001, the Defendants made a false propaganda in the Village that they have a right over the said property of the Plaintiff and even attempted to construct a building over the compound wall. It is also stated that the Defendants have also attempted to trespass into the property of the Plaintiff, but it was prevented by the Plaintiff. It is in those circumstances, the Plaintiff has instituted the suit.

5. On notice, the first Defendant filed a written statement contending *inter alia* that the Defendant does not know that the father of the Plaintiff has purchased the suit property and that a family partition took place in the family



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of the Plaintiff, whereby the suit property was allotted to the Plaintiff. It is further stated that the Plaintiff has to prove that there was a partition in his family during which the suit property was allotted to him. It is further stated that there is no compound wall at all on the Western side of the property. The Defendants have kept the Eastern side of their property vacant for ventilation and for carrying out repairs and white washing. The vacant land on the Eastern side of their property – Western side of the property of the Plaintiff, belongs to the Defendants and the Plaintiff cannot make any claim over it. After filing the suit, whimsically, the Plaintiff had put a door on the Western side of his property in order to make a claim over the suit property that it belongs to him. The Defendants have lodged a Police complaint against the Plaintiff before the Hosur Police Station. The Plaintiff was called for an enquiry and he was warned not to interfere with the peaceful possession of the Defendants in the vacant land on their Eastern side. There is no compound wall in the suit property, as claimed. There is a lane left by the Defendants on the Eastern side of their house to make repairs to their property. It is also stated that the suit property originally owned by Thukkaram, son of Chinna Mallari Rao who derived a title to the property through a registered partition deed registered as Document No. 4442 of 1975 on the file of Sub-Registrar, Hosur. After the death of Thukkaram, his son T.Narayanan and daughter Gayathri have sold one item of property to the first Defendant through a registered sale deed registered



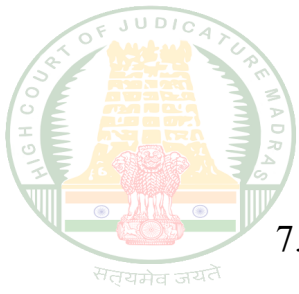
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as Document No. 2990 of 1994 on the file of Sub-Registrar, Hosur. The

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Eastern side of the portion of the first Defendant's property was sold to one A.V. Jayalakshmi, daughter of Late. Venkataramana Chari through a registered sale deed registered as Document No. 2991 of 1994 on the file of Sub-Registrar, Hosur. Subsequently, the said Jayalakshmi sold the property to one S. Gouramma, Wife of B.V. Veerabadiran through a registered sale deed registered as Document No. 237 of 1995 on the file of Sub-Registrar, Hosur. The said Gouramma in turn sold the property to the first Defendant under a sale deed registered as Document No. 640 of 2001 on the file of the Sub Registrar, Hosur. From the date of such purchase, the first Defendant is in peaceful possession of the property. The Plaintiff has no manner of right, title and interest in the property and therefore, he prayed for dismissal of the suit.

6. The first Defendant has filed an additional written statement contending among other things that the Plaintiff's brother S. Rasappa has filed a suit in O.S. No. 220 of 1989 on the file of Subordinate Judge, Krishnagiri and it ended in compromise. The "B" Schedule property in the said compromise decree was allotted to the Plaintiff. In the said compromise decree, nowhere, on the Western side to the Plaintiff's house, the suit property is shown.



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7. Before the trial Court, the Plaintiff examined himself as P.W-1 apart from four witnesses as P.W-2 to P.W-5. Ex.A-1 to Ex.A-3 documents were marked by the Plaintiff. On behalf of the Defendants, the first Defendant examined himself as D.W-1 along with two other witnesses as D.W-2 and D.W-3 and marked Ex.B-1 to Ex.B-36. The trial Court appointed an Advocate Commissioner, whose sketch and report have been marked as Ex.C-1 and Ex.C-2 respectively. The trial Court also sought for the revenue records from the Revenue Department and the sketch in respect of the land in Survey No. 1106 was marked as Ex. X-1 and the survey field register was marked as Ex.X-2.

8. The trial Court, on appreciation of the oral and documentary evidence, decreed the suit on the ground that as per Ex.A-1 the sale deed dated 03.10.1929 purchased by the Plaintiff's father, the suit property belongs to Plaintiff. Further, patta granted in favour of the Plaintiff in Ex.A-3 and the Commissioner's report also supports the case of the Plaintiff. Accordingly, the trial Court decreed the suit filed by the Plaintiff.

9. On appeal, the First Appellate Court reversed the judgment and decree passed by the trial court on the ground that in the final decree passed in O.S. No. 220 of 1989, marked as Ex.B-12, a plan is attached in which there is



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no reference made to any vacant site on the West of the house of Plaintiff.

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Therefore, the claim of the Plaintiff is not supported by any documentary evidence. The principle, “boundaries prevail over the extent”, appears to be relied upon by the trial Court for decreeing the suit, but when there are clear and precise extents given to the properties of the parties, relying on the general principle of boundaries prevailing over the extent does not arise. Accordingly, the First Appellate Court dismissed the suit by allowing the appeal preferred by the Defendants.

10. The learned Counsel for the Appellants submitted that the Suit property was allotted to the Plaintiff in a Suit for partition among the family members of the Plaintiff in O.S. No. 220 of 1989. The Suit ended in a compromise decree and based on the compromise decree, the Plaintiff is in enjoyment of the Suit property. The learned Counsel for the Appellants invited the attention of this Court to the plaint averments in O.S. No. 163 of 2001, the averments in the written statement filed by the Defendants and the additional written statement filed by the Defendants and also to the discussion of evidence by the learned District Munsif, Hosur in Judgment in O.S.No.163 of 2001 dated 22.10.2010. The learned Counsel for the Appellants also placed reliance on the Advocate Commissioner’s report marked as Ex.C-1 and Ex.C-2 in O.S. No. 163 of 2001. The learned District Munsif had in Judgment referred to the



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Advocate Commissioner's report and also relied on the evidence of Plaintiff as well as Defendants to grant a decree declaring the title of the Suit properties to the Plaintiff and consequential injunction restraining the Defendants from interfering with the peaceful possession and enjoyment of the Suit property. However, the First Appellate Court by Judgment dated 31.07.2012 on re-appreciation of evidence negated the finding of the learned District Munsif thereby dismissed the Suit and allowed the Appeal Suit preferred by the Defendants.

11. The learned Counsel for the Appellants invited the attention of this Court to the discussion of evidence by the learned District Munsif, Hosur and the very same discussion of evidence by the learned First Appellate Court Judge. It is the contention of the learned Counsel for the Appellants that the learned First Appellate Court Judge relied on the decree granted in an earlier Suit in O.S. No. 220 of 1989 thereby misdirected himself and had reversed the finding of the learned District Munsif. The substantial questions of law are to be answered in favour of the Appellants.

12. Per contra, the learned Counsel for the Respondents invited the attention of this Court to the discussion of evidence by the learned District Munsif, Hosur in O.S. No. 163 of 2001 and the report of the Advocate



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Commissioner under Ex.C-1 and Ex.C-2. The learned Counsel for the Respondents/Defendants also invited the attention of this Court to the evidence of D.W-2 in O.S. No. 163 of 2001/Rasappa who is none other than the brother of the Plaintiff herein and who filed the suit in O.S. No. 220 of 1989. It is his specific evidence that there is no lane beyond the Plaintiff's property on the Western portion. Also, the learned Counsel for the Respondents submitted that the Plaintiff claims title to the property from the year 1929 when his father purchased the property. Whereas the Defendants' predecessors in title were in enjoyment prior to 1929. The first Defendant purchased the property through Ex.B-3 to Ex.B-6. After partition between the brothers of the first Defendant's predecessor in title, Tukaram, who in addition to the extent allotted to him, purchased one other co-sharer's share. After the death of Tukaram, his legal heirs had sold the property allotted to their share to one Jayalakshmi. From Jayalakshmi the same property was sold to Gouramma. The said property was purchased by the first Defendant from Gouramma. Also, the first Defendant purchased some extent of property from the Legal Representatives of Thukkaram in which specific boundaries had been mentioned.

13. It is the contention of the learned Counsel for the Respondents that prior to the Defendants purchasing the property, the property was enjoyed by one Gouramma, Jayalakshmi and before her, their predecessors T. Narayana



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and Gayathri. The Plaintiff had not objected to the same but only after the

purchase of the Defendants, after several years, he raised a dispute as though he has title to the property on the Western side. Further, the learned Counsel for the Respondents stated that the Plaintiff's house is 4 feet higher above the ground level from the property of the Defendants. The Defendants' property is in ground level. It is the further contention of the learned Counsel for the Respondents herein that while filing the Suit, in the Plaint, the Plaintiff claims that there is a compound wall on the Western side of the Plaintiff's property over which the Defendants alleged to have put up a building. It is the specific case of the Defendants/Respondents that no such compound wall exists, as alleged by the Plaintiff. In the cross-examination of P.W-1, he admitted that there is no compound wall. What was pleaded by the Plaintiff in the Plaint is different from what was stated in his evidence. Therefore, the Judgment of the learned District Munsif is perverse. The First Appellate Court Judge had on re-appreciation of entire materials available, such as the evidence of P.W-1 to P.W-5, the evidence of D.W-1 to D.W-3 and the documents under Ex.A-1 to Ex.A-3, Ex.B-1 to Ex.B-36 and Ex.C-1 and Ex.C-2 set aside the decree on the strength of the earlier decree for partition. The query raised by the First Appellate Court Judge is justified as the Plaintiff had not objected to when the property was in enjoyment of the predecessor in title to the Defendants. Therefore, the learned Counsel for the Respondents prayed to dismiss this



Second Appeal.

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14. At the time of admission of the Second Appeal, this Court framed the following substantial questions of law:

“(a) Whether the lower Appellate Court is right in dismissing the Suit when the Plaintiff established the boundaries for the Suit property and proved the principle that boundaries will prevail over the extent?”

(b) Whether the lower Appellate Court is right in reversing the Judgment and decree when the trial Court has rightly appreciated the oral and documentary evidence and determined the issue in a right manner?

(c) Whether the lower Appellate Court is right in re-appreciating the documentary evidence in respect of documents in Exs.A-1 and B-1 and compared the same with Exs.C-1 and c1 and determined the issue in a different manner and dismissed the Suit?”

15. Heard the learned Counsel for both sides and perused the materials placed on record.

16. Perused the Complaint, Written Statement in O.S. No. 163 of 2001 and the documents filed in the suit. The Plaintiff has filed the suit for declaration of his title to the suit property and for consequential injunction. According to the Plaintiff, his house is facing East and he is the owner of the said house by virtue of Ex.A-1 sale deed of the year 1929 purchased by his father and allotted



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to his share vide partition of the year 1990 between himself and the other legal heirs of his deceased father. That he is in possession and enjoyment of the said house since the said partition. To the West of his house is the Defendants' house. According to the Plaintiff, the vacant land in between the Plaintiff's house and the Defendants' house is the suit property. The Plaintiff's contention is that he is in possession and enjoyment of the suit property by constructing a compound wall and that the Defendant attempted to interfere in his possession by attempting to construct a wall over the compound wall and that the same was thwarted by the Plaintiff. According to Plaintiff, the suit property is a vacant land measuring North-South 28 feet and East to West 6 feet.

17. The Plaintiff has filed the above suit and it is the bounden duty of the Plaintiff to prove that he has right, title and interest over the suit property and that he is in possession and enjoyment of the suit property. To prove his title, the Plaintiff produced Ex.A-1 sale deed of the year 1929 whereby the Plaintiff's father purchased property measuring 18 Gajam (54 feet, 1 Gajam = 3 feet) East to West and 16 Gajam (48 feet) North to South bounded on the East by path, West by Kumarachetty Gandoji Rao's house, on the North by vacant land and on the South by Yadha Muniappa's house.

18. Though the Plaintiff pleads that by way of partition, he was



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allotted the house as his share, he did not choose to file any document in support thereof. Whereas on the other hand, the Defendants filed Ex.B-12 a compromise decree passed by the learned Sub Judge, Krishnagiri in O.S.No.220 of 1989 wherein a partition suit was filed by the Plaintiff's brother against the Plaintiff and the other legal heirs of deceased Sangappa Chetty. In the said suit, a compromise was arrived at between the parties and a decree was passed to that effect. According to the said decree, the Plaintiff was allotted properties mentioned in "B" schedule. In the said "B" schedule apart from the properties consisting of agricultural lands, one country tiled house was allotted to the share of the Plaintiff measuring 24 feet East to West and 8¼ feet North to South. Thus the Plaintiff has right and title over the country tiled house measuring 24 feet East to West and 8 ¼ feet North to South and there is no mention of any vacant land adjacent to the house. Whereas as per Commissioner's report, he is in possession of house measuring 6.8 metre North to South on the Eastern side, 7.4 metre on the Western side, 16.6 metre East to West on the Northern side and 15.6 metre on the Southern side. Thus as per the Commissioner's report, the Plaintiff is in possession of approximately 51 feet East to West and 24 feet North to South. The Plaintiff has not come forward with any explanation or filed any documents to show as to how he came to be in possession of 51 feet East to West and 24 feet North to South when he was merely allotted 24 feet East to West and 8 ¼ feet as per the



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partition among the family members. The learned trial Judge completely ignored the family partition and took into account the parent deed of the year 1929 and has held that the Plaintiff is now in possession of only 51 feet East to West, 3 feet lesser than as per the original document and is therefore, entitled to the suit property. The said reasoning is perverse. Further, there is no whisper of any vacant land on the Western side of the house either in the parent sale deed or in the partition decree. In such a case, how the Plaintiff is entitled to the suit property has not been answered by the Plaintiff. Further, the learned trial Judge taking into account the patta Ex.A-3 granted in favour of the Plaintiff erroneously held that it also includes the suit property. Further as per the Commissioner's report, the suit property measures 1 metre (3.28 feet) East to West and 7.3 metre (23.9 feet) North to South on the Western side and 7.4 metres (24.27 feet) on the Eastern side approximately 24 feet. Whereas according to Plaintiff, the suit property measures 6 feet East to West and 28 feet North to South. If the Plaintiff's contention is to be believed that he had been in possession and enjoyment of the suit property, he would have given the correct and exact extent. Thus, it can be presumed that the Plaintiff is not the owner of the suit property and had not at all been in possession and enjoyment of the suit property.

19. On consideration of the deposition of the Plaintiff as P.W-1, he had



clearly stated that in the schedule of property, he had given the old Survey Numbers and he had also admitted that he had not amended the Plaint by furnishing the present Town Survey numbers. Also, as rightly pointed out by the learned Counsel for the Defendants P.W-1 in his cross-examination admitted that there is no compound wall in between the Plaintiff and the Defendants property. The Plaintiff's house is 4 ft. above the ground level from the Defendants' house and vacant site.

20. When the Plaintiff claims title to the property, based on the sale deed of the year 1929, the same property was subjected to partition in the year 1990 in view of the suit filed by the brother of the Plaintiff viz., Rasappa, a duty is cast upon the Plaintiff to prove his claim through specific pleadings and evidence, the correct and exact extent of land in his possession and enjoyment, and the documents of title evidencing his ownership. Whereas on the contrary in the present case, the Plaintiff had not given any specific particulars about the specific extent allotted to his share or whether the entire property purchased by his father was allotted to him as his share and whether suit property also forms part of the same. Rasappa was examined as D.W-2 before the trial Court where he had clearly admitted that there was no land or vacant space on the Western portion of the house that was allotted to the Plaintiff. The Western boundary was identified as Kumarachetty Gandoji Rao's house which property is in the



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enjoyment of the Defendants herein. The Defendants claim title through sale

deed Document Nos.4442/75 and 4443/75. After Thukkaram, his son viz.,

Narayanan and his daughter viz., Gayathri sold some extent of property to the

first Defendant herein and some extent of the property was sold to one

Jayalakshmi. The said Jayalakshmi sold to Gouramma and from Gouramma it

was purchased by the first Defendant. The same had been marked as Ex.B-1 to

Ex.B-6 before the trial court. The Advocate Commissioner's report had not

supported the case of the Plaintiff that there was a compound wall in the

Plaintiff's Western boundary and the Defendants' Eastern boundary. The

learned Sub Judge, Hosur in his Judgment had found out that the Plaintiff had

not marked any documents in support of his claim regarding the declaration of

title of the suit property measuring 6 x 28 ft. The Plaintiff, contrary to the

pleadings in the plaint, in the cross-examination admitted that there was no

compound wall on the Western side of his property. On the date of his

examination there was no compound wall and he had admitted the physical

feature as suggested by the learned Counsel for the Defendants. It is not the

case of the Plaintiff that the compound wall got damaged or was demolished.

Contrary to the pleadings it is seen from the Plaintiff's evidence that there is no

trace of any compound wall. Therefore, the discussion of evidence by the

learned District Munsif picking holes in the Defendants' evidence and granting

a decree in favour of the Plaintiff was rightly reversed by the learned Sub



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Judge stating that the Plaintiff had to stand or fall on the strength of his own evidence. On perusal of the Judgment of the learned District Munsif and the learned First Appellate Judge and on perusal of the evidence before the trial Court, the Judgment of the learned District Munsif cannot be considered as well-reasoned Judgment. On re-appreciation of the evidence before the learned District Munsif in O.S.No.163 of 2001, the learned Sub Judge compared the decree granted in O.S. No. 220 of 1989 wherein the Plaintiff was the first Defendant. The property allotted to the Plaintiff in O.S. No. 220 of 1989 as Item “B” is shown as country tiled house measuring North to South 24 feet and East to West 8¼ feet. Under those circumstances, the documents filed by the Defendants in support of his contention were found cogent whereas the Plaintiff failed to prove his contention through the documents under Ex.A-1 to Ex.A-3. Above all, the Commissioner's report was fair to the Court. The Commissioner's report stated about the passage available between the Plaintiff and the Defendants and it only support the case of the Defendants.

21. As rightly pointed out by the learned Counsel for the Defendants, when the predecessor in title of the Defendants were in possession of the property in dispute, the Plaintiff did not agitate his right regarding the Western boundary. The Defendants herein purchased the property from the predecessor in title of the Defendants under Ex.B-1 to Ex.B-5, sale deeds and disproved the



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claim of the Plaintiff. Further, the Plaintiff himself has let in oral evidence where he had clearly admitted that there was no property beyond the Western part of the Plaintiff's allotted share.

22. In the light of the discussion in paragraphs 17 to 21 above, the substantial questions of law are answered as follows:

Substantial Question of Law-1: The lower Appellate Court is right in dismissing the Suit when the Plaintiff failed to establish the boundaries for the Suit property and failed to prove the principle that boundaries will prevail over the extent. Accordingly, the substantial question of law-1 is answered in favour of the Defendants and against the Plaintiff.

Substantial Question of Law-2: The lower Appellate Court is right in reversing the Judgment and decree when the trial Court has not rightly appreciated the oral and documentary evidence and determined the issue in a right manner. Accordingly, the substantial question of law-2 is answered in favour of the Defendants and against the Plaintiff.

Substantial Question of Law-3: The lower Appellate Court is right in re-appreciating the documentary evidence in respect of documents in Ex.A-1 and Ex.B-1 and compared the same with Ex.C-1 and Ex.C-2 and determined



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the issue in a different manner and dismissed the Suit. Accordingly, the substantial question of law-3 is also answered in favour of the Defendants and against the Plaintiff.

In the result, **the Second Appeal is dismissed as having no merits.** The Judgment and decree dated 31.07.2012 made in A.S. No. 10 of 2011 on the file of the Subordinate Judge, Hosur reversing the Judgment and Decree dated 22.10.2010 made in O.S. No. 163 of 2001 on the file of the learned District Munsif, Hosur, is confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

03-06-2025

dh

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation : Yes/No



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To

1. The Subordinate Judge,
Hosur.
2. The District Munsif,
Hosur.
3. The Section Officer,
Vernacular Records Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Judgment made in
S.A.No.1440 of 2013

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