



S.A.Nos.974 and 975 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 15.12.2025

CORAM:

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

**S.A.Nos.974 and 975 of 2015 &
M.P.Nos. 1 and 1 of 2015**

R.Sagunthala ... Appellant in both the Appeals

Vs

1. Palanisamy ...1st Respondent in S.A.No.974 of
2015 and respondent in S.A.
No.975 of 2015

2. Indhirani

3. The Tahsildar
Sathyamangalam Taluk,
Erode District

4. The District Collector,
Erode District

... 2 to 4 Respondents in S.A.
No.974 of 2015

Prayer in S.A.No.974 of 2015

The Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree passed in A.S.No.31 of 2014 by the learned Sub Judge, Sathyamangalam dated 15.07.2015 reversing the Judgment and decree passed by the learned Principal District Munsif, Sathyamangalam in O.S.No.134 of 2011 dated 27.08.2013 and to allow this Second Appeal.



S.A.Nos.974 and 975 of 2015

Prayer in S.A.No.975 of 2015

The Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree passed in A.S.No.32 of 2014 by the learned Sub Judge, Sathyamangalam dated 15.07.2015 reversing the Judgment and decree passed by the learned Principal District Munsif, Sathyamangalam in O.S.No.281 of 2011 dated 27.08.2013 and to allow this Second Appeal.

S.A.No.974 of 2015

For Appellant : Mr.S.Parthasarathy
Senior Counsel for
Mr.V.S.Kesavan

For Respondent : Mr.M.Roshan Atiq

S.A.No.975 of 2015

For Appellant : Mr.S.Parthasarathy
Senior Counsel for
Mr.V.S.Kesavan

For Respondents : Mr.M.Roshan Atiq for R1 and R2
Mrs.P.Vijaya Devi for R3 & R4
Government Advocate

COMMON JUDGMENT

These Second Appeals have been preferred as against the Common Judgment and Decrees passed by the Sub Judge, Sathyamangalam in A.S.Nos.31 and 32 of 2014 dated 15.07.2015.



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2. The appellant in both the Second Appeals has filed a suit in O.S.No.134 of 2011 as against the respondent in S.A.No.975 of 2015 and respondents 1 to 4 in S.A.No.974 of 2015 for the relief of declaration and permanent injunction and the respondent in S.A.No.975 of 2015 and 1st respondent in S.A.No.974 of 2015 has filed the suit against the appellant herein before the trial court in O.S.No.281 of 2011 for the relief of permanent injunction in respect of the suit property therein. The trial court has decreed the suit filed by the appellant [O.S.No.134 of 2011] and dismissed the suit filed by the 1st respondent [O.S.No.281 of 2011] herein on 27.08.2013. Aggrieved by the common judgment and decree, the 1st respondent in S.A.No.974 of 2015 and respondent in S.A.No.975 of 2015 herein has preferred the first appeals before the Sub Court, Sathyamangalam in A.S.No.31 and 32 of 2014. The First Appellate Court reversed the Judgment and Decree passed by the trial court and allowed both the appeals and the suit filed by the appellant was dismissed and the suit filed by the 1st respondent in these appeals was decreed. Aggrieved by the said common judgment and decrees, the present Second Appeals have been preferred by the appellant.



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3. The brief facts of the case in O.S.No.134 of 2011 are as follows:-

The suit item nos.1 and 2 of the properties were purchased by the appellant / plaintiff through sale deeds dated 25.08.2000 and 02.03.2001 respectively. The respondents 1 and 2 / defendants 1 and 2 are husband and wife having their property on the northern side of the suit property. The appellant / plaintiff had constructed a house over the suit property after obtaining proper permission from the local authorities and plan approval from Executive Officer, Puliampatty Town Panchayat as per approval dated 16.03.2001. After construction of the house in the suit property, the appellant / plaintiff obtained electricity service connection and water tap service connection for the said house and the appellant / plaintiff and her family are residing in the said house and they are in peaceful possession and enjoyment of the property. The defendants 1 & 2 / respondents 1 & 2 in S.A.No.974 of 2015 having property on the northern side of the suit property, one month ago, when the defendants attempted to construct the compound wall in the suit property, the same was thwarted by the plaintiff and the plaintiff demanded the defendants to measure the property as per the sale deeds, but the defendants did not agree for the same, while so, on 17.04.2011, when the plaintiff and her family were in out of station to attend relative's family function, the respondents 1 and 2 / defendants 1



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and 2 illegally tried to enter into the suit property and put up illegal construction and the same was thwarted by the plaintiff. The defendants 1 and 2 are politically influential persons and would do anything and they are attempting to encroach the property and therefore, the plaintiff filed the suit for permanent injunction.

4. The brief averments of the written statement filed by the defendants 1 and 2 in O.S.No.134 of 2011 are as follows:-

The averments made in the plaint that the properties were purchased by the plaintiff and obtained permission for construction and constructed a house and when she was out of station, the defendants 1 and 2 attempted to encroach the properties are all denied as false. The defendants 1 and 2 along with written statement have filed the rough sketch and as per the rough sketch, on the western side, already the plaintiff constructed a compound wall and there is no compound wall situated between the land of plaintiff and the defendants 1 and 2. The plaint schedule properties situated in S.F.No.59/43 and the northern side property situated in S.F.No.59/42, the said property situated in S.F.No.59/42 to an extent 0.04.0 hectare belonged to P.S.Somasundaram through sale deed dated 07.07.1978 and the 1st defendant purchased property from the said P.S.Somasundaram to an extent of 2244 Sq.ft., through sale deed dated 04.01.1995 and in the



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said deed, the suit property was mentioned as southern boundary. The

1st defendant is in possession and enjoyment of the property purchased by him and also he had constructed the house and he is paying house tax, water tax and other taxes to the Government. The 1st defendant constructed two houses in S.F.No.59/42 and in the month of March, 2011, he demolished the old house and tried to construct a new house and he had dug pits for foundations and the plaintiff has no right over the property, where the 1st defendant attempted to make construction and southern boundary has been put up through a fence. The plaintiff demanded to sell 5x32 feet land to him in S.F.No.59/42, which belongs to the defendants 1 & 2 and the same was denied by the defendants 1 and 2, therefore, there is an enmity between the plaintiff and the defendants 1 and 2 and now, only to restrict the defendants 1 and 2 from constructing the house, the appellant / plaintiff filed the suit, and hence the suit is liable to be dismissed.

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

1. Is it true that the defendants attempted to encroach the property of the plaintiff by way of construction?



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2. Whether the plaintiff is entitled to decree for permanent injunction in respect of his possession?

3. Whether the plaintiff is entitled to relief of permanent injunction in respect of construction of building?

4. To what other reliefs the plaintiff is entitled to?

6. The brief averments of the plaint in O.S.No.281 of 2011:-

The suit property belongs to the plaintiff and the suit property is house site with vacant land. The suit property originally belonged to one P.S.Somsundararam through sale deed dated 07.07.1978. The plaintiff purchased the property from the said Somasundaram to an extent of 2244 Sq.ft., through sale deed dated 04.01.1995. Thereafter, he constructed two houses in the said property. The defendant has no right over the property and with false averments, she has filed the suit and the suit averments in O.S.No.134 of 2011 are totally denied by the plaintiff and on 09.09.2011, the defendant attempted to tress pass into the property and restrained the plaintiff from constructing a house, therefore, the plaintiff filed the suit.



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7. The brief averments of the written statement filed by the defendant in O.S.No.281 of 2011 are as follows :-

The defendant denies the entire allegations made by the plaintiff in the plaint and the southern portion was a vacant site and the plaintiff is now trying to construct a house on southern side of the suit property encroaching into the defendant's house site. The plaintiff's vendor, namely, P.S.Somasundaram purchased the property 100 links by 100 links measuring 10 cents with specific four boundaries through sale deed dated 07.07.1978. At that time, there was no re-survey and old survey S.F.No.146 and thereafter, it was subdivided as S.F.No.59/42. On 04.01.1995, the said P.S.Somasundaram had sold a portion of the property measuring 2244 sq.ft., with specific boundaries to the plaintiff. The defendant purchased the property measuring 2178 sq.ft., from the legal heirs of the deceased P.V.Ramasamy, who had purchased the property by virtue of the sale deed dated 26.09.1962. Further, the defendant, Sagunthala purchased the property in S.F.No.59/43-A and 198 Sq.Ft., through sale deed dated 02.03.2001. The plaintiff cannot claim his title to the suit property and the boundaries will prevail over the measurement, therefore, the suit is liable to be dismissed.



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8. Based on the above said pleadings, on hearing both sides and

on perusing the records, the trial court has framed the following issues for trial:-

(I) Whether the plaintiff is in possession and enjoyment of the suit property?

(ii) Whether the plaintiff is entitled for permanent injunction as prayed for?

(iii) To what other reliefs the plaintiff is entitled to?

9. Before the trial court, joint trial was conducted and the suit in O.S.No.134 of 2011 was taken as main suit and the evidence was recorded in that suit. The said evidence was treated as evidence in O.S.No.281 of 2011. On the side of the plaintiffs, P.W.s 1 to 3 were examined and marked Exs.A.1 to A.13 and on the side of the defendants, D.Ws.1 to 3 were examined and marked Ex.B.1 to B.4 and Advocate Commissioner was appointed in both the suits and the Commissioner Reports were marked as Exhibits C1 to C6. After considering the evidences adduced on both sides, the trial court decreed the suit in O.S.No.134 of 2011 and dismissed the suit in O.S.No.281 of 2011.



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10. Aggrieved by the said common judgment and decrees, the plaintiff in O.S.No.281 of 2011 and defendants 1 and 2 in O.S.No.134 of 2011 have preferred appeals in A.S.Nos.31 and 32 of 2014 before the First Appellate Court on various grounds and the First Appellate Court framed the following points for determination:-

1. Whether the Judgment and Decree passed by the trial court in O.S.No.134 of 2011 is sustainable?

2. Whether the appeal in A.S.No.31 of 2014 is to be allowed or not?

3. Whether the Decree and Judgment passed by the trial court in O.S.No.281 of 2011 is sustainable?

4. Whether the appeal in A.S.No.32 of 2014 is liable to be allowed or not?

After hearing both sides and perusing the entire documents placed on record and the trial court judgments, the First Appellate Court decreed the suit in O.S.No.281 of 2011 and dismissed the suit in O.S.No.134 of 2011. Aggrieved by the said common Judgment and decrees, the present Second Appeals have been preferred by the appellant.

11. At the time of admitting the present Second Appeals, this Court, formulated the following substantial questions of law on 17.03.2022:-

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“a) Whether the lower Appellate Court was right in disallowing the relief sought for by the appellant only on the ground that the appellant has not sought for the reliefs of declaration of title and possession over the suit property?

b) Where the report of the learned Advocate Commissioner, which was relied upon by the lower Appellate Court, points out to digging of the property to put up a construction in the portion belonging to the appellant, can be constructed to be taking possession of the property belonging to the appellant and whether the appellant will not be entitled for the relief of bare injunction on the basis of the report of the learned Advocate Commissioner?

c) Whether the lower Appellate Court had assigned cogent reasons while reversing the findings of the trial court as mandated under Order XLI Rule 31 CPC?’

12. The learned counsel appearing for the appellant in both the appeals would submit as follows:-

(i) The appellant has purchased the first item of the suit property through the sale deed dated 25.08.2000 and the second item of the suit property was purchased by the appellant through sale deed dated 02.03.2001 and after purchase of the said properties, the appellant has been in possession and enjoyment of the suit properties and she also



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constructed a house after obtaining planning permission from the concerned authorities. While so, the respondent and 1st respondent in both the appeals, who is the adjacent land owner in the northern side of the first item of the suit property, attempted to encroach the property by way of putting up a construction and the same was thwarted by the appellant. In the absence of appellant in the locality, on 17.04.2011, the respondents 1 and 2 attempted to put up construction by digging pits. The 1st respondent / 1st defendant has purchased the property of 65 ½ feet north-south on both sides and on the southern side, east-west – 33 feet and on northern side, east-west – 35 1/2 feet, in total 2244 sq.ft., but now, the respondents 1 and 2 in both the appeals attempted to encroach the property beyond the 65 ½ feet. Therefore, the appellant / plaintiff filed the suit in O.S.No.134 of 2011 for permanent injunction.

(ii) The 1st respondent / 1st defendant filed the suit for permanent injunction as against the appellant in O.S.no.281 of 2011 for his property. In fact, an Advocate Commissioner was also appointed and the Advocate Commissioner categorically stated about the measurements and the northern boundary of the 1st respondent's property starts from the road and immediately adjacent to the road, drainage is situated and thereafter, the measurement was taken by the Commissioner from the boundary stone and 65 ½ feet was earmarked



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from the boundary stone. The remaining southern side property belonged to the appellant, but now, the 1st respondent is trying to encroach the property beyond 65 1/2 feet by trying to put up construction. Before the trial court an Advocate Commissioner was appointed in both the suits. The commissioner also filed a report and plan. The commissioner appointed in O.S.No.281 of 2011 has categorically stated about the survey stone and from the survey stone, he measured the property as per measurement of the sale deed in favour of the 1st respondent. Therefore, beyond that the 1st respondent has no right over the property. It is admitted by the 1st respondent that he purchased the property from one Somasundaram and the said Somasundaram purchased the property 100x100 links. The western side property was retained by the vendor of the 1st respondent / defendant and the eastern side was sold to the 1st defendant to an extent of north-south – 65 ½ feet, east – west on southern side – 33 feet, while so, the appellant constructed a compound wall between the property of Somasundaram and the appellant / plaintiff.

(iii) The 1st respondent / defendant cannot have any land beyond the said compound wall, but however, the commissioner report clearly shows that beyond the compound wall on the southern side, the 1st respondent encroached the property and dug pits for putting up a



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construction. The appellant was examined as P.W.1 and also other two witnesses were examined as P.Ws. 2 and 3 and also marked Exhibits A.1 to A.13 and the respondents have examined D.Ws.1 to 3 and marked Exs.B.1 to B.4. The commissioner reports and plans were marked as Exs.C.1 to C.6. Therefore, the plaintiff proved that she is in possession and enjoyment of the suit property on the southern side. The 1st respondent / 1st defendant attempted to encroach the property by digging pits in the plaintiff's property. Therefore, the trial court taking into consideration all these facts, has rightly decreed the suit filed by the appellant / plaintiff.

(iv) The 1st respondent also filed a suit in O.S.No.284 of 2011 for permanent injunction in respect of the property purchased by him. As per the measurements in the sale deeds purchased by the 1st respondent / defendant, he is only entitled to north-south 65 ½ feet on both the sides. But now he is claiming more than what he is entitled to, therefore, the trial court has dismissed the suit filed by the 1st respondent / defendant. However, the First Appellate Court without considering the evidences adduced by the appellant / plaintiff, erroneously reversed the common judgment and decree of the trial court and allowed the suit filed by the 1st respondent / defendant and dismissed the suit filed by the appellant. Therefore, both the appeals



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are liable to be allowed and the common judgment and decree of the First Appellate Court has to be set aside and the decree passed by the trial court has to be restored.

13. The learned counsel appearing for the 1st respondent would submit as follows:-

(i) The appellant has filed the suit in O.S.No.134 of 2011 for her property and the 1st respondent has filed the suit in O.S.No.281 of 2011 for his property. The 1st respondent has purchased the property from S.Somasundaram with specific four boundaries and specific extent. The appellant, filed the suit by admitting the possession of the respondent and without seeking relief of declaration and recovery of possession, the suit for mere bare injunction is not maintainable and the possession of the 1st respondent has been admitted by the appellant and thereby the trial court ought to have decreed the suit filed by the 1st respondent and dismissed the suit filed by the appellant, However, the First Appellate Court after appreciating the evidence in a proper perspective manner, reversed the Judgment and decree passed by the trial court and the suit filed by the appellant was dismissed and the suit filed by the respondent was decreed.

(ii) After purchasing the property, the 1st respondent constructed a house and now he demolished the house and attempted to construct



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the house within his boundary and already the compound wall was in existence and with that boundary only, the 1st respondent attempted to put up construction and the appellant is attempting to restrain the 1st respondent from putting up construction, therefore, he filed the suit. The trial court without considering the evidences adduced on both sides in a proper perspective manner, erroneously dismissed the suit filed by the 1st respondent and decreed the suit filed by the appellant, whereas the First Appellate Court apparently appreciated the evidence and dismissed the suit filed by the appellant and decreed the suit filed by the 1st respondent, therefore, the Second Appeals are liable to be dismissed.

14. Heard the learned counsel appearing on both sides and perused the documents placed on record.

15. In this case, it is admitted fact that the appellant filed the suit for the property in suit in S.No.59/43 and the first respondent in the present appeals has filed the suit for S.No.59/42 and the Survey Number 59/42 is situated on the northern side and survey number 59/43 is situated on the southern side. There is no dispute with regard to the extent of the property purchased by the appellant and the 1st respondent. Before the trial court, an Advocate Commissioner was



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appointed and the commissioner reports and plans have been marked in both the suits. According to the appellant, the 1st respondent attempted to encroach the property by putting up a construction and also trying to dig the pits in some portion of the appellant's property. The 1st respondent denied the alleged encroachment and stated that the said property belongs to him and the said pits are within the boundary of the 1st respondent, therefore, both the parties are claiming properties based on their sale deeds.

16. The appellant has produced the title deeds in her name and also constructed house after getting approval from the concerned authorities and also the produced property tax receipts, water tax receipts and electricity consumption charges receipts. The 1st respondent also produced the documents, copy of the sale deed in his favour and copy of the sale deed in the name of his vendor, property tax receipts and approved plan for construction of building. The commissioner reports and the plan have been marked as Exhibits C1 to C6. On a careful perusal of the commissioner report and plan filed in O.S.No.281 of 2011, they reveal that the property of the appellant is situated on the southern side and the property of the 1st respondent is situated on the northern side. The 1st respondent's property was measured on the northern side survey stone from the said survey stone,



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65 1/2 feet was measured and the same shows that the portion of the pits were dug on the appellant's property. Further, the Commissioner Report also reveals that the respondent dug the pits in some portion of the appellant's property. The 1st respondent is only entitled to an extent mentioned in his sale deed and from the northern boundary of the 1st respondent's property, he is only entitled to 65 1/2 feet towards north-south in eastern side and on the western side, 65 1/2 feet, beyond that the 1st respondent cannot claim rights over the property. Further, from the Commissioner report and plan, it is clear that the 1st respondent had dug pits beyond his measurements. Therefore, from the evidence it is clear that the 1st respondent attempted to encroach the property.

17. At this juncture, the learned counsel appearing for the 1st respondent would submit that the appellant herself admitted the possession of the 1st respondent and thereby the suit for bare injunction is not maintainable and she ought to have sought for the relief of declaration and recovery of possession of the property. It is an admitted fact that the property is now vacant site and the 1st respondent only dug pits and mere digging pits will not amount to possession of the property and as far as vacant site is concerned, possession follow over the title. Therefore, it is clear that the appellant is in possession and enjoyment of the property and she also produced the Exs.A.1 to A.13, thereby the



appellant clearly proved her case, therefore, she is entitled to the relief of permanent injunction.

18. As far as the case of the 1st respondent is concerned, he is also claiming rights through the sale deed and as per sale deed, he is entitled to north-south 65 1/2 feet on eastern and western side and beyond that he is not entitled to any land, but however, according to him, already he put up construction and the compound wall also situated and now he is trying to put up construction on the compound wall, therefore, he is in possession and enjoyment of the property and without seeking declaration and recovery of possession, the suit is not maintainable. As per the Commissioner Report, old construction was not on the south end of the pit. The Commissioner report filed in O.S.No.134 of 2011 clearly shows that beyond the old compound wall, the pits were dug on southern side. Therefore, the available evidence clearly shows that the 1st respondent is attempting to encroach the property and the 1st respondent failed to prove his case. Merely because the appellant filed the suit for permanent injunction stating that the 1st respondent had dug the pits in his land, it does not amount to admission of possession of the 1st respondent.



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19. Therefore, the trial court, after analysing evidences and the commissioner's report and plan had come to a conclusion that according to the measurement on the eastern portion, the 1st defendant, viz., Palanisamy is attempting to put up construction, whereas on the western portion of the plaintiff's property, he constructed area of Sakunthala's property measuring 35 3/4 feet only in the disputed portion, which is on the eastern side in between the plaintiff and defendant's property, there had been an encroachment and it is clear from the commissioner report, Ex.C.4, therefore, considering all these facts and evidences, this Court holds that the 1st defendant, viz., Palanisamy and his wife, viz., 2nd defendant, Indhirani had encroached the property and had attempted to put up construction.

20. However, the First Appellate Court in the Judgment observed that there is a dispute in respect of the title of the property and therefore, without seeking declaration and recovery of possession, the suit filed by the appellant is not maintainable and dismissed the suit filed by the appellant, while so, the same yardstick has to be applied for the suit filed by the 1st respondent, however, decreed the suit filed by the 1st respondent. Once the trial court came to conclusion about the cloud over the title it ought to have dismissed both the suits. But decreed the suit filed by the respondent in these appeals and dismissed the suit filed



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by the appellant. The 1st respondent filed the suit for permanent injunction. Both the parties have filed the suit for bare injunction based on their respective title deeds. There is no dispute in respect of title, but the dispute is in respect of the extent of the property. However, the First Appellate Court without considering the above aspects, dismissed the suit filed by the appellant and reversed the Judgment and Decree passed by the trial court and decreed the suit filed by the 1st respondent. Therefore, the Judgment and decree passed by the First appellate Court are unsustainable and liable to be set aside.

21. As far as the Substantial Question of Law (a) Whether the lower Appellate Court was right in disallowing the relief sought for by the appellant only on the ground that the appellant has not sought for the reliefs of declaration of title and possession over the suit property? is concerned,

(i) The appellant has filed the suit for relief of permanent injunction alleging that the 1st respondent is attempting to encroach the property and also dug the pits and thereby sought for relief of permanent injunction. The 1st respondent / defendant also claiming right over the property, through his sale deed dated 04.01.1995. The appellant also claimed right over the property through sale deeds dated 25.08.2000 and 02.03.2001 respectively. Both the parties are claiming



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rights over the properties through their respective sale deeds. While so, the dispute is only in respect of the boundary. The appellant filed the sale deeds, plan approval and the tax receipts for his possession and it is admitted fact that as on date of filing the suit, the property was vacant site.

(ii) The disputed extent was vacant site and the 1st respondent attempted to construct the building over the property. The 1st respondent is not claiming any right over the property of the plaintiff, similarly the plaintiff also not claiming any right over the property of the 1st respondent, therefore, the relief of declaration and recovery of possession will not arise at all. Merely digging the pit on some portion of the appellant's property by the 1st respondent will not amount to encroachment and it is only an attempt to put up construction and thereby there is no cloud over the title of the property and if there is any cloud over the title of the property, then, the declaration of title is essential. The plaintiff is claiming right over the property based on her sale deeds and the 1st respondent is also claiming right over the property, through his sale deed, both the sale deeds having different sub division numbers and particular extent and now the question is only in respect of the fixing of boundary, thereby the relief of declaration and recovery of possession is not necessary in this suit, therefore, the First



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Appellate Court committed error in disallowing the relief sought for by the appellant only on the ground that the appellant has not sought for relief of declaration of title and possession over the property.

(iii) The First Appellate Court relied upon the Judgment of the **Hon'ble Supreme Court [Anathula Sudhakar Vs. P.Buji Reddy (Dead) by Lrs] reported in AIR 2008 Supreme Court 2033**, in fact, the Hon'ble Supreme Court in the said case has categorically stated that if there is any cloud over the title of the property, mere suit for bare injunction is not maintainable and the plaintiff has to seek the relief of declaration. In the case on hand, there is no dispute in respect of the title of the property and the plaintiff purchased the property through sale deeds dated 25.08.2000 and 02.03.2001 and the 1st defendant also purchased another set of property through sale deed 04.01.1995 on different sub divisions. The 1st respondent himself admitted that he is entitled for 65 1/2 feet north-south, while so, there is no cloud over the title of the property, therefore, the said case law relied upon by the First Appellate Court is no way relevant to decide this case.

22. As far as the Substantial Question of Law b) Where the report of the learned Advocate Commissioner, which was relied upon by the lower Appellate Court, points out to digging of the property to put up a



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construction in the portion belonging to the appellant, can be constructed to be taking possession of the property belonging to the appellant and whether the appellant will not be entitled for the relief of bare injunction on the basis of the report of the learned Advocate Commissioner? is concerned,

In this case, it is admitted fact that on the date of filing of the suit the disputed property is vacant site and the 1st respondent had dug some pits and some portion of the pits are situated within the boundary of the appellant and mere digging the pits for putting up a construction in some portion belonging to the appellant cannot be construed as possession of the 1st respondent, therefore, the First Appellate Court is wrong in holding that the appellant is not entitled to relief of bare injunction based on the Commissioner Report. The commissioner report clearly shows the pits dug by the 1st respondent and no objections have been raised by both the parties for the Advocate Commissioner's report and plan, therefore, as per commissioner report and plan, the alleged attempt for the encroachment of the property have been clearly proved. Therefore, the appellant has proved her case and the 1st respondent failed to prove his case.

23. As far as the Substantial Question of Law (c) Whether the First Appellate Court had assigned cogent reasons while reversing the



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findings of the trial court as mandated under Order XLI Rule 31 CPC?’

is concerned,

(i) The Trial Court after assigning adequate reasons decreed the suit filed by the appellant in O.S.No.134 of 2011 and dismissed the suit filed by the 1st respondent in O.S.No.281 of 2011, whereas the First appellate Court without assigning cogent reasons reversed the findings of the trial court. As per Order XLI Rule 31, the Judgment of the Appellate Court shall be in writing and shall state (a) Points for determination; (b) the decision thereon; (c) reasons for the decision and (d) where the decree appealed from is reversed or varied, the relief to which the appellant is entitled and shall at the time that it is pronounced be signed and dated by the Judge or by the Judges concurring therein.

(ii) In this case, the First Appellate Court has not assigned cogent reasons for reversing the Judgment of the trial court and the First Appellate Court observed that there are discrepancies between the Commissioner Report and the sale deeds and since the building was existing, unable to measure the same completely, therefore, held that the appellant / plaintiff failed to prove that the defendant dug pits on the properties of the plaintiff, whereas in the commissioner report, the commissioner has not stated that he is unable to measure the property, whereas he has categorically stated that from the survey stone, he



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measured the property, therefore, the above said observations made by the First Appellate Court is on misunderstanding, therefore, the First Appellate Court has not assigned cogent reasons while reversing the findings of the trial court and the same is unsustainable and liable to be set aside, thus the substantial question of law is answered.

24. In the result, the First Appellate Court has committed an error without considering the evidences and records passed the Judgment and thereby the common judgment and decrees passed by the First Appellate Court in A.S.Nos.31 and 32 of 2014 are liable to be set aside and the decree and judgment passed by the trial court in O.S.Nos.134 and 281 of 2011 are to be restored.

(i) The Second Appeal No.974 of 2015 is allowed and the decree and judgment passed in A.S.No.31 of 2014 is set aside and the Decree and Judgment in O.S.No.134 of 2011 is restored. Consequently, connected miscellaneous petition is closed.

(ii) The Second Appeal No.975 of 2015 is allowed and the decree and judgment passed in A.S.No.32 of 2014 is set aside and the decree and judgment in O.S.No.281 of 2011 is restored. Consequently, connected miscellaneous petition is closed. No costs.

15.12.2025

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1. The Sub Judge, Sathyamangalam
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ssd

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