IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2025

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

A.S.Nos.573 and 576 of 2023 and
C.M.P.Nos.19341 and 19392 of 2023

A.S.No.573 of 2023

R.Gunasekar ... Appellant/Plaintiff

-vs-

Thangarasu Achari (Deceased)

1. Village Administrative Officer,
Mangalampettai Village,
Virudhachalam Taluk,
Cuddalore District.

2. The Thasildhar,
Office of the Thasildhar,
Virudhachalam Town & Taluk,
Cuddalore District.

3. The District Collector,
Office of the District Collector,
Cuddalore.

4. Pushpa Ammal ... Respondents/Defendants

Prayer: Appeal Suit is filed under Section 96 r/w Order XLI Rule 1 of CPC to set aside the judgment and decree of suit in O.S.No.60 of 2019 dated

26.10.2022 passed by the Hon'ble III Additional District and Sessions Court, Cuddalore at Virudhachalam and consequently dismiss the suit in O.S.No.60 of 2019 by allowing the First Appeal.

For Appellant	: Mr.S.Mohan
For R1 to R3	: Mrs.R.Anitha Spl. Govt. Pleader
For R4	: Mr.R.Prabakar

A.S.No.576 of 2023

R.Sridhar ... Appellant/Plaintiff

-vs-

Thangarasu Achari (Deceased)

1. Village Administrative Officer,
   Mangalampettai Village,
   Virudhachalam Taluk,
   Cuddalore District.

2. The Thasildhar,
   Office of the Thasildhar,
   Virudhachalam Town & Taluk,
   Cuddalore District.

3. The District Collector,
   Office of the District Collector,
   Cuddalore.

4. Pushpa Ammal ... Respondents/Defendants

Prayer: Appeal Suit is filed under Section 96 r/w Order XLI Rule 1 of CPC to set aside the judgment and decree of suit in O.S.No.61 of 2019 dated 26.10.2022 passed by the Hon'ble III Additional District and Sessions

Court, Cuddalore at Virudhachalam and consequently dismiss the suit in O.S.No.61 of 2019 by allowing the First Appeal.

For Appellant	: Mr.S.Mohan
For R1 to R3	: Mrs.R.Anitha Spl. Govt. Pleader
For R4	: Mr.R.Prabakar

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COMMON JUDGMENT

A challenge has been made to the common judgment and decree of the Trial Court, dismissing the two suits in O.S.Nos.60 and 61 of 2019 filed by the plaintiffs.

Brief facts of both cases are as follows:

2. The property was originally owned by one Koothapadaiyatchi. His son Ramamoorthy had agreed to sell the property to one Chellamuthu by way of an agreement dated 20.06.1973. The said Chellamuthu had executed a Will dated 13.03.1992 bequeathing the property to both the plaintiffs / appellants herein equally, since they are brothers. After the death of Chellamuthu, both plaintiffs partitioned the property.

3. It is averred in the plaint that while recording the partition, the Survey Number has been mentioned as 106/1 instead of 106/3. According to the plaintiffs, though S.No.106/1 has been referred to in the document, the actual Survey Number is 106/3 and therefore, sought for declaration and injunction.

4. The defendants 2 to 4 disputed the contention of the plaintiffs. The 5th defendant, who is the contesting defendant filed a written statement, stating that she is the wife of the 1st defendant / Thangarasu Achari and he died even before institution of these suits. In S.No.106/3, the total extent was 54 cents and out of 54 cents, 32 cents were sold to one Duraisamy Chetty on 11.02.1954 by one Kanagasabai Achari and his father Kulanthaivel Achari. The remaining extent has been retained by them and therefore, the 5th defendant opposed both the suits.

5. The Trial Court, based on the above pleadings framed the following issues:

i) Whether the suit property belongs to the plaintiffs?

ii) Whether the plaintiffs are in possession of the property?

iii) Whether the plaintiffs are entitled for declaration?

iv) Whether the plaintiffs are entitled for permanent injunction as prayed for?

v) Whether the plaintiffs are entitled for permanent injunction as against Revenue Authorities?

vi) To what other relief the plaintiffs are entitled to?

6. In both suits, a common evidence has been recorded. On the side of the plaintiffs, P.W.1 to P.W.3 were examined and Ex.A1 to Ex.A8 were marked. On the side of the defendant, 5th defendant has been examined as D.W.and Ex.B1 to Ex.B16 were marked.

7. The Trial Court, after appreciation of the material documents and evidence, dismissed both suits. Challenging the judgment and decree of the Trial Court, the present appeals have been filed.

8. Learned counsel for the appellants would mainly submit that originally the Survey Number of the suit property is 106/3, whereas by

mistake, the same has been shown as 106/1 in the earlier document. According to him, the properties are situated adjacent to the house of the plaintiffs and therefore, they are entitled for declaration. The Trial Court has not appreciated the evidence properly and D.W.1 himself has clearly stated that she is not in a position to give the description of the property and therefore, learned counsel prayed for allowing the appeals.

9. Learned counsel for the 4th respondent herein / 5th defendant would contend that the sale deed is of the year 1954, which clearly shows that the property was originally owned by Kanagasabai Achari and he had sold 32 cents under Ex.B4 to one Duraisamy Chetty on 11.02.1954, wherein the Survey Number has been mentioned as 106/3 and the boundaries have also been clearly set out and the remaining 32 cents have been retained by the Vendor. Whereas the plaintiffs specify the property only in S.No.106/3 and not in S.No.106/1. Though as per the Revenue records, patta has been wrongly obtained by the plaintiffs, the same has been subsequently set aside by the order of Revenue Divisional Officer.

10. In the light of the above, the points for consideration in this appeal are as follows:

i) Whether the appellants have established the identity of the suit property?

ii) Whether the appellants have correlated the S.No.106/1 and S.No.106/3 within a specific overtact?

iii) Whether the plaintiffs are entitled for declaration and injunction as prayed for?

POINTS:

11. Heard the learned counsel on either side and perused the material documents available on record.

12. Admittedly, both appellants are brothers. According to them, 20 cents of land had originally been purchased by one Chellamuthu, grandfather of the appellants on 13.03.1992 and the said Chellamuthu had executed a Will, bequeathing 10 cents to each of the appellant. Though S.No.106/1 has been referred to in those documents, the actual Survey Number is 106/3 and sought declaration. It is relevant to note that the

appellants have relied upon the document of the year 1992, said to be executed in favour of Chellamuthu, in which S.No.106/1 is referred to. The boundaries set out in the document do not tally with the defendant's side document, particularly, the earlier document of the year 1954 (Ex.B4). It is for the appellants to establish that the actual Survey Number is 106/3 not 106/1. In those two documents, different boundaries are indicated and in fact, the earlier title deed, which is relied upon by the appellants is of the year 1992, wherein the Survey Number has been spelt out with specific boundaries. Whereas the document marked as Ex.B4 is of the year 1954, which relates to S.No.106/3 without specific boundaries. Thereafter, after selling 32 cents of land, the remaining 22 cents have been retained by the Vendor.

13. Further, the plaintiffs in their evidence admitted that S.No.106/3 is an ancestral property of Thangarasu Achari. Merely because the plaintiffs managed to get the patta for the Survey Number and later the same has also been cancelled by the authorities, the plaintiffs cannot seek for declaration. As stated supra, it is for the plaintiffs to establish that their

predecessors purchased only S.No.106/3 and not 106/1. Merely on the basis of revenue records, they cannot seek for declaration. Further, the plaintiffs have not taken any steps to establish the identity of the property and at least, an application should have been filed for demarcation and fixation of boundaries to locate the property. Merely because the 5th defendant was not residing in the property at the relevant point of time, that will not entitle the plaintiffs to get the relief of declaration in respect of the property. Accordingly, the points are answered.

14. In the result, finding no merits in these appeals, the instant Appeal Suits are dismissed. The common judgment and decree of the Trial Court is hereby confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

17.04.2025

Index: Yes / No
Internet: Yes / No
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N.SATHISH KUMAR,J.,
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To:

1. The III Additional District and Sessions Judge,
   Cuddalore at Virudhachalam.

2. The Section Officer,
   V.R.Section,
   High Court,
   Madras.

A.S.Nos.573 and 576 of 2023

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