



S.A. No.325 of 2024

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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DATED : 07.01.2025

CORAM

**THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI**

S.A.No.325 of 2024  
and  
CMP.No.9765 of 2024

1.Dharmendran  
2.Duraivelu  
3.Dilliraj

... Appellants

Vs

1.Ashok Verghese  
2.Anand Jacob Verghese  
3.Sonny George  
4.Lalitha  
5.Kumar  
6.Inbaraja  
7.Yesudass  
8.Stephen  
9.Renu Abraham

... Respondents

**PRAYER:** Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 18.12.2023 made in



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A.S.No.11 of 2022 on the file of Subordinate Judge, Alandur in reversing the judgement and decree dated 22.10.2021 in O.S.No.658 of 2006 on the file of District Munsif Court, Alandur.

For Appellants : Mr.V.Raghavachari, Senior Counsel  
for M/s.R.Gouri  
For R1 & R2 : Mr.Nithyesh Natraj  
for Vaibhav R Venkatesh Cavetor  
For R9 : Mr.T.S.Vijaya Raghavan

### **JUDGMENT**

The appellant has filed this Second Appeal against the judgment and decree dated 18.12.2023, made in A.S.No.11 of 2022 on the file of the Subordinate Judge, Alandur, which reversed the judgment and decree dated 22.10.2021 in O.S.No.658 of 2006 on the file of the District Munsif Court, Alandur.

2. Heard Mr. V. Raghavachari, learned Senior Counsel appearing for M/s. R. Gouri, learned counsel for the appellants, and Mr. Nithyesh Natraj, learned counsel appearing for Mr. Vaibhav R. Venkatesh Cavetor, and perused the material available on record.



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3. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

4. The appellants are the plaintiffs, challenging the reversal of the findings rendered in A.S.No.11 of 2022 on the file of the Subordinate Judge, Alandur. The appellants/plaintiffs filed a suit, O.S.No.658 of 2006, seeking a declaration and other consequential reliefs. The trial court ruled in their favor. However, the defendants preferred an appeal in A.S.No.11 of 2022, which was allowed, setting aside the findings of the learned trial judge. Hence, the present appeal has been filed by the appellants/plaintiffs.

5. The Brief facts of the case as follows:

The suit property, described as A-Schedule, is located in old Survey No.259/2 (new Survey No.259/16) and comprises a house and ground bearing Door No.4/467A in Swaminathan Nagar, 3rd Main Road, Kottivakkam Village. The property belongs to the plaintiffs through a settlement deed executed by their father, Dhanasekaran, dated 03.08.2006. Before the plaintiffs, their father, Dhanasekaran, was in possession and



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enjoyment of the property for more than 30 years, having inherited it from his father, Thangavelu, as ancestral property.

6. To access the A-Schedule property, the plaintiffs used a public lane, named Swaminathan Nagar, 3rd Cross Street, shown as the green-colored portion in the plan, referred to as the B-Schedule property. The first defendant, allegedly conspiring with other defendants, interfered with this access, prompting the plaintiffs to file the suit.

7. The suit was initially filed against six defendants. After the 1st defendant filed a written statement, the 7th and 8th defendants were impleaded. The 1st defendant contested the suit, disputing the plaintiffs' rights and title over both A and B-Schedule properties. She alleged that the plaintiffs trespassed into her property, comprised in Survey Nos.259/2 and 259/3, broke the compound wall, and removed the gate on the eastern side of her property.



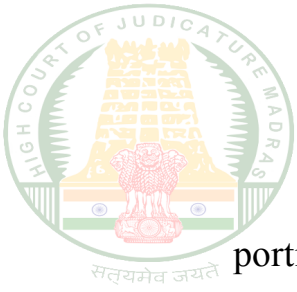
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8. The 1st defendant further claimed that the entire property belongs to her daughter, Renu Abraham (D-9), who purchased it through a registered sale deed dated 24.01.1990. She also raised the issue of misjoinder of necessary parties. Subsequently, the plaintiffs impleaded Renu Abraham as the 9th defendant.

9. The 7th and 8th defendants also contested the case, asserting that the plaintiffs have no right or title over the suit property. They alleged that the plaintiffs fabricated the settlement deed to claim the property fraudulently. They stated that an extent of 66 cents, comprised in Survey No.259, part of Kottivakkam Village, was purchased by them through a registered sale deed dated 31.10.2003 from their vendor, M/s. Silk Asia Exports Pvt. Ltd. Since then, they have been in possession and enjoyment of the property, which is enclosed by a compound wall.

10. The defendants further alleged that the plaintiffs, with ill intentions, broke open the compound wall and unlawfully occupied a

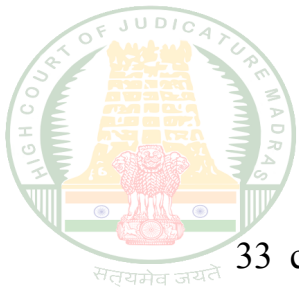


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portion of their land, shown as A-Schedule. They denied that the plaintiffs used the B-Schedule property as a pathway to access the A-Schedule property. The defendants claimed their vendor derived title as far back as 1952, and the plaintiffs' claims were vexatious and without locus standi. Hence, the defendants prayed for the dismissal of the suit.

11. Before the trial court, both parties adduced oral and documentary evidence. On the side of the plaintiffs, the second plaintiff was examined as PW1, and Exs.P.1 to Ex.P.19 were marked. On the side of the defendants, the seventh defendant was examined as DW1, and notice and patta were marked as Ex.B1 and Ex.B2. A commissioner was also appointed, and his report was marked as C.W.1 and C.W.2.

12. The learned trial judge framed four main issues concerning the declaration with an alternative prayer in respect of the A-scheduled and B-scheduled property and whether the plaintiffs were entitled to the relief of permanent injunction. Upon considering the entire evidence on record, the trial judge found that the plaintiffs' predecessor-in-title owned an extent of

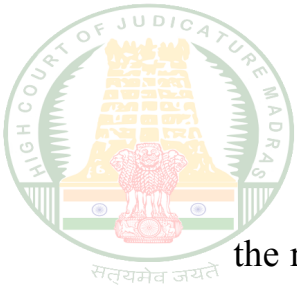


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33 cents. To this effect, there was a patta in the name of the plaintiffs' grandmother, Rachel, in Patta No. 365, as evidenced by Ex.A17, the A-Register extract. The boundary description found in Ex.A4 (sale deed) showed that the northern boundary was the land of Chinna Kulandai, the great-grandfather of the plaintiffs. The trial court also relied on Ex.A1, Ex.A7, Ex.A8, and the commissioner's report, concluding that the plaintiffs proved their right and title over the A-scheduled property and were enjoying the B-scheduled property as a public lane to access the A-scheduled property.

13. On the other hand, the defendants failed to establish any right or title to the suit property, particularly in respect of Survey No. 259/2. Accordingly, the suit was decreed as prayed for.

14. Challenging the trial court's findings, defendants 7 and 8 preferred an appeal (A.S. No. 11 of 2022), which was contested by the plaintiffs/respondents. The learned appellate judge independently analyzed the entire facts and evidence of the case and framed three issues regarding



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the relief of declaration and permanent injunction in respect of both A- and B-scheduled properties.

15. The learned appellate judge held that the plaintiffs failed to establish their title based on Ex.A17. The name “Roosav” mentioned in the document was not proved to refer to their grandmother Rachel, nor did the plaintiffs produce any document showing that Rachel/Roosav was the wife of Thangavelu, the plaintiffs' grandfather. The appellate court also noted that Ex.A17, when read alongside other evidence, did not substantiate the plaintiffs' claims. Additionally, Rachel's death certificate (Ex.A12) did not mention her husband's name, and no documents were produced in the name of the plaintiffs' father or grandfather.

16. The plaintiffs claimed 33 cents under the settlement deed (Ex.A1) but approached the court for the relinquishment of only 9 cents without proper explanation. The appellate court found that the plaintiffs failed to prove their title or cause of action.



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17. On the other hand, the defendants successfully established their vendor's title from 1995 through sale deeds (Ex.A11) and proved the vendor's title dating back to 1952. The appellate court observed that the plaintiffs, who sought a declaration, had the burden of proving their title. However, the trial court erroneously appreciated the plaintiffs' evidence and granted relief. Accordingly, the appellate court allowed the appeal, setting aside the trial court's findings. Challenging the appellate court's decision, the plaintiffs preferred this second appeal.

18. The learned counsel for the appellants raised the following prime grounds:

*i. The Lower Appellant Court ought to have seen that the plaintiff's title coupled with the possession over the suit property was further corroborated by Exhibits A2 Electricity bill, Exhibit 3 Property Tax receipt Ex. A17 Adangal which is 60 years old document reflecting the name of the plaintiff's grandmother Racheal to substantiate the nature of the property as the plaintiff's ancestral property continuously in possession and enjoyment of the plaintiffs.)*



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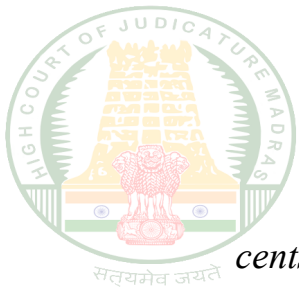
ii. *The Lower Appellant Court ought to have seen that the suit 'A'*

*Schedule property being house comprised in S. No. 259/2 measuring an extent of 33 cents originally owed by the plaintiff's grandmother Rachal corroborated by Ex. A17 Adangal extract which is 60 years old document which latter fell to the share of the plaintiff's father and was latter settled by executing registered Settlement Deed Ex. A1 to plaintiffs jointly being his sons.*

*Iii. The Lower Appellate Court ought to have seen that Ex. 4 Sale Deed Registered as Doc No.1949 of 1967 dated 22.5.1967 on the file of SRO Saidapet being the parent document which was executed by the plaintiff's adjacent owner Kesavan in respect of his property to in favour of Samuvel there is no mention as to Survey No. 259/2. Per contra to corroborate the case of the plaintiffs, in the schedule property in said document it has been described as Chinnakulandai property in the Northern side being the plaintiff's ancestor great grandfather.*

*iv. The Lower Appellate Court ought to have seen that while that being so Samuvel through his Power Agent being the 1<sup>st</sup> defendant fraudulently included S. No. 259/2 and executed two Sale deeds marked as Exhibits A5 and A6 registered as Doc. No. 569 of 1995 dated 9.2.1995 on the file of SRO Adyar and Doc. No. 566 of 1995 dated 9.2.1995 on the file of SRO Adyar to in favour of Silk Asia Export Private Limited along with the larger extent of land. The Plaintiff's property measuring an extent of 33*

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*cents in S. No. 259/2 has been fabricated and incorporated in the said two sale deeds which document is void and non est in the eye of law to the extent of the plaintiff's property. Therefore the sale deed executed through power agent by one who does not have any title right, and interest over the property does not confer any right, title and interest over the*

*v. The Lower Appellant Court ought to have seen that the Defendants 7 and 8 claim their alleged right over the suit property by virtue of void ad initio conveyance document said to have purchased from one Silk Asia Private Limited. The said document nothing but void as the alleged vendor does not have title over the suit property and therefore any alleged sale deed said to have been executed by vendor who does not have any semblance of right, title over the property does not confer valid right, title and interest over the property to the purchaser.*

*vi. The Lower Appellate Court ought to have seen that the and 7th and 8th defendants are not the bonafide purchasers and have involved in creating fabricated conveyance documents to usurp the ancestral property of the plaintiff being 33 cents while executing the sale deed in respect of larger extent of land. The said factum is clearly established by their own covenants in the sale deed that the plaintiffs' are in possession of the property as described in the schedule of the property therein.*



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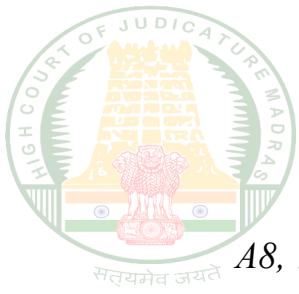
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vii. *The Lower Appellate Court ought to have seen that the defendants 2 to 6 are the plaintiff's father's sister's children who have been set exparte and has not turned to contest the case on merits. The Lower Appellant court ought to have drawn adverse inference since the defendants 2 to 6 were remained exparte.*

Viii. *The Lower Appellate Court ought to have scanned Advocate Commissioner report marked as Ex. C1 and C2 that the physical feature of the property to elucidate the issue for the court to decide clearly endorsed the plaintiffs pleading coupled with the factum of possession of the property to an extent of 33 cents which formed part of the larger extent of land which is the adjacent land.*

ix. *The Lower Appellate Court ought to have seen the "B" schedule property is the common pathyway to reach the "A" schedule property ? being the plaintiff's house as the same was admitted by the defendant during cross examination that "B" schedule property is common pathway.*

x. *The Lower Appellate Court has erred to discarding the pleading of the plaintiff that "B" schedule property is a common pathyway to reach his house being "A" schedule property since the plaintiff has not taken subpoena to examine the statutory authorities to that effect to show that it has been recorded as pathway in revenue records and also in Exhibits A7,*

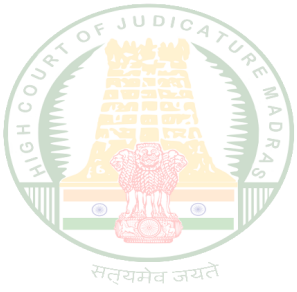


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WEB COPY A8, A9 and A10 which fact that it is used as common pathway has been admitted by the defendant during the evidence.

*xi. The Lower Appellate Court ought not to have discarded Ex. A17 on the finding that the name defers in the document while the same is only a typographical mistake (mentioned as Rochal instead of Rachael) being 60 years old document which fact need to be corroborated with other exhibits being the electricity receipt, property tax to substantiate it is an ancestral property.”*

19. Further, by producing additional typeset papers, the learned counsel for the appellants submitted the earlier suit judgment and decree passed in O.S. No. 288 of 1967. This suit was filed by one Baby Ammal, who claimed to be born to Thangavelu and Chellammal, against Rachel, Dhanasegar (mother and son), and another third party, Azhagappan, seeking a declaration of right and title over the property in Survey No. 259/2, an extent of 33 cents, with specified boundaries in Kottivakkam village.

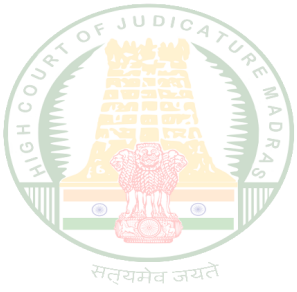


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20. The learned counsel submitted that the suit was filed by Baby Ammal against Rachel and Dhanasegar, who were the grandmother and father of the present plaintiffs. In that suit, Survey No. 259/2 (33 cents) was claimed as the absolute property of Thangavelu. According to Baby Ammal, she was the only legal heir born through her mother, Chellammal, and asserted that Rachel was a concubine of Thangavelu. While it was admitted that Dhanasegar was born to Rachel and Thangavelu, he was deemed an illegitimate son.

21. Both parties contested the suit, and during its pendency, Rachel passed away. After considering evidence from both sides, the learned trial judge concluded that Baby Ammal was entitled to a  $\frac{3}{4}$  share of the property, with the remaining  $\frac{1}{4}$  share going to Dhanasegar as the illegitimate son. Accordingly, Dhanasegar derived his right and title to the property through the said decree. Though this document was not impleaded in the current proceedings, the court has the authority to receive it as additional evidence.



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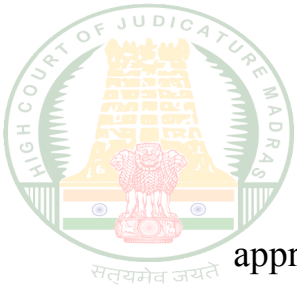
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22. To support this contention, the learned counsel relied on the authority cited in ***AIR 1987 Supreme Court 1242***, "*Ram Sarup Gupta (dead) by L.Rs.Appellants v. Bishun Narain Inter College and others respondents*", which states:

*"Civil P.C. (5 of 1908), O.6 R.1—Pleadings—Object and purpose—Question about lack of pleadings—It is not desirable to place undue emphasis on form; instead, the substance of pleadings should be considered."*

23. The learned counsel submitted that although the decree and judgment in O.S. No. 288 of 1967 were not produced before the courts below, they can now be received as additional evidence since they are public documents. Furthermore, the respondents/defendants claimed that their vendor's vendor purchased the property from the legal heirs of the plaintiffs in the suit.

24. The learned counsel for the appellants also pointed to Ex.A-17, the land A-register extract for Survey No. 259/2, which showed 33 cents registered in the name of Tha.Roosav/த.ரோசவ் (denoting Rachel, the plaintiffs' grandmother). This document, which has been in force for



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approximately 40 years, was not challenged by any party. Even the defendants' sale deed referenced a part of Survey No. 259/2 as one of the boundaries. The plaintiffs' ancestors, including Chinnakulandai, further established their right and title, which the trial court correctly appreciated. However, the first appellate court failed to properly evaluate these valuable documents. The appellants prayed for the findings of the first appellate court to be reversed and set aside.

25. In response, the counsel for the contested respondents (1 and 2) argued that the first appellate court rightly appreciated the oral and documentary evidence produced before the trial court. The court rightly concluded that the plaintiffs failed to prove their right and title, as well as their claim of succession through their predecessors. Specifically, Ex.A-17 and the death certificate (Ex.A-12) did not sufficiently establish that Rachel (or Roosav) was the wife of Thangavelu. The findings of the court were well-reasoned and did not require interference.



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26. The respondents' counsel also argued that the defendants had proved their right and title through sale deeds (Ex.A-7 to Ex.A-10) and prayed for the appeal to be dismissed as it lacked substantial questions of law. Furthermore, the plaintiffs failed to properly identify the suit property with an accurate description, which the first appellate court correctly recognized.

27. *To support their arguments, the respondents' counsel relied on the following authorities:*

***(i). In 2024 (3) SCC 224, Mary Pushpam Vs. Telvi curusumary and others***, in which stated as follows:

*“24. In order to test the above argument, we carefully examined the judgment of the trial court as also the first appellate court. What is discernible is that nowhere it is recorded the actual boundary or the measurements of the property in possession of the mother of the appellant (defendant therein). The respondents-plaintiff therein had based her case on the ground that they had purchased 8 cents of open piece of land and the defendant therein had raised*



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*construction over some adjoining land, and had trespassed over part of her purchased land as such decree of possession be granted.*

*25. We are unable to appreciate the said argument of the respondents. Suit for possession has to describe the property in question with accuracy and all details of measurement and boundaries. This was completely lacking. A suit for possession with respect to such a property would be liable to be dismissed on the ground of its identifiability. Further, it may be noted that if the construction by the defendant were not made over 8 cents of purchased land, then the plaintiff therein would not have a claim to possession of the same. The argument thus has to be rejected not only on facts but also on legal grounds as discussed above.”*

***(ii) In 2008 (17) Supreme Court Cases 491, Bachhaj Nahar Vs.***

***Nilima Mandal and another,*** stated as follows:

*“18. A perusal of the plaint clearly shows that entire case of the plaintiffs was that they were the owners of the suit property and that the first defendant had encroached upon it. The plaintiffs had not pleaded, even as an alternative case, that they were entitled to an easementary right of passage over the schedule property. The facts to be pleaded and proved for establishing title are different from the*



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*facts that are to be pleaded and proved for making out an easementary right. A suit for declaration of title and possession relates to the existence and establishment of natural rights which inhere in a person by virtue of his ownership of a property. On the other hand, a suit for enforcement of an easementary right relates to a right possessed by a dominant owner/occupier over a property not his own, having the effect of restricting the natural rights of the owner/occupier of such property.”*

(iii) Judgment of the ***Hon'ble Supreme Court of India in Civil Appeal No. 742 of 2001, Narayanan Rajendran and another Vs. Lekshmy Sarojini & others:***

*"64. Now, after 1976 Amendment, the scope of Section 100 has been drastically curtailed and narrowed down. The High Courts would have jurisdiction of interfering under Section 100 C.P.C. only in a case where substantial questions of law are involved and those questions have been clearly formulated in the memorandum of appeal. At the time of admission of the second appeal, it is the bounden duty and obligation of the High Court to formulate substantial questions of law and then only the High Court is*



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*permitted to proceed with the case to decide those questions of law.*

*The language used in the amended section specifically incorporates the words as "substantial question of law" which is indicative of the legislative intention. It must be clearly understood that the legislative intention was very clear that legislature never wanted second appeal to become "third trial on facts" or "one more dice in the gamble". The effect of the amendment mainly, according to the amended section, was:*

*(i) The High Court would be justified in admitting the second appeal only when a question of law is involved;*

*(ii) The substantial question of law to precisely / state such question;*

*(iii) A duty has been cast on the High Court to formulate substantial question of law before / hearing the appeal;"*

**(iv). 2023 SCC Online Kerala 8970, Fathima Beevi and others Vs.**

**Abdul Rahman,** in which reads as follows:

*“17. Thus, the legal position emerges is that, when there is a sale deed, if the executant wanted to annul the same, he had to seek*



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*cancellation of the said deed or the relief to set aside the deed. If a non -executant seeks annulment of a deed, he had to seek a declaration that the deed is invalid, or non-est or, illegal or that the deed is not binding upon him. In this matter, the plaintiff not sought the relief to declare Ext.B1 as invalid, or non-est or, illegal or that the deed is not binding upon him. In fact, the plaintiff could not succeed without seeking such a relief and getting the said relief allowed.”*

28. Upon considering both submissions, the following questions of law is framed:

*A. Whether the findings rendered by the first appellate judge involve a mis appreciation of evidence, leading to injustice, and whether they are perverse in nature and liable to be set aside?*

*B. Whether the Lower Appellant Court have erred in not confirming the Decree of the Trial Court when Ex A 4 to A 10 being the Registered Sale Deeds clearly incorporates the physical possession of the property to an extent of 33 cents, which fact clearly depicts the suit property to an extent of 33*



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*cents is the ancestral property of the plaintiff in their possession and the subsequent documents executed in respect of adjacent property has wrongly fabricated to include the portion of the plaintiff's property which is non est in the eye of law to the extent of the plaintiff's ancestral property in concerned?*

*C. Whether the Lower Appellant Court have erred in not confirming the Decree of the Trial Court when the plaintiff's title coupled with the possession over the suit property was further corroborated by Exhibits A2 Electricity bill, Exhibit 3 Property Tax receipt Ex. A17 Adangal which is 30 years old document reflecting the name of the plaintiff's grandmother Racheal to substantiate the nature of the property as the plaintiff's ancestral property continuously in possession and enjoyment of the plaintiffs?*

*D. Whether the Lower Appellant Court have erred in discarding the pleading of the plaintiff that "B" schedule*



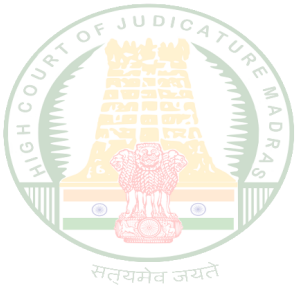
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*property is a common path way to reach his house being "A" schedule property since the plaintiff has not taken subpoena to examine the statutory authorities to that effect to show that it has been recorded as pathway in revenue records abd Exhibits A7,A8, A9 and A10, which the fact that it is used as common pathway has been admitted by the defendant during the evidence ?*

*E. Whether the Lower Appellant Court have erred in completely rejecting the case of the plaintiff that Ex. A17 being the adangal extract reflecting the name of the plaintiff's grandmother cannot be seen into since it has not been pleaded by the plaintiff in the plaint. It is submitted that the plaintiff has specifically pleaded that the suit property is his ancestral property wherein the plaintiff's grandmother Rachael was in possession and enjoyment corroborated by Exhibit A17 adangal extract being 60 years old document which latter fell to the share of the plaintiff's father and thereafter to his sons being the plaintiffs ?”*



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29. According to the appellants/plaintiffs, they claim rights and title over the suit A-schedule property through a settlement deed, Ex.A1. They assert that their father, Dhanasegaran, derived his right and title over the property through their grand-parents, namely Rachel and Thangavelu. In the settlement deed, their father's name is mentioned as Thangavelu. As per settlement deed / Ex.A6, it is stated that their father, Thangavelu, owned 33 cents of land in Old Survey No. 259/2 in Kottivakkam Village. The document / Ex.A6 also mentions that Thangavelu married Rachel, and Dhanasegaran was born to them. After the demise of Thangavelu, his wife Rachel possessed and enjoyed 33 cents of land. Upon Rachel's demise, the properties came into the possession of Dhanasegaran, who, out of love and affection, executed a settlement deed in favor of the plaintiffs, and his children as legal heirs.

30. The suit schedule properties consist of an extent of 33 cents in Old Survey No. 259/2 in Kottivakkam Village with defined boundaries. However, Ex.A6 Settlement deed is disputed by the contesting defendants, who argued that, neither the plaintiffs' father, Dhanasegaran, nor his father,



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Thangavelu, owned any land in Survey No. 259/2. The defendants (D1, D9) claim that they purchased the property from their vendor, M/s. Silk Asian Exports Pvt. Ltd., through their Power Agent, the first defendant, and his daughter, the ninth defendant. Additionally, the seventh and eighth defendants assert that they purchased a portion of the suit A-schedule property from the same vendor and disputed the plaintiffs' claim of ownership over the property.

31. The plaintiffs approached the Court seeking relief for declaration and other consequential remedies. To support their case, they presented the settlement deed / Ex.A1, which mentions the name of their father, Dhanasegaran as the son of Thangavelu and Rachel. The plaintiffs argued that their grand-parents owned 33 cents in Old Survey No. 259/2. They rely on the A-register extract marked as Ex.A17, which pertains to Thiruvanmiyur Village, where as Survey No. 269/2 stands in the name of Patta No. 365, "த.ரோசவ் / Tha.Roosav". The plaintiffs contended that the name "Roosav" in the said register is a typographical error and it should be "Rachel." They also produced their grand-mother Rachel's Death

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Certificate, marked as Ex.A12, to substantiate her identity.

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32.The dispute centers around as to whether the suit Survey No. 259/2 belongs to the plaintiffs' family. The contesting defendants claim ownership of Survey Nos. 259/2, 259/3, 259/4, and 259/5. They rely on sale deeds Ex.A4 to Ex.A11 to establish their title to the suit property. Notably, Ex.A4 is a sale deed executed by Kesavan in favour of Samuvel on 22-05-1967, transferring 71 cents in Survey Nos. 259/3, 259/4, and 259/5. However, the Northern boundary of the property described in Ex.A4 mentions the land belonging to Chinna Kulandai, the plaintiffs' great-grandfather.

33. The plaintiffs argue that the defendants' vendor, M/s.Silk Asia Exports Pvt. Ltd., fraudulently included Survey No.259/2 in their sale deed / Ex.A5, despite having no title to it. This argument was upheld by the trial Court, but overlooked by the learned first appellate Judge, leading to misapprehension of the evidence.



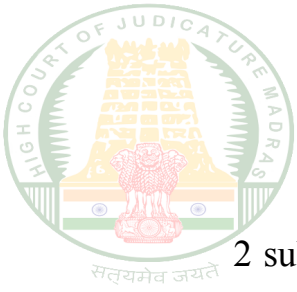
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34. Through Ex.A7 / sale deed, the Seventh defendant Ashok Varghese / 1st respondent herein purchased the property from M/s.Silk Asia Exports Pvt. Ltd. The boundary description reveals that, through Survey Nos. 259/2, 259/3, 259/4, and 259/5, he purchased a portion of the property, extending upto 71 cents. The description of boundaries mentions that the Northern boundary is owned by Manjula, while the Southern boundary is owned by Kalavathy and the Panchayadars, covering an extent of 3,191 sq. ft., with other boundaries specified therein.

35. As per Ex.A8 / sale deed, the 8th defendant / Anand Varghese, purchased property from M/s.Silk Asia Exports Pvt. Ltd. He acquired 4,509 sq. ft. in suit Survey No. 259/2, wherein it is stated that his vendor derived title from Manjula, through registered documents Nos.354/95 and 355/95. These documents mention that 700 sq. ft. of the property was encroached upon by the owner of the adjoining property, leaving only 3,850 sq.ft. in possession of their vendor, M/s.Silk Asia Exports Pvt. Ltd.

36. During the arguments, the learned counsel for respondents 1 and



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2 submitted that the said Manjula's documents were produced as additional evidence before the first appellate Court by filing an application in I.A.2 of 2022 to receive the additional documents which, were annexed in the additional typed-set of papers. Admittedly, the said Manjula purchased the property through a sale deed, dated 23-03-1982 from Baby Ammal, who acquired it through a sale deed dated 23-03-1982. Baby Ammal, the daughter of Thangavelu (born through his wife Chellammal), derived her right and title through a settlement deed for 33 cents in Survey No. 259/2, which was divided into 16 cents each, with a 3/4 share in Survey No. 259/2.

37. The legal heirs of Baby Ammal executed two sale deeds in favour of Manjula and Suseela Samuvel. Subsequently, both conveyed the properties to M/s.Silk Asia Exports Pvt. Ltd., the defendants herein. Therefore, the learned counsel for Respondents 1 and 2 contended that, even though the 1982 sale deeds in the names of Manjula and Suseela Samuvel were not produced, their vendor derived title through these documents concerning Survey No. 259/2. Hence, the learned first appellate Judge rightly concluded their right and title, which requires no interference



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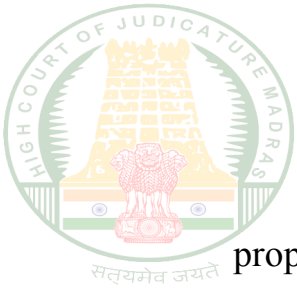
by this Court.

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38. Considering the arguments advanced on behalf of respondents 1 and 2, it is evident that their vendor, M/s.Silk Asia Exports Pvt. Ltd., purchased the property and established title to Survey No.259/2 through Baby Ammal, who claimed to be the daughter of Thangavelu and Chellammal. The plaintiffs, however, claimed to be the legal heirs of Dhanasekaran born to their grand-father Thangavelu and grand-mother Rachel. In the "A" Register extract (Ex.A-17), the name is mentioned as "த.ரோசல்," but the grand-mother's name is stated as Rachel.

39. Attention of this Court is drawn to the suit in O.S.No. 288 of 1967, on the file of District Munsif Court, Poonamallee, filed by Baby Ammal against Rachel and Dhanasekaran. In the suit, Baby Ammal claimed ownership and title, stating that the property in Survey No. 259/2 originally belonged to her grand-father / Chinnakulandai. After his demise, it passed on to her father Thangavelu, who died in 1949 itself, and thereafter to her mother, who died in 1954. Baby Ammal claimed sole possession of the

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property thereafter. However, in 1964, the defendants / Rachel (since deceased) and Dhanasekaran (since deceased) allegedly caused interference, prompting her to file the suit in O.S.No.288 of 1967 to declare her ownership and title. In the said suit, Rachel claimed to be the wife of Thangavelu, and Dhanasekaran was asserted to be their son.

40. Considering the evidence, the learned trial Judge held that the Patta for the Suit Survey No. 259/2 stands in the name of the first defendant / Rachel, from the year 1959 onwards. However, this does not take away the right of Chellammal, who is the mother of Baby Ammal. Accordingly, the suit property is deemed to be joint family property, in which, Thangavelu's wife, namely Chellammal, is entitled to 3/4th share. The first defendant / Rachel, being a concubine, her son is entitled to 1/4th share. Accordingly, the suit was decreed on 11.03.1969. Although the decree and judgment were not produced initially, they can be admitted as additional evidence, since it is a judgment passed by a Court of law in a case between Baby Ammal (since deceased) and Rachel (since deceased).

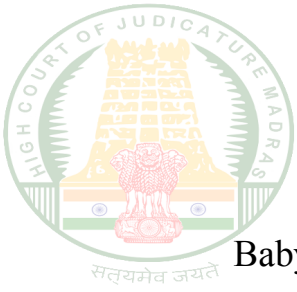


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41. The defendants trace their title to Baby Ammal in respect of Suit

Survey No.259/2, while the plaintiffs also trace their title to the same. This makes the decree and judgment passed in O.S.No.288 of 1967 being necessary documents. Considering the plaintiffs' pleadings, this document, being more than 30 years old and a public document, carries a presumption of genuineness under Section 114 of the Indian Evidence Act, 1872. It is therefore admitted as additional evidence and marked as Ex.A20.

42. One objection raised by the respondents herein, as well as the learned first appellate Judge's observation, was that although the plaintiffs claimed 33 cents as per the settlement deed, the boundary description therein refers to only 9 cents. This discrepancy does not align with the settlement deed. However, as per the Judgment and decree dated 11.03.1969, passed in O.S. No. 288 of 1967, the plaintiffs' father, Dhanasegaran, was granted only a 1/4th share in 33 cents, amounting to approximately 8.5 cents. The remaining 16 cents belong to Baby Ammal's family branch. Babyammal had already executed two sale deeds, each for the same extent of 16.5 cents in Suit Survey No. 259/2. At the most,



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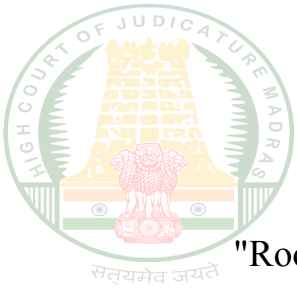
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Babyammal is entitled to a 3/4th share in 33 cents, amounting to 16 cents in the suit survey. Neither Babyammal nor, the defendants' vendors, have rights exceeding this.

43. Thus, even though the plaintiffs claimed 33 cents in the settlement deed, their rights in accordance with the boundary description, amounted to around 9 cents, which is legally sustainable. The plaintiffs' father, Dhanasegaran, was granted only a 1/4th share in Suit Survey No.259/2. Considering the entire pleadings, the suit in O.S.No.658 of 2006 is maintainable. The authority of the Supreme Court cited by the appellants/plaintiffs, reported in *AIR 1987 Supreme Court 1242 (Supra)* is acceptable.

44. At the time of filing the suit in O.S.No.288 of 1967, the plaintiffs' grandmother's name was mentioned as Rachel. The defendants' vendors filed a suit in O.S.No.658 of 2006 against her, and the learned trial Judge found that the Patta for Suit Survey No. 259/2 stood in Rachel's name from 1954 onwards. This patta, bearing No.365, is undisputed. The plaintiffs established that the patta, which was mistakenly recorded as belonging to

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"Roosav" in the A register extract, is actually in the name of Rachel. The learned trial judge rightly appreciated that Rachel and Roosav are one and the same person, but the learned first appellant Judge failed to appreciate the said fact, which needs interference by this Court.

45. The Ryotwari Patta standing in Rachel's name establishes her right and title over the suit property. The learned first appellate Judge's findings, being perverse and unjust, are liable to be set aside. The Patta No. 365 is also mentioned in the defendants' vendor's sale deed. Thus, Suit Survey No. 259/2 with Patta No. 365 is an admitted fact, confirmed by Ex.A-17, which the trial court rightly appreciated.

46. The learned first appellate Judge erroneously evaluated the facts, leading to incorrect findings, which that must be set aside. Accordingly, question of law in A, B, and C are answered in favour of the appellants herein. Although, the authorities cited by the defendants are acceptable, they are not applicable to the facts of the case on hand.



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47. The plaintiffs are residing in the suit property and paying Taxes, as evidenced by documents, such as the kist receipt (Ex.A2) and EB receipt Ex.A3). The Advocate Commissioner's report dated 15.03.2016, confirms that B-Schedule property is a public lane, which was not objected to by the contesting defendants who are respondents 1 and 2 herein.

48. The boundary descriptions in the documents refer to "Bakhinkam Channel," which is now a public lane. The plaintiffs access to their property (A-Schedule) is through this lane. The learned Advocate Commissioner's report also confirms that third parties' houses are adjacent to the said lane, with entrances leading to it. This establishes that B-Schedule property is indeed a public lane, as claimed by the plaintiffs.

49. The learned trial Judge had properly appreciated the learned Advocate Commissioner's report and other evidence, but the learned first appellate Judge failed to do so. This necessitates interference by this Court, and the findings of the first appellate Judge are set aside. Consequently, question of law in D and E are answered in favour of the plaintiffs. The suit



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in O.S.No.658 of 2006 is decreed as prayed for, subject to the production of certified copies of documents and additional title papers are hereby marked as secondary document, namely as Ex.A.20 series.

50. Accordingly, this Second Appeal is allowed, setting aside the Judgment and decree of the First Appellate Court and the connected miscellaneous petition is closed. There shall be no order as to costs.

**07.01.2025**

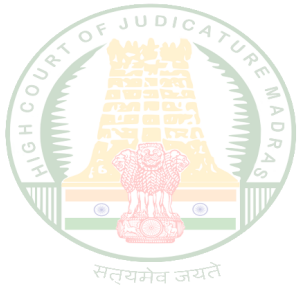
Index : Yes/No  
Neutral Citation : Yes/No  
Speaking/Non Speaking order

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To

1. The Subordinate Judge, Alandur.
2. The District Munsif, Alandur.
3. The Section Officer, VR Section, High Court of Madras.

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**T.V.THAMILSELVI, J.**

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CMP.No.9765 of 2024

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