



S.A.Nos.839 and 841 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2025

CORAM

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

S.A.Nos.839 and 841 of 2019

S.A.No.839 of 2019

Kasthuri (Died)
2.Senthilkumar
3.Lakshmikanthan
4.Balaji Aranganathan

... Appellants

Vs.

Gnanasoundari (Died)
1.Dilli
2.Chandran
3.Mohanasundari
4.Kamalakannan @ Kanna

... Respondents

(Sole appellant died, appellants 2 to 4 are brought on record as legal heirs of the deceased sole appellant vide court order dated 24.01.2025 made in C.M.P.Nos.1509, 1516 and 1519 of 2025 in S.A.No.839 of 2019)

S.A.No.841 of 2019

Kasthuri (Died)
2.Senthilkumar
3.Lakshmikanthan

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4.Balaji Aranganathan

... Appellants

Vs.

Gnanasoundari (Died)

1.Dilli

2.Chandran

3.Mohanasundari

4.Kamalakannan @ Kanna

... Respondents

(First appellant died, appellants 2 to 4 are brought on record as legal heirs of the deceased sole appellant vide court order dated 24.01.2025 made in C.M.P.Nos.1513, 1514 and 1515 of 2025 in S.A.No.841 of 2019)

PRAYER in S.A.No.839 of 2019 : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 11.12.2018 passed in A.S. No.14 of 2009, on the file of the Sub Court, Ponneri, upholding the decree and judgment dated 27.04.2009 passed in O.S.No.1107 of 1997, on the file of the District Munsif Court, Thiruvottiyur.

PRAYER in S.A.No.841 of 2019 : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 11.12.2018 passed in A.S. No.9 of 2010, on the file of the Sub Court, Ponneri, upholding the decree and judgment dated 27.04.2009 passed in O.S.No.1108 of 1997, on the file of the District Munsif Court, Thiruvottiyur.



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In both appeals :

For Appellant : Ms.Veena Suresh
For RR2 to 4 : Mr.V.Balamurugan

COMMON JUDGMENT

The appellant, Kasthuri (since deceased) in both these appeals is the plaintiff in O.S.No.1107/1997 and defendant in O.S.No.1108/1997 on the file of the District Munsif Court, Thiruvottiyur. Her legal heirs have been impleaded as appellants 2 to 4. The first respondent, Gnanasoundari (since deceased) is the plaintiff in O.S.No.1108/1997.

2. The suit in O.S.No.1107/1997 was filed for declaration of the plaintiff's title to the suit properties and for a consequential relief of permanent injunction restraining the defendants in the suit from interfering with her peaceful possession and enjoyment of the suit properties.



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3. The suit in O.S.No.1108/1997 was filed for the relief of permanent injunction against the present appellant from interfering with her peaceful possession and enjoyment of the suit properties. Both the suits in O.S.Nos.1107/1997 and 1108/1997 were tried jointly by the trial court and the evidence was recorded in common in O.S.No.1107/1997.

4. The case of the appellant / plaintiff in O.S.No.1107/1997 is as follows :

- i. The plaintiff is the owner of the suit properties. The plaintiff purchased the suit properties from one Chellammal @ Kanniammal through a sale deed dated 03.12.1983 (Ex.A1) and ever since the date of purchase she has been in possession and enjoyment of the same. When she attempted to put up construction in the suit properties on 25.03.1984, Gnanasoundari (the plaintiff in O.S.No.1108/1997) prevented the plaintiff from putting up any construction. In fact, the plaintiff, Kasthuri had dug up a well and also put up a shed on the northern portion of the suit properties.



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ii. One Varadhammal, mother of Chellammal @ Kanniammal purchased 28 cents out of 88 cents in Survey Number 379/3 from one Chellammal through a registered sale deed dated 25.11.1918. Varadhammal also purchased another extent of 35 cents in Survey Number 379/3. Apart from that, she purchased 10 cents in Survey Number 379/1 from one Krishnan Ayengar under a sale deed dated 22.11.1930. Thus, Varadhammal had purchased a total extent of 73 cents and after her death, her daughter Chellammal @ Kanniammal succeeded to her estate. She also mortgaged 73 cents during the year 1975 to Gnanasoundari.

iii. In order to discharge the mortgage loan, Chellammal @ Kanniammal allegedly executed a registered sale deed in respect of 27 cents in favour of the said Gnanasoundari. The sale deed itself is suspicious for the following reasons :

(a) The total extent is more than the actual extent as is seen from the rough sketch filed by Gnanasoundari in the earlier suit in



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O.S.No.17/1984.

(b) When Chellammal @ Kanniammal had sold only 27cents out of 73 cents the remaining extent of 46 cents was not shown as one of the boundaries in the sale deed.

(c) The sale deed is also silent as to why two separate extents are given when both the items are in the same survey number.

(d) Chellammal @ Kanniammal is an illiterate and she has affixed her thumb impression.

iv. The property purchased by Varadhammal in Survey Number 379/3 measuring 27 cents is on the northern side of the property belonging to Pappathi Ammal, the mother-in-law of Gnanasoundari. The other 35 cents purchased by Varadhammal in Survey Number 379/3 lies immediately to the northern side of Perumal Koil Street. The boundaries and extents given in the sale deed dated 21.09.1975 (Ex.B4) are wrong. Chellammal @ Kanniammal conveyed the remaining 46 cents to the plaintiff, Kasthuri after mentioning all these details through a registered sale



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WEB COPY deed dated 03.12.1983 (Ex.A1).

v. The plaintiff, Kasthuri also filed a suit in O.S.No.17/1984 before the Sub Court, Tiruvallur and obtained an order of interim injunction.

vi. In the said suit, an Advocate Commissioner was appointed. The husband of Gnanasoundari namely Manika Naicker is an influential person. The first defendant, Gnanasoundari did not raise any trees in the suit properties as alleged by her. Hence the suit filed by the plaintiff, Kasthuri has to be decreed and the suit filed by Gnanasoundari (since deceased) has to be dismissed with costs.

5. The case of the contesting defendants / plaintiff in O.S.No.1108/1997 are as follows :

i. All the allegations contained in the plaint in O.S.No.1107/1997 are false.



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- ii. Gnanasoundari (since deceased) purchased 27 cents in Survey Number 379/3 from Chellammal @ Kanniammal. In fact, the plaintiff, Kasthuri's husband attested the sale deed dated 21.09.1975 (Ex.B4). However, his wife Kasthuri had purchased the properties mentioned in O.S.No.1107/1997 with false boundary descriptions and measurements.
- iii. Since the plaintiff, Kasthuri and his men and agents attempted to disturb the defendants' peaceful possession, she filed a suit in O.S.No.260/1984 before the District Munsif Court, Ponneri, for a permanent injunction restraining her from interfering with her peaceful possession and enjoyment of her properties. Along with the suit she filed I.A.No.1028/1984 for appointment of an Advocate commissioner.
- iv. An Advocate Commissioner was appointed and he has clearly stated in his report that the property of the defendants is abutting Perumal Koil Street. The plaintiff, Kasthuri also admitted in the said suit that she is aware of the sale deed in favour of the defendant / Gnanasoundari.



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WEB COPY v. There is no cause of action for filing the suit in O.S.No.1107/1997.

Hence the suit filed by the plaintiff in O.S.No.1107/1997 has to be dismissed and the suit filed by the defendant in O.S.No.1108/1997 has to be decreed.

6. The trial court after framing necessary issues tried both the suits in O.S.Nos.1107/1997 and 1108/1997 jointly. The evidence was recorded in common in O.S.No.1107/1997.

7. In the trial Court, the plaintiff, Kasthuri examined her husband Ranganathan as PW1 and one Jayaraman as PW2. She also marked Ex.A1 to Ex.A6. The first defendant, Gnanasoundari (plaintiff in O.S.No.1108/1997) examined herself and marked Ex.B1 to Ex.B14. The Advocate Commissioner's report and plan filed in O.S.No.260/1984 on the file of the District Munsif Court, Ponneri, were marked as Ex.C1 and Ex.C2.



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8. The learned trial court judge, on considering the evidence on record, dismissed the suit in O.S.No.1107/1997 and decreed the suit in O.S.No.1108/1997, vide his decree and judgment dated 27.04.2009. on the following grounds:

- i. The plaintiff, Kasthuri has not described the suit properties in O.S.No.1107/1997 properly.
- ii. The Advocate Commissioner's report and plan (Ex.C1 and Ex.C2) tally with the rough sketch (Ex.B3) filed by the plaintiff in O.S.No.1108/1997.
- iii. The plaintiff has also admitted the contents of the sale deed dated 21.09.1975 (Ex.B4) and therefore, she cannot now state that the boundary descriptions and the extent mentioned in Ex.B4 are wrong. In Ex.B4, four boundaries have been clearly indicated.
- iv. Thus Gnanasoundari (since deceased) the plaintiff in O.S.No.1108/1997 has proved her case.
- v. On the other hand, the plaintiff, Kasthuri (since deceased) in O.S.No.1107/1997 had not established her title and possession



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9. Aggrieved over the decree and judgment passed by the trial court judge, Kasthuri (appellant herein) filed appeals in A.S.Nos.14/2009 and 9/2010 before the Sub Court, Ponneri. The learned Subordinate Judge, Ponneri, vide his decree and judgment dated 11.12.2018, upheld the findings recorded by the trial court judge and dismissed both the appeals, as against which the present second appeals are filed.

10. At the time of admission the following substantial questions of law were framed by my learned predecessor :

"(i) Whether the findings of Courts below that the appellant/first defendant is in possession of suit property only from the year 1990 on the basis of Ex.B4, B5 Adangal Extract and Ex.B6 Patta of the year 1990 is perverse, since the Courts below had failed to draw inference from a state of things, is shown to exist of its continuity retrospectively (i.e) backward also, while deciding the question of adverse possession and hence warrant interference under Section 100 of Code of Civil



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(ii) Whether the Courts below are correct in relying upon the Exs.A2,A3,A5 to A18 in which this appellant/first defendant is not a party to all, while deciding the question of title regarding the suit property against the appellant/first defendant?

(iii) When it is settled in Law that, the appointment of Advocate Commissioner is absolutely essential to identify the disputed property in question, is the learned Sub Judge right in refusing to appoint the Advocate Commissioner, only on the ground of long pendency of the case, ignoring the pronouncement of the Apex Court in 2019 SAR (Civil) 315.

(iv) Is the suit in O.S.No.1108/1997 maintainable, without seeking declaration of title, as the identity of the property is being questioned.

(v) Are the Courts below right in dismissing the claim of appellant in toto, when it is the admitted case of the parties that the suit items were purchased under Exhibit A1?

(vi) In the absence of identification of the suit property and measuring the property with the help of the Surveyor or Revenue officials, is the learned Sub Judge



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11. During the pendency of the appeals, Kasthuri died and her legal heirs were impleaded as the appellants 2 to 4.

12. Heard Ms.Veena Suresh, learned counsel for the appellant and Mr.V.Balamurugan, learned counsel for the respondents 2 to 4.

13. The plaintiff, Kasthuri (since deceased) purchased three items of the properties (suit properties) under a registered sale deed dated 03.12.1983 (Ex.A1) from Chellammal @ Kanniammal. The item numbers 1 and 2 are in Survey Number 379/3 and the item number 3 is in Survey Number 379/1 of Puzhal Village, Saidapet Taluk. There is no dispute with regard to item number 3 mentioned in the sale deed dated 03.12.1983 (Ex.A1). The real dispute between the parties is only with respect to item numbers 1 and 2 in Survey Number 379/3.



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13.1. The boundary description in respect of item number 1 as mentioned in Ex.A1 is as follows :

- North - Punja land and house belonging to Sadaiappa Naicker and others.
- South - Property belonging to Pappathiammal (deceased) and an agricultural land purchased by Kasthuri on the same day.
- West - Punja land belonging to Gnanasoundari.
- East - Property belonging to Kakkavaakathar and others and the property purchased by Kasthuri on the same day.

The extent of item number 1 is indicated as 10 cents.

13.2. The boundary description in respect of item number 2 is indicated as under :

- North - Wet land and the house purchased by Kasthuri mentioned as item number 1.
- South - Perumal Koil Street.
- West - The land and house belonging to late Pappathiammal.
- East - The properties belonging to Srinivasa Aiyengar, Ramadas Naicker, Kuppan, Subramani Naicker and others.



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WEB COPY The extent of land is indicated as 26 cents.

13.3. On the other hand, the property purchased by Gnanasoundari (since deceased) through a registered sale deed dated 21.09.1975 (Ex.B4) has been described under two heads, even though both the items are in the same survey number 379/3. The boundary description in item number 1 is as follows:

- North - Property purchased by Gnanasoundari (item number 2)
- South - Perumal Koil Street
- West - The land of Manicka Naicker
- East - The land of Sundaravaradha Iyer and others

The extent of land is indicated as 18 cents.

13.4. The boundary description of item number 2 is shown as under :

- North - The land of Sengappa Naicker and Kanagavalli Ammal.
- South - Property purchased by Gnanasoundari (item number 1).
- West - The land belonging to Chellappa Naicker and others.
- East - The land belonging to Sundaravaradha Iyer and others.

The extent of land is indicated as 9 cents.



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13.5. Thus, it is seen that the properties purchased by Kasthuri and Gnanasoundari are totally different from each other. Both the Courts below had placed reliance upon the Advocate Commissioner's report. The first item of the property in the sale deed dated 21.09.1975 (Ex.B4) is shown as AMBL in the rough sketch (Ex.B3). The measurement of this portion of the property is indicated as 200 feet x 50 feet which comes to around 22.95 cents. This is in variance with 18 cents mentioned in the sale deed (Ex.B4). The second item of the property mentioned in Ex.B4 is shown as CDKL in rough sketch (Ex.B3). The measurement is shown as 100 feet x 40 feet which comes to around 9.23 cents. However, in the sale deed (Ex.B4) it is shown as 9 cents. Moreover, the boundary descriptions mentioned in the sale deed (Ex.B4) are totally different from the boundary descriptions mentioned in the rough sketch (Ex.B3). These aspects have not at all been considered by both the courts below. On the other hand, since both the suits in O.S.Nos.1107/1997 and 1108/1997 were tried jointly and the evidence was recorded in common in O.S.No.1107/1997, both the courts below had held that the plaintiff, Kasthuri alone has to prove her title and possession over the properties



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forgetting the fact that Gnanasoundari (since deceased) had also filed the suit (O.S.No.1108/1997). The discrepancies found in the latter's sale deed dated 21.09.1975 (Ex.B4) have not at all been taken into account by both the courts below.

14. It is pertinent to point out that the appellant herein though filed a petition to measure her property and the property of the defendants, the same was dismissed by the first appellate court on the sole ground that the suits are pending for a long time and therefore, an Advocate Commissioner cannot be appointed to measure the property with the help of a Taluk Surveyor. Both the Courts below had mainly relied on the Advocate Commissioner's report and plan (Ex.C1 and Ex.C2) who cannot give a finding with regard to the possession of the suit properties. The sale deed dated 03.12.1983 (Ex.A1) filed by the appellants describes all four boundaries clearly. There is also no discrepancy in the measurements.



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15. As already observed, the property purchased by Kasthuri is totally different from the property purchased by Gnanasoundari. When the linear measurements indicated in the sale deed dated 21.09.1975 (Ex.B4) is totally different from the rough sketch (Ex.B3) and Advocate Commissioner's report and plan (Ex.C1 and Ex.C2), a decree for a permanent injunction cannot be granted in favour of Gnanasoundari, the plaintiff in O.S.No.1108/1997. On the other hand, the plaintiff, Kasthuri had proved her title and possession over item numbers 1 and 2 of the suit properties by adducing the sale deed (Ex.A1) and other relevant documents. It is settled that possession follows title. Both the Courts below have treated the first respondent, Gnanasoundari only a defendant and put the entire burden upon the appellant, Kasthuri and had rendered a perverse finding and therefore, the same has to be set aside in the present second appeal. In view of the reasons stated by me, the substantial questions of law are answered in favour of the appellant.



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16. In the result,

- i. the Second Appeals are allowed. No costs.
- ii. the decree and judgment dated 11.12.2018 passed in A.S. Nos.14/2009 and 9/2010, on the file of the Sub Court, Ponneri, and the decree and judgment dated 27.04.2009 passed in O.S.Nos.1107/1997 and 1108/1997, on the file of the District Munsif Court, Thiruvottiyur, are set aside.
- iii. the suit in O.S.No.1107 of 1997, on the file of the District Munsif Court, Thiruvottiyur, is decreed with costs.
- iv. the suit in O.S.No.1108 of 1997, on the file of the District Munsif Court, Thiruvottiyur, is dismissed with costs.

03.03.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
mtl



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To

1. The Sub Court, Ponneri.
2. The District Munsif Court, Thiruvottiyur.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

mtl

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