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S.A.NO.394 OF 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 25 / 07 / 2025

JUDGMENT PRONOUNCED ON : 24 / 10 / 2025

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL
SECOND APPEAL NO.394 OF 2014

AND
M.P.NO.1 of 2014

Somasundaram ... Appellant /Appellant /
Plaintiff

Vs.

Dinakaran ... Respondent / Respondent
Defendant

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, praying to set aside the Judgment and Decree dated December 16, 2013 passed in A.S. No.11 of 2012 on the file of the Subordinate Judge, Gudiyatham, Vellore District modifying the Judgment and Decree dated January 25, 2012 made in O.S.No.376 of 2003 on the file of the District Munsif, Gudiyatham.

For Appellant : Mr.V.M.G.Ramakannan
For Respondent : Mr.N.Manokaran

J U D G M E N T

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This Second Appeal is directed against the Judgment and Decree dated December 16, 2013, passed in A.S.No.11 of 2012 by the 'Subordinate Court, Gudiyatham, Vellore District' ['First Appellate Court' for brevity], whereby the Judgment and Decree dated January 25, 2012 passed in O.S.No.376 of 2003 by the 'District Munsif Court, Gudiyatham' ['Trial Court' for brevity] was modified.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

3. Case of the plaintiff is that the suit property among other items originally belonged to his father - Munisamy Mudaliyar. On May 17, 1976, the said Munisamy Mudaliyar executed a registered Settlement Deed bequeathing the suit property along with some other property to the plaintiff and handed over possession on the same day. The Settlement Deed was acted upon. Subsequently, the plaintiff put up constructions and enjoyed the suit property without any interruption. The plaintiff paid necessary taxes and availed electricity connection in his name for the suit property. While so, the defendant, who is an adjacent owner, without any manner of right or title or interest attempted to interfere with the plaintiff's



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peaceful possession and enjoyment of the suit property. Therefore, the plaintiff filed the Suit seeking permanent injunction restraining the defendant and his agents from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and costs.

4. The defendant filed a written statement stating that the plaintiff and the defendant are brothers. The defendant admitted the title and possession of the plaintiff. However, on the contrary, he averred that their father executed a Settlement Deed dated April 27, 1976 and bequeathed the suit property in his favour. The defendant's plea is that he is in the possession and enjoyment of the suit property. The plaintiff with an ulterior motive has attempted to trespass into the suit property. To restrain this, the defendant herein obtained an order of injunction against the plaintiff herein in O.S.No.365 of 2003 in the Trial Court. As a counter blast to the said suit, the plaintiff initiated this Suit suppressing those facts. According to the defendant, no cause of action arises in the present suit. Hence, he sought for dismissal of the Suit with costs.

5. Based on the above pleadings, the Trial Court, framed the



following issues for trial:

- "1. Whether the plaintiff is entitled for permanent injunction as prayed for?
2. To what relief?"

6. At trial, the plaintiff was examined as P.W.1 and Ex-A.1 to Ex-A.6 were marked on the side of the plaintiff. On the side of the defendant, Ex-B.1 to Ex.B4 were marked through cross-examination of P.W.1. Further, the defendant was examined as D.W.1, one Mr.Hari Babu, the Firka Surveyor of the suit property was examined as D.W.2, Mr.Ramesh, the brother of the plaintiff and the defendant, was examined as D.W.3, and Ex-B.5 to Ex.B11 were marked.

7. Upon hearing both sides and considering the evidence available on record, the Trial Court concluded that the plaintiff is not entitled to the relief of permanent injunction and dismissed the suit.

8. Feeling aggrieved, the plaintiff preferred an appeal before the First Appellate Court, which after hearing both sides and perusing the evidence available on record, modified the Judgment and Decree of Trial Court holding that the plaintiff is not entitled to the relief of injunction and since the plaintiff is in possession of the suit property, the defendant shall



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only exercise due process of law to evict the plaintiff. Accordingly, it allowed the appeal and modified the Judgment and Decree of the Trial Court on the above terms.

9. Feeling aggrieved by the Judgment and Decree of the First Appellate Court, the plaintiff has preferred this Second Appeal.

10. During the pendency of this Second Appeal, this Court appointed an Advocate Commissioner, who upon inspection has filed her Report and Plan.

11. Mr.V.M.G.Ramakannan, learned Counsel for the appellant / plaintiff would argue that the plaintiff's father -Munisamy Mudaliyar owned 40 Cents in Survey No.272/2B and some more extent of properties. He divided and distributed the 40 Cents equally to his five sons including the plaintiff and the defendant i.e., each 8 Cents, under 5 Settlement Deeds. Accordingly, the plaintiff acquired the suit property measuring 8 Cents in Survey No.272/2B within specific four boundaries vide Ex-A.1 - Settlement Deed dated May 17, 1976 executed by his father - Munisamy Mudaliyar. Similarly, plaintiff's father - Munisamy Mudaliyar executed 4 other Settlement Deeds in favour of his four brothers including the



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defendant and they have been in possession and enjoyment of the their respective portions.

11.1. He would further submit that, on the date of execution of Ex-A.1 itself, the plaintiff was given possession and enjoyment. Later he constructed a house thereon and has been paying taxes and electricity bills. Subdivision was effected and the plaintiff's portion was subdivided into Survey No.272/3. Separate Patta in Patta No.525 was issued in favour of the plaintiff in respect of his portion viz., the suit property in 2003.

11.2. He would further argue that the defendant in his written statement has admitted the plaintiff's title and possession *qua* suit property. But he filed proof affidavit with a variant version contrary to his written statement claiming title over the suit property. Further, the properties covered under Ex-B.1 - Settlement Deed executed by Munisamy Mudaliyar in favour of defendant, the southern boundary has been wrongly described as Balakrishnan's land instead of Town Survey Land. Actually, the said Balakrishnan's land lies on the west of the property covered under Ex-B.1.



11.3. He would further argue that, in Ex-A.1, the southern portion of the suit property has been described as defendant's land. However, it does not refer to defendant's land in the Survey No.272/2B and no such thing exist on the southern side of the suit property. It refers to defendant's land on a different survey number viz., Survey No.40 on the southern side of suit property. Further, the Advocate Commissioner appointed by this Court filed a Report and the same is incorrect in terms of boundaries of the suit property as well as the defendant's property in the Survey No.272/2B.

11.4. He would further argue that the Trial Court neither framed any issue *qua* title nor rendered any findings *qua* the same. The First Appellate Court erroneously proceeded to adjudicate the title of suit property in favour of defendant without framing any issue in that regard. The approach of the First Appellate Court is violative of the principles of natural justice. Both the Courts failed to appreciate the documentary evidence in a right perspective. Since the Suit is one for permanent injunction, the First Appellate Court findings *qua* title in favour of defendant is erroneous. The Judgment and Decree of the Trial Court as well as the First Appellate Court are erroneous and deserves to be set aside. Accordingly, he would pray to allow the Second Appeal.



11.5. He would rely on the following decisions in support of his contentions:

- (i) ***Bharat Singh's case*** - Judgment of the Hon'ble Supreme Court in *Bharat Singh -vs- Mst.Bhagirathi*, reported in *AIR 1966 SC 405* ;
- (ii) ***DDA's case*** - Judgment of the Hon'ble Supreme Court in *Delhi Development Authority -vs- Durga Chand Kaushish*, reported in *AIR 1973 SC 2609* ;
- (iii) ***Modi's case*** - Judgment of the Hon'ble Supreme Court in *K.K.Modi -vs- K.N.Modi*, reported in *(1998) 3 SCC 573* ;
- (iv) ***Kashi Nath's case*** - Judgment of the Hon'ble Supreme Court in *Kashi Nath -vs- Jaganath*; reported in *(2003) 8 SCC 740* ;
- (v) ***Karam Kapahi's case*** - Judgment of the Hon'ble Supreme Court in *Karam Kapahi -vs- Lal Chand Public Charitable Trust*, reported in *(2010) 4 SCC 753*
- (vi) ***Ramaswami's case*** - Judgment of this Court in *Ramaswami Moopanar -vs- Rathnammal*, reported in *1976 (89) LW 650 : (1976) 2 MLJ 363* ;

12. On the other hand, Mr.N.Manokaran, learned Counsel for the respondent / defendant would argue that there is no dispute *qua* Ex-A.1



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situate in Survey No.272/2B. However, the plaintiff managed to obtain the separate patta under Ex-A.5 in respect of the property settled in favour of the defendant under Ex-B.1 - Settlement Deed. Perusal of Ex-A.1, Ex-B.1 to Ex-B.4 - Settlement Deeds would clearly show that the defendant was settled with 8 Cents in the southern-most portion of the 40 Cents owned by Munisamy Mudaliyar in Survey No.272/2B. 8 Cents in the northern side of the same, is the plaintiff's property. The Advocate Commissioner appointed by this Court has identified the 40 Cents owned by Munisamy Mudaliyar and the portions of the parties thereof correctly; however, while describing the boundaries, she has erroneously described the northern side of the suit property as defendant's land instead of describing it as 'north of defendant's land'. Similarly she has described the southern boundary as Paranjothi's land instead of describing it as the 'south of Paranjothi's land'. She has made a similar mistake while describing the boundaries of the subject matter of Ex-A.1- Settlement Deed.

12.1. He would further argue that, the defendant nowhere admitted that the plaintiff is in possession of the subject matter property of Ex-B.1 - Settlement Deed dated April 27, 1976. Hence, there is no reason for the



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defendant to file a separate Suit for recovery of possession of the suit property which is the subject matter of Ex-B.1 and not Ex-A.1. The First Appellate Court is not right in directing the defendant to evict the plaintiff through due process of law. Accordingly, he would pray to direct the plaintiff to handover vacant possession of the property covered under Ex-B.1, by invoking Order XLI Rule 33 of CPC. There is no substantial questions of law in this case. Accordingly, he would pray to dismiss the Second Appeal, modify the Judgment and Decree of the First Appellate Court and confirm the Trial Court's judgment.

12.2. He would rely on the following decisions in support of his contentions:

(i) *Maria's case* - Judgment of the Hon'ble Supreme Court in *Maria Margarida Sequeira Fernandes -vs- Erasmo Jack De Sequeira*, reported in (2012) 5 SCC 370

DISCUSSION:

13. Heard on either side. This Court has perused the evidence available on record.

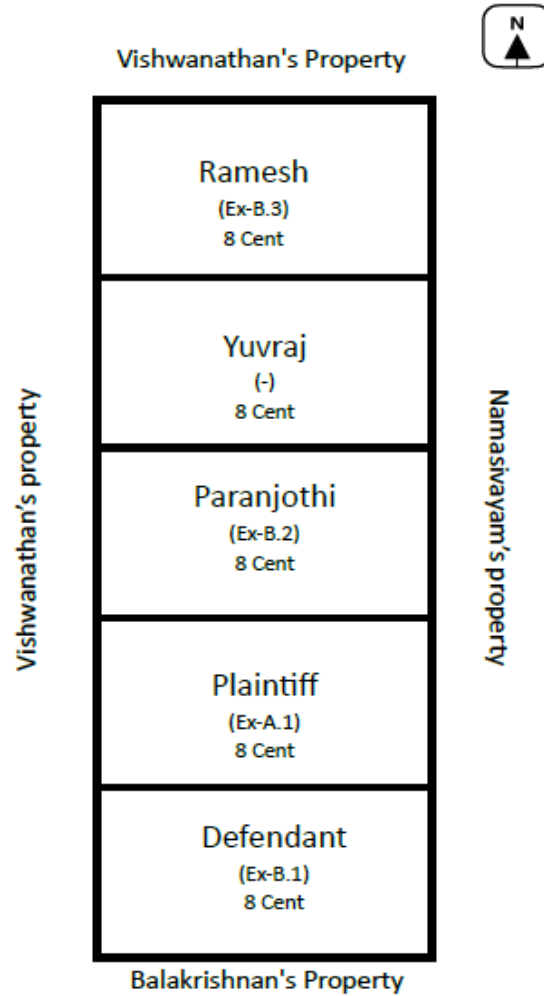


14. Admittedly, an extent of 40 Cents in Survey No.272/2B was separate property of Munisamy Mudaliyar, who is the father of the plaintiff and the defendant. Ex-B.6 - A Register would confirm the said fact.

15. Munisamy Mudaliyar executed five Settlement Deeds each in favour of one of his five sons as per the following table:

S.No.	Date	Exhibit	Extent	Donee
1.	April 27, 1976	Ex-B.1	8 Cents	Defendant
2.	May 1, 1976	Ex-B.2	8 Cents	Paranjothi
3.	May 3, 1976	-	8 Cents	Yuvaraj
4.	May 5, 1976	Ex-B.3	8 Cents	Ramesh
5.	May 17, 1976	Ex-A.1	8 Cents	Plaintiff

16. When worked out according to the recitals and description of property contained in Ex-A.1 and Ex-B.1 to Ex-B.3 - Settlement Deeds, the division and settlement of 40 Cents owned by Munisamy Mudaliyar upon his sons from north to south are as depicted hereunder:



17. There is no other order of division and settlement possible in accordance with the recitals and description of property contained in Ex-A.1 and Ex-B.1 to Ex-B.3. In fact, the Advocate Commissioner's Report and the Surveyor Report also shows the exact same order of division and settlement. However, the Advocate Commissioner while describing the boundaries in words, seems to have described them



wrongly as pointed out by the learned Counsel for the respondent / defendant. She has incorrectly stated that the northern boundary of the suit property [property covered under Ex-A.1] is the defendant's land, instead of describing it as lying to the north of the defendant's land. Similarly, she has described the southern boundary as Paranjothi's land, instead of describing that the suit property lies to the south of Paranjothi's land. However, this error due to inadvertence would not affect the case of the defendant, as the Report of the Advocate Commissioner is otherwise clear that the defendant's portion viz., the property covered under Ex-B.1 is situate on the southern most side of the 40 Cents owned by Munisamy Mudaliyar and that the suit property / plaintiff's property / property covered under Ex-A.1 is situate abutting the northern side of the defendant's land, as depicted in the above diagram. For the same reason, the contention of the plaintiff that the Advocate Commissioner's Report wrongly describes the southern boundary of the defendant's property i.e., property covered under Ex-B.1, as Balakrishnan's land deserves to be rejected.

18. The intention of the donor - Munisamy Mudaliyar behind executing the aforesaid Settlement Deeds was to divide *inter alia* his 40



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Cents equally among his sons. Accordingly, he has executed the aforesaid

Settlement Deeds one by one within a time frame of about one month giving equal share i.e., 8 Cents to each of his sons. From a bare reading of Ex-A.1 and Ex-B.1 to Ex-B.3, the intention behind the order of division and settlement of the said 40 Cents, which is as depicted above, is crystal clear. However, there appears to be no clear demarcation of the 8 Cents given to each of his sons. There is no doubt with the order of division and the extent of property, but the demarcation of each of the 8 Cents does not appear to be clear. Further, the 40 Cents property does not appear to be in a proper rectangular shape; it is irregular in shape. Hence, the legal remedy available to the parties is to file a Demarcation Suit. An Injunction Suit would not lie in the facts of this case.

19. The plaintiff claims the suit property to be the 8 Cents settled upon him vide Ex-A.1. In the Suit description of property, he has described the boundaries of suit property, matching that of the property settled upon him vide Ex-A.1; but he has mentioned the survey number pertaining to the 8 Cents settled upon defendant vide Ex-B.1 in the place of Suit survey number. In fact, he has managed to effect sub-division and obtain Ex-A.5 - Separate Patta in his name in respect of the 8 Cents settled



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upon the defendant. The said sub-division is not in accordance with Ex-

A.1. There is no evidence available on record to show that the sub-division was effected after due enquiry. Hence, the sub-division is wrong and the pursuant Ex-A.5 - Separate Patta issued in respect of the defendant's 8 Cents covered under Ex-B.1 - Settlement Deed in favour of plaintiff, is not binding on the defendant.

20. As stated *supra*, there is no clear cut demarcation between the properties settled by Munisamy Mudaliyar upon his five sons. This means there may be or may arise some boundary dispute between the plaintiff and the defendant, whose portions are abutting each other on one side as shown in the above diagram. Hence, the findings of the First Appellate Court is justifiable in observing that the defendant is entitled to evict the plaintiff only through due process of law, and the defendant is not entitled to a direction to the plaintiff to handover vacant possession of the property covered under Ex-B.1, by invoking Order XLI Rule 33 of CPC as contended by the learned Counsel for the respondent / defendant.



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21. As regards the First Appellate Court's findings *qua* title, there is no bar for the Court to decide title incidentally in an Injunction Suit. The First Appellate Court had to incidentally decide title as the plaintiff attempted to claim title over the property covered under Ex-B.1 - Settlement Deed dated April 27, 1976 executed in favour of defendant, on the basis of Ex-A.1 - Settlement Deed dated May 17, 1976 executed in his favour. There is no question of law much less substantial question of law is involved in this case. Hence, there is no need to interfere with the judgment of the First Appellate Court.

22. As stated *supra*, only a Demarcation Suit would lie in the facts of this case and the parties are at liberty to initiate Demarcation Suit proceedings, if not yet done. It is hereby made clear that this Judgment would in no manner stand as an impediment for the same and the Court concerned shall decide such a Suit on merits and in accordance with law, uninfluenced and untrammelled by any observation made by this Court in this Judgment.



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23. No quarrel with the case laws relied on either side. This Court has considered the principles advanced therein. As they are general principles, there was no need for this Court to discuss them elaborately.

CONCLUSION:

24. Resultantly, the Second Appeal stands dismissed as lack of substantial question of law. The Judgment and Decree of the First Appellate Court is confirmed. The parties are at liberty to initiate Demarcation Suit, if so desired or advised, if not yet done, as stated *supra*. Taking into consideration the relationship between the parties, there shall be no order as to costs. Connected Miscellaneous Petition shall be closed.

24 / 10 / 2025

Index : Yes
Speaking Order : Yes
Neutral Citation : Yes
PAM/TK

To

- 1.The Subordinate Judge,
Gudiyatham.
- 2.The District Munsif,
Gudiyatham.



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R. SAKTHIVEL, J.

PAM/TK

PRE-DELIVERY JUDGMENT MADE IN
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