



S.A.No.555 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2025

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

S.A.No.555 of 2023
and
C.M.P.No.17411 of 2023

K.A.Karupusamy

... Appellant/Plaintiff

Vs.

1. The Commissioner,
Tiruppur Municipal Commissioner,
Municipal Corporation Building,
Tiruppur Town,
Tiruppur District.

2. Town Sub-Inspector of Survey,
Municipal Corporation Building,
Tiruppur Town,
Tiruppur District.

... Respondents/Defendants

PRAYER: This Second Appeal is filed under Section 100 of C.P.C. against the judgment and decree dated 01.02.2023 passed in A.S.No.19 of 2022 on the file of the Principal Sub-Court, Tiruppur, confirming the judgment and decree dated 31.08.2021 passed in O.S.No.265 of 2014 on the file of the Principal District Munsif Court, Tiruppur.

For Appellant : Mr.P.Santhosh

For Respondents : Mr.Abishek Murthy



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JUDGMENT

This Second Appeal is preferred by the plaintiff against the judgment and decree dated 01.02.2023 passed in A.S.No.19 of 2022 by the Principal Sub-Court, Tiruppur.

2. The parties are indicated herein as per their litigative status and ranking before the Trial Court.

3.1. According to the plaintiff, K.A.Karupusamy S/o.Late K.Arumugham that the suit property was purchased by his father K.Arumugham from one Abdul Shardar under registered sale deed dated 28.09.1955 in Doc.No.1231/1955 of Tiruppur Sub-Registrar Office. The said Abdul Shardar purchased the suit property under the registered sale deed dated 19.09.1943 to an extent of 1300 Sq.ft.,

3.2. From the date of purchase, the plaintiff's father had been in possession and enjoyment of the extent purchased by him. Plaintiff's father owned 18 feet east-west on the southern side, 22 feet east-west on the northern side and 65 feet north-south on the eastern and western side. A tiled house facing south, six rooms with width of 11 feet east-west and 65 feet north-south was constructed by the plaintiff's father. He left backyard measuring 7 feet east-west 65 feet north-south. The defendants are trying to encroach into 7 ft. X 65 ft. backyard. In the backyard cement flooring is laid by



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his father and safety compound wall with wooden doorway was put up on the north and south of the suit property by his father. The plaintiff's father had allowed the passing of public sewage water through 1 ft. X 65 ft. private drainage. If the same is blocked, it will flood the suit property as the landscape is sloppy.

3.3. In the resurvey done in the year 1996, it was drawn to a lesser extent of 15 feet east-west on the southern side and 13 ½ feet east-west on the northern side. In this regard, his father gave an objection to the Tahsildar and the Municipal Chairman of Tiruppur on 17.06.1996. The field survey map was manipulated by the Municipal Authorities at the instigation of some persons with some ulterior motive. Hence, the said resurvey filed map does not bind on the plaintiff's father or on the plaintiff. The defendants do not have such a right to do so and the same is against law. The plaintiff is absolutely entitled for the measurements found in the sale deed of his father.

3.4. The suit was filed by the plaintiff's father in respect of the suit property for declaration of title and for permanent injunction restraining the 1st defendant from damaging northern and southern walls with doorways in O.S.No.153/97 on the file of the District Munsif of Tiruppur.

3.5. It was held that the suit property exclusively belonged to the plaintiff's father and the 1st defendant should take necessary steps for recovery of possession of disputed portion in accordance with law. No appeal was filed against the said judgment and decree and the same has reached



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finality.

3.6. Plaintiff's father K.Arumugham executed the registered Will dated 03.11.2006 in favour of the plaintiff in respect of the suit property. K.Arumugham died on 06.09.2010 due to his old age and the said Will came into force. Therefore, the judgment and decree made in O.S.No.153 of 1997 would apply to the plaintiff also.

3.7. While so, in the month of March 2012, the Councilor of 18th Ward, Umamaheswari and Velusamy along with menial workers were attempting to demolish the north and south walls and the same was prevented by the plaintiff. The plaintiff issued a legal notice to the said Umamaheswari and Velusamy on 03.04.2012 (1st defendant) calling upon the 1st defendant not to disturb his peaceful possession and enjoyment of the suit property. On 14.05.2012, the 1st defendant issued reply notice with false allegations stating that requisite proceedings would be taken against the plaintiff.

3.8. Thereafter, in the month of July 2014, Sub-Inspector of Town Survey issued Show Cause Notice calling upon the plaintiff to appear before him for enquiry on 18.07.2014. The plaintiff issue legal notice to the defendants 1 and 2 on 16.07.2014 calling upon the 2nd defendant not to hold any enquiry and the same is against the judgment and decree in O.S.No.153 of 1997. On 19.08.2014, the 1st defendant issued a notice under Sections 256, 258 and 441 of Coimbatore Municipal Corporation Act VII of 2008 alleging that the plaintiff has encroached into public road. The plaintiff issued reply for the



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said notice to the defendant on 25.08.2014 and the same was received by the 1st defendant on 26.08.2014.

3.9. The defendants are trying to grab the suit property and trespassed into the suit property which is owned and possessed by the plaintiff. Hence, the suit.

4.1. Per contra on behalf of the defendants 1 and 2, it was contended that disputed property is 1.4 meter X 19.4 meter road. The plaintiff has failed to show the correct schedule of property (disputed property). Regarding the same issue the plaintiff's father Arumugham filed a suit O.S.No.153 of 1997 before this Court and the same was partly allowed in favour of the defendants. In the previous suit itself it was clearly stated in the written statement that the suit property has been sub-divided (S.F.No.134 was sub-divided as T.S.Nos.72 and 73). Patta for T.S.No.73 stands in the name of defendant Corporation. Till date neither the father of the plaintiff nor the plaintiff has taken any steps to challenge the sub-division of property.

4.2. With regard to the same property, the matter was already decided by this Court. Now, the plaintiff has filed the suit with regard to the same property and therefore, the suit is hit by doctrine of Res Judicata. T.S.No.73 is Municipal road. Plaintiff's father encroached a portion of the Municipal Corporation road. As per the judgment and decree made in O.S.No.153 of 1997 order of permanent injunction was granted up to the commencement of



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proper proceedings to be initiated by the Municipal Corporation. The alleged cause of action are invented for the purpose of the suit. After the judgment and decree made in O.S.No.153 of 1997, notice was issued to the plaintiff as per the Coimbatore Municipal Corporation Act 7 of 2008.

5. Based on the divergent pleadings, the trial Court framed the relevant issues.

6. At trial, on the plaintiff's side, to substantiate the plaint details, plaintiff has examined himself as PW1 and twenty one documents have been marked. Ex.A20 is sale deed dated 28.09.1955 executed in favour of the father of the plaintiff K.Arumugham by one Abdul Shardar. Ex.A7 dated 27.11.2003 is the copy of judgment and decree passed in O.S.No.153 of 1997 by the District Munsif Court, Tiruppur. On the defendants' 1 and 2 side, neither any oral evidence were let in nor documents were marked.

7. Upon consideration of oral and documentary evidence and after hearing the arguments advanced by either side, the trial Court dismissed the suit holding that in O.S.No.153 of 1997 only qualified injunction was granted and the suit is hit by doctrine of Res Judicata and suit was dismissed in toto.

8. Aggrieved the plaintiff preferred appeal before the Sub-Court,



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Tiruppur in A.S.No.19 of 2022.

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9. The First Appellate Court, upon perusal of case records and after hearing the arguments of both sides, held that the issues involved in the instant suit in O.S.No.153 of 1997 are one and the same and after full trial, the suit was partly decreed with regard to injunction till the defendants take steps for laying public pathway and holding that the suit is hit by Section 11 of CPC, dismissed the appeal. Aggrieved the plaintiff has preferred this Second Appeal.

10. For the same suit property, plaintiff's father K.Arumugham laid a suit before the same Court namely, District Munsif Court, Tirupattur for the larger relief of declaration of title and for consequential permanent injunction.

11. On a clear perusal of plaint, filed in this suit, description of suit property is one and the same namely 7 feet (east-west), 65 feet (north-south) excluding drainage to an extent of one foot (east-west) X 65 feet (north-south).

12. It is the case of the plaintiff that the suit property to an extent of 1300 sq.ft., was purchased by the plaintiff's father. It is not the case of the plaintiff that approval for the plan was obtained from the Municipal Authority. Though the plaintiff has stated that in the year 1996, plaintiff's father came to



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know about the resurvey and patta was granted for a lesser extent of 15 feet on the western side and 13½ feet on the eastern side. From the perusal of records, it appears that the suit property is facing southern side; A tiled house is put up on the purchased property. It appears that the front portion is surrounded by wall and entrance door is fixed. It is pertinent to note that in the suit property, namely 7 feet X 65 feet to the width of one feet public drainage runs in east-west direction. From northern edge of the public drainage, it is the property of the Municipality. It is not in dispute that plaintiff's father settled the property in favour of the plaintiff and he is in possession and enjoyment of his property. As regards the same property namely 7 feet X 65 feet, his father as mentioned supra, filed a suit for declaration of title and for permanent injunction. The trial Court in O.S.No.153 of 1997 denied the relief of declaration of title and a qualified injunction till the defendants take action was granted.

13. More so, PW1 would state that the 1st defendant issued notice under Coimbatore Municipal Corporation Act on 19.08.2014 and the suit was filed on 02.09.2014. The trial Court as well as First Appellate Court have dismissed the suit as it is hit by doctrine of Res Judicata under Section 11 of CPC. For a better understanding Section 11 of CPC is extracted hereunder:

“SECTION 11- RES JUDICATA- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or



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between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.-- The expression former suit shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.-- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.-- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.-- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating .

1[Explanation VII.-- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a



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proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]”

14. Section 11 of CPC contains the rule of conclusiveness of the judgment based upon the maxim of '*Interest reipublicae ut sit finis litium*' which means it concerns the State that there be an end to the suits, and partly based upon the maxim '*Nemo debet bis vexari pro una at eadem causa*' which means no man should be vexed twice over for the same cause. In fact, Section 11 of CPC does not affect the jurisdiction of the Court but operates as a bar to the trial of the suit or issue if the matter in the suit was directly or substantial issue in previous suit between same parties litigating under the same title in a Court, competent to try the subsequent suit, in which, judgment in the earlier case such issue has been raised and it was answered.

15. After the patta was granted for a lesser extent, the plaintiff's father in the year 1996 has not appeared to have taken any steps. Plaintiff's father had filed the suit before the same Court in respect of the same property and the judgment passed by the trial Court reached its finality. The plaintiff filed the suit after issuance of notice under Coimbatore Municipal Corporation Act.

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Plaintiff has once again filed the suit in respect of the same property for the relief of only permanent injunction and the same was dismissed as suit is hit by doctrine of Res Judicata.

16. The fact that the public drainage to an extent of one feet breadth runs on the southern side of the plaintiff's house indicates the fact that the property on the south of drainage is an encroached property.

17. This Court is of the considered opinion that the judgment of the First Appellate Court does not suffer from any infirmity or perversity. This Court also does not find any good reason to upset the findings of the First Appellate Court. No substantial questions of law arise for consideration.

18. Above being the position, this Second Appeal stands dismissed. Sequel to this, Judgment and decree dated 01.02.2023 made in A.S.No.19 of 2022 passed by the Principal Subordinate Court, Tiruppur stands confirmed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

07.10.2025

Internet:Yes
Index:Yes/No
Speaking/Non speaking order
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R.KALAIMATHI, J.,

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To

1. The Principal Sub-Court, Tiruppur.
2. The Principal District Munsif Court, Tiruppur.

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and
C.M.P.No.17411 of 2023

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