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S.No.958 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	17.07.2025
<i>Pronounced on</i>	12.09.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.958 of 2021

1.N.Vijaya

2.Bakkiyavathi

3.Chithra

.. Appellants

versus

1.Dr.Kalaiyaran

2.Rajeshwari

3.Geetha

.. Respondents

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 31.03.2021 in A.S.No. 58 of 2019 on the file of learned Principal District Judge, Krishnagiri, confirming the judgment and decree dated 21.11.2019 made in O.S.No.194 of 2017 on the file of learned Principal Sub Court, Krishnagiri.

For Appellant : Ms.V.Srimathi

For Respondent : Mr.V.Sakkarapani for R1

No appearance for R2 & R3



S.No.958 of 2021

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JUDGMENT

This Second Appeal arises out of the judgment and decree dated 31.03.2021 in A.S.No. 58 of 2019 on the file of the Principal District Judge, Krishnagiri, confirming the judgment and decree dated 21.11.2019 in O.S.No.12 of 2010 on the file of the Principal Sub Court, Krishnagiri.

2. The second appeal has been admitted on the following substantial questions of law:

a. Whether the plaintiffs have failed to establish the title based on comparison of Exhibit A3 with A6. Are the Courts below justified in decreeing the suit?

b. Are the Courts below right in ignoring Exhibit A3, the antecedent title of the plaintiffs that indicates a lesser extent in comparison to the deed of purchase by the plaintiffs?

c. In the absence of the rectification deed at the instance of the co-owners, are the extent not binding upon the subsequent claimants under the deed?

d. In the absence of legal evidence to prove the error in



WEB COPY



S.No.958 of 2021

the extent by examining the parties to Exhibit A3, should not the Court hold against the title of the plaintiffs?

e. Can the Power of Attorney unconnected with division in the family, be evidence to establish title of the plaintiffs?

f. Whether Exhibit A12 and Exhibit 13 not operate as res judicata bind the plaintiffs from reagitating the concluded issues?

g. Whether the Courts below are right in relying upon boundary recitals when the extent alone as relevance in determining legal rights amongst the divided co-owners?

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

4. The defendants 1, 3 & 4 are the appellants herein. The respondent as plaintiff filed the above suit in O.S.No.194 of 2017 against the defendants for the relief of declaration of title, permanent injunction as against the defendants and to decline the judgment and decree dated 21.04.2017 passed in O.S.No.247 of 2011 as null and void and for costs.

5. Briefly stated, according to the plaintiff, the suit property belong to



S.No.958 of 2021

one late B.S.Munikrishna Chetty through a partition dated 07.09.2011. After his demise on 16.09.1991, his legal heirs divided the suit property among themselves. Accordingly, the suit property was allotted to one of his son namely Suresh Kumar as 'D' Schedule. Thereafter, the said Suresh Kumar settled a portion of the suit property (1025 sq.ft) in favour of his wife by virtue of settlement deed dated 07.03.2001. He is in possession and enjoyment of the remaining extent. On 28.02.2011 the said Suresh Kumar and his wife along with their daughters Revathy and Archana executed a general power of attorney in favour of one Mahadesan Venkatesan. As the house in the suit property was in dilapidated condition, the power agent demolished the same and sold the vacant site to the plaintiff on 07.09.2011. Since then the plaintiff is in possession and enjoyment of the same. He further submitted that the north of the suit property, the 1st defendant Vijaya owns a land which was inherited by her through a Will dated 27.11.2003 executed by her father. The said property was purchased by her father through a sale deed dated 24.07.1978. But in the above sale deed the measurements were wrongly mentioned. Taking advantage of the same, the



S.No.958 of 2021

defendants are claiming right over the suit property and also filed a suit in O.S.No.247 of 2011 on the file of the file of District Munsif Court, Krishnagiri, in order to grab the suit property from the plaintiff. Hence, the plaintiff was constrained to file the above suit.

6.The defendants 1, 3 and 4 put together resisted the plaintiff's suit stating that the original vendors were entitled only to lesser extent in the suit properties and by creating false documents for the larger extent. The plaintiff obtained the sale deed dated 07.09.2011 and now the plaintiff is laying false claim in the suit. The contention of the defendants is that as per registered partition deed dated 11.12.1954 partition was effected among one Santhana Gopala Chettiyar and his sons namely B.S.GopalaKrishna chetty and B.SMunikrishna Chetty in which the property described as 'D' schedule was allotted to the share of Munikrishna Chetty. As per the said partition deed, in the description of suit property, no measurement was given. Therefore, the vendors of the plaintiff had no right or title or possession over the suit property as claimed by the plaintiff. After the demise of



S.No.958 of 2021

Munikrishna Chetty his heirs succeeded the properties. But in the partition deed dated 16.09.1991, the extents were excessively mentioned and the plaintiff cannot take advantage of the same. It is further stated that as per the partition deed dated 16.09.1991 the extent of property allotted to B.M.Sureshkumar is mentioned as East- West 93 feet; north- south 20 ½ feet i.e. 1906.50 sq ft. The extent now claimed in the suit is 2108 sq ft., i.e. 202 sq feet excessively claimed by the plaintiff without any basis. It is further submitted that in the plaint it is vaguely alleged that the said Sureshkumar executed a gift deed on 07.03.2001 in favour of his wife Padmavathy for an extent of 1025 sq ft. The extent given in the above said partition deed and gift deed is excessive without any basis. By creating false records mentioning larger extent the said Sureshkumar and his family members executed a power deed on 28.02.2011 in favour of one Madesan. Without ascertaining the correctness of extent, the plaintiffs have obtained the sale deed on 07.09.2011 for larger extent. The plaintiff cannot take advantage wrong description of property in the sale deed dated 24.09.1942. The plaintiff instead of rely upon his own documents cannot rely upon the



S.No.958 of 2021

description given in the sale deed dated 24.09.1942. The plaintiff is not entitled to question the sale deed dated 24.07.1978 executed by Lakshminarayana Chetty in favour of Singarachari, the father of the defendants. It is submitted that the said Lakshminarayana Chetty possessed and enjoyed the land measuring East -west 17 ½ feet and north – south 31 ½ feet and other properties. The measurements given in the sale deed dated 24.07.1978 in favour of the defendant's father is correct. As per the sale deed dated 24.07.1978 in favour of the defendant's father, the defendant's owned and possess 30 ½ feet. The plaintiff is not entitled for the suit claim. Hence, prayed for dismissal of the suit.

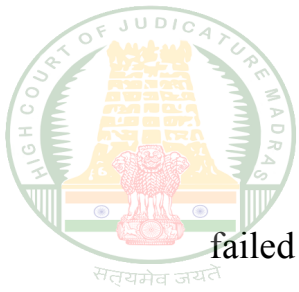
7.The learned counsel for the appellants/defendants 1, 3 and 4 would submit that the description of property given in the plaint is incorrect and the the plaintiff is entitled only to lesser extent. Since, the vendors of the plaintiffs have no right or title to the suit property as claimed by the plaintiff in the suit. It is submitted that after the demise of Muni Krishna his legal heirs succeeded his properties. But in the partition deed dated 16.09.1991,



S.No.958 of 2021

with ulterior motive the extent of land was incorrectly mentioned and the plaintiffs cannot take advantage of the same. It is further submitted that the said Suresh kumar executed a gift deed dated 07.03.2001 in favour of his wife Padmavathy to an extent of 1208 sq ft., and was holding the remaining extent of land. In the partition deed dated 16.09.1991 the extents of property allotted to the said Suresh Kumar was only 1906.50 sq ft., in which he executed the gift deed dated 07.03.2001 in favour of his wife Padmavathy to an extent of 1208 sq. ft., and the remaining land was retained by him. Whereas, in the suit a larger extent of 2108 sq.ft., is claimed (ie) an excess of 202 sq ft, excessively claimed by the plaintiff without any basis.

8.The learned counsel further submits that when it is found that the description of the property has been wrongly described, the same should have been cured by amending the plaint. Without making any such amendment in the description of the property, the courts below ought not to have granted the decree of declaration and injunction based on wrong description of the property. Her further contention is that when the plaintiffs



S.No.958 of 2021

failed to establish their title, the Courts below are not justified in decreeing the suit. Further she would submit that Exs.A12 and A13 operates as *res judicata* and the plaintiffs cannot be permitted to re-agitate the issues which was already concluded. The learned counsel further submits that the Courts below erred in relying upon the boundary recitals when the extent alone is relevant in determining the legal rights among the divided co-owners. To support her contentions, she has relied upon the judgments in the case of:

1. ***Syamakumar vs. Jayapalan Nair and Others.***, reported in **2012 SCC**

Online Ker 31597

2. ***Anathula Sudhakar vs. P.Buchi Reddy*** reported in **AIR 2008**

Supreme Court 2033

9. On the other hand, the learned counsel for the 1st respondent/plaintiff submit that under Ex.A6 sale deed the plaintiff has purchased the suit property from the power agent of the said Sureshkumar. He acquired the said property under Ex.A3 partition deed dated 16.09.1991. He then gifted a portion of the property allotted to him to his wife Pathmavathy under Ex.A4 on 07.03.2001. Thereafter, the said Sureshkumar



S.No.958 of 2021

and his family executed a power deed in favour of one Madesan who sold the suit property to the plaintiff. He would submit that under Ex.A3 partition deed dated 16.09.1991 the vendor of defendant's father Lakhminarayana Chettiyar was the 'C' schedule property measuring only 19.5 feet. However, in the sale deed executed in favour of the 1st defendant's father, 31 ½ feet was conveyed instead of 19.5 feet. On 27.11.2003 he executed a Will in favour of his wife and children with the above wrong measurements. The measurements given in the above Will is incorrect. Taking advantage of the wrong description of the property the defendants filed a suit in O.S.No.247/2011 and obtained a decree on 21.04.2017 based on the sale deed dated 24.07.1978 and Will dated 27.11.2003. The 1st and 2nd defendants in the above suit are the vendors of the plaintiff. They have not conducted the case in a proper manner. Hence, the judgment and decree passed in the above suit is not binding on the plaintiff. However, the Courts below held that in the suit in O.S.No.247/2011 the right of the wall alone was decided and therefore, it is not necessary to set aside the judgment and decree passed in the above suit. The learned counsel submits that the other



S.No.958 of 2021

reliefs claimed by the plaintiff was rightly granted by the Courts below which warrants no interference by this Court.

10. Heard on both sides and records perused.

11. The specific case of the plaintiff is that on 24.09.1942 the said Santhanagopal Chettiyar purchased the defendants' property lying north to the suit property. In the description of property in the above sale deed is described as follows:

கிழமேல் 27 கெஜம் தென்வடல் 6 ½ கெஜம் முன்று அகல
வீடுகள் 2, தழக்கடை, பிழக்கடை கிழமேல் 5 கெஜம், 3½ கெஜம் கொண்ட
ஜாகாவும், தெற்கு, கிழக்கு சுவர்களில் பூரா பாத்தியமும், வடக்கு மேற்கு
சுவர்களில் மாமூல் பொது பாத்தியமும், உட்பட

12. On 11.12.1954 there was a partition between Santhanagopal Chettiyar and his sons Gopalakrishnan Chetty, Lakshminarayana Chetty and Munikrishna Chetty. In the said partition the property purchased by him on 24.09.1942 and other ancestral properties were divided, in which the 'C' schedule property was allotted to Lakshminarayana Chetty. As per the partition deed, the said Lakshminarayana Chetty was allotted only 19.5 feet.



S.No.958 of 2021

But he had sold 31 ½ feet instead of 19.5 to the father of the 1st defendant on 24.07.1978. The plaintiffs have produced the sale deed dated 24.09.1942, and the same is marked as Ex.A1. The partition deed dated 11.12.1954 is marked as Ex.A2. From the above documents, it reveals that the said Lakshminarayana Chetty was allotted 'C' schedule property with the following measurements :

கிழமேல் 27 கெஜமும் தென்வடல் 6 ½ கெஜமும் பாத்தியப்பட்டது.
அவ்வகையில் 27 கெஜம் என்பது 81 அடியாகவும், 1 ½ கெஜம் என்பது
19.5 அடியாகவும், கணக்கிடப்பட வேண்டியுள்ளது. ஆனால் அந்த அளவு
படி உள்ள சொத்துக்களை விற்பனை செய்யாமல் தனக்கு சிறிதும்
பாத்தியம் இல்லாத சொத்துகளையும் சேர்த்து தென்வடல்

13.The above measurements shows that the said Lakshminaraya Chetty was entitled South-North 19.5 feet alone. While so, on 24.07.1978 he had executed a sale deed in favour of the 1st defendant for a larger extent measuring 31 ½ feet south north. In pursuant to the above sale deed the father of the defendants had executed a Will on 27.11.2003 in favour of his wife and children. Hence, with the wrong description of property the above documents are executed. It is not established by the above defendants how they are entitled for 31 ½ feet south-north. Moreover, even in the release



S.No.958 of 2021

deed executed in favour of the 1st defendant on 06.02.2008, only 19.5 feet south – north is mentioned. This goes to show that their predecessor in title were entitled only to 19.5 feet. Even in the suit filed by the defendants in O.S.No.247 / 2011 the measurement is given as South – North 31 ½ feet. However, in the above suit only the right of the east – west wall belonging to the defendant was decided. Hence, the arguments put forth on the side of the appellant/defendants that the judgement and decree passed in O.S.No.247/2011 operates as *res judicata* is unsustainable. The trial Court as well as the 1st Appellate Court has categorically held that the defendants as per Exs.A1 to A.8 documents they are entitled to 19.5 feet south-north alone. The plaintiff has derived his title from Ex.A1 sale deed and Ex.A2 partition deed. Hence, it is not required for the plaintiff to rectify the measurements in Ex.A3 partition deed. No perversity or infirmity found in the judgment and decree passed by the Courts below. Therefore, I do not see any question of law much less a substantial question of law in order to enable me to entertain this appeal.



S.No.958 of 2021

14.In the result,

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i.the second appeal stands dismissed.

ii.the judgment and decree dated 31.03.2021 in A.S.No. 58 of 2019 on the file of learned Principal District Judge, Krishnagiri, confirming the judgment and decree dated 21.11.2019 made in O.S.No.194 of 2017 on the file of learned Principal Sub Court, Krishnagiri is upheld. No costs.

12.09.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order

To

- 1.The Principal District Judge, Krishnagiri
- 2.The Principal Sub Court, Krishnagiri
- 3.The Section Officer, V.R.Section, High Court, Madras



WEB COPY



S.No.958 of 2021

K.GOVINDARAJAN THILAKAVADI,J.

vsn

**Pre-delivery judgment made in
Second Appeal No.958 of 2021**

12 .09.2025