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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-03-2025

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THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

**S.A No. 687 of 2024
and CMP No. 22255 of 2024**

Shanmugam

Appellant(s)

Vs

Chinnadurai

Respondent(s)

PRAYER : This Second appeal has been filed under Section 100 CPC, to set aside the decree and judgment dated 25.08.2023 passed by the Court of Special Judge No.II (FAC) Jayankondam in A.S No. 43 of 2019, reversing the decree and judgment dated 29.03.2019 passed by the District Munsif Court, Jayakondam in O.S No. 208 of 2011.

For Appellant(s): Mr.P.Sesubalan. Raja

For Respondent(s): None appeared

ORDER



WEB COPY This second appeal has been filed to set aside the decree and judgment dated 25.08.2023 passed by the Court of Special Judge No.II (FAC) Jayankondam in A.S No. 43 of 2019, reversing the decree and judgment dated 29.03.2019 passed by the District Munsif Court, Jayakondam in O.S No. 208 of 2011.

2. The plaintiff/respondent herein filed the suit in O.S No. 208 of 2011 on the file of the District Munsif Court, Jayakondam, for the relief of mandatory injunction and to remove the super structure made by the defendant by encroaching portion of his property in S.No. 469/1A. The case of the plaintiff is that the suit property along with other property belongs to him and his brother and they were entered into exchange deed on 13.08.1969, as per the exchange deed plaintiff's father enjoyed the suit property by fencing the same with four boundaries in which the defendant has no right and title, in that property Western half portion was allotted to the plaintiff about 50 years back had constructed the house residing there by paying tax. While so, the defendant who is the neighbor removed the fence and encroached the same. Therefore, he come forward with the present suit



praying for declaration as well as to remove the encroachment by way of mandatory injunction.

3. The said suit was contested by the defendant stating that in S.No. 469/1A, joint patta No. 1434 was granted in favour of the Gnanaprakasam, Kaliaperumal and Appadurai, Sidharthan, Chakaravarthy, Shanmugam. As per the exchange deed relied by the plaintiff, in that exchange deed there is boundaries shown as on the western side of Veeramuthu plot, from that Veeramuthu defendants' father Kasinathan purchased the said house flat with an extent of 10 cents through valid sale deed dated 25.02.1987 and fencing the same from the date of the purchase. The defendants father Kasinathan enjoyed the property as absolute owner after his demise the defendant was enjoying the said 10 cents land by putting up super structure and residing there, on the Western side of his property an extent of 10 cents suit property is belongs to the plaintiff which is situated wherein he has not made any such encroachment but the plaintiff falsely claiming that he had encroached the portion of the suit property which totally false. Considering the both side submissions the Trial Court framed issues and appointed advocate commissioner, who visited the suit property and measured the same and submitted his report. After considering the oral and documentary



evidence the Trial Court held that the plaintiff has not produced any document to prove that the defendant encroached the portion of the suit property. Besides, as per the report of the Advocate commissioner the description of the property found in the suit schedule is not tallied with property description as found in exchange deed as well as Ex.B1/sale deed thereby plaintiff not properly identified the property and plaintiff not established that as per the oral partition held in the family suit property was allotted to his share also not tallied with Ex.B1/sale deed the defendants father purchased 10 cents thereafter patta was granted in his name in patta No. 1434. Considering the document the Trial Court held that plaintiff not proved the defendant has encroached the portion of the suit property. So also commissioner report also not supported his case. Accordingly suit was dismissed.

4. Challenging the findings of the Trial court plaintiff filed the appeal before the Additional District Sessions Court, Ariyalur in AS No. 43 of 2019, which independently analyzed the oral and documentary evidence held that as on date defendant bound to prove that he is having land in S.No. 469/1A since his sale deed is pertaining to 469-A with an extent of 10 cents. Therefore, the first appellate Court concluded that without mentioning



proper sub division the defendants father purchased the property. Thereby, he has not proved his right and title in respect of 10 cents. On the other hand, the plaintiff proved his title as well as encroachment with the help of the advocate commissioner. Accordingly, suit was decreed by allowing the appeal.

5. Challenging the reversal findings of the Courts below, the defendant preferred the present second appeal

The appellant filed this appeal on the following grounds.

The First Appellate Court would not have reversed the Decree and Judgment of the Trial Court, had it taken into consideration the following facts:

1. The Respondent/Plaintiff had filed the above suit seeking Declaration, Recovery of Possession and Mandatory Injunction, regarding the property that his father Kannusamy and his brothers Gnanaprakasam and Boominathan obtained under the Exchange Deed dated 13.08.1969.

ii. The said property is a portion of a larger extent of 23 Cents comprised in Survey No. 469/1, that is 9 Cents out of 23 Cents. The property ad measuring 23 Cents, including the 9 cents of the respondent's family has been subdivided as 469/1A.

iii. The property ad measuring 23 cents, including the 9 cents of the respondent's family has been subdivided as 469/1A

iv. The Respondent/Plaintiff had also described the suit schedule in the plaint as it



has been described in the Exchange Deed.

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v. It is pertinent to note here that the property of Mr. Veeramuthu is also comprised in Survey No. 469/1A.

vi. The Appellant's father Mr. Kasinathan purchased the property of Mr. Veeramuthu, admeasuring 10 Cents vide Sale Deed dated 25.02.1987. In the above sale deed, the Western boundary owner has been described as one Gnanaprakasam, who is the brother of the respondent.

vii. In view of the facts narrated above, the First Appellate Court ought to have held that the 9 Cents claimed by the Respondent/Plaintiff is different from the 10 Cents purchased by the Appellant's Father Mr. Kasinathan.

vii. The First Appellate Court has also failed to take into consideration that the Joint Patta No. 1434 regarding Survey No. 469/1A has been issued in favour of the 5 persons including the Appellant as mentioned below 1) Gnanaprakasom 2) Ayyadurai, 3) Siddharthan 4) Chakaravarthy 5) Shanmugam (Appellant herein).

viii. The First Appellant Court has failed to consider the fact that in the Sale Deed dated 25.02.1987 executed by Mr. Veeramuthu in favour of Appellant's father Kasinathan, he has been mentioned as the Eastern boundary owner. Hence, it is obvious that the property inherited by the Appellant's father Kasinathan is different from the property that he purchased from Mr. Veeramuthu.

ix. The First Appellate Court has committed a blunder by not accepting Ex.B2, the joint patta issued in favour of 5 persons including the Appellant on the ground that



the respondent had raised objection regarding the same.

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x. The First Appellate Court has failed to realize that the property inherited by Mr. Kasinathan is comprised in Survey No. 469/1B and the property he purchased from Mr. Veeramuthu is a portion of the larger extent of 23 Cents comprised in Survey No. 469/1A.

xi. Unfortunately, without realizing the above factual aspect, the First Appellate Court inadvertently held that the Appellant had constructed his house in the property of the Respondent Plaintiff.

xii. The First Appellate Court has failed to realize that the report of the Advocate/Commissioner has rightly reflected that the parties have been in possession of their respective properties and the Appellant has not encroached the suit property as alleged by the respondent and the following measurements given in the sketch filed by the Advocate/Commissioner would substantiate the same;10. Thus, the Report of the Advocate/Commissioner proved the fact that the Appellant is in possession of 10 cents purchased by his father and the respondent/plaintiff is in possession of 9 cents of the property which they obtained under the Exchange Deed. Unfortunately, the First Appellate Court, without realizing the same, was pleased to decree the suit and caused miscarriage of justice.

6. Notice Issued to the respondents none appeared hence the



respondent name is printed in the cause title.

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7. The learned counsel for the appellant submits that the first appellate Court failed to take note of the fact that even at the time of the exchange deed made in the family of the plaintiff of the year 1969 the property of the Kasinathan, Veeramuthu is the vendor of the plaintiff's father is shown as one of the boundary on western side and from that Veeramuthu appellant's father purchased the property in the year 1987 which itself shows that suit property as well as property purchased by the defendant's father are two different property but the first appellate Court erroneously fixed the liability on the side of the defendant to prove the right and title which is totally erroneous without considering the settled proposition that the person who purchased the Court bound to prove his case. Further, he argued that as per the commissioner report the property purchased by the defendant through Ex.B1/sale deed is clearly mentioned which comes around 9.62 cents and the suit property shown as 8.64 cents both are two different items. As per the commissioner report the plaintiff alone encroached 1.4 metre of the defendant portion same was not been properly appreciated by the first appellate Court. Hence, he prays to set aside the findings of the first appellate Court.



8. This second appeal is admitted on the following questions of law:

i. Is the rejection of Ex.B2, the joint patta issued in favour of 5 persons including the appellant by the first appellate court on the ground that the respondent had raised objection regarding the same, has lead to the miscarriage of justice?

ii. Has the first appellate court committed an error by coming to the conclusion that the appellant has encroached the property of respondent and constructed his house in Survey No. 469/1A, though his father kasinathan is the owner of 10 cents compromised in the above survey Number?

iii. Has the first appellate Court has failed to appreciate the fact that the property inherited by the father of the appellant and the property he purchased from Veeramuthu are different properties ?

9. Considering the submission of the learned counsel for the appellant and perused the oral and documentary evidence. For the sake of convenienc, the parties are denoted as per the suit. The fact reveals that the plaintiff approached the Court for the relief of declaration and to remove the encroachment by way of mandatory injunction stating the defendant encroached the portion of the suit properly belongs to the plaintiff absolutely. Suit property survey number in mentioned as S.No. 469/1A. The contention of the defendant is the that 9 cents belongs to the plaintiff by way

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of exchange deed held in the family members is totally different from 10 cents purchased by his father from one Veeramuthu, who is adajacent land owner of the plaintiff, with specific four boundaries his father purchased the property to that effect the sale deed as Ex.B1. On perusal of Ex.B1/sale deed, its boundary description shows that the defendant's 10 cent land is situated on the Eastern side of the Gnanaprakasam land. Admittedly, Gnanaprakasam is brother of the plaintiff with whom the plaintiff have entered into deed of exchange. Therefore, with clear four boundaries, the property was purchased by the defendant's father in the year 1987 with an extent of 10 cents in S.No. 469/1. The learned counsel for the appellant/defendant pointed out that in S.No. 469/1 23 cents is available in land out of which 10 cents purchased by the defendant's father and another. Therefore, for the said 23 cents in S.No. 469-1A, joint patta issued in the name of the plaintiff's brother and the defendant. Hence, around 10 cents belongs to the defendant shown in the commissioner report and the suit property is comes around 8.64 cents shown as separate portion of the plaintiff property. Even as per the Advocate commissioner report the plaintiff encroached the portion of the property belongs to the defendant. Therefore, the Advocate commissioner report as well as physical feature as



on ground was properly appreciated by the Trial Court and dismissed the suit. But the first appellate Court erroneously fixed the responsibility on the side of the defendant and decreed the suit by allowing the appeal as such is erroneous one. Therefore, findings rendered by the first appellate Court is set aside. Further, joint patta issued in favour of five persons including appellant/defendant as such shows that the appellant is entitle to the Eastern side of the suit property. It was not been properly appreciated by the first appellate Court. Accordingly, findings of the first appellate Court is set aside. Accordingly, questions of law 1 is answered.

10. Boundary description in the sale deed/Ex.B1 relied by the defendant/appellant itself proves that suit property as well as property purchased by the defendant's father are two different properties with proper extent of 10 extent it has not been properly appreciated by the first appellate Court. Accordingly, questions of law 3 is answered.

11. The first appellate Court failed to take note of the fact that entire an extent of 23 cents in survey No. 469/1A which includes both the plaintiff's 9 cents and defendant's 10 cents, which are two different properties but the first appellate Court erroneously held that the defendant encroached the suit property as such is totally erroneous and liable to be set



aside. Accordingly, question of law 2 is answered.

WEB COPY 12. The findings of the first appellate Court in A.S No. 43 of 2019 is set aside. Accordingly, this second appeal is allowed. Thus, suit is dismissed as no merits finding of the Trial Court is confirmed. Pending petition(s), if any, is/are closed.

13-03-2025

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Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

To

i. The Special Judge No.II, FAC Jayankondam.

ii. The District Munsif Court, Jayakondam.

iii. The Section officer, V.R. Section, High Court, Madras.



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T.V.THAMILSELVI J.
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