



S.A.No.692 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	07.10.2025
<i>Pronounced on</i>	10.12.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.692 of 2023
and C.M.P.No.22041 of 2023

N.G.Suresh

.. Appellant

versus

Ramadoss Chettiar

.. Respondent

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 31.07.2023 made in A.S.No.24 of 2023 on the file of Sub Court, Sirkali, confirming the judgment and decree dated 25.10.2021 made in O.S.No.261 of 2012 on the file of the District Munsif Court, Sirkali.

For Appellants : Mr.S.Rajendrakumar

For Respondent : Mr.A.Muthukumar

JUDGMENT



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The above second appeal arises out of the judgment and decree dated 31.07.2023 made in A.S.No.24 of 2023 on the file of Sub Court, Sirkali, confirming the judgment and decree dated 25.10.2021 made in O.S.No.261 of 2012 on the file of the District Munsif Court, Sirkali

2.The case of the plaintiff is that the suit 'A' schedule property situated in S.Nos.35/2 and 35/1, was purchased by the plaintiff by virtue of a registered sale deed dated 14.07.1983. The plaintiff is in possession and enjoyment of the suit property from the date of purchase. The plaintiff is also possessing other properties adjacent to the suit property. The plaintiff, in order to prevent cattle and men from entering into the lands, has fenced the suit property and other properties and enjoying the same for the past 29 years. The defendant is having small extent of land on the western side of the suit property. While so, the defendants made attempts to survey the lands, with an intention to remove the above fence. Hence, the plaintiff issued a legal notice on 27.10.2012 questioning the same. On 10.12.2012 again the defendants attempted to remove the fence and encroach upon the suit property. Hence, the plaintiff was constrained to file the above suit.



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While so, on 20.03.2017 the defendant encroached upon the 2nd item of the suit property to an extent of 14 cents and re-fixed the fence towards south of the suit property. The portion encroached by the defendant is shown as 'B' schedule property in the suit schedule which is comprised in S.No.35/1B. Hence, the plaintiff prays for permanent injunction in respect of 'A' Schedule property and for recovery of possession in respect of 'B' schedule property.

4.The claim of the plaintiff was resisted by the defendant stating that the description mentioned in the suit schedule property is incorrect. The defendant has mortgaged his lands to the plaintiff. The plaintiff thereafter cultivated the lands through his agent. While so, the plaintiff insisted the defendant to sell his land which was refused by the defendant. The plaintiff has encroached 14 cents of land belonging to the defendant. Hence, the defendant took appropriate steps to measure the property. Aggrieved by this, the plaintiff has filed the above suit with an intention to grab the property of the defendant. It is further submitted that the defendant has never encroached upon the property of the plaintiff as claimed in the suit. It is further submitted that the plaintiff has wrongly stated the extent of the 2nd



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item of the suit property as 78 cents. In fact, in the mortgage deed dated 29.07.2002, executed by the defendant in favour of the plaintiff. The extent of land is clearly mentioned as 1 acre 14 cents. At the time of discharging of mortgage, the plaintiff encroached 7 cents of land belonging to the defendant on the eastern side of the plaintiff's lands. On 08.11.2012 the defendant lodged a complaint before the Police Station and only thereafter, the plaintiff filed the above suit. Hence, the defendant prayed for dismissal of the suit.

5.The trial Court, based on the above pleadings, materials on record and the arguments advanced by the respective counsel for the parties, decreed the suit in favour of the plaintiff. Aggrieved by this, the defendant preferred the appeal suit in A.S.No.24 of 2023 and the first Appellate Court after re-appreciating the evidence on record dismissed the appeal suit. Hence, the present second appeal is preferred.

6.The second appeal is admitted on the following substantial questions of law:

“A. Whether Courts below are correct in law in decreeing the suit when the respondent/plaintiff has not



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sought for Declaration of title?

B. Whether the Courts below are correct in law in failing to consider Ex.B.1, B.2 and B3 which clearly shows the entitlement of the defendant to an extent of 1.14 acres in R.S.No.35/1A which includes the 'B' schedule?

C. Whether respondent/plaintiff has not taken any steps against Appellant/Defendant vendor Angusamy who had been in possession from 1977 onwards, is he not estopped from claiming so as to against the appellant/defendant?"

7.The learned counsel appearing for the appellant/defendant would submit that the respondent as plaintiff, has initially filed the suit for bare injunction in respect of 94 cents and thereafter, in the year 2017 sought for possession of land measuring at 14 cents from the appellants/defendants. The respondent originally claimed 8 cents of land from the defendant in the 1st amendment petition and subsequently in the 2nd amendment petition claimed 14 cents. The Courts below failed to consider that the plea in the Amendment Petition was not supported by any documentary evidence. He would submit that the total extent of land in S.No.35/1 is 1 acre and 0.78 cents and after sub division 1 acre 14 cent of land was sub divided as



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R.S.No.35/1A in the name of the defendant's vendor Angusamy and 0.64

cents of land was recorded in the name of the plaintiff as S.No.35/1B as per their enjoyment. While so, the defendant purchased 1 acre 14 cents in S.No.35/1A, under Ex.B.1 sale deed dated 24.01.1996, and he is in possession and enjoyment of the said property from the year 1996 onwards. The defendant's vendor Angusamy was also in possession and enjoyment of 1 acre 14 cents in S.No.35/1A from the year 1977 onwards. Even in the registered mortgage deed, marked as Ex.B.2, executed by the defendant in favour of the plaintiff, the extent of land owned by the defendant is mentioned as 1 acre 14 cents in S.No.35/1A. Again in the discharge receipt of mortgage, it is mentioned as 1 acre 14 cents in S.No.35/1A, which belonged to the defendant. While so, the plaintiff suppressed the execution of Ex.B.2 mortgage deed, Ex.B.3 discharge receipt and about cultivation of defendant's property by the plaintiff under bokiyam from 29.07.2002 till 21.07.2006 as per Exs.B.2 and B.3 documents. The plaintiff did not take any action against the defendant's vendor Angusamy who had been in possession and enjoyment of 1 acre 14 cents from the year 1977 onwards. Moreover,



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the plaintiff did not seek any declaration prayer against the sale deed in the name of the defendant to declare the same as null and void. The defendant is having long possession and enjoyment and title over the 'B' schedule property and no declaratory relief is sought for by the plaintiff who claimed possession of the 'B' Schedule property. It is further submitted that without declaration of title, the plaintiff cannot seek relief of recovery of possession in respect of 'B' schedule property. The learned counsel for the defendant would further submit that the surveyor has not stated from which survey stone he has commenced the measurements and ensured its correct position to draw the lines between R.S.No.35/1A & R.S.No.35/1B. Hence, the Courts below are incorrect in decreeing the suit in favour of the plaintiff when the plaintiff failed to seek the relief for declaration of title and without taking into consideration the documents marked as Exs.B2 & B3 by the defendant. Since the defendant has mortgaged 1 acre 14 cents in R.S.No.35/1A, plaintiff is estopped from claiming 14 cents from the defendant. Further, the plaintiff is estopped from claiming 14 cents without taking any steps against the defendant's vendor Angusamy who was in possession and enjoyment of



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the said property from the year 1977 onwards. Hence, prayed for setting aside the judgment passed by the Courts below.

8. On the other hand, the learned counsel appearing for the respondent/ plaintiff would submit that the plaintiff has purchased 'A' schedule property comprised in S.No.35/2 and 35/1 under Ex.A1 Sale deed and from then onwards the plaintiff alone is in possession and enjoyment of the same for the past 29 years. Pending suit, the defendant encroached 14 cents of land belonging to the plaintiff and also dislodged the fence put up by the plaintiff. Hence, the plaintiff amended the plaint and sought for the relief of permanent injunction in respect of 'A' schedule property and for recovery of possession in respect of 'B' schedule property which was encroached by the defendant after filing the suit. The Courts below having considered the facts and circumstances of the case in proper perspective had rightly decreed the suit in favour of the plaintiff which warrants any interference by this Court.

9. Heard on both sides and records perused.

10. It is the specific case of the plaintiff that the defendant, after filing the suit, has encroached upon the plaintiff's land to an extent of 14 cents on



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20.03.2017. Whereas, the contention of the defendant is that the total extent of land in S.No.35/1 is 1 acre 78 cents and after sub division, 1 acre 14 cents was assigned as R.S.No.35/1 recorded in the name of the defendant's vendor Angusamy and the remaining 64 cents was recorded in the name of the plaintiff as 358/1B as per their enjoyment. The defendant had purchased 1 acre 14 cents from his vendor Angusamy under Ex.B.1 sale deed on 24.01.1996 and he is in possession and enjoyment of the above 1 acre 14 cents from the year 1996 onwards. Thereafter, the defendant mortgaged the said property to the plaintiff under Ex.B2 and discharged the same under Ex.B3. Even in the above mortgage deeds, the extent of land was mentioned as 1 acre 14 cents. During the mortgage period i.e., 29.07.2002 till 21.07.2006, the plaintiff's agent was alone cultivating the above mortgaged lands. At that time, the plaintiff encroached the defendant's land to an extent of 7 cents on the eastern side. It is not in dispute that in the 1st amendment petition the plaintiff claimed 8 cents encroached by the defendant and only in the 2nd amendment petition, after the surveyor's report, the plaintiff amended the plaint claiming 14 cents of land said to have been encroached



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by the defendant. The said land is shown as 'B' schedule property after amendment.

11.Upon perusal of Ex.A1 sale deed it is seen that the plaintiff has purchased 1 acre 16 cents of land in S.No.35/2 and 78 cents in S.No.35/1 i.e., a total extent of 1 acre 94 cents was purchased by the plaintiff from one Thirunavukarasu under a registered sale deed dated 14.07.1983. On the side of the plaintiff, the sale deeds of defendant's vendor are marked as Exs.A7 and A8 respectively. Under Ex.A7 it is seen that 67 cents of land was purchased and as per Ex.A8- Sale deed, 33 cents of land was purchased by the defendant's vendor Angusamy. Moreover, the defendant has not raised any objection before the trial Court with respect to the surveyor's report in which it is categorically mentioned that the defendant has encroached upon 14 cents of land belonging to the plaintiff. Moreover, the contention of the defendant is that his claim of right over the property to an extent of 1 acre 14 cents is based on Ex.B4 to B6 which includes the 'B' schedule property. In Ex.B1 sale deed though it is mentioned that the defendant has purchased 1 acre 14 cents in S.No.35/1A. Whereas the defendant's vendor Angusamy



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under Ex.A7 and A8 was owning only 1 acre of land and therefore, he could

not have conveyed 1 acre 14 cents of lands in favour of the defendant.

Moreover, the defendant is claiming right over 1 acre 14 cents which is based on the revenue records which could not confer title upon the defendant. When the vendor of the defendant was owning 1 acre of land under Ex.A7 and A8, the defendant cannot claim right over 1 acre and 14 cents in S.No.35/1A. Moreover, the claim of the defendant is that the plaintiff has encroached upon his land to an extent of 07 cents for which no action is taken by the defendant against the plaintiff. This would go to show that the said allegation is false. The defendant failed to establish that his vendor Angusamy was in possession and enjoyment of 1 acre 14 cents in R.S.No.35/1A which includes 'B' schedule property from the year 1977 onwards. Therefore, the defendant cannot claim 14 cents as per Ex.B2 and B3 documents. Hence, the Courts below have rightly held that the defendant is not entitled to 1 acre 14 cents and that the plaintiff has established the encroachment made by the defendant to an extent of 14 cents and rightly decreed the suit in favour of the respondent/plaintiff. Hence, all the



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substantial questions of law are answered against the appellant/defendant.

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12.In the result,

(i) this second appeal is dismissed. No costs.

(ii) the judgment and decree dated 31.07.2023 made in A.S.No.24 of 2023 on the file of Sub Court, Sirkali, confirming the judgment and decree dated 25.10.2021 made in O.S.No.261 of 2012 on the file of the District Munsif Court, Sirkali, is upheld. Consequently, connected miscellaneous petition is closed.

.12.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order

To

- 1.The Sub Judge, Sirkali Court, Sirkali
2. The District Munsif, Sirkali Court, Sirkali
- 3.The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.

vsn

**Pre- delivery judgment made in
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10.12.2025