



S.A.No.3 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.07.2025
Pronounced on	12.09 .2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.3 of 2020
and C.M.P.No.19393 of 2022

Manivasagam

...Appellant

Vs.

Selvam rep., by
Power Agent Govindammal
Puliyannur Village,
Tindivanam Taluk,
Villupuram District.

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 to set aside the decree and judgment dated 07.01.2019 made in A.S. No. 12 of 2015 on the file of the learned Principal Sub-Judge, Tindivanam, confirming the judgment and decree dated 23.03.2015 made in O.S. No.35 of 2012 on the file of the learned District Munsif, Tindivanam.

For Appellant : Mr. S.Kaithamalai Kumaran
For Respondent : Mr. R.Agilesh



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JUDGMENT

This appeal is directed against the judgment and decree dated 07.01.2019 made in A.S. No.12 of 2015 on the file of the Principal Sub Court, Thindivanam, confirming the judgment and decree dated 23.03.2015 made in O.S. No.35 of 2012 on the file of the District Munsif Court, Tindivanam.

2.The following substantial question of law were raised along with the memo of the grounds of second appeal:

"1. When admittedly the plaintiff has not proved his title to survey No.15/6 and another suit O.S.No.76/2008 is pending between the parties in respect of S.No.15/6, are the Courts below justified in decreeing the suit?

2. When admittedly the plaintiff has failed to prove his title to S.No.15/6, are the Courts below justified in decreeing the suit as prayed for?"

3.The defendant is on appeal.



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4.The case of the plaintiff is that the suit property originally belonged to one Venkatachala Udayar who had four sons namely Balakrishnan, Ponnusamy, Radhakrishnan and Devaraj. On 25.02.1943 there was a partition in the family in which 3 acres and 80 cents in S.No.100/4 was divided among the family members. In the said partition, 70 cent land on the west and the next 1 acre 2 cent land was allotted to Balakrishnan and the further next 1 acre 7 cent land was allotted to Radhakrishnan and the next 1 acre 1 cent land was allotted to Ponnusamy. The land measuring 1 acre 1 cent allotted to ponnusamy is the suit property. The new survey number for the suit land is S.No.14/1 and 15/6 respectively. The said Ponnusamy had two sons namely Rajabadhar and Selvam. On 09.07.1982 there was a partition in the family in which the suit property was allotted to the share of Selvam, the plaintiff herein. From then onwards the plaintiff is in possession and enjoyment of the suit property. The defendant has no right over the said property. The defendant's land is in S.No.15/5 and not in S.No.15/6. Since a wrong entry was made in the 'A' register in the name of Devaraj, the defendant is claiming right over the suit property. Hence, the plaintiff



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WEB COPY filed the above suit.

5.Per contra, the defendant would submit that it is incorrect to state that the suit property is comprised in S.No.14/1 and 15/6. The suit property is wrongly described in the suit schedule. The property allotted to the share of Ponnusamy i.e., 1 acre 1 cent out of 3 acres 80 cents is not entirely located on the western side. It is located on the Eastern and Northern side. Even the boundaries are not correctly stated in the suit. In fact, on the western side, the lands of Natesan Kantha lies. But in the suit it is shown as if one Paramandham land is lying on the west which is incorrect. To the west of Paramandham land, the property of the defendant lies in S.No.15/6. The plaintiff in order to grab the property of the defendant wrongly described the boundaries of the suit property and fraudulently included the property of the defendant in S.No.15/6. The defendant had also filed a suit in O.S.No.76/2008 in respect of his 1 acre 2cents of land and the suit is still pending. Likewise, another suit in O.S.No.138/2018 in respect of 1 acre 7 cent land purchased by the father of the defendant which was given to Rajabadhar is also pending. Hence,



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the property in S.No.100/4 to an extent of 3 acre 80 cents has to be measured and identified to resolve the dispute.

6.The trial Court upon considering the materials on record decreed the suit against which the defendant preferred the appeal suit in A.S.No.12 of 2015 before the Principal Sub Court, Tindivanam. The First Appellate Court dismissed the appeal. Aggrieved by this, the present appeal is preferred before this Court.

7.5.The learned counsel appearing for the appellant/defendant submits that the plaintiff/respondent failed to establish his title over the property in S.No.15/6 which admittedly stands in the name of defendant / appellant. He would further submit that another suit in O.S.No.76 of 2008 is pending between the same parties in respect of S.No.15/6. While so, the Courts below are not justified in decreeing the present suit. His further contention is that, when Order 41 Rule 31 of CPC provides for a mandatory procedure for deciding the appeal against the trial Court decree, the judgement and decree passed by the First Appellate Court without framing any points for consideration i.e., without following the



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mandatory procedure, dismissing the first appeal is erroneous. He would submit that it is the duty of appellate Court to raise points for determination to clear up the pleadings and focus the attention of the Court and the parties to the rival contentions, which arise for decision.

8.The Learned Counsel for the Appellant further submitted that in the present case, since the First Appellate Court has not formulated the points for determination, that the mandatory provisions of Order 41 Rule 31 CPC have not been adhered to. He would thus submit, the First Appellate Court being the final court of facts, the parties have a right to be heard both on question of law and on facts. Considering all the evidence adduced by the parties in this case, he further submits that since the First Appellate Court failed to consider Ex.A.7 documents, the judgment and decree passed by the First Appellate Court is liable to be set aside. To support his contention, learned counsel relied upon the judgment in the case of ***K.M.M.Kadar Hussain*** reported in ***1997 1 LW 827 and Parimal vs. Veena Alias Bharti*** reported in ***(2011) 3 SCC 545***.

9. He further submits that the plaintiff has failed to establish that



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the suit property is in S.No.15/6 and the documents filed on the side of the plaintiff with the description of property as mentioned in the suit, differs from the schedule of the property mentioned in the documents filed by the plaintiff. Moreover, the patta filed on the side of the plaintiff does not relate to the suit property. The report and plan of the Advocate Commissioner cannot be taken into consideration and moreover the plaintiff failed to establish that the revenue authorities have wrongly assigned S.No.15/6 in the name of the defendant. The plaintiff failed to exhibit the new and old FMB Sketch along with the Commissioner's report and also failed to examine the surveyor to establish that the suit property is located in S.No.15/6. While so, the Courts below erroneously held that the defendant failed to establish that the land in S.No.15/6 belongs to the defendant, and it is for the plaintiff to prove his case. Based on the oral evidence of plaintiff alone the Courts below have come to an erroneous conclusion that the suit property is in S.No.15/6 belongs to the plaintiff. Moreover, the Courts below lost sight of the fact that the plaintiff has not taken any steps to correct the S.No.15/6 which stands the name of the defendant. This would show that the land



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in S.No.15/6 do not belong to the plaintiff. He would further submit that the Courts below failed to appreciate the fact that the property mentioned in Ex.A.7 measuring 3.80 cents is not located in S.No.100/4. He further submitted that the Courts below without any iota of evidence erred in rendering a finding that the property belonged to the defendant is in S.No.15/5 even without measuring the correct extent of land. Though, it was proved by revenue records that S.No.15/6 is assigned to the defendant, the Courts below erroneously held that the defendant failed to provide documents to prove that S.No.15/6 belongs to the defendant. Hence, prayed for setting aside the judgment and decree passed by the Courts below.

10.On the other hand, the learned counsel for the respondent submits that when the trial Court and the First Appellate court concurrently decreed the plaintiff's suit by recording all the findings of facts, against the defendant and that the findings were also not perverse on facts, the second appeal does not involve any question of law much less any substantial question of law within the meaning of Section 100



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WEB COPY of CPC. Thus, he would submit that the trial Court and the First Appellate Court having examined the facts in extenso, therefore interference by this Court is unwarranted. To support his contention, he has relied upon the judgment in the case of ***Dagadabai (Dead) vs. Abbas*** reported in (2017) 13 SCC 705 and ***P.Kishore Kumar Vs. Vittal K.Patkar*** reported in 2023 SCC Online SC 1483.

11.Per contra, the learned counsel submits that at the time of subdividing S.No.100/4, the Revenue Authority, considering the patta stands in the name of Devaraj, assigned S.No.15/6 in the name of the defendant. He would further submit the land in S.No.15/5 is measuring 1 acre 1 cent and the land in S.No.15/6 is 65 cents which is in total 1 acre 67 cents, which means that, the defendant owning altogether 1 acre 67 cents in the above 2 Survey numbers. Whereas, it is admitted fact that the defendant was allotted 1 acre 2 cents alone and therefore, the properties in S.No.15/6 and 14/1 absolutely belongs to the plaintiff. Since the patta was mistakenly assigned in the name of Devaraj and the same has been mentioned in the 'A' register, the defendant with malafide



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intention is claiming right over the property in S.No.15/6. Moreover, the defendant has not purchased any property to show that the property in old S.No.15/6 belongs to the defendant. The learned counsel further submits that in the suit filed by the defendant in S.No.76/2008 an Advocate Commissioner was appointed who visited the suit property and filed his report along with plan in which, it is clearly mentioned that the suit property is situated in S.No.15/6 and 14/1. The defendant has not produced any document to show that the suit property in S.No.15/6 belongs to the defendant except the patta and the 'A' register. Whereas, in Ex.A1 pertaining to the year 1973, the boundaries mentioned clearly and prove that the suit property is situated in S.No.15/6 and the same belonged to the plaintiff. The defendant is claiming more extent of land without any right. Considering the oral and documentary evidence produced by the respective parties the Courts below, rightly held that the property belonging to the defendant is not in S.No.15/6 and it is only in S.No.15/5 and the land comprised in S.No.14/1 and 15/6 measuring 1 acre 1 cent belongs to the plaintiff which warrants any interference by this Court.



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12.Heard on both sides, records perused.

13.The first contention of the learned counsel for the appellant is that the 1st Appellate Court failed to raise points for determination to clear up the pleadings and focus the attention of the Court and the parties on the rival contentions. It is further submitted that Order 41 Rule 31 CPC provides for a procedure for deciding the appeal. The law requires substantial compliance with the said provisions. The 1st Appellate Court being the final Court of facts has to formulate the points for its consideration and independently weigh the evidence on the issue which arise for adjudication and record reasons for its decision on the said points. Hence, the judgment and decree rendered by the 1st Appellate Court is liable to be set aside. No doubt, the law imposes upon the Court of appeal the imperative duty and obligation of giving an adequate and satisfactory judgment such as is required by law and it is the duty to explain its reasons for doing so more especially when the Court of first instance has gone so fully into the facts and the reasons for



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the conclusions arrived at. However, the omission to frame specific "points for determination" by a lower appellate Court does not automatically vitiate its judgment. The substantial compliance with Order 41 Rule 31 of CPC is sufficient. The key is whether the appellate Court has considered and dealt with all the issues that actually arise in the appeal and recorded its reasons based on the evidence presented by both parties. If the appellate Court addresses all the issues in the appeal and provides reasons for its decision based on the evidence, the judgment will not be considered fatal due to the absence of explicit "points for determination". Therefore, the primary requirement is for the appellate Court to independently consider the evidence and provide clear reasons for its findings. If no party is prejudice by the lack of formally framed points, and the appeal was fully understood and decided on its merits, the judgment should not be set aside on this ground alone. With this in mind, this Court proceeds to see whether the 1st Appellate Court failed to consider the evidence and simply concurs with the trial Court findings without application of its own mind and that there is a complete failure to comply with the statutory requirements of Order 41



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Rule 31 CPC, and the judgment is left without any reasoned grounds for the decision.

14.The learned counsel for the appellants submits that the Courts below failed to consider the statutory value of the revenue records produced by the defendant to establish his title over the suit property, despite the fact, the plaintiff failed to prove his case by tangible evidence. He would submit that except the assertion made by the plaintiff that the land in S.No.15/6 belongs to him without any acceptable and tangible evidence, the Courts below ought not to have decreed the suit in favour of the plaintiff. On the other hand, the defendant has established his title to S.No.15/6 by producing the relevant revenue records. On perusal of the findings rendered by the Courts below it is observed that, by virtue of the documentary evidence marked as Exs.A1 to A7, the plaintiff has established his title over the property in S.No.15/6 and that the entries in revenue records do not convey any title to the defendant. Admittedly, the defendant rest his claim based on the entries made in the revenue record. It is not in dispute that in the partition took place on 25.02.1943 the properties to the extent of 3 acres



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80 cents in S.No.100/4 was divided among the sons of one Venkatachal Udayar in which 1 acre 72 cents of land was allotted to Balakrishna Udayar and Devaraj Udayar. The land measuring 1 acre 7 cents on the next east was allotted to Radhakrishna Udayar and on the further east 1 acre 1 cent was allotted to Ponnusamy Udayar, father of the plaintiff. Thereafter, the land measuring 1 acre 72 cents Balakrishnan and Devaraj was partitioned in the year 1950 in which the western 70 cents of land was allotted to Balakrishnan and the eastern 1 acre 2 cents of land was allotted to Devaraj. Further, the land measuring 1 acre 7 cents which was allotted to Radhakrishnan was purchased by Devaraj and thereafter, he sold the same to plaintiff's father. From then onwards the plaintiff's father was in possession and enjoyment of the property allotted to him in the partition and along with the property purchased by him from Devaraj. Thereafter, the suit property was allotted to the plaintiff by virtue of a partition took place on 09.07.1982. Therefore, the plaintiff is alone in possession and enjoyment of the suit property as absolute owner. According to the plaintiff, the suit property is situate in S.No.14/1 and 15/6 respectively. The specific contention of the plaintiff is that at

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the time of sub division patta was wrongly issued in the name of the defendant and taking advantage of the same the defendant is trying to grab the suit property measuring 1 acre 1 cent which absolutely belongs to the plaintiff. It is admitted fact that the defendant owns only 1 acre 2 cents. The dispute is that whether the above property lies in S.No.15/6. Except for the entries in the revenue records, the defendant has not produced any documents to show that his property lies in S.No.15/6. It is well settled legal proposition that patta is not a document of title and the entries in revenue records do not convey any title to the property. The 1st Appellate Court categorically held that the documents produced on the side of the plaintiff and the report of the Advocate Commissioner clearly established the fact that the suit land measuring 1 acre 1 cent lies only on the eastern side and not on the eastern and northern side as stated by the defendant. Moreover, the Courts below has relied upon the Commissioner's report marked in O.S.No.76/2008 in which it is stated that the suit property 1 acre 1 cent lies in S.No.15/6 and 14/1 respectively. The trial Court and the 1st Appellate Court concurrently decreed the plaintiff's suit by recording all the findings of facts against



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WEB COPY the defendant. No perversity or infirmity is found in the above findings of the Courts below. In this view of the matter, this Court is of the opinion that the second appeal did not involve any question of law much less substantial question of law within the meaning of Section 100 of the Code, requiring interference in the judgment and decree passed by the Courts below.

15.In the result,

(1) The Second appeal stands dismissed. No costs.

(2) The judgment and decree dated 07.01.2019 made in A.S. No. 12 of 2015 on the file of the learned Principal Sub-Judge, Tindivanam, confirming the judgment and decree dated 23.03.2015 made in O.S. No.35 of 2012 on the file of the learned District Munsif, Tindivanam, is upheld. Consequently, connected miscellaneous petition is closed.

12.09.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order

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To

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



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K.GOVINDARAJAN THILAKAVADI,J.

VSN

**Pre-delivery judgment made in
S.A.No.3 of 2020
and C.M.P.No.19393 of 2022**

12.09.2025