



SA No. 1296 of 2019



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON: 01.07.2025

PRONOUNCED ON : 08 .08.2025

CORAM

THE HONOURABLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

SA No. 1296 of 2019

AND

CMP NO. 27961 OF 2019

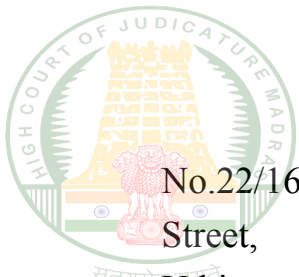
D.Thilagavathi
W/o. Dhanasekar,
Kulathangarai Street,
Agaramthuli, Uthiramerur and Taluk,
Kancheepuram District.

Appellant(s)

Vs

1. G.Devaki
W/o. T.S.Ganesan,
No.17, Guindy Venkatesamy Naidu
Street, Uthiramerur Town and Taluk,
Kancheepuram District.

2.S.Krishnan
S/o. A.Sivalingam,



No.22/16, Guindy Venkatesamy Naidu
Street,
Uthiramerur Town and Taluk,
Kancheepuram District.

Respondent(s)

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, 1908, to set aside the Judgment and Decree dated 14.08.2019, in AS No.19/2014 on the file of Principal Subordinate Judge, Kancheepuram reversing the Judgment and Decree dated 28.04.2014 in OS No.146 of 2011 on the file of the Additional District Munsif, Kancheepuram by allowing the above Second Appeal.

For Appellant : Mr.K.S.Ilangovan
For M/s.Achari and Antoni Associates

For Respondent(s): No appearance for R1 and R2

JUDGMENT

This Second Appeal is filed assailing the Judgment and Decree dated 14.08.2019, in A.S.No.19 of 2014 on the file of Principal Subordinate Judge, Kancheepuram, reversing the Judgment and Decree dated 28.04.2014 passed in O.S.No.146 of 2011 on the file of the Additional District Munsif, Kancheepuram.



2. The Second Appeal was admitted on the following substantial questions of law:

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“(1) Whether the 1st Appellate Court is right in disputing the plaintiff title over the suit property based on an unregistered sale deed produced by the defendant when Section 17(b) of the Registration Act, 1908 clearly states that any Title deed of the value above 100 or upwards shall be compulsorily registered.

(ii) Whether the 1st Appellate Court is right in its finding that the suit property does not belong to plaintiff's vendor in the absence of evidence on the contrary to prove that the suit property does not belong to the plaintiff's vendor as required under Section 102 of the Indian Evidence Act, 1872.”

3. Considering the scope of the issues involved between the parties, the subject matter lie in the narrow compass, it is unnecessary to dwell into the facts of the case in detail. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

4. The suit has been filed against the defendants for grant of permanent injunction restraining the defendants, their men and agents from in any way



damaging the compound wall of the suit property from the northern side or interfere with the suit property.

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5. According to the plaintiff, she has purchased a vacant land measuring 1950 sq.ft., east-west 65 feet and north-south 30 feet in Gramanatham S.No.878/208, in Ward No.11, Guindy Venkatasamy Naidu Street, Uthiramerur, for a sum of Rs.1,75,000/- under a registered sale deed dated 17.09.2001 from one A.Annamalai Naicker, son of Late Ayyasamy Naicker of Uthiramerur. The plaintiff purchased another extent of 243-1/4 sq.ft., in the same survey number from the same vendor, under a registered sale deed dated 20.02.2003. Thus, the plaintiff is the absolute and exclusive owner of the property in S.No.878/208, admeasuring 2,193-1/4 sq.ft., i.e., east to west on the northern side 60 feet, on the southern side 66 feet, north to south on the eastern side 33 feet, and on the western side 32 feet. Subsequently, the plaintiff applied for patta to the Tahsildar, Uthiramerur and obtained the patta for the properties purchased under the above said sale deeds.



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5.1. The further contention of the plaintiff is that her vendor Annamalai Naicker was in possession and enjoyment of the properties sold in favour of the plaintiff. The patta issued in the name of the plaintiff's vendor was subsequently transferred in the name of the plaintiff. The Chitta and Adangal also stands in the name of the plaintiff. The plaintiff had also produced the tax receipt dated 07.11.2002 in respect of the suit properties. While so, the first defendant has created a sale deed, as if she has purchased some property in her name from the said vendor. Being dissatisfied over the purchase of the property by the plaintiff, the first defendant developed enmity against the plaintiff and interfered with the plaintiff's possession and enjoyment in the suit property, which necessitated the plaintiff in filing the suit in O.S.No.56 of 2006 against the defendants before the District Munsif-cum-Judicial Magistrate, Uthiramerur, for the relief of permanent injunction covering the area of about 2,193 $\frac{1}{4}$ sq.ft., in survey No.878/208. The said suit was subsequently transferred to the file of the Additional District Munsif Court, Kancheepuram, as per the order of the learned Principal District Judge, Kancheepuram District at Chengalpattu and renumbered as O.S. No.146/2011.



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6. The defendants resisted the case of the plaintiff by contending that the plaintiff's vendor Annamalai Naicker owned and possessed only 65 feet east to west and 30 feet north to south in Gramanatham Survey No.878/208 and he had purchased the same under a registered sale deed dated 31.08.1962 from one Ponnusamy Nattar and another. Hence, the vendor Annamalai Naicker cannot claim more than 65 feet east to west and 30 feet north to south in the said survey number. The plaintiff will not derive any title or possession to the property alleged to have been purchased by her under the registered sale deed dated 20.02.2003 from her vendor Annamalai Naicker who himself had no title or possession in excess of 65 feet east to west and 30 feet north to south in Gramanatham survey no.878/208 on the east of Guindy Venkatasamy Naidu Street, Uthiramerur Town. The defendants further contended that the first defendant has purchased site measuring 16 feet north to south and 72 feet east to west on the north of the property of Annamalai Naicker, the plaintiff's vendor, under a registered sale deed dated 01.09.1980 from one Pavunammal W/o.Ramasamy Nattar, Devaki D/o. Ramasamy Nattar, Krishnaveni D/o.Ramasamy Nattar and Minor Mahalakshmi D/o. Ramasamy Nattar,

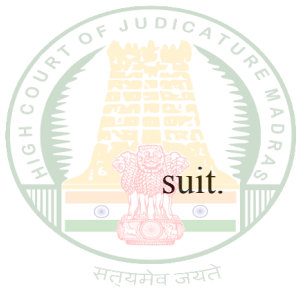


represented by her mother and guardian Pavunammal. From the date of purchase, the first defendant is in possession and enjoyment of the property by raising 4 teak trees in the said property. The first defendant also put up a thatched hut over the said property 7 years ago, and subsequently it was renovated by her. Further, contention of the defendants is that during rainy season, the first defendant used to cultivate greens, vegetables and other crops by taking water from hand pump located in front of her house. The plaintiff and her husband filed a suit in O.S.No.31 of 2003 against the defendants and the same is pending. Whiles, the plaintiff high handedly and unlawfully attempted to put up a compound wall over the property of the first defendant, which was resisted by her several times. Hence, the first defendant was constrained to file a suit in O.S.No.32 of 2006 before the District Munsiff Court, Uthiramerur, for permanent injunction. In spite of the suits pending, the plaintiff had constructed a compound wall in the property of the first defendant, which is the subject matter of the said suit in O.S.No.32 of 2006. The plaintiff had also fixed the electric meter board over the said compound wall and attempted to obtain service connection for the same, which was objected to by the first defendant, as



the said compound wall was unlawfully built by the plaintiff in the first defendant's property. The plaintiff has no title for getting decree of permanent injunction.

7. The defendants, by way of additional written statement, further contented that the first defendant under the registered sale deed dated 01.09.1980 had purchased the property from the said Pavunambal and others. The said Pavunambal had borrowed a sum of Rs.200/- from the first defendant on 05.05.1980 and executed a promissory note on the same day. Thereafter, the said Pavunambal along with her daughters sold the property under the unregistered deed dated 03.01.1981 in favour of the first defendant. The land measuring 2 feet north to south and 72 feet east to west sold by them is on the south of the property already conveyed by them under registered sale deed dated 01.09.1980 and placed the first defendant in possession thereof. The said property forms part of the northern portion of the suit property, which is in possession of the first defendant. The plaintiff being a trespasser, not entitled to any decree of permanent injunction. Therefore, prayed for dismissal of the



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8. Based on the pleadings and materials placed on record and the arguments advanced by the respective counsel for the parties, the trial Court has decreed the suit. Aggrieved over the same, the defendants have preferred the first appeal before the Principal Subordinate, Judge, Kancheepuram.

9. The first appellate Court by a judgment and decree dated 14.08.2019 in A.S.No.19 of 2014 allowed the appeal by setting aside the decree and judgement passed in O.S.No.146 of 2011, dated 28.04.2014 on the file of Additional District Munsif, Kanchipuram. Aggrieved by the judgement dated 14.08.2019, the present Second Appeal is preferred by the plaintiff.

10. The learned counsel for the appellant/plaintiff submits that the plaintiff had purchased two adjacent properties by way of two registered sale deeds dated 17.09.2001 and 20.02.2003 in Survey No.878/208, in Ward No.11, Guindy Venkatasamy Naidu Street, Uthiramerur. Initially, the plaintiff



purchased an extent of 1,950 Sq.ft., by way of registered sale deed dated 17.09.2001, which was marked as Exhibit A-1 and another extent of 243 ¼ sq.ft., by way of registered sale deed dated 20.02.2003 which was marked as Exhibit A-2.

11. He further submitted that the dispute is only with respect to the property measuring 243 ¼ sq.ft. The plaintiff purchased the above properties from one Annamalai Naicker after verifying all the revenue records, Patta, Chitta and Adangal, which stood in the name of the plaintiff's vendor Annamalai Naicker. The Chitta, Adangal and FMB Sketch in the name of plaintiff's vendor were marked as Court Exhibits C1, C2 and C3. The Chitta, Adangal and Patta transferred in the name of plaintiff was marked as Ex. A3 to Ex.A5. The patta was transferred by the Tahsildar only after enquiring the plaintiff and the defendants.



12. It is also submitted that the defendants have purchased one property adjacent to the disputed property by way of registered sale deed and the disputed property by way of unregistered sale deed dated 03.01.1981, however the unregistered sale deed was not marked as exhibit in the suit.

13. It is further submitted that the plaintiff alone is in possession of the property. The plaintiff also constructed the compound wall. The statement of PW-2, VAO also clearly proves the title and possession of the plaintiff. The defendants, particularly the first defendant has also participated in the patta proceedings.

14. It is further submitted that, the plaintiff has proved her case with valid oral and documentary evidence and the trial judge, considering the documents marked as Ex.A1 to Ex. A3 and the evidence of PW-2 and also the Court exhibits marked as Ex.C1 to Ex.C3, rightly decreed the suit. It is



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submitted that pending suit, at the instance of the defendants, an Advocate Commissioner was appointed to note down the physical features of the suit properties. The report of the Advocate Commissioner reveals the existence of a house fully compounded in the suit properties.

15. The learned counsel for the appellants further submitted that the first defendant failed to prove her possession or title in the suit property. The suit filed by the first defendant against this plaintiff for injunction with respect to the schedule mentioned property in O.S.32 of 2006 was dismissed for default on 18.08.2009 and that she had not taken any steps to file a petition to restore the suit or file any appeal challenging the same.

16. It is further submitted that the plaintiff has proved her title and possession through Ex.A1 to Ex.A6 and Ex.A-9. Since there was threat to her possession, the plaintiff lodged a complaint against the defendant and the CSR

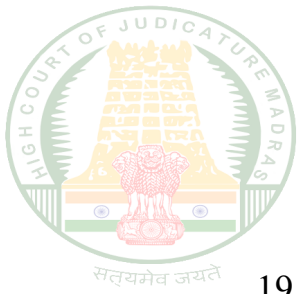


was marked as E.A8.

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17. The further contention of the appellant is that the first appellate court failed to give any weightage to the plaintiff's evidence and, on the other hand, it took a technical stand that through Ex.C1 to Ex.C3 possession cannot be proved. The first appellate court did not give any weightage to the documents marked on the side of the plaintiff. It is settled position that patta proves possession. The first defendant has not produced even a single document to prove her possession or title. On the other hand, the first defendant admitted the documents of the plaintiff and also admitted the plaintiff's possession. Hence prayed for setting aside the judgment and decree passed by the first appellate court.

18. Despite service of notice on the respondents, they failed to appear before this Court. No one had entered appearance on behalf of the respondents.



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19. Heard the learned counsel for the appellant and perused the materials available on record.

20. The first substantial question of law raised in this second appeal is that whether the first appellate court is right in disputing the plaintiff's title over the suit property based on an unregistered sale deed relied on by the defendants when Section 17(B) of the Registration Act, 1908, clearly states that any title deed of the value above hundred or upwards shall be compulsorily registered. The next substantial question of law is whether the 1st Appellate Court is right in its finding that the suit property does not belong to the plaintiff's vendor in the absence of evidence on the contrary to prove that the suit property does not belong to the plaintiff's vendor as required under Section 102 of the Indian Evidence Act, 1872.

21. On a perusal of Ex.B1, it is seen that the vendor of the plaintiff, namely Annamalai, has purchased east-west 65 feet, north-south 30 feet, i.e.,



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1950 sq. ft. under Ex.B1 in old S.No.878/2008. However, the plaintiff has produced Ex.A3 to Ex.A5 revenue records to establish her possession in the suit property measuring 2193 $\frac{3}{4}$ sq. ft.. Ex.A3 is the natham patta No.58, in the name of the plaintiff and Ex.A4 and Ex.A5 are Chitta and Adangal for fasli year 1412 and it has been sub-divided and shown in the revenue records as S.No.1719/22. The plaintiff has also obtained plan approval from the panchayat for putting up construction in the suit property. Even in Ex.B2 sale deed in favour of the 1st defendant, the southern boundary is shown as plaintiff's vendor's property. The Village Administrative Officer of Uthiramerur Town was examined as P.W.2 and through him Ex.C1 to Ex.C3 were marked. Ex.C1 to Ex.C3 are nothing but Chitta, Adangal and FMB sketch of the suit property. In the above documents it is clearly mentioned that S.No.878/208 has been sub-divided and new sub-division Number is 1719/22 and its total extent is 2193 sq.ft. for which patta No.54 was assigned. From the above documents, it is seen that originally the said patta was issued in the name of Annamalai Naicker and subsequently changed in the name of the plaintiff. This fact was deposed by the Village Administrative Officer examined as P.W.2. He had also spoken about the



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exact extent of land enjoyed by the plaintiff and the defendants. Moreover, the Advocate Commissioner has given a report about the availability of house fully compounded in the suit property. The plaintiff has proved her case with valid documents such as Ex.A3 to Ex.A5 and Ex.C1 to Ex.C3. The defendants, on the other hand, failed to produce any document to show their possession and enjoyment in the land measuring 243 ¼ sq. ft.

22. Moreover, the defendants are claiming title over the abovesaid land only through an unregistered sale deed. Section 17(1)(b) of the Registration Act, 1908, mandates the registration of non testamentary instruments that create, declare, assign, limit, or extinguish any right, title or interest in immovable property valued at hundred rupees and upwards. This means that documents like sale deeds, gift deeds and other instruments affecting immovable property worth rupees hundred or more must be registered. In the present case, the defendants failed to establish their possession and enjoyment in the suit property and therefore, the said unregistered sale deed cannot even be considered for collateral purpose. Moreover, the said unregistered sale deed was



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not even marked as exhibit in the suit by the defendants. Moreover, the suit filed by the defendants against the plaintiff for injunction in O.S. No.32/2006 was dismissed for default on 18.08.2009 against which the defendants have not taken any steps to restore the suit or to prefer an appeal. The defendants have admitted the possession of the plaintiff by stating in their written statement that they will take appropriate action to remove the offending construction, meter board, service connection from the disputed property, but till date, the defendants have not taken any steps against the plaintiff in respect of the disputed property. The trial court has considered the documents produced on the side of the plaintiff in right perspective manner and rightly decreed the suit in favour of the plaintiff. Moreover, in a suit for permanent injunction to restrain the defendants from interfering with the plaintiff's possession, the plaintiff will have to establish that as on the date of the suit she was in lawful possession of the suit property and the defendants tried to interfere or disturb such lawful possession. The prayer for injunction will be decided with reference to the finding on possession. In such case, suit for injunction simpliciter would be sufficient. In the present case, the plaintiff has been found to be in settled



possession of the property. While so, the first appellate court ought not to have interfered in the findings rendered by the trial court. The first appellate court ought to have considered the documents filed by the plaintiff, establishing her possession and enjoyment in the suit property. All the substantial questions of law are answered accordingly in favour of the appellant.

23. In the result,

1. Second Appeal is allowed. No costs. Consequently connected miscellaneous petition is closed.
2. The Judgment and Decree dated 14.08.2019, passed in AS No.19/2014 by the learned Principal Subordinate Judge, Kancheepuram, is set aside.
3. The Judgment and Decree dated 28.04.2014 in OS No.146 of 2011 on the file of the Additional District Munsif, Kancheepuram, is upheld.

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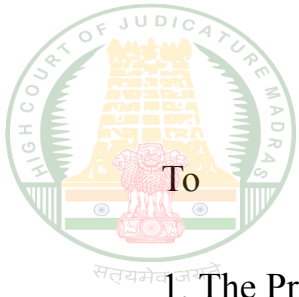
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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



SA No. 1296 of 2019



To

1. The Principal Subordinate Judge, Kancheepuram.
2. The Additional District Munsif, Kancheepuram.
3. The Section Officer, V.R. Section, High Court, Madras



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SA No. 1296 of 2019



K.GOVINDARAJAN THILAKAVADI J.

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Pre delivery Judgment in
S.A No. 1296 of 2019 and
CMP NO. 27961 of 2019

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