



S.A.No.837 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	29.08.2025
Pronounced on	21.11.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.837 of 2019

1. Vellaian
2. Devendran
3. Sekar
4. Rajeswari

...Appellants

Vs.

Maruthiah (deceased)

1. Subramanian
2. Karthick
3. Sasipriya
4. Vijayan
5. Velu
- 6, Shanthi Rajeswaran

...Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 18.06.2010 passed in A.S. No.41 of 2008, on the file of the Subordinate Court, Perambalur, confirming the Judgment



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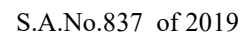
and decree dated 20.10.2003 passed in O.S.No.381 of 1993, on the file of the District Munsif Court, Perambalur.

For Appellants : Mr. P. Srinivasan
For Respondents : Mr.G. Ilamurugu for R1 to R5
R6 - No appearance.

JUDGMENT

This Second Appeal is preferred against the judgment and decree dated 18.06.2010 passed in A.S. No.41 of 2008, on the file of the Subordinate Court, Perambalur, confirming the Judgment and decree dated 20.10.2003 passed in O.S.No.381 of 1993, on the file of the District Munsif Court, Perambalur.

2. Briefly stated, the plaintiffs have purchased the suit property under Ex.A2 and Ex.A3 sale deeds measuring 1 acre out of 1.31 acres and a well, comprised in S.No.26/E, morefully described in the suit schedule. The existence of the above well is mentioned in Ex.A3 sale deed. The 2nd plaintiff was given UDR patta for the land measuring



3. The claim of the plaintiffs was resisted on the side of the defendant stating that the above 'CDEF' portion do not belong to the plaintiffs. It is incorrect to state that the defendant has encroached upon 'DEF' portion and annexed the same along with his property. In fact, plaintiffs, while measuring the properties, found that the plaintiffs has encroached upon the property of the defendant. The further contention of defendant is that on 23.07.1993, the defendant issued a legal notice to plaintiffs stating that the plaintiffs have encroached the property of defendant and put up the construction. Therefore, a panchayat was convened in which it was decided that the plaintiffs would pay a sum of Rs. 1,00,000/- to the defendant or shall remove the encroachment within a period of 3 months and the same was accepted by the plaintiffs. But, the plaintiffs failed to adhere to the decision of the panchayat. It is further



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stated that the Advocate Commissioner, in his Report and Plan, has submitted that only if the properties are measured with the aid of surveyor, it could be found to whom the 'CDEF' portion as mentioned in the rough plaint plan belong to. It is not established by the plaintiffs that the plaintiffs and their predecessor in title were in possession and enjoyment of 'CDEF' portion. The plaintiffs cannot claim adverse possession over the eastern portion of the well. Hence, prayed for dismissal of the suit.

4. The trial court, considering the oral and documentary evidence adduced, dismissed the suit, against which the plaintiffs preferred the appeal suit in A.S. No.41/2008 before the Subordinate Court, Perambalur, and the same was also dismissed by the first appellate court vide its judgment and decree dated 18.06.2010. The courts below, based on Ex.C9 to Ex. C11, came to the conclusion that a portion of the well, that is, 1 meter on the northern side and 1.2 meter on the southern side belong to the defendant and the same is annexed with the lands of the plaintiffs. Therefore, the courts below concluded that only the plaintiffs



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have encroached the property of the defendant and thereby dismissed the suit filed by the plaintiffs. Aggrieved by this, the present Second Appeal is preferred by the plaintiffs.

5. The learned counsel appearing for the appellants/plaintiffs has submitted that, the appellants have proved their title under Ex.A2 and Ex.A3 and that the area earmarked as 'CDEF' measuring 3 ½ cents as shown in the plaint plan had been encroached by the defendant and the existence of the well is established by the plaintiffs vide Ex.A3 sale deed. His further contention is that, the court below erred in dismissing the suit and appeal suit without considering the fact that Ex.A9 FMB sketch clearly depicts the eastern boundary line which is a straight line running from south to north. Whereas, in Ex.C7 to Ex.C11 a bend is shown on the eastern side of the suit property which was created by the defendant after encroachment. Hence, the courts below erred in dismissing the suit and appeal suit filed by the plaintiffs which warrants interference by this Court.



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6. On the other hand, the learned counsel for the respondents 1 to 5 submits that the rough plan submitted by the plaintiffs is incorrect since it does not contain the true physical features of the suit property. It is further submitted that the defendant's land lies on the eastern side of the suit property and there is no ridge between the plaintiffs' and defendant's land as alleged by the plaintiffs. The plaintiffs in fact have surveyed the suit property with the help of surveyor who found that some portion of the defendant's land was encroached and annexed with the plaintiffs land in S.F. No.26/6A. The trial court ordered for measuring the property with the help of surveyor. Thereafter, the property was measured by the surveyor. Based on Ex.C9 to C11, the courts below have found that only the plaintiffs had encroached upon the property of the defendant and rightly dismissed the suit filed by the plaintiffs which warrants no interference by this Court.

7. Despite notice, the 6th respondent remained absent.



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8. This Court carefully considered the submissions of the learned counsel on both sides and perused the material papers placed on record. The specific contention of the appellants / plaintiffs is that the courts below erred in dismissing the suit without considering Ex.A9 FMB sketch which clearly demonstrate the eastern boundary line, which is a straight line running from south to north. On a perusal of Ex.C7 to C11, there is a mentioning about a bend on the eastern side of the suit property. According to the plaintiffs it was created by the defendant after encroaching the plaintiffs' property. Admittedly the dispute between the plaintiffs and the defendant is with regard to the ridge separating their properties. It is not in dispute that the land belonging to the plaintiffs is comprised in S.No.26/6E and to the east of the above property lies S.No.26/5, admittedly belonging to the defendant. At the instance of the parties, an Advocate Commissioner was appointed, who measured the suit property with the help of surveyor. In Ex.C9 to Ex.C11, it is stated that, after measuring the above properties it was found that the plaintiffs have encroached upon the property of the defendant. This was objected



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by the plaintiffs stating that the surveyor ought to have measured the property based on Ex.A9 FMB Plan. No doubt, an FMB Plan can generally be relied upon as a crucial piece of evidence for fixing boundaries, but it is not necessarily the sole or conclusive proof in a legal dispute, especially if there are discrepancies or competing evidence. In many cases, established physical boundaries (like, existing walls, fences or natural land marks) and title deeds may take precedence over the survey plan measurements. When there is inconsistent with the ground reality, the FMB dimensions, the same cannot be taken into consideration. In the present case, the courts below have considered the joint survey report by the Advocate Commissioner and the Surveyor to ascertain the true boundaries. Hence, no perversity or infirmity found in the findings of the courts below which warrants any interference by this Court. Therefore, I do not see any question of law much less a substantial question of law in order to enable me to entertain the present second appeals.



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9. In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The judgment and decree dated 18.06.2010 passed in A.S. No.41 of 2008, on the file of the Subordinate Court, Perambalur, confirming the Judgment and decree dated 20.10.2003 passed in O.S.No.381 of 1993, on the file of the District Munsif Court, Perambalur, is upheld.

21.11.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Subordinate Judge, Perambalur.
2. The District Munsif, Perambalur,
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
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Pre delivery Judgment in
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