



S.A.No.749 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	05.08.2025
Pronounced on	02.09.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A. No.749 of 2019

Shanmugham

...Appellant

Vs.

1.G.Ramalingam
2.R.Rajavel
3.R.Udayakumar

... Respondent

Prayer : Second Appeal filed under Section 100 CPC, to set aside the judgment and decree of the learned II Additional Subordinate Judge, Cuddalore, in A.S.No.25 of 2014 dated 06.08.2014 confirming the judgment and decree of the learned District Munsif, Cuddalore, in O.S. No.129 of 2012 dated 16.12.2013.

For Appellant : Mr.R.Gururaj
For Respondent : Mr.R.Meenal for R1 to R3



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JUDGMENT

The second appeal has been preferred against the judgement and decree dated 06.08.2014 passed by the learned II Additional Subordinate Judge, Cuddalore, in A.S.No.25 of 2014, confirming the judgment and decree dated 16.12.2013 passed by the learned District Munsif, Cuddalore, in O.S. No.129 of 2012.

2. At the time of admission, in this second appeal the following question of law was formulated:

a) Was not the lower appellate court in gross error in failing to see that D.W.1 has admitted that he has no objection in the suit being decreed?

b) Was not the lower appellate court wrong in dismissing the suit by allowing the appeal when D.W.1 himself had consented for a decree being passed?

c) Did not the lower appellate court grossly err in stating that there was no cause of action when the suit was contested, surveyor examined as D.W.2 and appeal filed?



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d) Has not the lower appellate court committed grave error in ignoring the evidence of D.W.2, the surveyor, who could not confirm formation of any road or its name and time?

3.For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

4.According to the plaintiff, the suit 'A' schedule property is owned by the plaintiff and he is in possession and enjoyment of the property for more than 100 years. There was a partition between the plaintiff and his father Kaliaperumal and other family members by means of a registered partition dated 09.08.1990. In the said partition the suit 'A' Schedule property was allotted to the plaintiff and the same was mentioned as 'D' schedule in the partition deed. Ever since the date of partition, plaintiff is in absolute possession and enjoyment of the property and patta was also transferred in the name of the plaintiff. The plaintiff and his predecessor in title have been in possession and enjoyment of 'A' schedule property for more than the statutory period.



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The plaintiff has also perfected title by adverse possession. Even at the time of partition there were 2 superstructures in the suit 'A' schedule property in which the plaintiff and his family members are living, by paying property tax and electricity charges. The adjacent property on the eastern side of the 'A' schedule property, lies in S.No.748/2, which belongs to the father of the 1st defendant and patta also stands in the name of the 1st defendant and his brother Ramakrishnan jointly. There is a superstructure in S.No.748/2 which is on the north-east of the house of the plaintiff. The defendants do not have any right in S.No.748/1 which is described as 'A' schedule property. However while reconstructing, the defendants attempted to encroach 2 cents of the plaintiff's property on the Eastern side which is shown as 'B' schedule in the suit. Hence, the plaintiff was constrained to file the above suit for declaring plaintiff's title over the 'B' schedule property and for permanent injunction restraining the defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit 'B' schedule property.

5. The defendants together resisted the claim of the plaintiff by stating that the plaintiff has influenced the Natham Thasildar and has



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falsely obtained patta to an extent of 0.30 cents. The plaintiff has suppressed the material facts and filed the suit with false documents and false allegations with an intention to grab the property of this defendant to an extent of 0.02 cents, which is falsely described as 'B' schedule property. The three brothers namely Vaithilingam, Muthulingam and Mahalingam. According to the defendants, the three brothers were given 0.30 cents each in an oral arrangement entered between them. The Government has taken 0.01 cents each from the three brothers to form a road during their lifetime. Later, the road was widened. During the process of widening the road, the Government has taken another 0.01 cents from each of the 3 branches stated above. Plaintiff represents the branch of Mahalingam who was given western most moiety. The 1st defendant represents the branch of Muthulingam, who was given the middle moiety. The eldest son namely Vaithilingam was given the eastern moiety in the said oral arrangement. The middle portion which was allotted to Muthulingam was inherited by the 1st defendant and his brother Ramakrishnan since deceased. In an oral partition entered between them, the western half i.e., 0.14 cents was allotted to the 1st



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defendant and Ramakrishnan was allotted eastern half 0.14 cents. During the Natham upgradation scheme, patta was mistakenly given to a larger extent of 0.0965 sq.mt (30 cents). But the actual area available on the ground was only 0.28 cents. Instead of giving patta for the 0.28 cents, patta was mistakenly given for 0.0965 sq.meters. The 1st defendant came to know the mistake committed by the survey department only after the suit. The 1st defendant firmly believes that the plaintiff is instrumental for the mistake. The plaintiff has chosen to file the suit on the basis of patta obtained mischievously only with a malafide intention to grab the 1st defendant's property to an extent of 0.02 cents. Hence, prayed for dismissal of the suit.

6. The trial Court based on materials on record decreed the suit in favour of the plaintiff.

7. Aggrieved by this, the defendant has preferred the 1st appeal before the II Additional Sub Court, Cuddalore in A.S.No.25 of 2014 challenging the findings rendered by the trial Court in favour of the



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WEB COPY plaintiff. The 1st Appellate Court by its judgment dated 06.08.2014 reversed the findings of the trial Court, challenging the same, the second appeal has been preferred by the plaintiff.

8. The learned counsel appearing for the appellant/plaintiff submits that the 1st Appellate Court failed to take note of the oral evidence adduced by D.W.1 and D.W.2 and grossly erred in stating that there is no cause of action for filing the suit. His further contention is that the 1st Appellate Court failed to note that no land was actually acquired by Highways Department for expansion of the road and defendant's have taken the stand that 2 cents were acquired for road formation in order to get 2 cents from the plaintiff. In fact, the defendants failed to prove that the land has been acquired for laying road. Hence, the judgment and decree rendered by the 1st Appellate Court requires consideration by this Court.

9. On the other hand, the learned counsel appearing for the respondent/defendant submits that the description of the property in the plaint is incorrect and that the plaintiff has mischievously obtained patta



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for 0.30 cents in S.No.748. She would submit that the plaintiff has suppressed material facts with ulterior motive to grab 0.02 cents of land belonging to the defendant which is described as 'B' schedule property in the suit. Her further contention is that during Natham Upgradation Scheme, patta was mistakenly given to an extent of 0.0965 sq. mt., and the plaintiff with malafide intention to grab 0.02 cents of land, filed the present suit. The learned counsel for the Respondent further submitted that the plaintiff has not clearly described the property so as to identify it with correct boundaries and correct survey numbers which has been demarcated in the records of settlement maintained by Revenue Authorities. Hence the claim of the plaintiff cannot be accepted. To support her contention she has relied upon the following judgment reported in **2018 (1) L.W. 62**.

10.The 1st Appellate Court has rightly interfered in the findings rendered by the trial Court and allowed the appeal, considering all the facts and circumstances of the case and materials placed before it, which warrants no interference by this Court.

11. Heard on both sides and records perused.



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12. The undisputed facts in this case are that the three brothers namely Vaithiyalingam, Muthulingam and Mahalingam were given 30 cents each by way of an oral agreement. It is also not in dispute that the plaintiff represents the branch of Mahalingam and the 1st defendant represents the branch of Muthulingam. It is also not in dispute that the branch of Muthulingam was allotted the middle portion which was inherited by the 1st defendant and his brother Ramakrishnan. But according to the defendants, 0.1 cent of land was acquired by the Government for formation of road during the life time of three brothers namely Vaithiyalingam, Muthulingam and Mahalingam. His further contention is that, 0.1 cent of land was acquired by the Government for widening of the road from the branches of the above mentioned brothers. It is further submitted that, the 1st defendant is the branch of Muthulingam who was allotted the middle portion, was inherited by the 1st defendant and his brother Ramakrishnan. Thereafter in the partition, western half 0.14 cents was allotted to the 1st defendant and his brother Ramakrishnan was allotted eastern half 0.14 cents. But during Natham



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Upgradation Scheme, patta was mistakenly given for an extent of 0.0965 sq. mts. (30 cents) and due to the mistake committed by the Survey Department, the plaintiff in order to grab 0.02 cents of land from the defendants filed the above vexatious suit. But, the case of the plaintiff is that the plaintiff was allotted 'A' schedule property in a partition deed which took place on 09.08.1990 and patta was assigned to the name of plaintiff for 30 cents in S.No.748/1. His further contention is that there was a proposal to acquire land for the formation of road, but no actual acquisition was made and therefore, the plaintiff and his predecessor in title were enjoying 30 cents which was allotted to them in family partition. While so the defendants while restructuring his house attempted to encroach 0.02 cents from the plaintiff.

13. On perusal of impugned judgment and decree passed by the 1st Appellate Court, it is to be noted that the 1st Appellate Court dismissed the suit filed by the plaintiff by observing that 'A' Schedule property is less than 30 cents, by taking into consideration, the measurement given in Ex.A.11- copy of FMB plan. Further, the 1st Appellate Court has

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considered the categorical admissions made by the plaintiff that the defendant has not caused any disturbance in the suit survey no. 743/01. Therefore, there is no cause of action for filing the suit. Accordingly, The 1st Appellate Court allowed the appeal by setting aside the judgment and decree passed by the trial Court.

14. Now, it has to be seen that whether the above findings of the 1st Appellate Court is perverse without considering the evidence adduced by D.W.1. particularly, when D.W.1 has admitted that he has no objection in decreeing the suit and whether the 1st Appellate Court committed grave error in ignoring the evidence of D.W.2 surveyor who could not confirm the formation of any road by acquiring lands from the plaintiff and defendant's family. However, it is settled law that the plaintiff has to stand on his own leg to prove his case. He cannot find fault with the loophole on the side of the defendant.

15. The short point for consideration is that whether the Government has acquired 0.02 cents of land for formation of road. Though D.W.2 in his evidence deposed that he was not aware of the fact



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whether there was formation of any road even after the categorical admission made by P.W.1 that the lands were acquired for formation of road. Therefore, as rightly pointed out by the learned counsel for the respondent, admission is the best evidence and the same should be relied upon. Moreover, it is not established by the plaintiff that there was no acquisition of land and formation of road. Therefore, if the allottees, Vaithiyalingam, Muthulingam and Mahalingam together each had given 1 cent of land to the Government for formation of road, they could possess only 29 cents during their lifetime. Therefore, the plaintiff and defendant possess only 29 cents each. Apart from that on perusal of Ex.A.11 it is shown that the same has been assigned in the name of the plaintiff only in respect of 1183.68 sq.meters. The plaintiff himself admitted that apart from measurement given in Ex.A.11 he is not seeking any right over the property of the defendant. He had also admitted that the defendants are not creating any trouble in S.No.748/1 which belongs to the plaintiff. Therefore, it is made clear that 'A' Schedule property is within the linear measurement as described in Ex.A.11 which is less than 30 cents and therefore, plaintiff cannot claim the relief for declaration of



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right for 30 cents in S.No.748/1. Since the plaintiff himself admitted that the defendants are not disturbing the possession and enjoyment of property in S.No.748/1 by the plaintiff, the 1st appellate Court has rightly held that there is no cause of action for the suit.

16. The said findings for the 1st Appellate Court is neither perverse nor incorrect and therefore, the judgement and decree passed by the 1st Appellate Court warrants no interference by this Court. Hence, the Second Appeal stands dismissed. No costs.

02.09.2025

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

To

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



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K.GOVINDARAJAN THILAKAVADI,J
vsn

Pre- delivery judgement made in
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