



WEB COPY



S.No.353 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	18.07.2025
<i>Pronounced on</i>	12.09.2025

Coram:

The Honourable Mrs. Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.353 of 2019

K.S.Nagaraj (Died)

2.Vinodha

3.Premchand

4.Vivekandand

[* Sole appellant died, A2 to A4 brought on record as legal heirs of the deceased sole appellant vide Court order dated 07.07.2025 made in C.M.P.Nos.15501, 15503 & 15505 of 2025 in S.A.No.353 of 2019 (KGTJ)

.. Appellants

versus

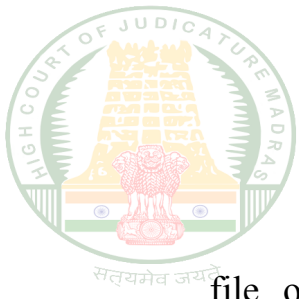
1.Sujatha

2.Suresh

3.Dr.Sathish

.. Respondents

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 19.08.2011 made in A.S.No.2 of 2011 on the



S.No.353 of 2019

file of Sub Court, Hosur, reversing the judgment and decree dated 30.08.2010 made in O.S.No.44 of 1997 on the file of the District Munsif Court, Hosur.

For Appellant : Mr.K.Sukumaran
for G.M.Ananthamukar

For Respondents : Ms.V.Srimathi for R1 and R2

JUDGMENT

This Second Appeal is preferred challenging the judgment and decree dated 19.08.2011 made in A.S.No.2 of 2011 on the file of Sub Court, Hosur, reversing the judgment and decree dated 30.08.2010 made in O.S.No.44 of 1997 on the file of the District Munsif Court, Hosur.

2. The plaintiff is the appellant in this second appeal. Pending second appeal the plaintiff died and his legal heirs were impleaded as appellants A2 to A4.

3. For the sake of clarity and brevity parties shall be referred in accordance with their litigative status in the plaint.



S.No.353 of 2019

WEB COPY

4. According to the plaintiff in O.S.No.44 of 1997 he states that the land in SF.No. 546/3, 0.74 cents originally belonged to one Venkatachari. This land was subsequently purchased by Kesava Ramanujam and the plaintiff. Thereafter, they divided the land equally between themselves. K. Kesava Ramanujam constructed a house and shops on his portion, leaving the remaining part as a backyard . The plaintiff, on his part, constructed a shopping complex and left the remaining portion for future construction. Subdivision has taken place and the plaintiff's portion was sub-divided as SF.No. 546/3B and Kesava Ramanujam's portion was allotted in S.F.No.546/3A, as per the proceedings of the Tahsildar, Hosur, in Na. Ka. No.611/147/86-87/C3, dated 16.11.1987. In pursuance of the same, patta was also issued to them separately. The plaintiff has put a barbed wire fence with stone pillars here and there, immediately after the sub-division. Kesava Ramanujam died about a year ago, leaving behind the defendants as his legal heirs. The defendants in order to encroach upon the land adjoining their property, attempted to trespass into the suit property, with the support of rowdy elements. The plaintiff came to know that the defendants have



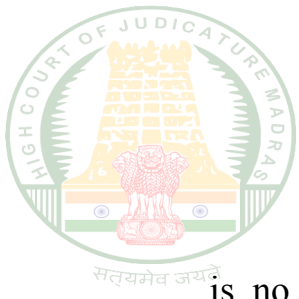
S.No.353 of 2019

WEB COPY

obtained fresh Patta to excessive extent, and on that basis, began to deny the plaintiff's title. The defendants have influenced the revenue officials and obtained patta afresh. The plaintiff has not been issued with any notice for inquiry from the revenue officials. The issue of patta to the defendants is illegal, and behind the back of the plaintiff. The plaintiff has preferred an appeal as against the said orders. Without any manner of right, title or possession, the defendants with the help of rowdy elements gathered on 28.02.1997, and dug pits in the plaintiff's land and when the plaintiff protested, they attempted to assault him and removed the barbed wire fence.

4.1. The defendants have absolutely no right, title or interest over the suit property, and they are bound to surrender possession of the same to the plaintiff. The plaintiff is entitled for mandatory injunction regarding the unlawful constructions through the process of the court. The plaintiff is entitled for future mesne profits, which has to be determined by way of a separate petition under Order 20 Rule 12 CPC. Hence, the suit.

5. The defendants together resisted the claim of the plaintiff that there



S.No.353 of 2019

WEB COPY

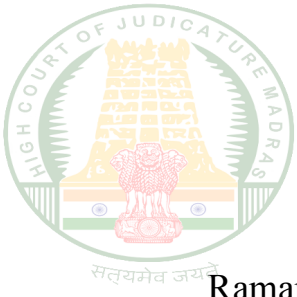
is no barbed wire fence as alleged. The dividing wall between the two portions is a permanent one, and is a regular wall put up with pillars at regular intervals and white washed. It is true that 74 cents was purchased from Venkatachari of Hosur, in 1974. Wholesale price was paid by the husband of the 1st defendant. The plaintiff is the son of KS Moorthy, the proprietor of the Medical store Moorthy Medicals. There was no other druggist except them in Hosur at that time. Kesava Ramanujam purchased the property in order to construct a Hospital or a nursing home in Hosur. It was away from the Hosur town. The plaintiff's father wanted to open a medical shop, next to the nursing. The entire consideration was paid only by the doctor. He was in good terms with the doctor, and so the doctor agreed for the same also. Till the death of Kesava Ramanujam on 02.08.1995, there was no claim on the part of the plaintiff or his father. The father of the plaintiff had influence on the Doctor, whereby he entrusted the task of concluding the sale talk, drafting the sale deed, payment of the money, and the registration to him. The doctor had nothing to suspect till the dispute arose. The name of the plaintiff has been surreptitiously



S.No.353 of 2019

WEB COPY

introduced in the sale deed, which the doctor did not know. Long after the registration of the sale deed, when acquisition was sought for, the father of the defendants 2 and 3 fought out the proceedings and sought the exclusion of the land since he had already commenced construction of the nursing home. Neither the plaintiff nor his father took any step for the same. When the doctor came to know of the inclusion of the name of the plaintiff in the sale deed, he did not want the friendship to be soured, he voluntarily along with the father of the plaintiff mutually divided the suit property and to evidence the boundary between them, the doctor put up a pucca compound wall running east west in or about the year 1976-77, made up of bricks and with pillars at regular intervals to demarcate the different portions. The wall was plastered on both sides. The defendants have put up coconut trees east west along the compound wall, and have also dug a ditch for discharge of waste water. The building constructed by the father of the defendant was let on lease to the Central Excise Department, and later the doctor himself occupied the same. The plaintiff or his father did not raise their voice for the construction of the thick compound wall. After the death of Dr. Kesava



S.No.353 of 2019

WEB COPY

Ramanujam, with some ulterior motive to grab the valuable property, the plaintiff has demolished a portion of the compound wall, in order to destroy the physical features after the appointment of the commissioner. The defendants have been in enjoyment of the land north of the compound wall for more than 20 years and even if the plaintiff had any right it has become extinguished when the compound wall was demolished. Pending suit and a complaint was lodged, with the police and action is pending. The shopping complex of the plaintiff is on the south of the compound wall. The shops are on the southern side and there is a space of about 8 or 9 feet on the north of the shops, to serve as an approach to the space on the west of the shops. The plaintiff is not entitled for the reliefs sought for and the suit has to be dismissed with costs.

6. The Trial Court held that the plaintiff is entitled for the declaratory relief and also directed the defendants to remove the alleged constructions within the period of two months. Aggrieved by the judgement and decree passed by the learned judge, the appeal suit in A.S.No.2 of 2011 was filed



WEB COPY

before the Sub Court, Hosur. The Ist Appellate Court based on the materials on record came to the conclusion that the plaintiff failed to prove his physical possession and enjoyment of the suit property at that time prior to the suit. The 1st Appellate Court further held that the east west compound wall was the boundary between the properties of the plaintiff and the defendants and that the plaintiff is not in possession and enjoyment of any property north of the east west compound wall at any point of time. Therefore, the 1st Appellate Court allowed the appeal preferred by the defendants 1 and 2. Aggrieved by this, the present second appeal is preferred by the plaintiff.

7. Heard the respective counsel on either side, the following substantial questions of law are formulated by this Court:

A. Is the First Appellate Court right in reversing the findings and decision of the Trial Court without recording proper reasons and totally ignoring evidence adduced in the case ?

B. Is the First Appellate Court right in not considering Section 45 of The Transfer of Property Act,



1882, which contemplates that in the case of joint transfer (joint purchase in this case), in the absence of evidence as to the interests in the fund to which they (transferees) respectively advanced, such persons shall be presumed to be equally interested in the Property and in totally ignoring the established fact that vide Sale Deed dated 9.12.1974 (Ex.A.1) Sri.Kesava Ramanujam (husband of First Respondent herein and father of Respondents 2 and 3 herein) and the Appellant herein jointly purchased 74 cents of land in Survey No.546/3B in Hosur Town?

C. Is the First Appellate Court right in ignoring the settled position of Law that under Section 101 of The Evidence Act, burden of proving is on the Defendants lies heavily on them and in ignoring the fact that the Defendants have not discharged their burden?"

8. The learned counsel appearing for the appellant/plaintiff submits that the land in SF 546/3 measuring 0.74 cents originally belongs to one Venkatachari, and the same was purchased jointly by the plaintiff K.S.Nagaraj and Kesava Ramanujam under a registered sale deed dated 09.12.1974. Subsequently, they divided the land equally and each were



S.No.353 of 2019

WEB COPY

entitled to 0.37 cents of land and were in possession and enjoyment of the same. The said Kesava Ramanujam has built a residential house in his portion of land and left the remaining portion as backyard. The plaintiff has put up a shopping complex in his portion and had left the remaining portion for future construction. Thereafter, the portion of land owned by plaintiff, a new sub division number was given as S.No.546/3B for an extent 0.15.0 hectares and the land owned by Kesava Ramanujam was sub divided as S.No.546 / 3A to an extent of 0.15.0 hectares. In pursuance of the said sub division patta number 1248 was issued in favour of the plaintiff and the plaintiff was in possession and enjoyment of the land in S.No.546/3B. It is further submitted that, to the south and west of the land in S.No.546/3B is the land of the plaintiff. The said Kesava Ramanujam died leaving behind the defendants as his legal heirs. The defendants having obtained patta for larger extent attempted to trespass into the lands of the plaintiff. The defendants are claiming title over the land of the plaintiff on the basis of new sub division and patta. The defendants have obtained patta by making false representation and the plaintiff has preferred an appeal against the



S.No.353 of 2019

WEB COPY

orders of the revenue authorities. Pending suit the defendants constructed a wall in the disputed area. The learned counsel further submits that the 1st Appellate Court failed to consider Ex.A1 sale deed dated 09.12.1974 through which the 1st respondent husband Kesava Ramanajum and the appellant/plaintiff jointly purchased 0.74 cents of land in S.No.546/3B. Under Section 45 of Transfer of Property Act, 1882, in the case of joint purchase in the absence of evidence as to the interest in the fund to which the transferees respectively advanced, such persons shall be presumed to be equally interested in the property. The 1st appellate Court failed to consider the joint application Ex.A4 submitted by the said Kesava Ramanujam and appellant/plaintiff for issuance of individual patta in their names after subdividing 0.74 cents into two halves. The above application proves that the said Kesava Ramanujam and the appellant/plaintiff were owning half share each in the total extent of 0.74 cents and that they both equally divided and each were entitled to 0.37 cents. The 1st appellate Court failed to consider that the appellant/plaintiff was in possession and enjoyment of his 0.37 cents of land until the respondents/defendants encroached over it



S.No.353 of 2019

WEB COPY

pending suit. The learned counsel further submits that the 1st appellate Court failed to consider the fact that the respondents/defendants have not proved that they are entitled to more than 0.37 cents in S.No.556/3A. He would further submit that the defendants/respondents failed to prove that their predecessor in interest namely Kesava Ramanujam alone paid the entire sale consideration for purchasing 0.74 cents of land and till 1976, the said Kesava Ramanujam was not aware that the plaintiff is joint purchaser. The defendants also failed to prove that when Kesava Ramanujam came to know about the joint purchase, the above 0.74 cents was divided in such a way that Kesava Ramanujam got allotted larger extent, that a compound wall was constructed in the year 1976-97 itself between the properties and that the defendants have perfected their title in respect of the alleged larger extent, by adverse possession as contended by the defendants/respondents. As per Section 101 of the Indian Evidence Act, 1872, the defendants are bound to prove the above contentions. Moreover, in the absence of any pleadings as to how the said Kesava Ramanujam was given more than 50% of land out of 0.74 cents. The 1st Appellate Court ought not to have

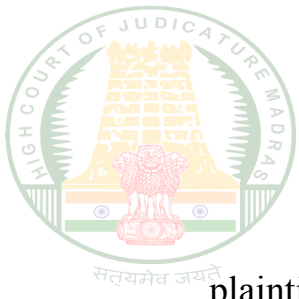


S.No.353 of 2019

WEB COPY

considered the contentions raised by the defendants. The learned counsel would further submit that till the death of Kesava Ramanujam there was no dispute among himself and the plaintiff. The 1st Appellate Court erred in concluding that the wall shown in Red Colour in Ex.C2 Advocate Commissioner's plan is old wall and the same was demolished and a new wall was constructed without any basis for arriving at such a conclusion. In fact, the said wall was newly constructed by the respondents/defendants pending suit after encroaching upon the plaintiff's land. The plaintiff has got absolute title over the suit property and he was exclusively in possession of the same until dispossessed by the defendants.

9.Per contra, the learned counsel for the defendants/respondents submit that the dividing wall between the two properties is the permanent one and moreover, the Commissioner's report and plan marked as Ex.C.1 and C2 reveals the existence of the old wall. There is no evidence on the part of the plaintiff that he was in possession of the disputed property at any point of time prior to the suit. She would further submit that the entire sale consideration was paid by the said Kesava Ramanujam. The name of the



S.No.353 of 2019

WEB COPY

plaintiff was surreptitiously introduced in the sale deed which the said Kesava Ramanujam, father of the defendants did not know at that time. Even at the time of acquisition process, neither the father of the plaintiff nor the plaintiff raised any claim. Thereafter, the father of the defendants 2 and 3 mutually divided the property and to evidence the boundary between them put up a pucca compound wall running east to west between the year 1976-77. Only after the death of the said Kesava Ramanujam with ulterior motive to grab the property the plaintiff has demolished a portion of the compound wall in the east west direction on the eastern side. The defendants have perfected title over the disputed property since the compound wall is in existence for more than 20 years. The learned counsel further submits that the description of the suit property given in the plaint is not sufficient to identify the same. Order 7 Rule 3 CPC postulates that where the subject matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it. No effective decree can be passed in respect of suit properties where the description of which as given in the plaint is not sufficient for its identification. Hence, the 1st



S.No.353 of 2019

WEB COPY

Appellate Court has rightly allowed the appeal suit setting aside the judgement and decree passed by the trial Court. To support her contention, she has relied upon the judgment reported in

1.AIR 2017 (NOC) 229 (ORI.)

2.2015 SCC Online P & H 16551

10.Heard on both sides, records perused.

11.The undisputed facts are that,

a.The land in S.F.No.546/3 measuring 0.74 cents originally belongs to one Venkatachari.

b.The sale deed marked as Ex.A1 jointly stands in the name of plaintiff's father and Kesava Ramanujam.

c.The portion of land owned by Kesava Ramanujam was subdivided as S.F.No.546/3A and the portion of land owned by the plaintiff was subdivided as S.F.No.546/3B.

12.The case of the plaintiff is that the said property measuring 0.74 cents was jointly purchased by his father and Kesava Ramanujam and after division each were entitled to 0.37 cents of land.

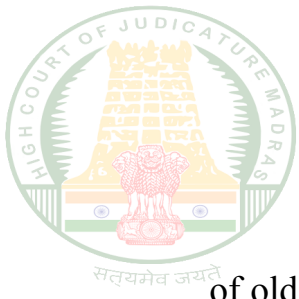


S.No.353 of 2019

WEB COPY

13. On the other hand, the contention of the defendants is that the entire sale consideration was paid by Kesava Ramanujam and the plaintiff surreptitiously included his name in the sale deed taking advantage of his close association with Kesava Ramanujam. When the said Kesava Ramanujam came to know about this, he voluntarily divided the suit property and to evidence the boundary between them, he put up a pucca compound wall running east west in or about the year 1976-77 to demarcate the properties. The defendants have planted coconut trees along the compound wall and also dug a ditch for discharge of drainage water. Neither the plaintiff nor his father raised any objection for the construction of the compound wall. Only after the death of the said Kesava Ramanujam the plaintiff in order to grab the property of the defendants demolished a portion of compound wall and filed the above vexatious suit.

14. On perusal of the Commissioner's report, it is seen that a damaged wall was found running east to west at the time of his inspection. He would further states that on the eastern side approximately 20 feet of the wall found to be damaged. But nothing is stated in the report about the existence



S.No.353 of 2019

of old wall.

WEB COPY

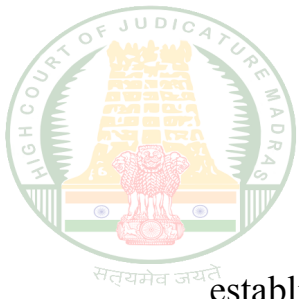
15. According to the plaintiff, after the demise of his father, he is in possession and enjoyment of the land in S.No.546/3B to an extent of 0.15.0 by putting up a shopping complex and leaving a portion of land for future construction. While so, the defendants having obtained patta for larger extent trying to trespass into the lands of the plaintiff. The defendants are claiming title over the land of the plaintiff on the basis of new sub division and patta which was obtained by them by making false representation. The plaintiff has also preferred an appeal and against the orders of the revenue authorities. The defendants are now started putting up construction in the lands of the plaintiff. On the side of the plaintiff, it is argued that Section 45 of Transfer of Property Act, 1882, in the case of joint purchase in the absence of evidence as to the interest in the fund to which the transfer is respectively advanced, such persons shall be presumed to be equally interested in the property. Section 45 of the Transfer of Property Act, 1882 runs as follows:



"45. Joint transfer for consideration. Where immovable property is transferred for consideration to two or more persons and such consideration is paid out of a fund belonging to them in common, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property identical, as nearly as may be, with the interests to which they were respectively entitled in the fund; and, where such consideration is paid out of separate funds belonging to them respectively, they are, in the absence of a contract to the contrary, respectively entitled to interests in such property in proportion to the shares of the consideration which they respectively advanced.

In the absence of evidence as to the interests in the fund to which they were respectively entitled, or as to the shares which they respectively advanced, such persons shall be presumed to be equally interested in the property."

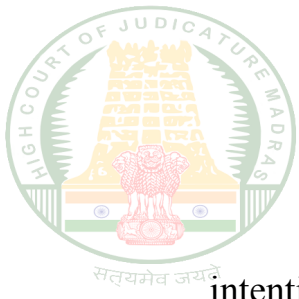
16. In the present case, though the defendants contend that the entire sale consideration was paid by Kesava Ramanujam, the same was not



S.No.353 of 2019

WEB COPY

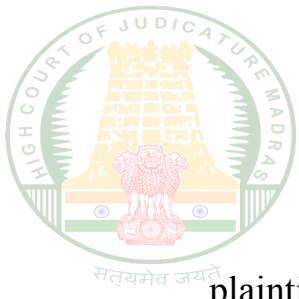
established by them. Therefore, as contemplated under Section 45 of the Transfer of Property Act, 1882, in the absence of evidence as to the interest as to the shares which the said Kesava Ramanujam and Nagaraj respectively advanced, they shall be presumed to be equally interested in the property. Moreover, Ex.A4 is an application signed by Kesava Ramanujam and the plaintiff, for issuance of individual pattas in their respective names after subdividing 74 cents into two halves. The above document proves that the said case Kesava Ramanujam and the plaintiff is owning half share each in the total 74 cents and that they have divided the said property into two halves i.e., 0.37 cents each. It is the specific case of the plaintiff that during pendency of the suit the defendants have encroached upon his property and constructed a wall. Whereas, the contention of the defendants is that the said wall is an old construction from the year 1976-77 put up by Kesava Ramanujam and that the dividing wall between the two properties is the permanent one. The further case of the defendants is that the father of the plaintiff included plaintiff name fraudulently in Ex.A.1 sale deed and when the same came to the knowledge of Kesava Ramanujam, with good



S.No.353 of 2019

WEB COPY

intention to have a smooth relationship with the father of the plaintiff mutually divided the property and put up pucca compound wall running east to west in the year 1976-77 itself. The defendants have planted coconut trees along the wall in the east west direction on their side dug a ditch for discharging drainage water. Neither the plaintiff nor his father raised any objections at the time of constructing the said wall. Only after the death of Kesava Ramanujam the plaintiff with ulterior motive trying to grab the property belonging to the defendants. Further, the case of the defendants is that the compound wall was intact till the portion was demolished by the plaintiff on 28.02.1997, 02.08.1997 and 08.09.1997 for which police complaints were given against the plaintiff. Hence, it is submitted that the division of property has taken place 13 years ago before filing of the suit and therefore, the defendants have perfected title over the disputed property. Though, it is contended on the side of the defendants that at the time of dividing the property the said Kesava Ramanujam had taken larger extent for which absolutely there is nothing on record to establish the same. When the properties were divided between the said Kesava Ramanujam and the



S.No.353 of 2019

WEB COPY

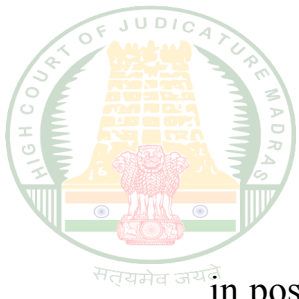
plaintiff and the same was subdivided and separated patta was issued in their favour. It is not explained by the defendants why Kesava Ramanujam took larger extent. Moreover, the Advocate Commissioner in his report and plan has only stated upon the existence of a damaged wall running east to west but no steps were taken by the defendants to establish it is old wall. According to the plaintiff, the said wall was newly constructed by the defendants during pending of suit. Whereas, it is the contention of the defendants that the old wall was constructed in the year 1976-77. While so, the defendants ought to have taken steps to obtain expert opinion with regard to the age of the wall. Since no steps were taken on the side of the defendants it cannot be construed that there was an old wall constructed in the year 1976-77 and the same was damaged by the plaintiff. Moreover, Ex.A3 patta was issued in favour of the plaintiffs in S.No.546/3B for an extent of 0.15.0 hectare. Under Ex.A4 a joint application was submitted by the said Kesava Ramanujam and the plaintiff's father for sub dividing the properties in S.No.546/3 for an extent of 0.74 cents purchased under Ex.A1 sale deed. In the above document, plaintiff Nagaraj and Kesava Ramanujam



S.No.353 of 2019

WEB COPY

have jointly signed. From the above documents, it is understood that the properties were equally owned by the said Kesava Ramanujam and by the plaintiff. The defendants failed to establish that they were entitled for more than 37 cents in S.No.546/3B and that they are enjoying the larger extent in excess of 37 cents. Furthermore, the defendants failed to prove that their predecessor in interest Kesava Ramanujam alone paid the entire sale consideration for purchasing 74 cents of land under Ex.A1 sale deed and that the said Kesava Ramanujam was not aware that the plaintiff is joint purchaser in the sale deed and that after coming to know the said Kesava Ramanujam and the plaintiff divided the said 74 cents in such a way the Kesava Ramanujam took larger extent and a compound wall was constructed in the year 1976-77 itself and the defendants have perfected title in respect of the said larger extent by adverse possession. Moreover, it is not explained on the side of the defendants why more extent was taken by Kesava Ramanujam when the sale deed stood in the name of Kesava Ramanujam and plaintiff's father. If really, the plaintiff's father fraudulently included his name in the sale deed and admittedly, when the sale deed was



S.No.353 of 2019

WEB COPY

in possession of Kesava Ramanujam, he had not taken any steps against the plaintiff. Though, the wall is shown as red colour in Ex.C2 Commissioner's report and the same cannot be presumed to be old unless the same was examined by an expert. Moreover, the defendants failed to establish that there was an old wall and after demolishing the same the new wall was constructed, when particularly it is the case of the plaintiff that the wall was newly constructed by the defendants during pendency of the suit. When the plaintiff has established his title under Ex.A1 that he is entitled for the right over the suit property, the 1st Appellate Court ought not to have rendered a findings that there is no evidence on the part of the plaintiff that he has got absolute title over the suit property. Since the defendants failed to establish that the description of the property given in the plaint is incorrect, the judgements relied on the side of the defendants is not applicable. Hence, all the substantial questions of law formulated by this Court are answered in favour of the appellant.



S.No.353 of 2019

WEB COPY

17.In the result, the second appeal stands allowed. No costs.

i) The judgment and decree dated 19.08.2011 made in A.S.No.2 of 2011 on the file of Sub Court, Hosur, is set aside.

ii) The judgment and decree dated 30.08.2010 made in O.S.No.44 of 1997 on the file of the District Munsif Court, Hosur is confirmed.

12.09.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order

To

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



WEB COPY



S.No.353 of 2019

K.GOVINDARAJAN THILAKAVADI,J.

vsn

**Pre-delivery judgment made in
Second Appeal No.353 of 2019**

12.09.2025