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S.No.712 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	14.07.2025
<i>Pronounced on</i>	28.07.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.712 of 2019
and C.M.P.No.13814 of 2019

K.Karuppannan

.. Appellant

versus

Kuppusamy (died)

1.Gandhimathi

2.Mythili

.. Respondents

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 12.03.2018 made in A.S.No. 27 of 2017 on the file of the Sub Court, Kangayam, confirming the judgment and decree dated 01.03.2014 made in O.S.No.12 of 2010 on the file of District Munsif Court, Kangayam by allowing this second appeal.

For Appellant : Mr.S.Shrish
for Mr.N.Manokaran

For Respondents : Mr.T.Ganesan for R1 & R2



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JUDGMENT

This Second Appeal arises out of the judgment and decree dated 12.03.2018 made in A.S.No.27 of 2017 on the file of the Sub Court, Kangayam, confirming the judgment and decree dated 01.03.2014 made in O.S.No.12 of 2010 on the file of the District Munsif Court, Kangayam.

2. The second appeal has been admitted on the following substantial questions of law:

a. Whether the Courts below have committed an error in dismissing the suit for permanent injunction in the absence of any dispute as to the title and lawful possession of the plaintiff over the suit property?

b. Have not the Courts below erred in ignoring the admission of the defendant, which is the best piece of evidence to grant the relief as prayed for?

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



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4. The plaintiff is the appellant herein files the above suit for the relief

of permanent injunction restraining the defendants, his men, agents interfering with plaintiff's peaceful possession and enjoyment of the suit properties in any manner.

5. Briefly stated, the case of the plaintiff is that, the suit properties are ancestral properties of the plaintiff. The plaintiff and their co-sharers entered into a partition registered on 14.06.1979 in which 'B' Schedule property was allotted to the plaintiff and the plaintiff is now in possession and enjoyment of the 'B' Schedule property which is the subject matter of the suit. The further submission of the plaintiff is that he has constructed a house within the suit property and enjoying the same by paying necessary tax for the said property. The defendants are the owners of the property lying on the Eastern side of the plaintiff's property and they do not have any right over the suit property at any point of time. While so, on 15.12.2009 the defendants attempted to trespass into the suit property, since they could not succeed in purchasing a portion of the suit property from the plaintiff. Hence, the plaintiff was constrained to file the above suit for permanent injunction.



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6.The defendants together resisted the claim of the plaintiff stating that originally the suit property was a vacant site belonging to one Nachappa Gounder by virtue of sale deed dated 27.05.1957. From the heirs of Nachappa Gounder viz.,Chenniappa Gounder and Balusamy Gounder, the 1st defendant has purchased the property on 30.03.1988 for valid consideration. The 2nd defendant is the wife of the 1st defendant and on the Southern side of the defendant's property, in the year of 1990 the defendants put up a hand loom unit and in the year 2009, they constructed a residential house and in order to maintain western North-South walls, the defendants left 2½ feet vacant space for white washing the wall and for maintenance. Patta was also issued in favour of the defendants on 14.08.1995.

7.According to the defendants, the dispute between the plaintiff and the defendants is with regard to the said vacant site which lies on the east of the plaintiff's house and west of defendant's house to an extent of 2½ feet x 25 feet. The plaintiff had suppressed the real facts and filed the above vexatious suit. The plaintiff has no right in the vacant space left by the

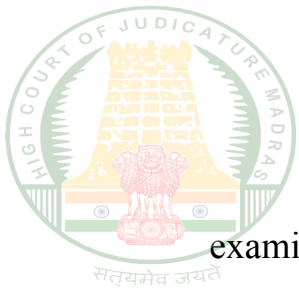


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defendants. The plaintiff has demolished the tiles placed on the western wall to an extent of 1½ feet x 10 feet. Hence, the defendants lodged a complaint before the Police Station and on enquiry the plaintiff agreed to compensate the defendants. The 3rd defendant's contention is that he is not a proper and necessary party to the suit. There is no cause of action for the plaintiff to file the suit against the 3rd defendant. The plaintiff has not given the correct extent of the suit property. Only to prevent the defendants from maintaining the western side north south wall, the plaintiff has come forward with false case. Hence, the suit was liable to be dismissed.

8. On the basis of the materials placed on record, and upon appreciating the same, the Courts below rightly dismissed the plaintiff's suit. Impugning the same, this second appeal has been preferred by the plaintiff.

9. The learned counsel for the appellant/plaintiff submits that the plaintiff has categorically proved his lawful possession and enjoyment in the suit property and that he has not suppressed any material facts as stated by the defendants in their written statement. In fact, the defendants



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examined as D.W.1 and D.W.2 had categorically admitted the relief claimed by the plaintiff. The suit itself has been filed in respect of the entire extent described under the four boundaries as per Ex.A.1 from which the plaintiff has derived his title from 14.06.1979, the date of execution of Ex.A.1 sale deed. The plaintiff has proved his possession and enjoyment in the suit property by filing Ex.A2 and Ex.A3 i.e., House Tax receipt and E.B Receipt. He would further submit that, a mere perusal of Ex.A.1 and Ex.B.1 sale deeds besides the evidence of P.W.1 and D.W.1 goes to show that there exists a boundary line between the portion of the respective parties. He would further submit that in the absence of any dispute as to the title of the plaintiff, the Courts below ought to have granted the relief prayed by the plaintiff. But the Courts below without pleadings have granted a relief to the defendants by vesting title over the portion of the property is unsustainable. To support his contention, he has relied upon the following judgment in the case of *Bachhaj Nahar vs. Nilima Mandal and Another* reported in (2008) 17 Supreme Court Cases 491 where it was held that:

"Without pleading and an opportunity of hearing to the



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opponent party, no amount of evidence, held, can be looked into for granting any relief."

10.His further submission is that, when there is a categorical admission on the side of the defendants that the plaintiff is in possession and enjoyment of the suit property, the Courts below ought to have granted the relief claimed by the plaintiff and that the Law Commission has also considered the provision under Order 7 Rule 6 of CPC and clarified the position for admission and also for empowerment of the Court to pronounce a judgment where the claim is admitted even on an oral admission. To support his contention, he has relied upon the following case ***Rajiv Ghosh vs. Satya Naryan Jaiswal (Special Leave Petition (CIVIL) No. 9975 of 2025).***

11.On the other hand, learned counsel appearing for the respondent would submit that, the cross examination of P.W.1 would clearly establish the fact that the real dispute between the plaintiff and the defendants is with regard to enjoyment of vacant space that lies between the property of the plaintiff and the defendants. It is further submitted that since the plaintiff

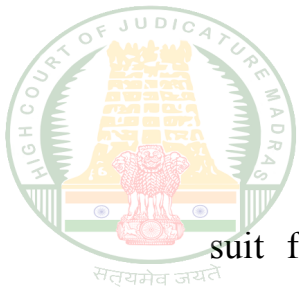


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has not given clear description of the property, the trial Court was not inclined to grant any decree in favour of the plaintiff inspite of no objection being given by the defendants to grant a relief of injunction in respect of the plaintiff's property. The judgment and decree of the trial Court was confirmed by the first appellate Court by appreciating the findings rendered by the trial Court in a proper perspective manner which calls for any interference by this Court.

12. Heard the learned counsel for the appellant and the learned counsel for the respondents and perused the entire materials available on record.

13. On perusal of the impugned Judgment passed by the trial Court which is confirmed by the first Appellate Court, it is seen that the Courts below have categorically held that the plaintiff has not given the clear description of the extent of the property for which the relief of permanent injunction is claimed. Therefore, the Courts below held the plaintiff is not entitled for the relief of permanent injunction and thereby, dismissed the



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suit filed by the plaintiff. In fact, the plaintiff himself in his cross examination has stated that the actual dispute between the plaintiff and the defendant is only with regard to the enjoyment of the vacant site which lies between the plaintiff and defendant's property. Though, the case of the plaintiff is that the defendant attempted to trespass the plaintiff's property, in evidence the plaintiff categorically admitted that the defendants have not encroached any portion of the plaintiff's property and that they never demanded the plaintiff to sell his property to them.

14. When the plaintiff himself admitted that the defendants never attempted to encroach upon his property and the dispute is only with regard to the vacant site which lies between the plaintiff and defendant's property, which vested with the defendant, as rightly pointed out by the Courts below there is no cause of action to file the above suit. A cause of action must involve some action or conduct by the defendant that prompts the plaintiff to file a suit. The plaintiff must demonstrate a legitimate right to sue, rather than merely stating a superficial or illusory claim of cause of action. From the materials on record, it is found that the cause of action stated in the



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plaint is only illusory, in order to maintain the suit. The law cannot permit clever drafting which creates illusion of a cause of action. What is required is that a clear right must be made out in the plaint. The Courts below essentially found that the plaintiff's claim lacks a legal foundation and rightly dismissed the suit.

15.For the above reasons, all the substantial questions of law are answered against the appellant and the second appeal stands dismissed. No costs. Consequently, connected miscellaneous petition closed.

28.07.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order

To

- 1.The Sub Court, Kangayam,
- 2.The District Munsif Court, Kangayam.
- 3.The Section Officer, V.R.Section, High Court, Madras.



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