



S.A.(MD).No.634 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.01.2025**

CORAM:

THE HONOURABLE **MRS.JUSTICE S.SRIMATHY**

S.A.(MD).No.634 of 2013

and

C.M.P.(MD)Nos.15372 of 2024 and 1466 of 2025

Padmarani

... Appellant

/Vs./

1.Subburam Chettiar
2.Suseela (Died)
3.Mahalakshmi
4.Narayanasamy
5.Revathai

...Respondents

(R2 to R5 are brought on record as LR's of deceased sole respondent vide Court order, dated 19.12.2019, made in CMP(MD)Nos.3925 to 3927 of 2019 in SA(MD)No.634 of 2013)

(Memo presented before the Court on 04.10.2024, is recorded as R2 died and R3 to R5 are already on record, are recorded as LR's of the deceased R2, vide Court order, dated 04.10.2024, made in SA(MD)No.634 of 2013)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and Decree, dated 17.12.2012, made in A.S.No.225 of 2011



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on the file of the II Additional Sub Court, Madurai, confirming the Judgment and Decree, dated 28.10.2011, made in O.S.No.532 of 2007 on the file of the II Additional District Munsif Court, Madurai Town.

For Appellants	: Mr.S.C.Herold Singh
R1 and R2	: Died
For R3 to R5	: Mr.M.S.Suresh Kumar
Advocate Commissioner	: M/s.M.Kirithiga

JUDGMENT

The present second appeal is preferred by the defendant against the judgment and decree, dated 17.12.2012, passed in A.S.No.225 of 2011 on the file of the II Additional Sub Court, Madurai, confirming the judgment and decree, dated 28.10.2011, passed in O.S.No.532 of 2007 on the file of the II Additional District Munsif Court, Madurai Town.

2. The plaintiff in the suit is the 1st respondent herein and the defendant in the suit are the appellant herein. The defendant / 1st respondent herein died and his legal heirs are impleaded as respondents 2 to 5 herein. For the sake of convenience, the parties are referred as plaintiff and defendants, as per the ranking



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in the suit.

3. The suit is filed for bare injunction restraining the defendant from interfering in the peaceful possession of the property.

4. The brief facts as stated in the plaint is that originally the entire property belongs to one Ramasamy Chettiar, after his demise his son Balakrishnan inherited the property. The properties consist of seven parts and the plaintiff, plaintiff's wife and son had purchased the property through six sale deeds dated 01.09.1986 from the said Balakrishnan. Hence the plaintiff is the owner of the property through the sale deed which is situated on the western side end in T.S.Nos.284/1 and 282/2 admeasuring 72 feet East-West on North and 72 feet on East-West on South and 21 feet North-South on East and 14.6 feet North-South on West. The defendant had purchased the property in S.No.274/1. The suit property is situated on the western end in T.F.Nos.284/1 and 284/2. And eastern end of the defendant's property. Two years before, the defendant put up windows on the eastern side wall of her house and the plaintiff objected for putting up windows



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facing the suit property. However, based on advice by the common people the defendant agreed that if the plaintiff intended to put up any construction in the area, then the defendant would remove the same, hence the plaintiff had not taken any action. On 28.04.2007, when the plaintiff started to construct a building in the portion, the defendant threw stones from her house and she threatened the plaintiff's workers by showing weapons like aruval and stick and she prevented the plaintiff's workers from doing the construction work. Thereafter, the defendant started throwing waste materials, human excrete on the suit property and thereby, the defendant had obstructed the plaintiff's enjoyment and prevented the construction work. On 04.05.2007, the defendant tried to encroach the suit property with the man power and the plaintiff resisted her encroachment. However, the defendant taking advantage of vacation holidays of the Court, on 06.05.2007, threatened the plaintiff and she tried to assault him and the same was resisted by the plaintiff with the help of his son and neighbours. The defendant's violent entry and threat continued day-by-day. Hence, the present suit is filed by the plaintiff.



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5. The defendant denied all the allegations and averments stated in the plaint and stated that an extent of 11 feet vacant site on the eastern side next to the eastern side wall of the defendant's house is available and 6 feet length in the vacant site absolutely belongs to the defendant. The plaintiff has wrongly filed the rough sketch and shown the entire 11 feet as suit property which is wrong. The description of the suit property in the schedule is shown as soil wall with tin sheeted house is wrong and no such property existed as described in the suit property. The defendant's mother purchased the house with 6 feet on the eastern side of the wall in the year 1957 itself and she gifted the house to the defendant in the year 1982. Hence, the defendant and her mother were enjoying the 6 feet on the eastern side of her house. Therefore, the plaintiff is entitled to the remaining portion of the vacant site after detecting the defendant's 6 feet in the suit property. The defendant further states that since 1986 the plaintiff claimed defendant's 6 feet and often quarrelled with her. But she has established her right and title to the 6 feet extent in the suit property. The plaintiff recently requested to sell the said 6 feet to him and the defendant refused for the same. The windows in the upstairs of the defendant's house were erected so many years ago even before the purchase by



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the plaintiff. The defendant never promised to the plaintiff for the removal of the windows as alleged in the plaint. The defendant also denied that on 28-04-2007 she threw stones and obstructed the plaintiff's work and the same is invented for the purpose of filing the false and frivolous suit. The defendant denied the allegations that she stopped the works with stick and aruval are highly imaginary. The defendant is an old lady and such allegations against her is highly ridiculous one and she never threw stones and waste materials as alleged by the plaintiff. The defendant also denied the allegations that on 04-05-2007 and 06-05-2007 she unlawfully obstructed the plaintiff and the allegations are false and highly imaginary, the defendant is a law-abiding senior citizen and never took the law on her hands as alleged. Being an old lady, she could not use the stick and aruval against the plaintiff. The suit is not maintainable under law and on facts. There is no cause of action for the suit. Hence, the defendant prayed for dismissal of the suit.

6. Based on the rival submissions and pleadings, the following issues are framed by the Trial Court:



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1. Whether the plaintiff is entitled to the decree of permanent injunction as prayed for?

2. To what other reliefs the plaintiff is entitled for?

On the side of the plaintiff, P.W.1 and P.W.2 were examined and Exhibits A-1 to A-14 were marked. On the side of defendant, D.W.1 was examined and no documentary evidence was marked. Also, Exhibits C-1 and C-2 were marked on the side of Court. After considering the pleadings, evidences and documents, the Trial Court decreed the suit. Aggrieved over the same, the defendant preferred an appeal.

7. The Appellate Court framed the following points for consideration:

1. Whether the plaintiff is entitled for the relief of permanent injunction as prayed for?

2. To what other reliefs the plaintiff is entitled for?



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After considering the rival submissions, the appeal was dismissed, confirming the judgment and decree of the Trial Court. Aggrieved over the same, the defendant has preferred the present second appeal.

8. The second appeal is admitted on the following substantial question of law:

“1. Whether a suit for bare injunction is maintainable when the appellant has disputed the title of the property?

2. Whether both the Courts below are correct in ignoring the fact of non-production of the original documents in his possession of the respondent as required under section 114(G) of the Indian Evidence Act, when the respondent has not given any valid reasons for non-production of the same even after giving notice of the same to him by the appellant?

3. Whether the Courts below are right in accepting the report of the Advocate Commissioner in whose report he has not furnished the measurements of the properties of both parties?”

9. The primary contention of the defendant is that the defendant had raised a cloud in the title of the plaintiff, hence the suit for bare injunction is not maintainable. It is an admitted fact that the property in T.S.No.284/1 and T.S.No.



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284/2 belongs plaintiff and the property in T.S.No.274/1 belongs to the defendant.

The dispute between the parties is only a small portion, wherein the plaintiff claims that portion on the western end belongs to the plaintiff. Whereas the defendant claims 11 feet is available in the disputed portion, but the defendant is entitled to 6 feet of the said portion and the plaintiff is entitled to 5 feet. When the defendant had not put up rival claim for the entire property, but had claimed only 6 feet, then the suit for declaration is not necessary. Therefore, the first substantial question of law is held against the defendant.

10. The plaintiff/respondent is claiming right based on the sale deeds executed in his favour. However, the plaintiff had not produced the original copy of the parent documents, which is in his possession. If the said documents are produced, then the issue could be resolved between the parties, then the plaintiff is bound to produce the same. If the parent documents indicate the total extent of the property and the same can throw some light to ascertain the measurement of the plaintiff's property, then the same is essential evidence. Then non-production of the original document would vitiate the claim of the plaintiff. Therefore, the



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second substantial question of law is held against the plaintiff and in favour of the defendant.

11. The Advocate Commissioner had submitted a report without any measurement hence the said report cannot be accepted. In the present case the dispute between the plaintiff and the defendant itself is the measurement of the property. The plaintiff claims the entire disputed portion and the defendant claims that in the disputed portion 5 feet belongs to the plaintiff and 6 feet belongs to the defendant. Therefore, measuring both the plaintiffs property and the defendant's property as per their sale deeds would be appropriate. Therefore, the third substantial question of law is held in favour of the defendant.

12. It is seen that the Trial Court had held that the defendant had claimed 6 feet, hence the defendant had to prove his case, which is erroneous and non-application of mind. The plaintiff ought to prove the case and placing burden on the defendant and rendering a finding that defendant had not proved is perverse finding.



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13. In order to resolve the dispute this Court appointed an Advocate Commissioner, who had filed a report stating that as per the document of the plaintiff 72 feet should be available on the ground, but only 70 feet is available. Hence, it is not possible to ascertain whether 6 feet is available or not. Further stated that unless the entire extent is measured including the plaintiff's house, the defendant's house and the other houses situated, the encroachment or overlapping of the land cannot be ascertained. The Advocate Commissioner has also stated that there is a mistake in the calculation, as per the Exhibit A1. Therefore, this Court is of the considered opinion that in order to resolve the issue between the parties, then the case ought to be remanded back.

14. Accordingly, the case is remanded back to the Trial Court. The parties are at liberty to amend the pleadings, to file additional evidences and to depose before the Courts. If need be, a fresh Advocate Commissioner may also be appointed and measure the other properties including the plaintiff and defendant properties. If need be, the defendant is permitted to file counter claim also.



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15. Therefore, the judgment and decree rendered by both the Courts are set aside. The Trial Court shall complete the suit within a period of one year from the date of receipt of a copy of this judgment. The civil miscellaneous petitions filed by the defendant to receive additional documents are closed and the defendant is directed to file the said documents before the Trial Court. The Registry is directed to return the original documents filed in the civil miscellaneous petitions to the defendant. The parties are directed to appear before the Trial Court on 04.03.2025

16. With the above said observations, the second appeal is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

30.01.2025

Index : Yes / No

NCC : Yes / No

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TO:

1. II Additional Sub Court, Madurai.
2. II Additional District Munsif Court,
Madurai Town.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

Tmg

Judgment made in
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