



S.A.(MD) No.797 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATE: 28.08.2025

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

S.A(MD) No.797 of 2013

&

M.P.(MD) No.2 of 2013

1. Sirumbayee (a) Pappa

2. Dharman

... Appellants

Vs

Arumugam (died)

1. Thangamani

2. Sivabakkiam

3. Sannasi

4. Rajkumar

5. Valli

... Respondents

PRAYER: Second Appeal filed under 100 of the Code of Civil Procedure Rule 1973, against the judgment and decree dated 19.7.2012 in A.S.No.4 of 2011 on the file of the Sub Court, Kulithalai, partly allowing the judgment and decree dated 30.9.2010 made in O.S.No.252 of 2001 on the file of the District Munsif Court, Kulithalai.



WEB COPY



S.A.(MD) No.797 of 2013

For Appellants : Mr.K.Govindarajan
For Respondents : Mr.V.G.Kamalesh

JUDGEMENT

This Second Appeal has been filed against the judgment and decree dated 19.7.2012 passed in A.S.No.4 of 2011 on the file of the Sub Court, Kulithalai, partly allowing the judgment and decree dated 30.9.2010 made in O.S.No.252 of 2001 on the file of the District Munsif Court, Kulithalai. The plaintiffs are the appellants herein. In this second appeal, the challenge has been made only with regard to refusal to grant any relief in respect of the suit C schedule property.

2. The case of the plaintiffs is as follows:

(i) The suit properties were the ancestral properties of one Mr.Sannasi, who had five sons, namely one Mr.Kandan, Mr.Arumugam - first defendant, Mr.Thangaraj, Mr.Mani and Mr.Jayabalan. The wife of the said Mr.Thangaraj was the first plaintiff and their son was the second plaintiff in the said suit. The said Mr.Thangaraj passed away leaving behind the plaintiffs and also the other children, which included one Mr.Mariyappan, Mr.Sankar, Ms.Amaravathi, Ms.Janaki, Ms.Bhanumathi



S.A.(MD) No.797 of 2013

and Ms.Gomathi. A partition took place between the said Mr.Thangaraj and his brothers, in and by which, the suit A and B Schedule properties were allotted to the said Mr.Thangaraj. The first defendant was allotted a house immediately north of the east-west road and east of the north-south lane. The house allotted to the first defendant was situated on the south-western corner of the house of the said Mr.Thangaraju. After partition, the said Mr.Thangaraj renovated the house, which was allotted to him and constructed a tiled house.

(ii) Even before partition, the said Mr.Thangaraj was in continuous and peaceful possession of the suit A and B schedule properties and perfected his title by adverse possession. The suit B Schedule property was allotted to the said Mr.Thangaraj since he was using the same to reach the road on the south even prior to construction of his house. The said Mr.Thangaraj was running a small petty shop in the B schedule property and later removed it.

(iii) The said Mr.Arumugam had claimed rights over the B schedule property by filing O.S.No.467 of 1994 before the District Munsif Court, Kulithalai. Although the Trial Court decreed the suit in O.S.No.467 of 1994, vide decree dated 26.3.1999 in favour of the said Mr.Arumugam, the appeal



S.A.(MD) No.797 of 2013

filed by the legal heirs of said Mr.Thangaraj in A.S.No.46 of 1999 before the Sub-Court, Kulithalai was allowed vide judgment and decree dated 15.12.2000. The Lower Appellate Court had held that the B schedule property was in possession of the said Mr.Thangaraj, that the said Mr.Arumugam had no right to dispute their title and that the claim had also been barred by the principle of *res judicata*. During the pendency of the first appeal, a Court Commissioner was appointed to inspect the properties and submit a report and sketch, which had also been done subsequently.

(iv) Before filing the first appeal, the said Mr.Arumugam had constructed a wall mentioned in the suit C schedule property. After the judgment in O.S.No.467 of 1994, the said Mr.Arumugam had constructed the wall mentioned in the suit D Schedule property subsequent to the decree passed in O.S.No.467 of 1994. The Commissioner had reported that these constructions were new. The said Mr.Arumugam had no exclusive right, title or possession in the portions denoted in the plan as north of XY wall and east of YZ wall.

(v) Even prior to the filing of the written statement, the said Mr.Arumugam had constructed the walls marked as EF and FH and



S.A.(MD) No.797 of 2013

attempted to block the access to the plaintiffs to the southern road. Despite these constructions, the plaintiffs had continued to use the pathway to access the southern road. In the appeal suit filed in A.S.No.46 of 1999 as against the earlier suit, it had been observed that the B schedule property was jointly owned by the legal heirs of the said Mr.Thangaraj and the said Mr.Arumugam, for which, the plaintiffs in the second suit had objected.

(vi) The constructions in the suit C and D schedule properties had affected the plaintiffs' rights and their use of the property and therefore, these constructions were needed to be removed. The said Mr.Arumugam had been threatening to make further constructions in the suit B schedule property. Hence, the present suit had been filed seeking for permanent injunction restraining the defendants from interfering with the plaintiffs' possession in the suit B schedule property and for a direction to the legal heirs of the said Mr.Arumugam to remove the constructions made in the suit C and D schedule properties.

3. During the pendency of the present suit, the said Mr.Arumugam died and his legal heirs were impleaded as defendants 2 to 6.



4. In the present suit, when he was alive, the said Mr.Arumugam filed a written statement, wherein it has been stated as follows :

(i) The said Mr.Arumugam admitted that the suit properties and other properties were the ancestral properties of the said Mr.Sannasi. The said Mr.Sannasi had five sons, including the said Mr.Thangaraj and the said Mr.Arumugam and they partitioned the properties among themselves. In the partition, the said Mr.Thangaraj was allotted only a tiled house on the northern portion, which was having entrance towards west facing the common north-south lane and it was kept in common to all the brothers to go from east- west road on the south to Bangal Vaikkal on the north.

(ii) After the partition, the said Mr.Thangaraj constructed a terraced house adjoining the tiled house in the vacant space. During these constructions, there was a vacant space of 1½ to 2½ feet wide on the southern side allowing access to the western common pathway. The B schedule property was not allotted to the said Mr.Thangaraj in the said partition in order to have a direct access to the east west road on the south from the house in the alleged A schedule property. The said Mr.Thangaraj had no necessity to have direct access since the common pathway was set apart to a breadth of nearly 10 feet from the road on the south to the Vaikkal



on the north to have access to the road even at the time of partition.

WEB COPY

(iii) The said Mr.Arumugam was allotted the house situated immediately on the north of the east west road and east of the north-south lane. In reality, the B schedule property measured 12 feet on the north and 17 feet on the south.

(iv) During the partition, the said Mr.Arumugam was allotted both the house in between XYZ as well as the vacant land up to EF on the north to a length of 12 feet in between EX. Similarly, a vacant space having a breadth of 9 feet on the eastern side was allotted to the said Mr.Arumugam. After the partition, the said Mr.Arumugam constructed the compound walls on the north side and the eastern side marked as EFH. But, the walls were not plastered with cement on both sides. The vacant land on the east of FH was allotted to the said Mr.Jayapalan.

(v) Originally, the tiled house on the northern portion with vacant space on the southern portion was allotted to the said Mr.Thangaraj, who kept the tiled house intact and constructed a new terraced house on the southern vacant portion after adjoining the titled house without leaving any



S.A.(MD) No.797 of 2013

vacant space in between the two houses. The said Mr.Thangaraj constructed the terraced house five years after the said Mr.Arumugam constructed the wall in between EFH in the plaint plan. The southern entrance was put up only at the time of construction of the terraced house. The entrance on the southern side and the northern side was constructed at the time constructing the terraced house after closing the entrance on the western side in the tiled house.

(vi) Prior to the partition, the said Mr.Thangaraj was living in the tiled house, for which, the entrance was on the western side and the remaining portion on the south where he constructed the terraced house was vacant. Even prior to the partition, he never used the alleged B schedule property as access to go to Mangamma Salai road on the south. The said Mr.Thangaraj never prescribed any title by adverse possession to the suit A and B schedule properties. The said Mr.Thangaraj never operated a petty shop in the B schedule property nor it was removed subsequently.

(vii) The said Mr.Jayabalan was allotted the vacant site measuring 1/2 cents on the east of FH portion. The said Mr.Arumugam purchased the said vacant site from the said Mr.Jayabalan under the registered sale deed dated 28.8.1982. When the said Mr.Thangaraj attempted to interfere with



S.A.(MD) No.797 of 2013

his possession and enjoyment over the said property, the said Mr.Arumugam filed O.S.No.467 of 1994 on the file of the District Munsif Court, Kulithalai and it was originally decreed. However, on appeal by the said Mr.Thangaraj and his legal heirs, the Lower Appellate Court allowed the appeal and dismissed the said suit.

(viii) In the judgment rendered by the Lower Appellate Court, it was not concluded that the said Mr.Thangaraj had exclusive possession over the suit B schedule property. But, it was decided that it was a common property between the parties. The observations made by the Commissioner so appointed were not correct. The plaintiffs had no title to the entire suit A schedule property. Purposely, the plaintiffs had not given the measurements to the suit A schedule property. As such, the plaintiffs had no title to the suit A schedule property. The suit filed by some of the legal heirs of the said Mr.Thangaraj alone was not maintainable in law.

(ix) The said Mr.Arumugam alone had title and possession over the entire portion upto EF and FH, which was inclusive of both the walls. The wall between F and I was constructed by the said Mr.Arumugam after the earlier suit was decreed. The said Mr.Arumugam had constructed the EFH wall in accordance with his title and possession.



S.A.(MD) No.797 of 2013

(x) The plaintiffs had no title or possession over the suit B schedule property and it absolutely belonged to the said Mr.Arumugam. Ultimately, he sought for dismissal of the suit.

5. On the side of the plaintiffs, the second plaintiff was examined as P.W1 and Exs.A-1 and A-11 were marked. On the side of the defendants, D.Ws.1 and 2 were examined and Exs.B-1 and B2 were marked.

6. On consideration of the oral and documentary evidence, the Trial Court, vide judgment dated 30.9.2010, dismissed the suit in O.S.No.252 of 2001. Aggrieved by the same, the unsuccessful plaintiffs preferred an appeal in A.S.No.4 of 2011 before the Lower Appellate Court, which, vide judgment dated 19.7.2012, partly allowed the appeal, thereby the judgment and decree of the Trial Court in respect of the suit B and D scheduled properties was set aside and the judgment and decree of the Trial Court were confirmed in respect of the suit C schedule property. The Lower Appellate Court further granted a permanent injunction against the defendants from making new constructions in the suit B schedule property and restrained the defendants from interfering with the peaceful possession



S.A.(MD) No.797 of 2013

and enjoyment of the plaintiffs in respect of the suit B schedule property.

The Lower Appellate Court also granted a mandatory injunction and directed the said Mr.Arumugam to remove the construction in the suit D schedule property within two months. Aggrieved by that portion of judgment, which confirmed the judgment and decree of the Trial Court in respect of the C schedule property, the plaintiffs had filed this present Second Appeal

7. This Second Appeal was admitted by this Court on 12.12.2013 on the following substantial question of law:

“Whether, in law, the learned appellate Judge is right in dismissing the suit in respect of C schedule on the basis of alleged admission of P.W. I when there is no such statement by P.W.I, if the entire evidence is read as a whole?

8. The Trial Court, vide judgment and decree dated 30.9.2010, dismissed the suit in O.S.No.252 of 2001 filed by the plaintiffs. Hence, the



S.A.(MD) No.797 of 2013

plaintiffs had filed the appeal in A.S.No.4 of 2011 before the Lower Appellate Court and the same was partly allowed, vide judgment and decree dated 19.7.2012 only in respect of the suit B and D schedule properties. However, the first appeal in respect of the suit C schedule property was dismissed. Challenging the said finding alone, the plaintiffs filed this Second Appeal.

9. Learned counsel for the appellants/plaintiffs submitted as follows:

(i) The said Mr.Thangaraj was none other than the husband of the first appellant and the father of the second appellant. The suit A and B schedule properties were allotted to the said Mr.Thangaraj. From the date of partition, the said Mr.Thangaraj and his family were enjoying the suit A and B schedule properties. The suit A schedule property is a house property. After partition, the said Mr.Thangaraj had put up a terraced house in the A schedule property and was enjoying the same property. To reach the union road, they were using the suit B schedule property. The said Mr.Thangaraj was running a tiffin stall.

(ii) In the absence of the appellants, the first defendant encroached upon the suit B schedule property and constructed a wall in the suit C and D



S.A.(MD) No.797 of 2013

schedule properties. When the appellants enquired about the same, the first defendant promised them to remove the walls in the suit C and D schedule properties. However, the walls were not removed. Hence, the appellants filed the present suit seeking for permanent injunction in respect of the suit B schedule property and for mandatory injunction in respect of the suit C and D schedule properties.

(iii) Though the Trial Court dismissed the suit in entirety, the Lower Appellate Court allowed the appeal in part and granted permanent injunction in respect of the suit B schedule property as it was not exclusively allotted either to the appellants or to the respondents or the said Mr.Jayabalan and as the same was used as a common pathway for the appellants and the respondents. It was ultimately held that both parties were entitled to enjoy the suit B schedule property as a common property and that one should not disturb the other. Since either the appellants or respondents had not established their exclusive right and title, it was held that the respondents alone had no right to put up a wall obstructing the free flow of the appellants.

(iv) The Lower Appellate Court rightly granted decree in favour of the appellants in respect of the suit B and D schedule properties and



S.A.(MD) No.797 of 2013

dismissed the suit only in respect of the suit C schedule property. The Lower Appellate Court admitted that the suit B schedule property was a common property and that one should not disturb the other. The mandatory injunction was granted in respect of the suit D schedule property in the same way. According to the appellants, the Lower Appellate Court ought to have allowed the prayer even in respect of the suit C schedule property also. The judgment and decree passed by the Lower Appellate Court in respect of the suit C schedule property are erroneous and are liable to be set aside and the appeal may be allowed in respect of the suit C schedule property.

10. On the contrary, the learned counsel for the respondents submitted as follows:

(i) Originally, the said Mr.Arumugam purchased the suit B schedule property from one of his brothers namely the said Mr.Jayabalan under Ex.B1. From 1982 onwards till filing of the present suit, the said Arumugam was in possession and enjoyment of the suit B schedule property. The appellants were allotted the house, which was lying immediately north to the house of the said Mr.Arumugam and they also altered the house and put up a terraced house. The said Mr.Arumugam had a



S.A.(MD) No.797 of 2013

right on the northern side of the house of the said Mr.Thangaraj.

WEB COPY

(ii) Even assuming that the said Mr.Thangaraj could reach the union road towards south, on the west of the house of the said Arumugam, there was a pathway. The Commissioner's report had clearly shown that the pathway was in existence and that the appellants could reach by using that pathway, which was lying west to the house of the said Mr.Arumugam. They never used the suit B schedule property to reach the union road, which was lying south to the suit B schedule property. From 1982, after purchase of the suit B schedule property, the said Mr.Arumugam was in possession and enjoyment of the suit B schedule property. All of a sudden, the appellants encroached upon a portion of that property and also put up a shed. Hence, they were not entitled to any relief as sought for.

(iii) The Trial Court rightly dismissed the suit in entirety since the appellants had not established their right and title. The Lower Appellate Court erroneously held that in the absence of any document, the suit B schedule property is a common property and no one is entitled to use the property exclusively by putting up any construction. The appeal is not maintainable and hence, there is no merit in the appeal. However, the Lower Appellate Court partly allowed the appeal in respect of the suit B and D



S.A.(MD) No.797 of 2013

schedule properties by granting the relief and it attained finality as the respondents had not filed any appeal challenging the judgment and decree passed by the Lower Appellate Court. However, the plaintiffs in the present suit, aggrieved by the refusal to grant relief in respect of the C schedule property, have filed this second Appeal.

11. This Court has carefully considered the submissions made by the learned counsel on either side and perused the materials available on record, more particularly, the judgments of both the Courts below.

12. Admittedly, the suit A schedule property was allotted to the appellants' family under the oral partition, which took place in the year 1975. Though the appellants claimed that the suit A and B schedule properties were allotted to them and that there were materials to show that the suit B schedule property was also allotted to them, all the documents and evidence produced by the appellants were only with regard to suit A schedule property. At the time of partition, the suit B schedule property was only a vacant site. Admittedly, the respondents had constructed a wall and the appellants had also put up a stall, etc. and some of the portions were



S.A.(MD) No.797 of 2013

kept vacant. The appellants had also not examined any other independent witness to prove that the suit B schedule property was allotted to them along with the suit A schedule property.

13. The first appellant alone was not having the exclusive right and possession over the B schedule property. However, the respondents had constructed a wall. Though the Trial Court dismissed the suit in entirety, the Lower Appellate Court, while re-appreciating the entire evidence, held that the appellants were having the entrance towards the southern side of the suit A schedule property and that they used the suit B schedule property to reach the main road. The respondents also had not established their exclusive right and title. Therefore, the Trial Court found that the suit B schedule property was common. Neither the appellants nor the respondents had disturbed to each other. Without giving any disturbance or trouble to the other users, they cannot come up with the suit seeking the relief of permanent injunction.

14. The Commissioner's plan would also show that in the portion of



the property, the appellants had also put up a shed. For running as tiffin centre, the respondents also put up a wall. However, the second appellant (D2), when he was cross examined, admitted in the evidence that the wall marked as FI was obstructing to reach the road, that they could not reach the road through the suit B schedule property and that they could reach the road only through the property of one Mr.Annavi. Therefore, the decree was granted to them for the relief of permanent injunction in respect of the suit B schedule property and for the relief of mandatory injunction in respect of the suit D schedule property namely the wall. However, the suit was dismissed with regard to the suit C schedule property.

15. Since both the appellants and respondents have not established their exclusive right and title and since the suit properties were originally the ancestral properties and it was only the suit B schedule property, which was kept vacant, all the parties could enjoy the properties. Since the Lower appellate Court is a final Court of fact finding, it re-appreciated the entire evidence and dismissed the suit filed by the appellants in respect of the suit C schedule property only based on the admission made by the appellants.



S.A.(MD) No.797 of 2013

16. When once the appellants have not asserted that the suit B schedule property exclusively belonged to the appellants, both the parties are entitled to use the same. Immediately north to the suit B schedule property, the house property belonging to the appellants exists, and west to the property, the respondent's house is situated. Both the houses are adjacent and both of them could enjoy the suit B schedule property. One should not create harm to the other user. The appellants admitted during the evidence that C schedule property does not create any hindrance by using the B schedule property by the appellants.

17. Under the above facts and circumstances of the case, this Court does not find any merit in the second appeal. The substantial question of law is answered against the appellants.

18. In the result, the second Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

28.08.2025
(1/2)



S.A.(MD) No.797 of 2013

Index : *Yes/No*
Speaking Order : *Yes/No*
Neutral Citation : *Yes/No*

To

1. The Sub Court, Kulithalai.
2. The District Munsif Court, Kulithalai.

CC to

The Section Officer,
VR Section,
High Court, Chennai.

mfa



WEB COPY



S.A.(MD) No.797 of 2013

P.VELMURUGAN, J.

mfa

Pre Delivery
Judgment made in

S.A(MD) No.797 of 2013
& M.P.(MD) No.2 of 2013

Judgment delivered on 28.08.2025