

S.A.(MD)No.345 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.345 of 2019

C.Balakrishnan

... Appellant/Appellant/
Plaintiff

VS

The Executive Officer,
Keezhkulam Town Panchayat,
Pootteti Post,
Vilvancode Taluk,
Kanyakumari District.

...Respondent/Respondent/
Defendant

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree in A.S.No.138 of 2014, dated 04.01.2019, on the file of the Subordinate Judge, Kuzhithurai, confirming the judgment and decree in O.S.No.313 of 2011, dated 03.11.2014, on the file of II Additional District Munsif Court, Kuzhithurai.



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For Appellant : Mr.C.Godwin

For Respondent : Mr.B.Saravanan
Additional Government Pleader

JUDGMENT

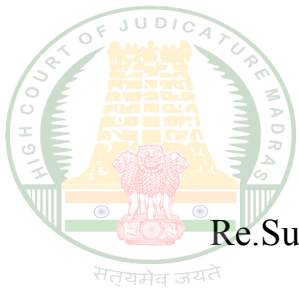
The unsuccessful plaintiff is before this Court on appeal.

2. The Second Appeal is filed challenging the judgment and decree, dated 04.01.2019 in A.S.No.138 of 2014, on the file of the Subordinate Judge, Kuzhithurai, confirming the judgment and decree, dated 03.11.2014 in O.S.No.313 of 2011, on the file of II Additional District Munsif, Kuzhithurai.

3. For the sake of convenience, the parties are referred to as per the litigative status before the trial Court.

4. According to the plaintiff, he is the absolute owner of the suit schedule property. The property was settled in his favour by his father through a settlement deed dated 23.08.2004. The suit property is in

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Re.Survey No.253/1, measuring an extent of 16 ½ cents in Keezhkulam Village, Vilavancode Taluk. It is the case of the plaintiff that there is a residential house and the plaintiff is residing there along with his family in the suit property. The defendant, with the collusion of the local people, is trying to usurp the suit property and convert it as a panchayat concrete pathway. The suit property, being the patta land, having patta No.4911, stands in the name of the plaintiff and he is the absolute owner and the defendant had no right to encroach upon the suit property. In this regard, the plaintiff had issued a legal notice on 24.02.2011 and since the same has not been replied, the plaintiff has come up with the suit for bare injunction.

5. The defendant resisted the suit both on the ground of jurisdiction and also on the ground that the plaintiff is not having title in portion of the property, which is a pathway. It is the contention of the defendant that the pathway is used by the villagers from time immemorial atleast for the past 80 years. The adjacent owners in the adjoining pathway have constructed compound walls on the other side of the pathway. The school students are using the said pathway to have access to the main road. Further the compound wall of the plaintiff's property has been constructed 60 years ago



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and the defendant had only decided to convert the pathway into a concrete pathway, for which, the funds have been allotted under G.F. scheme. Pursuant to calling for tenders, the work has also been allotted to a contractor. The defendant never attempted to trespass into the property in which the plaintiff has constructed a house and hence, the suit is not maintainable in respect of the pathway.

6. During trial, the plaintiff examined himself as P.W.1 and marked exhibits A.1 to A.8. On the side of the defendant, one Mohan Kennedy was examined as D.W.1 and exhibits B.1 to B.7 were marked.

7. The trial Court, on analysing the evidences, came to the conclusion that though there is no rival dispute in respect of title, even from the admission of P.W.1, the plaintiff was only having 14 ½ cents within the compound wall and therefore, only 14 ½ cents was in his possession and the suit filed for bare injunction for an extent of 16 ½ cents is not sustainable and dismissed the suit. On appeal, the lower appellate Court, by relying on Exs.A.2 and A.3 came to the conclusion that the plaintiff is in possession of only 13.75 cents. The lower appellate Court also had noted that the plaintiff



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has not taken steps to seek assistance for appointment of an Advocate Commissioner to establish the extent that was available within the compound wall and had dismissed the suit, by concurring with the findings of the trial Court. Assailing the concurrent finding of facts, the plaintiff had preferred the above Second Appeal.

8. The Second Appeal has not been admitted.

9. The learned Counsel appearing for the appellant contended that the plaintiff had filed a document in Ex.A.1 to establish that he has a right over 16 ½ cents and had filed documents in Exs.A.3 and A.4 for the payment of house tax to evidence his possession. It is his contention that when the plaintiff has sought for the relief in respect of a larger area, the Courts below ought to have atleast restricted the relief to the area in which admittedly the plaintiff is in possession, but however had in toto dismissed the suit and therefore, the findings are perverse and sought for interference of this Court.



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10. Contending contra, the learned Additional Government Pleader appearing for the respondent argued that when the plaintiff had come up with the suit for bare injunction, it is for the plaintiff to prove that he was in possession of the entire extent on the date of filing of the suit and unless he establishes his possession, he is not entitled for a decree of permanent injunction. Even as per the admission of P.W.1, he was not in possession of the entire extent of 16 ½ cents, but according to him, 14 ½ cents was available within the compound wall. But the lower appellate Court had rightly recorded the fact that only 13.75 cents was available within the compound wall in the possession of the plaintiff. As such, the findings arrived at are based on the evidences and needs no interference and sought for dismissal of the Second Appeal.

11. Heard the rival submissions and perused the materials available on record.

12. The plaintiff seeks for a decree of permanent injunction placing reliance on the settlement deed executed in Ex.A.1, dated 23.08.2004, by his father. Patta – Ex.A.2 has been filed which stands in the name of the plaintiff. As per the document in Ex.A.1, the extent of 16 ½ cents has been



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settled in favour of the plaintiff. Though the plaintiff has filed a document in Ex.A.1 for an extent of 16 ½ cents, it is for the plaintiff to plead and prove that the entire 16 ½ cents is available within the admitted compound wall, that has been constructed by him around 20 years ago, in which the house of the plaintiff is situated. It is the case of the defendant that they had not disturbed or intending to disturb any portion of the property that is available within the compound wall, in which the house of the plaintiff is situated. According to the defendant, only an extent of 13.75 cents of land is available within the compound wall of the plaintiff and there is a pathway running next to the compound wall across several other properties and the school going children are using the said pathway to have access to the main road.

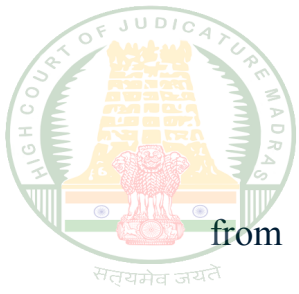
13. The defendant has also contended that in view of the fact that the pathway is used by the school going children and public from time immemorial atleast for 80 years, the panchayat had intended to convert the pathway into a concrete pathway. For this purpose, the defendant had called for tender and work order has been issued. The defendant had filed the documents in Exs.B.1 to B.7 in respect of steps taken by them to convert the pathway into a concrete pathway.



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14. The plaintiff, when he had come up with this suit seeking for bare injunction, it is for the plaintiff to establish that he was in the possession of the entire extent of the property on the date of filing of the suit. Though the plaintiff had filed the suit claiming injunction for extent of 16 ½ cents, however during cross-examination, P.W.1 had categorically admitted that only an extent of 14 ½ cents of land is available within the compound wall, in which the house of the plaintiff is situated. Further, the plaintiff had also admitted that on the western side of his property, beyond the limit of the compound wall, there is a pathway situated. The plaintiff had further admitted the fact that this pathway is used by the school going children and also the public for having access to the main road and this pathway has been used by the public for the past 16 years.

15. When the plaintiff categorically admits that only an extent of 14 ½ cents is available within the compound wall and also the pathway is in access for the students and public for the past nearly 16 years, it is clear that the plaintiff is not in a possession of the entire extent, as claimed by him and therefore, the plaintiff is not entitled to the relief of bare injunction as sought for. The lower appellate Court had rendered a clear finding that



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from the documents, only an extent of 13.75 cents of land is available within the compound wall of the plaintiff, in which his house is situated.

16. In respect to this finding, the learned Additional Government Pleader appearing for the respondent submits that though the defendant is not having any intention to usurp or encroach upon this 13.75 cents of land belonging to the plaintiff, which is lying within the compound wall of the house of the plaintiff, only since the plaintiff had come up with the claim seeking for more extent, that is an extent of 16.5 cents, which is inclusive of the portion of the pathway, over which the defendant is intending to convert the pathway into a concrete pathway, the defendant had contested the suit.

17. The learned Counsel for the appellant also fairly submits that since now they are not disputing the pathway which is lying beyond the limit of compound wall and also confirms the possession only in an extent of 13.75 cents that is available within the compound wall of the plaintiff, the apprehension of the plaintiff that the defendant is going to encroach upon his portion of the property is only misconstrued.



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18. The Courts below have arrived at a finding and had dismissed the suit based on the materials available and also by taking into consideration the fact that when the plaintiff is only in possession in respect of an extent of 13.75 cents within the compound wall, the excess area claimed by him is not maintainable and therefore, had rightly dismissed the suit.

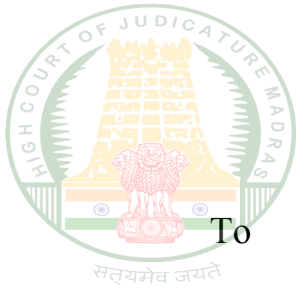
19. This Court does not find any illegality or perversity in the findings rendered by the Courts below. No question of law, much less a substantial question of law arises for consideration in the Second Appeal.

20. Accordingly, the above Second Appeal stands dismissed. However, there is no order as to costs.

15.07.2025

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

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To

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1. The Subordinate Court, Kuzhithurai.
2. The II Additional District Munsif Court, Kuzhithurai.
3. The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

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Judgment made in
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