



WEB COPY



1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.06.2025

CORAM:

THE HONOURABLE **MR.JUSTICE G.ARUL MURUGAN**

S.A(MD).No. 12 of 2018
and
C.M.P(MD).No.327 of 2018

- 1.A.Lakshmanan (died)
- 2.Punitha Valammal
- 3.L.Mayandi

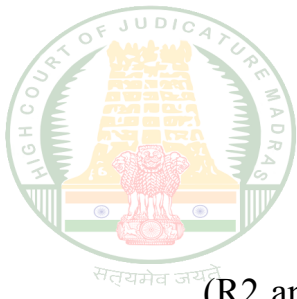
... Appellants

(A3 is brought on record as LR of the deceased 1st appellant vide Court order dated 05.12.2024 made in C.M.P(MD).No.17497 of 2024 in SA(MD).No.12 of 2018)

Vs.

- 1.Pandaram (died)
- 2.Rajendran
- 3.Chellathai
- 4.THangam
- 5.L.Ravi
- 6.L.Baskar
- 7.Duraimurugan
- 8.Kannan
- 9.Vanumamalai

... Respondents



(R2 and R3 are brought on record as LR's of the deceased sole respondent vide common order dated 06.10.2020 made in CMP(MD).No.9823 and 9824 of 2019 in SA(MD).No.12 of 2018)

(R4 to R9 are impleaded as per the order of this Court dated 10.01.2025 made in CMP(MD).No.91 of 2025 in SA(MD).No.12 of 2018)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 21.08.2017 passed in A.S.No. 127 of 2011 on the file of the learned Principal Subordinate Judge, Tirunelveli, modifying the judgment and decree dated 30.09.2011 passed in O.S.No.617 of 2005 on the file of the Principal District Munsif Court, Tirunelveli.

For Appellants : Mr.G.Prabhu Rajadurai

For Respondents : Mr.D.Srinivasaragavan

(for R2 & R3)

R1-died

No appearance (for R4, R5, R7 to R9)

R6 – tapal returned

JUDGMENT

The plaintiffs are the appellants before this Court. This second appeal is filed as against the judgment and decree dated 21.08.2017 in A.S.No.127 of 2011 on the file of the Principal Subordinate Court, Tirunelveli, partly allowing the appeal and modifying the judgment and decree dated 30.09.2011 in O.S.No. 617 of 2005 on the file of the Principal District Munsif Court, Tirunelveli.



2. The parties are referred to, as per their status before the trial Court.

3. The plaintiffs had filed the suit seeking for the relief to demarcate the plaint schedule properties with reference to survey records, sale deed and patta issued by the revenue authorities through Court. It is the case of the plaintiffs that the plaint I schedule property was purchased by them vide registered sale deed, dated 23.09.1979. The total extent of the plaint I schedule property is 7.20 Acres as per the sale deed. However, on 01.02.1990, the plaintiffs have sold 3 Acres out of 7.20 acres on the eastern side of the plaint I schedule property and they left with the remaining 4.20 acres, which was described as plaint II schedule property and they are in possession of the same. It is their further case that the defendant, who is the neighbour and subsequent purchaser of the lands situated on the western side of the plaintiffs' land, had removed the western boundary stone of the plaint II schedule land. As the bunds were destructed, a complaint was lodged and the plaintiffs have come up with the suit for demarcation of the boundaries.

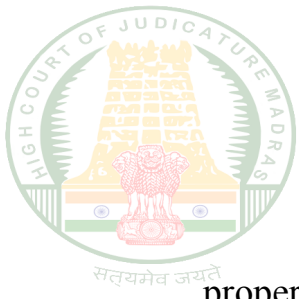
4. The defendant resisted the suit contending that he is only in enjoyment of the property, that was purchased by him, as per document and is willing to cooperate to earmark the boundaries with the help of the surveyor.



WEB COPY

5. During trial, on the side of the plaintiffs, first plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A.4. On the side of the defendant, the defendant examined himself as D.W.1 and one Rajendran was examined as D.W.2 and marked Ex.B.1 to Ex.B.6. In the suit, an Advocate Commissioner was appointed and the Advocate Commissioner's report along with plan were marked as Ex.C1 and Ex.C2.

6. The trial Court, after analysing the evidences, by judgment and decree dated 30.09.2011, decreed the suit based on the Advocate Commissioner's report and plan in Ex.C1 and Ex.C2 along with linear measurement. Aggrieved, the defendant preferred an appeal. The lower appellate Court, by re-appraising the evidences, held that the plaintiffs have sought only for demarcating the plaint schedule property based on the survey records, sale deed and patta issued by the revenue authorities. There was no dispute with regard to the other side boundaries and the dispute is only with regard to the western side boundary, since because the defendant purchased the land situated on the western side of the plaintiffs' land. The trial Court failed to consider this aspect. Hence, the lower appellate Court partly allowed the appeal suit and decreed the suit for demarcation of western boundary of plaint II scheduled



WEB COPY

property, as per UDR Sub Division plan shown in Ex.B.2, patta, vide judgment and decree dated 21.08.2017 and thereby, modified the judgment and decree of the trial Court. Aggrieved, the plaintiffs have preferred the above Second Appeal.

7. This Court by order, dated 12.01.2018, had ordered notice of motion and the appeal has not been admitted.

8. Mr.G.Prabhu Rajadurai, learned Counsel appearing for the appellants would submit that the suit has been filed only for demarcation and the issue of title has not been gone into, as no declaration of title has been sought for. The learned counsel submitted that since there was a boundary dispute, the suit was filed simpliciter for demarcation. However, while filing the suit, the relief was sought for demarcation based on the sale deed, survey records and pattas issued by the revenue authorities.

9. The learned counsel further submitted that even though they have made an attempt to implead the other land owners in this appeal by filing application, they were not able to serve them and make them as party in this



WEB COPY

present appeal. The lower appellate Court has modified the decree only placing reliance on the relief sought for by the plaintiffs in the suit, as the demarcation was sought to be made based on the revenue documents including the UDR patta and the sale deed. The appellate Court also found that since the other owners in respect of the other side boundaries were not on record and there was no prevailing dispute and since only for the defendant, who is having property on the western side there was a dispute, the lower appellate Court had decreed the suit in respect of demarcation in the western boundary alone.

10. The learned counsel now contends that when patta was issued under UDR scheme, it has not been properly carried out and issued, as per the documents. The learned Counsel further submits that since the mistake had crept in under UDR, when the revenue records were updated in the UDR scheme, the appellants are inclined to approach the competent authority to address the issue in respect of the mistake that crept in during UDR scheme that resulted in an error, when the patta in Ex-A3 came to be issued. As such, the learned Counsel submitted that the Second Appeal may be disposed of by giving liberty to the appellant to workout his remedy before the appropriate forum.

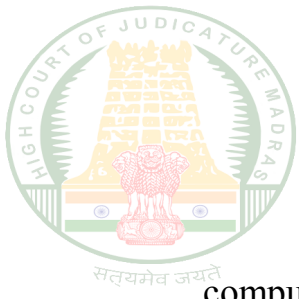


WEB COPY

11. Per contra, the learned Counsel for the respondent submitted that the respondents have purchased the property for valuable consideration and do not have any quarrel or dispute with the plaintiffs. The defendant is in possession and enjoyment of the suit property as per the purchase and the lower appellate Court has rightly decreed the suit by party allowing the appeal, since the *lis* between the parties is only with respect to the western side boundaries and the same has to be surveyed. He further submitted that the defendant is ready to co-operate for survey to be done by surveyor.

12. Heard the submissions and perused the records.

13. The plaintiffs, who claims to have purchased an extent of 7.20 Acres through sale deed dated 23.09.1975 in Ex.A.1, had come up with the suit for demarcation of the boundaries contending that the defendant, who was the subsequent purchaser of the land situated on the western side of the suit scheduled property, had removed the survey stones and damaged the bunds. The plaintiffs had marked the patta issued by the revenue authorities under UDR scheme in Ex.A3. The defendant had filed the sale deed executed in his favour in Ex.B.1, the patta issued in his favour in Ex.B2 and also A-register and



computerized patta issued in Ex.B.4 to Ex.B.6.

WEB COPY

14. The plaintiffs themselves have come up with the relief for demarcation on the western side boundaries based on the survey records, sale deed and patta issued by the revenue authorities. The trial Court by placing reliance on the Advocate Commissioner's report and plan filed therewith had decreed the suit for demarcation by giving linear measurements to the suit property as per the plan in Ex.C2. However, the lower appellate Court had rightly held that the issue between the parties is only on the western side, since the defendant was having property only on the western side of the suit schedule property and the other property owners in respect of other boundaries are not before the Court and decreed the suit for demarcation in respect of western side boundary based on Ex.B2. This Court is of the view that the decision arrived at by lower appellate Court cannot be found fault with, as the lower appellate Court has gone by the prayer sought for by the plaintiffs and the patta issued by the revenue authorities in Ex.A3 and coupled with the fact that the defendant is having lands on the western side of the property alone and further the dispute between the parties to the suit is also only in respect of western side boundaries. As such the judgment and decree of the lower appellate Court is confirmed.



WEB COPY

15. However, the learned counsel for the appellants submits that since now they come to know that an error had been crept in, while patta was issued in Ex.A3 under UDR scheme, which was not issued based on the documents, they are intending to approach the competent authorities for correcting the error. In view of the said submission, finding no fault in the decision arrived at by the lower appellate Court, this Second Appeal is disposed of, only with an observation that it is for the appellants to work out their remedy before the competent authorities in accordance with law, if there is an error. However, there is no order as to costs. Consequently, connected Miscellaneous Petition is closed.

19.06.2025

NCC : Yes / No

Index : Yes / No

Rmk

To

- 1.The Principal Subordinate Judge, Tirunelveli.
- 2.The Principal District Munsif Court, Tirunelveli.
- 3.VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



10

G.ARUL MURUGAN, J.

Rmk

S.A(MD).No. 12 of 2018
and
C.M.P(MD).No.327 of 2018

19.06.2025