

S.A.(MD)No.331 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 06.08.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)No.331 of 2019

Kumarasamy

... Appellant

VS

Paramasivam

...Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 12.02.2018 passed in A.S.No.175 of 2017 on the file of the Subordinate Court, Tiruchendur, confirming the judgment and decree, dated 30.06.2014 passed in O.S.No.3 of 2011 on the file of the District Munsif Court, Srivaikundam.

For Appellant : Mr.AN.Ramanathan
For Respondent : Mr.KA.Ramakrishnan

JUDGMENT

The defendant is before this Court on appeal. The Second Appeal is filed challenging the judgment and decree, dated 12.02.2018 passed in A.S.No.175 of 2017 on the file of the Subordinate Court, Tiruchendur, confirming the judgment and decree, dated 30.06.2014 passed in O.S.No.3



S.A.(MD)No.331 of 2019

of 2011 on the file of the District Munsif Court, Srivaikundam.

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

3.It is the case of the plaintiff that the plaintiff's predecessor was in possession and enjoyment of the suit property for nearly 30 years. The suit property is a natham house site. Now, the plaintiff is in possession and enjoyment of the suit property. The Government has issued a patta in favour of the plaintiff in Patta No.624. A house has been constructed and assessed with Door No.6/11. The plaintiff is paying the taxes to the suit property and he also obtained electricity service connection. The house and the vacant place around the house is enjoyed by the plaintiff and his predecessor. The defendant is also in enjoyment of the adjacent property in S.No.1976/21. In September 2010, the defendant while constructing his house, had encroached into a portion of the suit property taking advantage of the absence of the plaintiff at that time. The encroachment made has been shown as Item No.2 of the suit property. Hence, the plaintiff had filed the suit for declaration and consequential permanent and mandatory



S.A.(MD)No.331 of 2019

injunctions to remove the encroachment made in the Item No.2 of the suit property.

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4.The defendant resisted the suit contending that he has a property in S.No.1976/21 on the south of the suit property. The total extent is 3 cents. Patta has been issued to the defendant in Patta No.189 and the defendant is in possession of the property for more than 40 years. The defendant had removed the old structure and had constructed a new house. The defendant had denied that in the year 2010, he had encroached a portion of the suit property. He also constructed a house in the property in S.No.1976/21, which he is in possession and enjoyment for the past 40 years. It is the plaintiff, who constructed a compound wall and joined it with the defendant's house and only when the defendant tried to stop it, the plaintiff became enemical and had come up with the present suit and as such, sought for dismissal of the suit.

5.During trial, the plaintiff examined himself as PW-1 and one Saroja as PW-2 and marked Ex-A1 and Ex-A2. On the side of the defendant, DW-1 to DW-3 were examined and Ex-B1 was marked. Through witnesses,



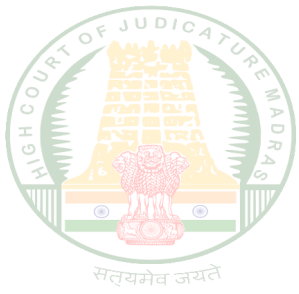
Ex-X1 to Ex-X4 came to be marked. An Advocate Commissioner was appointed and his report and plan were marked as Ex-C1 to Ex-C3.

6.The trial Court, after analysing the evidences, came to the conclusion that the plaintiff being the absolute owner in S.No.1976/20 and when the defendant also had admitted the title and possession of the plaintiff in his evidence and on finding that a portion of the suit property has been encroached, as reflected in the Commissioner's report, decreed the suit. On appeal, the lower appellate Court concurred with the findings of the trial Court and dismissed the appeal. Assailing the concurrent finding of fact, the defendant has preferred the above appeal.

7.This Court, by order, dated 28.03.2022 admitted the Second Appeal on the following substantial questions of law:

“1.Whether the Courts below was correct in shifting the onus of burden of proof on the defendant to prove his case, when the plaintiff has not proved his case by documents and evidence.

2.Whether Courts below is correct in granting the relief of Mandatory injunction when the plaintiff has not specifically proved that the defendant has encroached in his land and the suit was within limitation by oral and documentary evidence?”

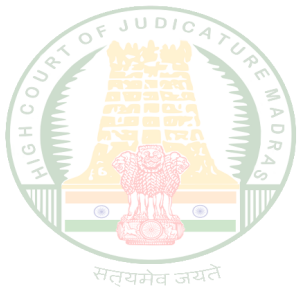


S.A.(MD)No.331 of 2019

8.The learned Counsel for the appellant argued that the plaintiff had not established his right by filing any title deed and further contended that the property has not been identified and the Commissioner has not made the survey with the help of a Surveyor and therefore, the findings rendered by the Courts below are perverse, as decree has been granted without proper identification and sought for interference of this Court.

9.*Per contra*, the learned Counsel for the respondent argued that the suit property being the natham land, the plaintiff had the patta and established his title over the suit property. When the defendant had admitted the title as well as the possession of the plaintiff, nothing further was required on the part of the plaintiff to prove and when once the plaintiff is found to have a valid title, the Courts below have rightly decreed the suit, which needs no interference and sought for dismissal of the appeal.

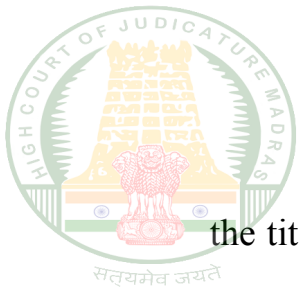
10.Heard the rival submissions and perused the materials available on record.



S.A.(MD)No.331 of 2019

11. Admittedly, the suit property is a natham house site. The plaintiff claims that his ancestors and himself have been in possession and enjoyment of the suit property for more than 30 years. The suit property being a natham house site, a patta has been issued in favour of the plaintiff in Ex-A1. The suit property is situated in S.No.1976/20. The plaintiff had filed the document in Ex-A2, the house tax receipt and also the documents in Ex-X1 to Ex-X4 were marked to evidence his title and possession over the suit property.

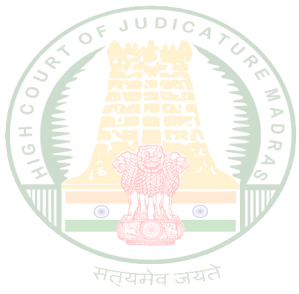
12. The defendant, admittedly, is in possession and enjoyment of the property in S.No.1976/21, for which, a separate patta has been issued in favour of the defendant in Ex-B1. The defendant though had resisted the suit contending that he had not encroached any portion of the suit property, while he was cross examined as DW-1, it is categorically admitted that the plaintiff is the owner of the property in S.No.1976/20, which is the suit property, for which patta has been issued in favour of the plaintiff. He further admitted that the suit property measuring 5¼ cents had been in possession and enjoyment of the plaintiff, in which the plaintiff had constructed a house and in enjoyment. When the defendant had admitted



S.A.(MD)No.331 of 2019

the title and possession over the suit property, it is only claimed that he has not encroached any portion of the suit property.

13.The plaintiff had taken out an application for appointment of Advocate Commissioner. The Advocate Commissioner had inspected the suit property and filed his report and plan in Ex-C1 to Ex-C3. From the report in Ex-C3, it is clear that the plaintiff is in possession of the property in S.No.1976/20 and the defendant is in possession and enjoyment of the house in S.No.1976/21. The Advocate Commissioner has noted that the house constructed by the defendant is only one year old and it is a new construction. It is also found that the defendant has put up a room by encroaching a portion of the suit property in S.No.1976/20 and in the Advocate Commissioner's plan, the encroachment has been earmarked. Based on the report, it was found that around 150 sq.ft., of land has been encroached by the defendant in the suit property in S.No.1976/20 belonging to the plaintiff. Further, DW-1 had also admitted that they had constructed a small room in the land belonging to the plaintiff.

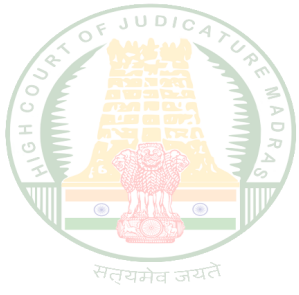


S.A.(MD)No.331 of 2019

14.By the Advocate Commissioner's report and plan in Ex-C1 to Ex-

C3 and the categorical admission of DW-1, it is established that the defendant had encroached a small portion of the suit property belonging to the plaintiff. When the title of the plaintiff over the suit property is proved and the encroachment is also established, which is further admitted by the defendant and particularly, when the defendant had not filed any objections to the Advocate Commissioner's report, the argument raised that the report was prepared without the help of a Surveyor is liable to be rejected. The plaintiff having proved his title and possession and also established the encroachment made by the defendant, is entitled for a decree to remove the encroachment.

15.The Courts below have rendered a concurrent finding of fact in decreeing the suit, which is based on materials available on record. There is no illegality or perversity in the findings arrived at by the Courts below. The substantial questions of law are answered against the appellant and in favour of the respondent.



S.A.(MD)No.331 of 2019

WEB COPY

16. Accordingly, the Second Appeal is dismissed. However, there is no order as to costs.

06.08.2025

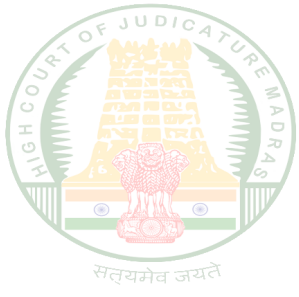
Index :Yes/No
NCC :Yes/No
cmr

To

1.The Subordinate Judge, Tiruchendur.

2.The District Munsif, Srivaikundam.

The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.(MD)No.331 of 2019

G.ARUL MURUGAN, J.

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Judgment made in
S.A.(MD)No.331 of 2019

06.08.2025