



S.A.(MD)Nos.495 & 496 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

JUDGMENT RESERVED ON : 19.08.2025

JUDGMENT PRONOUNDED ON : 10.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.(MD)Nos.495 & 496 of 2011

SA(MD).No.495 of 2011

Santhanam

....Appellant/Respondent/Plaintiff

Vs.

1.Sankaran

....Respondent/Appellant
/1st Defendant

2.Tamil Nadu Electricity Board
Rep.by Superintending Engineer
Office at Maharaja Nagar
Tirunelveli – 11

3.Tamil Nadu Electricity Board
Rep.by its Junior Engineer
Office at Nanguneri

....Respondents 2 & 3/Respondents 2 & 3
Defendants 2 & 3

SA(MD).No.496 of 2011

Santhanam

....Appellant/Respondent/1st Defendant

Vs.



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1.Sankaran

....Respondent/Appellant
/Plaintiff

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2.Tamil Nadu Electricity Board
Rep.by Executive Engineer
Tirunelveli

....Respondent/2nd Respondent
2nd Defendant

PRAYER in S.A.(MD).No.495 of 2011 : Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree dated 07.10.2010 made in A.S.No.104 of 2007 on the file of the Subordinate Judge, Valliyoor, reversing the judgment and decree dated 09.02.2005 made in O.S.No.673 of 1996 on the file of the Additional District Munsif Court, Nanguneri.

PRAYER in S.A.(MD).No.496 of 2011 : Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree dated 07.10.2010 made in A.S.No.38 of 2009 on the file of the Subordinate Judge, Valliyoor, reversing the judgment and decree dated 09.02.2005 made in O.S.No.435 of 1996 on the file of the Additional District Munsif Court, Nanguneri.

For Appellant : Mr.N.Tamilmani
In both appeals

For Respondents : Mr.M.P.Senthil for R1
In both appeals

: Mr.B.Ramanathan
Standing Counsel for R2 & R3
in SA(MD).No.495 of 2011
& R2 in SA(MD).No.496 of 2011



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COMMON JUDGMENT

The plaintiff in a suit for declaration of title and permanent injunction has preferred S.A.(MD).No.495 of 2011 challenging the judgment and decree of the First Appellate Court reversing the judgment and decree of the trial Court.

2.SA(MD).No.496 of 2011 has been filed by the first defendant in a suit for declaration of title, recovery of possession and mandatory injunction challenging the judgment and decree of the First Appellate Court reversing the judgment and decree of the trial Court.

(A).Pleadings of the parties before the Courts below are as follows:

3.The plaintiff in O.S.No.435 of 1996 has contended that he had purchased the suit schedule property of 16 ¼ cents out of 18.10 acres in Survey No.44/1 under a sale deed dated 08.11.1982 from one Singaramani. According to the plaintiff, those properties were allotted to Singaramani in oral partition among his family members and after his purchase, he is in exclusive possession and enjoyment of the suit schedule property. He had further contended that the first defendant had purchased northern side property on 13.09.1982 from one Subbiah who does not have any source of title.



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4. According to the plaintiff, the first defendant who is the brother of the plaintiff had started constructing a rice mill in the last week of May 1992 encroaching the property of the plaintiff. The first defendant was taking hectic efforts to get electricity service connection. It was further contended that the plaintiff believed that the first defendant was putting up a construction in his own property. Only last year, when he had inspected the suit property, it was found that there is an encroachment into the suit schedule property. Though the first defendant had initially agreed to remove the encroachment, later he proceeded to seek electricity service connection. Therefore, the present suit for declaration of title, recovery of possession and mandatory injunction for removal of the construction and not to give electricity service connection.

5. The first defendant in the said suit filed a written statement contending that he is enjoying the northern side property by purchasing it from one Subbiah on 13.09.1982 and he is possession and enjoyment of the same. It was further contended that the first defendant is making construction of the rice mill within the property which he got on partition between himself and the first defendant. According to the defendant, his property was subdivided as 44/1L1 and separate patta and tax receipt have been issued. He had further contended that he had obtained clearance from the revenue officials and other authorities and has put up the rice mill.



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6.In O.S.No.435 of 1996, an additional written statement was filed by the first defendant disputing the title of the plaintiff. In the said additional written statement, the first defendant reiterated that he had put up rice mill only in the northern 16 ¼ cents which he had purchased from one Subbiah and the rice mill is in the southern boundary of 16 ½ cents which exclusively belongs to him. In the additional written statement, it was further pointed out that the rice mill is the joint property of the plaintiff and the first defendant as per sale deed dated 24.11.1986 in which the plaintiff had relinquished his right of 16 ½ cents in favour of the first defendant. Out of which, 7 cents of northern end portion has been joined with the rice mill property and also marked as Survey No.44/1L1. Hence, he prayed for dismissal of the suit.

7.The first defendant in O.S.No.435 of 1996 has filed O.S.No.673 of 1996 seeking the relief of declaration of title and consequential injunction for an extent of 27 cents in Survey No.44/1L1. In the plaint, it was contended that he had purchased the property from one Subbiah on 13.09.1982 and the first defendant (the plaintiff in O.S.No.435 of 1996) got 16 ¼ cents of Survey No.44/1. According to the plaintiff, at the time of subdivision, the plaintiff and the defendant had agreed to give his 16 ¼ cents of land to the plaintiff and he gave an application to the Special Tahsildhar UDR Proceedings on 01.02.1984. Therefore, the plaintiff was given patta for 32 ½ cents and in the sub-division, it was sub-divided as 44/1L1.



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8.The plaintiff had further contended that he had put up construction of the rice mill in the schedule property of northern 16 ¼ cents portion. Hence, he prayed for declaration of title and for a mandatory injunction directing the Electricity Board to effect service connection to the rice mill.

9.In O.S.No.673 of 1996, the first defendant (plaintiff in O.S.No. 435 of 1996) had filed a written statement contending that the plaintiff had obtained signature in certain plain papers from him for approval of patta. Therefore, there is a likelihood that the plaintiff might have used those papers to illegally obtain patta in his name. The defendant has never transferred or alienated his property of 16 ¼ cents in favour of the plaintiff. There is no such agreement or any undertaking on the side of the defendant. Therefore, any subdivision of 44/1 granting larger extent to the plaintiff than what he had purchased is illegal. Hence, he prayed for dismissal of the suit.

10.Both the suits were jointly heard by the trial Court and evidence was recorded in O.S.No.435 of 1996. On the side of the plaintiff, the plaintiff was examined as PW1 and 3 witnesses were examined as PW2 to PW4. Exs.A1 to A5 were marked on the side of the plaintiff. On the side of the defendants, he had examined himself as DW1 and another witness as DW2. Exs.B1 to B10 were marked. The Commissioner's report was marked as



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Ex.C1 and 2 sketches filed by the Commissioner were marked as Exs.C2 and

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(B).Findings of the Courts Below:

11.The trial Court found that the suit schedule property in O.S.No.435 of 1996 belongs to the plaintiff. The trial Court further found that the entire suit schedule properties does not belong to the plaintiff in O.S.No.673 of 1996. But only northern 16 $\frac{1}{4}$ cents belong to the said plaintiff. The trial Court further found that the first defendant has encroached over southern portion belonging to the plaintiff. Since the defendant has put up construction with the knowledge of the plaintiff and construction was completed in the year 1992, the suit has been filed in time.

12.The trial Court further found that the first defendant has not explained how he was able to get patta for 27 cents, when he purchased only 16 $\frac{1}{4}$ cents and therefore, patta in favour of the first defendant has been erroneously issued during UDR proceedings. Since the plaintiff and the first defendant are brothers and if a decree for mandatory injunction is granted, it would result in demolition of the portion of the rice mill, the trial Court arrived at a finding that the deficit portion of the plaintiff could be adjusted in a common property which is located to the south of the plaintiff's property. The trial Court further found that only 2 $\frac{1}{2}$ cents has been encroached by the first defendant and the said 2 $\frac{1}{2}$ cents could be adjusted in favour of the



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plaintiff within a common property which is just adjoining his property.

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13. Based upon the above said findings, the trial Court proceeded to grant a decree for declaration of title in favour of the plaintiff in O.S.No.435 of 1996 based upon Ex.C3, the Commissioner's plan and the dismissed the prayer for mandatory injunction. The trial Court proceeded to grant a decree for declaration of title in O.S.No.673 of 1996 based upon the portions marked in Ex.C3 and dismissed the prayer for mandatory injunction.

14. The first defendant in O.S.No.435 of 1996 and the plaintiff in O.S.No.673 of 1996 (Santhanam) did not challenge the judgment and decree of the trial Court. However, the plaintiff in O.S.No.435 of 1996 and the first defendant in O.S.No.673 of 1996 (Sankaran) had preferred two first appeals before the First Appellate Court in A.S.Nos.104 of 2007 and 38 of 2009.

15. The First Appellate Court found that the trial Court has arrived at a finding that the appellant's property has been encroached upon by the respondent. It further found that after arriving at a finding that the appellant is the owner of 16 ¼ cents in the southern portion, has proceeded to reject the prayer for recovery of possession and had passed a decree for adjusting the deficit property with some other properties. The First Appellate Court further found that when the plaintiff has prayed for recovery of possession, without consent of the plaintiff, the trial Court ought not to have passed a decree adjusting the rights of the parties.



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16. Based upon the above said findings, the First Appellate Court set aside the judgment and decree in O.S.No.435 of 1996 by allowing the appeal and granting a decree for declaration of title and recovery of possession. However, the prayer for mandatory injunction not to effect service connection was rejected. The First Appellate Court while allowing A.S.No.104 of 2007 set aside the judgment of the trial Court in O.S.No.673 of 1996 and granted declaration of title to the first defendant Santhanam to an extent of 16 ¼ cents (instead of 27 cents) and permanent injunction in the above said said property.

17. Challenging the said common judgment and decree of the First Appellate Court, the present second appeals have been preferred in SA(MD).Nos.495 and 496 of 2011 by the plaintiff in O.S.No.673 of 1996 who is the first defendant in O.S.No.435 of 1996.

18. The second appeals were admitted on the following substantial questions of law:

SA(MD).No.495 of 2011:

(i) When the property and rice mill of the appellant concerned in O.S.No.673 of 1996 are situated in S.No.41/1L1, and when no denial or objection was made by the first respondent for the same, is not the appellant entitled for the relief of declaration on his own documents and evidence on



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record.?

(ii) *Whether the learned Subordinate Judge is justified in ignoring the vital point that the property of the appellant and rice mill are very much found in S.No.41/1L1 as evident from Ex.C1 report of the commissioner and patta, kist receipt, loan document in favour of the appellant and dismissing the suit of the appellant in O.S.No.673 of 1996 on appeal?*

(iii) *Whether the learned Subordinate Judge is justified in dismissing the suit of the appellant in O.S.No.673 of 1996 for declaration of title and consequential relief of injunction in S.No.41/1L1 when the case of the 1st respondent is relating to S.No.41/1 and not in respect of S.No.41/1L1?*

(iv) *When the grant of patta in favour of appellant was only on the basis of written consent by the first respondent before the Tahsildar concerned during the UDR patta proceedings in the year 1984, seeking subdivision of properties under joint patta, for convenient enjoyment, is not the appellant entitled to seek for declaration and consequential relief on the basis of patta and in the absence of appeal or revision by the first respondent challenging the same before the Tahsildar?*



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SA(MD).No.496 of 2011:

(i)When the plaintiff/1st respondent has not established his case of encroachment against the appellant and his construction of rice mill in S.No.41/1 belonging to the plaintiff/1st respondent, has not the learned Subordinate Judge committed error apparent on the face of the record.?

(ii)Whether the learned Subordinate Judge is justified in granting mandatory injunction and permanent injunction against the appellant for his rice mill and property situated in S.No.41/1L1, when the relief prayed for by the 1st respondent is pertaining to S.No.41/1?

(iii)Whether the suit in O.S.No.435 of 1996 has filed by the 1st respondent is maintainable when the relief against the appellant is relating to the property in different survey number and not mentioned in the suit of the 1st respondent or schedule of property.?

(iv)Whether the learned Subordinate Judge is justified in ignoring Ex.C1 and non-consideration of absence of denial of the first respondent to the appellant's case in S.No.41/1L1 before granting the relief of mandatory injunction for removal of rice mill in S.No.41/1L1.?



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(C).Submissions of the learned counsels appearing on either side.

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19.The learned counsel for the appellant submitted that the respondent had not established his title over 16 ¼ cents in Survey No.44/1. The boundary recitals in Ex.A1 do not tally with the suit schedule property. The appellant has specifically disputed the title of the respondent and therefore, the Appellate Court was not right in granting a decree in favour of the respondent without property appreciating the fact that the boundary recitals in Ex.A1 do not tally with the suit schedule property.

20.The learned counsel for the appellant had further submitted that patta granted in favour of the appellant for an extent of 27 cents was based upon the sub-division made pursuant to the letter of consent given by the respondent herein. When the respondent has already given a consent for grant of patta in favour of the appellant, thereafter, the respondent herein cannot claim title to an extent of 16 ¼ cents.

21.The learned counsel for the appellant had further stated that the respondent herein had miserably failed to establish that there is any encroachment within the property of the respondent. He had further submitted that the Commissioner's report would reveal that the suit schedule property of the respondent is in Survey No.44/1 whereas the property of the appellant is in Survey No.44/1L1 with a rice mill. When the first respondent claims title only over Survey No.44/1, he cannot proceed with a suit for recovery of



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possession with regard to Survey No.44/1L1 which exclusively belongs to the appellant.

22.The learned counsel for the appellant had further stated that Ex.A8 patta has been granted in favour of the appellant, the said order has not been challenged by the respondent either before the revenue officials or before the competent Court. The First Appellate Court had failed to consider the issue that there is no encroachment over the property of the first respondent. He had further submitted that the trial Court with a good intention, in order to avoid wrongful loss to both the parties, had directed adjustment of the rights of the parties. However, the First Appellate Court has not taken into consideration this factor.

23.Per contra, the learned counsel appearing for the respondents had contended that the plaintiff in O.S.No.435 of 1996 has established his title over 16 ¼ cents in Survey No.44/1. He had further submitted that the title of the plaintiff in O.S.No.435 of 1996 has been concurrently upheld by the trial Court as well as the appellate Court. After upholding the title, the trial Court has adjusted the rights of the parties by directing the plaintiff in O.S.No.435 of 1996 to take 2 ½ cents in a common property which is on the southern side of the plaintiff's property. Since the appellate Court found this adjustment as illegal, it has reversed the same. The learned counsel for the respondents had further submitted that the trial Court as well as the appellate



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Court have concurrently arrived at a finding that there is an encroachment of the property belonging to the plaintiff in O.S.No.435 of 1996. Therefore, the First Appellate Court was right in ordering recovery of possession. Hence, he prayed for sustaining the judgment and decree of the first appeal.

24.I have considered the submissions made on either side and perused the material records.

(D).Analysis:

25.The plaintiff in O.S.No.435 of 1996 (Sankaran) has purchased 16 ¼ cents in Survey No.44/1 under Ex.A1 sale deed from one Singaramani. The first defendant in the said suit (Santhanam) had purchased another 16 ¼ cents in Survey No.44/1L1 under Ex.A6 from one Subbiah and Arumugam on 13.09.1982.

26.The first defendant in O.S.No.435 of 1996 in Paragraph No.3 of his written statement has categorically admitted that he is enjoying the northern 16 ¼ cents. The plaintiff in O.S.No.673 of 1996 (Santhanam) in Paragraph No.4 of the plaint had categorically admitted that both Sankaran and Santhanam are having 16 ¼ cents in Survey No.44/1. In the said written statement, he had contended that Santhanam and Sankaran have reached an agreement wherein Sankaran had agreed to give up his portion of 16 ¼ cents in favour of Santhanam and has given a petition to the Special Tahsildar UDR Proceedings, Naguneri on 01.02.1984. Only based upon the said letter, the



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patta for an extent of 28 cents was granted in favour of Santhanam.

Therefore, it is clear that Santhanam admits the title of Sankaran to an extent of 16 $\frac{1}{4}$ cents in Survey No.44/1. He had further admitted that he is enjoying the northern portion and Sankaran is enjoying the southern portion. That apart, in Ex.A1 sale deed in favour of Sankaran, Santhanam is also one of the attester. Therefore, there cannot be any dispute whatsoever that Sankaran has established his title over southern portion of Survey No.44/1 for an extent of 16 $\frac{1}{4}$ cents.

27.Santhanam in his plaint in O.S.No.673 of 1996 in Paragraph No. 5 has categorically admitted that he had made construction of the rice mill only in the northern 16 $\frac{1}{4}$ cents. It is pertinent to point out that the alleged letter said to have been written by Sankaran to Tahsildar on 01.02.1984 as alleged in Paragraph No.4 of the plaint in O.S.No.673 of 1996 has not been produced before the Court.

28.In such circumstances, it is clear that there are no records to show that Sankaran has given up his right over 16 $\frac{1}{4}$ cents on the southern side of Survey No.44/1. Even assuming that such a letter has been addressed to the revenue officials, that would not result in erasing the title of Sankaran. Title can be transferred only under a registered document and not by a consent letter or mutation of revenue records. Therefore, the contention of the appellant that by way of consent letter from Sankaran, he had got patta for 28



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cents is not legally sustainable.

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29.The trial Court had arrived at a specific finding that Sankaran has established his title over the suit schedule property in O.S.No.435 of 1996. On the other hand, the plaintiff in O.S.No.673 of 1996 (Santhanam) has not established his title. The trial Court further found that Santhanam has encroached upon the property belonging to Sankaran. It is admitted by both the parties that on the southern side of the suit schedule property in O.S.No. 435 of 1996, common property of both Santhanam and Sankaran are located. Instead of ordering demolition and recovery of possession of the rice mill (which is encroached into the property of Sankaran), the trial Court has proceeded to grant a decree in favour for Sankaran to adjust the shortage portion (in the suit schedule property) within the common property.

30.It is pertinent to point out that as a case this decree, the present appellant has not preferred any first appeal. Therefore, it is clear that the present appellant has admitted the title of the respondents for an extent of 16 ¼ cents in the southern portion of Survey No.44/1 and that had encroached upon that properties. The first appeal was preferred only by Sankaran contending that, after declaring the title in favour of the plaintiff and arriving at a finding that the property has been encroached upon by Santhanam, the trial Court ought not to have rejected the prayer for recovery of possession. The First Appellate Court has rightly reversed the judgment



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and decree of the trial Court and restricted the declaration with regard to Santhanam for the northern 16 ¼ cents. Since the encroachment is not in dispute, the First Appellate Court has proceeded to grant a decree for recovery of possession. The trial Court was not right in rejecting the prayer for recovery of possession merely on the ground that the same will cause prejudice to Santhanam especially after arriving at a finding that Santhanam has encroached upon the property of Sankaran and the suit for recovery of possession is not barred by limitation.

31. The common property which is located on the southern side of the suit schedule property in O.S.No.435 of 1996 is not a suit schedule property in either of the suits. Therefore, the trial court ought not to have pushed Sankaran towards common property to adjust the shortage found in his self acquired property. The First Appellate Court has rightly reversed the findings of the trial Court and has allowed the appeal filed by Sankaran.

32. When Santhanam has failed to produce the alleged letter dated 01.02.1984 said to have been written by Sankaran to Special Tahsildar, any sub-division or mutation of revenue records based upon the alleged consent letter will not be binding upon Sankaran. Therefore, the appellant cannot contend that he has put up construction only in Survey No.44/1L1 and not in Survey No.44/1. Merely because the order of the revenue authorities or mutation of revenue records was not challenged, that would not be a legal



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impediment for a party to seek declaration of title, when the same is not barred by limitation. When the appellant has been granted declaration of title and permanent injunction by the First Appellate Court with regard to 16 ¼ cents covered under Ex.A6, he cannot have any grievance whatsoever. The appellant cannot claim more extent than what he has purchased by him under Ex.A6 on 13.09.1982. The First Appellate Court has rightly reversed the judgment and decree of the trial Court.

(D).Conclusion:

32.In view of the above said deliberations, all the substantial questions of law are answered as against the appellants. Both the second appeals stand dismissed. No costs.

10.11.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes/No
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To
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- 1.The Subordinate Judge
Valliyoor
- 2.The Additional District Munsif
Nanguneri
- 3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR,J.

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Pre-delivery Common Judgment made in
S.A.(MD)Nos.495 & 496 of 2011

10.11.2025