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S.A.No.1901 of 2000

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	07 / 04 / 2025
Delivered on	04 / 06 / 2025

CORAM:

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

S.A.No1901 of 2000

- 1.Nesam (Died)
- 2.Yesudasan
- 3.Rangan @ Ponnayyan
- 4.Christudas
- 5.Ambujam

: Appellants

(Appellants 2, 3 & 5 are recorded as
legal representatives of the
deceased first appellant
vide order dated 29.08.2012)

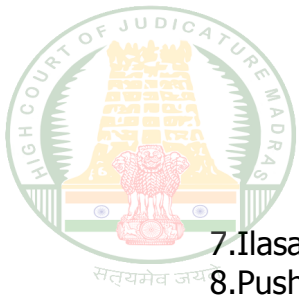
.vs.

- 1.Kumaraswamy (Died)
- 2.Ramaswamy (Died)
- 3.The State of Tamil Nadu,
Rep. by the District Collector,
Kanyakumari District,
Nagercoil.
- 4.Rosily (died)
- 5.Francis @ Balakrishnan
- 6.Thankaraj

: Respondents

(R4 to R6 are brought on record as
legal representatives of the deceased first respondent
vide order dated 29.08.2012 made in M.P.(MD)No.1 to 3 of 2012 in
S.A.No.1901 of 2000)

(Memo dated 29.02.2016 filed on 03.03.2016 in USR.No.1267 is recorded as
R4 died and R5 and R6 are recorded as legal representatives of the deceased
fourth respondent vide court order dated 07.03.2022 made in S.A.No.1901 of
2000)



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7. Ilasal @ Rajamma

8. Pushpalatha

9. Dhasan

(R7 to R7 are brought on record as LR's of the deceased vide Court order dated 12.02.2021 made in C.M.P.(MD)No.1124 to 1126 of 2021 in S.A.No.1901 of 2000)

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 10.04.2000 made in A.S.No.104 of 1983, on the file of the Sub Court, Kuzhithurai, reversing the judgment and decree dated 25.11.1982 made in O.S.No.517 of 1978 on the file of the Principal District Munsif, Kuzhithurai.

For Appellants : Mr.M.R.Srinivasan
For Mr.M.P.Senthil

For Respondents : Mr.T.Antony Arul Raj for R5 and R6

* * *

J U D G M E N T

This Appeal is directed against judgment and decree dated 10.04.2000 passed in Appeal Suit No.104 of 1983 by the Sub Court, Kuzhithurai, reversing the judgment and decree passed by the District Munsiff Court, Kuzhithurai in O.S.No.517 of 1978, dated 25.11.1982.

2. The appellant is the plaintiff, and after the appellant's demise, appellants 2 to 5 were brought on record as legal heirs of the deceased appellant. The first and second respondents are the defendants in the suit, and during the pendency of the appeal, both defendants passed away, so their legal



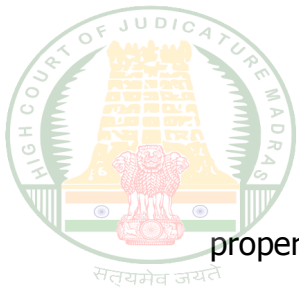
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heirs were brought on record. For the sake of convenience, the parties will be referred to according to their litigative status before the trial court

3. Brief facts of the plaintiff are as follows:-

3.1 The plaintiff purchased B-schedule item (1) and another plot through a sale deed dated 18.03.1963 from Kuttan Pillai, nephew of Krishnan Pillai, and others for a consideration of Rs. 700/-. The plaintiff also purchased B-schedule item (2) under a sale deed dated 07.12.1960 from Kesava Pillai, nephew of Ayyappan Pillai, for Rs. 1,000/-. Since then, the plaintiff has been in possession of B-schedule items as the absolute owner. There is an *odai* (water channel) in the southern part of B-schedule item (1), measuring about 4 cents, described as C-schedule item (1). Similarly, there is another *odai* on the western part of B-schedule item (2), measuring around 3 cents, described as C-schedule item (2). These *odais* are within B-schedule items, which form part of the A-schedule property.

3.2. The plaintiff claims that B-schedule item (1) has well-defined boundaries, with a *kaissala* as the southern boundary. The plaintiff planted coconut, jackfruit, and other trees in C-schedule item (1) and cultivated tapioca and plantains. However, on 21.11.1975, defendants 1 and 2, who own the



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property south of B-schedule item (1), demolished part of the *kaissala*. They also demolished part of the western *kaissala* of B-schedule item (2). The demolished portions are described as C-schedule item (2).

3.3. It is further averred in the plaint that the defendants prevented his attempt to restore the *kaissalas* on 25.11.1976. The plaintiff then filed a suit for demarcation of B-schedule items and partition of other properties in O.S.No.13 of 1976 before the District Munsiff Court, Kuzhithurai. Although the trial court dismissed the suit for demarcation, it upheld the plaintiff's title and possession of the B-schedule items. Taking advantage of this dismissal, defendants 1 and 2 attempted to trespass on C-schedule items on 16.07.1978, which the plaintiff resisted.

3.4. The plaintiff asserts that the resurvey plans prepared for the B-schedule items conflict with the decree in O.S.No.405 of 1956 from the District Munsiff Court, Kuzhithurai, and do not reflect his title or possession. Therefore, the resurvey plans should be cancelled. Since defendants refused to stop their unlawful actions after the plaintiff's request on 16.07.1978, the plaintiff seeks: (i) a declaration of his title and possession of C-schedule items (1) and (2); (ii) an injunction to prevent the defendants from trespassing; (iii) an order to restore



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the *kaissalas* by appointing a Commissioner; (iv) cancellation of the resurvey plan for B-schedule properties; and (v) costs.

4. Defendants 1 and 2 filed a written statement denying the allegations, asserting that the previous suit, O.S.No.13 of 1976, was dismissed, and thus this suit is barred by *res judicata*. They also claimed that they never demolished any *kaissalas* or attempted to trespass on the plaintiff's property. They argued there was no cause of action for this suit.

5. In an additional written statement, the defendants contended that the plaintiff's claim to cancel the resurvey plan is barred by limitation, as three years had passed since it became final. It is further stated that their possession is in accordance with the resurvey plan, and any rights the plaintiff had over the disputed portions were lost due to the defendants' long-standing adverse possession. Additionally, they claimed the *odais* in question were classified as sarkar *poramboke* (government land), making the plaintiff's claim invalid without including the State as a party to the suit. It is further stated that without first identifying their own land (76 ½ cents), the plaintiff's land could not be demarcated. Thus, they requested dismissal of the suit.



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6. Before the trial Court, the parties have adduced both oral and documentary evidence. After analyzing the entire evidence, the trial court decreed the suit. Aggrieved by the judgment and decree, the defendants filed an appeal in A.S.No.104 of 1983 before the Sub Court, Kuzhithurai. The first appellate Court reversed the judgment and decree passed by the trial court and allowed the appeal. Challenging the same, the plaintiff has filed this second appeal.

7. Mr.M.R.Srinivasan, learned counsel for the plaintiffs submits that the plaintiffs are entitled to a decree for the declaration of title and possession concerning the plaint schedule items 1 and 2 in the suit. He argues that the 'C' schedule items are part of the properties that were subject to partition in an earlier suit, O.S.No.405 of 1956, in which the predecessors-in-title of defendants 1 and 2 were parties. Therefore, he contends that the defendants cannot now make any claims contrary to the decree and judgment in O.S.No.405 of 1956. He further submits that the learned Sub-Judge erred in holding that the property presently under dispute is in S.No.4798 and is not part of O.S.No.405 of 1956. He would further contend that the learned Sub-Judge should have considered the plaintiff's plea that 'C' schedule item No.1 was erroneously grouped with the



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southern property, i.e., S.No.4798, during the re-survey proceedings. The present suit aims to correct this error by seeking the cancellation of the re-survey proceedings regarding 'C' schedule item No.1.

8. The learned counsel for the plaintiffs further submits that if 'C' schedule item No.1 is measured and identified according to the boundaries specified in Ex.A11, which is the final decree and plan in O.S.No.405 of 1956, it becomes clear that the present 'C' schedule item No.1 falls within S.No.4797, and not S.No.4798. He contends that the learned Sub Judge should have held that since 'C' schedule item No.1 is part of S.No.4797, the contesting defendants' claim is barred by res judicata, due to the decree and judgment in O.S.No.405 of 1956. Furthermore, he argues that the learned Sub-Judge's finding that the present suit property is in S.No.4798, and therefore the defendants' claim is not barred by res judicata, is unsustainable.

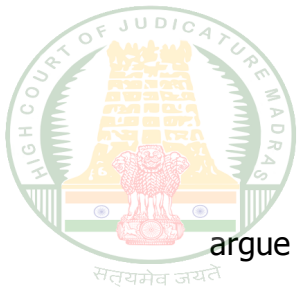
9. The learned counsel also submits that the defendants are bound by the documents in Ex.A1 to A9, and that in O.S.No.13 of 1976, as evidenced by the judgment in Ex.A9, the plaintiff's title was upheld. Therefore, the defendants are bound by the decisions rendered in O.S.No.405 of 1956 and O.S.No.13 of 1976. He argues that the learned Sub Judge erred in holding that the decision in



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O.S.No.13 of 1976 bars the present suit. He further submits that the earlier suit, O.S.No.13 of 1976, was dismissed solely on a technical ground, namely, that the suit for demarcation was not maintainable in law. As such, the institution of the present suit, which seeks title, possession, and other consequential reliefs, is not barred. He would further submit that the first appellate court remitted the matter back to the trial court on the question of res judicata and in response to the order passed by the first appellate court, the plaintiff's father filed C.M.A.No.855 of 1997 before this court, which was subsequently allowed in favour of the plaintiff. However, the first appellate court, upon reviewing the matter again, mechanically accepted the version of the respondents and allowed their appeal. Hence the learned counsel prays that this Court to set aside the order of the appellate Court and confirm the findings of the trial Court.

10. Per contra, the learned counsel appearing for the respondents 5 and 6 would submit that the plaintiffs are not entitled to a decree for a declaration of title and possession with respect to the plaint schedule items 1 and 2. He contends that the properties listed in 'C' schedule are not part of the subject matter of O.S.No.405 of 1956, as claimed by the plaintiffs, and that the learned Sub-Judge was correct in concluding that the property in dispute falls within S.No.4798, which was not part of the earlier partition suit. He would further



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argue that the plaintiffs are attempting to reopen matters that were already settled in previous litigation and that the decree and judgment in O.S.No.405 of 1956 do not apply to the present dispute. He further submits that the learned Sub-Judge rightly rejected the plaintiffs' plea that 'C' schedule item No.1 was mistakenly grouped with S.No.4798 during the re-survey proceedings. According to the respondents, the re-survey authorities properly determined the boundaries, and no mistake occurred that warrants the cancellation of the re-survey process. The plaintiffs' attempt to challenge this survey, years after its completion, lacks merit and should not be entertained.

11. The learned counsel for the defendants would further submit that the plaintiffs' argument regarding res judicata is unfounded. He asserts that 'C' schedule item No.1 was never part of S.No.4797, as claimed by the plaintiffs, and the findings of the Sub-Judge confirm that the suit property is located in S.No.4798, which is not part of the earlier decree in O.S.No.405 of 1956. The plaintiffs' attempt to link the current dispute to that suit is misplaced, as the properties in question are distinct. Moreover, the defendants argue that the findings in O.S.No.13 of 1976 do not bind them in the present suit. The dismissal of that suit on technical grounds does not give the plaintiffs any right to re-litigate the same issues under the guise of seeking title and possession. The



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learned Sub-Judge correctly held that the decision in O.S.No.13 of 1976 is a bar to the current suit. The respondents maintain that the plaintiffs are improperly trying to circumvent prior judgments, and the present suit should be dismissed as it is barred by both res judicata and the doctrine of finality. In conclusion, the learned counsel for the defendants prays that the Court uphold the judgment of the first appellate Court and dismiss the claims of the plaintiffs, confirming the learned Sub-Judge's findings in favour of the defendants.

12. Heard the learned counsel on either side and perused the materials available on record.

13. The specific case of the plaintiff is that he purchased B-schedule item (1) under a registered sale deed dated 18.03.1963 and item (2) under another registered sale deed dated 07.12.1960, and has been in possession and enjoyment of the same as absolute owner. He also claims ownership over the adjacent odais, described as C-schedule items (1) and (2), as they fall within the boundary of the purchased lands. According to him, the defendants, who own property to the south, unlawfully demolished the kaissalas (boundary structures) in 1975 and attempted to encroach again in 1978. During the resurvey, C-schedule item (1) was mistakenly included in S.No.4798, which pertains to the



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defendants. The plaintiff, therefore, seeks a declaration of title and possession, a permanent injunction, restoration of boundary structures, and cancellation of the resurvey plan.

14. The specific case of the defendants is that the C-schedule items are not part of the plaintiff's title and fall within their own land in S.No.4798, as reflected in the resurvey plan. They further contend that the suit is barred by res judicata in view of the dismissal of O.S.No.13 of 1976, that the odais are classified as government poramboke land, and that the plaintiff's claim is time-barred and devoid of cause of action.

15. While admitting the second appeal, this Court formulated the following substantial question of law:

"Whether the decision of the lower appellate Court holding that the judgment and decree in Ex.A11 suit do not constitute res judicata respecting the defendants' claim is sustainable in law?"

16. It is not in dispute that the plaintiff purchased the property from the predecessors-in-title of the defendants. When the plaintiff purchased the property, there was no road on their western side, but later, a road was formed. As a result, the defendants' property seems to have been impacted, and they



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tried to recover the lost land from the plaintiff's property, which led to the present dispute. It is also not in dispute that two earlier suits were filed. One was O.S.No.405 of 1956, in which the father of the defendants was a party, and the other was O.S.No.13 of 1976 filed by the plaintiff seeking demarcation. The judgment and decree in O.S.No.13 of 1976 was marked as Ex.A9 and was dismissed solely on the ground that a suit for demarcation without declaration was not maintainable. However, the issue of title was not adjudicated on merits.

17. The main contention of the learned counsel for the defendants is that the suit is barred by res judicata, as the earlier suit for demarcation was dismissed. However, a reading of the judgment of the first appellate Court shows that although the Court found the defendants had failed to prove possession to support their claim of adverse possession, it nevertheless reversed the trial Court's decree only on the ground that the present suit was barred by res judicata.

18. The learned counsel for the plaintiffs has placed reliance on the decision of the Hon'ble Supreme Court in ***E.Achuthan Nair v. P. Narayanan Nair & Anr.*** [(1987) 4 SCC 71], wherein it was held that a suit for demarcation of boundaries separating adjacent lands is maintainable even without seeking a declaration. The relevant portion of the said judgment is extracted hereunder:-

2. The only question argued before us by the learned Counsel for the



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appellant was that a suit for demarcating the boundary of a property was not maintainable when the plaintiff himself was uncertain about the precise boundary. He placed reliance upon a judgment of the High Court of Bombay in Kavasji Jamsetji v. Hormasji Nassarvanjishet [ILR 29 Bom 73] and a judgment of a learned Single Judge of the Kerala High Court in Rayappan v. Yagappan Nadar [1958 Ker LT 955]. In these two cases, the learned Judges purported to follow the statement of Lord Keeper Henley in Wake v. Conyers [1759 (I) W & TLC (7th Edn.) 170] decided in 1759 where he had said "the court has, in my opinion (and if parties are not satisfied, they have resort elsewhere), no power to fix the boundaries of legal estates, unless some equity is superinduced by the act of the parties, as some particular circumstance of fraud, or confusion, where one party has ploughed too near the other, or the like; nor has this Court a power to issue such commissions of course, as here prayed". We do not think that we will be justified in importing into our jurisprudence the technicalities of English law and the distinction made by the English courts between legal estates and equitable estates. In India, the question whether a suit is cognizable by a civil court is to be decided with reference to Section 9 of the Civil Procedure Code. If the suit is of a civil nature, the court will have jurisdiction to try the suit unless it is either expressly or impliedly barred. A dispute regarding identification of boundary between two adjacent land owners is certainly a dispute of a civil nature and it is not barred either expressly or impliedly. In the judgment under appeal, Poti, J. pointed out:

"We can also state from our experience at the bar that this type of suits are not unfamiliar to this part of our country. In fact in several areas of the State suits for determination of boundaries when the boundaries between the holdings are disputed are a matter of common occurrence and the maintainability of such suits, have not, till recently, been doubted.... It is not necessary to further go into this question since we see no warrant to follow the English law based, as it is upon its peculiar historical background. The question in the Indian context is not whether any equitable consideration has to be shown before a plaintiff in a suit gets the relief and, therefore, what was said in the decisions of the English courts on this particular form of action may not have relevance here. As we pointed out earlier in this judgment, the only question that may be relevant to the issue in a suit of this nature in the courts in India is whether the suit is one of a civil nature. Once it is shown



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*that it is, no other question would arise and the courts will have to entertain the suit and try it on the merits. The decision in *Kavasji v. Hormasji* [ILR 29 Bom 73] which has also been referred to by Varadaja Iyengar, J. in *Rayappan v. Yagappan Nadar* [1958 Ker LT 955] has simply purported to follow the English cases without considering how far the law should be applicable to this country. We, therefore, are of the view that the decision in *Rayappan v. Yagappan Nadar* [1958 Ker LT 955] has not laid down the correct law and has therefore, to be overruled."*

Justice Viswanatha Iyer who agreed with Justice Poti but added a brief note of his own, stated:

"Disputes as regard the location of boundary separating adjacent lands of different owners may arise under ever so many circumstances. One common instance is where portions of survey field are transferred or allotted to different persons without mentioning either the side measurements or other necessary measurements to fix the geometrical shape of the plot at the spot. The area and location alone may have been shown in the transfer deed or the partition deed. Without changing the location, the area conveyed or allotted may be sought to be located in one or more alternative geometrical shape by one owner. This may clash with the claim of the other person to have his area located in a particular geometrical shape. Again, any one party may wish to have the limits of the area belonging to him demarcated so that he may either enclose the area to prevent trespass or to exercise acts of possession without encroaching into the neighbouring plot. If the other party on demand does not cooperate, a cause of action arises to have the limits of his property determined through court. Again the property conveyed or allotted may have been described only with reference to neighbouring properties. Those properties may or may not have been limited in extent and shape to a survey field. In that case, a fixation of the boundary of those properties may be necessary to fix the boundaries of the properties conveyed or allotted. If there is no cooperation in doing that, that may result in a dispute. These instances are only illustrative and not exhaustive. All these disputes are disputes of a civil nature and they can form the subject matter of a suit under Section 9 CPC. There is no express or implied bar under any other law...."

According to me, whenever there is a dispute between two parties as regards the location of a boundary separating their neighbouring properties and if on a demand to cooperate in fixing that boundary it is not given, a suit will lie at the instance of the demanding party. So I agree with my



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learned brother that the decision in Rayappan v. Yagappan [1958 Ker LT 955] is not correct and has to be overruled."

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This decision overruled earlier views, such as that in 1976 (1) MLJ 344, which held otherwise.

19. It is pertinent to note that in O.S.No.13 of 1976, the suit was dismissed not on merits but purely on the ground of maintainability, i.e., it was held that a suit for demarcation without seeking declaration was not maintainable. No issue regarding title was adjudicated. It is a settled principle of law that for res judicata to apply, the issue must have been directly and substantially in issue in the previous suit, the parties to the previous suit must be the same or must represent the same interests and it must have been heard and finally decided on merits by a competent court. In the present case, since the earlier suit was dismissed on a technical ground and not on merits, the doctrine of res judicata cannot apply.

20. Furthermore, in light of the subsequent authoritative pronouncement of the Hon'ble Supreme Court in ***E.Achuthan Nair*** (*supra*), the earlier view that a suit for demarcation is not maintainable without a prayer for declaratory relief stands clarified and superseded. It is now settled that when the plaintiff seeks declaration of title along with reliefs of demarcation and possession, such a suit



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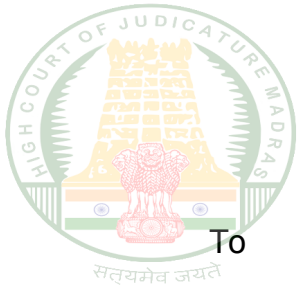
is legally maintainable. Therefore, the maintainability of the present suit cannot be questioned on the ground that the earlier suit for demarcation alone was dismissed.

21. In view of the above, this Court finds that the first appellate Court committed an error in applying the bar of res judicata. As the issue of title and possession was never finally decided in the earlier suit, and in light of the subsequent clarification on the maintainability of demarcation suits, the substantial question of law is answered in favour of the plaintiffs and against the defendants.

22. Accordingly, the judgment and decree passed by the first appellate Court are set aside, and the judgment and decree of the trial Court are restored. Since the substantial question of law is answered in favour of the appellants, the second appeal stands allowed. There shall be no order as to costs.

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Index: Yes/No.
Speaking Order : Yes/No.
Neutral Citation Case : Yes/No.
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To

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1. The Sub Court,
Kuzhithurai.
2. The Principal District Munsif,
Kuzhithurai.



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P.VELMURUGAN, J.

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Pre-Delivery Judgment made in
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