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S.A.No.1531 of 2000

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment Reserved on : 07.04.2025

Judgment Delivered on : 18.07.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1531 of 2000

1. Lourdes Fernand (died)
2. Sahayaraj Devotta
3. Joe Devotta
(Memo dated 10.07.2023 in USR.No.21450
is recorded as first appellant died and the
appellants 2 and 3, who are already on record,
are recorded as LR's of the deceased 1st appellant,
vide Court Order dated 11.07.2023 made
in S.A.No.1531 of 2000)

.. Appellants

Vs.

1. Anthony Xavier (died)
2. Theresita Machado
3. A.Sahayatta Fernando
4. A.Loretta Fernando
5. A.Pradeep Fernando
(Respondents 2 to 5 are brought on record
as LR's of the deceased sole respondent,
vide Court Order dated 06.06.2023 made in
CMP(MD).Nos.564 to 566 of 2019
in S.A.No.1531 of 2000)

.. Respondents



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Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 13.07.2000 passed by the Additional District Judge-cum-Chief Judicial Magistrate, Tuticorin in A.S.No.29 of 2000, confirming the judgment and decree dated 17.09.1992 passed by the Additional District Munsif Court, Tuticorin in O.S.No.703 of 1990.

For appellant : Mr.M.P.Senthil

For respondents : No appearance

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 13.07.2000 in A.S.No.29 of 2000 on the file of the learned Additional District-cum-Chief Judicial Magistrate, Tuticorin, confirming the judgment and decree dated 17.09.1992 in O.S.No.703 of 1990 on the file of the learned Additional District Munsif, Tuticorin.

2. The plaintiffs in the suit are the appellants in this Second Appeal. They filed O.S.No.703 of 1990 before the Additional District Munsif Court, Tuticorin, seeking declaration, permanent injunction, and mandatory injunction on the following facts.



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2.1. The father-in-law of the first plaintiff and the grandfather of the second and third plaintiffs, Peranjin Devotta, purchased the suit properties in a court auction held in E.P.No.78 of 1965 on the file of the Sub Court, Tuticorin. The sale was confirmed, and a sale certificate (Ex. A2) was issued in his favour on 27.02.1968. The first plaintiff is the wife of P.Pichaiya Devotta, son of Peranjin Devotta, and the second and third plaintiffs are their children.

2.2. It is stated that Peranjin Devotta, after acquiring the property through the court auction, settled the same in favour of his son P.Pichaiya Devotta by a settlement deed dated 29.03.1973 (Ex.A1). After such settlement, P.Pichaiya Devotta, and subsequently the plaintiffs upon his death, have been in lawful possession and enjoyment of the property.

2.3. The plaintiffs are residing on the southern side of the compound wall belonging to the defendants. On 07.04.1972, the defendants purchased the property bearing Door No.9 from Nazaraj Fernando, who had in turn purchased it from Ando Machoda on 28.04.1966, whose father Joseph Machoda had earlier purchased it from Mrs.Nakshatra Peril on 02.03.1928. The said Mrs. Nakshatra Peril was the wife of Late Rozario Motha.



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2.4. The plaintiffs claim that the sale deed dated 07.04.1972, under which the defendants claim, differs materially from the earlier deed dated 28.04.1966.

On comparing the two sale deeds along with the municipal plan, the plaintiffs allege that the defendants' claim overlaps and encroaches upon their property.

2.5. The plaintiffs further stated that as per the court sale deed dated 27.02.1968, items 2 and 3 of the property are vacant lands enclosed by a compound wall, containing a well, a municipal water connection, and five trees, all belonging to them. The defendants' property is only to the south, with a narrow three-feet passage allowed for common use.

2.6. According to the plaintiffs, during 2nd week of 1990, the defendants attempted to encroach upon the vacant land (items 2 and 3) by demolishing an old house and extending their construction. They also attempted to open a new doorway encroaching onto the plaintiffs' land. The plaintiffs therefore issued a telegram on 07.12.1990, to which the defendants replied the next day with alleged false statements.



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2.7. Hence, the suit was filed for:

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(i) declaration that items 2 and 3 of the schedule property, except the 3 feet pathway, belong absolutely to the plaintiffs;

(ii) permanent injunction restraining the defendants from interfering or putting up any construction in the said portion; and

(iii) mandatory injunction directing removal of the encroachment.

3.1. The defendants filed a written statement denying the allegations. They contended that the measurements given by the plaintiffs were incorrect and exaggerated. According to them, the property bearing Door No.9, together with the open space in front and the well, belongs to them absolutely. The plaintiffs have no land beyond the 3 feet pathway on the south. They also stated that the measurements in the second and third items are inflated. According to the defendants, the plaintiffs wrongly included the common pathway and open space within their schedule.

3.2. The defendants further claimed that they and their predecessors have been in exclusive possession of the entire property, including the open space, well, and trees, for over 12 years. They denied any knowledge of the court auction in 1968 or the alleged settlement deed of 1973. They stated that the



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husband of the first plaintiff, Pichaiya Devotta, came to reside in Door No.8 only a few years before his death and that earlier, the house remained locked. They maintained that their northern wall has windows and doors facing their own property and not the plaintiffs' land. The plaintiffs, out of jealousy, filed the suit to harass them. They prayed that the suit be dismissed with costs.

4. Based on the above pleadings, the trial Court has framed the following issues:

"(i) Whether the second and third item of the suit properties belong to the plaintiffs ?

(ii) Whether the suit properties have been properly described ?

(iii) Whether the plaintiffs are entitled to get the relief of permanent injunction ?

(iv) Whether the defendants have encroached upon the third item of the suit properties and had put up construction ?

(v) Whether the plaintiffs are entitled to get the relief of mandatory injunction ?

(vi) Whether the plaintiffs are entitled to the compensatory costs ?

(vii) To what other relief the plaintiff is entitled to ?"



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5. Before the trial Court, on the side of the plaintiffs, P.Ws.1 and 2 were examined and Exs.P-1 to P-37 were marked. On the side of the defendants, D.Ws.1 and 2 were examined and Exs.D-1 to D.4 were marked. Exs.C-1 to C-6 were marked as Court documents.

6. After considering the evidence, the trial court found that the plaintiffs failed to prove exclusive title and possession over items 2 and 3 of the property, and also held that the defendants had not encroached upon the property. Accordingly, the suit was dismissed.

7. Aggrieved by the dismissal, the plaintiffs filed A.S.No.29 of 2000 before the Additional District Judge-cum-Chief Judicial Magistrate, Tuticorin. The appellate court, upon reappraisal of the entire evidence, agreed with the trial court's findings and held that the plaintiffs had not proved their case.

8. In the Second Appeal, this Court admitted the matter on the following substantial questions of law:

(i) Whether the findings of the Courts below are vitiated by its failure to consider the boundary recitals in Ex.A-2, the sale certificate, Ex.A-1, the settlement deed, corroborated by the Field Sketch Ex.A-3 ?



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(ii) Whether the findings of the Courts below regarding Ex.A-2 is vitiated, in the absence of any pleadings or evidence disputing the correctness of the boundary recitals and the extent referred therein ?

(iii) Whether the Courts below are right in dismissing the suit after having found that the measurements given in the title deeds of the respondents, are not correct ?

9. Learned counsel for the appellants submitted that both the courts below failed to properly appreciate the legal effect of the court auction sale certificate (Ex.A2) and the settlement deed (Ex.A1). Once a sale certificate is issued in a court auction, title passes absolutely to the purchaser, and the courts below ought to have recognised the plaintiffs' ownership. It was further argued that the measurements in the court sale deed correspond substantially to the suit property, and the minor variation should not defeat their title. Learned counsel further submitted that the attempt of the defendants to extend construction and open a new door into the plaintiffs' land clearly shows their encroaching intention. Both courts, by ignoring the settled documents, erred in dismissing the suit.



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10. There was no representation for the respondents/defendants at the time of hearing before this Court. From their written statement, it is clear that their position is that the measurements shown by the plaintiffs are incorrect, that the disputed properties belong to them, and that they have been in possession for a long period. They denied any encroachment or interference and asserted ownership through valid purchase and continuous enjoyment.

11. This Court has carefully considered the submissions made on behalf of the appellants and has examined the entire record, including the pleadings, exhibits, and the report of the Advocate Commissioner.

12. It is an undisputed fact that originally both House Door Nos.8 and 9 belonged to the ancestors, and Door No.9 was purchased by the predecessors-in-title of the respondents/defendants. The appellants' predecessors-in-title are entitled to Door No.8 with the house. There is no dispute regarding House Door Nos.8 and 9, i.e., Door No. 8 belongs to the appellants/plaintiffs and Door No.9 belongs to the respondents/defendants. The present dispute pertains only to the second and third items of the suit properties. According to the appellants/plaintiffs, these portions belong to them, and there exists a common

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pathway along with a "Mutram," which is shared by both parties. The appellants' case is that the respondents/defendants have encroached upon this portion and put up constructions, and, therefore, they seek the relief of a mandatory injunction. The respondents/defendants, however, have stoutly denied these allegations. The question for determination is whether the appellants/plaintiffs have established ownership and possession over the disputed portion of the suit properties.

13. In a suit for declaration of title, the plaintiffs bear the burden of proving their case with clear and convincing evidence. While there may be minor inconsistencies in the defendants' title or measurements, the plaintiffs cannot rely on these alone to establish their right. They must show with certainty that the disputed items fall within the boundaries of the property purchased under Ex.A2 and that they have been in lawful possession. The defendants, on the other hand, have produced documents and evidence, including municipal records and house tax receipts, indicating long-standing possession and enjoyment. The Courts below found that the plaintiffs failed to correlate the boundary recitals in Ex.A1 and Ex.A2 with the actual ground position and, therefore, did not establish exclusive ownership or possession of the disputed items.



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14. A perusal of Ex.A1, the settlement deed executed by the first plaintiff's father-in-law and the second and third plaintiffs' grandfather, and Ex.A2, the sale certificate issued pursuant to the Court auction in E.P.No.78 of 1965, shows that the property is described in general terms with boundaries that do not clearly include the disputed items. The field sketch marked Ex.A3 also does not conclusively show these portions within the plaintiffs' holding. The plaintiffs have not produced independent evidence, such as a survey sketch, measurement, or title correlation certificate, to demonstrate that the disputed courtyard and compound wall are part of Ex.A2. The absence of such evidence is significant, particularly when the identity of the property itself is in dispute.

15. The Advocate Commissioner's report and plan, relied upon by the Courts below, indicate that the A-schedule property claimed by the plaintiffs is adjacent to the defendants' Door No.9 property, but the disputed portion of land between them is neither clearly separated nor in the exclusive possession of the plaintiffs. The Commissioner's observations, along with the evidence of P.W.1 and D.W.1, show that both parties have access to the courtyard and that there is no clear demarcation suggesting exclusive enjoyment by the plaintiffs. The entire material on record is based on the factual aspects.

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16. With regard to the first and second substantial questions of law, the Court finds that the boundary recitals in Ex.A1 and Ex.A2 do not by themselves confer ownership unless the plaintiffs establish the identity of the property with reference to the ground position. The Courts below have concurrently found that the plaintiffs have failed to do so, and no material indicates that these findings are perverse or based on misreading of evidence. Both Courts, after detailed examination of oral and documentary evidence, concluded that the plaintiffs' claim of title and possession over items 2 and 3 is unsupported by sufficient proof. These factual findings are binding in the absence of demonstrated legal error.

17. With regard to the third substantial question of law, the claim that the defendants' sale deed contains erroneous measurements does not, by itself, advance the plaintiffs' case. Even assuming some inconsistency in the defendants' description, that alone cannot vest title in the plaintiffs unless they first prove that the disputed portion belongs to them. The plaintiffs cannot take advantage of the weakness of the defendants' case. They have failed to provide definite proof of ownership and possession. Consequently, the findings of the trial and first appellate courts are not vitiated by any illegality or perversity and do not warrant interference under Section 100 of the Code of Civil Procedure.

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18. Considering the entire record, this Court finds no reason to take a different view from that of the Courts below. The findings are based on careful examination of both oral and documentary evidence and are neither perverse nor contrary to law. While the plaintiffs have highlighted discrepancies in the defendants' title, they have not proved exclusive ownership or possession of the disputed items. The evidence shows that the defendants have been in long-standing possession, and the disputed portion of land cannot be clearly identified as belonging solely to the plaintiffs. Accordingly, the findings of the trial and first appellate courts do not require interference.

19. In the result, the Second Appeal fails and is dismissed, confirming the judgment and decree dated 13.07.2000 in A.S.No.29 of 2000 on the file of the Additional District Judge-cum-Chief Judicial Magistrate, Tuticorin, which in turn confirmed the judgment and decree dated 17.09.1992 in O.S.No.703 of 1990 on the file of the Additional District Munsif, Tuticorin. There shall be no order as to costs.

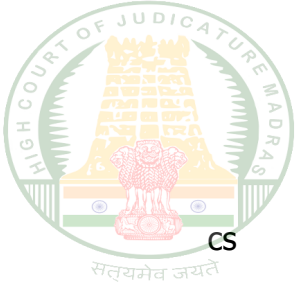
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Index: Yes/no

Speaking Order: Yes/no

Neutral case citation: Yes/no

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To

1. The Additional District Judge-cum-Chief Judicial Magistrate, Tuticorin.
2. The Additional District Munsif, Tuticorin.
3. The Section Officer, V.R. Section, Madurai Bench of Madras High Court, Madurai.

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P.VELMURUGAN, J

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Pre-delivery Judgment
in S.A.No.1531 of 2000

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