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S.A.Nos.1642 and 1643 of 2000

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.04.2025

Pronounced on : 18.08.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.Nos.1642 and 1643 of 2000

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1. Tamilarasi

2. Chandran

.. Appellants in S.A.No.1642 of 2000

Chandran

.. Appellant in S.A.No.1643 of 2000

Vs.

1. Angamuthu (died)

2. Leelavathi

3. A.Lalitha

4. A.Subramanian

(Respondents 3 and 4 are brought on record as LR's. of the deceased first respondent, vide Court Order, dated 04.01.2018 in C.M.P.Nos.7559 to 7561 of 2017 in S.A.No.1642 of 2000)

.. Respondents in S.A.No.1642 of 2000

1. Angamuthu (died)

2. A.Lalitha

3. A.Subramanian

(Respondents 2 and 3 are brought on record as LR's. of the deceased sole respondent, vide Court order dated 04.01.2018 in C.M.P.Nos.7562 to 7564 of 2017 in S.A.No.1643 of 2000)

.. Respondents in S.A.No.1643 of 2000



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Second Appeal No.1642 of 2000 filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 15.07.1998 made in A.S.No.169 of 1997 on the file of the II Additional District Court, Tiruchi, reversing the judgment and decree dated 28.02.1997 made in O.S.No.4 of 1992 on the file of the III Additional District Munsif, Tiruchi.

Second Appeal No.1643 of 2000 filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 15.07.1998 made in A.S.No.166 of 1997 on the file of the II Additional District Court, Tiruchi, reversing the judgment and decree dated 28.02.1997 made in O.S.No.1549 of 1991 on the file of the III Additional District Munsif, Tiruchi.

For appellants : M/s.J.Maria Roseline in both the appeals

For respondents: No appearance in both the appeals

COMMON JUDGMENT

Second Appeal No.1642 of 2000 is filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 15.07.1998 made in A.S.No.169 of 1997 on the file of the II Additional District Court, Tiruchi, reversing the judgment and decree dated 28.02.1997 made in O.S.No.4 of 1992 on the file of the III Additional District Munsif, Tiruchi.



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2. Second Appeal No.1643 of 2000 is filed under Section 100 of the Code of Civil Procedure against the judgment and decree, dated 15.07.1998 made in A.S.No.166 of 1997 on the file of the II Additional District Court, Tiruchi, reversing the judgment and decree dated 28.02.1997 made in O.S.No.1549 of 1991 on the file of the III Additional District Munsif, Tiruchi.

3. The suit in O.S.No.1549 of 1991 had been filed by the plaintiff stating as follows:

Initially, the property in dispute was Government land, but later it was on 7.11.1969. The plaintiff's father Muthuveeran was given the land and since then, the plaintiff has been enjoying the suit property. The plaintiff's father has built a hut in the Northern part of the land, used the back part of the house for keeping fire-wood, cattle and sheep. The plaintiff, the son of the deceased, has been enjoying the suit property since the death of the former. The house in the suit property has been taxed in the name of the plaintiff. The defendants live near the suit property. The defendant is trying to trespass on the suit property with an intention of usurping the plaintiff's property and the defendant has no right to do. On 16.07.1991, the defendants tried to trespass on the plaintiff's property by using his influence and the plaintiff prevented him from doing so. Since the



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defendant is a powerful person, he can try to interfere with the plaintiff's peaceful possession and enjoyment of the suit property at any time. Fearing that, the plaintiff has filed this case seeking permanent injunction against the defendant.

4. The suit in O.S.No.4 of 1992 had been filed by the plaintiff stating as follows:

The plaintiff claims that the property in question "A" belongs to the plaintiff and that the said property was given to the plaintiff by the Government and that the plaintiff is in the enjoyment thereof, and that the second plaintiff is the husband of the first plaintiff and has left the Eastern part of the said property vacant and built a building on the Western part. The father of the first defendant Muthuveeran and the father of the second plaintiff, are brothers. The other brothers are Irular and others, The properties in the suit B and C schedule, were allotted by the Government to the said Muthuveeran and Velu families respectively and they were enjoying the said properties separately, since the Government did not allot land to Iruv and his son Shanmugam and it was decided to allot the vacant plots to Shanmugam, and the above decision was taken in the presence of the Panchayat and 4 families. The above decision was prepared in the form of a list and every-one signed it. The second defendant



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Velu's daughter-in-law and while everyone agreed to the above decision. The first defendant along with the second defendant, refused to sign the list of partition in bad faith and then the plaintiff has filed the present suit seeking permanent injunction against the defendant No.2 in respect of the B-property and in this case, the second defendant attempted to trespass into the A-property at the instigation of the second defendant and the plaintiff has prevented the defendants from doing so, but fearing that the defendants 1 and 2 may at any time, attempt to trespass into the property. Hence, the plaintiff has filed the present suit seeking permanent injunction to prevent the defendants, their servants and agents from interfering with the plaintiff's peaceful possession and enjoyment of the property.

5. The defendants have filed written statement in O.S.No.1549 of 1991 stating as follows:

The suit property is in the personal ownership and enjoyment of the plaintiff is false and the same is denied. The plaintiff's father Muthuveeran and the defendant's father Palaniandi, are brothers. The plaintiff's father has two more brothers and the family was living in a property measuring 16 cents and three people were given individual leases with house plots allocated for them. The defendant is enjoying 2-cent property measuring 20 feet to the South and



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40 links to the East of the 5 cent property specified in the description of the suit properties and the defendant has a personal ownership in the Northern part of the claim property and had put up a bamboo fence around it. The fire-wood and cattle are being used in it and that the deceased Irul did not leave any property to the plaintiff's paternal uncle and the defendant, that it was decided to allot a part of the entire area to Irul's son Shanmugam and that a resolution was passed in the Village Panchayat and it was decided to divide the share by lot and that a list was prepared accordingly and the plaintiff, the defendant and others signed it and that in the meantime, Vagi and Leelavathi refused to sign the document. Therefore, the list of partition was stopped half-way and that the plaintiff has concealed the above information and that the documents filed by the plaintiff are not sufficient to say that the plaintiff is enjoying the suit property and that the plaintiff has never enjoyed the entire area of the suit property, that the plaintiff is trying to trespass into the suit property by removing the fence on the Northern side of the claim property and that the plaintiff has no right, interest or enjoyment in the suit property and the description of the suit property is not correct and the defendant prayed to dismiss the suit.

6. The defendant in O.S.No.4 of 1992 contested as follows in the suit:

The plaintiffs have not been able to obtain any benefits from the property



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and that the statement that the property is in possession of the plaintiffs, is completely false and that the plaintiffs have deliberately given wrong details of the property and that the plaintiffs will not get any benefit from the evidence and that the Patta was given by the Trichy Tahsildar and that the plaintiffs have been made the Eastern part of the property vacant and that the plaintiffs' possession of the property is denied and that the vacant land was allotted to them, because the land was not allotted to the community and that the Panchayat was formed for it and that no land was given to the community and that no Resolution was written and the defendants signed in it and during the partition, the defendant first agreed and then refused to sign the partition deed, and the same is false and that the defendants never agreed to the partition and that the second plaintiff tried to interfere with the defendant's property. The plaintiff obtained injunction in his suit and the suit is filed with bad intentions and that the plaintiffs have hidden the facts. The plaintiffs also said that the property in question belongs to the defendant's grandfather and that the plaintiff has left a vacant land for his house, which has been left on his own property and that the land in possession is 110 feet South and 27 feet East. There is a public foot-path to the West of it and to the East of the public foot-path is the property which belongs to the second defendant and to the West of it is the property of the plaintiff and to the South of Angamuthu's house is a Temple house and to the



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South of the Temple house is the opponent's house. To the first defendant's property is an opponent's house on the opposite side of the public foot-path and the property in the plaintiff's possession has an area of 12 feet and a width of 23 feet and the plaintiff's property is located on the North of the public foot-path leading to the Temple house and the road leading to the Southern Maruthai house, the public foot-path is located on the four corners of the defendant's property, which is East of the West Road. The four corners of the plaintiff's property are incorrect and the defendant's property is located in the house of the defendant in the enjoyment of Kaladeenam. The defendant is the one who is the owner of the property and that the description of the property of the house "A", which is incorrect. The property of the house "A" is of Type "A". The property in the house "A" is Type A. The property in the house "A" was enjoyed by the plaintiff before the plaintiff and the defendant "A" is enjoying it after him and that the plaintiffs have never enjoyed the property of the house "A" and that the documents filed by the defendants, do not give them any right with respect to the property in question. Since the plaintiffs are not in possession, they cannot get the relief of injunction and that there is no valid cause of action for the plaintiff to grant injunction and hence, the defendants pray that the suit may be dismissed.



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7. Before the trial Court, on the side of the plaintiff, P.W.1 (plaintiff in O.S.No.1549 of 1991), P.W.2 (2nd defendant in O.S.No.4 of 1992) and P.W.3 were examined and Exs.P-1 to P-15 were marked. On the side of the defendants, D.W.1 (The defendant in O.S.No.1549 of 1991), D.W.2 and D.W.3 were examined. Upon consideration of the oral and documentary evidence, the trial Court dismissed the suit in O.S.No.1549 of 1991 and the suit in O.S.No.4 of 1992 was decreed. Challenging the same, the First Appeals (A.S.Nos.166 and 169 of 1997) were filed by the respective parties and the said First Appeals were allowed dismissing the suits in O.S.No.4 of 1992 and decreed the suit in O.S.No. 1549 of 1991. As against this judgment, the defendant in O.S.No.1549 of 1991 filed S.A.No.1643 of 2000 before this Court and the plaintiffs in O.S.No.4 of 1992 filed S.A.No.1642 of 2000 before this Court.

8. While admitting both the Second Appeals on 23.10.2000, this Court formulated the following substantial questions of law:

(i) Whether the evidence of a party can be relied on, in the absence of any pleading ?

(ii) When the suit property is a "mound" and incapable of access, whether such a right of way can be declared over such a structure ?



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9. The learned counsel for the appellants contended that the lower appellate Court ought to have dismissed the First Appeal filed by the respondents on the ground that they had failed to prove their possession or establish any right of user over the suit properties. It was further submitted that the first appellate Court erred in relying upon the statement of Angamuthu that he had lodged a police complaint against Chandran and had decided to drop the same and pursue his remedy through a civil suit, as though such a statement by itself would prove that Chandran was interfering with his possession. It was argued that the appellate Court decreed the respondents' suit without discussing the other evidence on record and without there being any specific pleading as to how Chandran was alleged to have interfered with their enjoyment of the property. The learned counsel pointed out that no police complaint had been produced or marked in evidence, and hence, the finding of the first appellate Court was without basis. The learned counsel would further submit that the appellate Court failed to appreciate that merely because Leelavathi's entrance was on the southern side, it could not automatically mean that she was using the disputed portion of the property, particularly when there was clear evidence that



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the disputed site was a mound and not fit for convenient access. Moreover, Leelavathi herself had not made any pleading in her written statement claiming such a right of access. It was also contended that Ex.B-25 plan categorically showed that both Leelavathi and Angamuthu had access only on the western side of their respective houses, and hence, the finding of user through the southern side was contrary to evidence. The learned counsel further argued that the first appellate Court had misinterpreted the evidence of Chandran by wrongly holding that he had admitted that the main entrance of Leelavathi's house was situated on the pathway in dispute, whereas the evidence only indicated that her entrance faced the western side pathway. It was also urged that the appellate Court failed to notice that Chandran's statement in O.S.No.1549 of 1991, wherein he had stated that he was in possession of two cents of land, referred to the disputed portion being part of the total extent of five cents in his occupation, and could not be construed as an admission that his possession was confined only to two cents. It was further submitted that as per Ex.A-1 Patta, the southern boundary of Angamuthu's property was that of Maruthai, whereas, in his plaint, he had described the southern boundary as the "common pathway" and the "Temple House (Koil Veedu)". This, according to the counsel, showed that he had deliberately given an incorrect description of the property to suit his case, which was significant since Angamuthu had himself admitted that he had no land



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situated south of the Temple House. The learned counsel also submitted that the appellate Court failed to take note of the fact that the plea of access from the southern side was not even raised in the plaint, and only for the first time during evidence, Angamuthu made such a claim.

10. The learned counsel would further contend that Angamuthu had admitted that he had no access on the western side and that in order to reach his property, he would have to cross the mound lying to the east of Chandran's house, which itself showed that his alleged right of access was not practicable. The counsel also pointed out that Leelavathi had claimed entitlement to eight cents of land, whereas the Patta issued in her favour clearly mentioned only five cents. Moreover, her plea that she was using the disputed site for bathing was contradicted by her own witness, D.W.3, who had stated that there was no bathing enclosure or screen provided in the site, making such a claim improbable, especially when the water tap provided for her use was located on the northern side. It was also submitted that the lower appellate Court had failed to notice that the eastern boundary of Chandran's property was the house of Ponnan Muthuriyar, which in itself covered the disputed site and thus confirmed Chandran's possession. The learned counsel further emphasised that Leelavathi herself had not filed any independent suit seeking protection of her alleged



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possession or right of access. Finally, it was contended that the first appellate Court overlooked the evidentiary value of Ex.B-1 Patta, which corroborated the possession of Chandran and Tamilarasi, and that apart from the Patta, there was ample evidence to prove their continuous possession even prior to the assignment of the suit property. Hence, the learned counsel for the appellants prayed that the Second Appeals be allowed.

11. There is no representation for the respondents in both the Second Appeals.

12. This Court has perused the materials available on record.

13. The defendant in O.S.No.1549 of 1991 is the appellant in S.A.No.1643 of 2000 and the respondents are the plaintiff in the above said suit.

14. The appellants in S.A.No.1642 of 2000 are the plaintiffs in O.S.No.4 of 1992 and the respondents are the defendants in that suit.

15. Both the suits were jointly tried and the evidence was recorded jointly and common evidence was adduced. The plaintiff as P.W.1 and the first



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defendant in O.S.No4 of 1992 was examined as P.W.2 and independent witness was examined as P.W.3. The plaintiff in O.S.No.4 of 1992 was examined as D.W.

1. The trial Court, after trying the suits jointly and heard and passed common judgment by decreeing the suit in O.S.No.4 of 1992 and dismissing the suit in O.S.No.1549 of 1991.

16. Aggrieved by the above said result in the suit, the respondents herein filed an appeal in A.S.No.166 of 1997 and A.S.No.169 of 1997. The first appellate Court, after hearing the parties on both sides, allowed the first appeal filed by the respondent and decreed the suit filed by the respondents in O.S.No.1549 of 1991 and dismissed the suit in both the appeals and decreed the suit in O.S.No. 1549 of 1991 and dismissed the suit in O.S.No.4 of 1992. Challenging the same, the plaintiff in O.S.No.4 of 1992 and the defendant in O.S.No.1549 of 1991, have filed the present Second Appeals.

17. Though at the time of admitting the Second Appeals, this Court had formulated the substantial questions of law referred to supra, on a reading of the pleadings and the oral and documentary evidence, and the evidence of P.Ws.1 and 2 and P.W.3 who is the independent witness, and also the admission made by D.W.1, it is seen that the trial Court failed to appreciate the oral and documentary evidence and dismissed the suit filed by the respondents and



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decreed the suit filed by the appellants. However, the first appellate Court, as fact-finding Court, while re-appreciating the oral and documentary evidence, allowed both the First Appeals.

18. On a careful perusal of the pleadings and evidence of P.Ws.1 to 3, it is to be noted that admittedly the suit properties were originally the Government poramboke and the Patta was granted to the father of the first respondent. Based on the allotment and possession, Patta was also granted in favour of the father of the first respondent. They have constructed the building in a portion of the property and left the portion of the property in keeping the fire-woods and cattle. The Patta was also issued in a portion of the property in the name of the second respondent and they have also paid the house tax. Though the appellants have admitted the physical features of the property and the fact that they have put up constructions thereon, they contend that a list of partition was prepared only by them, in which neither the respondents nor their predecessors had affixed their signatures, and therefore, no valid partition had ever taken place.

19. On a reading of the evidence of P.Ws.1 to 3, the possession and enjoyment of the suit properties in O.S.No.1549 of 1991, has been proved and



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the appellants have also not proved that they were in possession and enjoyment of the suit properties mentioned in O.S.No.4 of 1992. However, the first appellate Court as the final fact finding Court, while re-appreciating the pleadings and oral and documentary evidence, allowed the First Appeals and set aside the judgment and decree passed by the trial Court.

20. On a careful reading of the oral and documentary evidence, this Court finds that there is no substantial question of law to be decided, since the findings are based on the oral and documentary evidence. The suit properties are immovable and incapable of division and to access, in order to substantiate that they have not even filed any application for appointment of Advocate Commissioner for noting down the physical features and that the suit properties are only the mound and incapable of access and due to that, there was no access, whereas, on a reading of the evidence of P.Ws.1 to 3 and D.W.1, the respondents have established their case and in paragraph 27 of the judgment of the first appellate Court, the first appellate Court discussed and reasons were given as below:-

"27. ... There is a lane situated to the west of Leelavathi's house, lying between the houses of Leelavathi and Angamuthu, and through that lane, Leelavathi reaches Keezha Street from the Western side. P.Ws.1 and 2 and



D.W.1 have deposed that there is a kitchen to the East of Chandran's house and that, further to the East, there is a raised portion of land. In his evidence, Angamuthu stated that, below the entrance steps of the defendant's house, there is a half-built structure. The staircase of the defendant's house is situated on the Eastern side and is raised about one foot above the ground level. That portion is at a higher elevation than the adjoining vacant plot. Between the houses of Angamuthu and Leelavathi, the lane also lies at about the same height of one foot. When it is an admitted fact that the entrance staircase of Leelavathi's house is situated on the Western side, and that she has to descend through that entrance to reach the lane, it cannot be accepted that she comes out towards the Western side, then moves Northward, and thereafter proceeds to Keezha Street. From the evidence of D.W.1, it is clear that Leelavathi is in enjoyment of the plot situated on the Southern side of her house. This Court finds that the opposite parties, namely Chandran and Tamilarasi, have not proved their possession over the entire 'A' Schedule property. Hence, as far as the 'A' Schedule property is concerned, the Court below erred in granting the relief of permanent injunction. Considering the oral and documentary evidence and the fact that Chandran and Tamilarasi have not proved their enjoyment of the vacant space situated to the East of their house, they are not entitled to the relief of permanent injunction. Since the



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entrance steps of Leelavathi's house are on the Southern side, and since it is established that she has to descend through the Southern portion to reach Keezha Street, granting an injunction in favour of Chandran, would obstruct her use of the common pathway through the Southern portion. Therefore, this Court holds that Chandran and Tamilarasi are not entitled to the relief of permanent injunction in respect of the 'A' Schedule property. Consequently, the judgment and decree passed by the trial Court are liable to be set aside, and O.S.No.4 of 1992 stands dismissed. The Court below has answered Issue No.4 accordingly."

21. In view of the above findings of the first appellate Court, this Court does not find any substantial question of law and this Court also does not find any perversity in re-appreciation of evidence by the first appellate Court, and there are no merits in these Second Appeals and the Second Appeals are dismissed accordingly. There shall be no order as to costs.

18.08.2025

Index: Yes/no
Speaking Order: Yes/no
Neutral case citation: Yes/no

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To

1. The District Munsif Court, Trichirapalli.
2. The Second Additional District Judge, Trichirapalli.
3. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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P.VELMURUGAN, J

CS

Pre-delivery Judgment in
S.A.Nos.1642 and 1643 of 2000

Judgment delivered
on 18.08.2025