



S.A.No.496 of 2001

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 28.08.2025

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

**S.A.No.496 of 2001 and
C.M.P.No.5322 of 2001**

1. Arumugham (died)
2. Thangamani
3. Sivapackiyam
4. A.Sannasi
5. Rajakumari
6. Minor Valli Priya

(Minor represented by Natural guardian
and her mother Mrs.Thangamani - 2nd
appellant)

[Appellants 2 to 6 were brought on record
as LRs of the deceased sole appellant
vide order dated 31.12.2002 made
in C.M.P.No.9633 of 2002 by PSDJ]

... Appellants

Vs

1. Sirumbayee @ Pappa
2. Mariyappan
3. Dharman @ Dharmalingam
4. Sankar
5. Amaravathy
6. Janaki
7. Banumathy
8. Gomathi

... Respondents

PRAYER:



S.A.No.496 of 2001

WEB COPY

Second Appeal filed under 100 of the Code of Civil Procedure Rule 1973 against the judgment and decree rendered by the learned Sub Judge, Kulithalai in A.S.No.46 of 1999 dated 15.12.2000 reversing the judgment and decree of the learned District Munsif, Kulithalai in O.S.No. 467 of 1994 dated 26.03.1999.

For Appellants 2 to 6 : Mr.V.G.Kamalesh
For Respondents : Mr.K.Govindarajan

JUDGEMENT

S.A.No.496 of 2001 has been filed against the judgment and decree dated 15.12.2000 passed in A.S.No.46 of 1999 on the file of the Sub Court, Kulithalai reversing the judgment and decree dated 26.3.1999 passed in O.S.No.467 of 1994 on the file of the District Munsif Court, Kulithalai.

2. The said suit in O.S.No.467 of 1994 was filed by one Mr.Arumugam as against one Mr.Thangaraj - sole defendant seeking permanent injunction restraining him from interfering with his peaceful possession and enjoyment of the suit property. During the pendency of the



S.A.No.496 of 2001

said suit, the sole defendant died and his legal heirs were impleaded as defendants 2 to 9 in the said suit.

3. The case of the plaintiff is as follows:

(i) The plaintiff and the sole defendant were brothers. The plaintiff had purchased the suit property from one of his brothers - one Mr.Jayabalan through a registered sale deed dated 28.8.1982 for a sale consideration of Rs.150/-. The ancestral properties had already been divided through an oral partition. The sole defendant had started giving trouble to the plaintiff when he refused to sell the suit property to him. When the sole defendant and his family members attempted to trespass into the suit property, the plaintiff had prevented them from entering into the suit property. Hence the suit.

4. While he was alive, the sole defendant filed a written statement wherein it was stated as follows :

(i) In the family partition, the suit house alone was allotted to the plaintiff. However, the plaintiff had no right beyond the eastern side wall of his house so allotted. The vacant land on the eastern side of the house of the



S.A.No.496 of 2001

plaintiff up to the pathway on the western side had been allotted to the sole defendant in the said partition. Both of them were residing in their respective houses as per the partition. Their yet another brother - one Mr.Kandan had been residing in the house that had been allotted to him and it was lying to the west of the eastern pathway. Similarly, the said Mr.Jayabalan and one Mr.Mani had been residing in a large house with a courtyard situated south of Union Road. No vacant land had been allotted to the said Mr.Mani and the said Mr.Jayabalan north of Union Road.

(ii) Similarly, the northern portion of the land lying to the north of the said Mr.Kandan's house and to the west of common pathway up to the canal, had been allotted to said Mr.Kandan and the middle portion was allotted to the sole defendant and the northern corner had been allotted to the plaintiff. Thus, each person had been in possession and enjoyment of their respective houses adjoining vacant lands as per the allotment. The plaintiff had a right to the property bounded on the north by Union road, on the east of the common pathway, on the south by the house and vacant land of the said Mr.Thangaraj and also on the west by the vacant land of the sole defendant. Similarly, the sole defendant was entitled to the property



S.A.No.496 of 2001

WEB COPY

bounded on the south by his house and vacant land, on the west by Annavi's property, on the north by Union road and on the east by the eastern wall of the house of the plaintiff and the north wall of the plaintiff's house. The plaintiff had no right beyond the eastern wall on the east and the northern wall on the north of his property.

(iii) The sale deed dated 28.8.1982 was not valid. The plaintiff was running a tea stall in front of his house. The sole defendant, through his hard work, constructed a tiled house 15 years back and had been in possession and enjoyment of the property. The sole defendant had used the suit property as a pathway to access his house from Union road. The sole defendant was running a petty shop for a long time. The sole defendant had tried to start a tiffin shop, which had made the plaintiff and his wife jealous leading them to file this suit.

(iv) The plaintiff was not entitled to an injunction against the sole defendant. The plaintiff was not in possession and enjoyment of the suit property. The plaintiff had agreed to remove the encroachment, but had not done so. The plaintiff had then tried to encroach the property of the sole defendant. Taking advantage of the absence of the sole defendant, the



S.A.No.496 of 2001

WEB COPY

plaintiff had encroached upon 6 feet of the land north of his north wall and east of his east wall land and constructed a stone wall. The plaintiff had agreed to remove the stone wall that obstructed the front portion of the sole defendant, but he had failed to do so. The suit was not maintainable without seeking a declaratory relief. Hence, he prayed for the dismissal of this suit.

5. As already stated, during the pendency of the suit, the sole defendant died and his legal heirs were impleaded as party defendants to the said suit. They also contested the suit. On the side of the plaintiff, the plaintiff himself was examined as PW1 and his brother - the said Mr.Jayabalan was examined as PW2 and two documents were marked as Ex.A1 and Ex.A2. On the side of the defendants, one witness was examined as DW1 and three documents were marked as Ex.B1 to Ex.B3. Ultimately, the Trial Court, vide judgment dated 26.3.1999, decreed the said suit. Aggrieved by that, defendants 2 to 9, who are none other than the legal heirs of the sole defendant, preferred an appeal in A.S.No.46 of 1999 before the Lower Appellate Court, which, vide judgment dated 15.12.2000, set aside the judgment and decree passed by the Trial Court and allowed the appeal



S.A.No.496 of 2001

WEB COPY

filed by defendants 2 to 9. As against the same, the legal heirs of the plaintiff filed this second appeal.

6. It is worthwhile to make a mention here that two of the legal heirs of the said Mr.Thangaraj, who was the sole defendant in O.S.No.467 of 1994 on the file of the District Munsif Court, Kulithalai, filed a suit in O.S.No.252 of 2001 against the said Mr.Arumugam (sole plaintiff in the first suit) and five others.

7. S.A.No.496 of 2001 was admitted on 01.4.2001 on the following substantial questions of law:

i. Is the Lower Appellate Court right in finding that the suit for declaration should have been filed for getting permanent injunction when the partition is not disputed?

ii. Is the Lower Appellate Court is empowered to record its own findings in the place of the well considered findings of the Lower Court?



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S.A.No.496 of 2001

iii. Has the Lower Appellate Court taken note of the binding nature of the decree in O.S.No. 48 of 1995 dated 22.09.1995?

iv. Is the Lower Appellate Court right in going behind the sale deed Ex.A1?

v. Is the findings of the Lower Appellate Court supported by any evidences? and

vi. Is the Lower Appellate Court right in rejecting the appellant's suit when the possession is admitted by the respondents?

8. Learned counsel for the appellants submitted as follows :

(a) The suit property originally belonged to the father of the deceased Mr.Arumugham and the deceased Mr.Thangaraj. During the life time of their father, all the brothers namely the original plaintiff, the sole defendant and other brothers divided the properties by way of oral partition in the presence of villagers and well wishers. The suit property was adjacent to the first appellant's property, which is situated in the eastern side of the first appellant's house and southern side of the respondents' house. In the suit property, the vacant site was allotted to one of the brothers of the deceased appellant - the said Mr.Jayabalan. He kept the same as vacant site.



S.A.No.496 of 2001

WEB COPY

(b) The said Mr.Jayabalan sold the suit property to the first appellant/original plaintiff. Thereafter, the plaintiff was enjoying the suit property continuously and prior to filing of the suit, the original defendant tried to interfere with the possession and enjoyment and put up a shed. Therefore, the first appellant/original plaintiff filed the suit in O.S.No.467 of 1994 seeking for a bare injunction restraining the sole defendant from interfering with the peaceful possession and enjoyment and also not to put up any super structure.

(c) The Trial Court rightly appreciated the oral and documentary evidence and rightly decreed the suit whereas the Lower Appellate Court failed to consider the pleadings, the oral and documentary evidence and the sale deed dated 28.8.1982 executed by the said Mr.Jayabalan in favour of the first appellant under Ex.A1. Though the said Mr.Jayabalan, who was examined as P.W.2, clearly stated that the suit property is a vacant site, that the same was allotted to the said Mr.Jayabalan and that the said Mr.Jayabalan , in turn, executed the sale deed in favour of the first appellant under Ex.A1, however, the Lower Appellate Court erroneously allowed the appeal filed by the defendants by setting aside the judgment and decree



S.A.No.496 of 2001

passed by the Trial Court.

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9. Per contra, the learned counsel for the respondents submitted as follows :

(a) The said Mr.Jayabalan had absolutely no right, title or interest over the vacant site or kollai manai to the north of the Union Road. He was never in possession of any of the properties nor had he any title to any such properties north of the Union Road. The said Mr.Jayabalan and the other brother the said Mr.Mani were allotted the big house with a vacant site to the south of Union Road and the west of Thaliyampatti Road. The first appellant/original plaintiff was allotted the mud house and the tiled house under the family partition. The plaintiff encroached upon the road side poramboke to the south of the property and immediate north of the Union road and was running a tiffin shop. Apart from that, the original plaintiff absolutely had no right, title or interest over any portion of the site to the east of the eastern wall of his house. The vacant site east of the plaintiff's eastern wall was allotted to the sole defendant so as to enable him to have



S.A.No.496 of 2001

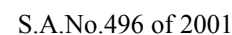
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access to his house from the Union Road on the south.

(b) The sale deed dated 28.8.1982 was a false and fabricated one. The said Mr.Jayabalan had no possession over the suit property so as to convey the same to the original plaintiff. The original defendant, by doing hard labour, remodelled the house into a pucca terraced building long ago and had been in possession and enjoyment of the same. The Trial Court miserably failed to understand the case and erroneously decreed the suit. However, the First Appellate Court re-appreciated the oral and documentary evidence and dismissed the suit. There is no merit in the appeal. Hence, the second appeal is liable to be dismissed.

10. The specific case of the appellants is as follows :

The suit property was allotted to the said Mr.Jayabalan by oral partition. In the year 1982, under Ex.A1, the said Mr.Jayabalan sold the suit property to the first appellant. The first appellant was enjoying the suit property. Since the sole defendant tried to interfere with the peaceful possession and enjoyment and tried to put up the shed, only to prevent



WEB COPY

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S.A.No.496 of 2001

WEB COPY

13. According to the appellants, the suit property is a vacant site, which was allotted to the said Mr.Jayabalan, who sold it to the original plaintiff under Ex.A1 for a valuable consideration. According to the respondents, the said Mr.Jayabalan was allotted the house, which was a bigger house lying south of the Union road and the suit property lies north to the union road immediately after the suit property. Further, the property lying on the eastern side of the property allotted to the original plaintiff was allotted to the sole defendant. The suit property was kept as a vacant site. The sole defendant was using the said suit property to reach the Union Road and also put up a shed and was running the tiffin stall.

14. The house of the original plaintiff is lying to the west of the suit property. The first appellant put up a tiffin stall in between the north to union road and south to his house. The original plaintiff never used the suit property. Though the claim of the original plaintiff was that the suit property was allotted to the said Mr.Jayabalan, the said Mr.Jayabalan used the suit property for storing the firewood.



S.A.No.496 of 2001

WEB COPY

15. On a perusal of the records, it is seen that there is no material available to show that the suit property was allotted either to the said Mr.Jayabalan or to the original plaintiff or to the sole defendant. The Trial Court decreed the suit on the ground that though the original plaintiff had purchased the suit property from the said Mr.Jayabalan under Ex.A1, the respondents had not denied the same. However, the Lower Appellate Court rightly re-appreciated the evidence and the pleadings and found that the appellants had not produced any document or any material to show that the suit property was allotted to the said Mr.Jayabalan. The respondents have also not produced any document to show that the suit property was allotted to the respondents. As the original plaintiff filed the suit for bare injunction, he has to prove his right and title.

16. When the title is disputed and when the suit is filed for bare injunction, the plaintiffs will have to produce the supporting materials to prove the same. When the defendants denied the title of the plaintiffs, it is for the plaintiffs to seek the relief of declaration. Even after filing of the written statement, the defendants had seriously disputed the right and title of



S.A.No.496 of 2001

the appellants/plaintiffs. But, the plaintiffs have not taken any steps even to amend the plaint. Though the original plaintiff stated that he had purchased the suit property as a vacant site from one of his brothers namely the said Mr.Jayabalan through Ex.A1, which would show that the said Mr.Jayabalan executed the sale deed in favour of the original plaintiff, except Ex.A1, no other document or material is available to show that the suit property was allotted to the said Mr.Jayabalan.

17. Even as per the evidence and also the Commissioner's report, the house of the said Mr.Jayabalan is situated south to the Union Road. The suit property is lying north of the Union Road. The said Mr.Jayabalan and the said Mr.Mani were allotted the properties lying south to the Union Road. The appellants and the respondents were allotted properties north to the Union Road. Neither the appellants nor the respondents have proved that the suit property was allotted to them. The appellants have not proved that the suit property belonged to the said Mr.Jayabalan, who, in turn, sold the suit property to the original plaintiff.

18. The respondents have also not proved that the suit property was



S.A.No.496 of 2001

WEB COPY

allotted to them. Though the respondents claimed that to reach the Union Road from their house, the suit property was allotted to them, that the respondents were using the suit property to reach the Union Road and that they kept it as a vacant land, put up a shed and was running a tea stall, even the Commissioner's report would show that there is a pathway. Since the respondents' house is north to the appellant's house, the respondents were using the said pathway to reach the Union Road. Therefore, the respondents cannot claim any exclusive right or possession over the suit property.

19. The original plaintiff had stated that at the time of filing the suit, the sole defendant had encroached a portion and put up a stall. The appellants have neither filed the suit for declaration nor for recovery of possession or mandatory injunction, instead, the suit was filed only for bare injunction. Even after filing of the written statement and the Commissioner's report, the appellants have not taken any steps to amend the plaint to include the prayer for declaration or recovery of possession or mandatory injunction.



S.A.No.496 of 2001

WEB COPY

20. Though the Trial Court accepted Ex.A1 after considering the oral and documentary evidence and the physical feature and surroundings of the suit property and granted the decree, the Lower Appellate Court, rightly re-appreciated the oral and documentary evidence and dismissed the suit. It is a settled proposition of law that the Lower Appellate Court is the final Court of fact finding, it has to re-appreciate the evidence independently and has to give finding independently. It was indeed sailing on the judgment and decree of the Trial Court. In view of the above, substantial questions of law Nos.1 and 2 are answered accordingly.

21. As far as the third substantial question of law is concerned, though the appellants marked a copy of the decree passed in O.S.No.48 of 1995 dated 22.9.1995 as Ex.A2, they have not produced any pleadings or details with regard to the same. Further, neither the respondents nor the said Mr.Jayabalan were parties to the earlier suit. The said suit was filed by third parties and the same was for a bare injunction. Subsequently, the suit was decreed as the defendant in the suit had not objected to grant the decree. Since the respondents were not parties to the earlier suit, the said judgment



S.A.No.496 of 2001

WEB COPY

and decree passed in O.S.No.48 of 1995 dated 22.9.1995 would not bind the respondents in this case. The third substantial question of law is answered accordingly.

22. As far as the fourth substantial question of law is concerned, admittedly, the suit property is a joint family property. In the year 1975, all the brothers had divided the property and the suit property was kept as vacant. Since the parties had admitted that they divided the property by way of oral partition and from the evidence, it was seen that even without the list of partition and any specific boundaries, the properties were allotted only through oral partition and without the exact measurements, the properties were allotted to the parties. From the evidence, it is found that south of the Union Road properties of the said Mr.Jayabalan and the said Mr.Mani were allotted. The original plaintiff was allotted on the north to the Union Road. Still further north portion was allotted to the sole defendant. The suit property was a vacant site. The appellants did not have any other document except Ex.A1 said to have been executed by the said Mr.Jayabalan. No other document had been produced regarding the extent or possession. The



S.A.No.496 of 2001

WEB COPY

respondents have also not produced any material to show that the suit property was allotted to them and that they had the exclusive right over the suit property.

23. In the absence of any material to show that the suit property was allotted to the said Mr.Jayabalan as a vacant site and the said Mr.Jayabalan was enjoying the suit property, the appellants did not have any right over the suit property. No revenue record like patta, chitta, adangal or any FMB book is available to show that the original plaintiff had right over the suit property. In the absence of the same, this Court cannot accept Ex.A1. The fourth substantial questions of law is answered accordingly.

24. As far as the fifth substantial question of law is concerned, as already held that the Lower Appellate court is a final Court of fact finding and it re-appreciated the oral and documentary evidence and had given the findings and the findings of the Lower Appellate Court are supported by the evidence. The fifth substantial question of law is answered accordingly.



S.A.No.496 of 2001

WEB COPY

25. As far as the sixth substantial question of law is concerned, though the appellants have stated that they purchased the suit property from the said Mr.Jayabalan under Ex.A1, as already held, no material is available to show that the suit property was allotted to the said Mr.Jayabalan. Subsequently, the appellants were in possession and enjoyment of the suit property. The respondents have also not established the same. Originally, the suit property was kept as vacant. Neither of the appellants examined any of the witnesses. Except the original plaintiff and the said Mr.Jayabalan, no independent witnesses have been examined. On the side of the respondents also, except D.W.1, no other independent witness was examined to show that the respondents were enjoying the suit property exclusively after purchase under Ex.A1. In the absence of the same, the Lower Appellate Court rightly held that both the appellants and respondents have not established any right or title.

26. The suit property is originally a joint family property. No material is available to show that the suit property exclusively belonged to one of the brothers. The appellants have not filed the suit for declaration or



S.A.No.496 of 2001

WEB COPY

for any other relief. Instead, the suit was simply filed seeking for a bare injunction. If that be the case, the appellants have to establish their exclusive right and title over the suit property. Hence, the Lower Appellate Court allowed the appeal and set aside the judgment and decree passed by the Trial Court. The portion of the property was enjoyed by the appellants and the portion of the property was enjoyed by the respondents. However, the appellants have not established the exclusive right and possession over the suit property. Hence, the Lower appellate Court allowed the appeal by setting aside the judgment and decree passed by the Trial Court. The sixth substantial question of law is answered accordingly.

27. All the substantial questions of law are answered against the appellants on the ground that the appellants have not established the case that the suit property was exclusively allotted to the said Mr.Jayabalan, that he had exclusive right and title over the suit property and that later, he sold the same under Ex.A1 to the original plaintiff.



S.A.No.496 of 2001

WEB COPY

28. In view of the above, the Second Appeal fails and there is no merit in the second appeal.

29. Accordingly, the Second Appeal is dismissed. Considering the relationship between the parties, there will no order as to costs and the parties will have to bear their own costs. Consequently, connected miscellaneous petition, if any, is closed.

28.08.2025

(1/2)

<i>Index</i>	: <i>Yes/No</i>
<i>Speaking Order</i>	: <i>Yes/No</i>
<i>Neutral Citation</i>	: <i>Yes/No</i>

To
1. The Sub Court, Kulithalai.
2. The District Munsif Court, Kulithalai.

CC to
The Section Officer,
VR Section,
High Court, Chennai.

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S.A.No.496 of 2001

P.VELMURUGAN, J.

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**P.D. Order mad in
S.A.No.496 of 2001
&
C.M.P.No.5322 of 2001**

28.08.2025