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S.A.No.1277 of 2001

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22 / 08 /2025

CORAM:

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

S.A.No.1277 of 2001

1. Joseph (Died)
2. J.Martin Sahayaraj
(A2 is brought on record as LR of the deceased sole appellant vide order dated 13.06.2017 made in C.M.P.(MD)Nos.4916 to 4918 of 2017 in S.A.(MD)No.1277 of 2001)
3. J.Rani
(A3 is brought on record vide order dated 06.01.2023 made in C.M.P.(MD)No.2659 of 2022 in S.A.(MD)No.1277 of 2001) : Appellant

.VS.

- 1.Philomina Ammal (Died)
- 2.Vanaja
- 3.Jessie
- 4.Thiboorsees Arputharaj : Respondents
(R2 to R4 are brought on record as LR of the deceased sole respondent vide order dated 09.08.2019 made in C.M.P.Nos.6101, 6102 and 6104 of 2019 in S.A.No.1277 of 2001)



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PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree dated 18.06.2001 made in A.S.No.258 of 1998, on the file of the Sub Court, Trichy, reversing the judgment and decree dated 03.09.1998 made in O.S.No.352 of 1988, on the file of District Munsif Court, Trichy.

For Appellants : Mr.P.Thiagarajan

For Respondents : Mr.M.Ashok Kumar

* * *

J U D G M E N T

This Second Appeal is directed against the judgment and decree dated 18.06.2001 passed in Appeal Suit No.258 of 1998 on the file of the Sub Court, Trichy, whereby the judgment and decree dated 03.09.1998 made in O.S.No.352 of 1988 on the file of the District Munsif Court, Trichy, was reversed.

2. The deceased first appellant was the sole plaintiff, and the deceased first respondent was the sole defendant in the suit. Their respective legal heirs are now contesting this Second Appeal. For the sake of convenience, the parties are referred to as per their status before the trial Court.



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3. The brief facts of the plaintiff's case are as follows:

The suit property originally belonged to the plaintiff's father, Amirthasamy Pillai, by virtue of a sale deed dated 22.10.1921. He died in the year 1924, and the plaintiff's mother passed away in 1972. Consequently, the plaintiff claims to have become the sole owner of the suit property. The plaintiff contends that he constructed a building on the first floor after obtaining due permission from the Municipality. The suit property is described as a house property measuring 35 feet east to west and 35 feet north to south. To the east of the property, the plaintiff maintains a 3-feet lane which he claims forms part of his property. Further east of the said lane is a compound wall (marked as B-C in the plaint plan), which, according to the plaintiff, also forms part of the suit property and has been continuously enjoyed by him and his predecessors-in-title. The plaintiff alleges that the defendant, claiming to be the owner of the adjacent eastern plot, attempted to raise a construction encroaching upon the B-C compound wall. According to the plaintiff, the defendant has no right or title over the said wall and hence sought permanent injunction to restrain the defendant from interfering with the plaintiff's peaceful possession or constructing on the B-C compound wall.



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4. The suit was contested by the defendant, who, in his written statement, denied the exclusive ownership of the plaintiff. It was contended that the plaintiff has two sisters and one brother who also have rights over the property and, therefore, the suit is liable to be dismissed for non-joinder of necessary parties. The defendant asserted that the 3-feet space on the eastern side is a common lane left for maintenance, including whitewashing of the defendant's wall, and that the compound wall B-C belongs to the defendant. It was further alleged that the plaintiff had constructed a latrine in the common lane and unlawfully erected a staircase above the B-C wall. According to the defendant, the plaintiff has no right over the compound wall B-C, which belongs exclusively to the defendant, and hence the suit deserves to be dismissed.

5. Before the trial Court, the plaintiff examined himself as P.W.1 and marked 11 documents as Exs.A1 to A11. On the defendant's side, one Xavier was examined as D.W.1, and 11 documents were marked as Exs.B1 to B11. The reports of the Advocate Commissioner were marked as Exs.C1 and C2.

6. Upon analyzing the oral and documentary evidence, the trial Court decreed the suit as prayed for. Aggrieved by the same, the defendant preferred an appeal in A.S.No.258 of 1998 before the Sub Court, Trichy, which reversed the decree of the trial Court and allowed the appeal. Hence, the plaintiff has come before this Court by way of this Second Appeal.



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7. The learned counsel appearing for the appellant/plaintiff submitted that the claim of the defendant that the 3-feet lane on the east of the plaintiff's house is a common passage left for repair and whitewashing of the compound wall has not been substantiated. The trial Court, relying on the plaintiff's title deed (Ex.A1 dated 22.10.1921), accepted the plaintiff's claim, whereas the first appellate Court, by misreading the Commissioner's plan, came to a contrary conclusion. A proper reading of the respective title deeds, namely, Ex.A1 (plaintiff's title deed), Ex.B11 (defendant's title deed dated 07.07.1968), and the defendant's parent documents, Exs.B1 (dated 21.02.1944) and B2 (dated 27.10.1945), shows that the defendant's property measures only 15 feet east-west commencing after the disputed wall. Therefore, the only real issue for consideration is whether the disputed compound wall B-C falls within the plaintiff's 35-feet extent or within the defendant's boundary.

8. The learned counsel further submitted that the existence of a latrine on the western side of the B-C compound wall and the tin sheet resting on that wall has not been denied by the defendant. The plaintiff had also filed objections to the Commissioner's Report pointing out that the Commissioner failed to clearly state whether the B-C wall falls within the plaintiff's 35-feet east-west measurement or within the 15-feet east-west dimension of the defendant's



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property. It was also highlighted that the Commissioner's plan shows a doorway at the southern end of the lane (marked I-B), and the construction over the doorway rests on the disputed B-C wall. The Commissioner, in his report, described 'ABCDE' as the plaintiff's property and noted that only a house was constructed in the portion marked 'FGHIA'. Therefore, the compound wall B-C lies within the overall 35-feet east-west extent of the plaintiff's property. However, the first appellate Court, solely relying on the Commissioner's plan, erroneously concluded that the survey stone at point 'B' marked the end of the plaintiff's 35-feet property and that the compound wall B-C was situated beyond this boundary, thereby holding that the wall belongs to the defendant. According to the learned counsel, the said conclusion is clearly unsustainable, as the Advocate Commissioner has expressly identified the entire area marked 'ABCDE' as forming part of the plaintiff's property. Accordingly, the B-C compound wall lies within the plaintiff's boundary. He would further submit that this Court suo motu, in view of the fact that the Advocate Commissioner went twice for inspection but did not give details to show whether the B-C compound wall is situated within the boundaries of the plaintiff or his property, and to know the present stage of the compound wall and whether such boundary as B-C shown in the Commissioner's report is existing on the date, should give a quietus to the issue. The learned Advocate Commissioner filed his report and plan on 28.06.2023, wherein it has been clearly pointed out that the disputed compound



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wall referred to as B, B1, C, C1 in the plan, having 1.3 feet width, is located within the boundaries of the plaintiff/appellant and the defendant/respondent's property (vacant side) as per their title deeds measuring 15 feet east-west, situating only at C, C1, D, D1 portion. No portion of the disputed compound wall is situated within the boundaries of the respondent/defendant, and from this report, it is crystal clear that the disputed compound wall absolutely belongs to the appellant/plaintiff and does not situate in the respondent's property. Therefore, the findings of the first appellate court are, therefore, contrary to the documentary evidence and commission report on record and are liable to be set aside.

9. The learned counsel for the respondent/defendant submitted that since the plaintiff has two sisters and a brother who also have rights in the property, he cannot claim exclusive ownership, and because they were not made parties to the suit, the suit ought to have been dismissed for non-joinder of necessary parties . It was contended that the 3-feet lane on the eastern side is a common passage reserved for maintenance, including repairs and whitewashing of the defendant's compound wall, which was constructed by the defendant's predecessor-in-title. It was argued that the plaintiff had encroached upon the common lane by putting up a latrine and staircase over the B-C compound wall, which actually belongs to the defendant. The first appellate Court, after properly



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considering the evidence and the Commissioner's report, rightly held that the wall is outside the plaintiff's property and therefore dismissed the suit. Hence, no interference is called for in this second appeal.

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

11. The Second Appeal was admitted on the following substantial questions of law:-

"(i) When the documentary evidence coupled with the report and plan of the Commissioner establish the fact that 35 ft east to west belonged to the plaintiff includes the disputed BC wall, still is the learned Subordinate Judge right in reversing the decree and dismissing the suit? and

(ii) Is the learned Subordinate Judge being a final court of fact, right in disposing of the appeal without discussing the evidence on record?"

12. The specific case of the plaintiff is that the suit property originally belonged to his father and, following the death of his parents, the ownership vested solely in him. He asserts that the property includes a 3-feet wide lane on the eastern side along with the compound wall marked B-C, both of which have been continuously enjoyed by him and his predecessors. Having obtained the necessary municipal permissions, the plaintiff constructed a building on the first



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floor. He maintains that the defendant has no right over the compound wall B–C and is wrongfully attempting to erect constructions on it, thereby interfering with his peaceful possession and enjoyment of the property.

13. The defendant, however, denies the plaintiff's claim of exclusive ownership over the entire property, pointing out that the plaintiff has two sisters and a brother who also have rights therein but were not made parties to the suit, which raises the issue of non-joinder of necessary parties. Further, the defendant contends that the 3-feet lane is a common passage left open for purposes such as repairs and whitewashing of the compound wall B–C, which was constructed by his predecessor in title and therefore rightfully belongs to him. The defendant also alleges that the plaintiff has encroached upon this lane by constructing a latrine and staircase over the compound wall B–C and denies the plaintiff's right to interfere with his property rights.

14. Admittedly, the suit property measures 35 feet east to west and 35 feet north to south. Within this extent, the plaintiff has constructed a house on the western portion admeasuring about 32 feet, leaving on the eastern side an open strip of about 3 feet, which is followed further east by the disputed compound wall marked B–C. The case of the plaintiff is that this compound wall forms part of his property, lying within his 35 feet measurement. The grievance



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of the plaintiff is that the defendant, who owns the adjacent vacant site measuring 15 feet in width east to west, attempted to raise a construction encroaching upon the said compound wall. Hence, the plaintiff filed the present suit for permanent injunction restraining the defendant from interfering with his possession of the wall.

15. In order to substantiate his case, the plaintiff examined himself as P.W.1 and produced Ex.A1, the title deed dated 22.10.1921, along with other documents marked as Exs.A2 to A11. On the side of the defendant, D.W.1 was examined and Exs.B1 to B11 were marked. To assist the Court, an Advocate Commissioner was appointed, who inspected the property and filed his reports and plans marked as Exs.C1 and C2.

16. The trial Court, upon appreciation of the evidence and the Commissioner's reports, found that the compound wall B-C lies within the plaintiff's property, as the plaintiff's east-west measurement extends up to 35 feet. Since the house occupied only 32 feet, the balance of 3 feet along with the compound wall was held to belong to the plaintiff. Accordingly, the trial Court decreed the suit.



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17. However, on appeal, the first appellate Court reversed the judgment of the trial Court. The appellate Judge mainly relied on the Commissioner's report to hold that the survey stone at point B marked the end of the plaintiff's 35 feet measurement, and therefore concluded that the compound wall B–C fell within the defendant's property. The appellate Court did not, however, undertake a detailed discussion of the evidence, nor did it address the effect of the title deeds and the Commission reports in their entirety.

18. It is pertinent to note that, in order to resolve the controversy as to whether the disputed wall B–C lies within the plaintiff's 35 feet extent or within the defendant's 15 feet extent, and in order to ascertain the present position of the compound wall so as to give a quietus to the issue, this Court thought it fit to appoint another Advocate Commissioner during the pendency of the Second Appeal, considering that the earlier inspection by the Advocate Commissioner was conducted as far back as in 1988 pursuant to the order of the trial Court. The Advocate Commissioner inspected the property on notice to both parties and filed his report dated 28.06.2023. In his report and plan, the Commissioner has measured the plaintiff's property as 34.6 feet and the disputed wall B–C as 1.3 feet in width. Taken together, the extent corresponds closely with the 35 feet east–west measurement recited in the plaintiff's title deed (Ex.A1), the small



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variation being attributable to the wall thickness and physical measurement. The defendant's property was measured as 15 feet, and the total width of both properties with the wall substantially tallies with the FMB sketch showing 51 feet. Crucially, the Advocate Commissioner has categorically observed that the compound wall B-C stands as the dividing wall between the plaintiff's land and the defendant's vacant site, and that no portion of the wall falls within the defendant's 15 feet extent. The Commissioner has further noted that the wall is an old brick structure, unplastered and in a dilapidated condition, thereby negating the suggestion of recent construction by the defendant.

19. From the above, it becomes clear that the disputed wall B-C is included within the plaintiff's measurement of 35 feet east to west. The plaintiff's title deed (Ex.A1) establishes his right over the entire extent, and the Commissioner's measurements corroborate that after deducting the constructed portion of 32 feet, the balance open land and the compound wall are within the plaintiff's property. The defendant's title deed (Ex.B11) and parent documents (Exs.B1 & B2) consistently record only 15 feet east-west, and this extent begins only after the disputed wall. Thus, there is no scope to hold that the B-C wall lies within the defendant's property.



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20. The contention of the defendant that the 3 feet lane is a common passage reserved for repairs and maintenance is unsupported by any document. On the contrary, the plaintiff's use of the said space by constructing a latrine and staircase, which the defendant himself admitted, shows long-standing possession by the plaintiff. If indeed the space were common or belonged to the defendant, it was incumbent on him to institute proceedings for removal of the encroachment. No such action was ever taken. Even in the earlier suits relied upon by the defendant, the plaintiff was not a party, and no declaratory relief establishing the defendant's exclusive ownership of the B-C wall was obtained. In the absence of such proof, the defendant cannot be permitted to claim ownership over the wall.

21. It is a settled principle that an appellate Court, while reversing the findings of the trial Court, is required to reappreciate the evidence and record its independent reasons. The first appellate Court in the present case failed to do so and merely relied upon an isolated reading of the Commissioner's plan without reconciling it with the title deeds and the total measurements. Such an approach is legally unsustainable.



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22. Though normally this Court would not interfere with findings of fact in Second Appeal, where the findings of the first appellate Court are perverse and contrary to documentary evidence and the Commissioner's reports, interference is not only justified but necessary to secure the ends of justice. The two substantial questions of law framed at the time of admission, therefore, stand answered in favour of the plaintiff.

23. In view of the foregoing discussion, it is held that the compound wall B-C forms part of the plaintiff's 35 feet east-west measurement and belongs exclusively to him. The finding of the first appellate Court to the contrary is erroneous and liable to be set aside.

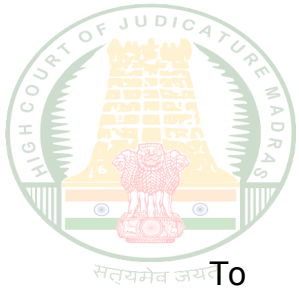
24. The Second Appeal is allowed. The judgment and decree dated 18.06.2001 passed in A.S.No.258 of 1998 by the Sub Court, Trichy, are set aside, and the judgment and decree dated 03.09.1998 passed in O.S.No.352 of 1988 by the District Munsif Court, Trichy, are restored. No order as to costs.

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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,
Trichy.
- 2.The District Munsif Court,
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P.VELMURUGAN, J.

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Pre-Delivery Judgment made in
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