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S.A.No.1176 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	15/04/2025
Delivered on	09/07/2025

CORAM:

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

S.A.No.1176 of 2003

Kadapichan : Appellant

.VS.

1.Kulanthaivelu
2.Senthil Kumar : Respondents

PRAYER: Second Appeal filed under Section 100 of Civil Procedure Code, against the judgment and decree made in A.S.No.57 of 2000, on the file of the I Additional Sub Court, Tiruchirapalli, dated 21.09.2001 reversing the Judgment and Decree made in O.S.No.289 of 1996, on the file of District Munsif, Manapparai, dated 26.01.2000.

For Appellant : Mr.K.Govindarajan
For M/s.Sarvabhauman Associates

For Respondents : No appearance

* * *



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This appeal is directed against the judgment and decree passed in Appeal Suit No.57 of 2000 by the I Additional Sub Court, Tiruchirapalli, reversing the judgment and decree in O.S.No.289 of 1996, on the file of the District Munsif Court, Manapprai.

2. The short facts of the case are as follows:

The plaintiff purchased the suit property in S.F.No.99/2, measuring 44 cents in Karappur Village, Manaparai Taluk, Trichy District, vide sale deed dated 20.08.1984 from the defendants. Since that time, he has been in effective possession and enjoyment of the property, consistently paying the required kist. The plaintiff's grievance arises from the defendants' attempts to disturb his peaceful possession, prompting him to institute the suit for declaration and injunction restraining the defendants from interfering with his enjoyment of the property.

3. Defendants 1 and 2 filed a written statement denying the allegations in the plaint, contending that they sold property in S.F.No.90 of Karappur Village and never sold the property in S.F. No. 99/2. The case of the defendants is that S.F.No.99/2 was mistakenly mentioned in the sale deed dated 20.08.1984, and therefore, they prayed for the dismissal of the suit.



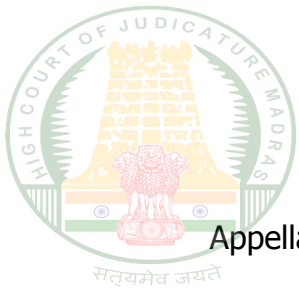
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4. Before the trial court, the plaintiff examined two witnesses, viz., P.W.1, and P.W.2, and marked 5 documents as Exs. A1 to A5. On the defendants' side, two witnesses were examined as D.W.1 and D.W.2 and the patta stands in the name of the first respondent was marked as Ex.B1. Additionally, the Commissioner's report (Ex.C1), rough sketch (Ex.C2) and Surveyor's sketch (Ex.C3) were also marked.

5. The trial court, after considering the oral and documentary evidence from both sides, held that the plaintiff was entitled to an order of interim injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the suit property and decreed the suit in favour of the plaintiff. Aggrieved by the judgment and decree passed by the trial Court, the defendants filed an appeal in A.S.No.57 of 2000 before the I Additional Subordinate Judge, Trichy. The lower appellate court reversed the trial court's findings and allowed the appeal. Hence, the plaintiff is before this Court by way of this second appeal.

6. The learned counsel for the appellant/plaintiff would contend that the respondents have not proved their claim that the defendants sold S.F.No.90 instead of S.F.No.99/2 in Karappur Village. He points out that the learned



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Appellate Judge did not fully consider evidence showing that the appellant purchased only 44 cents in S.F.No.99/2. The Commissioner's Report clearly states that S.F.No.90 is one acre with specific boundaries, which supports the argument of the appellant that the respondents sold only S.F.No.99/2. The learned counsel would further point out that the respondents have not taken any steps to correct the survey number, which makes the Ex.A1 sale deed legally binding and hence the respondents cannot introduce any oral evidence that contradicts the sale deed. However, without considering the above aspects, the learned appellate judge allowed the appeal, which warrants interference by this Court. Therefore, the learned counsel prayed that the judgment of the appellate court be set aside and the findings of the trial court be confirmed.

7. Heard the learned counsel for the appellant. Notice was served to the respondents, and the name of the counsel has been printed in the cause list; however, there was neither representation from the counsel nor from the respondents.

8. The Second Appeal was admitted on the following substantial question of law:-

"Whether the reversing judgment of the lower appellate Court is vitiated from not considering the entire evidence available on record to decide the issue in question and the



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possession of law application to the facts of the case?"

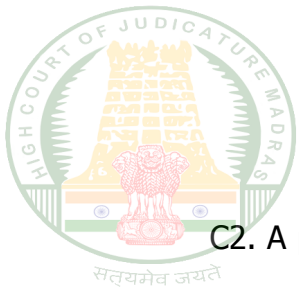
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9. In order to answer the substantial question of law, it is necessary to consider certain admitted and undisputed facts. It is not in dispute that prior to the execution of Ex.A1, both S.F.No.90 and S.F.No.99/2 belonged to the respondents/defendants. The sale deed dated 20.08.1984 (Ex.A1), executed by the respondents in favour of the appellant, is not disputed. The execution of the document, the signature of the executants, and the passing of consideration have not been denied. Furthermore, the extent of the land conveyed 44 cents and the boundaries mentioned in the sale deed are also not in dispute.

10. The core issue for consideration is limited to whether the suit property lies in S.F.No.99/2, as described in the document, or in S.F.No.90, as contended by the respondents. While the plaintiff contends that the property lies in S.F.No. 99/2, as expressly mentioned in Ex.A1, the defendants claim that the reference to S.F.No.99/2 was a mistake and that the actual land sold was situated in S.F.No.90.

11. During the pendency of the suit, an Advocate Commissioner was appointed to inspect and measure the suit property. The Commissioner submitted a report along with a rough sketch, which were marked as Exs.C1 and

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C2. A perusal of the Commissioner's Report shows that the land identified by the boundaries mentioned in Ex.A1 is physically located in S.F.No.90 and not in S.F.No.99/2. Though the warrant specifically required inspection of land in S.F.No.99/2, the Commissioner, while visiting the field with the help of local officials and village records, found that the boundaries described in Ex.A1 matched only with the physical location in S.F.No.90.

12. Importantly, this crucial aspect of the report that the land described in the sale deed falls within S.F.No.90 was not denied by the appellant. On the contrary, the appellant has consistently maintained that the land he purchased is the same land which he continues to possess and enjoy, and which corresponds with the boundaries in Ex.A1. The only dispute arises from the numerical description of the survey field.

13. The appellate Court, acting as the final court of fact, carefully analysed the oral and documentary evidence, including the testimonies of P.W.2 and D.W. 2, as well as Exs.C1 and C2. It correctly found that while Ex.A1 contains a reference to S.F.No.99/2, the property actually conveyed and now possessed by the plaintiff is physically situated in S.F.No.90. This finding was not based on mere conjecture but supported by cogent evidence.



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14. It is well settled in law that when there is a discrepancy between the survey number and the boundaries in a conveyance deed, the boundaries will prevail, particularly when the boundaries are clear, fixed, and identifiable on the ground. At this juncture, it would be appropriate to refer to the judgment of the Hon'ble Apex Court in the case of **Subhaga v. Shobha**, [(2006) 5 SCC 466] wherein it has been observed as follows:

5. We find that a commission was issued for demarcating the suit Plot No. 1301/1 Ba and the Commissioner showed the disputed area in the map prepared by him. The lower appellate court while considering the question of identification had referred to the description of the boundaries in the plaint, the admissions of one of the defendants as DW 1 and the report and plan submitted by the Commissioner. That court also noticed that the plaintiff had given specific boundaries of the suit land and it was clear from the sketch prepared by the Commissioner that the disputed constructions lay in the suit land and that it belonged to the plaintiff. This was the basis of the affirmance of the decree in favour of the plaintiff by the lower appellate court. In the second appeal, the learned Judge of the High Court, after referring to the description of the boundaries in the plaint, simply discarded the sketch prepared by the Commissioner in the presence of the parties after ascertaining the plots lying as boundaries of the suit property. It also appears to have taken the view that without a survey of the adjoining plots, it cannot definitely be said that the disputed structure lies in the plot belonging to the plaintiff, namely, Plot No. 1301/1 Ba. We think that the High Court was not justified in interfering with the finding of the lower appellate court and in discarding the identification made by the Commissioner. It must be noticed that the suit had been remanded twice for the purpose of identifying the suit property and such identification had been



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done by the Commissioner and such identification had been accepted by the trial court and the first appellate court in the light of the admissions of DW 1. The vague and general reasons given by the High Court for interfering with the decision of the first appellate court are clearly insufficient to upset the finding on identification. There was nothing to show that the Commissioner had not properly identified the suit property.

6. The High Court has also upheld the title claimed by the plaintiff over Plot No. 1301/1 Ba. Once we accept the identification made by the Commissioner as was done by the first appellate court, it is clear that the plaintiff has the right to have the disputed construction removed and the well filled up. That a property can be identified either by boundary or by any other specific description is well established. Here the attempt had been to identify the suit property with reference to the boundaries and the Commissioner has identified that property with reference to such boundaries. Even if there was any discrepancy, normally, the boundaries should prevail. There was no occasion to spin a theory that it was necessary in this suit to survey all the adjacent lands to find out whether an encroachment was made in the land belonging to the plaintiff. In this situation, we are satisfied that the judgment and decree of the High Court calls for interference. We are also satisfied that the lower appellate court was justified in affirming the decree granted in favour of the plaintiff on the pleadings and the evidence in the case. "

In the present case, the boundaries mentioned in Ex.A1 remain undisputed and unchallenged. The appellant himself does not claim possession of any property in S.F.No.99/2 beyond those boundaries. Thus, even if there was a clerical or inadvertent error in the survey number mentioned in the document, it does not vitiate the substance of the transaction when the land is identifiable by boundaries.



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15. In light of the above, the appellate court was justified in holding that the trial court erred in placing exclusive reliance on the survey number mentioned in the sale deed, without properly appreciating the oral and documentary evidence and without giving due weight to the findings in the Commissioner's Report. The appellate court correctly reversed the decree of the trial court after reappreciating the entire evidence on record, and there is no perversity or illegality in such findings.

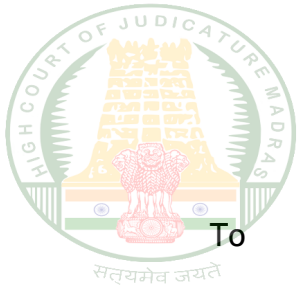
16. Therefore, this Court finds no merit in the contention of the appellant that the lower appellate court failed to consider the entire evidence or misapplied the legal principles. On the contrary, the appellate court applied the correct legal principle namely, that boundaries prevail over survey numbers and extent and based its findings on the evidence on record. Accordingly, the substantial question of law is answered in the negative, against the appellant.

17. In view of the above reasoning, the Second Appeal fails and stands dismissed. 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 I Additional Sub Court,
Tiruchirapalli.
2. The District Munsif, Manapparai



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P.VELMURUGAN, J.

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Judgment made in
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