



S.A.Nos.1257 & 1258 of 2003

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **15.07.2025**

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.Nos.1257 & 1258 of 2003

S.A.No.1257 of 2003:

Sreekrishnan

... Plaintiff/Respondent
Appellant

Vs.

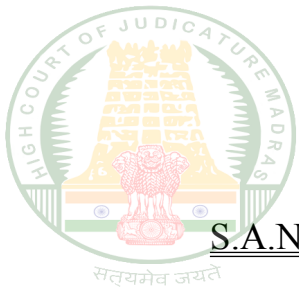
Leksmi

... Defendant/Appellant/
Respondent

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, 1908, against the decree and judgment in A.S.No.101 of 1998, dated 13.11.2002 by the Subordinate Judge, Padmanabhapuram reversing the decree and judgment in O.S.No.175 of 1996, dated 31.03.1998 by the learned District Munsif cum Judicial Magistrate at Eraniel.

For Appellant : Mr.S.Sureshkumar

For Respondent : No appearance



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S.A.No.1258 of 2003:

WEB COPY Sreekrishnan

... 4th Defendant/
4th Respondent/
Appellant

Vs.

1.Lekshmi

... Plaintiff/Appellant/
1st Respondent

2.Neelakanta Prasad (Died)

3.Madhavadhas (Died)

4.Ambika (Died)

... Defendants 1 to 3/
Respondents 1 to 3/
Respondents 2 to 4

*(Respondents 2, 3 and 4 are died. Recorded vide
memo, dated 14.07.2025.)*

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, 1908, against the judgment and decree of the learned Subordinate Judge, Padmanabhapuram, made in A.S.No.32 of 1999, dated 13.11.2002 reversing the judgement and decree, dated 31.03.1998 made in O.S.No.157 of 1996 on the file of the District Munsif cum Judicial Magistrate, Eraniel.

For Appellant : Mr.S.Sureshkumar

For R-1 : No appearance

R-2 to R-4 : Died



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COMMON JUDGMENT

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These two second appeals have been filed by the plaintiff in O.S.No.175 of 1996 and the fourth defendant in O.S.No.157 of 1996 on the file of the District Munsif cum Judicial Magistrate Court, Eraniel challenging the judgment of the First Appellate Court.

2. O.S.No.157 of 1996 was filed by one Lekshmi Amma claiming declaration of title and possession over an extent of 11.50 cents as per document, but 14.250 cents as per lie in old S.No.1561/A, new S.No. 715/5A in Eraniel Village, Kalkulam Taluk, Kanyakumari District.

3. O.S.No.175 of 1996 was filed by one Sreekrishnan seeking the relief of declaration of title and permanent injunction over an extent of 14.366 cents in old S.No.1561/C, new S.No.715/5 in Eraniel Village, Kalkulam Taluk, Kanyakumari District. The said Sreekrishnan was arrayed as the fourth defendant in O.S.No.157 of 1996.

4. According to the plaintiff in O.S.No.157 of 1996, the suit schedule properties were originally owned by one Easwara Pillai, who is the father of defendants 1 and 2. According to her, the suit schedule



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properties were allotted to the share of Easwara Pillai under Exhibit A.9 partition deed. It is the further case of the plaintiff therein that, the said Easwara Pillai had sold 46 cents in old S.No.1561/A to his sister Ragupathy Amma under Exhibit A.3, dated 15.07.1976. From the said Ragupathy Amma, the first defendant has purchased the suit schedule properties under Exhibit A.4, dated 08.05.1986. Thereafter, first defendant has sold the suit schedule properties in favour of the plaintiff on 24.02.1996 under Exhibit A.1.

5. The plaintiff in O.S.No.157 of 1996 has further contended that, she had entered into possession of the suit schedule properties by way of oral lease even prior to her purchase from the first defendant. Even though as per the records, she has purchased only 11.500 cents in S.No. 715/5A, as per lie, the actual extent is 14.250 cents. The first defendant demanded additional sale consideration and when the same was not accepted, he had started giving trouble to the plaintiff.

6. The plaintiff has further contended that, the resurvey correlation for old S.No.1561/A was originally S.No.715/4 and S.No.715/5. Subsequently, S.No.715/4 was subdivided into 715/4A, 4B and 4C and



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S.No.715/5 was subdivided into S.No.715/5A and 5B. Therefore, according to the plaintiff, the plaint schedule property comes in S.No. 715/5A and the adjacent eastern portion is S.No.715/4A.

7. According to the plaintiff, the defendants 1 and 4 had attempted to trespass into the plaint schedule property and there was an altercation on 31.03.1996. Since the fourth defendant is colluding with the first defendant and attempting to disturb the possession, the present suit has been filed.

8. The defendant in O.S.No.157 of 1996, namely, Sreekrishnan has filed O.S.No.175 of 1996 seeking declaration of title and consequential injunction for an extent of 14.366 cents in old S.No.1561/C, new S.No. 715/5A.

9. According to the plaintiff in O.S.No.157 of 1996, the plaint schedule properties were originally owned by Easwara Pillai and he got the suit schedule properties under Exhibit A.9 partition deed and after his death, it devolved upon his wife Ambika, sons Neelakanta Prasad and Madhavadas in Oodukour. While they were in exclusive possession,



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they entered into a sale agreement with the plaintiff on 08.02.1996 under Exhibit B.2. Based upon the said sale agreement, a sale deed came to be executed in favour of the plaintiff on 19.03.1996 under Exhibit B.3. According to the plaintiff, immediately possession was also handed over to him.

10. The plaintiff has further contended that, the adjacent western plot of the suit schedule property originally belonged to Easwara Pillai and his family and now, the present defendant [Lekshmi Amma] has purchased the western plot, namely, S.No.715/4A from the other family members of deceased Easwara Pillai. It is further contended by the plaintiff that, the defendant does not have any right, title or possession over the suit schedule property and an attempt was made to trespass into the suit schedule property on 07.04.1996 and hence, the present suit for declaration of title and permanent injunction.

11. The Trial Court after considering the oral and documentary evidence on either side has arrived at a finding that, the plaintiff in O.S.No.157 of 1996 [Lekshmi Amma] has purchased only in old S.No. 1561/A correlating to S.No.715/4A. The Trial Court has relied upon



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Exhibit B.1 rectification deed to arrive at a finding that, the plaintiff in O.S.No.157 of 1996 has not purchased any extent in S.No.715/5. Based upon the said findings, the suit filed by Lekshmi Amma in O.S.No.157 of 1996 was dismissed and the suit filed by Sreekrishnan in O.S.No.175 of 1996 was decreed as prayed for.

12. Challenging the above said judgment and decree of the Trial Court, Lekshmi Amma had preferred A.S.Nos.101 of 1998 and 32 of 1999 before the Sub Court, Padmanabhapuram. Both the appeals were heard together and a common judgment came to be passed. The First Appellate Court has arrived at a finding that, there is a mistake in the old survey number in the rectification deed. It further found that the case of Lekshmi Amma that she was in possession of the suit schedule properties prior to her sale deed under Exhibit A.1 is believable and proceeded to reverse the judgment and decree of the Trial Court in both the suits. The First Appellate Court allowed both the appeals. Thereby, decreed in the suit filed by Lekshmi Amma and dismissing the suit filed by Sreekrishnan. Challenging these two judgments and decrees, the present second appeals have been preferred by Sreekrishnan.



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13. At the time of admission, both the second appeals were admitted on the following substantial question of law:

"Whether the judgment of the Lower Appellate Court in both the suits is vitiated due to an error of law, namely, failure to appreciate the relevant legal materials in their proper perspective in which they ought to have been appreciated?"

14. The learned Counsel appearing for the appellant submitted that Lekshmi Amma had purchased 41.60 cents in S.No.715/4A and 11.20 cents in S.No.715/5 correlating to old S.No.1561/A under Exhibit A.1 sale deed, dated 24.02.1996. However, admitting that there is a mistake, a rectification deed was entered into between Lekshmi Amma and her vendor under Exhibit B.1, dated 16.03.1996. As per the rectification deed, S.No.715/5 was amended as 715/4A. Therefore, the entire extent of 53.10 cents has been purchased by the said Lekshmi Amma only in S.No. 715/4A and no extent was purchased in S.No.715/5 at all.

15. The learned Counsel appearing for the appellant further submitted that, the boundary recitals in Exhibit A.1 sale deed will clearly indicate that what was purchased by Lekshmi Amma, namely, S.No. 715/4A is located on the western side of S.No.715/4B. This boundary

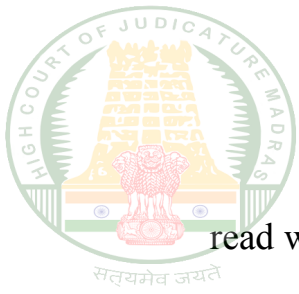


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recitals found in Exhibit A.1 were not rectified in the rectification deed, dated 16.03.1996. Therefore, what was purchased by Lekshmi Amma is only S.No.715/4A and not S.No.715/5.

16. The learned Counsel appearing for the appellant further submitted that before purchasing the property, the appellant Sreekrishnan has entered into a sale agreement with the legal heirs of Easwara Pillai under Exhibit B.2 on 08.02.1996 which is prior to Exhibit A.1 sale deed in favour of the first defendant. Under Exhibit B.2 sale agreement, it is clear that, what is intended to be sold to the appellant is S.No.715/5 having an extent of 14.366 cents. This was followed up by the sale deed, dated 19.03.1996 under Exhibit B.3. In fact, after execution of rectification deed in favour of Lekshmi Amma, sale deed was executed in favour of Sreekrishnan under Exhibit B.3. Therefore, the vendor as well as the purchaser were clear about the lie and location of the suit schedule property.

17. The learned Counsel appearing for the appellant had further contended that, the case of Lekshmi Amma relating to oral lease has no relevance whatsoever in a suit for declaration of title. When Exhibit A.1



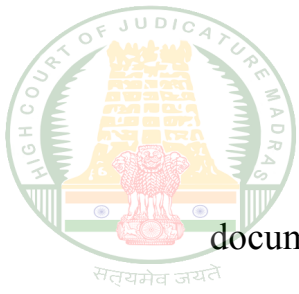
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read with Exhibit B.1 clearly indicate that Lekshmi Amma had purchased only S.No.715/4A, the prayer of Lekshmi Amma seeking declaration of title for S.No.715/5A ought not to have been decreed. The First Appellate Court has not properly appreciated the recitals in Exhibit A.1, Exhibit B.1, Exhibit B.2 and Exhibit B.3 and has erroneously decreed the suit of Lekshmi Amma and dismissed the suit of the appellant. Hence, he prayed for allowing the appeals.

18. Though the respondents have been served and they are represented through a Counsel, for the past several hearings there is no representation on the side of the respondents. This Court is constrained to pass orders on merits on the basis of the submissions made by the learned Counsel appearing for the appellant.

19. The plaintiff in O.S.No.157 of 1996 [Lekshmi Amma] had claimed title to an extent of 14.250 cents in S.No.715/5A correlating to old S.No.1561/A. She has purchased the suit schedule properties under Exhibit A.1, dated 24.02.1996. A perusal of Exhibit A.1 reveals that the said Lekshmi Amma has purchased 41.60 cents in S.No.715/4A and 11.5 cents in S.No.715/5, totalling an extent of 53.10 cents. As per the



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document, the old survey number is 1561/A. However, a rectification deed came to be entered into between Lekshmi Amma and her vendors under Exhibit B.1 on 16.03.1996, wherein, S.No.715/5 was deleted and it was substituted with S.No.715/4A. Therefore, it is clear that the plaintiff Lekshmi Amma had not purchased any extent in S.No.715/5. However, suppressing Exhibit B.1 rectification deed, Lekshmi Amma had filed O.S.No.157 of 1996 on 02.04.1996 alleging that her vendor and the present appellant are disturbing her possession.

20. The First Appellate Court has not properly considered the purport of Exhibit B.1 rectification deed executed by the first defendant in favour of the plaintiff, wherein, S.No.715/5 has been deleted and substituted with S.No.715/4A. A perusal of the Commissioner's report and plan would clearly indicate that, S.No.715/4A is located to the west of S.No.715/4B. This location is confirmed in the boundary recitals of Exhibit A.1 and Exhibit B.1. When Lekshmi Amma has purchased a property which is located to the west of S.No.715/4A, now she is attempting to make a claim over a property which is located north of S.No.715/4B. Therefore, as per the survey number in Exhibit B.1 and as per the boundary recitals in Exhibit A.1 and Exhibit B.1, what was



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purchased by Lekshmi Amma is only S.No.715/4A and not S.No.715/5.

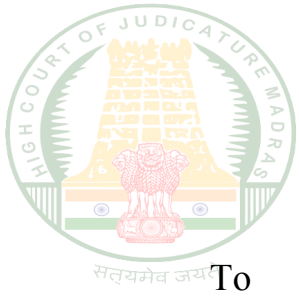
On the other hand, the appellant Sreekrishnan has established the fact that he has purchased S.No.715/5A under Exhibit B.2 sale agreement and Exhibit B.3 sale deed. The boundary recitals in Exhibit B.3 sale deed clearly matches with the Commissioner's report and plan and also with Exhibit A.15 plan which was marked by Lekshmi Amma before the First Appellate Court. Therefore, viewed from any angle, the First Appellate Court was not right in granting a decree in favour of the respondents with regard to S.No.715/5A.

21. In view of the above said deliberations, the substantial question of law is answered in favour of the appellant. The second appeals stand allowed. The judgments and decrees of the First Appellate Court in both the first appeals are set aside. The judgments and decrees of the Trial Court in both the suits are restored. There shall be no order as to costs.

15.07.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

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To
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- 1.The Subordinate Judge,
Padmanabhapuram.
- 2.The District Munsif cum Judicial Magistrate,
Eraniel.
- 3.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
S.A.Nos.1257 & 1258 of 2003

Dated:
15.07.2025