



S.A.No.789 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.No.789 of 2003

1.Ramakrishnan

2.Muthunayagom

3.Sukumaran

....Appellants/Appellants/Plaintiffs

-VS-

1.Chellamuthu

2.Selvanayagam

3.Lakshmanan

4.Thanislas

5.Chandrabose

... Respondents/Respondents 1,2 and 4 to 6/
Defendants 1,2 and 4 to 6

PRAYER : Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree dated 18.10.2001 made by the Second Additional Subordinate Judge, Kuzhithurai Camp in A.S.No.14 of 1997 on file, confirming the judgment and decree dated 31.10.1996 made in O.S.No.392 of 1985 on the file of the Additional District Munsif, Kuzhithurai.

For Appellants : Mr.K.N.Thampi

For Respondents : Mr.K.Ramaprabha
For M/s.K.Sreekumaran Nair for R2

: No appearance for R4 & R5

: R1 & R3 -dismissed as abated



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JUDGMENT

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The plaintiffs in O.S.No.392 of 1985 on the file of the First Additional District Munsif, Kuzhithurai have filed the present second appeal challenging the concurrent findings of the Courts below.

2. According to the plaint averments, the plaintiffs' father namely Ponnann Nadar was allotted 65 cents out of 1 Acre and 30 cents in Old Survey No. 2747/1 (Resurvey No.47/2) in partition under Exhibit A1 dated 11.04.1948. It is the further case of the plaintiffs that on the same day of partition, the father of the plaintiffs had executed a registered sale deed in favour of the first defendant under Exhibit A3, for an extent of 15 cents which is on the southern most portion of 65 cents. The first defendant has executed a registered sale deed in favour of the second defendant under Exhibit B3 on 28.07.1982. Therefore, the second defendant is entitled to only 15 cents. He had demolished the bund which is on the southern boundary of the plaintiffs' property. Therefore, the present suit has been filed for demarcation of boundary on the southern side.

3. The defendants have contended that under Exhibit B1 dated 15.10.1979 when the plaintiffs have partitioned the suit schedule property among themselves, it is shown as if the plaintiffs' family owned 62 cents. On the other hand, the plaintiffs' father has already sold 15 cents and out of the balance 50 cents, 3 cents has been acquired by the Government. Therefore, the plaintiffs



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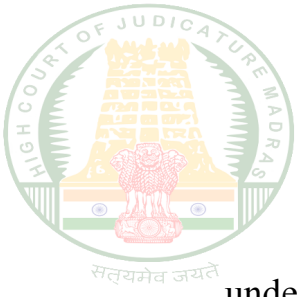
are entitled to just 47 cents in Old Survey No.2747/1. On the other hand, claiming 62 cents based upon Exhibit B1 is illegal. Therefore, the prayer in the suit cannot be granted.

4.It was further contended by the defendants that if plaintiffs claim more extent from the above the said survey number then the second defendant would be entitled to 19 cents.

5.The trial Court as well as the Appellate Court have proceeded to dismiss the suit primarily relying upon Exhibit B1 and the contention of the defendants. After alienating the property in favour of the first defendant and the acquisition by the Government, the plaintiffs' family would be entitled to just 47 cents in Old Survey No.2747/1. However, they claim 62 cents under Exhibit B1 partition deed. The defendants claim 19 cents even though they have purchased just 15 cents under Exhibit A3 and B3. When both the parties claim more extent than the extent found in the document, the trial Court as well as the Appellate Court have proceeded to dismiss the suit for demarcation of boundaries. Challenging the concurrent findings, the present second appeal has been filed.

6.At the time of admission, the following substantial questions of law have been framed.

a)Whether Exhibit B3 is void ab initio, since it had come to be registered in the State of Kerala, when no part of the property comprised therein is situated in that State?



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b)When a specific extent of 15 cents alone have been conveyed under Ex.A.3 could the buyer under Ex.A3, enlarge the extent of land purchased by him by giving the measurement of all the four boundaries in Ex.B3, the sale deed?

7.According to the learned counsel for the appellants, Exhibit A3 has been registered in Parasala and it is a void document. No property is located in Parasala and therefore, the said document ought not to have been relied upon by the Courts below for dismissing the suit filed by the plaintiffs. He had further contended that when specific extent has been conveyed under Exhibit A3, the defendants cannot claim more extent than what is found under Exhibit A3.

8.The learned counsel for the appellants had further contended that the defendants traced their title only from the plaintiffs. Therefore, there is no dispute whatsoever with regard to the extent of property that was sold in favour of the defendants. In such circumstances, the plaintiffs have prayed for demarcation of remaining portion in the suit schedule property excluding 15 cents which is allotted on the southern side of Old Survey No.2747/1. The Courts have been carried away by the fact that the plaintiffs as well as the defendants are claiming more extent than what is found under the document.

9.Per contra, the learned counsel appearing for the respondent/second defendant had submitted that the plaintiffs are claiming more extent than under Exhibit A1 partition deed. Under Exhibit A1 partition deed only an extent of 65

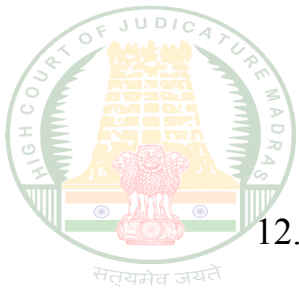


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cents was allotted. Out of 65 cents, 15 cents was already sold to the first defendant from whom the second defendant has been purchased. Out of 50 cents, 3 cents has been acquired by the Government for formation of channel. In such circumstances, the plaintiffs cannot claim 62 cents in Old Survey No. 2747/1. Therefore, for demarcation of the southern portion excluding 15 cents in the the southern boundary is not possible unless the plaintiffs had approached the Court with clean hands. Hence, the defendants have prayed for confirming the judgment and decree of the Courts below.

10. Heard the learned counsel appearing on either side and perused the material records.

11. A perusal of the judgment and decree of the Courts below reveals that both the Courts below have non-suited the plaintiffs solely on the assumption that the plaintiffs are claiming more extent than what is due to them under Exhibit A1. A perusal of the plaint reveals that the plaintiffs have specifically contended that after excluding 15 cents of land that was sold in favour of the first defendant, the rest of the land belongs to the plaintiffs. The plaintiffs have prayed for demarcation of the suit property excluding 15 cents of their southern boundary on the ground that 15 cents has been sold by the plaintiffs' father in favour of the first defendant.



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12.A perusal of the records further reveal that the plaintiffs' father has sold only 15 cents in favour of the first defendant under Exhibit A1 on 11.04.1948. The first defendant in turn has sold only 15 cents in favour of the second defendant under Exhibit B3 on 28.07.1982. A perusal of the southern boundary under Exhibit B3 reveals the name of the first plaintiff. Therefore, it is clear that on the northern side of the property of the second defendant, the plaintiffs' property is located. Whatever may be the extent of the property, excluding 15 cents of the second defendant's property on the southern side, the boundary can be fixed. There cannot be any dispute between the parties with regard to the fixation of southern boundary after allotting 15 cents in Old Survey No.4727/1.

13.The second substantial question of law is answered in favour of the appellants. The first substantial question of law is not necessary for disposal of this second appeal.

14.In view of the above said deliberations, the second appeal stands allowed and there shall be a decree for demarcation of the remaining portion in the suit property excluding southern 15 cents sold to the first defendant. There shall be a decree for permanent injunction restraining the defendants from



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interfering with the peaceful possession of the plaintiffs excluding southern 15 cents of the suit schedule property. No costs.

26.06.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes/No
msa

To

1. The II Additional Subordinate Judge,
Kuzhithurai Camp

2.The I Additional District Munsif,
Kuzhithurai

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR,J.

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