



S.A.Nos.128 and 131 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.Nos.128 and 131 of 2020
and C.M.P.Nos.2744 and 2807 of 2020

S.A.Nos.128 of 2020:

- 1.Govindasamy
- 2.Mechari
- 3.Kaliappan
- 4.Murugan

... Appellants

VS.

- 1.Rajini
- 2.Sekar
- 3.The District Revenue Officer,
Krishnagiri
- 4.The Tahsildar,
Krishnagiri.

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Common judgment and decree passed in A.S.No.40 of 2017 dated 30.08.2019 on the file of the Principal Subordinate Judge, Krishnagiri reversing the judgment and decree dated 31.08.2015 in O.S.No.154 of 2008 on the file of the District Munsif, Krishnagiri.



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For Appellants : Mr.V.Rameshvel

For Respondents : Mr.G.Magesh Kumar
for M/s.Mukund R.Pandian for R1 & R2
Mr.N.Muthuvel
Government Advocate (CS) for R3 & R4

S.A.Nos.131 of 2020:

1.Govindasamy
2.Mechari
3.Kaliappan
4.Murugan

... Appellants

vs.

1.Pachaiyappan
2.Rajini
3.Sekar

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the Common judgment and decree passed in A.S.No.10 of 2017 dated 30.08.2019 on the file of the Principal Subordinate Judge, Krishnagiri in reversing the judgment and decree dated 31.08.2015 in O.S.No.111 of 2009 on the file of the District Munsif, Krishnagiri is liable to be set aside and the suit in O.S.No.111 of 2009 is to be decreed in all aspects.

For Appellants : Mr.V.Rameshvel

For Respondents : Mr.G.Magesh Kumar
for M/s.Mukund R.Pandian for R2 & R3
No appearance for R1



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J U D G M E N T

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S.A.No.128 of 2020 is arising out of suit for declaration and injunction filed by the respondents 1 and 2, in respect of 2.62 acres in S.No.167/1A. The respondent's suit for declaration and injunction was decreed by the trial Court, only to the extent of four boundaries mentioned under Ex.A3. Aggrieved by the same, the appellants filed an appeal in A.S.No.40 of 2017. The First Appellate Court, while dismissing the appeal modified the judgment and decree passed by the trial Court and decreed the appeal. Aggrieved by the same, S.A.No.128 of 2020 has been filed.

2. S.A.No.131 of 2020 is arising out of suit for declaration and injunction filed by the appellants in respect of 0.54 cents in S.No.167/1A and also two other items of properties in S.Nos.167/2 and 166/4. Since there was no dispute between the parties in respect of items 2 and 3, the trial Court decreed the suit as far as items 2 and 3 are concerned. The suit was dismissed insofar as item one is concerned. At the time of dismissing the suit, the trial Court also observed that if the suit property does not come within the property covered by Ex.A3 then the plaintiffs are entitled to claim



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title over the suit property, unless they have lost their title. Aggrieved by the same, the appellants filed the appeal. The appellate Court dismissed the appeal and set aside the decree passed by the trial Court.

3. The suit in O.S.No.154 of 2008 filed by the respondents 1 and 2 is anterior in time and therefore, the evidence was recorded in that suit, in view of the same, the parties are referred to as per their ranking in O.S.No.154 of 2008.

4. The plaintiffs filed O.S.No.154 of 2008 seeking declaration of title and permanent injunction in respect of 2.62 acres in S.No.167/1A in Sajjalapalli Village, Junjupalli Tharraf, Krishnagiri Taluk. They also sought for permanent injunction restraining the 6th defendant/Tahsildar from effecting a separate sub division in the suit property to the extent of 54 cents out of total extent of 2.62 acres. They also sought for a declaration that the order passed by the 5th respondent/District Revenue Officer, dated 31.09.2006 was not binding on the Court. It was the case of the plaintiffs that the suit property originally belonged to one Govindasamy, after his death, the patta was transferred in the name of his wife Lakshmi Ammal, who died on 09.07.2003 and during her lifetime, she executed a Will in



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favour of the plaintiffs, who are her grandsons bequeathing the suit properties in their favour. The defendants, who are all the owners of the neighbouring lands on the southern side of the suit properties attempted to destroy the ridge dividing the suit property and their property. On enquiry, the plaintiffs acquired knowledge that the defendants obtained order for inclusion of their names in patta No.1176 along with the name of plaintiffs' grandmother Lakshmi Ammal. According to the plaintiffs, the defendants' father Chinnamunigan purchased 5 acres of land under registered Sale Deed dated 17.04.1957 from one Sippoy Munisamy and the said property is situated in the southern side of the suit property. Later, during settlement proceedings patta was issued in favour of defendants for 7.08 acres including 2.08 acres belonged to the plaintiffs grandmother Lakshmi Ammal. Therefore, in order to purchase peace, the plaintiffs' grandfather Sippoy Govindasamy was forced to purchase 2.08 acres under registered sale deed dated 08.06.1959 from Chinnamunigan father of the defendants.

5. It is also stated by the plaintiffs, the total extent of the suit property in S.No.167/1A in 1.06.0 hectares =2.62 acres. Apart from 2.08 acres purchased by the plaintiffs from Chinnamunigan, their grandfather said to



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have been in possession and enjoyment of 54 cents. Therefore, the instant suit has been laid claiming right over 2.62 acres in S.No.167/1A.

6. The suit was resisted by the appellants/defendants on the ground that the father of the defendants have got total extent of 2.62 acres in the suit survey number. It was the case of the appellants that after selling 2.08 acres to the plaintiffs, they retained 54 cents and has been in possession and enjoyment of the same. It was also claimed by the defendants that the 54 cents situated on the northern side of survey number and 2.08 acres purchased by the plaintiffs situated on the southern side. On these pleadings, the defendants sought for dismissal of the suit.

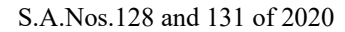
7. The appellants/defendants on their part filed O.S.No.111 of 2009 seeking declaration and injunction in respect of above mentioned 54 cents in S.No.167/1A, apart from two other items by reiterating their pleadings in O.S.No.154 of 2008. The said suit was resisted by the respondents/plaintiffs by reiterating their plea found in the plaint in O.S.No.154 of 2008.



8. Since the issues involved in both the suits are inextricably linked with each other, there was a joint trial and evidence was recorded in the suit filed by the respondents/plaintiffs.

9. On behalf of the plaintiffs, both the plaintiffs were examined as PW1 and PW.2. On their behalf, 14 documents were marked as Exs.A1 to A14. On behalf of the defendants, the 2nd defendant was examined as DW.1 and 9 documents were marked as Exs.B1 to B9.

10. The trial Court on consideration of oral and documentary evidence available on record, came to the conclusion that the plaintiffs are entitled to declaration of title only in respect of the property covered by four boundaries in Ex.A3. As a consequence, the suit filed by plaintiffs [respondents herein] was decreed to the extent of property covered by four boundaries in Ex.A3. The decree for declaration and injunction granted to that extent. The suit filed by the appellants/defendants in O.S.No.111 of 2009 was dismissed in respect of item No.1. Since there was no dispute as regarding items 2 and 3, the appellant's suit was decreed in respect of item Nos.2 and 3. We are not concerned with item Nos.2 and 3 described in O.S.No.111 of 2009 in this second appeal.





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*scope of the appeal filed by the appellants with regard to the
unchallenged portion of the decree, in the absence of any
appeal filed by the respondents?*

13. It is seen from Ex.B2 -'A' register that the total extent of land in S.No.167/1 was mentioned as 7.08 acres. The entire extent of land was originally registered in the name of Chinnamunigan. Ex.A11 is a registered sale deed executed in favour of Chinnamunigan, he purchased five acres of land in Old Survey No.25, which is equivalent to S.No.167/1B. Ex.A3 is a sale deed executed by appellants/defendants' father Chinnamunigan in favour of respondents/plaintiffs' grandfather Sippoy Govindasamy under sale deed dated 08.06.1959. A perusal of the same would indicate Chinnamunigan sold 2.08 acres in S.No.167/1. Therefore, it is clear, the respondents/plaintiffs' grandfather Sippoy Govindasamy purchased only 2.08 acres from appellants/defendant's father under Ex.A3. However, they claim right over 2.62 acres. The respondents/plaintiffs have not produced any document to show that they have right over more than 2.08 acres purchased by them under Ex.A3. Likewise, the appellants/defendant's father Chinnamunigan purchased 5 acres from Sippoy Govindasamy and sold 2.08 acres to respondents/plaintiffs grandfather Sippoy Govindasamy.



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The property measuring 2.08 acres in S.No.167/1 situated on northern side of the suit property was sold by appellants/defendants father in favour of respondents/plaintiffs' grandfather under Ex.A3 as seen from boundary description thereon. It is also seen in Ex.A3, southern boundary of property sold under Ex.A3 has been mentioned as property of purchaser as well as seller under the said document. Hence, it appears apart from 2.08 acres purchased under Ex.A3, the purchaser Sippoy Govindasamy had some property on the southern side. However, the appellants/defendants claim right over additional 54 cents in S.No.167/1A. If the extent of the property under Exs.A3 and A11 are taken together, the total extent is 7.08 acres which is reflected as total extent of the property in S.No.167/1 as per the old 'A' register. Therefore, the excess extent of 54 cents claimed by plaintiffs and defendants may not be available on ground. However, both the Courts below have not taken any step to measure the property with reference to the title document by appointing Advocate Commissioner. In the light of Exs.A3, A11 and A14, there is a serious dispute with regard to the availability of extent of properties claimed by respective parties. The Court below, first of all should have measured the suit property with reference to the title documents of the parties namely Exs.A3, A11 and A14 and also with reference to the revenue document, to come to the conclusion whether



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the properties with an extent as claimed by the respective parties are available on ground. In the absence of said exercise the dispute between the parties cannot be resolved.

14. However, the First Appellate Court while dismissing the appeal filed by the appellants also interfered with the finding of the trial Court and modified the decree passed by the trial Court. The respondents herein are not aggrieved by the decree passed by the trial Court and have not filed any appeal. Notwithstanding the same, the First Appellate Court while dismissing the appeal interfered with the finding of the trial Court and modified the decree passed by the trial Court. The same is not acceptable to this Court. The Appellate Court is not justified in passing a decree in favour of the respondents/plaintiffs in O.S.No.154 of 2008 without a formal appeal filed by them, especially while dismissing first appeal. Order 41 Rule 33 can be resorted to only in cases, where the First Appellate Court comes to the conclusion, while allowing appeal by setting aside portion of the decree appealed against that unchallenged portion cannot be reconciled with modified decree to be passed by Appellate Court by allowing appeal. In this regard reference may be had to ***Nirmala Bala Ghose and another Vs. Balai Chand Ghose*** reported in ***AIR 1965 SC 1874=1965 SCC OnLine SC 281***.



The relevant observation reads as follows:

The rule is undoubtedly expressed in terms which are wide, but it has to be applied with discretion, and to cases where interference in favour of the appellant necessitates interference also with a decree which has by acceptance or acquiescence become final so as to enable the Court to adjust the rights of the parties. Where in an appeal the Court reaches a conclusion which is inconsistent with the opinion of the Court appealed from and in adjusting the right claimed by the appellant it is necessary to grant relief to a person who has not appealed, the power conferred by Order 41 Rule 33 may properly be invoke. The rule however does not confer an unrestricted right to re-open decrees which have become final merely because the appellate Court does not agree with the opinion of the Court appealed from.

However, while dismissing first appeal, power under Order 41 Rule 33 cannot be invoked and unchallenged portion cannot be modified. Therefore, the questions of law framed at the time of admission were answered in favour of appellants.

15. In view of the discussion made earlier, there is a serious dispute with regard to the availability of property with an extent as claimed by respective parties. This Court already came to the conclusion that dispute cannot be resolved without measurement of the suit property, by the



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Advocate Commissioner with reference to the title deeds and other documents of the respective parties. Therefore, in view of the conclusion reached by this Court on the question of law framed at the time of admission by this Court, I am inclined to set aside the judgment and decree passed by the trial Court as well as First Appellate Court and the matter is remanded back to the file of trial Court with a direction to the trial Court to appoint an Advocate Commissioner to measure the suit property with reference to the title documents of the respective parties and necessary revenue records. Both the parties shall lead further evidence and then the suit shall be disposed of on its own merits.

16. In Nutshell:

- (i) The Second Appeals are allowed. The matter is remanded to the file of trial Court with directions to dispose of suit afresh as indicated above.
- (ii) Consequently, the connected miscellaneous petitions are closed.
- (iii) In the facts and circumstances of the case, there will be no order as to costs.

03.03.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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S.SOUNTHAR, J.

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To

1.The Principal Subordinate Judge,
Krishnagiri.

2.The District Munsiff,
Krishnagiri

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