



S.A.No.544 of 2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.01.2026

Pronounced on : 20.02.2026

CORAM:

THE HON'BLE MR.JUSTICE **V.LAKSHMINARAYANAN**

S.A.No.544 of 2000

1.Lakshmi Ammal
2.Gopal Mudaliar
3.Ramamoorthy
4.Dhanasundari
5.Jayanthi
6.Easwari

... Appellants

Vs.

S.Bakthavatsalu Naidu

... Respondent

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure against the judgement and decree of the learned Principal District Judge, Chengalpet, dated 14.10.1999 in A.S.No.47 of 1999, in reversing the Judgment and decree of the learned District Munsif, Chengalpet dated 30.03.1999 passed in O.S.No.126 of 1985.

For Appellants : Mr.R.V.Venkatesan

For Respondent : Mr.M.Ganesan

JUDGMENT

The present second appeal arises against the judgment and decree of the court of the learned Principal District Judge, Chengalpet, in Civil Regular Appeal Suit No.47 of 1999 dated



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14.10.1999 in reversing the judgment and decree of the learned District Munsif at Chengalpet in O.S.No.126 of 1985 dated 30.03.1999 and thereby, decreeing the suit for declaration of title, recovery of possession of B schedule mentioned property and also granting of injunction restraining the defendants from putting up any constructions over the B schedule and for costs.

2. The appellants before this Court are the defendants in the suit. For the sake of convenience, the parties shall be referred as per their ranks in the suit.

Case of the plaintiff is as follows:

3. The plaintiff claimed that he is the absolute owner of the A schedule mentioned property. B schedule is on eastern portion of the A schedule. He claimed that he purchased A schedule property from one Savithri Ammal by way of a registered sale deed dated 29.07.1977. Savithri Ammal had purchased the said property from one Venkatathri on 24.04.1965. Venkatathri had acquired title to the property by virtue of a partition deed, between his father, himself and his siblings. The partition deed is a registered document dated 24.06.1951. The plaintiff alleged that after the purchase, he



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had put up a rice mill over the portion of A schedule property. B schedule property was kept vacant by him.

4. On 20.11.1984, the defendants trespassed into the B schedule property and raised paddy. Upon coming to know of this fact, the plaintiff protested against such encroachments. The defendants agreed to vacate and hand over possession after harvesting paddy. After the harvest, when the plaintiff sought the defendants to vacate and hand over possession, the defendants refused the request of the plaintiff and threatened that they were going to put up a touring talkies over the B schedule property. He pleaded that the defendants have no right, title or interest over the B schedule property. Since the defendants had denied the title of the plaintiff, he came forth with the suit for the aforesaid relief. In addition to the claim of title by way of purchase dated 29.07.1977, the plaintiff also pleaded that he and his predecessors-in-title had crystallised a right in them by virtue of adverse possession.

5. Summons were issued in the suit. The defendants entered appearance. Defendants 1 and 2 are husband and wife.



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They filed a detailed written statement. According to the written statement, they pleaded as follows:

The plaintiff is not an exclusive owner of the A schedule mentioned property. They denied the tracing of title by the plaintiff. They pleaded that an extent of 65 feet East-West and 387 feet North-South in S.No.335/3 of Payanoor Village, Chengalpet Taluk belonged to one Thangathammal and Namasivaya Mudaliar. These persons had sold the property in favour of Manicka Mudaliar on 11.12.1919. The said Manicka Mudaliar was the father of the second defendant, viz., Varadharaja Mudaliar. Apart from him, Manicka Mudaliar had two other sons namely Narayanasamy Mudaliar and Venkatathri Mudaliar.

6. In the partition executed between Manicka Mudaliar and his three sons, the extent of 65 feet East-West and 129 feet North-South was allotted to each of the sons. The southern most portion of the property was allotted to the second defendant, the northern most portion of the property was allotted to Venkatathri Mudaliar and the middle portion was allotted to Narayanasamy Mudaliar. On the date of presentation of the plaint, Narayanasamy Mudaliar was no more. The defendants urged that post partition, each of the



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brothers enjoyed their shares absolutely and exclusively in their own right and title. In order to demarcate the property to which each brother was entitled, ridges had been formed and boundaries were fixed.

7. Though initially the defendants denied the sale in favour of the plaintiff, in the latter portion of the written statement, they conceded that the plaintiff had purchased the northern most share of Venkatathri and added that the plaintiff had put up the compound wall on all four sides of the property so purchased. They conceded that the plaintiff had raised rice mill in the property and that the rice mill, the tubs, the well and drying yard were all within the compound wall raised by the plaintiff. They urged that the plaintiff and their predecessors were only entitled to 65 feet x 129 feet and the claim of the plaintiff above this extent was untenable.

8. The defendants urged that the plaintiff was trying to take advantage of the wrong description of the measurement given in the sale deed. The first defendant urged that she had purchased an extent of 1 acre and 12 cents adjacent to the plaintiff's property on the East from one Swaminatha Aachari and others, by way of a



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registered sale deed dated 19.05.1973. She added that adjacent to the plaintiff's property, on the south, is the property belonging to one Arumugha Maistry, who had purchased 65 feet East-West and 74 feet North-South. After such purchase, Arumugha Maistry put up a live fence on the western side of the property, and on the other three sides, fences were put up by the plaintiff and the first defendant.

9. It was also pleaded, that in exercise of ownership, the second defendant had mortgaged the property to an extent of 65 feet x 129 feet in favour of Madurantagam Co-operative Housing Society. The first defendant pleaded that she is cultivating 1 acre 12 cents purchased by her, by raising paddy, chilly and ragi. On the southern side of Arumugha Maistry's Property, the first defendant had put up barbed wire fencing after planting granite stones. They added that the entire property on the southern side of Arumugha Maistry's land has been enjoyed by both the defendants in their own right and title. They had put up a shed for a motor pump set and installed electric motor over pump set. They had also enjoyed the trees standing therein and had constructed tubs for feeding cattle. They added that the defendants and their predecessor-in-title had



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encroached upon gramamatham site abutting the property on the south and were using it as a pathway. For the purpose of agriculture, they had also formed a water channel in S.No.335/5. They also, pleaded that they are entitled to B schedule property by virtue of adverse possession. They denied the right, title or interest of the plaintiff over the property and added that the suit is a speculative and vexatious one. On these pleadings, they sought that the suit to be dismissed with costs.

10. On the basis of these pleadings, the learned Trial Judge framed the following issues:

- “1. Whether the Plaintiff is entitled for suit B Schedule Property?*
- 2. Whether the Plaintiff is entitled for recovery of possession?*
- 3. Whether the Plaintiff is entitled for permanent injunction as prayed for?*
- 4. To what relief?”*

11. Pending the suit, an Advocate Commissioner was appointed in I.A.No.1331 of 1985. A warrant was issued on



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15.02.1986 to inspect the suit survey number, to note down the extent along with the physical features and to submit a report.

Mr.A.VijayaKumar, Advocate, Chengalpet also inspected the property and submitted a report together with a plan.

12. On the side of the plaintiff, he examined himself as PW1. He marked Ex.A1 to Ex.A5. On the side of the defendants, the third defendant entered the witness box and examined himself as DW1. The Advocate Commissioner was examined as DW2. The defendants marked Ex.B1 to Ex.B7. The report and the plan of the Advocate Commissioner were marked as Ex.C1 and Ex.C2.

13. On the basis of the oral and documentary evidences, the learned Trial Judge came to a conclusion that as the alienation by Thangathammal in favour of Manicka Mudaliar was only to an extent of 65 feet x 387 feet, the claim of the plaintiff, on the basis of the partition deed, which shows that the brothers are entitled to 81 feet x 145 feet, is erroneous. She found that the plaintiff had not proved his claim as he had not examined Savithri Ammal, his vendor. She relied upon the Advocate Commissioner's report to



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conclude that the plaintiff is not entitled to an area more than 65 feet x 145 feet and consequently, dismissed the suit with costs.

14. Aggrieved by the same, the plaintiff preferred a regular appeal before the learned Principal District Judge at Chengalpet. This appeal was received as A.S.No.47 of 1999. The learned Principal District Judge, allowed the appeal and decreed the suit as prayed for. He did so after holding that though the purchase made by Manicka Mudaliar under Ex.B1 was only for 65 feet x 387 feet, as Manicka Mudaliar was the headman of the Village and the property was a gramamatham, it was possible that he would have enjoyed 81 feet East - West. To arrive at this conclusion, he found that as the partition deed entered into between Manicka Mudaliar and his sons had not been questioned, the case of the plaintiff was probabale. He also referred to Ex.A4, the sale deed executed by Narayanaswamy Mudaliar in favour of one Chinnakannu, after the partition deed, on 14.09.1983, which showed an extent of 85 feet as the East - West measurement. He also relied upon Ex.A5, being a sale deed in favour of Muniammal, the wife of Arumuga Maistry with respect to this property, which also showed the East - West measurement as 85 feet. He came to the conclusion that the plaintiff's plea on



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adverse possession does not arise, as he had proved his title. He also held the compound wall put up by the plaintiff ought to be treated as a preventive wall to prevent dust from entering the rice mill and therefore, the plaintiff will be entitled to a decree as prayed for.

15. Aggrieved by the same, the defendants have approached this court by way of this second appeal. This court entertained the second appeal and framed the following substantial questions of law:

"a) Whether the finding of the Appellate Court based on a point for consideration wrongly framed by it regarding adverse possession is sustainable in law?

b) Whether the decision of the Appellate Court which omitted to consider material documents and evidence well considered by the trial court is valid and correct?

c) Whether the decision of the appellate Court based on the wrong evidence appreciation of evidence and the finding recorded by it is demonstrably incorrect on the face of document and evidence produced before it and whether it is sustainable in law?



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d) Whether the appellate court is not correct in calculating the time of limitation from 1965 onwards, the date of purchase by the plaintiff's vendor?

16. In and by way of judgment and decree dated 02.06.2020, this court had dismissed the second appeal. The defendants preferred a further appeal to the Supreme Court by way of a Special Leave. The Supreme Court entertained the petition in SLP(C).No. 10523 of 2021. By an order dated 04.12.2024, the Supreme Court granted leave, allowed the appeal and restored the second appeal back on to the file of this Court.

17. I heard Mr.R.V.Venkatesan for the appellants/defendants and Mr.Ganesan for the respondent/plaintiff.

18. After hearing the counsel, the questions of law have been re-cast by this court as follows:

“(i) When the purchase by Manicka Mudaliar from Thangathammal was to an extent of 387 feet North-South by 65 feet East – West, could Manicka



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Mudaliar and his sons have enlarged the area of the property through the partition deed?

(ii) Does not the principle, *Nemo dat quod non habet* apply to the facts of the case?

(iii) Was the lower appellate court correct in treating Ex.A2 is the title deed for the property, when Ex.B1, the sale deed executed between Mancika Mudaliar and Thangathammal was available before this Court?

(iv) Is not the judgment of the lower appellate court vitiated as the conclusion arrived at by the learned Judge were based on surmises and conjunctures?”

19. Mr.R.V.Venkatesan, after narrating the facts, urged that Thangathammal, the original owner was entitled only to 387 feet North - South and 65 feet East - West. It was this property that she had alienated in favour of Manicka Mudaliar, the father of the second defendant (the predecessor-in-title of the plaintiff), Venkatathri. He pointed out that when the partition deed was entered into between the parties, the extent of 65 feet x 129 feet, which each of the brothers were entitled to, was wrongly mentioned in the partition document as 85 feet x 145 feet. Further, he pointed that the plaintiff had not examined his vendor, Savithri Ammal to



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substantiate his case that she was in possession and enjoyment of an extent of 85 feet x 145 feet.

20. Mr.R.V.Venkatesan added that the plaintiff, knowing that he was entitled only to 65 feet East – West, had constructed a compound wall comprising this extent alone. He relied on the commissioner's report and place to this end. He stated that the lower appellate court fell in error in assuming that Manicka Mudaliar would have been in possession and enjoyment of a larger extent than what he had purchased from Thangathammal. He pointed out that the brothers of the plaintiff, namely, Narayanaswamy Mudaliar and Venkatathri, had alienated their portions to third parties and that the East - West measurements had been maintained as 65 feet right from the beginning, as on one side of the property there is a road, as would clear from the Advocate Commissioner's report.

21. Mr.R.V.Venkatesan urged that the partition deed alone cannot be taken as a document of title, as done by the lower appellate court and that, the plaintiff cannot claim a higher right than what his predecessor was entitled to. Hence, he pleaded that



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the lower appellate court had proceeded on the basis of surmises and presumptions and hence, requires to be interfered with in this appeal.

22. Per contra, Mr.Ganesan argued that the parent document of the plaintiff and the defendants is Ex.B1 which would show that the plaintiff is entitled to an extent of 81 feet x 145 feet. He pointed out that the defendants had conceded that they are in possession of a larger extent than 387 feet, which was originally alienated by Thangathammal. Therefore, it is possible that the plaintiff is in possession of the property in extent as mentioned under Ex.B1. He pointed out that the trial court had committed an error in relying upon Section 90 of the Indian Evidence Act with respect to Ex.B1 and this fact had been rightly interfered with by the lower appellate court. He invited my attention to Ex.A4 and Ex.A5 and pointed out that this had been properly appreciated by the lower appellate court and the property being a grama natham, it is possible that the plaintiff is in occupation of a larger extent than what had been allotted to his vendor's vendor and purchased by his predecessor, Savithri Ammal.



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23. Mr.Ganesan stated that Savithri Ammal had issued a notice staking a claim of 81 feet East - West and 145 feet North - South under Ex.B5 and the fact that she had not presented a suit immediately does not mean that she was not in possession and occupation of the same. Hence, he pleaded that the lower appellate court appreciated the facts in the proper manner and the same need not be interfered with by this court in second appeal.

24. I have carefully considered the submissions on both sides and have gone through the records.

25. It is not in dispute that Manicka Mudaliar is the father of the second defendant and of the plaintiff's predecessor-in-title. Manicka Mudaliar had acquired title to the property by virtue of a sale deed executed by Thangathammal in his favour. The schedule of property of Ex.B1 shows as follows:

“ சொத்தின் விபரம் செங்கல்பட்டு டிஸ்திரிக்ட்டு திருப்போரூர்
சப்டிஸ்திரிக்ட்டு 161 நெ. ஜமீன் பையனுர் கிராமத்தில் நாங்கள் அனுபவித்து வருகிற
புதுவை பாட்டைக்கு கிழக்கு வீதிக்கு வடக்கு மாணிக்காசாரி மனை மனைப்
பிழக்கடைக்கு மேற்கு வேணுகோபால முதலியார், அ.வாசுதேவ முதலியார் வகைரா
நிலத்துக்கு தெற்கு. இதன் மத்தியில் ஜாரி மனை பிழக்கடை கிழக்கு மேற்கு அடி 65



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வடக்கு தெற்கு அடி 387 இதிலுள்ள பனைமரம் 65 காட்டு வாழை மரம் 4, புளிய

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மரம் 4, ..."

26. Subsequently, Manicka Mudaliar entered into a partition deed with his sons, namely, Venkatathri, Narayanaswamy Mudaliar, and Varadharajan. The partition deed covers several properties including the suit schedule mentioned property. Manicka Mudaliar did not retain any share with respect to the property that he purchased from Thangathammal. The said property was allotted to his three sons in equal moieties. From a perusal of the partition deed dated 24.06.1951, it becomes clear that instead of showing the extent of property as 65 feet East - West and 387 feet North - South, it was shown as 81 feet x 145 feet. The partition deed does not narrate as to how a larger extent than what was purchased by Manicka Mudaliar under Ex.B1 came into the possession of the family.

27. The lower appellate court had presumed that as the property is grama natham and since Manicka Mudaliar was the village headman, it is possible that he was in occupation of a larger extent than what he had purchased. I should point out here that



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this is not even the pleading of the plaintiff. The simple case of the plaintiff is that Savithri Ammal had purchased the property from Venkatathri and he had, in turn, purchased the property from her and hence, he is in occupation of 85 feet x 145 feet.

28. The pleadings are absolutely silent as to how 65 feet x 387 feet blossomed into 81 feet x 145 feet. It is here I would recall the latin maxim "*Nemo dat quod non habet* – no one gives what he does not have". This is a fundamental principle on the law of property. It has been applied consistently in this Country and even recently by the Supreme Court in ***Umadevi Nambiyar v. Thamarasseri Roman Catholic Diocese, (2022) 7 SCC 90***. The Court pointed out that if the vendors of a party do not have any title, they have nothing to convey to the purchaser except, perhaps, litigation. This view has been reiterated by the Supreme Court again in ***P.Kishore Kumar v. Vittal K.Patkar, 2023 SCC Online SC 1483***.

29. If Manicka Mudaliar possessed only what he obtained from Thangathammal, how the said Manicka Mudaliar and his sons



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came to possess a larger extent than what was purchased by

Manicka Mudaliar remains a huge mystery.

30. I should point out that the defendants do not deny the title of the plaintiff with respect to 65 feet x 129 feet, but deny the claim of the plaintiff over the B schedule. It is here that the Advocate Commissioner's report under Ex.C1 becomes relevant. The report shows that the property of the plaintiff has been compounded on all four sides. As pointed out by the learned Trial Judge, if the plaintiff was actually entitled to 81 feet, he would not have put up a compound wall at the end of 65 feet. Hence, the conclusion of the learned Appellate Judge on the basis of the presumption that Manicka Mudaliar, being the village headman could have been in enjoyment of a larger portion is not sustainable.

31. Another serious error committed by the learned Lower Appellate Judge is in treating the partition deed under Ex.A2 as a title deed and not the sale deed executed by Thangathammal in favour of Manicka Mudaliar as the parent deed. A partition deed is not a stand alone document of title. It is an instrument, which divides the property, jointly possessed by the family amongst the co-



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owners. By virtue of the document, specific shares are given to each of the parties, thereby clarifying their individual rights over the same. It is not uncommon in this part of the country for a document of partition deed to be executed even over poromboke lands.

32. In fact, this court had an opportunity to consider whether a partition deed can be treated as a document of title. This was in ***Balkis Natciar and Others v. Arulmigu Adheeswarar Thirukoil and Others, (2020) 1 LW 922***. A learned Single Judge held that merely on the basis of a partition deed, a decree for declaration of title cannot be granted. It was held that beyond a partition deed, other documents establishing title are necessary. A partition deed, though between the parties can be treated as genuine, the same would not constitute a valid record to establish title to an immovable property. It further pointed out that when no other document except a partition deed and revenue documents are produced, a court should not grant a decree for title. I should point out here that the plaintiff has not produced any revenue records either to show that he has been in possession and enjoyment of the property. I am conscious that revenue records are not documents of



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title, but at least it would have indicated the possession of a person over the property.

33. The lower appellate court seriously erred in ignoring the document under Ex.B1 and holding that the partition deed alone should be treated as a title deed. The learned Judge found fault with the defendants for not having filed a suit challenging the extent in the partition deed and hence, came to a conclusion that the document is binding on the defendants.

34. The case before the court is one for declaration of title. In terms of Section 34 of the Specific Relief Act, the plaintiff must demonstrate an existing right to the specific property at the time the suit was filed. The right claimed must be a substantive legal right not one based on hypothesis. In such a suit, the burden of proof lies heavily on the plaintiff to establish his title by clear and convincing evidence. Furthermore, even if all technical requirements are met, granting a declaratory relief being an equitable remedy, rests within the court's sound judicial discretion, whether to grant it or not.



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35. Applying this principle to the present case, it is the duty of the plaintiff to have specifically pleaded that despite Ex.B1, the predecessor-in-title of his vendor, namely, Venkatathri was in possession of a larger extent than what was purchased by the Venkatathri's father Manicka Mudaliar. The least that the plaintiff ought to have done was to examine his vendor, Savithri Ammal to prove that she was in occupation of the extent which had been alienated in the year 1965. When the defendants have denied that neither Savithri Ammal nor the plaintiff are entitled to any extent above 65 feet x 129 feet, and have contended that the measurement given in Ex.A2 is an erroneous one, the burden lay heavily on the plaintiff to discharge the same. Unfortunately, the plaintiff did not discharge the same.

36. Mere filing of the sale deeds of his vendor and himself does not show that the plaintiff is in possession of the B schedule property. The presumption made by the lower appellate court that the property being a grama natham, Manicka Mudaliar and his family members could have been in occupation of a larger extent than what was purchased by him is neither supported by pleadings nor by evidence.



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37. It is a well established position of law that surmises and conjuncture cannot substitute legal proof. A court, especially when dealing with a suit for declaration of title, for possession and for injunction, must base its findings upon the evidences presented to it. Mere pleadings and arguments cannot be considered as evidence. That is the situation here. The plaint is bereft of any pleadings of the plaintiff's predecessor being in possession of a larger extent than what was purchased under the title deed, and for the mere fact that the second defendant was a party to Ex.A2, the Court could not have come to the conclusion that the family was in occupation of an extent larger than what was purchased under Ex.B1.

38. The family members, for whatever reasons might, have entered into the partition deed, and as already pointed out, that not being a document of title, the findings of the learned Lower Appellate Judge that as the second defendant is a party to the document, it is presumed that the family was in occupation of a larger extent than what was purchased by Manicka Mudaliar, is perverse.



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39. Furthermore, when no pleadings or evidence point out that the wall erected by the plaintiff on the eastern side is a protective wall, other than a mere *ipse dixit* of the plaintiff, the learned Lower Appellate Judge erred in rejecting the report and plan of the Advocate Commissioner under Ex.C1 and Ex.C2.

40. A perusal of the objection filed by the plaintiff to the Advocate Commissioner's report nowhere shows that the plaintiff had objected that the wall is a protective wall and had been erroneously noticed by the Commissioner.

41. The findings of the Lower Appellate Court that the wall is a protective wall, in view of this court, has to be treated as a "special pleading". Similarly, his finding that the document under Ex.B3, namely, the mortgage deed that had been created by the second defendant and his sons is equally erroneous. The document had come into existence on 18.01.1979, at least six years before the presentation of the plaint. Even if I were to accept the finding that Ex.B3 ought to be ignored, still this court is unable to accept that



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Ex.B1-sale deed would not be a title deed for the family but it would be Ex.A2-partition deed.

42. In the view of the aforesaid discussion, the substantial questions of law are answered in the following terms:

Answer for Question (a) & (d):

This question of law is unnecessary as the learned Appellate Judge had not decreed the suit on the basis of adverse possession of the plaintiff.

Answers of Questions (b) and (c) & recast questions of law:

These are answered in favour of the defendants/appellants and against the plaintiff/respondent. For the reasons as stated above a partition deed having been treated as a title deed and by ignoring Ex.B1, which is a sale deed, under which the family came to possess the property, the appreciation by the lower appellate court is erroneous. The conclusion of the learned Judge, having been based on surmises and presumptions and being dehors the pleadings of the parties, is treated as perverse.

43. In fine, the second appeal is allowed. The judgment and decree of the learned Principal District Judge in A.S.No.47 of 1999 dated 14.10.1999 is set aside. The judgment and decree of the



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learned District Munsif in O.S.No.126 of 1985 dated 30.03.1999 stands restored. The suit in O.S.No.126 of 1985 shall stand dismissed. The defendants/appellants will be entitled for costs throughout.

20.02.2026

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Neutral Citation : Yes/No

To

- 1.The Principal District Judge, Chengalpet
- 2.The District Munsif, Chengalpet
- 3.The Section Officer, VR Records, Madras High Court



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V.LAKSHMINARAYANAN, J.

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