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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-11-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 1153 of 2008 ***and M.P. No.1 of 2008***

[CNR:{HCMA010089462008]

Case QR

and SA No. 1154 of 2008

SA No. 1153 of 2008

1. V.Shantha Kumari (died) W/o.Balasubramanian
2. Balasubramani S/o.Murugesan
3. Jayaprakash Mohan S/o.Balasubramani
4. Subashini W/o.Thirumal
5. Sasikala D/o.Balasubramani
   [Sole Appellant died, A2 to 5 brought on record as legal representatives of the deceased sole appellant vide order dated 29/07/2022 made in C.M.P. Nos.9823 and 9824 of 2022)

..Appellant(s)

Vs

1. E. Balaraman (Died) S/o.Ethiraj Mudali,
2. Malar D/o.Late Balaraman, W/o.Aranganathan
3. Panneer Selvam S/o.Late Balaraman
4. Pandian S/o.Late Balaraman.
5. Asha D/o.Late Balaraman, W/o.Kishore
   [The respondents 2 to 5 were brought on record as legal representatives of the deceased sold respondent vide order dated 29-08-2022 made in CMP Nos.14103, 14108 and 14111/2022)

..Respondent(s)

SA No. 1154 of 2008 ***and M.P. No.1 of 2008***

CNR:{HCMA010089482008}

Case QR

1. V.Shantha Kumari (died)
   W/o.Balasubramanian
2. Balasubramani S/o.Murugesan

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3. Jayaprakash Mohan S/o.Balasubramani
4. Subashini W/o.Thirumal
5. Sasikala D/o.Balasubramani
   [Sole Appellant died, A2 to 5 brought on record as legal representatives of the deceased sole appellant vide order dated 29/07/2022 made in C.M.P. Nos.9823 and 9824 of 2022)

..Appellant(s)

Vs

1. E. Balaraman (Died) S/o.Ethiraj Mudali,
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4. Pandian S/o.Late Balaraman.
5. Asha D/o.Late Balaraman, W/o.Kishore
   [The respondents 2 to 5 were brought on record as legal representatives of the deceased sold respondent vide order dated 29-08-2022 made in CMP.14104,14107 and14110/2022)

..Respondent(s)

PRAYER in S.A. No.1153 of 2008: The Second Appeal has been filed under Section 100 of Civil Procedure Code as against the judgment and decree dated 11.04.2008 made in A.S. No.1 of 2005 on the file of the Sub Judge, Tiruvallur reversing the judgment and decree dated 29.09.2004 made in O.S. No.81 of 2001 on the file of the District Munsif, Pallipattu.

PRAYER in S.A. No.1154 of 2008: The Second Appeal has been filed under Section 100 of Civil Procedure Code as against the judgment and decree dated 11.04.2008 made in A.S. No.3 of 2005 on the file of the Sub Judge, Tiruvallur reversing the judgment and decree dated 29.09.2004 made in O.S. No.538 of 2001 on the file of the District Munsif, Pallipattu.

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Both appeals:

For Appellant(s): Mr. N. Manoharan for Mr. P. Krishnan

For Respondent(s): R1 - Died
M/s.P.Dinesh Kumar [For R2 To 5]

COMMON JUDGMENT

These Second Appeals have been preferred as against the common judgment and decrees dated 11.04.2008 passed by the First Appellate Court in A.S. Nos.1 of 2005 and 3 of 2005 on the file of the Subordinate Judge, Tiruvallur. The deceased 1st appellant in S. A. No.1153 of 2008 has filed a Suit in O.S. No.81 of 2001 on the file of the District Munsif, Pallipattu for the reliefs of declaration and permanent injunction. The deceased 1st respondent in S.A. No.1154 of 2008 has filed a Suit in O.S. No.538 of 2001 on the file of the District Munsif, Pallipattu for the relief of permanent injunction. Both the Suits were tried jointly together along with another Suit in O.S. No.262 of 2001 and a common judgment has been passed by the trial Court and the trial Court decreed the Suit in O.S. No.81 of 2001 and dismissed the Suit in O.S. No.538 of 2001. Aggrieved by the said decrees and common judgment, the defendant in O.S. No.81 of 2001 and the Plaintiff in O.S. No.538 of 2001 have preferred appeals in A.S. Nos.1 of 2005 and 3 of 2005 respectively. The First Appellate Court partly allowed the appeal in A.S. No.1 of 2005 by declaring that the Plaintiff is entitled to declaration for 11 cents and also granted permanent injunction. The

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appeal in A.S. No.3 of 2005 was also partly allowed in respect of permanent injunction to an extent of 56 cents of land. Aggrieved by the said common judgment and decrees, these Second appeals have been preferred by the respective appellants.

2. ***The case of the Plaintiffs in O.S. No.81 of 2001 is as follows:***

The Suit property, originally belonged to one V.P. Venkatachala Mudali and he had two wives namely Kannammal alias Lakshmiammal and Sakkubaiammal. The said Venkatachala Mudali had two sons and two daughters namely Muniganapathy, Manoharan, Perundevi and Saraswathy through his 1st wife. Through his second wife, he had one daughter namely Santhakumari. The 2nd wife and the daughter born through 2nd wife are the Plaintiffs 1 and 2. While so, Perundeviammal had filed a Suit in O.S. No.92 of 1960 as against the Plaintiff for partition and separate possession on the file of the Subordinate Court, Vellore. The Plaintiffs were allotted with the Suit property and the possession was also granted through E.P. No.125 of 1968. The Plaintiffs took possession on 06.05.1968 along with other properties, thereby the Plaintiffs are in possession and enjoyment of the property. Patta was also granted in favour of the Plaintiffs and the Plaintiffs are in continuous possession and enjoyment of the Suit property. The defendant is a stranger and he has no connection whatsoever over the Suit property. While so, on 10.04.1995, the defendant attempted to trespass into the Suit property, thereby, the Plaintiffs

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issued a notice on 17.04.1995. After receipt of the notice, the defendant failed to reply the notice. Therefore, the Plaintiffs filed the Suit.

2.1. The ***defendant in O.S. No.81 of 2001*** has filed a ***Written statement*** as follows:-

The Suit is not maintainable. The relationship between the parties is admitted. The filing of a Partition Suit in O.S. No.92 of 1960 on the file of the Subordinate Court, Vellore is true, but it is not true that the Plaintiffs were put in possession of the Suit property through execution proceedings vide E.P. No.125 of 1968. The Plaintiff was never in possession and enjoyment of the Suit property at any point of time. The defendant is the real owner of the Suit property and he is in possession and enjoyment of the same and he purchased the property through two Sale Deeds dated 17.05.1968. Even since the date of sale deeds, the defendant is in possession and enjoyment of the property in S. No.1/6 measuring to an extent of 0.68 cents. The vendors of the defendant are the owners of the property by virtue of preliminary decree in O.S. No.92 of 1960 and final decree dated 14.03.1966. They also took possession of the property in E.P. No.126 of 1966 on the file of the District Munsif, Tiruttani on 20.07.1966. The Plaintiffs have no right over the property and they were never in possession of the Suit property at any point of time. Therefore, the Suit is liable to be dismissed.

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3. ***The case of the Plaintiff in O.S. No.538 of 2001 is as follows:-***

Originally the Suit property belonged to the vendor of the Plaintiff through two Sale deeds dated 17.05.1968 and the Plaintiff's vendor was entitled to the property through preliminary decree passed in O.S. No.92 of 1960 and final decree dated 14.03.1966 and he took possession of the property through execution proceedings in E.P. No.126/66 dated 20.07.1966. Pursuant to the same, the Plaintiff has been under the possession and enjoyment of the property. The defendants have no right to question or interfere with the Plaintiff's right over the property. The defendants, without any manner of right or title over the property, are making attempts to dispossess the Plaintiff's lawful possession and enjoyment of the property since 01.11.1999. Therefore, the Plaintiff filed the Suit.

3.1. ***The case of the defendants in O.S. No.538 of 2001 is as follows:-***

The Suit is not maintainable. The averment that the property belongs to the vendors of the Plaintiff through O.S. No.92 of 1960 is false. In fact, the Suit schedule property was allotted to the defendants in final decree proceedings in I.A. No.158 of 1963 in O.S. No.92 of 1960 on the file of the Subordinate Court, Vellore. Through the said proceedings, item 7 in 'A' Schedule property was allotted to the 1st defendant and the item 8 in 'A' Schedule property was allotted to the 2nd defendant. Out of 68 cents in Old S. No.56/2 in New S. No.1/6, the 1st defendant herein was allotted to ¼ share among other properties while the 2nd

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defendant was allotted with ¾ share among other properties. Thus the entire 68 cents was allotted to the defendants herein under Item Nos.7 and 8 in the above Suit in O.S. No.90 of 1962. These defendants were described as defendants 4 and 5 in the said Suit. Therefore, the Plaint averments that the Suit item was allotted to the share of the Plaintiff's vendor is not correct. Therefore, the sale in favour of the Plaintiff is not valid. The Plaintiff is not in possession and enjoyment of the property. The patta for the Suit property stands in the name of the defendants. The defendants alone are in possession and enjoyment of the property. Therefore, the Suit is liable to be dismissed.

4. Based on the above pleadings and after hearing both sides, the trial Court has framed the following issues:

O.S. No.81 of 2001

(i) Whether the Plaintiffs are the absolute owners of the Suit property and are in continuous possession after delivery in E.P. No.125 of 1968 on 06.05.1968?

(ii) Whether the Plaintiffs perfected their right and title to the Suit property by adverse possession?

(iii) Whether the Plaintiffs are entitled to a decree as prayed for?

(iv) To what reliefs, the Plaintiffs are entitled?

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O.S. No.538 of 2001

(i) Whether the Plaintiffs are in possession and enjoyment over the Suit property?

(ii) Whether the Plaintiffs are entitled to the relief of permanent injunction?

(iii) To what other reliefs, the parties are entitled?

5. Before the trial court, on the side of the Plaintiff, PW1 and PW2 were examined and the documents Ex.A1 to Ex.A.43 were marked. On the side of the defendants, DW1 to DW4 were examined and Ex.B.1 to Ex.B.15 were marked. The trial court, after evaluating the oral and documentary evidences adduced on both sides and perusing the records, passed a common judgment dated 29.09.2004 by decreeing the Suit in O.S. No.81 of 2001 and by dismissing the Suit in O.S. No.538 of 2001. Aggrieved by the said common judgment and decrees, the defendant in O.S. No.81 of 2001 has preferred an appeal in A.S. No.1 of 2005 and the Plaintiff in O.S. No.538 of 2001 has preferred an appeal in A.S. No.3 of 2005 on the file of the Subordinate Judge, Tiruvallur on various grounds.

6. The First Appellate Court has framed the ***points for determination in all the three appeals as to whether the three appeals have to be allowed or not?***

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7. Thereafter, the First Appellate Court through its common judgment dated 11.04.2008, modified the common judgment of the trial Court and partly allowed the appeal in A.S. No.1 of 2005 and decreed the Suit in O.S. No.81 of 2001 in respect of 11 cents and the Suit in O.S. No.538 of 2001 was also modified and partly allowed the Suit in O.S. No.538 of 2001 in respect 56 cents. Aggrieved by the said common judgment and decrees, the Plaintiff in O.S. No.81 of 2001 and the defendant in O.S. No.538 of 2001 have preferred these second appeals respectively.

8. This Court admitted the second appeals on the following ***substantial questions of law:***

(i) Whether the conclusion of the Lower Appellate Court relying on Ex.B.16 is unsustainable in law more particularly when Ex.B.16 does not establish possession of the properties by the parties.

(ii) Whether the Lower Appellate Court has failed to assign sufficient and cogent reasons while reversing the findings of the trial Court and the judgment is vitiated.

(iii) Whether the Lower Appellate court has failed to appreciate the oral and documentary evidence in proper perspective and the judgment is vitiated.

9. The learned counsel appearing for the appellant in both the appeals would submit that the appellant in S.A. No.1153 of 2008 has filed a Suit in O.S.

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No.81 of 2001 for the reliefs of declaration and permanent injunction in respect of the Suit property. The respondent in S.A. No.1154 of 2008 has filed a Suit in O.S. No.538 of 2001 for the relief of permanent injunction. Both the Suits were tried along with another Suit in O.S. No.262 of 2001. The trial Court has correctly decreed the Suit filed by the appellant and dismissed the Suit filed by the respondent. However, the First Appellate Court modified the decree and judgment and granted decree in respect of 11 cents and also granted decree in the another Suit filed by the respondent to an extent of 56 cents. Originally the Suit property was allotted to the share of the appellant and her mother through final decree proceedings in O.S. No.92 of 1960 and possession was also granted through proceedings in E.P. No.125 of 1968. As per the final decree, the Suit property was allotted to the Plaintiff and her mother. While so, the respondent attempted to interfere with the Plaintiff's possession and enjoyment of the property and thereby, she filed the Suit. The respondent herein filed the Suit in O.S. No..538 of 2001 for the relief of permanent injunction claiming that he is in possession and enjoyment of the property.

9.1. The learned counsel would further submit that in fact, both the parties admitted that the Suit property was allotted by partition in O.S. No.92 of 1960 and delivery of possession was also granted through proceedings in E.P. No.125 of 1968 and 126 of 1966. The old Survey number of the property is S. No.56/2 in New survey number is S. No.1/6. The Plaintiff's property is situated in old Survey No.56/2 to an extent of 68 cents and the defendant's

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property is situated in Old Survey No.37 to an extent of 68 cents. Therefore, the properties situated in two different survey numbers were allotted to each Plaintiff and the defendant's vendors. While so, the First Appellate Court has merely relied the Survey Register, which was filed as an additional document before the First Appellate Court and wrongly came to a conclusion that the Plaintiff is entitled only to 11 cents. After receipt of additional document, Ex.B.16, Land Survey Register and while dealing the same, nothing has been discussed in the judgment that an extent of 68 cents of Suit property is not situated in Old Survey No.56/2 and New Survey No.1/6. Thereby, reversing the judgment of the trial Court is without any acceptable and valid reasons based on the evidences. The Lower Appellate Court has not given clear findings while setting aside the well considered judgment of the trial Court. Ex.A.2, Ex.A.4 and Ex.A.8 have clearly established that in Item Nos.7 and 8 of the said Suit property, to an extent of 68 cents in Old S. No.56/2, New S. No.1/6, the Plaintiff had taken possession of the property. While so, the First Appellate court without even framing proper points for determination, based on the additional document and without giving any opportunity to the parties to adduce evidence, allowed the appeal and modified the judgment of the trial Court and granted relief in respect of 11 cents to the Plaintiff in O.S. No.81 of 2001 and also granted decree in respect of 56 cents to the Plaintiff in O.S. No.538 of 2001. Therefore, the common judgment and decrees passed by the First Appellate Court are liable to be set aside.

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10. The learned counsel appearing for the ***respondents in both the appeals*** would submit that the respondent has filed a Suit in O.S. No.538 of 2001 for the relief of permanent injunction and the appellant herein has filed a Suit in O.S. No.81 of 2001 for the reliefs of declaration and permanent injunction. In fact, the respondent in these second appeals and the Plaintiff in O.S. No.538 of 2001, has purchased the properties through two Sale Deeds dated 17.05.1968 and the vendor of the respondent got the property through Preliminary decree in O.S. No.92 of 1960 and final decree through execution proceedings in E.P. No.126 of 1966 dated 20.07.1966. Therefore, the Plaintiff's predecessor had been in possession and enjoyment of the property, thereby, the Plaintiff obtained the property and from the date of purchase, he has been under possession and enjoyment of the property. The trial Court without considering the evidences in a proper and perspective manner, erroneously dismissed the Suit filed by the respondent and decreed the Suit filed by the appellant. However, the First Appellate Court after considering the evidences in a proper and perspective manner, partly decreed the Suits to an extent of 11 cents to the appellant and 56 cents to the respondent. Therefore, the common judgment and the decrees passed by the First Appellate Court are based on the available records and therefore, these second appeals are liable to be dismissed.

11. This Court heard both sides and perused the records.

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12. For the sake of convenience and brevity, the 'appellant' in both the appeals will be referred to as 'Plaintiff' and the 'respondent' will be referred to as 'defendant'.

13. In this case, there is no dispute that both the parties are entitled to the properties through final decree proceedings in O.S. No.92 of 1960. According to the Plaintiff, she is entitled to the property by way of final decree passed in O.S. No.92 of 1960 and the possession was also delivered through Court order dated 06.05.1968 passed in E.P. No.125 of 1968. Thereby, she is entitled to the property. According to the defendant, he purchased the property from his vendor through Sale Deeds dated 17.05.1968. The vendor of the defendant was also entitled to the property through final decree proceedings in O.S. No.92 of 1960. Therefore, both the parties are claiming the property through final decree.

14. As per the final decree proceedings, the Suit property was allotted to the Plaintiff. In order to prove the case of the Plaintiff, on the side of the Plaintiff, PW1 and PW2 were examined and the documents Ex.A1 to Ex.A.43 were marked. On the side of the defendants, DW1 to DW4 were examined and Ex.B.1 to Ex.B.15 were marked. The trial Court decreed the Suit filed by the Plaintiff and dismissed the Suit filed by the defendant. The First Appellate Court partly allowed the appeals and granted decree in favour of the Plaintiff in

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respect of 11 cents and granted decree in favour of the defendant in respect of 56 cents.

15. Before going into the merits of the case, this Court noticed that the First Appellate court has not framed proper points for determination. In all the appeals, the First Appellate Court has framed the only point as to *whether the three appeals are liable to be allowed or not.* Apart from that, there is no any other point framed by the First Appellate Court and the same is not in consonance with Order XLI Rule 31 of Code of Civil Procedure. Further the First Appellate Court has received an additional document Ex.B.16. The First Appellate Court, without discussing about the above said document and without affording opportunity to the opposite party to dispute the document, allowed the appeals based on the above said document.

16. As per Order XLI Rule 31 of Code of Civil Procedure, the judgment of the Appellate Court shall be in writing and shall state— (a) the points for determination; (b) the decision thereon; (c) the reasons for the decision. In this case on hand, no point for determination has been properly framed and the First Appellate Court has not given reasons for reversal of the judgment of the trial Court. As per Order XLI Rule 27 of the Code of Civil Procedure, the Appellate Court has power to receive additional documents. As per Order XLI Rule 28 of the Code of Civil Procedure, after receipt of a document, the First Appellate

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Court has to take evidence or direct the Court from whose decree, the appeal is preferred or any other subordinate Court, to take such evidence and to send it when taken to the Appellate Court. But in the case on hand, the First Appellate Court failed to follow the procedure under Order XLI Rule 28 of the Code of Civil Procedure. Without framing proper points for determination and without proper discussions, the First Appellate Court has reversed the common judgment passed by the trial Court and thereby, the common judgment of the First Appellate Court is not in consonance with provisions of the Code of Civil Procedure. Therefore, the judgment of the First Appellate Court is against the provisions of Order XLI Rule 28 and 31 of Code of Civil Procedure. Therefore, the common judgment and decrees passed by the First Appellate Court are liable to be set aside and the matter is to be remanded back to the First Appellate Court for framing proper points for determination and to record evidence in respect of the document, Ex.B.16, received as an additional document by affording opportunity to both the parties in respect of the same and to dispose the appeal in the manner known to law. If necessary call for the original record of Ex.B.16 and peruse the said document.

17. Accordingly, these ***second appeals are allowed. The decrees and the common judgment dated 11.04.2008 passed by the First Appellate Court in A.S. Nos.1 of 2005 and 3 of 2005 on the file of the Subordinate Judge, Tiruvallur are set aside and the matter is remanded back to the First***

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Appellate Court for fresh consideration by framing proper points for determination and to provide opportunity to both the parties in respect of the additional document, Ex.B.16, and to dispose the same in accordance with law. Since the appeals are pending for a long time, the First Appellate Court is hereby directed to dispose the appeals within four (4) months from the date of receipt of a copy of this judgment. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

19-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

MJS

To

1. The Subordinate Judge, Tiruvallur.
2. The District Munsif, Pallipattu.

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P.DHANABAL J.

MJS

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