



SA No. 582 of 2007



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-02-2026

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CORAM

THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

SA No. 582 of 2007

1. Sulochana

Appellant(s)

Vs

1. Manicka Mudaliar (Died)

2.The Collector
Villupuram District Villupuram,

3.The Tahsildar
Kallakurichi Taluk

4.The Deputy Surveyor
Kallakurichi

5.Rani,
W/o Late Manicka Mudaliar

6.Priya,
D/o Of Late Manicka Mudaliar

7.Devi
R5 to R7 brought on record being LR's of the
deceased R1 vide order dated 26.04.2019

Respondent(s)

SA No. 582 of 2007

PRAYER

Filed against the judgment and decree in A.S.No.12 of 2005 on the file of the Subordinate Judge, Kallakurichi, dated 28.02.2006 in confirming the judgment and decree in O.S.No.774 of 1997 on the file of the II Additional District Munsif, Kallakurichi, dated 18.11.2004.



For Appellant(s): M/s V.Srimathi

For Respondent(s): Mr.K.Venkatasubban
for M/s.SarvabhaumanAssociates
(For R5 to R7)

R1 – Died

No appearance (R2 to R4)

ORDER

This second appeal is directed against the judgment and decree passed in A.S.No.12 of 2005 dated 28.02.2006 by the Court of the Subordinate Judge, Kallakurichi, confirming the judgment and decree dated 18.11.2004 in O.S.No.774 of 1997 on the file of the Court of II Additional District Munsif, Kallakurichi, at the instance of the appellant/ first defendant. For the sake of convenience, the parties are referred to as per their status in the suit in O.S.No.774 of 1997.

2. The first respondent/ plaintiff herein laid a suit in O.S.No.774 of 1997 seeking a permanent injunction against the defendant/ appellant and three others in respect of the suit property situated in Dry RS.No.14/3 and Dry RS.No.14/4 comprising of 0.22 cents and 0.21 cents respectively. The plaintiff claims to have purchased the suit property under a registered sale deed dated 03.07.1991, which was marked as Ex.A2, from 15 persons who happens to be the family members/ legal heirs of Periyar, Krishnan & Sanyasi. Having purchased the



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said property, the plaintiff obtained a loan from the Government and commenced construction of a decorticator mill, rice mill and a thatched house etc., in the suit property by obtaining electricity connection. The first defendant filed O.S.No.497 of 1993 on the file of the court of Additional District Munsif, Kallakurichi seeking an injunction against the plaintiff and also obtained a temporary injunction. However, the said injunction was set aside at the instance of the plaintiff in C.M.A.No.54 of 1996. Though the defendant filed CRP No.2383 of 1997 before this court and obtained an injunction in C.M.P.No.12149 of 1997, the said O.S.No.497 of 1993 came to be dismissed finally by a decree dated 26.06.2001 and the same was confirmed in A.S.No.76 of 2001 dated 26.02.2004. Thus, the plaintiff claiming absolute title over the suit property and alleging interference with such possession by the first defendant with the help of the defendants 2 to 4, filed the present suit seeking permanent injunction from interfering with his peaceful possession and enjoyment over the suit property.

3. The first defendant filed a written statement contending that she had purchased 10 cents of land out of 66 cents situated in R.S.No.14/3, R.S.No.14/4A and R.S.No.14/4B from one Mr.Mannangatti, S/o Sanyasi, under an agreement of sale dated 21.02.1988 for a total sale consideration of Rs.2,000/-. In view of non-cooperation of the said Mr.Mannangatti, the first defendant filed O.S.No.48 of 1988 seeking specific performance of the



agreement of sale, and the said suit was decreed on 21.09.1993 in favour of the first defendant. In furtherance of the said decree, the first defendant filed E.P.No.184 of 1996 and E.P.No.134 of 1997 for execution of the sale deed and for delivery of possession respectively, and both the execution petitions were allowed. The first defendant claims to have been put in possession of 10 cents of undivided share out of 66 cents in the above said survey numbers. Thus, the first defendant claims to have been in possession of 10 cents of undivided share out of 66 cents in the said survey numbers as against the claim of the plaintiff of having possession over an extent of 43 cents situated in R.S.No.14/3 and R.S.No.14/4.

4. On behalf of the plaintiff, he himself got examined as P.W-1 and Exhibits A1 to A7 were marked. On behalf of the first defendant, she herself got examined as D.W-1 and also examined D.W-2, while marking Exhibits B1 to B12. Exhibits C1 and Ex.C2 ie., the Commissioner's report and the plan, were marked during the course of examination of D.W-1.

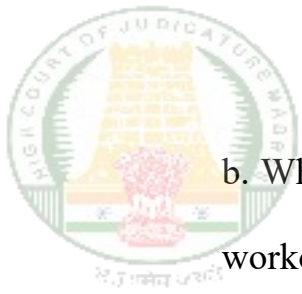
5. The trial court as well as the lower appellate court, having examined the matter in detail, both oral and documentary evidence, came to the conclusion that the property that is being claimed by the first defendant, admeasuring 10 cents, is found to be situated on the eastern side of Kookulam Colony road, and whereas the suit property is situated on the western side of the



Kookulam Colony road. Thus, it is concluded that the property that is being claimed by the first defendant under Ex.B2 is nothing to do with the suit schedule property. For arriving at the said conclusion, the courts below placed reliance on Ex.B2, registered copy of the sale deed, and Ex.B3, the certified copy of the full satisfaction memo in E.P.No.134 of 1997 in O.S.No.482 of 1988. Having arrived at such a conclusion, the courts below also have taken note of the electricity bills marked as Ex.A6 and the receipt for collection of licence fees marked as Ex.A7, and came to the conclusion that the plaintiff has been in possession and enjoyment of the suit property. Further, the courts below have also observed that the first defendant, having claimed to have purchased an undivided share of 10 cents out of 66 cents, has to work out her remedies for identification of the 10 cents of land either by filing a suit for partition or otherwise and decreed the suit in favour of the plaintiff. It is also necessary to note that the first defendant, having filed O.S.No.497 of 1993 against the plaintiff for injunction, failed in the said suit. Having failed in the said suit, it is not open for the defendant to resist the claim of the plaintiff herein on the very same set of facts.

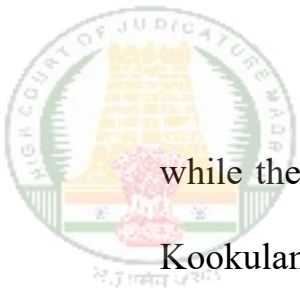
6. This court, by an order dated 21.09.2022 admitted the second appeal of the year 2007 on the following substantial question of law:-

- a. Whether the suit for injunction is maintainable as against the co-owner of the property?



- b. Whether the observation of the courts below directing the appellant to workout her rights before the court for partition, is incorrect, when the 1st defendant/ plaintiff is a prior purchaser of the property and had taken possession of specific boundaries through court?
- c. Whether the suit for permanent injunction is maintainable in the light of the decree in O.S.No.497 of 1993 and O.S.No.482/88 in favour of the appellant and whether those decree would not operate as res-judicata?
- d. Whether the present suit is maintainable in view of the dismissal of the earlier suit in O.S.No.873 of 1996 as withdrawn and whether it is hit by the principles of Order 23 CPC?

7. This court, after having taken note of the conclusions arrived at by the courts below and on having perused the entire material on record, is of the considered view that none of the substantial questions of law basing upon which the second appeal has been admitted do raise any question of law, much less substantial question of law. In the light of the factual findings recorded by the courts below, which the learned counsel for the appellant failed to dislodge before this court, the claim of the first defendant, as a co-owner does not arise. Whether the first defendant intends to pursue her remedy to claim/ assert her rights over the 10 cents of land covered by decree in O.S.No.482 of 1988 or not is for the first defendant to decide. Once, it is found that the suit property in O.S.No.482 of 1988 is situated on the eastern side of Kookulam Colony Road,



while the suit property in the present suit is situated at the western side of the Kookulam Colony Road, the question of the first defendant claiming ownership as a co-owner of the suit scheduled property does not arise. As already noted above, O.S.No.497 of 1993 came to be finally dismissed and the same was confirmed by the appellate court. Therefore, any reliance basing upon OS.No.497 of 1993 is of no avail.

8. Then, coming to the question of *res judicata* raised by the first defendant on the ground that the appellant earlier filing O.S.No.873 of 1996 and withdrawing the same is concerned, the courts below have rightly concluded that the said suit was filed only against the first defendant herein, and the present suit has been filed against the first defendant as well as the other defendants in the light of the changed circumstances and basing upon a new cause of action. As the suit in O.S.No.873 of 1996 and the present suit are for permanent injunction, this court does not see any impediment for the plaintiff to file the present suit basing upon a subsequent cause of action. Even otherwise, O.S.No.873 of 1996 was not contested on merits and the same was admittedly withdrawn by the plaintiff herein for filing the present suit. Therefore, the question of filing of the previous suit under no circumstances can be said to be operating as *res judicata* within the meaning of Section 11 of the Code of Civil Procedure.



9. In the light of the above, this court is of the considered view that the so-called substantial questions of law basing upon which the present second appeal has been admitted does not infact raise any question of law, much less substantial question of law. Even otherwise, in the light of the discussion above, all the questions basing upon which the second appeal has been admitted are liable to be answered against the appellant/ first defendant and accordingly, the second appeal is dismissed. However, it is made clear that it is open for the appellant/ first defendant to work out her remedies basing upon the decree passed in O.S.No.483 of 1988 read with Ex.B2/sale deed, notwithstanding the findings recorded in the present proceedings. No costs. Consequently, the connected miscellaneous petitions, if any, shall stand closed.

13-02-2026

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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To

1. The Collector
Villupuram District Villupuram,
2. The Tahsildar
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Kallakurichi
4. II Additional District Munsif, Kallakurichi.
5. Learned Subordinate Judge, Kallakurichi.



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MUMMINENI SUDHEER KUMAR J.
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