



SA No. 1601 of 2010



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-02-2026

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR

SA No. 1601 of 2010

1. P.Sundaram,
- 2.K.U.Kumarasamy,
- 3.Malarkodi,
- 4.Arukkaniammal,

Appellant(s)

Vs

1. The State Of Tamil Nadu,
Rep. By Its District Collector, Erode
Dt., Erode-11.
- 2.The Divisional Engineer,
Highways And Rural Development,
Highways Dept., Erode.
- 3.The Sub Divisional Officer,
Tn Highways Dept. And Rural
Development, Kodumudi, Erode Dt.
- 4.The Assistant Director,
Surveys And Land Records, Collector
Office, Erode.

Respondent(s)

For Appellant(s): M/s.N.Manokaran

For Respondent(s): Mr.P.Gurunathan,
Additional Government Pleader (C.S)



ORDER

This second appeal is directed against the concurrent judgment and decree passed by the learned District Munsif-cum-Judicial Magistrate, Kodumudi and the learned Additional District Judge, Fast Track Court-I, Erode in O.S.No.115 of 2000 and A.S.No.112 of 2008 raising the following grounds as substantial questions of law.

a) Whether the courts below in erred in law and misdirected themselves in dismissing the suit merely on the basis of uncorroborated resurvey proceedings in the absence of any other oral or documentary evidence on the part of the defendants to reject the plaintiffs' title under Ex.A1 to A3?

b) Whether the courts below are correct in law in holding that the principle of constructive res-judicata has no application to the facts of the present case even though the judgement and decree granted in O.S.No.253 of 1983 (Ex.A8 and A9) has attained finality against the defendants more so, an exparte decree is also a valid decree under law and that it would operate as res-judicata as held in 2007 SAR 727 ?

C) Whether the courts below erred in law in holding that the failure on the part of the plaintiffs to challenge the resurvey proceedings is fatal to their case even though the civil court is competent to decide the validity of the resurvey proceedings in the absence of an appeal before the statutory authorities as held in 1998 (1) CTC 630 (FB) ?

2. The brief narration of facts is necessary for disposal of this second appeal. The parties are referred to as per their status in the original suit for the sake of convenience.



2.1. The plaintiff herein laid a suit in O.S.No.115 of 2000 on the file of the Court of District Munsif-cum-Judicial Magistrate, Kodumudi, originally seeking a permanent injunction against the defendants and thereafter, by amending the plaint, added a relief for grant of mandatory injunction directing the defendants to construct a demolished portion of 11 feet east-west wall of the suit and 11 feet length cement sheet shed of the suit property at the cost of the defendants. The suit schedule property was situated in S.No.62/2, Itchipalayam Village, on the eastern side of Erode-Karur Highways Road.

2.2.The case of the plaintiffs, as pleaded in the plaint, is that one Ganesan was the absolute owner of the suit property and his title to the said property was declared in O.S.No.253 of 1983 on the file of the District Munsif Court, Erode, as against the first defendant herein and it is from the said Ganesan, the plaintiffs acquired the Items 1 to 3 of the suit schedule property under Exhibits A1 to Ex.A3 documents and therefore, they have perfect title and possession over the suit schedule properties. It is also their further contention that the judgment and decree obtained by the vendor in O.S.No.253 of 1983 is binding on the first defendant herein and therefore, they are estopped from, any way interfering with the possession and enjoyment of the plaintiffs in the suit schedule properties.

2.3.The defendants filed their written statement denying the claim made by the plaintiffs and further contending that the suit schedule property in



O.S.No.253 of 1983 is only a house property and the same has nothing to do with the suit schedule property in the present suit. According to the defendants, the suit schedule property in O.S.No.253 of 1983 is only a house property more fully described in the decree therein and the suit schedule property in the present suit is on the northern boundary of the suit scheduled property in O.S.No.253 of 1983. Thus, it is the specific contention of the defendants that the land situated in S.F.No.63 is a poromboke land and the plaintiffs cannot claim any right over the said property.

2.4. During the course of trial, the first plaintiff got examined as P.W.1 and two other witnesses were examined as P.W.2 and P.W.3, besides marking Exhibits A1 to Ex.A7. On behalf of the defendants, D.W.1 was examined and Ex.B1 was marked. In addition to the same, during the pendency of the suit, an Advocate Commissioner was appointed for examining the physical features of the suit schedule property and his reports and the plans therein were marked as Ex.C1 to Ex.C4. Though the plaintiffs relied upon the judgment and decree in O.S.No.253 of 1983 in support of their claim and title over the suit schedule property, the said judgment and decree were not marked during the course of trial before the trial court and no explanation was offered for not filing the same before the trial court. The trial court, having taken note of the same, has drawn an adverse inference against the plaintiffs and further, having taken note of the contents of Ex.A7, which is the proceedings of the Tahsildar, Erode dated



05.12.1991, dealing with the resurvey of the land in question, came to the conclusion that the plaintiffs failed to establish their case and dismissed the suit by a judgment and decree dated 22.10.2007.

2.5. Aggrieved thereby, the plaintiff filed A.S.No.112 of 2008 on the file of the Additional District Judge, Fast Track Court – I, Erode. Before the lower appellate court, the plaintiffs filed the additional evidence and got the judgment and decree in O.S.No.253 of 1983 as Exhibits A8 and Ex.A9. The lower appellate court, having taken note of the judgment and decree in O.S.No.253 of 1983 and on examining the sketch attached to the decree therein, came to the conclusion that the plaintiff in O.S.No.253 of 1983 got right to the portion marked as ‘L’, ‘M’, ‘N’ and ‘O’, as shown in the plan, which is on the southern border of the present suit schedule property situated in S.F.No.62/2 and thus found that the suit schedule property in O.S.No.253 of 1983 is different from the suit schedule property in the present suit. Further, the lower appellate court also found that there was no clarity in the decree in O.S.No.253 of 1983 as to the nature of declaration that was made. The lower appellate court also came to the conclusion that there was no declaration of title of the vendor of the plaintiffs herein even in respect of the suit schedule property in O.S.No.253 of 1983. The courts below also has taken note of the reports submitted by the Advocate Commissioner, marked as Ex.C1 to Ex.C4, and came to the conclusion that the demolished portion of the suit schedule property is situated in S.F.No.63, but



not in S.F.No.62/2. As against the specific findings contained in the reports of the Advocate Commissioner and the plans therein, there were no objections filed either by the plaintiffs or by the defendants, thereby admitting the contents of the said report. The courts below have taken note of the contents of the reports submitted by the Advocate Commissioner and arrived at a conclusion that the demolished portion of the suit schedule property is situated in S.No.63, which is identified as road poromboke. Admittedly, the plaintiffs herein are not claiming any right over the land situated in S.No.63. Ex.A7 which deals with the resurvey of the subject land and other adjacent land of year 1991, has not been put to challenge either in the present suit or in any other proceedings by the plaintiffs at any point of time. In the absence of any challenge to the resurvey proceedings marked as Ex.A7, and the reports of the Advocate Commissioner marked as Exhibits C1 to Ex.C4 and in the light of the factual conclusions arrived at by the courts below that the suit schedule property in O.S.No.253 of 1983 is different from the suit schedule property in the present suits, there is nothing before this court to arrive at a different conclusion on the factual aspects.

3. The learned counsel for the appellant also has not brought to the notice of this court any of the material or any ground to differ with the factual findings recorded by the courts below. Though the learned counsel for the appellant raised three grounds calling them as substantial questions of law, in the



considered view of this court, the said grounds does not infact raise any questions of law, much less substantial questions of law, in the facts and circumstances of the case.

4. In the light of the above, this court is of the considered view that there is no substantial question of law that would arise for consideration before this court and the second appeal is dismissed at the admission stage. Even otherwise, on the facts of the case also, the learned counsel for the appellant failed to persuade this court to deviate from the view taken by the courts below.

5. In the light of the above, the second appeal stands dismissed. No costs. Consequently, connected applications, if any, shall stand closed.

25-02-2026

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



To

1. The State Of Tamil Nadu,
Rep. By Its District Collector, Erode
Dt., Erode-11.
2. The Divisional Engineer,
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Highways Dept., Erode.
3. The Sub Divisional Officer,
Tn Highways Dept. And Rural
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