



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-03-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 106 of 2020

1. N.Murugesan
2. S,Mohan

..Appellant(s)

Vs

1. A.S.Jahir Hussain
2. A.S.Sadhiq Basha
3. A.S.Mohammed Yosuf
4. A.S.Ibrahim

..Respondent(s)

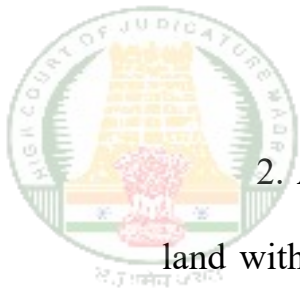
Prayer: Second appeal is filed under Section 100 of Code of Civil Procedure, praying to set aside the judgment and decree 04.11.2019 made in AS.No.5/2016 on the file of the Principal Subordinate Judge at Kanchipuram in reserving the judgment and decree dated 14.10.2015 made in OS.No.83 of 2011 on the file of the District Munsif Cum Judicial Magistrate at Uthiramerur.

For Appellant(s): Mr.K.Venkatasubban
for M/s.Sarvabhauman Associates

For Respondent(s): M/s.R.V.Gayatri
for M/s.P.Ramanujam and Associates

JUDGMENT

The plaintiffs are the appellants. They filed a suit seeking declaration of title and recovery of possession in respect of suit 'B' schedule property. The suit was decreed by the trial court and the first appeal filed by the respondents/defendants was allowed. Aggrieved by the same, the plaintiffs have come before this court by way of second appeal.

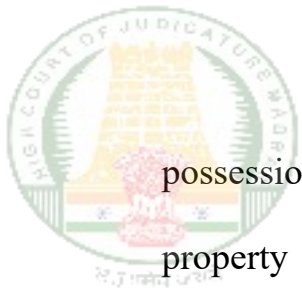


2. According to the plaintiffs, one Neelaveniammal owned 6,105 feet of land with east-west measurement of 185 feet and north-south measurement of 33 feet in suit survey number. She purchased the said property under registered sale deed dated 27.11.1991 marked as Exhibit A1. The said Neelaveniammal sold portion of her property on the western side with east-west measurement of 102 feet and the north-south measurement of 33 feet in favour of defendants 1 to 4 under registered sale deed dated 15.07.2004. The remaining property on the eastern side with east-west measurement of 83 feet and north-south measurement of 33 feet, totally 2739 feet was sold by Neelaveniammal in favour of plaintiffs' vendor namely Baskaran under registered sale deed dated 05.10.2006. Subsequently, the above said Baskaran sold the property purchased by him in favour of plaintiffs under two sale deeds dated 29.09.2008 and 29.09.2008 marked as Ex.A3 and Ex.A4. The first plaintiff purchased the property with east-west measurement of 83 feet and north-south measurement of 16 feet from the above said Baskaran. The second plaintiff purchased the property with east-west measurement of 83 feet and north-south measurement of 17 feet from the above said vendor. Thus, the plaintiffs have been in possession and enjoyment of the said property with east-west measurement of 83 feet and north-south measurement of 33 feet from the date of purchase. It is further stated by the appellants that the defendants committed trespass into the portion of their property on the western side and encroached strip of land with east-west measurement of 13 feet and north-south measurement of 33 feet and



put up a compound wall encompassing the encroached portion. The plaintiffs issued a legal notice to the defendants requesting them to remove the compound wall and surrender the possession of the encroached portion on 29.07.2011. However, the defendants failed to give any reply. Therefore, the plaintiffs were constrained to file a suit for the abovesaid reliefs.

3. The defendants filed a written statement denying the title of the plaintiffs over the suit 'B' schedule property. It was the specific case of the defendants that the property purchased by the defendants lies in New Survey.No. 1712/9A and the property purchased by the plaintiffs is situated in New Survey.No. 1712/9B. It is also stated by the defendants that the suit 'B' schedule property shown as encroached portion by the plaintiffs forms part of the property purchased by them which is situated in Survey.No. 1712/9A. It is also specifically pleaded by the defendants that they became owner of the property situated in Survey.No. 1712/9A with an extent of 3366 square feet by virtue of registered sale deed executed by the said Neelaveniammal dated 15.07.2004. It is also stated that immediately after purchase, the defendants surveyed the property and had put up compound wall on eastern side demarcating the boundaries. The plaintiffs' vendor purchased the remaining property from the very same vendor Neelaveniammal. It is also stated that the defendants were the previous purchasers and therefore, the plaintiffs could have only purchased what was remaining with the common vendor. After purchase by the defendants, it was also claimed by the defendants that they had been in



possession of the property purchased by them and they do not possess any property more than what was purchased by them. On these pleadings, the defendants sought for dismissal of the suit.

4. Before the trial court, the second plaintiff was examined as PW1 and yet another witness was examined as PW2. On behalf of the plaintiffs, 12 documents were marked as Ex. A1 to Ex.A12. On the side of the defendants, 1st defendant was examined as DW1 and five documents were marked as Ex.B1 to Ex.B5. The trial court appointed an Advocate Commissioner and he measured the property with the help of Surveyor. The Advocate Commissioner's report and plan were marked as Ex.C1 and Ex.C2. The report of the surveyor and plan were marked as Ex.C3 and Ex.C4.

5. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs established their title over the suit property and decreed the suit as prayed for. Aggrieved by the same, the defendants preferred an appeal in A.S. 5 of 2016 on the file of the Principal Subordinate Judge, Kanchipuram. The first appellate court reversed the findings of the trial court and allowed the appeal. As a necessary consequence, the suit was dismissed. Aggrieved by the same, the plaintiffs have come before this court,

6. At the time of admission, this Court formulated the following substantial questions of law by order dated 04-02-2020.



a) *Whether the Court below was right in having ignored material evidence and acted against the evidence available on record viz., Ex.C1-Advocate Commissioner's report, where under it is stated that "AFDEE" encroached portion comes within S.No.1712/9B that of the plaintiffs property, which makes the judgment and decree perverse?*

b) *Whether the Court below was right in ignoring Ex.C3, where under it is clearly shown that the encroached portion comes within the appellants property, which makes the conclusion of the Lower Appellate Court perverse?*

7. The learned counsel for the appellants/plaintiffs by drawing attention of this court to Exhibits C1 to C4, submitted that the First Appellate Court misread the report and plan submitted by the Advocate Commissioner and came to the conclusion that the plaintiffs were in possession of the property with east-west measurement of 25.4 meters and as a necessary consequence committed an error in dismissing the suit filed by the plaintiffs. The learned counsel submitted that conjoint reading of Exhibits C1 to C4 would establish that the plaintiffs will get east-west measurement of 83 feet only if the encroached portion shown as AFDE in the Advocate Commissioner's plan is annexed with the remaining property of the plaintiffs.

8. The learned counsel for the respondents/defendants submitted that as per the measurement shown by the Advocate Commissioner, on the southern side, the plaintiffs are found to be in possession of only 28.6 meters. Therefore, there is a shortage of the extent purchased by the defendants. The learned



counsel submitted that the compound wall was put up by the defendants after purchase of the suit property and the present suit filed by the plaintiffs belatedly in the year 2011 cannot be considered without a prayer for mandatory injunction.

9. From the pleadings of the parties and also documents marked on the side of the plaintiffs, especially Exhibits A1 to A4, it is clear that the properties of the plaintiffs and the defendants were originally owned by one Neelaveniammal. The linear measurement of the property owned by her was east-west measurement of 185 feet and north-south measurement of 33 feet. The total extent was 6105 feet. The defendants purchased the western portion of the property from Neelaveniammal with east-west measurement of 102 feet and north-south measurement of 33 feet. The defendants purchased the property on 15.07.2004. Therefore, there is no doubt that the title document of the defendants is anterior in time. Subsequently, the said Neelaveniammal sold the remaining extent of the property with east-west measurement of 83 feet and north-south measurement of 33 feet to the plaintiffs' vendor Baskaran on 05.10.2006. The plaintiffs were purchased the suit property under two separate sale deeds from Baskaran on 29.09.2008. The first plaintiff purchased the property with east-west measurement of 83 feet and north-south measurement of 16 feet. The second plaintiff purchased the property with east-west measurement of 83 feet and north-south measurement of 17 feet. If the linear measurements of the properties mentioned in the plaintiff's title document



marked as Exhibits A3 and A4 are taken together, the total measurements of the property purchased by the plaintiffs will be 83 feet east-west and 33 feet north-south. As far as north-south measurement is concerned, there is no dispute between the parties. The dispute is only with regard to east-west measurement. Therefore, as per the title document, the plaintiffs are entitled to 83 feet east-west and the defendants are entitled to 102 feet east-west.

10. In order to ascertain whether the parties are in possession of the properties purchased by them, the trial court appointed an Advocate Commissioner and also a Surveyor. The Advocate Commissioner's report and plan have been marked as Exhibits C1 and C2 and the Surveyor's report and plan have been marked as Exhibits C3 and C4.

11. It is seen from the Exhibits C3 and C4, the properties purchased by the defendants lies in Survey No. 1712/9A and the properties purchased by the plaintiffs lies in Survey No.1712/9B. The disputed portion falls within the Survey No.1712/9B as per Exhibit C3, plan of the Surveyor. Therefore, as per the Surveyor's plan, plaintiffs encroached 2.8 meter east-west and 10.8 meter north-south.

12. The Surveyor, in his plan, had also given the linear measurement of the properties of the parties. As per the Surveyor's plan, the plaintiffs are entitled to 25.4 meters which is equivalent to 83.33 feet. Likewise, the defendants are entitled to east-west measurement of 30.8 meters on the northern side which is equivalent to 101.04 feet. As per Surveyor's plan, the defendants



are entitled to 31.7 meters(28.6 + 3.1) on the southern side, which is equivalent to 104 feet. If the encroached portion shown as AFDEE in the Advocate Commissioner's plan is added with the plaintiffs' property, they will get 83.33 feet. However, the defendants will get only 30.8 meters, which is equivalent to 101.04 feet on northern side. On the other hand, the defendants will get 31.7 meters which is equivalent to 104 feet on southern side. However, as per the title deed, the defendants are entitled to only 102 feet. Therefore, it is clear that as per the plan and report submitted by the Advocate Commissioner and Surveyor, there is an encroachment by the defendants into the property of the plaintiffs.

13. The defendants in their written statement clearly pleaded that the property purchased by them is situated in Survey No.1712/9A and the property purchased by the plaintiffs is situated in Survey No.1712/9B. As per plaint description, the property of plaintiffs situates in Survey No.1712/9B and encroached portion is shown as portion of S.No.1712/9B. A combined reading of Advocate Commissioner's report and plan with the Surveyor's report and plan would indicate that AFDE portion i.e., disputed portion falls within the subdivision Survey.No.1712/9B which admittedly belongs to the plaintiffs. In view of the same, the plaintiffs are entitled to recovery of AFDE portion as shown in the plaint. The first appellate court assumed that the plaintiffs are already in possession of 25.4 meters, which is equivalent to 83.33 feet. However, the plaintiffs will get 25.4 meters only if the disputed AFDE portion



is included with their property. Therefore, the first appellate court misread the advocate commissioner's report and plan and came to the conclusion that the plaintiffs failed to establish their title over the suit property.

14. In view of the same, the first appellate court's findings are liable to be set aside. The substantial questions of law framed at the time of admission are answered in favour of the appellants/plaintiffs and the second appeal stands allowed by setting aside the judgment and decree passed by the first appellate court in AS.No.5/2016. The appellants/plaintiffs are entitled to declaration and recovery of possession in respect of portion of the property shown as AFDE in the advocate commissioner's plan. It is also ordered that the plan by the Advocate Commissioner and the Surveyor marked as Exhibits.C2 and C3 shall form part of the decree passed by this Court. There shall be no order as to costs.

04-03-2026

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

1. The Principal Subordinate Judge, Kanchipuram
2. The District Munsif Cum Judicial Magistrate, Uthiramerur.



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S.SOUNTHAR, J.

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