



WEB COPY

SA No. 1018 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13-02-2026

CORAM

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

SA No. 1018 of 2005

AND

CMP NO. 716 OF 2010,CMP NO. 964 OF 2013

1. Ganesagounder,
S/o Late Vaithi Gounder
2. Kunjammal
W/o Ganesa Gounder
3. Kandasamy
S/o Ganesa Gounder
4. Dr, Subramaniyan,
S/o Ganesa Gounder,
5. Dhanabal,
S/o. Ganesa Gounder

..Appellant(s)

Vs

PAPPU GOUNDR,(died)

2. Mohanasundaram
1. S/o.late Pappu Gounder
3. Sivalingam
S/o.late Pappu Gounder
4. Manikandan
S/o.late M.Ganesan,



5. Ravichandran

S/o.late M.Ganesan

6. Anbukani

S/o.late M.Ganesan

R1 died, R2 to R6 are brought on record as LR's of the deceased R1 vide court order dated 02/01/2025 made in CMP Nos 13696,13701,13698 of 2022

..Respondent(s)

PRAYER

Second Appeal filed under Sec.100 of Civil Procedure Code, praying to set aside the Judgment and decree passed by the learned Additional Subordinate Judge, Nagapattinam in A.S.No.69 of 2004 dated 07.12.2004 reversing the judgment and decree passed by the learned District Munsif, Nagapattinam in O.S.No. 606 of 2000 dated 30.01.2004 (O.S.No.264 of 1998 of D.M.C., Thiruthuraipoondi)

For Appellant(s): Mr.A.Sundaravadhanan

For Respondent(s): Mr. K.Govi Ganesan for R2 To R6
R1 - Died

JUDGMENT

Challenging the reversal findings of the courts below, the defendants have preferred this Second Appeal.



2.Before the trial court, the respondent/plaintiff filed a suit for partition in O.S.No.606 of 2000 before the District Munsif Court, Nagapattinam for the relief of declaration and other consequential relief in respect of Survey No.58/1B to an extent of 2 acres 87 cents vide old Patta No.118, New Patta No.693 with four boundaries against defendants 1 to 5, who are neighbouring landowners.

3.For the sake of convenience, the parties are denoted as per the ranking in the Suit.

4.The appellants/defendants contested the suit stating that the plaintiff is not entitled for 2 acres 87 cents, on the other hand, he is entitled for 2 acres 82 cents and the remaining 0.53.5 ares belong to defendants and patta also granted in their name. Eversince, they are in continuous and long possession. Therefore, they have disputed the plaintiff's right.

5.Both parties adduced evidence before the trial court. Considering the evidence on record, three issues were framed and the trial judge finally concludes that as per the document relied on by both plaintiff and defendants, it reveals that plaintiff is entitled only 2 acres 62 cents in new Survey No.58/1B, Old Survey No.58/1. Accordingly, the relief of declaration was granted only for an extent of 2 acres 62 cents, the suit was partly allowed and in respect of 25 cents, the suit was dismissed.

6.Challenging the said findings, the plaintiff preferred an appeal in A.S.No. 69 of 2004 on the file of Sub-Court, Nagapattinam. The first appellate



judge independently analysed the facts and evidence on record, framed points for consideration and finally held that the plaintiff has proved his right and declaration for the entire extent of property by relying the Commissioner's report. Accordingly, the first appeal was allowed and the findings of trial judge was confirmed. Challenging the said reversal findings, now, the defendants have preferred this Second Appeal.

7. Brief facts of the case is as follows :-

The plaintiff's case is that the suit was originally filed by Pappu gounder stating that the property situated in Survey No.58/1B an extent of 2 acres 87 cents belong to him by way of purchase through sale deed dated 26.07.1963 including his other property. Thereafter, he applied for subdivision of the land purchased by him. Accordingly, the property was sub-divided as Survey Nos.58/1A, 58/1B and 58/1C. The suit property is pertaining to 58/1B, which is now under dispute. The plaintiff contended that the total extent of Survey No.58/1B is an extent of 2 acres 87 cents, but the defendants encroached 25 cents along with their land and falsely claimed right over the property and caused interference. Hence, the suit.

8. The defendants contested the suit stating that the subdivision was taken place in the year 1978 with the knowledge of plaintiff, but at that time, he has not raised any objection. Further, they have contended that they are also having land in Survey No.58/1. Considering the enjoyment of the land by the respective parties, subdivision was made and given separate subdivision numbers in the



year 1978 itself. The defendants further contended that they are in possession and enjoyment of the property as per the subdivision and they have not encroached any of the property as claimed by the plaintiff. To that effect, they have also produced the revenue records, through which, the defendants contended that they are in enjoyment of 0.53.5 ares of land in Survey No.58/1, which was subdivided as 58/1C in the year 1978 itself.

9. The defendants would further submit that the plaintiff himself aggrieved that lesser extent was allotted during the subdivision proceedings. If any such mistake was committed, he ought to have raised objections by preferring an appeal under Sec.9 and 10 of Tamil Nadu Survey and Boundaries Act, 1923, but, he has not preferred any appeal. If at all, he had any grievance, the appeal has to be filed within 3 years from the year of 1978, but the plaintiff has not preferred any such appeal. Therefore, he cannot raise objections with regard to subdivision by filing the suit in the year 2000, nearly about 20 years later. The defendants also pointed out that even in the present suit, they have not claimed any relief of recovery of possession. So, the relief claimed by the plaintiff is not sustainable one. Hence, they prayed to dismiss the suit.

10. Before the trial court, three issues were framed. Both parties adduced evidence. On the side of plaintiff, he was examined as P.W.1 and the documents Ex.A1 to Ex.A6 were marked. On the side of defendants, 3rd defendant was examined as D.W.1 and the documents Ex.B1 to Ex.B33 were marked. The Commissioner's report and plan were marked as Ex.C1 and Ex.C2.



11. On considering the evidence on record on the side of plaintiff, the trial court has held that though as per the sale deed Ex.A6, he said to have purchased 2 acres 87 cents and admittedly, the disputed 0.53.5 ares is existed in between plaintiff and defendant's land. As per Ex.A6, the plaintiff purchased the property in the year 1963 and admittedly, the subdivision was happened in the year 1978. An extent of 2 acres 59 cents, patta was granted in favour of plaintiff and for an extent of 1 hectare 5 ares, the patta was granted in favour of defendants, i.e. 0.53.5 ares. Based on the patta issued in favour of defendants for Survey No.58/1C, they were in possession and enjoyment of the property. To that effect, the documents relied on by the defendants Ex.B3 to Ex.B27 were considered by the trial judge and finally held that the plaintiff able to prove that he is in possession and enjoyment of the property from the year of 1978 as per the subdivision for the land in Survey No.58/1. But the plaintiff was not able to establish that he was in possession of the property as per the sale deed for an extent of 2 acres 87 cents. The Commissioner's report has also been considered by the trial judge and held that there was no specific division between the parties, but considering the other relevant records, the suit was restricted to the claim of 2 acres 62 cents.

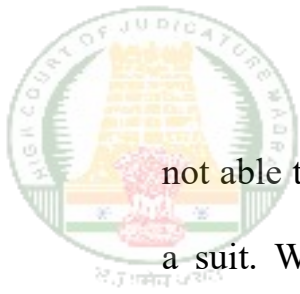
12. Furthermore, the subdivision of suit survey number was not been challenged by the plaintiff through proper forum. Moreover, the defendants, who are also being the neighbours of plaintiff, he is very well aware of the possession and enjoyment of defendants in Survey No.58/1C. With the



knowledge of plaintiff, they have possessed and enjoyed the property. But the plaintiff has not raised any objection nor filed any appeal against issuance of the Patta. Therefore, the relief claimed by the plaintiff only with regard to 2 cents 62 cents, he was entitled to and the remaining 25 cents, the plaintiff was not entitled. Accordingly, with respect of 2 acres 62 cents, suit was partly allowed and with respect to remaining 25 cents, the suit was dismissed.

13. Aggrieved by the said findings, the plaintiff preferred an appeal in A.S.No.69 of 2004 before the Additional Sub-Court, Nagapattinam. The plaintiff contended that the court below failed to appreciate the documents and the evidence adduced on the side of plaintiff. The court below also not appreciated the fact as if the sale deed stands in his name, on the other hand, the defendants have not produced any sale deed, without which in respect of 25 cents, the relief not granted by the trial court as such is erroneous one. Hence, he prayed to set aside the findings of trial judge.

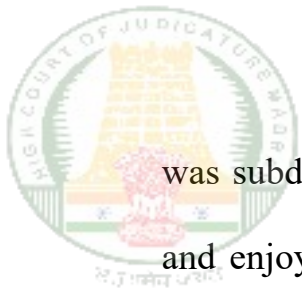
14. On analysing the facts and evidence on record, the first appellate judge has framed separate points for consideration and finally held that as per the sale deed Ex.A6, the plaintiff has purchased an extent of 2 acres 87 cents. On the other hand, the defendants have not produced any document to show their right and title over the property. The first appellate judge has held that at the time of subdivision for entire extent, the entire property purchased by the plaintiff was not considered and the patta was given only for 2 acres 66 cents in Survey No.58/1B. At that time, the plaintiff was in abroad. Therefore, he was



not able to raise objections in time. After came down to India, the plaintiff filed a suit. When he came to know about the alleged mistake committed by the revenue authority, within three years, from the date of knowledge, he filed a suit as such is maintainable. Further, as per the Commissioner's report, there is no boundary available between the plaintiff and defendants. Therefore, by getting wrong patta, the defendants encroached the property belong to the plaintiff, for which they are not entitled. Accordingly, the plaintiff is entitled for declaration of entire extent of 2 acres 87 cents in Survey No.58/1 and the appeal was allowed. The suit was decreed as prayed for. Aggrieved over the said reversal findings, the defendants have preferred this Second Appeal.

15. The learned counsel for appellants argue that the lower court failed to appreciate both law and facts properly and failed to consider that though a larger extent of 2 acres and 87 cents is mentioned in the sale deed, the plaintiff purchased 2 acres and 59 cents only with the specific boundaries and enjoyed the property from 1963 onwards, since the boundaries would prevail over the extent mentioned in the sale deed. The learned counsel for appellants would further argue that the first appellate court not properly appreciated the commissioner's report and plan marked as Ex.C1 and Ex.C2, which clearly supports the case of defendants. But, based on the Commissioner's report, the trial judge granted the relief in favour of plaintiff as such is erroneous one.

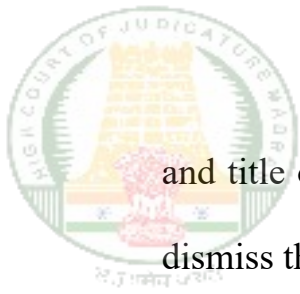
16. The learned counsel for appellants would also pointed out that the lower court failed to see that as per the subdivision, the land in Survey No.58/1



was subdivided into 58/1B and 58/1C and as per the measurement, possession and enjoyment of property, the patta was granted in favour of plaintiff for an extent of 2 acres 59 cents and for defendants an extent of 1 hectares and 5 ares i.e. 0.53.5 ares as per the peaceful possession and enjoyment, which was not questioned nearly about 20 years. But, the first appellate court failed to appreciate all those evidence on record and also not considered the documents relied on by the defendants, which clearly proves that they are having right and title over the property as per the patta, which was granted to them, but on considering their long possession, the first appellate court erroneously granted the relief in favour of plaintiff as such is illegal. Hence, he prayed to set aside the findings of first appellate court.

17. By way of reply, the learned counsel for respondent/plaintiff would submit that the plaintiff proved his right and title based on the sale deed Ex.A6 of the year 1963, but though the patta was issued for lesser extent, the title deed alone to be taken into consideration and the same was rightly appreciated by the first appellate court, which requires no interference. Hence, he prayed to dismiss this Second Appeal as no merit.

18. The learned counsel would further argues that at the time of subdivision, he was not available in India. When he came down to India, he was known about the alleged mistake. Immediately, he came forward with the suit. Therefore, the first appellate court rightly concludes that the said suit is maintainable and also rightly observed that the defendants not proved their right



and title over the property through relevant sale deeds. Therefore, he prayed to dismiss the Second Appeal as no merit.

19. Considering both side submissions, this Second Appeal was admitted on the following question of law :-

(a) *Whether the suit itself is maintainable, when admittedly the plaintiff is a citizen of Singapore and cannot hold any property in India without the permission of Reserve Bank of India?*

(b) *Whether the suit for declaration and permanent injunction is maintainable in law, when admittedly the plaintiff is not at all in possession of the disputed 25 cents of land in Old S.No.58 and New S.No.58/1C?*

(c) *Whether the suit is maintainable in law, when the suit has not been filed within three years from the date of the sub-division of S.No.58 in 1978, as per the provisions of Section 14 of the Tamil Nadu Survey and Boundaries Act?*

(d) *Whether the findings of the lower appellate court is sustainable in law, when the plaintiff has been enjoying only 2 acres and 59 cents with specific boundaries as mentioned in Exs.C1 and C2, which alone will prevail and not the extent mentioned in the sale deed? And*

(e) *Whether the findings of the Court below is sustainable in law by wrongly placing the burden on the defendants, when the burden is*



heavily upon the plaintiff to establish his case by producing the relevant documents, as per Sections 101 and 102 of the Indian Evidence Act?

20. In respect of question of law (a) is concerned, the case of plaintiff is that he is the citizen of Singapore. So, he was not able to immediately raise objections and there is no specific pleading to that effect. Therefore, the said question of law is irrelevant to the facts. Accordingly, the question of law (a) is answered.

21. In respect of question of law (b) is concerned, considering the entire submissions of both sides, based on Ex.A1 sale deed, the plaintiff purchased the property in the year 1963 in Survey No.58/1 for an extent of 2 acres 87 cents. Admittedly, the land in Survey No.58/1 was subdivided into 58/1A, 58/1B and 58/1C. As per subdivision in the year 1978, the property, which was purchased by the plaintiff, he was allotted with Survey No.58/1B. Considering his possession, patta was issued for the said extent alone. Now, the case of plaintiff is that he was abroad at that time, now only he came to know that nearly about 25 cents was grabbed by the defendants including their land, who are his neighbours. Therefore, he came forward with the suit for declaration and other consequential relief. The contention of defendants is that they are entering the land belong to the plaintiff, but during the subdivision, considering their possession and enjoyment, the revenue authorities have granted subdivision as



well as patta. Accordingly, the plaintiff was granted with land and possession of defendants was assigned with No.58/1 for an extent of 1 acre and 32 cents.

Eversince, they were in possession and enjoyment of the same. The plaintiff also enjoyed the land, which was allotted to him in Survey No.58/1B from 1978 onwards. The plaintiff has not raised any objections for lesser allotment of land. Only in the year 1998, the suit was filed, nearly about 20 years later from the date of subdivision. All these years, the defendants have possessed and enjoyed the land with the knowledge of plaintiff, but he has not raised any objections. It is an undisputed fact that both plaintiff and defendants were neighbours. Though he is in abroad, he can very well knew about the possession and enjoyment of land by the defendants. Therefore, as per the patta issued in favour of defendants as well as by long possession, the defendants perfected their title over the land, which was allotted to them in Survey No.58/1C. Per contra, the plaintiff not preferred any appeal challenging the subdivision proceedings within 3 years from the date of issuance of sale deed. But, now he filled up the lacuna stating that he was in abroad and he was not able to file the appeal within time, which is not acceptable one. But, the first appellate court failed to appreciate the said aspect and erroneously granted the relief as such is liable to be set aside. Accordingly, the question of law (b) is answered.

22. Admittedly, the issue between the parties pertaining to subdivision of property, but the same was not challenged within 3 years from the date of issuance of sale deed and only to fill up the lacuna, the plaintiff filed the suit



before the civil court as such is not sustainable one. To that effect, the question of law (c) is answered.

23. As per the Commissioner's report as well as the evidence of plaintiff, it would prove that the plaintiff is enjoying 2 acres 59 cents and he himself admits that the defendants are in enjoyment of 0.53.5 ares continuously and they were in long possession. Therefore, the plaintiff has not proved his claim that he approached the court within time and as per the Commissioner's report, within four boundaries, the plaintiff was in enjoyment of the property was established. Furthermore, at the time of issuing patta during the subdivision proceedings, by considering long possession and enjoyment of the property, in the presence of parties, the subdivision was taken place. Therefore, the plaintiff was not able to establish the exact extent mentioned in the sale and the same was rightly appreciated by the trial court. But, the first appellate court failed to appreciate the same. To that effect, the findings rendered by the trial judge is liable to be set aside. Accordingly, the question of law (d) is answered.

24. The first appellate court had erroneously held that the defendants bound to prove their claim in respect of Survey No.58/1C and also held that no title deed was produced by the defendants. But, it is the case of declaration filed by the plaintiff, who failed to prove his enjoyment over the property from the year 1978 onwards. Therefore, the burden is shifted on the defendant. Accordingly, the question of law (e) is answered.



25. In the result, the findings of first appellate court in A.S.No. 69 of 2004 is set aside and the findings of trial court in O.S.No. 606 of 2000 is confirmed. Accordingly, the plaintiff is entitled for the relief of declaration only in respect of 2 acres 62 cents. The suit is decreed in respect of 2 acres and 62 cents and the suit is dismissed in respect of 25 cents. Accordingly, this Second Appeal is allowed. No costs. Consequently, the connected Civil Miscellaneous Petitions are closed.

13-02-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

RPP

To

1. Additional Subordinate Judge, Nagapattinam.
2. District Munsif, Nagapattinam.
3. Section Officer, VR Section, Madras High Court.



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T.V.THAMILSELVI J.

RPP

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