



WEB COPY

SA No. 209 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12-03-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 209 of 2020

T.Kathirvel

..Appellant(s)

Vs

Vasanthi

..Respondent(s)

Prayer : Second appeal is filed under Section 100 of Code of Civil Procedure code, praying to set aside the judgment and decree dated 04.12.2019 made in AS.No.14 of 2015 on the file of the learned Sub Court, Pollachi reversing the judgment and decree dated 05.08.2015 made in OS.No.278 of 2008 on the file of the learned District Munsif Court, Pollachi.

For Appellant(s):	V.Anandhamoorthy
For Respondent(s):	M/s.N.Ponraj

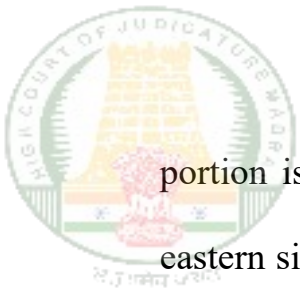
JUDGMENT

The unsuccessful plaintiff in the suit is the appellant. He filed a suit seeking declaration of title over suit 'B' and 'C' scheduled properties and for consequential permanent injunction restraining the defendant from putting up any construction in the suit property. He also sought for mandatory injunction directing the defendant to remove the encroachment already made by her in the suit property which is morefully described as 'ACDB' in the plaint plan. The



suit was decreed by the trial court. Aggrieved by the same, the defendant preferred an appeal and the first appellate court reversed the findings of the trial court and dismissed the suit. Aggrieved by the same, the appellant/plaintiff has come before this court by way of second appeal.

2. According to the plaintiff, the suit property was originally belonged to one Chinna Mariappa Thevar under partition deed dated 11.11.1959. The plaintiff purchased the suit properties as vacant site from the above said Chinna Mariappa Thevar and his sons on 07.12.1988 under Exhibit A2. Thereafter, the plaintiff constructed a house in the year 1994 leaving two feet space on eastern and northern side. The said space was left out by the plaintiff to enable him to maintain his wall and for whitewashing. It is also stated that there are two windows on the northern wall and through the same the plaintiff has been enjoying the natural light and air. It was further stated by the plaintiff that on the northern side of the suit property, the defendant owned property. The said property was purchased by the defendants' parents Shanmugham and Manonmani on 11-09-1991 under Exhibit A4. Thereafter, the suit property was settled in favour of defendant by her parents under settlement deed dated 17-10-2007 marked as Exhibit A5. On 02.04.2008, the defendant forcibly demolished the wall of the plaintiff on the north-west corner and started putting up construction encroaching upon the space left out by the plaintiff on the northern side. In spite of protest by the plaintiff, the defendant had put up construction to the length of 17 feet as shown as 'ACDB' in the plaint plan. The construction



portion is on the western side on the northern space left by the plaintiff. The eastern side of the northern space is remaining as a vacant space. Therefore, the encroached construction is shown as 'B' schedule property in the plaint plan and the remaining vacant space on the north-eastern side is shown as 'C' Schedule Property. Therefore, the plaintiff sought for declaration, injunction and mandatory injunction as mentioned above.

3. The defendant filed a written statement denying the claim of the plaintiff that he left two feet vacant space on the northern side of his property. It was the specific case of the defendant that the construction made by her is within her property and the suit 'B' and 'C' scheduled properties are not properties of the plaintiff. It was also stated that the plaintiff had put up construction up to the brim of his property and therefore, he has not left any space on the northern side. Thus, denying the title of the plaintiff over suit 'B' and 'C' scheduled properties, the defendant sought for dismissal of the suit.

4. Before the Trial Court, the plaintiff was examined as PW1 and yet another witness was examined as PW2. On behalf of the plaintiff, 15 documents were marked as Ex.A1 to Ex.A15. On behalf of the defendant, she was examined as DW1 and three documents were marked on his side as Ex.B1 to Ex.B3. The Trial Court appointed an Advocate Commissioner. The report and plan of the Advocate Commissioner have been marked as Ex.C1 and Ex.C2. The photographs submitted by the Advocate Commissioner have been marked as Ex.C3 series.



5. The Trial Court, based on the report submitted by the Advocate Commissioner, came to the conclusion that the defendant encroached the northern open space left by the plaintiff and decreed the suit as prayed for. Aggrieved by the same, the defendant preferred an appeal in AS.No.14 of 2015 on the file of Sub Court, Pollachi. The First Appellate Court, on appreciation of oral and documentary evidence, came to the conclusion that the plaintiff miserably failed to establish the encroachment made by the defendant and accordingly, allowed the appeal. As a necessary consequence, the suit was dismissed. Aggrieved by the same, the plaintiff has come before this Court.

6. At the time of admission, this Court formulated the following substantial questions of law for consideration by order dated 25.02.2020.

a) Whether the Lower Appellate Court is right in non-suiting the plaintiff when he has proved his title with cogent evidence and the encroachment made by defendant through Ex.A9 and the defendant has not produced even a semblance of evidence to prove her case?

b) Whether the Lower Appellate Court is right in dismissing the suit on the ground of miscalculation of area without any iota of evidence adduced by the defendant?

7. The learned counsel for the appellant submitted that the suit property was purchased by the appellant under Exhibit A2 dated 07.12.1988 with measurements of 55 feet north-south and as per the Advocate Commissioner's



report, the north-south measurement of plaintiff's wall is only 53.10 feet.

Therefore, the encroachment on the side of the defendant stands proved. He further submitted that when the plaintiff proved his right over the disputed northern portion by producing his title documents, Ex.A1 and Ex.A2, the First Appellate Court committed a serious error in reversing the well-considered judgment of the Trial Court and allowed the appeal. The learned counsel also submitted that defendant has not produced any documents in support of her claim. Therefore, the first appellate court ought not have reversed the findings of the trial court.

8. The learned counsel for the respondent/defendant submitted that the property has not been measured by the Advocate Commissioner with reference to the title documents of the respective parties. Therefore, the First Appellate Court rightly held that the plaintiff failed to prove that the defendant encroached the portion of the suit property.

9. A perusal of Exhibits A1 and A2, the title documents of the plaintiff and Exhibits A3 and A4, the title documents of the defendant would indicate that the plaintiff purchased the property with north-south measurement of 55 feet and east-west measurement of 30 ½ feet under Ex.A2 dated 07.12.1988. The defendant purchased the property with north-south measurement of 49 feet on the western side and the north-south measurement of 61 feet on the eastern side. The east-west measurement of the property purchased by the defendant is 52 feet on the northern side and 53 feet on the southern side. The same can be



gathered from Exhibit A4, sale deed in favour of defendant's parents. The very same measurements are mentioned in the settlement deed executed by defendant's parents in favour of the defendant marked as Ex.A5.

10. A perusal of Advocate Commissioner's report would indicate that he only noted down the physical features of the suit properties. In Page No.2 of the advocate commissioner's report, there is an insertion by handwriting stating that the north-south measurement of western wall of the plaintiff was 53.10 feet. Likewise, the plan submitted by the advocate commissioner is prepared with black ink. However, in the plan also there is an insertion with the blue ink as if the north-south measurement of plaintiff's property was 53.10 feet. Based on these insertions, the trial court came to the conclusion that the plaintiff constructed building with north-south measurement of 53.10 feet and however, he purchased 55 feet. In such circumstances, there must be a space available on the northern side. Further, on perusal of the records, the suit was filed on 25-04-2008 and the Advocate Commissioner was appointed on the very same day and he also visited the property on 25-04-2008. In the preamble portion of the report, the Advocate Commissioner mentioned that at the time of his local inspection the defendant was not available in her house, he could not issue notice to her. However, he noted that the parents of the defendant were available in the house. Therefore, it is clear that the Advocate Commissioner was appointed ex-parte on the date of presentation of the plaint and he inspected the suit property without even serving notice on the defendant. In such



circumstances, the report filed by him without issuing notice to the defendant cannot be pressed into service. Further, it is also seen that the Advocate Commissioner has not measured the properties of both the parties with reference to the title deeds with the help of Surveyor.

11. As mentioned earlier, both the parties purchased the properties with definite linear measurements. Only if properties of both the parties are measured by a qualified Surveyor with reference to title deeds of the respective parties, we will be in a position to come to the conclusion as to whether the defendant committed trespass into the property belongs to the plaintiff. Merely by measuring the northern wall of the plaintiff, we cannot jump to the conclusion that there is an encroachment by the defendant in the property of the plaintiff. The first appellate court rightly pointed out the deficiency in the evidence of the plaintiff and dismissed the suit.

12. It is settled law that in a suit for title, the plaintiff must succeed on his own strength and he cannot rely on the weakness of the defence. As a plaintiff in a title suit, the appellant should have taken steps to measure the properties of both the parties with the help of qualified Surveyor. Therefore, the plaintiff failed to lead best evidence by seeking appointment of Surveyor to measure the properties of both the parties with reference to their title deeds. The deficiency in the evidence of the plaintiff has been pointed out by the first appellate court and ultimately, the suit was dismissed. Merely because the plaintiff produced his title documents, he is not entitled to seek declaration. He has to establish that



the defendant committed trespass into the property and she is in possession of more than what she purchased. In such circumstances, the substantial questions of law framed at the time of admission are answered against the appellant/plaintiff and in favour of the respondent/defendant.

13. Accordingly, the second appeal stands dismissed by confirming the judgment and decree dated 04.12.2019 in AS.No.14 of 2015 on the file of the Sub Court, Pollachi reversing the judgment and decree dated 05.08.2015 made in OS.No.278 of 2008 on the file of District Munsif Court, Pollachi. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

12-03-2026

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

1. The Sub Court, Pollachi.
2. The District Munsif Court, Pollachi.



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S.SOUNTHAR, J.

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