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S.A.No.334 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.334 of 2020
and CMP.No.6805 of 2020

1.R.Savithiri
2.C.Jayanthi

... Appellants

vs.

R.Thirumoorthy

... Respondent

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree in A.S.No.7 of 2018 dated 10.09.2019 on the file of Subordinate Judge, Mettupalayam, in reversing the judgment and decree in O.S.No.137 of 2005, on the file of the District Munsif Judge, Mettupalayam.

For Appellants : Mrs.V.Srimathi

For Respondent :Ms.S.Shruthi Varshini
for M/s.I.Abrar Md. Abdullah



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JUDGMENT

The unsuccessful plaintiffs are the appellants. They filed a suit for bare injunction restraining the defendant from causing any damages to north-south compound wall on the eastern side of their residential house in the suit property. The suit was decreed by the trial Court in respect of the compound wall except 'MBQM' portion. The trial Court also granted a decree for mandatory injunction directing the defendant to remove construction in 'HIJK' portion. Aggrieved by the said decree, the defendant filed an appeal. The First Appellate Court reversed the findings of the trial Court and dismissed the suit. Aggrieved by the same, the plaintiffs have come before this Court.

2. According to the plaintiffs, the building bearing Door No.4/54, Mettupalayam Taluk, Veliangadu Post, Muttukallur Village is the absolute property of the plaintiffs and the suit has been filed only in respect of north-south compound wall situated on the eastern side of residential house of the plaintiffs. The plaintiffs and their predecessor in title have been in possession and enjoyment of the suit property for more than 70 years. Recognizing the right, title and interest of the plaintiffs, the Special

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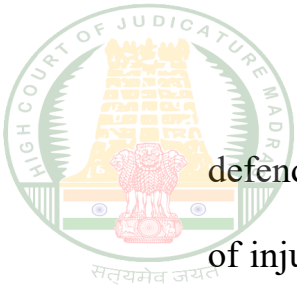
Tahsildar of Natham Land issued patta in the name of the husband of the 1st plaintiff.

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3. It was also pleaded by the plaintiffs that in order to facilitate white washing of the eastern compound wall, the plaintiffs left 2 feet space on the eastern side of the compound wall. The defendant who owns the property on the east of the suit property without having any right attempted to cause damage to the compound wall of the plaintiffs. Hence, the present suit was laid seeking permanent injunction.

4. The defendant filed a written statement denying the right, title and interest of the plaintiffs in the property on the eastern side of north-south compound wall. The defendant also denied the averment in the plaint as if, the plaintiffs left 2 ft space on the eastern side of north-south compound wall. The allegation in the plaint that the defendant attempted to cause damage to the north-south compound wall also specifically denied in the written statement.

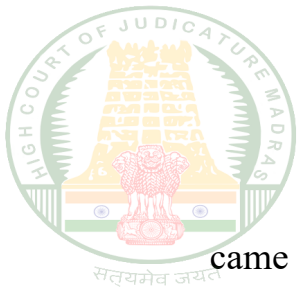
5. The defendant further pleaded that the existing compound wall of the plaintiffs on the northern side was constructed by encroaching the property of the defendant up to 8 feet. It was further pleaded that the



defendant has not attempted to damage the compound wall and on the basis of injunction obtained, the plaintiffs attempted to stop the construction work of the defendant which was carried out within the limitation of their property. On these pleadings, the defendant sought for dismissal of the suit.

6. Before the trial Court, the 1st plaintiff was examined as PW.1. Yet another witness was examined as PW.2. On behalf of plaintiffs, sixteen documents were marked as Exs.A1 to A16. It is pertinent to mention that the original judgment and decree of the trial court was set aside and matter was remanded to trial Court as ordered by the III Additional Sub Court, Coimbatore in A.S.No.41 of 2009. The details of witnesses examined by parties and documents marked were not properly mentioned in annexure to trial Court's judgment. This Court perused the original records called for from the Courts below and found two witnesses were examined on behalf of the plaintiffs and one witness was examined on behalf of the defendant.

7. It is also seen, the trial Court appointed an Advocate Commissioner and he filed three reports and plan which were marked as Exs.C1 to C6. It is to be mentioned Exs.C1 to C6 have also been marked on the side of the plaintiffs as Exs.A6 to A11.



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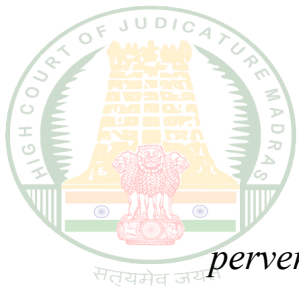
8. The trial Court on appreciation of evidence available on record came to the conclusion that the plaintiffs were entitled to decree for injunction in respect of the eastern compound wall except 'MBQM' portion. The trial Court also granted a decree for mandatory injunction directing the defendant to remove the construction of 'HIJK'. Aggrieved by the same, the defendant preferred an appeal in A.S.No.7 of 2018 on the file of the Subordinate Court, Mettupalayam. The First Appellate Court reversed the findings of the trial Court and dismissed the suit. Aggrieved by the same, the plaintiffs have come before this Court.

9. At the time of admission, this Court formulated the following substantial questions of law for consideration by order dated 24.03.2020:

(a) Whether the lower Appellate Court is justified in dismissing the suit when the plaintiff had established the defendant had encroached on their property and the report of the Advocate Commissioner substantiates the fact?

(b) Whether a Natham Patta is not a document of title and possession and whether the findings of Court is contrary is not in correct?

(c) Whether the Lower Appellate Court is justified in holding that the Court is powerless to grant orders under 151 of CPC conflicting with the settled view of Madras High Court in 1990 1 Law weekly?



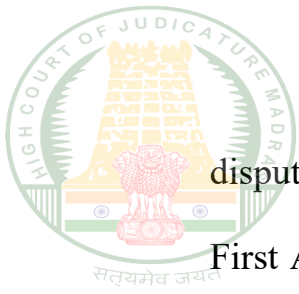
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(d) *Whether the judgment of the Lower Appellate Court is not perverse inasmuch as it fails to disclose the area of error committed by the trial Court?*

(e) *Whether the Commissioner report and plan that are unimpeached not binding on the defendant and has a probative value on Court?*

10. It is seen from the pleadings found in the plaint, the plaintiffs filed the suit only in respect of the eastern compound wall of the property situated in Door No.4/54, Mettupalayam Taluk, Veliangadu Post, Muttukallur Village. The description of the property is specifically confined to the compound wall situated on the eastern side of his residential house.

11. The defendant in his written statement categorically pleaded that the plaintiffs had no right, title and interest on the eastern side of north-south compound wall. It was the specific case of the defendant that the property situated on eastern side of the compound wall belongs to the defendant. Therefore, from the pleadings, it is clear, the plaintiffs filed a suit only in respect of eastern compound wall and sought for injunction restraining the defendant from causing damage to the eastern compound wall. The defendant filed a written statement claiming right over the property on the eastern side of the compound wall. Therefore, there is no



dispute with regard to the identification of the subject matter of the suit. The

First Appellate Court in its judgment also observed that the plaintiffs have

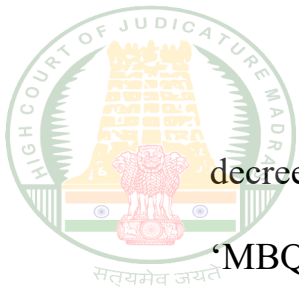
not properly described the suit property by giving measurement of the

compound wall. The said observation made by the First Appellate Court is

unwanted when there is no difficulty in identifying the subject matter of the

suit, in the light of the specific averment found in the plaint.

12. It is also specific case of the defendant that the northern portion of the plaintiffs' compound wall was put up by encroaching the defendant property. The Advocate Commissioner's report and plan which have been marked as Exs.A6 and A7 would clearly indicate the northern portion of suit compound wall which falls in 'MBQM' portion stands in the property of the defendant. The rest of the suit compound wall situated within the property of the plaintiffs. Therefore, taking into consideration, portion of the suit compound wall falls outside the property of the plaintiffs, the trial Court confined the decree for injunction only in respect of portion the compound wall, after excluding 'MBQM' portion. When the rest of the compound wall stands in the property of the plaintiffs and the defendant in his written statement has not claimed right over the said portion of the compound wall, in the light of the report and plan of the Advocate Commissioner which have been marked as Exs.A6 and A7 there may not be impediment for granting



decree for injunction in respect of the suit compound wall after excluding 'MBQM' portion, which is found to be situated in the property of the defendant.

13. The trial Court rightly negatived prayer for injunction in respect of 'MBQM' portion as the said portion of the compound wall found to be situated in the portion of the land belong to the defendant. The reasoning given by the First Appellate Court regarding improper description of the suit property is not acceptable to this Court. In the light of the specific pleadings of the parties, the First Appellate Court failed to take into consideration the material evidence available on record namely the Advocate Commissioner's report and plan and committed an error in dismissing the prayer for injunction in *toto*.

14. Therefore, this Court is of the view that the decree for permanent injunction granted by the trial Court in respect of the eastern compound wall excluding 'MBQM' portion deserves to be restored.

15. The trial Court apart from the decree for permanent injunction also granted a decree for mandatory injunction directing the defendant to remove the construction found in 'HIJK' portion.



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16. A perusal of the plaint would indicate there is no pleadings in the plaint regarding the alleged encroachment by the defendant. The plaintiffs also did not seek a prayer for mandatory injunction.

17. In such circumstances, the trial Court ought not to have granted a decree for mandatory injunction. The First Appellate Court rightly appreciated the said position and set aside the decree for mandatory injunction passed by the trial Court.

18. I do not find any error in the said conclusion reached by this Court. In view of the discussion made earlier, the substantial questions of law 'd' and 'e' are answered in favour of the appellants. The substantial questions of law 'a' and 'c' are answered against the appellants as it relates to the decree for mandatory injunction. The learned counsel appearing for the appellants advanced argument only on substantial questions of law 'a, c, d and e' and she has not pressed substantial question of law 'b'.



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19. Accordingly, the second appeal is partly allowed by restoring the decree for permanent injunction granted by trial Court in respect of eastern compound wall excluding portion “MBQM”, mentioned in Exs.A6 and A7, Advocate Commissioner’s report and plan. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

22.04.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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To

1.The Subordinate Judge, Mettupalayam.

2.The District Munsif Judge,
Mettupalayam.



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S.SOUNTHAR, J.

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