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SA No. 386 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-02-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

**SA No. 386 of 2015 and
M.P.No.1 of 2015**

M. Velusamy
S/o Murugaian, No. 1/16E,
Satheeswar Nagar, Vellore Road,
Mahalingapuram
Coimbatore 641 111

..Appellant(s)

Vs

K Dhanalakshmi
W/o C. Arumugam,
No. 9A, Arputham Nagar, K.V. Palayam
Vellore Main Road, Podanur (post)
Coimbatore 641 023.

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of C.P.C. to set aside the Judgment and Decree made in A.S.No.20 of 2010 on the file of learned III Additional Subordinate Judge, Coimbatore dated 19.12.2014 reversing the Judgement and Decree made in O.S.No.2683 of 2006 on the file of II Additional District Munsif Court, Coimbatore dated 18.03.2010

For Appellant(s): Mr.D.Veerasekaran

For Respondent(s): Mr.P.R.Ramesh Babu



JUDGMENT

This Second Appeal has been preferred as against the Decree and Judgment passed by the learned III Additional Subordinate Judge, Coimbatore in A.S.No.20 of 2010 dated 19.12.2014.

2. The appellant is the defendant and the respondent is the plaintiff in the main Suit. The respondent herein filed the suit in O.S.No.2683 of 2006 on the file of the learned II Additional District Munsif Court, Coimbatore for the relief of declaration to declare that the plaintiff is the owner of the suit property and consequential relief of recovery of possession and mandatory injunction and to remove the encroachment made by the defendant in the suit property and for permanent injunction restraining the defendant from entering into the suit property. The said suit was dismissed by the trial Court. Aggrieved by the said Decree and Judgment, the plaintiff has preferred the Appeal Suit. The First Appellate Court reversed the Judgment of the trial Court and decreed the suit by allowing the appeal by way of Decree and Judgment dated 19.12.2014. Aggrieved by the said Decree and Judgment of the First Appellate Court, the present Second Appeal has been preferred by the defendant.



3. For the sake of convenience and brevity, the parties herein are referred as plaintiff and defendant, as referred before the trial Court.

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4. The brief averment of the plaint are as follows:-

4.1. The suit property is a building and the same was purchased by the plaintiff from one T.Damodarasamy under the registered sale deed dated 01.03.1999. The said property forms part of agricultural land comprised in S.F.No.538/1 of Vellalore Village. The subject matter of the site in question is Plot no.63 and the total extent of area is 2560 sq.ft., The plaintiff is working in Southern Railway, while so, in the month of July – August 2006, the defendant trespassed into the plaintiff's vacant land on the western side and had put up structures by occupying about 7 feet, East-West and 65 feet, North-South and the defendant is in illegal possession of the land to an extent of 455 Sq.ft., the defendant is in unlawful possession of the property, therefore, the plaintiff has filed the suit.

5. The brief averments of the Written statement filed by the defendant are as follows:-

5.1. The suit is not maintainable and the plaintiff is put to strict proof of averments except those that are specifically admitted herein. The allegations that the defendant occupied 7 feet East-West and 65



feet North-South is denied. The plaintiff is not entitled to any relief sought for in the plaint, in fact, the defendant purchased the Site No.62 to an extent of 4 cents, 338 sq.ft., with specific four boundaries from one T.Damodarasamy by way of registered sale deed dated 24.01.2000, the defendant's property situated on the western side of the plaintiff's property. Originally, site Nos.62 and 63 were purchased by Damodarasamy through the sale deed dated 04.03.1998. The defendant purchased the western side of the plaintiff's property with specific measurements and boundaries. The house sites are not approved by the local authorities and the defendant has paid development charges for approval of his Site No.62. The defendant also constructed a house in site no.62 after obtaining proper building approval and the construction was completed in the year 2003.

5.2. The defendant is paying house tax till date. The defendant also obtained loan for construction of building from M/s The Sakthi Co-operative House Building Society Ltd., Coimbatore. Ever since the date of purchase of the property in Site No.62, the defendant is in possession and enjoyment of the property. The defendant never interfered or encroached the plaintiff's property. The suit is not maintainable for non-joinder of necessary parties, since the land owners of the property situated on the eastern side of the plaintiff's property are



necessary parties to the suit and ought to be impleaded. The defendant constructed a compound wall on the eastern side of his site no.62 and there is a boundary stone lying between the site nos.62 and 63, therefore, the plaintiff is not entitled for the relief of declaration and possession and mandatory injunction and other reliefs sought for in the plaint. Therefore, there is no cause of action for the suit and the suit is liable to be dismissed.

6. Based on the above said pleadings and after hearing both sides, the trial Court has framed the following issues for trial:-

“1. Whether the plaintiff is entitled to decree for declaration and consequent relief of recovery of possession?.

2. Whether the plaintiff is entitled to decree for mandatory injunction.

3. Whether the plaintiff is entitled for permanent injunction?

4. Whether the plaintiff is entitled for damages?

5. Whether the suit is bad for non-joinder of necessary parties?

6. Whether the measurements shown in the schedule of the property are correct?

7. To what other reliefs, the plaintiff is entitled to?

Before the trial Court, on the side of the plaintiff, P.W.1 was examined and Exs.A.1 to A.11 have been marked. On the side of the defendant,



DW.1 was examined and marked Exhibits B.1 to B.7 and apart from those documents, Exs.C.1 and C.2, Commissioner report and plan were also marked. After analysing the evidences adduced on both sides and perusing the records, the trial Court dismissed the suit. Aggrieved by the said Decree and Judgment of the trial Court, the plaintiff had preferred the Appeal Suit before the learned III Additional Subordinate Judge, Coimbatore in A.S.No.20 of 2010 on various grounds. The First Appellate Court has framed the following points for determination in the Appeal Suit:--

“1. Whether it is true that the defendant had encroached the property belonged to the plaintiff and made construction as stated by the plaintiff?.

2. Whether the plaintiff is entitled to the reliefs of declaration, possession, mandatory injunction and permanent injunction as prayed for?

3. Whether the decree and judgment of the lower court is liable to be set aside?”

After analysing the evidence adduced on both sides and hearing the learned counsel on both sides, the First Appellate Court reversed the Judgment and decree of the trial Court and allowed the Appeal Suit by setting aside the decree and Judgment passed by the trial Court and decreed the Appeal Suit with costs.



7. Aggrieved by the said Decree and Judgment passed by the First Appellate Court, the defendant has preferred this Second Appeal. This Court, at the time of admitting the Second Appeal on 21.05.2015 formulated the following substantial questions of law:-

“Whether the lower appellate Court is correct in accepting the Commissioner’s report Ex.C1 prepared based on the measurement given in the unapproved layout sketch Ex.C2, when the defendant filed his objections to the said report?”

“Whether the lower appellate Court is right in decreeing the suit in the absence of any legally acceptable evidence to prove the alleged encroachment in the suit property when the definite measurement given in the sale deed Ex.B.2 has not been challenged in a manner known to law?”

8. The learned counsel appearing for the appellant would submit that the appellant is the defendant in the suit filed by the respondent / plaintiff for the relief of declaration, permanent injunction and for mandatory injunction. The case of the plaintiff is that she purchased the property from one Damodarasamy through sale deed dated 01.03.1999, Plot No.63, to an extent of East-West – 40 feet and North-South – 63 feet. The defendant also purchased the property in Plot No.62 through



sale deed dated 24.01.2000 from the same vendor, viz., Damodarasamy in Site No.62, East-West – 32 feet and North-South – 65 feet.

Thereafter, he put up a construction after obtaining building approval from the local body and completed the construction in the year 2003. He also paid property tax for the building and the vacant site. Therefore, the defendant has not encroached any part of the vacant property belongs to the plaintiff, the trial Court after elaborate discussions came to a conclusion that the Commissioner also stated in the report that the measurements of plot nos.64, 65, 66 and 67 are tallied with the documents and the plaintiff failed to produce the layout and the plaintiff also admitted that he raised cement ridges on the four corners of the property and there was a ridge between the plot nos.63 and 64, eastern side and the owner of the Plot No.64 demolished the ridge situated on the eastern side of the plaintiff's property and put up a fence, therefore, the plaintiff failed to prove the encroachment allegedly made by the defendant and dismissed the suit. However, the First Appellate Court without considering the evidences adduced by the defendant and without appreciating the facts in a proper perspective allowed the Appeal Suit and decreed the Appeal Suit by setting aside the decree and judgment passed by the trial Court, therefore, the decree and judgment passed by the First Appellate Court are liable to be set aside by allowing the Second Appeal.



8.1 Further, the First Appellate Court failed to consider the objections filed by the Appellant to the Commissioner's report and failed to see that the plaintiff has not chosen to get the documents of the other plot owners and correlated with the suit property or by examining them as witnesses to substantiate the alleged encroachment said to have been made by the appellant. The respondent / plaintiff has not challenged the sale deed in favour of the appellant/ defendant and failed to consider that the entire lay out was an unapproved plot sold by the predecessors in title to the plaintiff and the defendant. When the definite measurements have been mentioned under the respective sale deeds, the plaintiff has failed to get the documents of the other adjacent plot owners correlated with the measurements of the suit property during the time of the inspection by the Commissioner.

8.2. The First Appellate Court failed to see that even in the rough sketch, Exhibit, C2, it is clear that the adjacent land owners of the plaintiff on the western side erected stones beyond the limits of the property by demolishing the ridge raised by the plaintiff, therefore, the judgment and decree passed by the First Appellate Court are liable to be set aside.



9. The learned counsel appearing for the respondent would submit that the respondent purchased the property from the said Damodarasamy through sale deed dated 01.03.1999 in Plot No.62 to the extent East-West – 40 feet and North-South – 63 feet and the sale deed in favour of the plaintiff is prior to the sale deed of the defendant and the plaintiff purchased the property with specific four boundaries and the measurements, the defendant, who purchased the property subsequent to the purchase of the plaintiff, ought to have verified the measurements at the time of purchase of the property, but without verifying the measurements, he purchased the property, taking advantage that the plaintiff is not residing in the suit property and the suit property is vacant site, thereby encroached East-West – 7 feet on the western side of the plaintiff's property and put up construction, thereby the plaintiff filed the suit for declaration, recovery of possession, mandatory injunction and for permanent injunction.

9.1. The trial court without appreciating the evidence adduced on the plaintiff's side in a proper perspective, erroneously dismissed the suit. However, the First Appellate Court, after analysing the evidences and after elaborate discussion, came to a fair conclusion and allowed the Appeal Suit and set aside the Decree and Judgment passed by the trial Court and decreed the Suit. The First Appellate Court held that



merely because the adjacent land owner put up fence, it does not mean that he only encroached the property, whereas the defendant, who lastly purchased the property ought to have measured the property and only after measuring the property, he ought to have purchased the property and without measuring the property, he has purchased and there is no availability of the plot for the extent of East – West – 32 feet in Plot no.62, which allegedly purchased by the defendant. Therefore, the First Appellate Court has correctly decreed the suit and the present Second Appeal is liable to be dismissed.

9.2. That apart, the learned Advocate Commissioner also inspected the property and filed his report, as per the Commissioner Report, he measured the property from road side, which starts from eastern side and measured entire plots from 67 to 62 all the plots from the eastern side, road have width of 40 feet, east west as per the sale deeds. The defendant, had lastly purchased to an extent of 32 feet, which is not in existence of the property, therefore, the First Appellate Court has correctly decreed the suit. There is no Substantial Questions of Law involved in this case, thereby pleaded to dismiss the Second Appeal.

9.3. The learned counsel appearing for the respondent referred the following Judgments:-



(I) The Judgment of this Court reported in 2014-2-L.W.191
[R.Radhakrishnan Vs.R.Nagarajan]

(ii) Judgment of this Court reported in 2014(3) 802 [Seetharaman
rep. By her Power Agent, Narasimman V. Jayaraman and Others]

(iii) Judgment of this Court reported in 2014 (3) CTC 820
[Subramanian Vs. Kosalai Ammal (Deceased and others)]

10. Heard the learned counsel on both sides and perused the
entire documents placed on record.

11. In this case, both the plaintiff and the defendant have
purchased the property from Damodarasamy. The sale deed in the
name of the plaintiff is prior to the sale deed in the name of the
defendant. The plaintiff purchased the property through sale deed dated
01.03.1999, similarly, the defendant also purchased the property from
the same vendor, viz., Damodarasamy by way of a sale deed dated
24.01.2000. In fact, according to the plaintiff, the Commissioner was
appointed and the Commissioner measured the property from the
eastern side of the road and all the plots from Plot Nos.67 to 63 having
width of 40 feet as per the documents available, but as far as Site No.62
is concerned, as per the document, east-west – width is 32 feet, but that
measurement is not available and only 25 feet alone is available,



however, the defendant encroached the property. According to the defendant, he purchased the property from Damodarasamy and thereafter, he constructed a house in the year 2003 and at that time, the plaintiff has not raised any objections. The Commissioner also filed his report along with plan with the help of surveyor as per commissioner report and plan there is no encroachment.

12. It is admitted fact that the plots are unapproved plots and the Commissioner also measured the property on the eastern side of the road and the Commissioner has not identified the western boundary of the property, if the entire property is measured, then, the available extent can be identified, but the Commissioner has only measured the property from one end of the road and there is no evidence as to the western boundary of the property and without ascertaining the western boundary of the property, it is not appropriate to find out the real measurement and the existence of the property. Since both the plaintiff and the defendant had purchased the property from the same person, they failed to examine the said person, viz., Damodarasamy as one of the witness in the suit. Since the suit is filed by the plaintiff for the relief of declaration and recovery of possession. it is duty of the plaintiff to prove her case and she cannot take advantage of the weakness of the defendant's case, therefore, the plaintiff has to prove her case, but the plaintiff failed



to measure the entire property and only measured from the one side road, without even identifying the western boundary of the property. The real extent of the property has to be identified. The plaintiff also failed to produce the documents of the opposite plots to ascertain the measurements, since the plots are unapproved plots, it is the duty of the parties to prove their respective measurements and the plaintiff, who filed the suit has to prove her case, but she failed to prove the measurements. Merely because there is a shortage of 7 feet and measuring from one road side, the real encroachment cannot be identified. The plaintiff also admitted in her evidence that there were cement bund formed by her on the four sides of the plaintiff's land and the plot owner of no.64, on the eastern side of the plaintiff's land demolished the eastern side bund and put up fence beyond that bund, while so, it cannot be said that the defendant encroached the property, therefore, the trial court has correctly dismissed the suit. However, the First Appellate Court, failed to consider the above said aspects and without giving adequate reasons, set aside the judgment and decree passed by the trial Court, therefore, the judgment and decree passed by the First Appellate Court is unsustainable and the same is liable to be set aside.



13. As far as the Substantial Question of Law *“Whether the lower appellate Court is correct in accepting the Commissioner’s report, Ex.C1 prepared based on the measurement given in the unapproved layout sketch Ex.C2, when the defendant filed his objections to the said report?* is concerned, in this case, the Commissioner has been appointed and he filed a report along with the surveyor plan, since it is an unapproved plots, the entire properties ought to have been measured and even in the commissioner report, they measured the property on the eastern side of the road and they have not even identified the western side boundary of the property, only after identifying the western boundary of the property, real measurement would be ascertained. There is no evidence that whether any survey boundaries have been identified and from the said survey stone boundaries, any measurements were made or not, merely measuring the property from the one side of the road is not sufficient to prove the exact measurements, therefore, the trial Court and the First Appellate Court is not correct in accepting the Commissioner Report, Ex.C.1 prepared based on the measurements given in the unapproved lay out sketch, Ex.C.2, Rough sketch. Thus the Substantial Question of Law is answered.

14. As far as the Substantial Question of Law *“Whether the lower appellate Court is right in decreeing the suit in the absence of any legally*



acceptable evidence to prove the alleged encroachment in the suit property when the definite measurement given in the sale deed Ex.B.2

has not been challenged in a manner known to law? is concerned, in this case, both the plaintiff and the defendant have purchased the properties from the same vendor, plot no.63 belongs to the plaintiff and plot no.62 belongs to the defendant. Both the sale deeds contains specific extent and the boundaries. The plaintiff is not a party to the sale deed executed in favour of the defendant, therefore, the defendant need not challenge the sale deed executed in favour of the defendant. The plaintiff can seek declaration in respect of her property based on her sale deed and she need not challenge the sale deed in the name of the defendant. The plaintiff is unable to identify the exact portion of the alleged encroachment and without measuring the entire property, alleged encroachment could not be identified. The defendant has not filed the suit for declaration of his property, whereas the plaintiff has only filed the suit for declaration and it is the duty of the plaintiff to prove the alleged encroachment with specific extent, but she failed to prove the alleged encroachment, therefore, the First Appellate Court is not right in decreeing the suit in the absence of legally acceptable evidence to prove the alleged encroachment in the suit property, thus, the substantial question of law is answered.



15. In view of the above said discussion and answers to the Substantial Questions of Law, this Second Appeal is allowed and the decree and judgment passed by the First Appellate Court in A.S.No.20 of 2010 dated 19.12.2024 are liable to be set aside. However since both the parties purchased the properties from the same vendor and the dispute is in respect of the measurement of the property it is appropriate to give a chance to the plaintiff to measure the property by identifying the western boundary of the property i.e., boundary between S.F.539 and the plot No.62 by remitting the case back to the trial Court for fresh consideration.

16. Accordingly this second appeal is allowed and the judgment and decree passed by the trial Court in O.S.No.2683 of 2006 dated 18.03.2010 and the decree and judgment passed in A.S.No.20 of 2010 are set aside and this case is remitted back to the trial Court for re-appointment of Commissioner to measure the property with the help of qualified surveyor and to dispose the case afresh by affording opportunity to both the parties. Consequently, connected miscellaneous petition is closed. No costs.

25-02-2026

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



To

1. The III Additional Subordinate Judge Court,
Coimbatore

2. The II Additional District Munsif Court,
Coimbatore

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P.DHANABAL, J.

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