



WEB COPY

SA No. 955 of 2



‘IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24-02-2026

CORAM

THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

SA No. 955 of 2013

M.Govindaraj

..Plaintiff/Appellant/
..Appellant

Vs

1. S.K.Adam
2. S.K.Hussain
3. Sheik Khader
4. Jaleel

..
Defendants/Respondents
..Respondent(s)

PRAYER: This Second Appeal is filed under Section 100 C.P.C., to set aside the judgment and decree dated 11.10.2012 passed in A.S.No.95 of 2011 by the Subordinate Judge, Kallakurichi confirming the judgment and decree dated 10.08.2011 passed in O.S.No.754 of 2005 by the learned I Additional District Munsif, Kallakurichi.

For Appellant(s):

M/s. J.Kamaraj

For Respondent(s):

M/s S.M.S.Shriram Narayanan
For R1 To R4



JUDGMENT

WEB COPY

Heard.

2. This Second Appeal is by the plaintiff in O.S. No.754 of 2005, challenging the concurrent judgments whereby the suit came to be dismissed by the I Additional District Munsif Court, Kallakurichi on 10.08.2011 and the said dismissal was confirmed by the Subordinate Judge, Kallakurichi in A.S. No.95 of 2011 on 11.10.2012.

3. For the sake of convenience, the parties are referred to as they were arrayed before the Trial Court.

4. The suit was instituted for permanent injunction to restrain the defendants from trespassing into the suit property and from interfering with the plaintiff's peaceful possession and enjoyment, particularly in relation to the portion shown as C D E F in the plaint rough sketch, including the common wall marked E F and the alleged vacant strip of 1 ½ feet adjoining the plaintiff's construction, the interference being pleaded to have commenced from 15.09.2005 onwards. The plaintiff avers that the suit property absolutely belongs to him, that he is in possession and enjoyment, and identifies it with



reference to the plaint plan markings as “A B C D E F”; he further relies on a registered sale deed dated 13.01.2001 and pleads that patta stands in his favour.

WEB COPY

5. The defendants denied the claim and asserted rights over the adjoining Plot No.25. According to them, while the plaintiff commenced construction in September 2005, he encroached into their side. The defendants had also filed O.S. No.964 of 2005 seeking, mandatory injunction, alleging encroachment by the plaintiff.

6. Before the trial court, the plaintiff examined PWs 1 to 4 and marked Exs. A1 to A10, while the defendants examined DWs 1 and 2 and marked Exs. B1 to B6; in addition, the court marked Exs. C1 to C4 comprising the commissioner's reports and plans. The trial court held that the plaintiff had failed to prove entitlement to the alleged strip/extent on the western side of his house and had not approached the court with clean hands, and accordingly dismissed both suits. The defendants did not file any appeal against the said findings in O.S.No.964 of 2005 and therefore, the findings has attained finality.

7. On reappraisal, the First Appellate Court concurred with the Trial Court and dismissed the appeal, confirming the decree dated 10.08.2011 in O.S. No. 754/2005, without costs.



8. Aggrieved by the concurrent dismissal, the plaintiff has preferred this Second Appeal contending that both courts erred in dismissing the bare injunction suit by relying on irrelevant third-party documents and by rejecting Exs. C1 and C2 (Advocate Commissioner's report and plan), though, according to him, they are independent evidence on which findings ought to have been based; he also alleges inconsistency in rejecting the commissioner's measurements while accepting from the same material a one-foot gap between the defendants' thatched structure and the plaintiff's wall, and challenges the non-acceptance of Ex. A10 photographs on the stated ground that the commissioner's report did not advert to the suit property.

9. He further assails reliance on DW2 as an interested witness on the "common wall" issue, disputes the finding that his right in the alleged common wall was unproved beyond Ex. A1 and for want of parent/title deeds, and contends that the dispute concerns only a 1½ ft × 50 ft strip requiring determination of identity and possession and, even in an injunction suit, adjudication of title on the parties' documents, as he claims lawful ownership. He lastly urges that the courts ought to have preferred the commissioner's evidence over interested oral testimony and held that he proved possession and title by documents, and proposes for framing substantial questions of law regarding (i) failure to decide title, (ii) improper preference of interested



evidence over the commissioner's report, (iii) misreading of evidence, and (iv) findings based on surmise and conjecture.

WEB COPY

10. The plaintiff has filed the suit for bare injunction in respect of a strip of land measuring 1½ feet in the east- west, alleged to be situated on the western side of his property and lying between his property and that of defendants 1 to 3. The plaintiff claims title to the suit property on the basis of Ex.A1 – title deed. Under Ex.A1, the plaintiff purchased a property measuring 22¾ feet on the northern side in plot No 26, natham survey No 338/4.

11. It is the case of the plaintiff that while constructing a multi-storied building in his property, he left 1½ feet on the western side and put up construction in the remaining portion. However, as per the Commissioner's sketch marked as Ex.C1 and Ex C2, the construction put up by the plaintiff measures 22 feet from west to east. If that be so, the contention of the plaintiff that he left 1½ feet on the western side stands falsified.

12. Further, it is brought on record that the plaintiff has a boundary dispute with the owner of the eastern side property, namely Rajeswari. In this regard, Ex.A5 notice issued earlier stands against the case of the plaintiff. Apart



from this, the Commissioner in Ex.C3 and Ex C4 report and sketch has clearly stated that there is no vacant land lying between the properties of the plaintiff and the defendants. This finding seriously affects the case of the plaintiff.

13. Though the learned counsel for the plaintiff contended that the courts below committed an error in relying upon the Commissioner's report, it is to be noted that the property was inspected by the Advocate Commissioner in the presence of both parties and their respective counsel. No objections were filed to the Commissioner's report. In the absence of any demur or objection, the courts below were justified in placing reliance upon Ex.C3 and Ex C4 report.

14. The next contention of the plaintiff is that, as per the Commissioner's report (Ex.C1 and Ex C2), after deducting the constructed measurement of 22 feet, a balance extent of $\frac{3}{4}$ feet (referred to by the trial court as $\frac{1}{3}$ feet) remains and that the same ought to have been granted in his favour. It is true that the trial court observed that such extent appears to be available. However, until the boundary dispute between the plaintiff and the eastern side owner is resolved, it cannot be conclusively held that the said extent lies on the western side as claimed by the plaintiff. There exists a possibility that such available extent, if any, may fall on the eastern side.



15. Thus, the plaintiff has not conclusively established that the suit property, as pleaded by him, is in existence and available on the western side of his property. In the absence of clear proof, the relief of bare injunction cannot be granted.

16. Accordingly, this Court finds no reason to interfere with the concurrent findings of the courts below. No substantial question of law arises for consideration in this appeal.

17. In that view, the second appeal is dismissed at the admission stage itself. There shall be no order as to costs. Consequently, the connected miscellaneous petition, if any, stands closed.

24-02-2026

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

MFA



WEB COPY

SA No. 955 of 2



TO

1. I Additional District Munsif Court, Kallakurichi
2. Subordinate Judge, Kallakurichi



WEB COPY

SA No. 955 of 2



DR.A.D.MARIA CLETE, J.

MFA

SA No. 955 of 2013

24-02-2026