



WEB COPY

SA No. 718 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17-03-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 718 of 2021

A.Thangamani

..Appellant(s)

Vs

D.Seethalakshmi

..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 13.07.2020 passed by the Learned Principal Sub Judge, Salem made in AS.No.79/2018 confirming the judgment and decree of the II Additional District Munsif, Salem dated 07/09/2018 made in OS.No.357/2010.

For Appellant(s): C.Sivanesan

JUDGMENT

The unsuccessful plaintiff is the appellant. She filed a suit seeking declaration of her right of way over the suit 'B' schedule property shown as 'ABCD' in the plaint plan. She also sought for permanent injunction restraining the defendant from putting up any construction in the suit 'B' schedule property. The plaintiff also sought for mandatory injunction directing the defendant to remove the construction already put up by her in the suit 'B' schedule property shown as 'ABIJ' in the plaint plan. The trial court dismissed the suit. The first appeal filed by the appellant/plaintiff was also dismissed.



Challenging the concurrent findings, the appellant/plaintiff has come before this court by way of second appeal.

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2. According to the appellant/plaintiff, she purchased suit 'A' schedule property under registered sale deed dated 04.12.2008. The suit 'B' schedule property lies on the northern side of 'A' schedule property and the same is the only access to the road called Kuthandavar Swamy Koil Street which lies on the western side of the disputed suit 'B' schedule property. It is also stated by plaintiff that north-south measurement of suit pathway is 7 feet width and east-west measurement is 100 feet length. It is further stated by the plaintiff that the defendant owns a house on the northern side of the suit pathway and he purchased the same under sale deed dated 11.05.2005. The defendant, after purchasing the property on the northern side, put up construction in the suit pathway 'B' Schedule by encroaching 360 Sq.feet of property. The encroachment has been shown as yellow washed area in the plaint plan. It is further stated by the plaintiff that six months prior to the filing of the suit, the defendant encroached portion of the suit property with linear measurement of 7 feet north-south and 25 feet east-west. Since the defendant attempted to put up further construction, the present suit was filed seeking above said reliefs.

3. The defendant filed a written statement and denied various averments found in the plaint. It was the specific case of the defendant that the width of the



suit lane portion is 7 feet and the plaintiff purchased the property south of the lane portion. The defendant also admitted that she purchased house on the north of the lane portion. However, encroachment of 360 Sq. feet of land in the suit lane portion is denied. The defendant also claimed that she had no intention of putting up construction in the suit lane portion and she had not encroached any portion of suit 'B' scheduled property. It was also stated that only plaintiff had put up stone pillars and barbed wire fencing in the suit lane portion and encroached the same. On these pleadings, the defendant sought for dismissal of the suit.

4. Before the trial court, the plaintiff was examined as PW1 and her husband was examined as PW2. On behalf of the plaintiff, 15 documents were marked on her side as Ex.A1 to Ex.A15. The defendant was examined as DW1 and seven documents were marked on her side as Ex.B1 to Ex.B7. The Advocate Commissioners appointed by the trial court were examined as CW1 and CW2. Their report and the plan have been marked as Ex.C1 to Ex.C4.

5. The trial court, on appreciation of evidence available on record, came to the conclusion that the plaintiff failed to prove her case that the defendant encroached the suit lane portion and dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S. 79 of 2018 on the file of Principal Sub-Court, Salem. The first appellate court affirmed the findings of the trial court



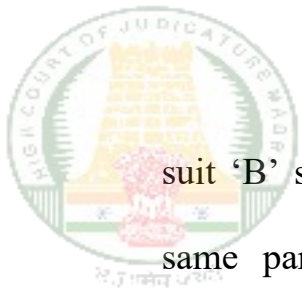
and dismissed the appeal. Aggrieved by the concurrent findings, the plaintiff has come before this court.

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6. The learned counsel for the appellant/plaintiff submitted that the Advocate Commissioner in his report had stated that defendant put up a house in the suit 'B' schedule property and overlooking the same, the trial court as well as the first appellate court dismissed the suit filed by the plaintiff. He also submitted that the documentary evidences produced by respective parties have not been properly appreciated by both the courts below.

7. A perusal of the pleadings of the parties would indicate that the dispute is with regard to the 7 feet lane portion situated in between the property of the plaintiff and defendant. The plaintiff's property has been shown as suit 'A' schedule property and the disputed lane portion has been shown as suit 'B' schedule property. The defendant's house situated on the northern side of suit 'B' schedule property. It is the specific case of the plaintiff that after purchase of the house on the northern side, the plaintiff demolished the same and put up new construction. During the said course, she encroached portion of the 'B' schedule property and put up construction thereon.

8. A close scrutiny of the plaint would indicate that in Paragraph No. 5 of the plaint, the plaintiff had stated that the defendant encroached portion of the



suit 'B' schedule property to the extent of 360 Sq.feet. However, in the very same paragraph, the plaintiff also stated that the defendant had put up construction encroaching 'B' schedule property with measurement of 7 feet north-south and 25 feet east-west. If the linear measurements given by the plaintiff are taken into consideration, the extent of the encroached portion would be only 175 square feet. However, in the very same paragraph, the plaintiff mentioned that the defendant encroached 360 Sq.feet of suit 'B' schedule property.

9. It is settled law that a person seeking mandatory injunction should give correct measurements of the alleged encroached portion. In the case on hand, even in the pleadings, the extent of the encroached portion mentioned by the plaintiff is not clear. In one place, she says the extent is 360 Sq. feet. In another portion, she mentioned the extent as 175 Sq. feet. In the absence of definite case in the pleadings, the plaintiff is not entitled to seek any mandatory injunction against the defendant.

10. The Advocate Commissioner, in his report, has not given any definite findings that the defendant encroached portion of the disputed suit lane and put up any construction. In fact, as per the Advocate Commissioner's report, the defendant was in possession of the property with a lesser linear measurement than the one purchased by her. The Advocate Commissioner, in his report,



pointed out that the defendant purchased the property with north-south measurement of 58 feet. However, she is found to be in possession of property with north-south measurement of 54 feet. Therefore, there is a shortage of 4 feet in north-south direction. Likewise, the defendant purchased the property with east-west measurement of 59 feet. However, she is in possession in only 57 feet. Therefore, it is clear that the linear measurements of the property in possession of the defendant is less than the linear measurements mentioned in his title document.

11. The Advocate Commissioner, in his report, also stated that 7 feet lane portion appears to be situated in the property of the plaintiff. It is also mentioned that major portion of lane portion falls within 'A' schedule property of the plaintiff. Therefore, the exact location of disputed 'B' schedule property has not been properly identified by the Advocate Commissioner. If the major portion of disputed lane portion falls within 'A' schedule property of the plaintiff, there is no scope for encroachment by the defendant. In the Advocate Commissioner's report, there is no specific finding that the defendant encroached portion of the lane portion. He also failed to locate the suit 'B' schedule property lane portion.

12. The plaintiff approached the Court with a specific plea that suit 'B' schedule property is the only access available to her and the same has been



encroached by the defendant. When the Advocate Commissioner's report is not helpful to locate the suit 'B' schedule property, the plaintiff should have taken steps before the Trial Court by filing necessary objection. However, for the reasons well known to her, she has not taken any steps to file objection to advocate commissioner's report and to seek re-issue of warrant for the advocate commissioner to locate the suit 'B' schedule property. In any event, as per the conclusion reached by the advocate commissioner, the major portion of the 7 feet lane portion falls within suit 'A' schedule property belongs to the appellant. In such circumstances, the encroachment, if at all can only be by the plaintiff not by the defendant.

13. The first appellate court also, by taking into consideration the photographs of the suit property filed before the court as Exhibit A15, came to the conclusion that house portion of the defendant was an old one and there was no evidence to show that she had put up new construction. Therefore, the pleading of the plaintiff that after purchasing the house on the northern side of the suit 'B' schedule property, the plaintiff demolished the same and had put up new construction encroaching portion of the suit 'B' schedule property is also falsified.

14. The first appellate court, on proper appreciation of evidence available on record, came to the conclusion that plaintiff failed to prove her case that the



defendant had encroached suit 'B' scheduled property and put up new construction. The said factual finding is not vitiated by any perversity and therefore, I do not find anything to interfere with the said conclusion reached by the first appellate court. Since the second appeal does not involve any substantial question of law, no interference is called for and the same is dismissed by affirming the judgment and decree in AS.No.79 of 2018 dated 13.07.2020 passed by the Principal Sub Judge, Salem confirming the judgment and decree in OS.No.357/2010 dated 07.09.2018 passed by II Additional District Munsif, Salem. There shall be no order as to costs.

17-03-2026

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

1. The Principal Sub Judge, Salem.
2. The II Additional District Munsif, Salem.



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S.SOUNTHAR, J.

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