



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22-06-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 681 of 2021 and
CMP.No.13722 of 2021**

1. Ramasamy Gounder
2. Thangaraju
3. Ganesan

..Appellant(s)

Vs

1. Annalakshmi
2. M.Natarajan

..Respondent(s)

Prayer : Second appeal is filed under Section 100 of Code of Civil Procedure, 1908, praying to set aside the judgment and decree passed in A.S.No.77 of 2019 dated 19.02.2021 on the file of the Principal Sub Judge, Erode confirming the judgment and decree passed in O.S.No.483 of 2014 dated 13.08.2019 on the file of the Principal District Munsif, Erode.

For Appellant(s):	V.S.Kesavan
For Respondent(s):	Mr.C.Ramaraj for M/s.M.Guruprasad

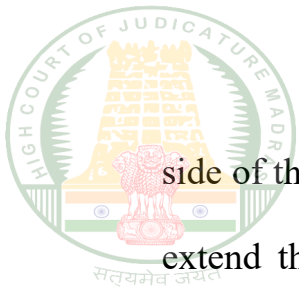
JUDGMENT

The unsuccessful defendants are the appellants. The respondents/ plaintiffs filed a suit seeking measurement of the suit properties with the help of Advocate Commissioner and to fix northern side boundary line of 1st item, southern side boundary line of 2nd item and to fix four boundaries of 3rd item in R.S.No.92/1B. They also prayed for permanent injunction restraining the defendants from in any manner interfering with the peaceful possession and



enjoyment of the suit properties by the plaintiffs. The suit was decreed by the Trial Court by passing a preliminary decree for appointment of Advocate Commissioner to measure the property and to fix the boundary lines. Aggrieved by the same, the defendants preferred an appeal and the same was dismissed. Challenging the concurrent findings against them, the defendants have come before this court by way of second appeal.

2. According to the respondents/plaintiffs, the suit items 1 and 2 are owned by plaintiffs 1 and 2 respectively. The suit item 1 lies on the southern side and the suit item 2 lies on the northern side. In between the suit items 1 and 2, there is a strip of land belongs to defendants situated in R.S.No. 92/1C which is marked in blue colour in the plaint plan. There is a north-south cart track (suit item 3) lies on the western side of defendants' land to facilitate the access from item 1 to item 2. According to the plaintiffs, the suit item 1 was purchased by first plaintiff under sale deed dated 14.07.1977 and the suit item 2 was allotted to second plaintiff under registered partition deed dated 14.03.1990. As per the documents, the first plaintiff was entitled to 75 cents of land in S.F.No.19 (R.S.No. 92/1D). The second plaintiff was entitled to 1.75 acres of land in S.F.No.19 corresponding R.S.No.92/1A. Later, at the time of re-survey, 25 cents of land in item 2 was incorporated with item 1 of the suit property. Thus, the extent of the first item increased to 1.00 acre of land and the extent of item 2 decreased to 1.50 acres. It is further stated that the defendants high-handedly obliterated boundary lines on the northern side of the 1st item and the southern



side of the 2nd item and the eastern side of the 3rd item and thereby, attempted to extend their extent than the extent actually belonged to them. The plaintiffs requested the defendants to take up measurements of the respective properties and fix boundary lines. However, the request was ignored by the defendants. In these circumstances, the present suit was filed for the above said relief.

3. The appellants/defendants filed a written statement and denied the averments in the plaint that 1.75 acres of land in suit item 2 was allotted to the share of 2nd plaintiff under partition deed dated 14.03.1990. Further, the allegation in the plaint that at the time of re-survey, 25 cents of land in item 2 was incorporated with item 1 and the same resulted in increase of the extent in item 1 and decrease of the extent in item 2 was denied. The allegation in the plaint that defendants attempted to obliterate the boundary lines and extend their property was also denied. It was also stated by the defendants that one Marappa Gounder and his sons originally owned an extent of 2.24 acres in old S.F.No.19 and an extent of 16 cents in old S.F.No.21 of Nanjanapuram village, Erode Taluk. After death of Marappa Gounder, his sons Sengoda Gounder and Chinnappa Gounder orally divided their properties. An extent of 75 cents on the South was allotted to Sengoda Gounder and another extent of 75 cents of land on the northern side was allotted to Chinnappa Gounder. The said Sengoda Gounder and his legal heirs sold the property allotted to him to 1st plaintiff under registered sale deed dated 14.07.1977. Likewise, the above said Chinnappa Gounder and his legal heirs sold the property allotted to him in



favour of 1st defendant under registered sale deed dated 13.07.1977. Hence, the allegation in the plaint with regard to extent in item 1 was specifically denied. It was further submitted that the vendors of the first plaintiff and the first defendant owned 1.50 acres and possessed an area of 1.70 ½ acres within the boundaries and therefore, they were in possession of 20 ½ cents in excess within the specific boundaries. Thus, according to the defendants, the first plaintiff was entitled to 85 ¼ cents and the defendants were entitled to 85 ¼ cents though both of them purchased only 75 cents. On these pleadings, the defendants sought for dismissal of the suit.

4. Before the Trial Court, the 2nd plaintiff, who is none other than the husband of the first plaintiff was examined as PW1. Yet another witness was examined as PW2. On behalf of the plaintiffs, 17 documents were marked as Ex.A1 to Ex.A17. The 2nd and 3rd defendants were examined as DW1 and DW2. Yet another witness was examined as DW3. On behalf of the defendants, one document was marked as Exhibit B1.

5. The Trial Court, on appreciation of oral and documentary evidence available on record, decreed the suit by passing a preliminary decree for appointment of Advocate Commissioner to fix the boundaries. Aggrieved by the same, the defendants preferred an appeal in A.S.No.77 of 2019 on the file of the Principal Sub-Judge, Erode. The First Appellate Court affirmed the findings of the Trial Court. Challenging the concurrent findings against them, the defendants have come before this court.



6. The learned counsel for the appellants submitted that the courts below have committed an error in passing a preliminary decree in a suit for demarcation of boundary lines. He submitted that the suit filed by the plaintiffs seeking fixation of boundary lines between the properties of the plaintiffs and the defendants is not at all maintainable in the absence of any prayer for declaration.

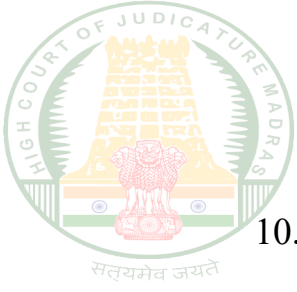
7. It is seen from the typed set of papers that first plaintiff purchased 75 cents of land in S.F.No.19 described as item 1 in the plaint schedule under Exhibit A1 dated 14.07.1977. Likewise, the second plaintiff was allotted 1.75 acres of land in the very same survey number described as item 2 in the plaint under partition deed dated 14.03.1990 marked as Exhibit A2. As per the plaint plan, the corresponding new re-survey number for item 1 is R.S.No.92/1D and for item 2 is R.S.No.92/1A. The “A” register showing the extent and survey field map showing location of the subdivision are filed as Exhibit A9 to Exhibit A14. The survey field map for S.F.No. 92 relating to item 3 of the suit property and the defendants property has been marked as Exhibit A3. The defendants also claimed that 1st defendant purchased 75 cents of land from Chinnappa Gounder in the very same S.F.No.19 under registered sale deed dated 13.07.1977 marked as Exhibit B1. Therefore, all the title deeds of the parties namely first plaintiff, second plaintiff and the first defendant are before the court.



8. The cause of action for filing the present suit is alleged obliteration of original boundary line between the properties of the parties by the defendants and alleged expansion of his property by moving the boundaries. The said allegation in the plaint has been denied by the defendants in the written statement. Therefore, the crux of the issue is whether the plaintiffs and defendants are in possession of the properties purchased by them and whether there is any shifting of boundary by any of the parties. The said issue can be resolved only by survey of the properties of both the parties by a qualified Surveyor with reference to the title deeds and revenue documents. Just for fixing the boundary line in between the properties of plaintiffs and defendants by surveying the property, the present suit has been laid.

9. With regard to the location and lie of the properties owned by respective parties, there is no serious dispute. In fact, DW1, in his evidence, deposed that the location of the property shown in the plaint plan is correct. He also admitted that the boundary line in between the properties of 1st plaintiff and his property has been obliterated. The relevant admission of DW1 was extracted in the Trial Court judgment and the same reads as follows.

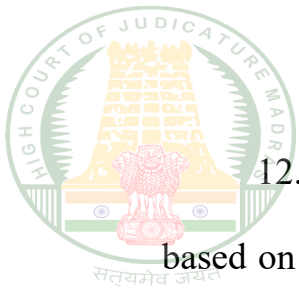
“1ம் வாதி பூமிக்கும் எங்கள் பூமிக்கும் மட்டும் பொழி அதாவது தாவா 8 1/4 செண்ட் விஸ்தீரணத்திற்கு இடையில் அழிந்து விட்டது, எனவே அளந்து பொழி நிர்ணயம் செய்ய வேண்டும் என்று நாங்கள் 1ம் வாதியிடம் கோரியவுடன் இந்த வழக்கை தவறான



விபரங்களை கூறி தாக்கல் செய்திருக்கின்றனர்,"

10. The above said admission of DW1 categorically established the boundary dispute between the parties. It also established that defendants themselves requested plaintiffs for survey and fixation of boundaries. Therefore, the boundary dispute can be resolved only by appointing a qualified surveyor to measure the property and fix the boundary line. Both the courts below, on proper appreciation of the evidence available on record, came to the conclusion that fixation of boundary line by proper survey of the properties of the plaintiffs and defendants is absolutely necessary and hence, passed a preliminary decree appointing an Advocate Commissioner to measure the property with the help of qualified Surveyor and fix the boundary line. He was also directed to file a report and plan within a period of three months. The parties were given liberty to file application for passing of final decree. I do not find any legal error in the conclusion reached by the courts below.

11. Only after filing of report by the Advocate Commissioner after measuring the property with the help of qualified Surveyor, the Court can pass a decree fixing the boundary line. Therefore, the preliminary decree passed by the Trial Court as confirmed by the First Appellate Court for appointment of Advocate Commissioner to survey the property and fix the boundary line with the help of qualified Surveyor is in accordance with the law and therefore, the submission made by the learned counsel for the appellants is not appealable to this Court.



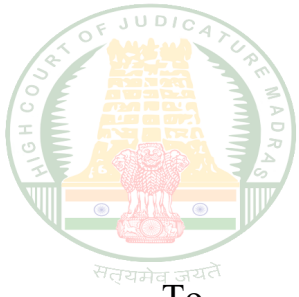
12. The title documents of the parties were filed before the Court and based on the title documents, the properties have to be measured and boundary line has to be fixed. In case, there is any difficulty in fixing the boundary line due to availability of larger extent or lesser extent on ground, certainly the same will be reflected in the report filed by the Advocate Commissioner and the said dispute can be resolved in the final decree proceedings after hearing the parties.

13. The plaintiffs sought for survey of the suit properties and fixation of boundary lines only and therefore, the submission made by the learned counsel for the appellant that the suit filed by them without prayer for declaration is not at all maintainable is without any substance.

14. In the light of the discussion made earlier, I do not find any substantial question of law arising for consideration to interfere with the findings of the courts below. Accordingly, the second appeal stands dismissed by affirming the judgment and decree passed in A.S.No.77 of 2019 dated 19.02.2021 on the file of the Principal Sub-Judge, Erode confirming the judgment and decree passed in O.S.No.483 of 2014 dated 13.08.2019 on the file of the Principal District Munsif, Erode. There shall be no order as to costs. Consequently, the Connected Miscellaneous Petition is closed.

22-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
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1. The Principal Sub Judge, Erode
2. The Principal District Munsif, Erode.



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S.SOUNTHAR, J.

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