



S.A. No.666 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 10.11.2025

PRONOUNCED ON : 06.02.2026

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A. No.666 of 2021

and

C.M.P. No.13385 of 2021

Anbarasi

... Appellant

Vs.

V.Bhaskar

... Respondent

Prayer: This Second Appeal is filed under Section 100 of the code of Civil Procedure, against the Judgment and Decree dated 08.04.2021 in A.S.No.1 of 2021 on the file of the learned Subordinate Judge, Alandur reversing the Judgment and Decree dated 27.02.2017 in O.S.No.370 of 2011 of the learned Additional District Munsif Court, Alandur.



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For Appellant : Mr.N.Manoharan
For R1 to R3 : Mr.E.Prabu

JUDGMENT

This Second Appeal is filed against the judgment and decree dated 08.04.2021 made in A.S.No.1 of 2021 passed by the Sub Court, Alandur reversing the judgment and decree dated 27.02.2017 made in O.S. No. 370 of 2011 passed by the Additional District Munsif, Alandur.

2.The unsuccessful plaintiff is on appeal.

3.The plaintiff has filed the above suit in O.S.No.370/2011 seeking the relief of permanent injunction and for mandatory injunction asserting that she possesses absolute title and uninterrupted possession over the 'A' schedule property to an extent of 1210 sq. ft., in T.S.No.35 under Ex.A2 sale deed dated 07.03.1996. While so, the defendant is trying to construct compound wall on the eastern side by encroaching a portion of plaintiff's 'A' schedule property and therefore, the plaintiff was constrained to file the above suit.



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4. On the other hand, the claim of the plaintiff was resisted by the defendant stating that he has purchased the property in T.S.No.34 under Ex.B1 sale deed 22.07.1991. He then constructed the building after getting approval from the Alandur Municipality and also obtained EB service connection and his property was assessed for property tax. When the defendant was trying to construct the compound wall on the eastern side, the plaintiff prevented him and removed the basement of the compound wall. The further contention of the defendant is that, the defendant's family were in continuous possession of his property for more than 80 years, prior to the purchase of plaintiff and the boundaries are fixed. The defendant has constructed his compound wall entirely within his own legitimate boundary.

5. The trial Court after framing necessary issues and based on the materials on record decreed the suit in favour of the plaintiff. Aggrieved by this, the defendant preferred the appeal suit in A.S.No.1 of 2021 before Sub Court, Alandur. The First Appellate Court reversed the judgment and decree passed by the Trial Court and dismissed the suit filed by the plaintiff. Hence, this second appeal is preferred by the plaintiff challenging the judgment and decree passed



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by the first Appellate Court.

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6.This second appeal is admitted on the following substantial questions of law:

1) Whether the first appellate Court is right in rejecting the learned Advocate Commissioner's report and survey plan marked as Ex. C1 to Ex. C3 as not conclusive proof, particularly, when the commissioner's report and survey plan are relevant under Order 26 Rule 9 C.P.C to elucidate the matter in dispute as to the encroachment, as held in 2020(1) SCC 1 (CB)?

2) Has not the first appellate Court erred in giving undue credence to the lesser extent mentioned in the TSLR (Ex.A3) by overlooking the correct extent of the property purchased by the plaintiff under the Sale Deed dated 07.03.1996 (Ex.A2)?”

7.Mr.N.Manoharan, learned counsel for the appellant / plaintiff would submit that the suit property was originally owned by Tmt. Muniyammal and Madana, who had sold it to Tr. CM. Hasan under a sale deed dated 11.09.1975 (Doc.No.1565/1975) marked as Ex.A1. His legal heirs sold it to Mr. MSM. Syed Ibrahim under a sale deed dated 25.11.1982 (Doc.No.3920/1982). Thereafter,

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MSM. Syed Ibrahim had executed a sale deed to the plaintiff on 07.03.1996 (Doc.No.859/1996) marked as Ex. A2. After purchase, the plaintiff had constructed a residential house in the year 1996. She had obtained EB service connection. The House was assessed for property tax. The defendant is the owner of the house site on the western side. Both the plaintiff and the defendant vendor had left 5 feet gap for setback facility between their properties. While so, on 25.05.2011 the defendant had purchased the property in TS.No.34, and at the instigation of the ex-municipal counsellor, he had started constructing a compound wall by annexing 1 feet left for setback by the plaintiff. The plaintiff and her husband had obstructed the encroachment made by the defendant, for which they were assaulted and criminally intimidated. A police complaint was given and CSR was issued. Again, on 05.06.2011, the defendant started the construction of the compound wall by encroaching the portion of the plaintiff's property.

8.Under such circumstances, the suit was filed for the relief of permanent injunction on 13.06.2011. After the report and plan filed by the Advocate Commissioner, the plaint was amended to include the relief of mandatory injunction.



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9. On the other hand, Mr. E. Prabu, learned counsel appearing for the respondent/ defendant submitted that the defendant, has not committed any encroachment whatsoever in the alleged 'B' Schedule property or any other part of the Plaintiff's land. He further submitted that he is not a "recently purchased" owner, as falsely alleged, but holds a solid, ancestral title over his property (Door No. 14/19) in T.S.No.34, which has been in his family's continuous possession for more than 80 years. The defendant's title is legitimate and predates the Plaintiff's tenure. The suit property's boundaries have always been fixed and known, and the Defendant has constructed his compound wall entirely within his own legitimate boundary. The fundamental flaw of the Plaintiff's claim lies in her failure to prove a clear title over the alleged area of encroachment. While the Plaintiff asserts ownership of 1210 sq. ft. based on her Sale Deed (Ex.A2), the Defendant points out that this extent is contradicted by the official government document, the Town Survey Land Register (TSLR, Ex.A3), which records a lesser extent for her property. Since both the parties, the Plaintiff and the Defendant are not having the actual extent mentioned in their respective Title Deeds, the TSLR record of title and boundary, and its evidence must prevail when there is a dispute over the true extent of the property on the ground. Therefore, the Plaintiff has not only failed to establish her absolute title



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to the claimed 1210 sq. ft. but has also failed to accurately define her legal boundary, thereby rendering her entire claim of encroachment null.

10.The defendant strongly objected to the Advocate Commissioner's Report and Survey Plan (Exs. C1 to C3), which the Plaintiff relied upon, arguing that the Commissioner's measurements in respect of the alleged encroachment were based on the Plaintiff's disputed extent (1210 sq. ft.) and not the correct official TSLR boundaries.

11.Heard on both sides and records perused.

12.The trial Court found that the defendant has encroached 0.5 meters of the plaintiff's property based on the title deeds marked as Exs.A1 & A2 and also relied upon the report and plan of the Advocate Commissioner marked as Exs.C1 to C3. But the first appellate Court reversed the findings of the trial Court by holding that the plaintiff failed to prove her easementary right and that the report and plan of the Advocate Commissioner is not a conclusive proof. It has further held that the northern compound wall admittedly is in existence even prior to the purchase of the plaintiff in the year 1996, which is corroborated by Exs.A8, B10



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and B.11 photographs. The First Appellate Court further held that though the plaintiff has purchased 1210 sq. ft., under Ex.A2, the Ex.A3-TSLR is only for 1014 sq. ft. Further, the first Appellate Court held that the relief of mandatory injunction is time barred.

13.It is not in dispute that the plaintiff has purchased 1210 sq. ft., under Ex.A2 sale deed dated 07.03.1996 and the parent document dated 11.09.1975 marked as Ex.A1 shows the same extent. The title of the plaintiff is not disputed by the defendant. However, in Ex.A3-TSLR dated 12.09.1984 the extent of plaintiff's property is shown as 1014 sq. ft. It is also not in dispute that the defendant purchased the property in TS.No.34 to an extent of 2400 sq. ft., under Ex.B.1. However, the TSLR would reveal that only an extent of 1776 sq. ft., is available to him in the ground. In order to elucidate the matter in dispute, an Advocate Commissioner was appointed by the trial Court, who had inspected and measured the property with the help of a surveyor after due notice to the parties. The Commissioner's report, plan and surveyor's report were marked as Exs.C1 to C3. In the report of the Advocate Commissioner, it is mentioned that the defendant had encroached 0.5 meters towards north south on the western portion of the plaintiff's property in TS.No.35 and the same is reiterated in the



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surveyor's report marked as Ex.C3.

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14.Now, it has to be seen whether the defendant had encroached 0.5 meters towards north south on the western portion of the plaintiff's property in T.S.No.35. It is settled law that, when there is a discrepancy between the measurements in a title deed and the town survey land record (TSLR) report, the measurements and boundaries mentioned in the registered title deed generally prevail over the TSLR/Revenue records. However, in cases of clear boundary description, boundaries take precedence over both, and in disputes, physical possession and Court appointed commission reports are preferred.

15.According to the plaintiff, the suit property is 1210 sq. ft., in T.S.No.35 with lineal measurement of 22 ft., east west and 55 ft., north south and the same has been purchased under Ex.A2 sale deed 07.03.1996 by the plaintiff. The parent document dated 11.09.1975 is marked as Ex.A2. The above two documents indicates that an extent of 1210 sq.ft., was purchased by the plaintiff. Though, Ex.A3 TSLR indicates 1014 sq.ft., the boundaries will prevail over the extent. The Advocate Commissioner's report and plan along with surveyor's report elucidate that the defendant has encroached upon the property of the



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plaintiff to an extent of 0.5 meters. It is settled law that, to elucidate the matter in dispute the report and plan submitted by Advocate Commissioner is admissible in evidence. The findings of the trial Court is not only based on the report and plan of the Advocate Commissioner but also based on the title deeds of the plaintiff. The First appellate Court erred in rejecting the Advocate Commissioner's report and survey plan as not conclusive proof, and the same are relevant under Order 26 Rule 9 CPC, to elucidate the matter in dispute as to the encroachment, as held in **2002(1) SCC 1**. Moreover, the title deeds will prevail over the revenue records. The First Appellate Court erred in giving undue credence to the lesser extent mentioned in the TSLR by overlooking the correct extent of the property purchased by the plaintiff under Ex.A2 sale deed dated 07.03.1996. There is no discrepancy in the extent of 1210 sq. ft., owned by the plaintiff. The plaintiff has proved her title, boundary and possession over the suit property. Therefore, the contention of the learned counsel that the property ought to have been measured based on Ex.A3 TSLR is incorrect.

16.On the other hand, the defendant examined as D.W.1 categorically admitted that though in Ex.B1 sale deed the extent of the property is shown as 2400 sq. ft., he asserts his title only on the basis of TSLR report marked as



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Ex.B.3 in which the extent is shown as 1776 sq. ft. He further admitted that, he is not aware of the actual extent of his property and also stated that he is ready to remove any encroachment made by him in the property of the plaintiff. He also admitted that the extent given in Ex.B2 is incorrect and that he agrees with the extent mentioned in Ex.B3 TSLR report is correct. Based on the report of the Advocate Commissioner, the plaintiff has amended the plaint including the prayer for mandatory injunction for removal of encroachment as noted in the report and plan of the Advocate Commissioner. Hence, the same cannot be said to be barred by limitation. Moreover, the First Appellate Court has proceeded as if, the dispute is in respect of northern compound wall, which is incorrect. Admittedly, the dispute is only with respect to the western wall. Moreover, the plaintiff claims title over the suit property under Ex.A2 sale deed. The dispute arose when the defendant encroached a portion of 'A' schedule property. Therefore, there is no need for the plaintiff to claim any easementary right. Thus, the findings of the First Appellate Court that, the dispute is with regard to the northern wall and that the plaintiff has not asked for easementary right is found to be erroneous. Therefore, the judgment of the first appellate Court is found to be perverse when the oral and documentary evidences on record sufficiently proved the alleged encroachment made by the defendant, which warrants



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interference by this Court. In view of the above said reasons all the substantial questions of law are answered in favour of the appellant.

17.In the result, this second appeal is allowed, the Judgment and Decree dated 08.04.2021 in A.S.No.1 of 2021 on the file of the learned Subordinate Judge, Alandur is set aside. No costs. Consequently, connected miscellaneous petition is closed.

06.02.2026

vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To

1. The Subordinate Judge, Alandur
2. The Additional District Munsif, Alandur
3. The Section Officer,
VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI, J.

vsn

**Pre-delivery Judgment in
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and

C.M.P. No.13385 of 2021

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