



THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 08.12.2025

Judgment pronounced on : 06.02.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

A.S.No.543 of 2025
& CMP.No.8493 of 2025

T.S.Krishnamoorthy

..Appellant

Vs.

1.J.Gopalakrishnan
 2.Neelam Jain
 3.M.Balasubramanian
 4.V.Ramesh

5.The Collector of Chennai,
 No,32, Rajaji Salai, Chennai – 1.

6.The Tahsildar,
 Mambalam-Guindy Taluk,
 K.K.Nagar,
 Chennai – 78.

..Respondents

Prayer: Appeal Suit filed under Section 96 of the Code of Civil Procedure, to set aside the judgment and decree dated 01.11.2022 in O.S.No.13520 of 2010 on the file of the learned VII Additional Judge, City Civil Court, Chennai, transferred from the High Court of Madras in C.S.No.552 of 2004.

For Appellant : Mr.P.Valliappan
 Senior Counsel
 for Mr.T.Deeraj

For Respondents : Mr.S.Mukunth



Senior Counsel
for Mr.M.Muthappan for R1
Mr.G.Nanmaran
Special Govt. Pleader for RR5 & 6
No appearance for RR2 to 4

JUDGMENT

The plaintiff, whose suit in O.S.No.13520 of 2010 for declaration of title, possession, permanent injunction and mesne profits came to be dismissed after trial, is the appellant.

2.Pleadings:

The plaint averments in brief:

(a) The plaintiff is the owner of the suit property, Plot No.13, Survey No.257, Velacherry Village, measuring 2400 sq.ft. It forms part of an approved layout in D.D.T.P.221 of 75, originally named as Sri Ganesh Nagar, Velacherry. The plaintiff purchased the suit property under a registered sale deed dated 21.07.1978 from the original owner, R.Shanmugam, represented by his duly constituted power of attorney agent, one C.Krishnamoorthy. The plaintiff has been in possession and enjoyment ever since the purchase. He has also put up a thatched shed in the suit property. However, when he received the original sale deed from the Sub-Registrar's office, he found that the plan, showing the approved layout was not annexed to the sale deed.



(b) The plaintiff contacted the power agent, C.Krishnamoorthy and demanded for a copy of the approved layout plan. The power agent, C.Krishnamoorthy provided the same, based on which, the plaintiff applied for building plan approval to the Corporation of Madras and approval was also granted in P.P.No.C15/413/79 dated 29.12.1979. However, for want of funds and family circumstances, the plaintiff could not put up construction. The plaintiff also obtained separate patta in his name from the Tahsildar vide Patta No.316 dated 24.02.1983. The plaintiff, in fact, rented the thatched shed to one M.Subramanian @ Mani on 04.06.1983. The plaintiff was also paying land tax for the suit property. In 1985, there was a threat of interference to the plaintiff's possession by one M.Balasubramanian and hence, the plaintiff filed a suit before the City Civil Court in O.S.No.7045 of 1985. The suit was decreed on 12.11.1986.

(c) On 14.08.1988, the plaintiff also lodged a complaint with the Inspector of Police, Velacherry against the said M.Balasubramanian and one Prabakaran to thwart their attempts to disturb the plaintiff's peaceful and enjoyment of the suit property. The plaintiff also wrote to the Sub-Registrar and objected to any registration of the suit property, which belongs to the plaintiff, vide objection petition dated 16.09.1989. Taking advantage of the plaintiff



residing away from the suit property, some third parties, without the knowledge and consent of the plaintiff, attempted to trespass into the suit property.

However, all such attempts were interrupted with the help of the local police on the complaint made by the plaintiff. The plaintiff has been continuously vigilant in protecting his right and possession over the suit property.

(d) In the first week of April 2004, he however found that some preparations have been made for commencing building work and on enquiry, the plaintiff came to know that one R.Hemanathan, power agent of the 1st defendant was attempting to put up construction on behalf of the 1st defendant. The plaintiff informed the power agent that he is the owner of the suit property and all further construction works were stopped immediately. When the plaintiff again visited the suit property on 09.05.2004, he found that a small building measuring 15' x 10' had been put up and construction was incomplete. The plaintiff again approached the police authorities and also made search at the Sub-Registrar's Office at Saidapet. The plaintiff then came to know that the 1st defendant, relying on a dismissal of a suit in O.S.No.2297 of 2000 on the file of the XIV Assistant City Civil Court, Chennai, on 04.03.2004 and relying on a sale deed dated 29.06.1990 executed by none else than Balasubramanian, the defendant in O.S.No.7045 of 1985, was claiming right. The sale in favour of the 1st defendant is based on a fraudulent suit in O.S.No.9641 of 1988, where a



decree was obtained on 30.11.1988 by playing fraud and by collusion, especially when the vendor, Balasubramanian had no title to the suit property in the first place. The defendant in the said collusive suit was none else than C.Krishnamoorthy, who executed the sale deed on 21.07.1978 in favour of the plaintiff. The plaintiff was not a party to both the suits in O.S.No.2297 of 2000 and O.S.No.9641 of 1988 and therefore, the decrees in the said suits would not bind the plaintiff and all subsequent transactions are invalid, non est in the eye of law.

(e) In the meantime, the 4th defendant created a bogus and invalid sale deed on 22.07.1983 in favour of S.Marimuthu Chettiar, his own close relative and a benami and name lender for his son, M.Balasubramanian, the 3rd defendant. The said sale deed itself was not registered for nearly six years, as there were incurable defects and irregularities in the document. All the 52 plots in the approved layout in D.T.P.No.221/75 had been sold under the name, Sri Ganesh Nagar and the earlier purchasers were given separate patta for their respective plots as well. On 30.05.2004, the plaintiff lodged a complaint to the Inspector of Police, Velacherry, seeking police assistance to remove the superstructure put up by way of trespass. However, the police authorities directed the plaintiff to seek remedy before the civil court. Patta granted in favour of the plaintiff and more than 40 bonafide purchasers was set at naught



by proceedings in Na.Ka.No.1/633/99 dated 26.03.1999, in pursuance of orders obtained by playing fraud and misrepresentation in W.P.No.9650 of 2003, without even notice being issued to the registered pattadars. No steps were also taken under the Tamil Nadu Survey and Boundaries Act, 1920. The plaintiff sent a lawyers notice under Section 80 of CPC to the defendants 5 and 6 on 14.04.2005 for restoring subdivision and patta in the name of the plaintiff, by cancelling subsequent patta wrongly issued to the 1st defendant. Hence, the suit.

3.The written statement filed by the 1st defendant in brief:

The plaintiff is not the owner of the suit property. There is no area called “Sri Ganesh Nagar”. The suit property is situate only in “Balamurugan Nagar” and not in “Sri Ganesh Nagar”, in which layout, the plaintiff claims right. The 1st defendant alone is in possession and enjoyment of the property purchased by him for a valuable sale consideration in the year 1990. There is no “Sri Ganesh Nagar” layout in Velacherry. The 1st defendant has been in continuous possession and enjoyment of the suit property ever since his purchase on 29.06.1990. The construction put up in the suit property by the 1st defendant is lawful and there is no cause of action for filing the suit. In furtherance of the directions issued by the writ Court, the Special Commissioner of Land Administration conducted an enquiry and held that the patta in favour of the 1st defendant is valid. The vendors of the plaintiff have not been arrayed as



defendants and hence, the suit is bad for non-joinder as well.

4. The written statement filed by the 2nd defendant in brief:

The plaintiff claims to have purchased the property from one C.Krishnamoorthy, power agent of R.Shanmugam. The said R.Shanmugam had given power of attorney only for 1 acre. R.Shanmugam and one R.Dhandapani are owners of 2.10 acres of land each and they had jointly formed a layout in D.D.T.P.No.221/75 by including both the lands. The power agent has exceeded the authority given to him by selling the suit property to the plaintiff. The plaint is bereft of particulars as against whom the plaintiff gave police complaints in the year 1996 and 2000. The suit filed by the 2nd defendant against the 1st defendant in O.S.No.2297 of 2000 was for permanent injunction to restrain the 1st defendant from disturbing the 2nd defendant's possession and enjoyment of Plot No.13, Balamurugan Nagar, Velacherry in Survey No.257. Interim order in the said suit granted in favour of the 2nd defendant was in force till disposal of the suit 04.03.2004. The plaintiff is not entitled to any relief.

5. Reply statement filed by the plaintiff in brief:

Having formed a layout in the name and style of “Sri Ganesh Nagar” in respect of lands in Survey No.257, Velacherry Village and having obtained an approval in D.T.P.No.221/75, plots cannot be sold as if they are comprised in



Balamurugan Nagar. The Advocate Commissioner, who located the suit property, clearly rendered a finding that Plot No.13 is situate only in D.T.P.No.221/75. The 1st defendant has omitted to trace the title of S.Marimuthu Chettiar to the suit property, more so, Survey No.257 of Velacherry Village. The vendor of the 1st defendant, S.Marimuthu Chettiar is a total stranger to the suit property and to the entire extent in Survey No.257, Velacherry Village. The tracing of title by the 1st defendant is defective. Patta granted in favour of the plaintiff was as early as on 24.02.1983 and the plaintiff's possession was never disturbed for close to 20 years. The plaintiff has already challenged the order of the Special Commissioner of Land Administration in W.P.No.9650 of 2003, the same is pending. The plaintiff has also filed W.A.No.391 of 2005, seeking permission to contest W.P.No.9650 of 2003. Both the matters are pending before the High Court. Therefore, the 1st defendant cannot claim any right over the patta granted in his favour. Neither the plaintiff's vendor, nor his power agent have objected regarding the purchase made by the plaintiff or the plaintiff's possession of the suit property ever since the date of the purchase. In so far as the claim regarding power of attorney being executed only for 1 acre, it is contended by the plaintiff that in and by a registered power of attorney dated 05.11.1975, power was given in respect of 1 acre, as contended by the 1st defendant. However, subsequently, by another power dated 20.02.1974, Doc.No.49 of 1974, power was also executed in



respect of the remaining 1 acre and 10 cents. Therefore, the plaintiff's purchase is valid and the contention of the 2nd defendant is untenable.

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6. Issues framed by the trial Court:

Based on the pleadings, the trial Court has framed the following issues:

1. Whether the plaintiff is the absolute owner of the suit property?
2. Whether both the defendants are estopped from disputing the Sale Deed dated 21.07.1978 in favour of the plaintiff?
3. Whether the decree in O.S.No.9641/88 (XII Asst. City Civil Court, Chennai) was obtained by fraud and collusion and is not binding on the plaintiff?
4. Whether the defendants have purchased the property on 29.06.1990?
5. Whether the defendants are in possession and enjoyment of the suit property since the purchase in 1990?
6. Whether the Suit is bad for non-joinder of necessary parties?
7. Whether the Right and Title of the defendants is strengthened by the Order passed by the Special Commissioner and Commissioner, Land Administration on 10.02.2003?
8. Whether the plaintiff is entitled for the relief of Declaration of Title as prayed for?
9. Whether the plaintiff is entitled for the relief of recovery of possession as prayed for?



10.To what relief the plaintiffs are entitled to?

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7.Trial:

At trial, on the plaintiff, the plaintiff examined himself as P.W.1 and marked Ex.A1 to Ex.A33 and on the side of the defendants, the 1st defendant was examined as D.W.1 and marked Ex.B1 to Ex.B9. Mr.Ramachandran, authorized representative of the 2nd defendant was examined as D.W.2 and through him Ex.B10 and Ex.B11 were marked. Ex.C1 and Ex.C2 were marked as Court documents.

8.Decision of the trial Court:

On consideration of the oral and documentary evidence and in the light of the pleadings, the trial Court came to the finding that the plaintiff is not entitled to any relief and dismissed the suit.

9.Present appeal:

Aggrieved by the dismissal of the suit, the plaintiff is before this Court, by way of the present First Appeal.

10.I have heard Mr.P.Valliappan, learned Senior Counsel for



Mr.T.Deeraj, learned counsel for the appellant and Mr.S.Mukunth, learned Senior Counsel for Mr.M.Muthappan, learned counsel for the 1st respondent and Mr.G.Nanmaran, learned Special Government Pleader for the respondents 5 and 6.

11.Arguments of the learned counsel for the appellant:

(a) Mr.P.Valliappan, learned Senior Counsel appearing for the appellant, taking me through the pleadings as also the documents exhibited before the trial Court, including the Advocate Commissioner's report, would contend that the plaintiff had established a valid acquisition of Plot No.13 in “Sri Ganesh Nagar” layout, which was in fact an approved layout. The learned Senior Counsel would further contend that when the entire lands in Survey No.257 has been plotted out, that too, by way of an approved layout and all the plots have been sold, it was not open to the defendants to claim that there was another layout under the name of “Balamurugan Nagar” and that they claim right under the same layout.

(b) It is the contention of Mr.P.Valliappan, learned Senior Counsel that in the present case, the identity of the property is not in dispute and in such circumstances, the trial Court clearly fell in error in dismissing the suit and non-suiting the plaintiff to any of the reliefs prayed for in the suit. He would also



take me through the Advocate Commissioner's report and findings with regard to the suit property being forming part of only “Sri Ganesh Nagar” layout and not “Balamurugan Nagar” layout and therefore, contends that the trial Court has not considered the said crucial finding rendered by the Advocate Commissioner. He would further state that without even notice to the appellant/plaintiff, the Revenue Authorities have cancelled the patta, which is clearly invalid in the eye of law. According to the learned Senior Counsel, the defendants have colluded amongst themselves to defeat the plaintiff's legitimate right, title and interest over the suit property. The learned Senior Counsel also relies on the decision of this Court in *Solomon Selvaraj Esther and others Vs. Indirani Bhagawan Singh and others*, reported in (2022) 2 CTC 854, which was also affirmed by the Hon'ble Supreme Court in (2023) 1 SCC 349, where this Court held that when an earlier suit for permanent injunction had been decreed, the Court cannot permit re-litigation and it would clearly operate as *res judicata* in a subsequent suit for title.

12.Arguments of the learned counsel for the respondents:

(a) Mr.S.Mukunth, learned Senior Counsel appearing for the 1st respondent would firstly contend that the plaintiff, having come to Court, it was the duty of the plaintiff to identify the property, in respect of which, he sought for relief. Pointing out to the sale deed in favour of the plaintiff in Ex.A3



dated 21.07.1978, learned Senior Counsel would highlight that the document did not even mention the name of the layout, leave alone it being approved. He would further state that even the original sale deed was not exhibited before the Court. Similarly, even in Ex.A6, he would contend that the name of the layout is not mentioned. He would also state that the ex-parte decree obtained by the plaintiff is of no avail and further it was only a suit for bare injunction.

(b) It is also the contention of Mr.S.Mukunth, learned Senior Counsel that the plaintiff ought to have at least examined his vendor to prove his entitlement to Plot No.13 of “Sri Ganesh Nagar” layout and having firstly not impleaded his vendors and secondly not having examined his vendors, the plaintiff has to be non-suited. Pointing out to Ex.A3, preamble to the sale deed under which the plaintiff claims title, the learned Senior Counsel states that the document, as already contended, does not mention about the approved layout and further, on the contrary, it states that the lands are not developed.

(c) Regarding the Advocate Commissioner's report, Mr.S.Mukunth, learned Senior Counsel would state that the findings of the Advocate Commissioner in fact are in favour of the defendants as the Commissioner gives a categorical finding that the tenant occupying the suit property was a tenant of the 1st defendant and not the plaintiff, which clearly evidences the fact that the



defendant alone is in possession of the suit property, claiming independent right under the sale deed in respect of a plot in “Balamurugan Nagar” and nothing to do with the “Sri Ganesh Nagar” layout. In support of his submission, the learned Senior Counsel would rely on the decision of the Madurai Bench of this Court in *S.Ramakrishnan Vs. M.Ramadas (Died) and others*, reported in 2025 (5) CTC 366, where it has been held that when the plaintiff claims title and failed to examine his vendor, then the plaintiff cannot be said to have discharged the onus upon him, by providing best evidence available, warranting adverse inference to be drawn against the plaintiff's title. The learned Senior Counsel would therefore pray for dismissal of the appeal, contending that the trial Court has not committed any error in appreciation of the pleadings, oral and documentary evidence on record.

13.I have carefully considered the submissions advanced by the learned Senior Counsel on either side. I have also gone through the records, pleadings, oral and documentary evidence adduced by the parties before the trial Court.

14.Points for consideration:

On considering the arguments in the first appeal, the following points are framed for consideration:

- 1.Whether the plaintiff, on the strength of the sale deed dated 21.07.1978, is entitled to the relief of declaration of title and



consequently, whether he is entitled to the relief of recovery of possession.

2. What is the effect of the decrees obtained by the plaintiff in O.S.No.7045 of 1985 and the suit filed by the 2nd defendant in O.S.No.2297 of 2000 as against the 1st defendant.

15. Points 1 and 2:

Both the plaintiff and the defendants claim right to one and the same property. It is the case of the plaintiff that he has purchased Plot No.13 in Survey No.257, forming part of an approved layout in “Sri Ganesh Nagar” in D.T.P.No.221 of 1975, whereas, it is the case of the defendants that the suit property is situate in “Balamurugan Nagar” and not “Sri Ganesh Nagar” and that the defendants alone are in possession of the suit property. Pending the suit, an Advocate Commissioner was appointed and he filed a report and also plans in Ex.C1 and Ex.C2. It is the contention of the plaintiff that the vendor of the 1st defendant has fabricated the name of the layout as “Balamurugan Nagar”, instead of “Sri Ganesh Nagar” and once again sold the plots already sold under the name and style of “Sri Ganesh Nagar”, taking advantage of the patta issued in the name of the defendants.

16. The plaintiff, after his purchase, applied for mutation of revenue records and patta was also granted in Patta No.3168 as early as on 24.02.1983



with the subdivision as 257/11. In order to protect the possession of the suit property, it is seen from the oral and documentary evidence that the plaintiff has lodged several police complaints against the 1st defendant and also Balasubramanian before filing the present suit. The plaintiff has admitted that he is out of possession and that is the reason why he has sought for relief of delivery of possession in the said suit. Therefore, it is of no avail to contend that the Advocate Commissioner has found the tenant occupying the suit property to be tenant under the 1st defendant.

17.The plaintiff has exhibited documents to show that he has been paying land taxes and has been in absolute possession and enjoyment. The suit filed in O.S.No.7045 of 1985 against the 3rd defendant has been decreed. It is contended by Mr.S.Mukunth, learned Senior Counsel that the decree is an ex-parte decree and therefore, would have no value or effect to the present dispute. A copy of the plaint, judgment and decree have been marked as Ex.A9 to Ex.A11. The said suit filed by the plaintiff was against Balasubramanian under whom the contesting defendants claim right to the suit property. In the said plaint, the plaintiff has asserted his right to the suit property on the basis of sale deed dated 21.07.1978 and also mutation of patta on 24.02.1983. Interestingly, neither the sale deed as pointed out by Mr.S.Mukunth, learned Senior Counsel, nor the plaint discloses the fact that the suit property is forming part of an approved



layout under the name and style of “Sri Ganesh Nagar”, Velacherry. There is no reference about the said approval even in the schedule to the plaint.

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18.The defendant in the said suit, the 3rd respondent herein remained ex-parte and the trial Court passed a judgment, disposing of the suit in a summary fashion, holding that the claim was proved and therefore the plaintiff is entitled to decree as prayed for. The fact remains that the said decree has not been challenged by the 3rd respondent, Balasubramanian. It has become final and it is certainly binding on the Balasubramanian and his successors-in-interest. The competent Civil Court has granted a decree, finding that the plaintiff is in lawful possession and enjoyment of the suit property.

19.Coming to the suit filed by the 2nd defendant, S.Marimuthu Chettiar, represented by his power agent, Balasubramanian, in O.S.No.5006 of 1988, the plaintiff was admittedly not arrayed as a party. However, the vendors of the plaintiff were arrayed as defendants 5 to 6. The said suit was also for bare injunction to restrain the defendants from interfering with the possession and enjoyment of the suit property, in fact, a larger extent of 4 acres and 20 cents. The vendors of the plaintiff contested the said suit by filing written statement. The said suit was dismissed by a judgment and decree dated 10.10.1996. Mr.S.Marimuthu Chettiar, represented by the power agent, Balasubramanian



filed yet another suit against C.Krishnamoorthy, who represented the vendors of the plaintiff as power agents in O.S.No.9641 of 1988. In the said suit, the plaintiff sought for a relief that the sale deed dated 22.07.1983 in favour of the plaintiff is true, valid and binding on the defendant, fully supported by consideration and for declaration.

20.Strangely, Mr.C.Krishnamoorthy, power agent of the vendors of the plaintiff submitted to a decree as prayed for by the plaintiff, through an endorsement made by the counsel on 28.10.1988 and having counter signed the said endorsement himself on 30.11.1988. It is contended by the plaintiff that the power agent had colluded with the 3rd defendant only in order to nullify the valid purchase made by the plaintiff and also to get over the decree passed in favour of the plaintiff in O.S.No.7045 of 1985.

21.As already stated above, both the plaintiff and the defendants claim right over the same property. Therefore, it is to be seen as to whose title is valid and whose title is defective. The plaintiff has admittedly purchased the property at an earlier point of time, in the year 1978. His sale deed has been marked as Ex.A3. In the sale deed, of course, as pointed by Mr.S.Mukunth, learned Senior Counsel, there is no reference to the layout having been approved. However, the property has been described as Plot No.13, comprised in Survey No.257 and



bounded on four definite sides, with admeasurements as well.

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22. There is also a specific reference to the fact that all expenses levied by the local authority for development and the betterment of the land should be borne by the purchaser. The patta granted in the plaintiff's name, marked as Ex.A7 evidences the fact that the Survey No.257 subdivided as 257/11 and mutated in the name of the plaintiff. The plaintiff has also obtained building approval from Corporation of Chennai, where there is a reference for the first time about the approved layout in D.T.P.No.221/75. The building approval itself is dated 23.01.1980. In the light of the above, I do not see why and how the plaintiff should be non-suited, only on account of the sale deed in his favour not mentioning that the layout has been approved in D.T.P.No.221/75. Having sold the property by forming a layout, it was not open to S.Marimuthu Chettiar, represented by his own son and power agent, Balasubramanian, to claim that he has purchased the property by sale deed dated 22.07.1983 and affirmed by a decree in O.S.No.9641 of 1988 and alienate and encumber the very same Plot No.13 in approved layout D.T.P.No.221/75 in favour of the 1st respondent herein.

23. Curiously, the schedule to the sale deed in Ex.B1 also relates to the very same property that has already been sold in favour of the plaintiff,



excepting for the fact that the sale deed in Ex.B1 mentions D.T.P.No.221/75 to be “Balamurugan Nagar”. The layout approval plan, that has been annexed to Ex.B1, curiously does not refer to the name of the layout as either “Balamurugan Nagar” or “Sri Ganesh Nagar”. Both the sale deeds in favour of the plaintiff and the 1st respondent are relating to the very same Plot No.13, comprised in Survey No.257 forming part of an approved D.T.P.No.221/75. In such circumstances, it is trite legal position that if the property has already been encumbered and conveyed to the plaintiff even as early as in 1975, it was not open for the very same property being sold in favour of the 1st respondent subsequently under a different sale deed, by claiming that the plot is comprised in “Balamurugan Nagar” layout. The defendants have not been able to produce any evidence or proof in support of their claim that D.T.P.No.221/75 was “Balamurugan Nagar” and not “Sri Ganesh Nagar” layout. However, in my considered opinion, the name of the layout place into insignificance.

24.As long as the parties are not disputing the identity of the property, both the plaintiff and the contesting defendants claiming the property to be comprised in Survey No.257 and forming part of approved layout in D.T.P.No.221/75, in which the subject plot is assigned as Plot No.13, the extent and boundaries are also tallying. In such circumstances, at the risk of repetition, whether the plot is in “Sri Ganesh Nagar” or “Balamurugan Nagar” or whether



the name of the layout is not mentioned in the documents is really of no consequence.

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25.The said Balasubramanian, who has conveyed the property to the defendant, as power agent of his father, S.Marimuthu Chettiar had in fact earlier suffered a decree in O.S.No.7045 of 1985 dated 12.11.1986, where the competent Civil Court has found that the plaintiff is in possession. The defendant has not assailed the said judgment and decree even though it is an ex-parte decree, it has force of a regular Civil Court decree and is certainly binding on the defendant therein, namely M.Balasubramanian. The plaintiff, pursuant to his purchase, has also produced ample documentary evidence to establish his continuous possession and enjoyment of the suit property, till such time, the defendants trespassed and high handedly put up a construction. The finding of the Advocate Commissioner that the tenant of the defendant is in occupation is of therefore no consequence or benefit to the case of the defendants.

26.In fact, in the Advocate Commissioner's report, the Commissioner has affirmed the fact that on comparison of FMB sketch for Survey No.257 and the copy of the layout relied on by the plaintiff to suit schedule property referred only to Plot No.13 of D.T.P.No.221/75 and the same was not disputed even before the Advocate Commissioner by the defendants. In such circumstances,



the name of the layout being “Balamurugan Nagar” and not “Sri Ganesh Nagar” does not in any manner come to the aid of the defendants, especially when their layout plan also does not indicate the name of the layout. The plaintiff therefore has clearly established his valid purchase prior in point of time to the acquisition by the 1st defendant and once the property has already been dealt with, it was no longer open for anybody else to deal with the very same property behind the back of the plaintiff. The trial Court, without noticing these aspects, has been carried by the fact that the plaintiff's sale deed did not contain the name of “Sri Ganesh Nagar” and without also noticing the building approval plan which is prior to Ex.B1 sale deed in favour of the defendants, which clearly indicates the approval number. In view of the above, I am inclined to accept the arguments of Mr.P.Valliappan, learned Senior Counsel that when the parties do not dispute the identity of the property, the non-mentioning of the name of the layout or the fact that the layout is approved in the sale deed, Ex.A3, does not render the case of the plaintiff fatal.

27.Further, as held by this Court in *Solomon Selvaraj Esther's case*, the findings in a suit for a permanent injunction would also amount to *res judicata* and when Balasubramanian, power agent and son of S.Marimuthu Chettiar had suffered a decree finding the plaintiff to be in possession, the said decree would certainly be binding on the defendants, who are claiming only under the said



S.Marimuthu Chettiar and his son, Balasubramanian. Insofar as the decision that has been relied by Mr.S.Mukunth, learned Senior Counsel, in S.Ramakrishnan's case, I do not see the non-examination of the vendor of the plaintiff to be fatal in the light of the discussion herein above, more specifically, there being no dispute with regard to the identity of the property. In such circumstances, the plaintiff has clearly established his right, title and interest over the suit property under a valid purchase made vide Ex.A3 and subsequently, lawful possession as well, by exhibiting planning permission, building plan approval and tax receipts, until such time, he claims to be dispossessed by the defendants. In the light of the above, the findings of the trial Court are unsustainable and liable to be interfered with. The plaintiff is entitled to the relief of declaration as prayed for in the suit and insofar as the consequential relief as well.

28.In view of the discussions herein above, the decree in O.S.No.7045 of 1985 would certainly bind the defendants and on the contrary, the suit in O.S.No.9641 of 1988 was behind the back of the plaintiff and strangely, the defendant therein, who was the power agent who executed the sale deed in favour of the plaintiff on behalf of the plaintiff's vendors had submitted to a decree. Having already dealt with the property, the said C.Krishnamoorthy was aware of the fact that Plot No.13 had already been encumbered and in such



circumstances, it is not known under what circumstances, the said Krishnamoorthy proceeded to submit to a decree. The decree is clearly collusive and cannot bind the plaintiff. Accordingly, both the points for consideration are answered in favour of the appellant. In the light of the above, I am constrained to set aside the judgment and decree of the trial Court.

29.Result:

In fine, the Appeal Suit is allowed and the judgment and decree dated 01.11.2022 in O.S.No.13520 of 2010 on the file of the learned VII Additional Judge, City Civil Court, Chennai, is set aside, together with costs. Consequently, connected Civil Miscellaneous Petition is closed.

06.02.2026

Neutral Citation Case : Yes
Speaking order
Index : Yes
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To

- 1.The VII Additional Judge, City Civil Court, Chennai.
- 2.The Collector of Chennai,
No,32, Rajaji Salai, Chennai – 1.



3.The Tahsildar,
Mambalam-Guindy Taluk,
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P.B.BALAJI.J,

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Pre-delivery judgment made in
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