



WEB COPY

SA No. 342 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 11-03-2026**

CORAM

**THE HON'BLE MR.JUSTICE S. SOUNTHAR**

**SA No. 342 of 2020 and  
CMP.No.6973 of 2020**

Selvaraj

..Appellant(s)

Vs

Rangasamy

..Respondent(s)

**Prayer :** Second appeal is filed under Section 100 of Code of Civil Procedure code, praying to set aside the judgment and decree of Lower Appellate Court Judge in A.S No.33 of 2015 dated 28.02.2019 on the file of Sub Ordinate Judge, Kallakurichi reversing the judgment and decree dated 07.02.2015 passed in O.S.No.48 of 2009 on the file of II Additional District Munsif Court, Kallakurichi.

For Appellant(s): M/s.R.Kumaravel

### **JUDGMENT**

The unsuccessful plaintiff is the appellant. He filed a suit for bare injunction against the respondent. The suit was decreed by the trial court and aggrieved by the same, the respondent/defendant preferred an appeal. The first appellate court reversed the findings of the trial court and dismissed the suit. Aggrieved by the said reversal findings, the appellant/plaintiff has come before this Court by way of second appeal.



2. According to the appellant, he purchased the suit property from legal representatives of one Ramasamy under Exhibit A1 dated 08-04-1999. Though in Exhibit A1, a larger extent and linear measurements are mentioned, the appellant has been in possession and enjoyment of the lesser extent with lesser linear measurements. It was also claimed by the appellant that he enjoyed the property by putting up a house and the same was damaged due to heavy rain. Now, he is enjoying the same as a vacant site. It was also stated that the respondent requested the appellant to sell the suit property to him during January 2009. Since the appellant refused the request made by the respondent, he attempted to interfere with his possession. Therefore, the suit was filed for bare injunction.

3. The respondent/defendant filed a written statement and denied the title of plaintiff's vendor over the suit property and sought for dismissal of the suit. The defendant also claimed that the claim made by the plaintiff as if he has been enjoying the property with east-west measurement of 42 feet and north-south measurement of 19 ½ feet was not correct. According to the defendant, the available extent on ground is only 36 feet north-south and 54 feet east-west. The defendant claimed that the plaintiff has been in possession and enjoyment of only 9 feet north-south and 54 feet east-west. It was also claimed by the defendant that he is entitled to property with an extent of 27 feet north-south and 54 feet east-west in the suit survey number. The cause of action alleged in

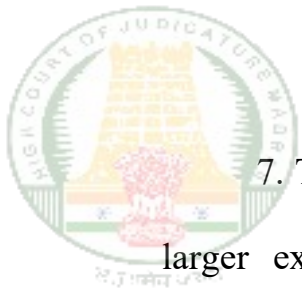


the plaint was also denied by the defendant.

4. Before the trial court, the plaintiff was examined as PW1 and one Muthusamy was examined as PW2. On behalf of the plaintiff, his title document was marked as Exhibit A1 and one house tax receipt was marked as Exhibit A2. On behalf of the defendant, he was examined as DW1 and his title document was marked as Exhibit B1. The house tax receipts paid by the defendant was marked as Exhibit B2 series. The decree obtained by the defendant in OS.No.1111 of 2004 was marked as Exhibit B3. The trial court appointed an advocate commissioner and he filed his report and plan and the same were marked as Ex. C1 and Ex.C2.

5. The trial court, based on oral and documentary evidence available on record, came to the conclusion that the appellant was entitled to decree for injunction and decreed the suit. Aggrieved by the same, the respondent preferred an appeal in A.S.No.33 of 2015 on the file of Sub-Court, Kallakurichi. The first appellate court reversed the findings of the trial court and dismissed the same. Aggrieved by the same, the appellant/plaintiff has come before this court.

6.The learned counsel for the appellant/plaintiff vehemently contended that when the defendant, in his written statement, admitted the possession of the plaintiff over smaller extent in the suit survey number, the first appellate court ought not have dismissed the suit in its entirety.



7. The plaintiff, in the plaint averments itself, clearly stated that though a larger extent and linear measurements have been mentioned in his title document, the plaintiff has been in possession and enjoyment of the suit property only lesser extent. In the written statement filed by the respondent, he claimed right over the property with linear measurement of 27 feet north-south and 54 feet east-west. According to the defendant, the north-south measurement available on ground is only 36 feet. He claims the right over 27 feet and the plaintiff is entitled to only 9 feet. A close scrutiny of the pleadings of the respective parties would indicate that there is a serious doubt with regard to the linear measurement of the property in possession of the plaintiff.

8. At the time of arguments, copy of Ex.A1 was produced by learned counsel for appellant before the Court. In Exhibit A1, the linear measurement of the property sold to plaintiff was mentioned as east-west 20 feet and north-south 15 feet with the total area of 300 square feet. However, in the plaint property description, the plaintiff claimed right over 19 feet north-south and 42 feet east-west. The total extent of the suit property has not been mentioned in the plaint description. Even as per the plaint averments, there is a dispute with regard to the extent and the linear measurements. When the property with east-west measurement of 20 feet and north-south measurement of 15 feet was conveyed to the plaintiff, how the plaintiff is entitled to maintain a suit for property with east-west measurement of 42 feet and north-south measurement of 19 ½ feet is not clear.



9. The title document of the defendant which was marked as Exhibit B1 is dated 27.07.1937 and the same is anterior in time and the defendant claims right over the property with the linear measurement of 27 feet north-south and 54 feet east-west.

10. In view of the serious dispute with regard to the linear measurements of suit property, the simple suit for bare injunction filed by the plaintiff without seeking declaration of title is not maintainable.

11. Further, it is seen from the first appellate court judgment that the defendant already filed a suit for bare injunction against the plaintiff in OS.No.1111 of 2004 and the same was decreed in favour of the defendant. The decree copy has been marked as Exhibit B3. It is also noted by the first appellate court that the plaintiff remained ex-parte in the suit and suffered ex-parte decree. When the plaintiff already suffered an ex-parte decree for injunction at the hands of the respondent/defendant, the present suit filed by him seeking injunction without a prayer for declaration is not at all maintainable. The First Appellate Court rightly reversed the findings of the trial court and dismissed the suit. I do not find any substantial question of law arising for consideration in this second appeal. Hence, the same is dismissed by confirming the judgment and decree passed in A.S.No.33 of 2015 dated 28.02.2019 on the file of Sub-Ordinate Judge, Kallakurichi reversing the judgment and decree dated 07.02.2015 in O.S.No.48 of 2009 on the file of II Additional District



Munsif Court, Kallakurichi. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

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

1. The Sub-Ordinate Judge, Kallakurichi.
2. The II Additional District Munsif Court, Kallakurichi.



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**S.SOUNTCHAR, J.**

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