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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**Reserved on : 27-10-2026**

**Delivered on : 03-11-2026**

CORAM

**THE HON'BLE MRS.JUSTICE THIRUMAGAL CHANDRASEKAR**

**SA(MD) No. 25 of 2014**

CNR:{HCMD010842632014}

and

MP(MD).No.1 of 2014

P.Narayana Perumal (died)
1) N.Vijayalekashmi, D/o.P.Narayana Perumal,
Sekharavilai, Vembanoor Post, Agasteeswaram
Taluk, Kanyakumari District.

..Appellants / plaintiff

Vs

R.Anandha Padmanabhan,
S/o.T.Ramanadar, South Ganapathipuram,
Ganapathipuram Pot, Agasteeswaram Taluk,
Kanyakumari.

.. Respondent / Defendant

**Prayer:** Second Appeal filed under Section 100 CPC against the Judgment and Decree dated 05.07.2013 made in A.S.No.79 of 2012 on the file of the Principal Subordinate Court, Nagercoil reversing the Judgment and decree dated 19.10.2012 made in O.S.No.161 of 2009 on the file of the Principal District Munsif Court, Nagercoil, Kanniyakumari.



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For Appellant : Mr. T. Antony Arulraj
For respondent : Mr.R.T.Arivukumar

**JUDGMENT**

This Second Appeal has been filed against the Judgment and Decree dated 05.07.2013 made in A.S.No.79 of 2012 on the file of the Principal Subordinate Court, Nagercoil reversing the Judgment and decree dated 19.10.2012 made in O.S.No.161 of 2009 on the file of the Principal District Munsif Court, Nagercoil, Kanniyakumari.

**2. The Brief Facts of the case are as follows:**

(i). The case of the plaintiffs is that the suit property situated at Neendakarai 'B' Village, Agasteeswaram Taluk, comprised in Resurvey Nos. 788/1 and 788/2, originally belonged to the first plaintiff, who acquired title to the same under a registered sale deed. The first plaintiff executed a settlement deed dated 05.02.2003 in favour of the second plaintiff. The defendant owns the adjoining property comprised in Resurvey No. 788/3, situated on the eastern side of the suit property. According to the plaintiffs, on 02.12.2008, the defendant trespassed into and encroached upon a portion of the suit property measuring 46.64



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square metres, with a north-south measurement of 8.8 metres on the eastern and western sides and an east-west measurement of 5.4 metres on the northern and southern sides. Hence, the plaintiffs instituted the suit seeking declaration of title, recovery of possession, mandatory injunction for removal of the encroaching construction and permanent injunction.

(ii). The defendant contested the suit, denying the plaintiffs' claim of ownership over the entire extent comprised in Resurvey Nos. 788/1 and 788/2. According to the defendant, as per the resurvey plan and measurements, the plaintiffs were entitled to only 1½ cents of land and were in possession of the same on the western side of the defendant's property. It was further contended that any additional extent claimed by the plaintiffs might have been lost during the formation of the new roads on the western and northern sides of their house. The defendant claimed to be the owner in possession of 15 cents of land, together with the building thereon, comprised in Resurvey Nos. 788/3 and 788/10. It was also contended that the eastern wall of the plaintiffs' house constituted the boundary separating the respective properties and that the plaintiffs had no right, title or possession over the disputed portion. On these grounds, the defendant sought dismissal of the suit.



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(iii). Before the trial Court, the second plaintiff was examined as P.W.1 and one N. Sivachandran was examined as P.W.2, and Exs.A1 to A7 were marked on the side of the plaintiffs. The defendant examined himself as D.W.1 and marked Exs.B1 to B3. The Commissioner's report and plan were marked as Exs.C1 and C2.

(iv). On considering the oral and documentary evidence the trial Court decreed the suit, granting the reliefs of declaration, recovery of possession, mandatory injunction and permanent injunction in favour of the plaintiffs. Aggrieved by the said judgment and decree, the defendant preferred an appeal and the same was allowed.

3. Challenging the judgment and decree of the first appellate Court, the appellants / plaintiffs have preferred the present Second Appeal.

4. The Second Appeal was admitted on the following substantial questions of law:-

*a) Whether a decree can be given in favour of the defendant on the basis of a field map?*

*b) Whether not the non-production of correlation*



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*report relied on by the defendant is fatal to his case?*

*c) Whether the exhibits Al and A2 required to be proved as they are ancient as per Section 90 of the Evidence Act?*

*d) Whether the judgment of the lower appellate court is vitiated for havirig failed to take into account the production of the patta and kist receipt in favour of the plaintiff/appellant?*

*e) Whether not the non examination of revenue officials by the defendant is fatal to the proof of his claim?*

*f)Whether the defendant has proved his possession which is admissible under the provisions of law?*

5. Heard Mr. D. Rajkumar, learned counsel appearing for the appellants and Mr. K. T. Arivukumar learned counsel appearing for the respondent and perused the materials available on record.

6. The appellant / first plaintiff purchased the suit property, measuring an extent of 2½ cents comprised in Survey Nos.788/1 and 788/2, under two registered sale deeds, namely, Exs.A1 and A2.



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Subsequently, he settled the said property in favour of her daughter, the appellant / second plaintiff, under the registered settlement deed dated 05.02.2003, marked as Ex.A3. On the eastern side of the suit property lies the property belonging to the respondent/defendant, comprised in Survey Nos.788/3 and 788/10, measuring an extent of 15 cents.

7. The case of the appellants/plaintiffs is that, on 02.12.2008, the respondent / defendant trespassed into their property and encroached upon an extent of 46.64 square metres, measuring 8.8 metres on the northern and southern sides and 5.4 metres on the eastern and western sides. Though the appellants / plaintiffs had purchased 2½ cents under Exs.A1 and A2, the physical extent available in Survey Nos.788/1 and 788/2 was found to be only approximately 1¼ cents as per the resurvey measurements. Alleging that the respondent / defendant had encroached upon the remaining portion and put up a construction thereon, they instituted the suit seeking declaration of title, recovery of possession, mandatory injunction and permanent injunction.

8. Per contra, the respondent / defendant contended that the appellants / plaintiffs were entitled to only a lesser extent as per the resurvey records and that the remaining extent might have been lost due



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to the formation of roads on the western and northern sides of their property. He further claimed that the disputed portion formed part of his property.

9. During the trial, an Advocate Commissioner was appointed to inspect and measure the property. The Commissioner, with the assistance of a licensed surveyor, inspected the property on 27.06.2009 in the presence of both parties and measured the properties on the basis of the respective title deeds as well as the resurvey plan.

10. As per the title deeds, the Commissioner identified the plaintiffs' property as AIJD, measuring an extent of 2.453 cents, and the defendant's property as IGHJ, measuring an extent of 2.500 cents.

11. As per the re-survey plan, the combined extent available in Survey Nos.788/1 and 788/2 was only 1.265 cents, whereas Survey No.788/3 was found to contain 3.696 cents. The Commissioner has further stated that the plaintiffs' old tiled-roof building was situated in the portion marked as AEFD and the defendant's newly constructed concrete building was situated in the portion marked as EGHF. The disputed portion was specifically identified as EIJF in the Commissioner's plan.



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12. The aforesaid measurements assume considerable significance. There is a deficiency of 1.188 cents in the plaintiffs' survey fields when compared with the extent of 2.453 cents identified under their title deeds. Similarly, there is an excess of 1.196 cents in Survey No.788/3 when compared with the defendant's entitlement of 2.500 cents identified by the Commissioner. The corresponding deficiency and excess in the adjoining survey fields lend considerable support to the case of the appellants / plaintiffs regarding the alleged encroachment.

13. The Field Measurement Book sketch is relevant for identifying the survey boundaries and measurements. However, it cannot, by itself, confer title or enlarge the extent of ownership beyond that conveyed under the registered documents. The respondent / defendant cannot claim the excess extent found in Survey No.788/3 merely on the basis of the resurvey measurements without establishing his title to the same.

14. Further, though the respondent/defendant relied upon the resurvey records, he has not produced the correlation report relied upon by him to establish the identity and correlation of the old and new survey



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numbers. Nor has he examined any competent revenue official to explain the basis of the resurvey measurements. Though such non-production and non-examination may not, by themselves, be fatal in every case, they assume significance in the present case, particularly when the appellants / plaintiffs have established their claim under registered title deeds and the Commissioner's report discloses a corresponding deficiency and excess in the adjoining survey fields.

15. With regard to Exs.A1 and A2, the applicability of Section 90 of the Indian Evidence Act, 1872, depends upon the documents having completed 30 years at the time of their production and being produced from proper custody. Subject to satisfaction of these requirements, the Court may draw the statutory presumption regarding their execution and attestation. The documents have also to be considered along with Ex.A3 settlement deed and the other evidence on record.

16. The appellants / plaintiffs have also produced patta and kist receipts in support of their claim. Though revenue records do not independently confer title, they are relevant corroborative evidence regarding possession and enjoyment. The first appellate Court ought to have considered these documents along with the registered title deeds and



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the Commissioner's report.

17. The contention of the respondent / defendant that the appellants / plaintiffs had lost the remaining extent due to the formation of roads on the western and northern sides is also unsupported by convincing evidence. The Commissioner inspected the property and measured the same with reference to the available survey boundaries. Therefore, the respondent / defendant's contention cannot be accepted merely on the basis of an assumption.

18. It is true that the Commissioner has not separately measured the defendant's property in Survey No.788/10. Nevertheless, the measurements recorded in respect of Survey No.788/3, read along with the title deeds and the Commissioner's plan, provide relevant material for determining the disputed boundary. The omission to measure Survey No.788/10 does not, by itself, invalidate the entire Commissioner's report.

19. The Commissioner has specifically identified the buildings and the disputed portion as EIJF in the plan. These physical features, considered along with the registered title deeds, revenue records and the corresponding deficiency and excess in the adjoining survey fields,



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support the appellants / plaintiffs' case. The respondent / defendant has failed to establish any independent title or lawful entitlement to the disputed portion merely by relying upon the resurvey measurements or the existence of his construction.

20. The first appellate Court, while reversing the judgment of the trial Court, failed to properly appreciate the documentary evidence and the material particulars contained in the Advocate Commissioner's report and plan. In view of the foregoing discussion, this Court finds that the appellants/plaintiffs have established their title under Exs.A1 to A3 and their entitlement to the reliefs claimed in the suit. The findings of the first appellate Court are therefore liable to be set aside.

21. In the result, the Second Appeal is allowed. The judgment and decree passed by the first appellate Court are set aside and the judgment and decree passed by the trial Court are restored. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

**03-11-2026**

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



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To

1. The Principal Subordinate Court, Nagercoil.
2. The Principal District Munsif Court, Nagercoil, Kanniyakumari District.
3. The Section Officer,
   VR Section,
   Madurai Bench of Madras High Court
   Madurai.



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**THIRUMAGAL CHANDRASEKAR, J.**

T. RAJAPRABA

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