



S.A.(MD)No.571 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.01.2026

Pronounced on : 18.03.2026

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

S.A.(MD)No.571 of 2015

1.M.Rani

2.S.Murugesan

3.Prema

... Appellants/
Respondents/
2, 3 & 4/
Defendants
2, 3 & 4

Vs.

1.Sundaresan

...1st Respondent/
Appellant/
Plaintiff

2.Panju son of Sooriyan (exonerated)

...2nd Respondent/
5th Respondent/
5th Defendant



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3.Vijayalakshmi
represented through her power agent
Balakrishnan

...3rd Respondent/
6th Respondent/
6th Defendant

PRAYER : Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree passed in A.S.No.55 of 2013 dated 04.03.2015 on the file of the Sub Court, Sivaganga reversing the judgment and decree passed in O.S.No.46 of 2009 dated 13.02.2013 on the file of the District Munsif Court, Sivaganga.

For Appellants : Mr.R.Sundar Srinivasan

For Respondents : Mr.V.Meenakshi Sundaram
for Mr.L.Siva for R1

R2 – Exonerated

Mr..S.Srinivasa Raghavan for R3

JUDGMENT

The Second Appeal is directed against the judgment and decree made in A.S.No.55 of 2013 dated 04.03.2015 on the file of the Subordinate Court, Sivagangai, reversing the judgment and decree passed in O.S.No.46 of 2009 dated 13.02.2013 on the file of the District Munsif Court, Sivagangai.



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2. The appellants are the defendants 2 to 4. The first respondent / plaintiff filed a suit to declare that the suit property is belonging to the first respondent / plaintiff and for consequential permanent injunction restraining the appellants and the respondents 2 and 3 / defendants 5 and 6 and their men from in any manner interfering with the first respondent / plaintiff's peaceful possession and enjoyment of the suit property and for mandatory injunction for removal of fencing structures, which were made by encroaching upon the suit property by the defendants.

3. For the sake of convenience and brevity, the parties hereinafter will be referred to as per their status / ranking in the trial Court.

4. The case of the plaintiff, in short, is as follows:

(a) The suit property measuring 1.14 acres is situated in Punjai Survey No.13/4 of Vallaneri alias Alagapuri Village, Alangulam Group, Sivagangai Taluk. The total extent of suit Survey No.13/4 is 4 acres 58 cents. The suit property is situated on the extreme western portion of the entire extent of 4.58 acres. The suit property belonged to one Vallikannu Ammal by virtue of a registered Inam settlement deed dated 21.04.1970.



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She sold the suit property to the plaintiff vide sale deed dated 25.06.1983 and since then, the plaintiff has been in possession and enjoyment of the same. The defendants have absolutely no right, title or possession over the suit property.

(b) During UDR (Updating Registry) scheme, patta was granted to the plaintiff only for 24 ares by wrongly subdivided as 13/4B. The plaintiff preferred an appeal against the illegal subdivision. The Revenue Divisional Officer (RDO), Sivagangai, has cancelled the subdivision and ordered to carry out fresh subdivision after notice to the parties concerned. The second defendant preferred an appeal before the District Revenue Officer (DRO), Sivagangai and the same was dismissed on 07.03.2007.

(c) The defendants 2 to 4 filed a suit in O.S.No.47 of 2007 before the District Munsif Court, Sivagangai against the plaintiff and the fifth defendant and obtained a judgment and decree, whereunder, the defendants 2 to 5 were declared as owners of 2.29 acres in the entire survey number. In that judgment itself, it has been confirmed that the plaintiff's property is situated on the extreme western side of the entire survey number and its extent is 1.14 acres. But the first defendant had



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encroached into a portion of the property, which was described as 'BAFE' and the defendants 2 to 5 had encroached into a portion shown as 'GHI' in the rough sketch and fenced them with the help of hooligans. The plaintiff issued a legal notice dated 16.07.2008 to the defendants and also effected public notice in Dinamalar daily. The first defendant sent a reply notice with false and untenable allegations.

(d) Since the defendants belong to the same village, they colluded together and approached the plaintiff to execute a sale deed in respect of the suit property in their favour. Since the plaintiff was not amenable for the same, they forcibly trespassed into the suit property and encroached a portion of the same. Hence, the plaintiff was constrained to file the above suit seeking declaration, permanent injunction and for mandatory injunction.

5. The defence of the defendants 2 to 4, in short, is as follows:

(a) In O.S.No.47 of 2007, the claim of the present plaintiff was rejected and therefore, it is false to allege that in the said judgment itself, it has been confirmed that the plaintiff is having 1.14 acres in the suit survey number. One Suihya Konar entered into a sale agreement to



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purchase two shares out of four shares belonging to the two sharers in the extent of 4.58 acres in Survey No.13/4 and since those two sharers failed to execute sale deed, he filed a suit in O.S.No.251 of 1985. In pursuance of the decree passed in O.S.No.251 of 1985, the Court executed a sale deed in favour of the said Suriya Konar and thereafter, he sold away the said property to the defendants 2 to 5 by virtue of a sale deed dated 24.02.1997. Patta was also issued in the name of the defendants 2 to 5 in Patta No.845 and they have been in possession and enjoyment of the said property. They constructed a house and obtained electricity service connection and are paying house tax and electricity consumption charges.

(b) Since the plaintiff herein tried to interfere with the peaceful possession and enjoyment of the defendants 2 to 5, they were constrained to file the suit in O.S.No.47 of 2007 against the plaintiff herein and the suit was decreed and the same is in force. One Rajendren, elder of the defendants 2 to 5 filed a suit in O.S.No.77 of 2007 for partition and the said suit was also decreed in which the suit property was specifically excluded. Since the plaintiff is a party to O.S.No.47 of 2007, the present suit is barred by *res judicata* and on that ground, the suit is liable to be dismissed. The plaintiff exonerated the fifth defendant before the trial



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Court and hence, the suit is also bad for non-joinder of necessary party.

(c) The Advocate Commissioner's report and plan would reveal that the plaintiff is not in possession and enjoyment of the suit property as alleged and the same would reveal that 'ABEF' portion has been subdivided as Survey No.13/4A, which means that there is no property bearing Survey No.13/4. Moreover, four boundary does not tally with the Commissioner's report and plan. The plaintiff has suppressed the existence of pucca house in the suit property. Hence, the suit is liable to be dismissed.

6. The defence of the sixth defendant, in brief, is as follows:

(a) The plaintiff has purchased his property by specifically admitting the entitlement of the predecessors of the sixth defendant as northern boundary was mentioned as punja belongs to Arumugam Servai; however, the plaintiff has fraudulently suppressed the said four boundary and filed the suit with wrong four boundary. Neither the sixth defendant nor her predecessors were parties to the suit in O.S.No.47 of 2007 and hence, the judgment and decree does not bind on her.

(b) The entire property in Survey No.13/4 was subdivided in the



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year 2004 itself as Survey Nos.13/4A and 13/4B and the first defendant was allotted Survey No.13/4A and only the property belonging to the defendants 2 to 4 which was lying on the south of the suit property has been subdivided as Survey No.13/4B. Hence, neither the plaintiff nor the defendants 2 to 4 have any right over Survey No.13/4A.

(c) Originally, the entire property in Survey No.13/4 belonged to one Paramasivam Pillai and Veerabadran Servai. The said Veerabadran Servai and his heirs are entitled to 56 cents lying on the extreme northern portion of Survey No.13/4 and they had sold the said property to one Muthirulayee and Shanmugamoorthy vide two separate sale deeds. The plaintiff has purchased 1.14 acres from the heirs of Paramasivam Pillai, namely, Vallikannu Ammal by excluding the entitlement of other sharers. Ever since the sale in favour of the first defendant in the year 1994, she has been in possession and enjoyment of the property purchased by her until her death on 15.12.2008 and thereafter as her legal heir the sixth defendant is in possession and enjoyment of the same. Hence, the suit is liable to be dismissed.

7. The learned trial Judge, upon considering the pleadings of all



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the parties, framed the following issues,

1. *Whether the plaintiff is entitled to the relief of declaration as prayed for?*
2. *Whether the plaintiff is entitled to the relief of permanent injunction as prayed for?*
3. *Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for?*
4. *To what other reliefs?*

8. During trial, the plaintiff examined himself as P.W.1 and exhibited 13 documents as Ex.A1 to Ex.A13. On the side of the defendants, 5 witnesses including the third defendant were examined as D.W.1 to D.W.5 and 34 documents came to be exhibited as Ex.B1 to Ex.B34. The learned Advocate Commissioner has been examined as Court witness as C.W.1 and his report, plan and photographs came to be exhibited as Ex.C1 to Ex.C3.

9. The learned District Munsif, Sivagangai, upon considering the pleadings and the evidence both oral and documentary and on hearing the arguments of both the sides, passed a judgment and decree dated 13.02.2013 dismissing the suit. Aggrieved by the dismissal of the suit, the plaintiff preferred an appeal in A.S.No.55 of 2013 and the learned



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Subordinate Judge, Sivagangai, upon considering the materials available on record and on hearing the arguments of both the sides, passed the impugned judgment and decree dated 04.03.2015 allowing the appeal and thereby setting aside the judgment and decree of the trial Court and granted declaratory relief with regard to "A1.A3.D2.D.A1" shown in Ex.C2 in favour of the plaintiff and for consequential permanent injunction and also for mandatory injunction for removal of the portion shown as "A1.A3.D2.D.A1" as per Ex.C2 within three months, failing which, the plaintiff can remove the same and claim expenses from the defendants. Challenging the impugned judgment and decree, the defendants 2 to 4 have preferred the present Second Appeal.

10. At the time of admission, following Substantial Questions of Law came to be formulated.

- 1. Whether the lower Appellate Court is justified in not considering the plea of res-judicata, upheld by trial Court on the basis of finding in earlier proceedings in O.S.No.47 of 2007, District Munsif Court, Sivaganga?*
- 2. The lower Appellate Court having found that the main edifice of the case that plaintiff's vendor was entitled to 1 acre 14 cents on the west was not correct and concurred with the trial Court on that score, whether grant of relief to plaintiff is legally sustainable?*
- 3. When the plaint schedule does not disclose existence of*



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house and the lower Court having found that the house of defendants 2 to 5 existed even prior to suit, whether grant of relief of mandatory injunction is proper?

4. *Whether frame of the suit with prayer for mandatory injunction without prayer for recovery of possession is proper?*
5. *Whether grant of decree for mandatory injunction for demolition of house even against D-4 when he was exonerated is proper?*
6. *Whether non-framing of points for consideration as contemplated under Order 41, Rule 31 C.P.C. which causes prejudice to the appellants by the lower Appellate Court is not vitiating factor of the judgment and decree of trial Court?*

11. Heard Mr.R.Sundar Srinivasan, learned counsel appearing for the appellants / defendants 2 to 4, Mr.V.Meenakshi Sundaram, learned counsel appearing for the first respondent / plaintiff and Mr.S.Srinivasa Raghavan, learned counsel appearing for the third respondent / sixth defendant.

12. At the outset, it is pertinent to note that the total extent of Punjai Survey No.13/4 situated in Vallaneri alias Alagapuri Village, Alangulam Group, Sivagangai Taluk, is admittedly 4.58 acres.

13.As rightly contended by the learned counsel appearing on either



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side, the dispute presents a triangular contest between the plaintiff, the sixth defendant and the defendants 2 to 4. The sixth defendant, claiming through her father, the first defendant, asserts right and title over an extent of 56 cents situated on the extreme northern side of Survey No. 13/4. The plaintiff claims right and title over an extent of 1.14 acres on the extreme western portion of the said survey number, whereas the defendants 2 to 4 claim title over an extent of 2.29 acres on the extreme eastern side of the same survey number. It is the further case of all the parties that another sharer is stated to be owning an extent of 1.14 acres on the extreme southern portion of the said survey number. However, if the aforesaid extents are aggregated, the total comes to 5.13 acres, whereas the admitted total extent of Survey No.13/4 is only 4.58 acres.

14. According to the plaintiff as well as the defendants 2 to 4, the suit property originally belonged to one Paramasivam Pillai. It is their further case that the said Paramasivam Pillai had four sons and that the entire extent of 4.58 acres was divided among his four heirs, each being allotted 1.14 acres. The plaintiff claims to have purchased one such share, measuring 1.14 acres, and the defendants 2 to 5 claim to have



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purchased two such shares, aggregating to 2.28 acres. However, it is the specific case of the sixth defendant that the suit property originally belonged jointly to Paramasivam Pillai and one Veerabadran Servai; that the said Veerabadran Servai was entitled to an extent of 56 cents lying on the extreme northern side of the entire property; that the said extent was conveyed by the legal heirs of Veerabadran Servai in favour of two persons, namely, Muthirulayee and Shanmugamoorthy, under Exs.B3 and B4 respectively; that the said purchasers, in turn, conveyed the said property in favour of the first defendant under two sale deeds dated 08.06.1984 marked as Exs.B6 and B5 respectively; and that the first defendant had been in possession and enjoyment of the said 56 cents and, after his demise, the sixth defendant has continued to be in possession and enjoyment thereof.

15. It is pertinent to note that the trial Court, on an appreciation of the evidence adduced, has recorded a categorical finding accepting the case of the sixth defendant that her predecessor, Veerabadran Servai, was entitled to an extent of 56 cents in Survey No.13/4 and that, after the demise of the first defendant, she has been in possession and enjoyment



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of the said property. As already pointed out, though the plaintiff, being aggrieved by the dismissal of the suit, preferred a first appeal, the defendants 2 to 4 admittedly did not file any cross-appeal or cross-objection challenging the said finding of the trial Court accepting the case of the sixth defendant. Further, the first appellate Court has also confirmed the said finding with regard to the sixth defendant's entitlement to 56 cents. It is also pertinent to note that the defendants 2 to 4, who have filed the present second appeal, have not chosen to challenge the said concurrent finding of the Courts below.

16. The learned counsel appearing for the appellants / defendants 2 to 4 would contend that, inasmuch as the first appellate Court has concurred with the finding of the trial Court that the sixth defendant, claiming title under Veerabadran Servai, is entitled to 56 cents out of the total extent of 4.58 acres, it necessarily follows that the plaintiff cannot lay claim to the entire extent of 1.14 acres. It is also not in dispute that the plaintiff has not filed any cross-appeal or cross-objection challenging the said finding of the first appellate Court. In view of the above, it is clear that the finding relating to the sixth defendant's entitlement to 56



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cents on the extreme northern side of Survey No.13/4 has attained finality and cannot be reopened in the present second appeal. Consequently, after excluding the said extent of 56 cents, the remaining extent available in Survey No.13/4 would be 4.02 acres.

17. It is not in dispute that the defendants 2 to 4 had earlier instituted a suit in O.S.No.47 of 2007 against the present plaintiff and the fifth defendant, seeking a declaration that the suit properties therein belonged to them and the fifth defendant, and for a consequential permanent injunction restraining the present plaintiff and his agent from in any manner interfering with their peaceful possession and enjoyment of the said properties. After a full-fledged trial, the said suit in O.S.No.47 of 2007 came to be decreed as prayed for, granting the reliefs of declaration and permanent injunction. It is no doubt true that, under the said judgment, the defendants 2 to 5 herein were declared to be the owners of an extent of 2.29 acres in Survey No.13/4, situated on the eastern side of the present plaintiff's property.

18. The learned counsel appearing for the first respondent /



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plaintiff would contend that, in the said judgment itself, it has been recorded that the plaintiff's property is situated on the western extremity and measures 1.14 acres. However, as rightly contended by the learned counsel appearing for the appellants / defendants 2 to 4, there is no such categorical finding; on the other hand, what has been observed is only that the suit property therein (belonging to defendants 2 to 5) and the property claimed by the present plaintiff are distinct and separate, though adjacent to each other.

19. The learned counsel appearing for the appellants / defendants 2 to 4 would mainly contend that, in view of the judgment and decree passed in O.S.No.47 of 2007, which was directly against the plaintiff, the present suit is clearly barred by the doctrine of res judicata, and that the learned trial Judge has rightly invoked the said doctrine and held the suit to be barred, but the learned first appellate Judge has failed to properly consider the same, thereby rendering an erroneous finding.

20. Per contra, the learned counsel appearing for the first respondent / plaintiff would submit that the doctrine of res judicata is not



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the said survey number. Admittedly, the sixth defendant, who now claims ownership over the said 56 cents, or her predecessor, the first defendant, were not parties to the earlier suit. Therefore, the earlier adjudication cannot be construed as one determining the rights of all parties in respect of the entire property. When the subject matter of the earlier suit is not identical and all persons claiming interest in the larger extent were not parties to the earlier proceedings, the principle of res judicata cannot be pressed into service in the present case.

23. As already pointed out, one Vallikannu Ammal was the owner of an extent of 1.14 acres in the suit survey number under Ex.A2 settlement deed, and she conveyed the said property to the plaintiff by a sale deed dated 25.06.1983 marked as Ex.A3. It is also not in dispute that one Suriya Konar had instituted a suit for specific performance in respect of an extent of 2.29 acres in the suit survey number, obtained a decree therein, and in pursuance of the said decree, secured execution of a sale deed through Court, pursuant to which the said property came to be purchased by the defendants 2 to 5. However, the crucial aspect remains that the properties purchased by the plaintiff as well as by the defendants



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2 to 5 originally formed part of the larger extent owned by Paramasivam Pillai. In other words, both the plaintiff and the defendants 2 to 4 trace their respective titles to the said larger extent originally owned by Paramasivam Pillai. The plaintiff claims title over 1.14 acres through Vallikannu Ammal, whereas the defendants 2 to 4 claim title over 2.29 acres through Suriya Konar. It is also the consistent case of both parties that another sharer is in possession of an extent of 1.14 acres on the southern side, though the said person was not a party either to the earlier suit or to the present proceedings.

24. As already noted, an extent of 56 cents on the northern side belongs to the sixth defendant and stands excluded from consideration. Thus, the remaining extent available for adjudication is 4.02 acres. The plaintiff claims 1.14 acres, whereas the defendants 2 to 4 claim 2.29 acres, aggregating to 3.43 acres. If their respective claims are proportionately worked out with reference to the available extent, the plaintiff's entitlement would be approximately 1.005 acres and that of the defendants 2 to 4 would be approximately 2.01 acres. Therefore, the plaintiff cannot claim declaration in respect of the entire 1.14 acres as



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sought for in the plaint, nor can the defendants 2 to 4 assert title over the full extent of 2.29 acres. Their respective rights necessarily require to be adjusted and determined with reference to the available extent of 4.02 acres.

25. The learned counsel appearing for the appellants / defendants 2 to 4 would further contend that the plaintiff, before the trial Court, has exonerated the fifth defendant, who is admittedly a co-owner along with the defendants 2 to 4, and that, inasmuch as the fifth defendant is a necessary party, the suit is liable to be dismissed for non-joinder of a necessary party. However, the Courts below have failed to advert to and adjudicate upon the said crucial issue.

26. It is seen from the records that one Panju, son of Suriya Konar, who was a joint purchaser of the extent of 2.29 acres along with the defendants 2 to 4, was initially impleaded as the fifth defendant in the present suit. However, during the pendency of the suit, at the instance of the plaintiff, he came to be exonerated. The reasons for such exoneration are not forthcoming from the records. It is also pertinent to note that, in



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the earlier suit in O.S.No.47 of 2007 filed by the defendants 2 to 4, the said Panju was arrayed as the second defendant along with the present plaintiff, and the reliefs of declaration and permanent injunction were sought not only in favour of the plaintiffs therein but also in favour of the said Panju. In the said suit, Panju remained ex parte.

27. The learned counsel appearing for the appellants / defendants 2 to 4 would contend that the present suit has been instituted by the plaintiff seeking reliefs of declaration, permanent injunction and mandatory injunction not only against the defendants 2 to 4 but also against the fifth defendant and therefore, the fifth defendant is a necessary party to the proceedings.

28. No doubt, as rightly contended by the learned counsel for the appellants / defendants 2 to 4, the aspect of exoneration of the fifth defendant has not been adverted to by the Courts below. It is seen from the records that, though he was shown as exonerated before the first appellate Court, notice had in fact been served on him before the trial Court and he had remained ex parte. The crucial question, therefore, is



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whether, in the absence of the fifth defendant, an effective and complete adjudication of the dispute between the contesting parties is possible. In the present case, the contesting defendants are defendants 2 to 4, who have been asserting the very same title that was earlier claimed jointly by the defendants 2 to 5. The dispute essentially centres around the competing claims of the plaintiff on the one hand and the defendants 2 to 4 on the other, in respect of the extent available out of the larger property originally owned by Paramasivam Pillai. The adjudication in the present proceedings does not create any independent liability against the fifth defendant nor does it determine any right exclusively referable to him. The interest, if any, claimed through the defendants 2 to 5 is substantially and effectively represented by the contesting defendants 2 to 4. Therefore, this Court is of the considered view that an effective decree determining the respective rights of the plaintiff vis-à-vis the defendants 2 to 4 can very well be passed even in the absence of the fifth defendant. It is also pertinent to note that the defendants 2 to 4 have contested the suit in respect of the entire larger property and have not demonstrated any prejudice caused to them on account of the exoneration of the fifth defendant. Hence, the contention that the suit is liable to be dismissed for



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non-joinder of the fifth defendant is devoid of merit and is liable to be rejected.

29. The learned counsel appearing for the appellants / defendants 2 to 4 would contend that the present suit, in so far as it seeks the relief of mandatory injunction without a corresponding prayer for recovery of possession, is not maintainable in law.

30. Section 39 of the Specific Relief Act, 1963 contemplates that a mandatory injunction may be granted to prevent the breach of an obligation and to compel the performance of certain acts. It is well settled that where the plaintiff continues to be in possession of the property and alleges that the defendants have encroached upon a portion thereof and have put up fencing or construction, the plaintiff can maintain a suit for mandatory injunction for removal of such encroachment, without necessarily seeking the relief of recovery of possession. The necessity to seek recovery of possession would arise only in cases where the defendants are shown to be in settled and exclusive possession of the property and the plaintiff has been completely dispossessed.



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31. In the case on hand, it is the specific case of the plaintiff that the defendants have encroached upon a portion of the suit property and have put up fencing and construction, while the plaintiff continues to remain in possession of the remaining extent. In such circumstances, the relief of mandatory injunction for removal of the encroachment is clearly maintainable, even in the absence of a separate prayer for recovery of possession

32. In the present case, an Advocate Commissioner was appointed, who has filed his report along with the plan. The learned first appellate Judge, placing reliance on the said report and plan, has proceeded to declare that the portion identified therein belongs to the plaintiff and has also granted the relief of mandatory injunction directing removal of the encroachment in the specific portion so demarcated by the Commissioner.

33. As already pointed out, the plaintiff is entitled to an extent of 1.005 acres and the defendants 2 to 5 are entitled to an extent of 2.01 acres, subject, however, to proper identification and demarcation of their



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respective shares. It can be safely concluded that if any fencing or encroachment is found within the extent of 1.005 acres situated on the extreme western side of the suit survey number, the same is liable to be removed. The precise demarcation of the property and the determination of encroachment, if any, shall be worked out during the execution proceedings by conducting an appropriate survey and measurement through the competent authority. Accordingly, the relief of declaration and consequential injunction shall stand confined to the extent indicated above. Having regard to the overall facts and circumstances of the case, the parties are directed to bear their own costs. The Substantial Questions of Law are answered accordingly.

34. It is declared that the plaintiff is entitled to an extent of 1.005 acres out of the suit property and that the defendants 2 to 5 are entitled to an extent of 2.01 acres, subject to identification and demarcation. The demarcation of the suit property and removal of encroachment, if any, shall be worked out in the execution proceedings by conducting appropriate survey and measurement through the competent authority.



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35. In the result, the Second Appeal is partly allowed and the judgment and decree of the first appellate Court are modified to the extent indicated above. The parties are hereby directed to bear their own costs.

18.03.2026

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
csm

To

1. The Subordinate Judge, Sivagangai.
2. The District Munsif, Sivagangai.
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J

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**Pre-Delivery Judgment made in
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Dated : 18.03.2026