



S.A.Nos.1679 of 2003, 1127 and 1128 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserved : 16/03/2026

Date of Pronounced : 05/06/2026

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

S.A.Nos.1679 of 2003, 1127 and 1128 of 2004

(1)SA No.1679 of 2003:-

- | | |
|---|--|
| 1.Gopinath (Died) | : 1 st Appellant/Appellant/
Plaintiff |
| 2.N.Leelavathy
(2 nd appellant is brought on record
as LR of the deceased sole appellant,
vide Court order, dated 11/01/2023
made in CMP(MD)No.12869 of 2022
in SA No.1679 of 2003) | : 2 nd Appellant/LR of the
deceased sole appellant |

Vs.

- | | |
|---|---|
| 1.S.Ponnammal (Died) | |
| 2.Tamil Nadu Electricity Board
Rep. B y Superintending Engineer,
Maharaja Nagar,
Tirunelveli-11. | |
| 3.Junior Engineer,
Distribution,
Tamil Nadu Electricity Board,
Samathanapuram,
Palayamkottai. | : Respondents 1 to 3/Respondents/
Defendants |



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4.S.Kumarasamy

5.S.Suriyanarayan

6.V.Gomathi

7.T.Jeyanayagam

8.S.Somasuntharam

: Respondents 4 to 8

(Respondents 4 to 8 are brought on record as LR.s of the deceased 1st respondent, vide Court order, dated 30/06/2023 made in CMP(MD)Nos. 12862, 12864 and 12866 of 2022 in SA No.1679 of 2003)

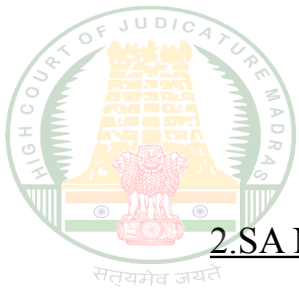
PRAYER: This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 24/10/2002 made in A.S.No.52 of 2002 on the file of the Principal Sub Court, Tirunelveli, confirming the judgment and decree dated 18/10/2001 and made in O.S.No.22 of 1996 on the file of the II Additional District Munsif, Tirunelveli.

For Appellants : Mr.P.Thiagarajan

For R4 to R8 : Mr.V.Meenakshisundaram

For R1 : Died (Steps taken)

For R2 and R3 : No appearance



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2.SA No.1127 of 2004:-

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S.Ponnammal

: Appellant/Appellant/Plaintiff

Vs.

Gopinath

: Respondent/Respondent/Defendant

PRAYER: This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 24/10/2002 made in A.S.No.43 of 2002 on the file of the Principal Sub Court, Tirunelveli, confirming the judgment and decree dated 18/10/2001 and made in O.S.No.450 of 1995 on the file of the II Additional District Munsif, Tirunelveli.

For Appellant : : Died

For Respondent : No appearance

(3)SA No.1128 of 2004:-

S.Ponnammal

: Appellant/Appellant/1st Defendant

Vs.

1.Gopinath

: 1st Respondent/Respondent/
Plaintiff



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2. Tamil Nadu Electricity Board,
through its Superintending Engineer,
Mahajaraja Nagar,
Tirunelveli.

3. Junior Engineer,
Tamil Nadu Electricity Board,
(Distribution) Samathanapuram,
Palayamkottai, Tirunelveli.

: Respondents 2 and 3/Respondents/
Defendants 2 and 3

PRAYER: This Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 24/10/2002 made in A.S.No.47 of 2002 on the file of the Principal Sub Court, Tirunelveli, confirming the judgment and decree dated 18/10/2001 and made in O.S.No.22 of 1996 on the file of the II Additional District Munsif, Tirunelveli.

For Appellant : Died

For Respondents : No appearance

COMMON JUDGMENT

S.A.No.1679 of 2003 has been filed by Gopinath who is the plaintiff in O.S.No.22 of 1996 as against the judgment and decree, dated 24/10/2002 and made in A.S.No.52 of 2002 on the file of the Principal Subordinate Court, Tirunelveli, confirming the judgment and decree, dated 18/10/2001 and made in O.S.No.22 of 1996 on the file of the



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II Additional District Munsif, Tirunelveli. Whereas S.A.No.1127 of 2004

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has been filed by Ponnammal who is the plaintiff in O.S.No.450 of 1995 as against the judgment and decree passed in A.S.No.43 of 2002, dated 24/10/2002 on the file of the Principal Subordinate Court, Tirunelveli, as confirmed in O.S.No.450 of 1995, dated 18/10/2001 on the file of the II Additional District Munsif, Tirunelveli. Similarly, S.A.No.1128 of 2004 has been filed by Ponnammal who is the plaintiff in O.S.No.450 of 1995 as against the judgment and decree passed in A.S.No.47 of 2002, dated 24/10/2002 on the file of the Principal Subordinate Court, Tirunelveli, as confirmed in O.S.No.22 of 1996 dated 18/10/2001 on the file of the II Additional District Munsif, Tirunelveli.

2.The suit in O.S.No.450 of 1995 was filed by one Ponnammal as plaintiff against Gopinath for a declaration and permanent injunction. According to the plaintiff, the suit property originally belonged to one Velayuthampillai. On 16/11/1911, the said Velayuthampillai gifted the first item of the suit scheduled property in favour of his wife Thayammal @ Avudaiyammal. The said Thayammal @ Avudaiyammal sold the property to one Sankaravadivammal, on 25/09/1913. After the death of Sankaravadivammal, the property



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devolved upon her son Subbaiyapillai. Thereafter, on 11/04/1945, he sold the property to the plaintiff's father Somasundaram Pillai. The said Somasundaram Pillai executed a registered Will on 07/10/1956. The said Will came into effect after the death of the Somasundaram Pillai, on 15/06/1973. As per the Will, the first scheduled suit property bequeathed to the plaintiff. After the death of her father, she has been in continuous possession and enjoyment of the property. In all the documents from the year 1911, the present Door No.17 showed as vacant land on the eastern boundary of her property. Only during the year 1913, constructions were made in the first scheduled property. The plaintiff's house bears Door No.20. The eastern side of the wall situated in her property belongs to the plaintiff and her ancestors.

3. The suit wall has been in possession and enjoyment by the plaintiff's family ever-since the date of the construction. It was not in the possession and enjoyment of the defendant. The house bearing Door No. 17 was situated on the eastern side of the plaintiff's house. There was a corridor available measuring 4 feet between Door No.17 and Door No.20. Recently the officials from the Survey Department came and measured the property mentioning the wall as a common wall which was



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wrong. The said wall exclusively belongs to the plaintiff. The plaintiff, therefore, prayed to declare that the wall as the absolute property of the plaintiff and to pray grant of injunction.

4.The defendant, who is the plaintiff in O.S.No.22 of 1996 filed written statement by contending that the wall which is the subject matter of the suit is the the western side wall of the defendant house bearing Door No.17. The suit property belongs to the plaintiff situated only on the western side of his property. A small corridor was situated on the eastern side of the the property. That was the common pathway for Door Nos.18, 19 and 20. The same was concealed by the plaintiff. The plaintiff or her ancestors has no right whatsoever over the property. Therefore, the defendant prayed that the suit filed by the plaintiff has to be dismissed and the suit filed by him in O.S. No.22 of 1996 has to be allowed.

5.The trial Court, after receipt of the written statement has framed the following issues in O.S No.450 of 1995:-

- 1.Whether in the suit second scheduled property, the plaintiff is in separate possession?*
- 2.Whether the plaintiff is entitled to the relief of*



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declaration and injunction as prayed for?

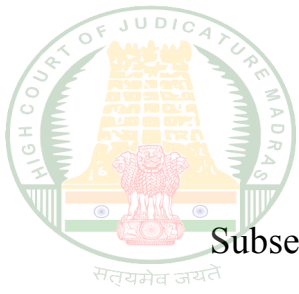
3.To what other relief, the plaintiff is entitled to?

6.The defendant (Gopinath) also filed a suit in O.S.No.22 of 1996 for declaration, injunction and mandatory injunction against the plaintiff. According to him the suit property belonged to one Thangammal, by virtue of her purchase under a registered sale deed, dated 03/08/1973 executed by Ulagammal and Esakkiammal. The plaintiff further contended that the western portion of the wall was maintained by the said Thangammal as the exclusive owner along with the house bearing Door No.17. After the death of the said Thangammal, her legal heirs namely the plaintiff and his sister by name Leelavathi were in enjoyment of the property. A partition suit in O.S.No.114 of 1989 was filed by Leelavathi before the Subordinate Judge, Tirunelveli. The plaintiff was allotted the first scheduled property, which is the western portion of the first scheduled property of the plaintiff and it was confirmed in a final decree passed, on 03/07/1995. The plaintiff is in possession and enjoyment of the entire second scheduled property namely, the western portion of Door No.17 and after the allotment, the western wall was enjoyed as his exclusive wall. The said wall is the exclusive wall of the plaintiff and her predecessor in title. North-south



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western wall also shown as third scheduled property. The first defendant claimed to be the owner of the Door No.17 adjoining the western wall of the plaintiff's first scheduled property. Recently the first defendant making bogus claim to the plaintiff's entire western portion of the wall. Neither the first defendant, nor his predecessor has any right whatsoever over the property. The first defendant also erected the electrical pole in the second scheduled property wall for obtaining the electricity connection. Immediately, the plaintiff through his Advocate sent a telegram to the Superintending Engineer and the Junior Engineer, who are the defendants 2 and 3 in O.S. No.22 of 1996 requesting them to stop the electric service connection to the said first defendant. However, the first defendant and his son in spite of strong objection from the plaintiff put up a wall on the plaintiff's exclusive third scheduled property of about 10 feet and connected the same to the newly constructed Arch bearing Door No.20 and also inserted palmyra wood frames in the third scheduled wall. All the above constructions were made in a hurried manner. When the plaintiff is ready to initiate legal action for the first defendant's encroachment, after receiving the Advocate notice from the plaintiff, suppressing the material facts on the recent construction. At the same time, claiming exclusive right over the third scheduled wall.



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Subsequently, she also filed a frivolous suit in O.S.No.450 of 1995 for consequential injunction. He insisting on the matter to his Advocate for filing a strong written statement. The first defendant seems to have sent a objection to the District Survey Office and for finding of the wall between T.S.Nos.220 and 221. In response to her objection, a notice, dated 20/04/1995 requesting the plaintiff to appear for enquiry along with records, on 15/05/1985 to the plaintiff. The Inspector of Survey also visited the property and took proper measurements between T.S.Nos.220 and 221. The plaintiff appeared for enquiry and gave statement pointing out that it is exclusively belonged to him. The first defendant's man representing on his behalf, appeared for enquiry, but failed to give any statement. A communication was sent by the Surveyor to the first defendant, on 05/07/1995 requesting her to seek a remedy through a Court of law. But she filed the frivolous suit in O.S.No.450 of 1995. Therefore, the plaintiff filed a suit for declaration, permanent injunction and mandatory injunction against the defendants.

7. The first defendant filed a written statement denying the allegations but reiterated his contention in O.S.No.450 of 1995. Hence, prayed for dismissal of the suit.



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8. After hearing both sides, the trial court has framed the following issues in O.S.No.22 of 1996:-

1. Whether the third scheduled suit property belonged to the plaintiff?

2. Whether the plaintiff is entitled for declaration injunction?

3. Whether the plaintiff is entitled for injunction as prayed for?

4. Whether the plaintiff is entitled for mandatory injunction as prayed for?

5. To what other reliefs?

9. Both the suits were tried together and the witnesses were recorded in O.S.No.450 of 1995. On the side of the plaintiff, PW1 and PW2 were examined and documents Exs.P1 to P11 were marked. On the side of the defendant, DW1 was examined and documents Exs.B1 to B15 were marked.

10. After hearing both parties, the trial Court dismissed the suit in O.S.No.450 of 1995 filed by Ponnammal and decreed the suit filed by Gopinath in O.S.No.22 of 1996 declaring that the suit property



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belonged the defendant in O.S.No.450 of 1995, who is the plaintiff in

O.S.No.22 of 1996 and also granted the relief of permanent injunction.

However, mandatory injunction was denied.

11. Against the dismissal of the suit in O.S.No.450 of 1995 filed by Ponnammal and an appeal filed by Gopinath against the partly decreeing the suit in O.S.No.22 of 1996. A.S.Nos.43 of 2002 and 47 of 2002 have been filed by Ponnammal, whereas, A.S.No.52 of 2002 has been filed by Gopinath, against the rejection of the prayer of mandatory injunction in O.S.No.22 of 1996. All the appeals were jointly heard by the Principal Sub Judge, Tirunelveli, and dismissed all the appeals, by a common judgment, dated 24/10/2002. Against which, these three second appeals were preferred by the appellants.

12. At the time of admission of S.A.No.1679 of 2003, the following substantial questions of law were framed :-

1.Is the learned Principal Subordinate Judge right in negating the decree for mandatory injunction as barred by limitation when the appellant has clearly in his pleadings and evidence has stated that the cause of action arose in 1995?

2.Is the learned Principal Subordinate Judge right in



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negating the decree for mandatory injunction as not claimed against the Electricity Board when the decree of declaration and present injunction was granted against all the defendants including the Electricity Board and that it binds the Electricity Board also?

13. Similarly, when admitting S.A.Nos.1127 and 1128 of 2004, the following substantial questions of law were framed:-

1. Whether Courts below have acted without any material evidence?

2. Whether the interpretation of the documents filed by the parties is wrong?

3. Whether the Courts below failed to take into consideration the features in the suit properties?

14. Heard the learned counsel appearing for the appellant in S.A.No.1679 of 2003 and the learned counsel appearing for the respondents 4 to 8.

15. In the suit in O.S.No.450 of 1995 in which the deceased Ponnammal seeking declaration and permanent injunction, declaring that the suit wall is her absolute wall.



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16. The plaintiff sought a declaration of title over the suit wall on the basis of alleged continuous possession and enjoyment. However, her own evidence discloses that the disputed wall is not the eastern wall of her house bearing Door No.20, but a wall situated beyond the veranda and corridor on the eastern side thereof. She further admitted that the pathway adjoining the wall is used not only by her but also by the owner of Door No.19. Such admission considerably weakens her claim of exclusive ownership over the disputed wall.

17. A careful scrutiny of Ex.A1, the parent settlement deed of the year 1911, reveals that the property conveyed thereunder was described as lying on the western side of the property belonging to Esakiah Pillai, together with the veranda and corridor. Significantly, there is no recital conveying any eastern boundary wall as part of the settlement. Similar descriptions are found in Ex.A9 and other title deeds relied upon by the plaintiff. None of those documents establish that the disputed wall formed part of the property conveyed to the plaintiff or her predecessors-in-title.



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18. On the contrary, Ex.B4, the title deed of the defendant's

predecessor-in-title, specifically refers to the conveyance of the house together with the compound wall. The subsequent documents, including Ex.B2, also disclose that the property was transferred along with the wall. The defendant has further established his title through the partition proceedings in O.S.No.114 of 1989 and the final decree passed therein, whereby the suit property was allotted to him. Although the plaintiff was not a party to the said proceedings, the burden still rested upon her to independently to prove her title, which she failed to discharge.

19. The plaintiff also failed to produce any documentary evidence before the revenue authorities when an attempt was made to measure the property and ascertain whether the disputed wall formed part of her holding. Such conduct lends support to the defendant's case.

20. Insofar as the relief of mandatory injunction is concerned, the defendant Gopinath alleged that the plaintiff had raised unauthorised constructions during the year 1995. However, no convincing evidence was produced to establish that the construction was newly put up in the year 1995. The defendant himself admitted the



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existence of the corridor from an earlier point of time and failed to produce photographs or other reliable evidence showing that the disputed structure did not exist previously. Be that as it may, the grievance relating to the electricity connection was directed primarily against one Pitchaiyapillai, who was not proceeded against, nor was any effective relief sought against the Electricity Board. Consequently, the Courts below rightly declined the relief of mandatory injunction.

21. The findings recorded by the Trial Court and affirmed by the First Appellate Court are based on a proper appreciation of the oral and documentary evidence. The plaintiff has failed to establish either title or exclusive possession over the disputed wall, whereas the defendant has produced cogent documentary evidence supporting his claim. No perversity, illegality or misreading of evidence is demonstrated warranting interference in second appeal. Accordingly, the judgments and decrees of the Courts below are liable to be affirmed.

22. Nevertheless, having regard to the submission that the disputed wall is presently in a dilapidated condition, it is made clear that the respondents 4 to 8 (legal heirs of deceased Ponnammal) shall not



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alter, reconstruct or expand the existing structure so as to change its

WEB COPY present physical features.

23. In the result, all the second appeals are dismissed and the judgments and decrees passed by the Courts below are confirmed. No costs.

05.06.2026

Index : Yes
Internet : Yes
NCC : Yes / No

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To

- 1.The Principal Subordinate Court,
Tirunelveli.
- 2.The II Additional District Munsif Court,
Tirunelveli.

Copy to

- 1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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R.POORNIMA, J.

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Pre-Delivery Common Judgments in
S.A.Nos.1679 of 2003, 1127 and 1128 of 2004

05/06/2026