



**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. OF 2025
(@ S.L.P.(C) Nos. 10838 – 10839 OF 2022)

AYYAVU

... APPELLANT(S)

VERSUS

PRABHA AND OTHERS

... RESPONDENT(S)

J U D G M E N T

S.V.N. BHATTI, J.

1. Leave granted.
2. The plaintiff in O.S. No. 379 of 1998 in the Court of the Principal District Munsif Kuzhithurai is the appellant. The appellant filed the suit for the relief of perpetual injunction and mandatory injunction to allow the plaintiff to remove the granite construction allegedly put up by the respondents/defendants and for other reliefs. The plaint schedule consists of two items. The first item deals with an extent of 16 cents and the second item deals with 5 cents. The plaintiff's case is that one Mariyammal, daughter of Anthoni Nadachi, was the owner of the plaint schedule. Through a registered sale deed, the plaintiff purchased the plaint schedule property, and with the permission of the Gram Panchayat, alleges to have constructed a residential building. Respondent nos. 1 to 3 have interfered with the plaintiff's peaceful occupation and enjoyment of a portion of the plaint schedule which is more fully described and contended as an old well. Further, respondent nos. 1 to 3 have also put up a compound wall separating the western boundary of the

plaint schedule with the portion identified as the old well. The plaintiff, therefore, resting the case on the sale deed dated 23.08.1988, filed the suit for the reliefs noted above.

3. At the first instance, the suit was laid against respondent nos. 1 to 3. Subsequently, respondent nos. 4 to 7 have been impleaded as defendants by way of an amendment. The suit was primarily resisted by respondent nos. 1 to 3. The gist of the defendants' case is that the plaintiff is not entitled to claim ownership to the disputed portion of the plaint schedule; moreover, the portion marked as old well stands away from the schedules covered by the sale deed. The portion continued to remain with Mariyammal, and on 06.08.1998, Mariyammal executed a settlement deed in favour of the Governor of Tamil Nadu for an extent of 1¼ cents, which includes the disputed well. By passing the resolution dated 13.08.1996, development was undertaken and the plaintiff without any manner of right obstructed the work undertaken by the defendants. The fifth defendant/the Panchayat claims that the disputed 1¼ cents stood vested in Gram Panchayat through a settlement deed to have been executed by Mariyammal. Therefore, the prayer for injunction is unavailable. The Trial Court framed the following issues:

- “1. Whether the plaintiff is entitled to the decree for permanent injunction against the defendants from entering into the suit property and trespassing in the suit property?
2. Whether the plaintiff is entitled to remove the granite construction put up along with the western boundary of item No.2 of the plaint schedule property?”

4. By the Judgment and Decree dated 29.04.2004, the suit was dismissed. The Trial Court principally proceeded on the total extent of land purchased by Mariyammal, *i.e.*, 23 cents, and Mariyammal sold an extent of 21 cents in

favour of the plaintiff. Consequently, the disputed well in an extent of 1¼ cents falls outside the deed on which the plaintiff rests the case. Therefore, the first test of *prima facie* case is not made out by the plaintiff.

5. The plaintiff filed A.S. No. 32 of 2004 before the Sub Court, Kuzhithurai. The first Appellate Court allowed the appeal, and the gist of the findings recorded by the Appellate Court is that the fifth defendant claims vesting of the disputed property under a settlement. According to the first Appellate court, Exhibit-B8 bears the signatures of 31 persons. Firstly, Exhibit-B8 is not a registered document, and, secondly, for no reason properly explained, 31 persons have subscribed their signatures to Exhibit-B8. In the manner known to law, Exhibit-B8 is not proved by the fifth defendant. Further, the acceptance of title and possession under a settlement deed does not satisfy the requirements of law. Exhibits-B1 to B4 are anterior to Exhibit-B8 and will not have probative value in any manner to establish the possession or right claimed by the fifth defendant. The Appellate Court relied on and referred to the Commissioner's Report dated 16.12.2003 and the boundaries in the Sale Deed dated 23.08.1988 and allowed the appeal.

6. Defendants 1 to 3, aggrieved by the judgment of the first Appellate Court, filed S.A.(MD) No. 437 of 2010 and, through the impugned judgment, the second appeal is allowed. The High Court, through the impugned judgment, noted that the total extent is 23 cents, and what has been sold in favour of the plaintiff is 21 cents. This discrepancy, the High Court held, is not made good through documentary evidence by the plaintiff. The defendants disputed the title of the plaintiff. In this light, the High Court held that the suit for mere injunction is illegal in the absence of a prayer for declaration by the plaintiff.

- 7.** The plaintiff, aggrieved by the said view, is in appeal before us.
- 8.** This Court ordered Notice to the defendants on 14.07.2022. The Office Report shows that the Notices on the defendants are served. The defendants are not represented by an Advocate.
- 9.** We have heard Mr. Jayanth Muth Raj, learned Senior Counsel for the plaintiff.
- 10.** It is contended that the Sale Deed dated 23.08.1988 (Exhibit-A1) has definite boundaries. The plaintiff's vendor has not retained any portion and, if a portion has been retained, the south-west boundary of the second item must reflect as land belonging to and retained by the vendor – Mariyammal. The reason for a lesser extent is that a portion of the land originally purchased by Mariyammal was affected by road widening. The Commissioner's Report clearly identifies the property as falling within ABCDEFGHI as in R.S. No. 237/4 and FGJKE in R.S. No. 237/5 admeasuring 20.5 cents. The continuous possession of the plaintiff could not have been disbelieved by the High Court through the impugned Judgment. It is argued that the defendants, in the absence of a legal and valid document, cannot resist the plaintiff's claim. The High Court reappreciated the findings of fact and erroneously allowed the appeal. We have taken note of the contentions and perused the record.
- 11.** The plaintiff and the defendants rest the case through Mariyammal. It is the case of the plaintiff that Mariyammal sold an extent of 21 cents within the boundaries described in the sale deed. As could be noted and appreciated from the Commissioner's Report, one quarter of the cent is the disputed property. The High Court failed to appreciate that to deny enjoyment or actual possession of FGHI, the boundaries in the sale deed, play an important role. The Sale Deed-Exhibit-A1 does not reflect that Mariyammal retained a portion

after selling 21 cents to the plaintiff. The defendants claimed that under a settlement deed, the disputed property stood vested in the Gram Panchayat. The fallacy noted by the High Court in the said contention is that the series of Exhibits – B1 to B8 cannot in the eyes of law be treated as lawfully conveying anything in favour of Gram Panchayat, much less the disputed extent that stood vested in the Gram Panchayat. The High Court ought to have accepted the plaintiff's case by appreciating the exhibits marked by both parties, who claimed through Mariyammal, and the description of the schedule property in Exhibit-A1 by juxtaposing the same with the Commissioner's Report and plan drawn to sketch. Further, the framing of the suit was not an issue before the Trial Court and the first Appellate Court. Non-suiting the plaintiff on that ground is unsustainable. Having appreciated the Commissioner's Report and juxtaposing the same with the findings of the first Appellate Court, we are of the view that the High Court committed an error in deciding the findings of fact which do not suffer from perversity or misreading of evidence under Section 100 of the Civil Procedure Code, 1908.

12. For the above reasons, the impugned Judgment in Second Appeal (MD) No. 437 of 2010 is set aside. The Civil Appeals are allowed. No order as to costs.

.....J.
[PANKAJ MITHAL]

.....J.
[S.V.N. BHATTI]

New Delhi;
March 7, 2025.