

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
PRINCIPAL DISTRICT COURT, KANCHEEPURAM.

PRESENT: **Tmt. Deepthi Arivunithi, M.L.,**
Principal District Judge,
Principal District Court,
Kancheepuram.

Monday, the 30th day of March 2026

Appeal Suit No.5/2020 and Appeal Suit No.7/2023
(CNR.No. TNKP060021752020 and CNR.No.TNKP060021742020)

Appeal Suit No.5/2020

RajendiranAppellant /Plaintiff

// Vs //

S.P. SudagarRespondent/Defendant.

This appeal preferred as against the Decree and judgment passed in
O.S.No.228/2014 on the file of the Additional Subordinate Judge at Kancheepuram
dated 19.03.2020.

Rajendiran .. Plaintiff.

Vs.

S.P. Sudagar .. Defendant

Appeal Suit No.7/2023

1. Rajendran
2. Mathiazhaga
3. Pari
4. Karunakaran
5. Gowri

.. Appellants/Defendants.

Vs.

S.P. Sudagar .. Respondent/Plaintiff

This appeal preferred as against the Decree and judgment passed in O.S.No.232/2008 on the file of the Additional Subordinate Judge at Kancheepuram dated 19.03.2020.

S.P. Sudagar

.. Plaintiff

Vs.

1. Rajendran
2. Mathiazhaga
3. Pari
4. Karunakaran
5. Gowri

.. Defendants.

This appeal suits came up before me for final hearing on 18.02.2026 in the presence of Thiru. K. Varadhan, Counsel appearing for the Appellant in both the Appeal Suits and of M/s. Y. Thiagarajan, counsels appearing for the Respondent in both the Appeal Suits and upon hearing the arguments from the counsels for both the parties, upon perusing the records of the case and having stood over for consideration till this date, this Court delivered the following

COMMON JUDGMENT

Appeal in A.S. No. 5 of 2020 is filed under Order XLI Rule 1 and s.96 C.P.C. challenging the common judgment and decree dated 19.03.2020 passed in O.S. No. 228 of 2014 by the Additional Subordinate Court, Kancheepuram whereby the suit was dismissed without costs.

2. Appeal in A.S. No. 7 of 2023 is filed under Order XLI Rule 1 and s.96 C.P.C. challenging the common judgment and decree dated 19.03.2020 passed in O.S. No. 232 of 2008 by the Additional Subordinate Court, Kancheepuram whereby the suit was decreed with cost.

Grounds of appeal:

3. The impugned judgment is a common judgment passed in respect of O.S. No. 228 of 2014 and O.S. No.232 of 2008. Hence, the grounds are commonly set out herein as follows. The following are among the main grounds of appeal. The judgment of the trial court is against law, weight of evidence and probabilities of the case. The trial court has not perused the plaint pleadings and oral evidence of the appellant who was examined as PW1. The boundaries of the property are clearly mentioned in Ex. B2 and Ex. B3. The same extent and boundaries are mentioned in Ex. B3 and Ex. B4. Till the date of purchase under Ex. B4, the survey number of the respondent is mentioned as S. No.112/7. However, when the suit in O.S. No. 232 of 2008 was filed, new boundaries and new sub-division was incorporated in the plaint. The trial court failed to take note of the documents in Ex. B9 to B12. Even prior to the filing of the suit on 24.06.2008, the respondent has mentioned in the letter to the Revenue Divisional Officer to sub-divide his property. While so, even prior to the filing of the suit, the appellant had constructed the house and suppressing the same, a suit for bare injunction was filed by the respondent. Though Ex. B11 letter from the

electricity board would show that there was no connection in the premises, the report of the Advocate commissioner would show that there was electricity connection in the premises. The property was sub-divided without any notice to the appellant. The property purchased by the respondent under Ex. B4 lies in between the house property of Periya Kanniyappa Naicker and his vacant site being a middle portion. However, the property has been incorrectly sub-divided. Ex. A2 was wrongly found to be a self serving document. The said document is a true and valid document which has more evidentiary value. The trial court came to an incorrect conclusion that the amendment is not correct or binding as per the order in I.A. No. 337 of 2010. The evidence of PW1 is true and believable. In fact the evidence of DW1 and DW2 is supporting the case of the appellant. The trial court erred in awarding a mandatory injunction without any prayer or court fee for the same. Without a specific prayer for recovery of possession, the judgment of the trial directing the appellant to hand over vacant possession of the property cannot be sustained. Hence, the judgment of the trial court is perverse and therefore has to be reversed. Hence, that the appeals have to be allowed.

Brief averments in the plaint and the amended plaint in O.S. No. 228 of 2014 (O.S. No. 42 of 2008):

4. This suit is one filed by the appellant as against the respondent herein. The case of the plaintiff is as follows. The suit property morefully described in the plaint

schedule is a part of the Survey No.112/7 measuring 0.08 cents out of 0.16 cents. The property originally belonged to his grandmother Alangarammal and one Nagappan. The said Nagappan, the plaintiff's father Perumal Naicker and one Lakshmana Naicker are brothers and sons of Alangarammal who was the wife of Periya Kanniappa Naicker. The said Alangarammal and her three sons entered into a partition among themselves including the suit schedule property on 09.09.1964. In the said partition deed, the suit property measuring 0.08.cents was allotted to the share of the plaintiff's father Perumal Naicker. The said person was exercising all rights of ownership. The land was classified as Natham land and was given new subdivisions such as S. No.112/7A1 measuring 0.0120 sq.ft., and S. No. 112/7C measuring 0.180 sq.ft., and the patta stands in the name of the plaintiff's father.

The said Perumal Naicker died on 03.04.1980 leaving behind him the plaintiff and his brothers Karunakaran, Mathialagan, Pari and the plaintiff's sister Gowri as his legal heirs to succeed to the property. Their mother Danammal pre-deceased Perumal Naicker. The plaintiff along with the other heirs are in possession and enjoyment of the suit property. While so, the defendant, who is an influential person, used his influence and obtained patta for a portion of the property in his name. The defendant had no right and title to the suit property. He tried to trespass into the property which was successfully resisted. Since the plaintiff has no adverse interest to his brothers and sister. Hence, he has filed the suit individually. Hence, the suit.

The suit was subsequently amended to include the relief of declaration of title including S. No. 112/7A2, for consequent permanent injunction and for relief of declaration to declare the survey and sub division effected by survey officials by wrongly showing 112/7A2 belonging to the plaintiff in the name of the defendant as invalid.

Brief averments in the written statement and additional written statement in O.S. No.228 of 2014 (O.S. No. 42 of 2008):

5. The written statement was filed denying the allegations and averments made in the plaint except those that specifically admitted. The total extent available in S. No.112/7 was 16.74 cents though the registered document mentioned only 16 cents. The land originally belonged to Murugappa Naicker's son Kanniyappa Naicker. The said Murugappa Naicker had two sons namely Periya Kanniyappa Naicker and Chinna Kanniyappa Naicker. The said Murugappa Naicker mortgaged the property by way of a registered mortgage deed dated 09.08.1922. Subsequently the property was partitioned by his sons under a registered partition deed dated 20.05.1926. Under the partition, Chinappa Naicker was allotted the property measuring 22x100 i.e. 2200 sq.ft., (5 cents) in Survey No. 112/7 of the suit village. The said Chinnappa Naicker and his father together sold the property to Manicka Mudaliar by way of a registered sale deed dated 16.11.1928. Periya Kanniyappa Naicker attested the said sale deed as a witness.

From the date of purchase, the said Manicka Mudaliar was in possession and enjoyment of the 5 cents property situated in S. No. 112/7. After his death, this son C.N. Subramaniya Mudaliar sold the property to Venkatesa Mudaliar by way of a registered sale deed dated 22.12.1959. After his death, his legal heirs sold the property to this defendant through registered sale deed dated 16.04.2007. The Special Tahsildar for Land development Scheme issued a joint patta in the name of Perumal and Sundarajan, s/o Venkatesa Mudaliar on 24.09.1987 in Patta No. 704. Therefore Periya Kanniyappa Naicker is not entitled for the 16 cents in S. No. 112/7 as claimed. The plaintiff initially admitted his property to be in S. No. 112/7A1 and S. No. 112/7C for an extent of 300 sq.mt. The property allotted was 4.23 cents in S. No. 112/7A1 and 2.9 cents in S. No. 112/7C. The said property is not related to the property in S. No. 112/7A2. The plaintiff's property is situated on the east of the property in S. No. 112/7A2. All the legal heirs of Perumal Naicker are not made parties to the suit and therefore, the suit is bad for non joinder of necessary parties. The description of the property is wrong.

The amendment made in the plaint is inconsistent with the plaint pleadings and the amendment is not carried out as per the amendment petition that was allowed. The prayer against the survey officials is not maintainable. The said prayers were not authorised in order dated 26.11.2014 in C.R.P. No. 2666/2012. Hence, the prayer has to be struck down. The fact that is not the plaintiff unlawfully trespassed into the portion in S. No. 112/7A2 and the same is confirmed by the Advocate commissioner

report. The plaintiff is not entitled to any relief in respect of the S. No. 112/7A2. Hence, that the suit has to be dismissed.

Brief averments in the plaint filed in O.S. No. 232 of 2008:

6. The suit was filed by the 1st respondent in the appeals. The averments in the written statement have been stated in the plaint and therefore, the same are not set out herein in order to avoid repetition. The suit has been filed claiming a relief of declaration and consequent permanent injunction, for costs and for such other reliefs.

Brief averments in the written statement filed by the 1st defendant in O.S. No. 232 of 2008:

7. The written statement is filed denying the allegations and averments made in the plaint except those that are specifically admitted. The suit is barred by Order II Rule 2 C.P.C. The other facts are similar to that narrated in the suit filed by the 1st defendant/plaintiff as already set out hereinabove. Hence, the same is not set out herein once again to avoid repetition. Therefore, that the suit has to be dismissed.

8. Based on the pleadings on record and having heard both sides, the trial court framed the following issues for consideration.

Issues in O.S. No. 228/2014:

1. Whether the plaintiff is in possession and enjoyment of the suit property?

2. Whether the plaintiff is entitled for permanent injunction against the defendants from in any way interfering with his peaceful possession and enjoyment of the suit property?

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

Additional issues in O.S. No. 228/2014:

1. Whether the plaintiff is entitled for declaration of title of suit property including in S. No. 112/7A2?

2. Whether plaintiff is entitled for declaration against revenue officials as prayed for?

Issues in O.S. No. 232/2008:

1. Whether plaintiff is entitled for declaration of title in respect of suit property and consequently permanent injunction as prayed for?

2. To what other relief the plaintiff is entitled to?

Additional issued in O.S. No. 232/2008:

1. Whether plaintiff is entitled for delivery of vacant possession of the suit property after removal of superstructure thereon?

2. Whether the suit relief is barred by limitation?

3. Whether suit property is properly valued for court fees?

4. To what other relief the plaintiff is entitled to?

9. The suit in O.S. No. 42 of 2008 was initially pending on the file of the Additional Munsif Court, Kancheepuram and the same was transferred to the file of the Additional Subordinate Court, Kancheepuram by way of order dated 11.07.2014

in Tr.O.P. No. 57/2011 and the suit was ordered to be tried along with O.S. No. 232/2008. A joint trial memo was filed and the suits were ordered to be tried together. Before the trial court, on behalf of the plaintiff PW1 was examined and Ex. A1 to A4 were marked. On behalf of the defendant, DW1 and DW2 were examined and Ex. B1 to B12 were marked.

10. Upon hearing both sides and having perused the materials on record, the impugned judgment was passed by the trial court whereby the suit in O.S. No.228/2014 was dismissed without costs and the suit in O.S. No. 232/2008 was decreed with costs. The present appeal is filed challenging the impugned judgment and decree. On receipt of the trial court records, both side counsels were heard. On perusal of the materials on record and having considered the contentions raised by both sides, this court frames the following points for consideration.

1. Whether the amendments made in the plaint filed in O.S. No. 228/2014 is inconsistent with the amendment petition filed and allowed before the trial court?
2. Whether the plaintiff (appellant) has established his title over the suit schedule properties as claimed?
3. Whether the plaintiff (appellant) is entitled to the reliefs as prayed for in O.S. No. 228/2014?
4. Whether the relief of recovery of possession after removing superstructure can be maintained without description of the superstructure in the schedule?
5. Whether the reliefs in O.S.No.232.2008 were properly valued?

6. Whether the plaintiff (Respondent) is entitled to the reliefs as claimed in O.S. No. 232/2008?

7. Whether the appeals have to be allowed?

11. Point No.1:

The brief set of facts necessary for the purpose of these appeals are as follows. The suit in O.S.No.228/2014 (Original O.S.No.42/2008) was filed by the appellant/plaintiff seeking the relief of permanent injunction in respect of Sy.No.112/7A1 and Sy.No.112/7C. During the pendency of the suit, the relief was amended to include the declaration in respect of Sy.No.112/7A2 and for permanent injunction in respect of the said survey number. The suit in O.S.No.232/2008 was filed by the respondent/plaintiff as against the appellants/defendants for a relief of declaration and recovery of possession in respect of Sy.No.112/7A2. Both the suits were heard and a common judgement was passed by the trial court. Challenging the common judgment two appeals were filed by the appellant. In view of the common judgment pronounced, this court has heard the appeals together and is pronouncing a common judgment in respect of both the appeals.

12. In order to ensure clarity, the plaintiif in O.S.No.228/2014 (OS.42/2008) and the defendants in O.S.No.23/2008 are referred to as the appellant hereinafter. The defendant in O.S.No.42/2008 and the plaintiff in O.S.No.232/2008 is referred as as the respondent.

13. The case of the appellant is as follows. The appellant claims to be the owner of the suit property comprising of Sy.No. 112/7A1 to the extent of 0.0120 sq.mts., Sy.No.112/7C measuring 0.0180 sq.mts. and Sy.No. 112/7A2 measuring 5.5 cents. The appellant claims title to the suit property on the ground that the property originally belonged to his grandmother Alangarammal and one Nagappan. According to the appellant, the property was divided among the three sons and the said Alangarammal by way of partition deed dated 09.09.1964 and the suit property measuring 0.08 cents were allotted to the share of the plaintiff's father Perumal Naicker. The said person has exercised all the rights of ownership. While so, the said Perumal Naicker died on 03.04.1990 leaving behind the plaintiff, his brothers and sister as legal heirs to succeed to the property. It is the case of the appellant that the respondent tried to trespass into the suit property, due to which the case came to be filed.

14. The respondent on the contrary would assert his title in respect of Sy.No.112/7A2 measuring a total extent of 5 cents. He would state that the suit property originally belonged to Murugappa Naicker's son Kanniyappa Naicker. Murugappa Naicker had two sons viz. Periya Kanniyappa Naicker and Chinna Kanniyappa Nacker. The said property was partitioned among the sons by a registered Partition Deed dated 20.05.1926 under the said partition. Chinna Kanniyappa Naicker was allotted 5 cents in Sy.No.112/7. The said person along with his father sold the property to Manicka Mudaliar by way of registered sale deed dated

16.11.1928. Periya Kanniappa Naicker attested the said deed as witness. From the date of purchase, the said Manicka Mudaliar was in possession and enjoyment of the property and after his death, C.N. Subramania Mudaliar being his son sold the property to Venkatesa Mudaliar under deed dated 22.12.1959. After his death, the legal heirs of Venkatesa Mudaliar sold the property to this defendant through the registered sale deed dated 16.04.2007. The property was sub divided as Sy.No.112/7A2 and patta was also issued in the name of the defendant. Therefore that the appellants cannot claim any right over the suit property.

15. In order to prove his claim, the appellant has filed Ex.A.1 to Ex.A.4. The joint patta in the name of Alangara ammal and Nagappan in Patta No.182 is marked as Ex. A.1. The partition deed dated 09.09.1964 is marked as Ex.A.2. The patta No.704 and Adangal issued in the name of Perumal is marked as Ex. A.3 and A.4.

16. The respondent has filed the following documents in order to prove his case. The certified copy of the registered partition deed dated 20.05.1926 is marked as Ex. B.1. The certified copy of the registered sale deed dated 16.11.1928 is marked as Ex. B.2. The original sale deed dated 22.12.1959 is marked as Ex. B.3. The original sale deed dated 16.04.2007 is marked as Ex. B.4. The patta No. 704 issued in the name of Perumal and Sundarrajan is marked as Ex.B.5. The patta issued in the name of the respondent is marked as Ex.B.6. The receipt for payment of property tax dated 09.04.2007 is marked as Ex. B.7. The Encumbrance Certificate for the suit

property is marked as Ex.B.8. The photograph and CD for the suit property is marked as Ex. B.9. The copy of the letter dated 03.05.2008 is marked as Ex.B.10. The copy of the letter issued by the EB authorities dated 13.03.2008 is marked as Ex.B.11. The copy of the letter given by the respondent to the RDO, Kancheepuram is marked as Ex. B.12.

17. The first point raised by the learned counsel for the respondent is that the prayer in O.S.No. 228/2014 cannot be considered in view of the fact that the amendments carried out in the plaint are inconsistent with the amendment petition filed in I.A.No. 337/2010 which was eventually allowed by the Hon'ble High Court of Madras vide order dated 26.11.2014 in CRP(PD) 2666/2012.

18. With regard to the said contention, this court has carefully perused the prayer found in I.A.No.337/2010 and the amendments carried out in the plaint. It is seen that there are some discrepancies in the amendment as found in the amended plaint and as prayed for in the amendment petition. Since, the amendments which are not covered under the I.A.No. 337/2010 are not authorised by the trial court, the same cannot be taken into consideration. On this aspect, the learned counsel for the appellant has contended that the order in the revision petition was never challenged by the respondents in the higher forum. As already noted, the order dated 26.11.2014 in CRP(PD) 2666/2012 was allowed and the appellants were permitted to amend the plaint in accordance with the prayer found in I.A.No. 337/2010. While so, the

amendments which are inconsistent with the prayer in the said interlocutory application cannot be taken into consideration. Accordingly the said point is answered.

Point No:2

19. The next issue that arises for consideration is whether the appellant has established his title over the suit schedule properties comprised in S.No.112/1A1, S.No.112/7A2 and S.No.112/7C. On perusal of the averments on record and the written statement filed by the respondent, it is apparent that the title of the appellant over the suit properties comprised in S.No. 112/7A1 and S.No.112/7C are not disputed by the respondent. It appears that the extent as claimed by the appellant in respect of these survey numbers are also not disputed. The dispute in respect of ownership arises only in respect of the land comprised in S.No. 112/7A2. It is settled position of law that a person who claims the title has to prove his title. In the present case, since the appellant asserts his title over the suit property comprised in S.No. 112/7A2, it is for the appellant to produce sufficient material to establish his title.

20. The learned counsel for the appellant has contended before this court that even as per the documents filed by the respondent herein relating to his title, the boundaries would show that the property in S.No.112/7A2 was incorrectly divided and that there was no division as claimed by the respondent. He would state that initially the suit property comprised in Paimash Number 549 and 550 which was

converted under the Ryotwari Act and given new S.No. 112/7 to an extent of 0.16 cents. There is no proof to show when the Survey numbers were further sub divided as S.No.112/7A1 and 112/7A2. He would point out that even under Ex.B.5, it is a joint patta that was issued in the name of appellants father Perumal and Sundarrajan. He would point out that the sketch plan showing the entire property in S.No.112/7 to the total extent of 20.4 metres would show that the property was not subdivided for nearly twenty eight years. After the death of Venkatesa Mudaliar till the date of sale, the defendant has to prove his possession and enjoyment and not a single document has been filed. There is no periodical, yearly or fasli payment by his vendors in possession. While so, the respondent, has without the knowledge of the appellant, brought a surveyor and effected the sub division on 23.08.2007 without his knowledge. As per Ex. A.3 and A.4 the whole extent of S.No.112/7A1 is only 0.120 sq.mtrs and therefore it is not known how the subdivision was effected showing the extent of S.No. 112/7A1 as 0.05 cents. Hence, it is apparent that the respondent filed the suit in O.S.No. 232/2008 with a wrong survey and subdivision number. Though, the respondent claims that no electricity connection was given in the house belonging to the appellant, the Commissioner report clearly would show that the service connection has been given and is functioning. Ex.B.9 Photo would show that a building with cement sheet construction has been put up and is in occupation of the appellant. Though a sale deed dated 16.04.2007 has been produced showing that the Western side 22 x 100 feet was sold to the respondent, there is no plan attached to

the sale deed demarcating the property. Therefore without knowing the location of the property, the respondent has obtained a false patta. There is no proper pleadings to show that the property was only a vacant site. Hence that the appellant proved his title over the suit property and the trial court erred in dismissing the suit and consequently the appeal has to be allowed.

21. The learned counsel for the respondent would contend as follows. The respondent has produced the title deeds relating to his vendors tracing it from 20.05.1926. He has filed Ex.B.1 to B.3 being the documents to show the title of his vendor. Further he has filed the original sale deed executed in favour of the respondent. The pattas and the kist receipts are also filed. The appellant claims 8 cents by virtue of Ex.A.2 partition deed which is only the self made document and cannot create any title unless he is able to establish the earlier title of the parties to the partition deed. Ex.A.1 is only patta and cannot be considered as a document of title. No other documents of title are produced by the appellant. The chitta and adangal produced are only the xerox copies issued by the VAO which cannot be relied upon. It is apparent from the documents produced by the defendant that a joint patta was issued in the name of Perumal and Sundarrajan and the same was not objected by him. When the plaintiff's father Perumal has not claimed any land over and above 7.5 cents, his son cannot make any claim for another 5 cents in Sy.No.112/7A2. The defendant has examined himself as D.W.1 and has examined his vendor as D.W.2. He has marked all the documents to show that he has a valid title

over the suit property. He has also filed the patta obtained from the appropriate authorities which has not been objected. The respondent/plaintiff already had 8 cents in his possession and therefore, he cannot make any claim in respect of the land in Sy.No.112/7A2 to an extent of 5 cents. The appellants have deliberately trespassed and made a construction only in the year 2009 which was objected by the respondent herein. This fact is apparent from the report of the Advocate commissioner. P.W.1 has, at the time of cross examination, admitted the title and devolution of title from Murugappa Naicker and grant of patta in the name of Sundarrajan. Under the Survey and Boundaries Act, the suit can be filed only within three years of such survey or sub division and therefore, the appellant cannot claim any right based on the alleged wrong survey done by the revenue department. The trial court has properly considered the materials on record and has rightly dismissed the suit filed by the appellant and decreed the suit filed by the respondent. Hence, the judgment of the trial be confirmed.

22. Based on the contentions and on perusal of records, this court finds as follows. The issue that arises for consideration is whether the appellant has established his title over the suit property in Sy.No.112/7A2 to an extent of 5 cents. As is already noted the title of the appellant in respect of Sy.No.112/7A1 and Sy.No.112/7C is not in dispute. The learned counsel for the appellant has tried to raise several contentions by drawing the attention of this court to the sale deeds filed as Ex.B.1 to B.3 to contend that the respondent has not produced any records to show

that the lands in Paimash Nos.549 and 550 were converted to Sy.No.112/7 upon the survey under the Ryotwari Act. However, it is relevant to note that even the appellant himself has claimed his title over the property based on the re-survey and the appellant himself has claimed that the lands in Paimash Nos. 549 and 550 were reclassified as Sy.No.112/7. It is to be noted that the patta marked as Ex.A.3 and adangal marked as Ex.A.4 would show that the same was issued in the favour of the appellant's father in Sy.No. 112/7A1 and Sy.No.112/7C. Thus, it is apparent that there is no confusion in the minds of the parties before this court with regard to the identity or the survey number allotted to the suit schedule properties. Therefore, the contentions raised by the appellant in this regard does not merit consideration.

23. The learned counsel for the appellant has raised another contention with regard to the sub division of Sy.No.112/7A2 being made behind his back without the knowledge of the appellant. Such a contention is falsified by the admission of the appellant himself who was examined as P.W.1. P.W.1 has, in his cross examination, expressly admitted that he was aware of the division of the Sy.No.112 as Sy.No.112/7A1, 112/7A2 and Sy.No.112/7C. Therefore, the contention raised in this regard does not merit consideration. The learned counsel for the appellant has raised the issue with regard to the four boundaries of the land and has stated that the boundaries as indicated in the sale deed executed in favour of the respondent is contrary to the boundaries as reflected in Ex.B.1 to B.3. In this regard, it is to be noted that there are no pleadings in the plaint with regard to the identity or

boundaries of the properties involved in the present dispute. It is the specific case of the appellant that he has a valid title over the property in Sy.No.112/1A2 by virtue of the partition deed marked as Ex.A.2. The said partition deed was executed between Alagarammal and her three sons. A perusal of the schedules specified in the partition deed would show that an undivided share of 1/3rd was granted in respect of Sy.No.112/7. As rightly pointed out by the learned counsel for the respondent, the partition deed can be considered only to be a self serving document in the absence of any document to show the title of Alagarammal or her predecessor in title to the total extent of property situated in Sy.No.112/7. In this regard, it is relevant to note that Ex.A.1 is a joint patta granted in favour of Alagarammal and Nagappan for the Sy.No.112/7 corresponding to Paimash No.549/4 and 550/4 for a total extent of 0.16 cents. It is settled position of law that patta cannot be considered as a document of title. The title deeds become relevant in the present case since the respondent has produced the sale deeds from the year 1926 ie. Certified copy of the registered partition deed dated 20.05.1926 in Ex.B.1 and subsequent sale deeds in the year 1928 and 1959. It is also relevant to note that all the partition deeds and the sale deeds filed by the respondent was admitted by P.W.1 at the time of cross examination.

24. Thus, it is seen that the appellant has not produced any documents of title in respect of the land in Sy.No.112/7A2 relating to which, he claims a declaration of title. It is also relevant to note that the joint patta issued in the name of his father and one Sundarrajan which is produced and marked by the defendant as Ex.B.5 is not

disputed by P.W.1. Even as per the claim made by the appellant, his father obtained 1/3rd share in the entire extent of property situated in Sy.No.112/7. Thus, this court finds that the document furnished by the appellant is insufficient to prove his title to the suit property in Sy.No.112/7A2. However, by way of admission, the entitlement of the appellant to Sy.No.112/7A1 and 112/7C stands established. Accordingly, this point is answered.

Point No.3:

25. Initially the suit was filed by the appellant praying for a relief of permanent injunction in respect of S.No. 112/7A1 and S.No. 112/7C. However, by way of filing the I.A. No. 337/2010 and the consequent orders allowing the said application, the prayer for permanent injunction was modified as a prayer for declaration of the plaintiff's title to the petition schedule property by including the S.No. 112/7A2 and to consequently granting permanent injunction against the defendant and his men. A further prayer was added by including relief of declaration that the survey effecting the sub division as S.No. 112/7A2 in the name of the defendant was invalid. In the preceding point, this court has already found that there are no documents produced by the appellant to show their title in respect of S.No. 112/7A2. As already noted, there are no pleadings in the plaint with regard to misdescription of the property relating to the boundaries specified therein. Since the appellant has not produced any document of title relating to S.No. 112/7A2, it is seen that he is not entitled to any relief with

respect to the said survey number. However, by way of admission, the appellant is entitled to declaration in respect of the S.No. 112/7A1 and S.No. 112/7C and a permanent injunction relating to the suit properties.

26. As already stated though the appellant has claimed that the property was subdivided in his absence and he was not aware of the same, P.W.1 has in his cross examination specifically admitted that he was aware about the sub division made and he was aware of the sub division No. 112/7A2 which was sub division granted in favour of the respondent herein. The learned counsel for the respondent has also rightly brought the attention of this court to Section 14 of the Tamilnadu Survey and Boundaries Act, 1923, wherein it is provided that any person who is aggrieved by the determination of any boundary shall institute a suit within three years from the date of notification to set aside or modify the determination. In this case, it is apparent that the land was sub divided and the patta was issued in favour of the respondent under Ex.B.6 on 13.09.2007. Though the suit was filed by the appellant in the year 2008, the appellant has not impleaded the Revenue authorities or questioned the determination of the boundary as contemplated under the Tamilnadu Survey and Boundaries Act, 1923. Therefore, this court finds that the appellant is not entitled to the remedy of declaration as sought for. As such this point is answered.

Point No.4

27. Upon perusal of the documents on record, it is apparent that the respondent has established his title over the properties situated in S.No.112/7A2. Further, it is also to be noted that his vendor was also examined as D.W.2 and he has also traced out his title in respect of the property situated in the said survey Number. The respondent has also produced documents to show that the property was trespassed by the appellant in the year 2008, due to which a complaint was given which is marked as Ex.B.12. He has also produced a letter from the Electricity Board to show that no electricity connection was available in the premises till 13.03.2008. During the pendency of the present suit, an advocate commissioner was appointed to inspect the properties and he has filed his report and plan relating to the physical features of the suit property. The said Advocate commissioner has filed his report which was marked as Ex.C.1 and Ex.C.2. On perusal of record, it is apparent that the Advocate commissioner found that the property was constructed in the year 2009 which is after the filing of the present suit. Consequent to the same, an amendment petition was filed and the suit was amended including the relief of delivery of vacant possession after removal of the superstructure and the same was allowed. Consequently, the said relief was included in the suit in O.S.No.232/2008 filed by the respondent herein. The learned counsel for the appellant has vehemently contended that the removal of superstructure cannot be ordered when the same was not described in the schedule. It is further contended that, since the superstructure was not

described in the schedule to the suit in O.S.No.232/2008, the respondent is not entitled to the relief of removal of superstructure as claimed and even if any relief is granted, the same becomes inexecutable in view of the absence of the schedule. In the present case, it is to be noted that the Advocate commissioner was appointed and has inspected the suit property and has also given his plan and report describing the superstructure i.e., available on the premises. The said Advocate commissioner report and plan is on record and there are no objections filed to the Advocate commissioner's report and plan. Further, the Advocate commissioner was also not examined as a witness to dispute the contents of his record or to deny the nature and description of the superstructure herein. Since, there is sufficient material to show the nature of the superstructure available in the premises and since the relief also amended by the respondent herein, the contentions of the learned counsel for the appellant cannot merit consideration. Hence, this court finds that the judgment of the trial court order in removal of Superstructure need not be varied or modified. As such the point is answered.

Point No.5

28. The learned counsel for the appellant has contended that the reliefs were not properly valued. However, on perusal of records, it is seen that upon amendment of the relief, the respondent has correspondingly altered the valuation and also paid the necessary court fees and therefore it is found that the reliefs are properly valued.

Point No.6

29. In the preceding points, this court has found that the respondent has proved his title to the suit property as described in O.S.No. 232/2008. The encroachment and construction put up by the appellant also stands proved by way of pre-ponderance of probabilities. Therefore, the respondent is entitled to the reliefs as claimed. Accordingly the point is answered.

Point No.7

30. The trial court has dismissed the suit in O.S.No. 228/2014 and decreed the suit in O.S.No. 232/2008. From the discussions made hereinabove, this court has found that the appellant has proved his title in respect of the suit properties in S.No.112/7A1 and S.No. 112/7C and is entitled to the declaration in respect of the said properties. However, that he is not entitled to the other reliefs as claimed. Therefore, the judgment of the trial court dismissing the suit in O.S.No. 228/2014 in toto cannot be sustained and to that extent the judgment has to be modified. As far as the suit in O.S.No. 232/2008 is concerned, this court finds that the respondent is entitled to the decree as claimed. There is no infirmity in the judgment passed by the trial court. Hence, the appeal in respect of O.S.No. 232/2008 fails. Accordingly the point is answered.

31. In result, A.S.No. 7/2023 is dismissed without costs; the Appeal in A.S.No. 5/2020 is allowed in part without costs and the common judgment dated 19.03.2020

is modified as follows. The suit in O.S.No. 228/2014 is decreed in part and the title of the plaintiff is declared in respect of S.No. 112/7A1 to the extent of 0.0120 Sq.mtrs and S.No. 112/7C to the extent of 0.0180 sq.mts and permanent injunction is granted in respect of these properties restraining the defendant, his men or agents from interfering with the plaintiff's peaceful possession and enjoyment. On all other aspects the common judgment and decree of the trial court stands confirmed. Considering the nature of the dispute no costs are imposed.

//This Judgment has been partly dictated to the Stenographer, taken down, transcribed and typed by her in the computer corrected and pronounced by me in the open Court on this Monday, the 30th day of March 2026.

Principal District Judge,
Principal District Court ,
Kancheepuram.

Exhibits and Witnesses on
both sides:- Nil

Principal District Judge,
Principal District Court ,
Kancheepuram.

Draft/Fair COMMON JUDGMENT

A.S.Nos. 5/2020 & 7/2023

DATED: 30. 03.2026

Principal District Court,

Kancheepuram.