



S.A.No.918 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

Dated: 03.08.2026

Coram:

THE HONOURABLE MR.JUSTICE P.DHANABAL

S.A.No.918 of 2015

and

M.P.No.1 of 2015

Mr.K.Jayakumar

.. Appellant

Vs.

Mr.G.Loganathan

.. Respondent

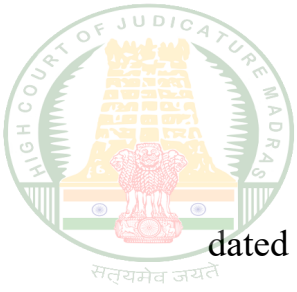
Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 23.01.2015 in A.S.No.35 of 2013, on the file of the XVII Additional Judge, City Civil Court, Chennai, against the judgment and decree dated 26.09.2012 in O.S.No.2340 of 2011 on the file of the XVII Assistant Judge, City Civil Court, Chennai.

For appellant : M/s.B.K.Sreenivasam

For respondent: M/s.R.V.Rukmani for M/s.P.B.Ramanujam

JUDGMENT

This Second Appeal has been preferred against the judgment and decree dated 23.01.2015 passed by the 17th Additional Judge, City Civil Court, Chennai in A.S.No.35 of 2013, reversing the judgment and decree



S.A.No.918 of 2015

dated 26.09.2012 passed by the XVII Assistant Judge, City Civil Court, Chennai in O.S.No.2340 of 2011.

2. The respondent in this Second Appeal is the plaintiff and he filed a suit before the trial Court in O.S.No.2340 of 2011 on the file of the XVII Assistant Judge, City Civil Court, Chennai, for the relief of declaration, declaring the plaintiff as the absolute owner of the suit schedule property and direct the defendant to hand over the possession of the suit property along with the original settlement deed. The said suit was decreed by the trial Court and aggrieved by the same, the defendant has preferred First Appeal in A.S.No.35 of 2013 before the first appellate Court and the same was allowed by setting aside the judgment and decree passed by the trial Court and the suit filed by the plaintiff, was dismissed. Aggrieved by the judgment and decree of the first appellate Court, the present Second Appeal is filed by the defendant.

3. The case of the plaintiff before the trial Court is that the plaintiff is the absolute owner of the suit property and he acquired the property by way

Page No.2/21



S.A.No.918 of 2015

of intestate succession after the death of his mother on 08.04.1997 and also by virtue of the release deed, dated 24.02.2004, from his father and brother.

The defendant is the maternal uncle of the plaintiff and initially, larger extent of land of about 2508 Sq.Ft. was absolutely owned by one Govindaraj Mudaliar, who is the grand-father of the plaintiff and father of the defendant. The said Govindaraj Mudaliar had settled the suit property through settlement deed, dated 12.03.1977 of an extent of 1558 Sq.Ft. in favour of the defendant and similarly, he settled the remaining portion of an extent of 950 Sq.Ft. in favour of the plaintiff's mother. The said Govindaraj Mudaliar retained his life interest of himself and wife, after his life-time, and settled the property which will have to be enjoyed by the beneficiaries therein. Though the settlement deed was executed in the year 1976, the property was not divided until the death of his grand-father Govindaraj Mudaliar. The grand-mother of the plaintiff pre-deceased the said Govindaraj Mudaliar. After the demise of the said Govindaraj Mudaliar, the defendant continued the possession in respect of the property and enjoyed the rents and profits without sharing the same with the plaintiff's grand-mother as per the settlement deed. During the year 2000, the defendant has handed over the

Page No.3/21



S.A.No.918 of 2015

possession in respect of the part of the property and the plaintiff, after the family arrangement between the plaintiff's family members on 24.02.2009 and subsequently, gave an application for submission of Patta and the Surveyor came to the suit schedule property and measured the entire property. At that time, the plaintiff came to know that the defendant is in enjoyment of the property of an extent of 190 Sq.Ft., which the defendant is not entitled to be possessed and the same was occupied by the defendant illegally. As per the terms of the settlement deed, original settlement has to be under the possession of the plaintiff and the duplicate copy has to be maintained by the defendant. The original and the duplicate are in possession of the defendant. When the plaintiff questioned about the illegal encroachment, the defendant has threatened the plaintiff and his family members. Since the property has not been divided, the defendant, who is the co-owner along with the plaintiff, cannot claim any right over the plaintiff's legitimate property and thereby the defendant is liable to pay mesne profit. The plaintiff has sent legal notice, dated 26.10.2010 and after receipt of the said legal notice, the defendant replied with false averments. Therefore, the plaintiff has filed the present suit for the relief of declaration declaring that

Page No.4/21



S.A.No.918 of 2015

the plaintiff is the absolute owner of the suit schedule property and seeks direction directing the defendant to hand over the possession of the suit schedule property to the plaintiff along with the original document of settlement deed.

4. The brief averments of the defendant in the written statement are that the suit is not maintainable and the same is liable to be dismissed. The averments in the plaint are false and the defendant is not aware about the plaintiff acquiring the property by way of intestate succession after the death of his mother and by virtue of the release deed, dated 24.02.2009. In fact, as per the settlement deed, dated 12.03.1976, the front portion of the house was allotted to the defendant and the back portion was allotted to one Kanniammal who is the sister of the defendant and the said Kanniammal died on 06.04.1987 leaving behind her husband and two sons, namely the plaintiff and his brother Chandrasekaran. Even after the settlement deed executed by the said Govindaraj Mudaliar, since he retained life interest for himself and his wife, he constructed a house after obtaining approval from the Corporation of Madras and he was in possession of the suit property till



S.A.No.918 of 2015

his death. During the construction of the house, after demolishing the old structure, the said Govindaraj Mudaliar constructed a superstructure on a portion of the land measuring 6' East West and 31' and 9" North to South on the Eastern side out of the area of 950 Sq.Ft. allotted to the said Kanniammal. The said Govindaraj Mudaliar, during his lifetime, with a view to avoid any unpleasantness of any litigation, a mediation was effected between the defendant and the plaintiff and his brother represented by his father guardian V.Kanniappan. As per the mediation, an agreement was executed between the defendant and V.Kanniappan and the plaintiff's father on 21.11.1989, after the death of the said Kanniammal, who is the beneficiary as per the settlement deed, dated 12.03.1976. As per the agreement, the father of the plaintiff and his brother as natural guardian, agreed that they shall not claim any right or raise dispute over the portion of land where the superstructure was built with the remaining area of the plaintiff to an extent of 6' East and 31'9" North to South on the side. The agreement was executed in the presence of Govindaraj Mudaliar. Hence, the defendant is in peaceful possession and enjoyment of the disputed portion of land to an extent of 198 Sq.Ft. for more than 12 years and he has acquired

Page No.6/21



S.A.No.918 of 2015

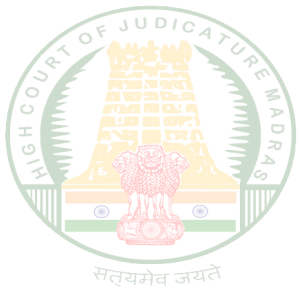
the title by way of adverse possession also. In fact, the property was sub-divided by Corporation of Chennai on 26.05.2000 and the plaintiff and his brother Chandrasekaran are owners and the property was also assessed to tax as per the tax assessment, they are paying the property tax to the Corporation of Chennai. Hence, the plaintiff is having knowledge from the year 2000 and had come to the Court to file the vexatious suit belatedly and therefore, the suit is barred by limitation. Therefore, the suit is liable to be dismissed.

5. Based on the above pleadings of parties and after hearing both sides, the trial Court has framed the following issues for trial:

- (i) Whether the plaintiff is entitled for declaratory relief ?
- (ii) Whether the suit is barred by limitation ? and
- (iii) Whether the plaintiff is entitled to get possessory relief ?

6. In order to prove his case by the plaintiff, on the side of plaintiff, P.W.1 was examined and Exs.A-1 to A-8 were marked. On the side of defendant, D.W.1 was examined and Ex.B-1 was marked.

Page No.7/21



S.A.No.918 of 2015

7. The trial Court, after hearing both sides and on a perusal of the records, decreed the suit as per the judgment and decree of the trial Court and the defendant has preferred First Appeal on various grounds and the first appellate Court has framed the following points for determination:

- (i) Whether the findings of the trial Court regarding declaration and possession, are correct ? and
- (ii) Whether the judgment and decree of the trial Court is correct ?

8. The first appellate Court, after hearing both sides and perusing the records, allowed the First Appeal by setting aside the judgment and decree of the trial Court and aggrieved by the said judgment and decree of the first appellate Court, the defendant has preferred the present Second Appeal.

9. This Court, at the time of admitting the present Second Appeal, framed the following substantial questions of law on 02.11.2015 :

- (i) Whether the first appellate Court was right in holding that Ex.B-1 which is an unregistered document, will confer title on the defendant in



S.A.No.918 of 2015

deprivation of the title claimed by the plaintiff, based on the settlement deed,
dated 12.03.1976 (Ex.A-1) ?

(ii) Whether the first appellate Court was right in holding that the plaintiff was failed to prove that there was an encroachment by the defendant ?

10. Learned counsel for the appellant submitted that the appellant as plaintiff, has filed the suit before the trial Court for the relief of declaration declaring that the suit property belongs to him and also prayed for recover of possession by handing over the possession of the property to the plaintiff.

10.1. In order to prove his case, the plaintiff was examined as P.W.1 and considering the evidence and accepting the case of the plaintiff, the trial Court decreed the suit and directed the defendant to hand over the possession of the property. The trial Court negated the defence raised by the defendant that the father of the plaintiff and his brother, during the life-time of the said Govindaraj Mudaliar, executed the agreement and not to claim the property from 6' East and 31'9" North to South through Ex.B-1,

Page No.9/21



S.A.No.918 of 2015

thereby, the suit was decreed, whereas, the first appellate Court, without appreciating the evidence adduced on the side of the plaintiff, has set aside the judgment and decree passed by the trial Court. When once the settlement deed is executed by the settlor, though he has retained his life-time, he has not alienated the property during his life-time. Ex.B-1 agreement was not at all executed by the father of the plaintiff and there is only an agreement which shows that no property has been conveyed. Therefore, the first appellate Court is not right by placing reliance on Ex.B-1. Hence, the judgment and decree passed by the first appellate Court are liable to be set aside.

11. Learned counsel for the respondent submitted that the appellant is none other than the sister's son of the defendant and the father of the defendant is the owner of the suit property and he settled the front portion of the property to the defendant and the rear portion was settled to the sister of the defendant, who is the mother of the plaintiff. As per the settlement, the life interest was given to the father and mother of the respondent/defendant and the mother of the appellant/plaintiff died after the settlement deed



S.A.No.918 of 2015

executed by his grand-father. During the life-time of the father of the defendant, he constructed a house after demolishing the old house. At that time, he constructed a house by extending the portion which was settled to the mother of the plaintiff, of an extent of 6' East and 31' 9" North to South.

11.1. Learned counsel for the respondent further contended that the father of the plaintiff and his brother, along with the said Govindaraj Mudaliar, entered into agreement in respect of a portion of the property constructed by the said Govindaraj Mudaliar. The property was sub-divided in the year 2000 itself and the plaintiff is also aware of the sub-division. However, they have filed the suit only in the year 2011, thereby the suit is barred by limitation. The trial Court, without considering the above aspect, had erroneously decreed the suit and thereby, the defendant preferred the First Appeal before the first appellate Court and the first appellate Court, after considering the evidence adduced by both sides and relying upon Ex.B-1, dismissed the suit and allowed the First Appeal. Govindaraj Mudaliar, during his life-time itself, had put up construction by encroaching a portion of the property allotted to the plaintiff's mother. The plaintiff has



S.A.No.918 of 2015

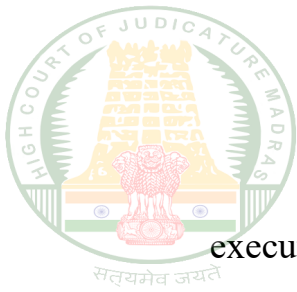
not examined his father and the plaintiff does not know about the fact as to when the defendant encroached upon the property. No Commissioner was appointed to measure the suit property and identifying the encroachment and the plaintiff has to prove his case independently. In the schedule of property, an extent of 190 Sq.Ft. was mentioned, but there are no boundaries and no plan attached with the plaint, was referred, and therefore, the first appellate Court has allowed the First Appeal and thereby, there is no perversity or illegality in the judgment passed by the first appellate Court. Further, no substantial question of law is involved in this Second Appeal and hence, the Second Appeal is liable to be dismissed.

12. This Court heard both sides and perused the records.

13. For the sake of convenience and brevity, the parties are referred to herein as they are ranked in the Original Suit as plaintiff and defendant.

14. In this case, the plaintiff has filed the suit for declaration and recovery of possession based on the settlement deed, dated 12.03.1976

Page No.12/21



S.A.No.918 of 2015

executed in favour of the mother of the plaintiff and also the release deed executed by his father and brother through release deed, dated 24.02.2009.

The defendant is none other than the brother of the plaintiff's mother. The settlor Govindaraj Mudaliar settled his property in favour of his son and daughter and the extent of 1558 Sq.Ft. was allotted to the defendant and 950 Sq.Ft. was allotted to the plaintiff's mother. The settlor Govindaraj Mudaliar reserved his life interest of the suit property while settling the property. After the demise of the plaintiff's mother and grand-father / settlor, the plaintiff has filed the present suit stating that the defendant encroached upon the property of an extent of 190 Sq.Ft. The defendant has not denied the encroachment and the construction made in a portion of the property allotted to the plaintiff's mother. According to the defendant, the construction was made during the life-time of the settlor, since he had retained the life-interest over the property. The said construction was made in the year 1989 and at that time, the mother of the plaintiff was no more, however, neither the father of the plaintiff, nor the plaintiff had raised any objection during the life-time of the said Govindaraj Mudaliar. The defendant along with the plaintiff's father and brother, while the plaintiff was minor and on behalf of the minor, they

Page No.13/21



S.A.No.918 of 2015

have entered agreement in respect of the property allotted to the settlor in favour of the plaintiff's mother and an extent of 6 feet East to West and 31'9"

North to South on the Eastern side of the area of 950 Sq.Ft., thereby, the plaintiff and his father have constructed the property. Now, the plaintiff, after demise of the settlor, filed a suit. The plaintiff in the plaint has not stated about the measurements about the alleged encroachment made on the property and the schedule of property has not been properly mentioned in the suit. The schedule mentions that, "All that piece and parcel of land measuring an extent of 190 Sq.Ft. situated at Door No.43/1, Dr.Natesan Road, facing Besant Road, Triplicane, Chennai-600 005." With this identification, the plaintiff has filed the plaint and along with the plaint, the plan is also annexed in respect of the encroached portion, has been mentioned and the width of the encroached portion has also been mentioned and though the length of the measurement was marked as 31 feet x 9 inches, but however, in the schedule, the plaint plan has not been referred and the property has not been properly identified. The plaintiff has failed to take steps for appointment of the Commissioner to measure the property and to identify the alleged encroachment. According to the defendant, they have

Page No.14/21



S.A.No.918 of 2015

WEB COPY

constructed building during the life-time of Govindaraj Mudaliar in the year 1989 itself. In order to prove the same, they have marked Ex.B-1, but it is only an agreement and no witness was examined on their behalf to prove the same. However, the plaintiff who has filed the present suit for declaration, has to prove his case based on the evidence. The plaintiff has not filed any other document to show the alleged encroachment and failed to prove his case by adducing proper evidence. It is well settled law that without proper identification of the property, the Court cannot grant the relief of recovery of possession and without any proper four boundaries and the measurement, the declaratory relief also cannot be granted.

15. The trial Court, in the judgment, had discussed the facts and the plaintiff has produced documents to show his title and the defendant has also admitted that the Govindaraj Mudaliar constructed the superstructure and encroached an extent of 6' East to West and 31' 9" North to South on the Eastern side out of the area of 950 Sq.Ft. and allotted to the mother of the plaintiff and relied upon Ex.B-1 and the said document Ex.B-1 is an unregistered document and there are no recitals to the effect that the

Page No.15/21



S.A.No.918 of 2015

defendant has given Rs.30,000/- to the father of the plaintiff and executed the agreement. Instead, it is found that the said structure was put up by the first portion by spending Rs.30,000/- by notionally fixing the value of the portion of the land. Therefore, the defendant had not given any money for the above said agreement to the father of the plaintiff. Further, the trial Court held that Ex.B-1 was executed by the plaintiff's father and the defendant has failed to prove that Ex.B-1 was executed by the father only for the welfare of the minors, and therefore, when once the property is settled in favour of the plaintiff's mother, the defendant cannot encroach upon the property and decree the suit.

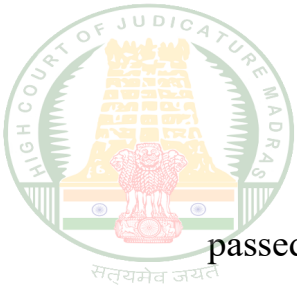
16. The first appellate Court, has, in the judgment, discussed about Ex.B-1 and the father of the plaintiff can alienate the property on behalf of the minors and no permission of the Court is required. Ex.B-1 is the document executed in the year 1989 and the parties are close relatives. The plaintiff failed to examine his father and the construction was put up during the life-time of Govindaraj Mudaliar and the plaintiff came to know about the encroachment when he surveyed the property, but no Surveyor's report



S.A.No.918 of 2015

has been marked. The plaintiff also failed to identify the properties with four boundaries and only mentioned in the suit property as 190 Sq.Ft. The plaintiff failed to take steps for appointment of a Commissioner to find out the exact encroachment of the incorrect property and without proper measurement, it is not appropriate to grant the relief to the plaintiff. Therefore, the first appellate Court has set aside the judgment and decree passed by the trial Court and dismissed the suit.

17. On a perusal of records, it is seen that the plaintiff has not identified the suit property properly. The trial Court failed to consider that the plaintiff has not identified the property in terms of Order 7 Rule 3 CPC and only mentioned an extent of 190 Sq.Ft. and failed to take steps for appointment of Commissioner to identify the property and to find out proper measurement of encroachment, whereas, the first appellate Court has correctly appreciated the facts and came to the conclusion that the plaintiff has failed to prove his case and not even has clearly identified the property and thereby, the suit was dismissed. Therefore, the judgment and decree

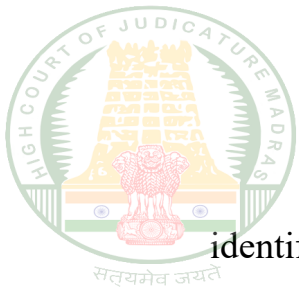


S.A.No.918 of 2015

passed by the first appellate Court, are in order, and there is no illegality or perversity in the judgment and decree passed by the trial Court.

18. As far as the first substantial question of law is concerned, the first appellate Court has discussed about Ex.B-1 and though it is not a registered document, considering the close relationship between the parties, has given some importance to the document, but not declared the title of the defendant through Ex.B-1. However, based on the non-identification of the property and not taking steps for appointment of Advocate Commissioner, the first appellate Court had dismissed the suit. Therefore, the first appellate Court was not wrong in not holding that Ex.B-1 is an unregistered document when compared with the title of the defendant and for deprivation of the plaint document by the plaintiff based on the settlement deed, dated 12.03.1976. The first substantial question of law is answered accordingly.

19. As far as the second substantial question of law is concerned, the plaintiff filed the suit for declaration and recovery of possession and the plaintiff has not sought for declaration in respect of the entire property and only for part of the property, filed the suit without any four boundaries and



S.A.No.918 of 2015

identification. The plaintiff failed to prove the exact particulars of the alleged encroachment in the property and also failed to take measurements to measure the property and to identify the encroachment and thereby, the first appellate Court is right in holding that the plaintiff has failed to prove that there was encroachment by the defendant. It is settled law that, as far as the suit for declaration is concerned, the plaintiff has to prove his case based on evidence and the present suit is filed for declaration and recovery of possession. Therefore, the plaintiff has failed to prove his case by properly identifying the suit property. The second substantial question of law is answered accordingly.

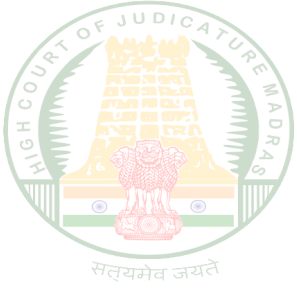
20. In view of the above said discussion and answers to the substantial questions of law, this Court is of the opinion that the Second Appeal has no merits and it deserves to be dismissed.

21. Accordingly, the Second Appeal is dismissed. There shall be no order as to costs. Consequently, the Miscellaneous Petition is closed.

03.08.2026

Index: Yes/no
Speaking Order: Yes/no
Neutral Case citation: Yes/no
cs

Page No.19/21



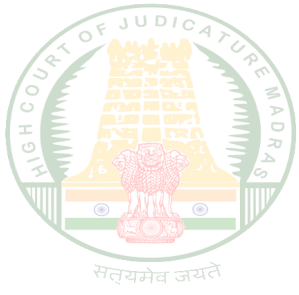
S.A.No.918 of 2015

WEB COPY

To

1. The XVII Additional Judge, City Civil Court, Chennai.
2. The XVII Assistant Judge, City Civil Court, Chennai.
3. The Record Keeper, V.R.Section, High Court, Madras.

Page No.20/21



WEB COPY



S.A.No.918 of 2015

P.DHANABAL, J

CS

S.A.No.918 of 2015

03.08.2026

Page No.21/21