

S.A.No.293 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

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**Dated : 03.03.2025**

**CORAM:**

**THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI**

**S.A.No.293 of 2023**  
**and C.M.P.No.8692 of 2023**

A.Palanisamy  
Appellant

...

Vs.

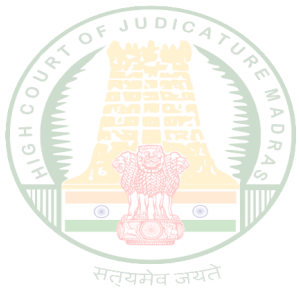
K.Prabhakaran

... Respondent

Prayer :Second Appeal has been filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 11.11.2022 made in A.S.No.6 of 2022 on the file of Additional District Court, Namakkal reversing the Judgment and decree dated 28.09.2021 made in O.S.No.108 of 2018 on the file of Additional Sub Court, Namakkal, and prays to set aside the same.

For Appellant : Mr.P.Wesley Isaac

For Respondent : Mr.S.Senthil



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## **J U D G M E N T**

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The dispute is with regard to 8 cents. According to the appellant, he is in possession and enjoyment of 8 cents, after selling a portion of the properties to the respondent, in the year 1985. The appellant sold only 2 acres of lands to the Vendors in 1984 and he retained 8 cents on the South East side. The remaining extent of 1 acre and 32 cents which is adjacent to the disputed land was sold to another third party that is the Eastern side of the disputed land.

2.The learned counsel for the respondent contended that though the extent was granted in 2 acres of lands but with a specific four boundaries the land was conveyed by the appellant to original purchaser Kannammal of the year 1984.

3.The respondent's father purchased the property from the original vendor Kannammal under a Sale Deed in the year 1985 to an extent of 2 acres with specific four boundaries. Thereafter, from 1995 onwards, after demise of the respondent's father, the respondent is



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enjoying the property through Ex.A3 – Will executed by his father. In the year 2018, Ex.A5 - Joint patta was issued in respect of S.No.27/4B in favour of both the respondent and the appellant. Thereafter, the dispute arose between them. After selling a portion of the property, the original owner retained the then 8 cents, thereby, he claimed that he is in possession and enjoyment of the said lands. Hence, the respondent filed a suit for declaration to declare that he is the absolute owner of the extent of the entire land with four boundaries as per the Sale Deed. The suit was dismissed after analysing the evidence holding that in the conveyance Deed, the measurement of the property is approximately cited. The measurement was not properly cited in the documents. Accordingly, the suit was dismissed. On appeal, the First Appellate Court held that as per Ex.B4 – Sale Deed dated 25.04.1994 through which the appellant sold the remaining extent of 1 acre and 32 cents in favour of the third party wherein it is mentioned as Southern boundary belongs to Kaliyappan, father of the respondent, thereby, the First Appellate Court held that the appellant/defendant has not retained any extent much less 8 cents, The Sale Deed relied by Ex.A1 and Ex.A2



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wherein the boundaries were clearly mentioned, though the extent is different the boundary prevails accordingly and the Appeal Suit was allowed. Challenging the said findings, now the defendant has filed this Second Appeal.

4. When the matter was taken up for hearing, the learned counsel for the appellant argued that as per the Sale Deed relied by the respondent/plaintiff Ex.A1 and Ex.A2, the extent was mentioned only 2 acres but, 2 acres 8 cents is available, thereby, during the sub division in the year 2018, joint patta was issued in favour of the appellant and the respondent. It proves that the original owner/the appellant is holding 8 cents of lands through S.No.27/4B but as rightly pointed out by the learned counsel for the respondent through the Sale Deeds. The appellant sold the entire extent with specific boundaries and not retained 8 cents as they claimed now.

5. A perusal of the Sale Deed reveals that the four boundaries were mentioned and there is no recitals and that originally owner



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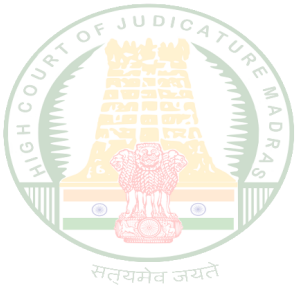
retained 8 cents as claimed in the Written Statement. A portion of the lands was acquired by the National Highways for expanding the road.

The learned counsel for the appellant submitted that only 2 acre was sold to the plaintiff but he is claiming more that extent.

6.Considering all the submissions made on either side, there is no proof on the side of the appellant that he is in possession and enjoyment of the property 8 cents after selling the property to the respondent and one Srirangan family. Besides the boundary prevails over the extent also.

7. The learned counsel for the respondent is inclined to settle the issues and even agreeing to pay the compensation to the alleged 8 cents to avoid further litigations.

8. By way of reply, the learned counsel for the appellant/defendant expressed that he has not inclined to receive the amount on the other hand, he is insisted for 8 cents land.



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9. As discussed above, at that time of selling the land to the vendor of the plaintiff, the appellant/defendant not retained 8 cents of land indeed the remaining extent of 1 acre 32 cents sold to another third party as per the submission on the side of the respondent. It reveals that after purchase of land, both the plaintiff and another third party has put up the fence demarcating their portion. Therefore, there is no existing of 8 cents much less than south east corner. Both purchasers already put up and possessed and enjoyed as per boundaries mentioned in their schedule. Hence, there is no existing of 8 cents as claimed by the appellant.

10. It is settled proposition when that there is a dispute arose between the parties in respect of boundaries and extent, boundary alone prevails, though the sale deed pertaining to the plaintiff's vendor mentioning as 2 acres but with specific boundaries it was sold thereafter with four boundaries it was fenced by the plaintiff's vendor.

11. Therefore, as on date, the appellant has not retained any extent



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much less than 8 cents land but on the side of the respondent/plaintiff inclined to settle the issues. The respondent/plaintiff stated that portion of the land was already proposed to acquire by the National Highways Authorities in order to form the ring road and portion was acquired and notification was issued by the Authorities and the compensation amount also deposited before the concerned authorities.

12. During pendency of the suit proceedings, the plaintiff/respondent herein not able to get compensation. Therefore, considering all these aspects, this Court calling upon the appellant and he appeared before this Court who is aged about 70 years, he needs only 8 cents which is not available both law and fact.

13. Even assuming that the appellant/defendant is having possession of 8 cents but ever since of the year 1984 onwards, he has not approached any Court of law to declare his right and title of the 8 cents.

14. To avoid further litigation, and to settle the issue amicably, this Court directs the respondent to pay a sum of Rs.30,000,00/- to the appellant



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as compensation for the alleged claim of 8 cents . The amount to be paid within two months.

15. In the result, this Second Appeal is disposed of. Consequently, connected miscellaneous petition is closed. No costs.

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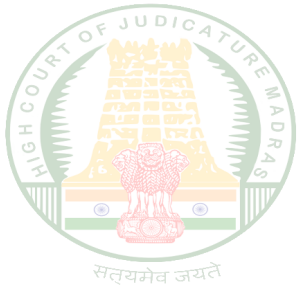
Speaking / Non Speaking order  
Neutral Citation : Yes/No  
Index : Yes/No  
msrm

To

- 1.The Additional District Court, Namakkal.
- 2.The Additional Sub Court, Namakkal.
- 3.The Section Officer,  
VR Section,  
High Court of Madras.

**T.V.THAMILSELVI,J.**

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