

SA(MD). No.630 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved On : 16.03.2026

Delivered on : 10.04.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

SA(MD). No.630 of 2025
and
CMP(MD)No.20135 of 2025

Balakrishnan

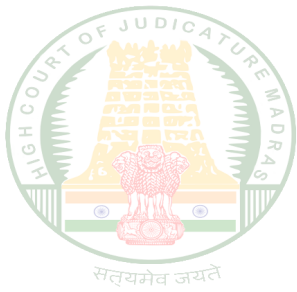
... Appellant/Appellant /
Defendant

Vs.

Parameshwari

... Respondent / Respondent/
Plaintiff

PRAYER :- Second Appeal is filed under Section 100 of the Civil Procedure Code, against the judgment and decree dated 08.08.2022 passed in A.S.No.70 of 2021 on the file of the learned Subordinate Judge, Thirumangalam, confirming the judgment and decree dated 27.10.2021 made in O.S.No.67 of 2017 on the file of the learned District Munsif cum Judicial Magistrate, Peraiyur.



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For Appellant : Mr.S.Sadeskumar

For Respondent : Mrs.A.Sakthi Bavatharani
for Mr.J.Bharathan

JUDGMENT

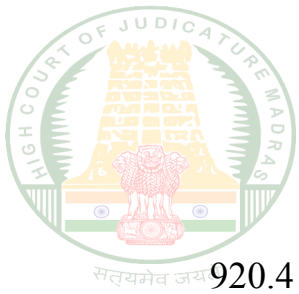
The unsuccessful defendant before the trial Court as well as the Appellate Court, is the appellant in the present second appeal

2. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

3. The facts that are necessary for deciding the present second appeal, briefly:

4.The case of the plaintiff:

The plaintiff is the owner of Schedule A property, he having purchased a portion of vacant site of an extent of 1312 sq.ft. from the defendant. The plaintiff has constructed RCC building to an extent of



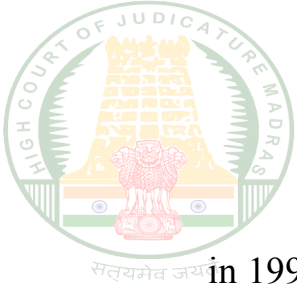
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920.4 sq.ft in schedule B of the suit property, with the remaining portion being vacant. He also constructed a half foot compound wall, which is set out in C schedule Property. The defendant however is claiming right over the vacant site left by the plaintiff in the C schedule property, despite having sold the same to the plaintiff. In March 2017, taking advantages of the plaintiff's absence, the defendant constructed a pucca building above the compound wall, belonging to the plaintiff and also planted drainage pipes in the vacant place and the defendant has constructed one storey building above the compound wall situated in C schedule property measuring ½ X20 feet by way of encroachment. Hence, the plaintiff filed the suit for declaration that C schedule property is an absolute property of the plaintiff and for mandatory injunction to demolish the illegal construction in C schedule property and also for permanent injunction

5. Written statement of defendant:

Admitting that the plaintiff had purchased vacant site from the defendant, the defendant contends that he has constructed a house even



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in 1994 and has been residing there ever since, including obtaining water connection, electricity connection, and payment of kist. The defendant has not encroached into schedule C property as alleged in the plaint. The plaint sketch is false.

6.Issues framed by the trial Court:

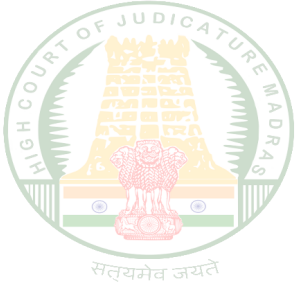
Based on the pleadings, the trial Court has framed the following issues and additional issues:

6.1.Issues:

1. தாவா சி அட்டவணை சொத்தானது வாதிக்குரியதா?
2. பிரதிவாதி சி அட்டவணை சொத்தை ஆக்கிரமித்துள்ளாரா?
3. ஆக்கிரமிப்பு ஏதெனும் அகற்றப்பட வேண்டுமா?
4. இதர பரிகாரங்கள் யாவை?

6.2.Additional Issues:

1. தாவா சி இலக்க சொத்தில் வாதி கோரிய விளம்புகை பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?



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2. வாதி கோரிய நிரந்தர உறுத்துக்கட்டளை
பரிகாரம் வாதிக்கு கிடைக்கத்தக்கதா?

7.Trial:

Before the trial Court, the plaintiff examined herself as P.W.1 and marked Ex.A1 to A6. On the side of the defendant, the defendant examined himself has P.W.1 and Ex.B1 was marked. Ex.C1 to C3 were marked, through the advocate commissioner appointed through the Trial Court.

8.Decision of the trial Court:

The trial Court answering the issues in favour of the plaintiff, decreed the suit.

9.Decision of the First Appellate Court:

Aggrieved by the judgment and decree of the trial Court, the defendant filed an appeal in A.S.70 of 2021 before the Sub-Judge,



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Thirumangalam. The first Appellate Court, on re-appreciation of the pleadings, oral and documentary evidence, confirmed the findings of the Trail Court and dismissed the appeal.

10.Present appeal:

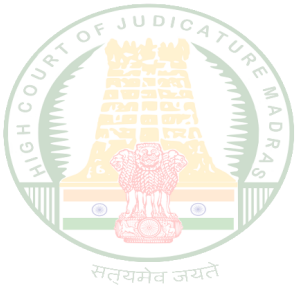
As against the concurrent findings, the defendant is now on second appeal.

11.Substantial questions of law:

The second appeal was admitted on 16.03.2026. The following substantial questions of law were framed:

“A. Whether the suit filed by the plaintiff against the defendant for permanent injunction or mandatory injunction without praying for recovery of possession is maintainable or not?

B. Whether the C schedule property is properly described as per Order 7 Rule 3 and Order 7 Rule 4 of C.P.C? “



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12. I have heard Mr.Sadeskumar, learned counsel for appellant and Mrs.A.Sakthi Bavatharani for Mr.J.Baranthan, learned counsel for the respondent.

13. Arguments of learned counsel for the appellant/defendant:

13.1. Mr.Sadeskumar, learned counsel for appellant, advancing argument for the substantial questions of law would mainly contend that the plaintiff has not satisfied the mandate of Order 7 Rule 3 CPC which requires a clear description of the suit property, especially, when the plaintiff is seeking a relief of mandatory injunction. Taking me through the plaint schedule, Mr.Sadeskumar would state that the schedule does not contain material particulars and decree granted by the Trial Court and affirmed by the First Appellate Court are therefore clearly unsustainable on this limited score itself.

13.2. It is further contended by the learned counsel for the appellant, Mr.Sadeskumar, that the Trial Court as well as the First Appellate Court merely proceeded based on the Advocate



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Commissioner's Report, without noticing that the Commissioner had only found the pipe line alone to be encroached by the defendant and not as alleged by the respondent / plaintiff. In this regard, Mr.Sadeskumar also took me through the copy of the Advocate Commissioner's report, as well as the sketch filed by the advocate commissioner, along with the report and also the objections filed to the said commissioner report by the defendant.

13.3. It is also further submitted by Mr.Sadeskumar that the defendant was already in settled possession of his property, having constructed a house even at the time of sale of vacant land in favour of the plaintiff and therefore, the allegation that the defendant encroached into the plaintiff's property, namely schedule C in March 2017, is imaginary and totally unsubstantial. The learned counsel would therefore state that the questions of law will have to be necessary answered in favour of appellant /defendant.



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14. Arguments of learned counsel for the respondent/plaintiff:

14. Mrs.A.Sakthi Bavatharani would firstly contend that the Trial Court as well as the first Appellate Court have rightly appreciated the oral and documentary evidence produced by the parties, in the context of the pleadings, namely the plaint and the written statement and the concurrent findings of fact recorded by the Courts below cannot be interfered with in a second appeal under Section 100 of the Code of Civil Procedure.

14.2. Mrs.A.Sakthi Bavatharani, would further state that the appellant / defendant admitted sale in favour of plaintiff and in such circumstances, the burden was on the appellant / defendant to establish that the defendant had not encroached into any portion of the property that was sold by him to the respondent/ plaintiff. In this regard the learned counsel for the respondent / plaintiff took me through the cross examination of D.W.1, namely, the appellant/defendant and relying on the same, she would contend that the defendant has categorically admitted to the fact that the ground floor house alone was put up at the



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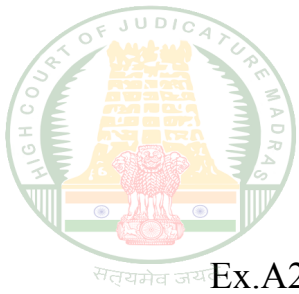
time of sale of the property in favour of the respondent /plaintiff. Relying on the report of the Advocate Commissioner, the learned counsel would contend that the respondent /plaintiff has satisfactorily established the fact that further construction was put up by the appellant / defendant and only in that process, encroachment has been made. She would further state that the no grounds arise for interference into Section 100 of CPC and the second appeal cannot be entertained.

15. I have considered the submission advanced by the learned counsel parties.

16. Discussion:

Substantial Question of No.A:

16.1. The fact that the respondent /plaintiff is owner of the Schedule A property is specifically admitted by the defendant. Infact, the respondent / plaintiff purchased the property only from the defendant in and by the sale deed dated 03.05.1995. The extent of property sold in favour of the respondent /plaintiff is also admitted vide sale deed in

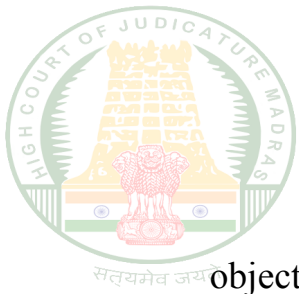


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Ex.A2. The plaintiff has, apart from the sale deed in her favour also filed planning approval for putting up construction in Ex.A3 and Tax receipt for assessment in her name in Ex.A4, water tax receipt in her name in Ex.A5 and electricity service connection in her name in Ex.A6. Therefore even apart from the sale deed executed by the appellant / defendant himself, the plaintiff had been able to clearly demonstrate and establish that she is the owner of the schedule A property. However, what begs for an answer is as to whether, in the course of putting up any additional construction, the defendant has encroached into C schedule property, rendering the defendant liable to remove the encroachment in the C schedule property.

16.2. In order to establish the encroachment, the plaintiff sought for appointment of Advocate Commissioner before the Trial Court and an Advocate Commissioner was the appointed and the report was also filed along with a sketch vide Ex.C1 to C3. Report of the Advocate commissioner noticed encroachment made by the appellant / defendant over schedule C property. No doubt, the appellant/defendant had filed



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objections to the report before the trial Court. However, the Trial Court has considered the same along with the report and after assessing the oral and documentary evidence available on record, both Courts, infact, being concurrently came to the that conclusion that the construction was put up by the appellant / defendant only in March 2017, accepting the version of the respondent / plaintiff.

16.3. The appellant / defendant, who was examined as D.W.1, has admitted in cross examination that he constructed a ground floor portion in 1994, after obtaining prior sanction. However the said sanction has not been exhibited, despite a suggestion put to him that if the plan is produced, it would reveal the nature of construction for which planning approval was obtained. He has further stated that he did not obtain any loan for putting-up the ground floor construction and only for putting up first floor construction he availed loan. Particulars of the loan are also not been exhibited before the Court. The planning permission obtained for the first floor is also not produced by the appellant. In fact, the appellant even takes a new stand in the witness box that the offending



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encroachments were made with consent of the respondent. From the evidence of D.W.1, it is therefore crystal clear that the construction was not put-up by the appellant in one-go. Initially he had put-up construction of Ground floor and later by availing loan, he has put-up additional construction by a way of first floor and in such process alone, the encroachment complained of has been made. As seen from the cross examination, it is also admitted by the appellant himself that he has encroached onto schedule C property and tries to justify the same, stating that it was with the consent of the respondent /plaintiff. There is no pleading with regard to any such consent given by the respondent / plaintiff in the written statement, thus having giving a go by to the defence initially raised in written statement. Having admitted that he has encroached on to the Schedule C property, it does not lie in the mouth of the appellant /defendant to contend that there is no proper description of the alleged encroachment in Schedule C property and that the mandate the Order 7 Rule 3 CPC has not been satisfied. The respondent / plaintiff has also substantiated the encroachment through the report of the advocate commissioner and the sketch filed along with the report. In fact,



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on going through C schedule property, as described in the plaint, I find that the plaintiff has sufficiently described the encroachment and has also given measurements of the same. Thus, I do not see how the plaintiff should be non-suited on the ground of failure to comply with Order 7 Rule 3 CPC. The Substantial question of law No.1 is answered in favour of the respondent/plaintiff and against the appellant/ defendant.

17. Substantial Question of law No. B :

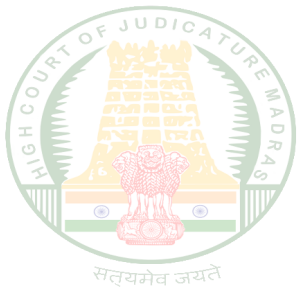
17.1. When the appellant / defendant admitted that he sold property in favour of the respondent / plaintiff and the respondent / plaintiff does not dispute the extent of the property or the measurements conveyed to the plaintiff, the respondent/ plaintiff has established ownership over the said property and when the plaintiff alleges encroachment into such property sold by the defendant himself, there is no necessity / requirement for the respondent / plaintiff to seek for recovery of possession and a simpliciter relief for mandatory injunction, would suffice. Section 39 of Specific Relief Act, viz., relief of mandatory injunction is no doubt a discretionary relief. However, in the judgment of



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the Hon'ble Division Bench in the case of **J.Selvaraj v. K. Gowri shankar and Others 1996** reported in **1995 SCC On Line Mad 33**, , the Court has also held that even if a suit was effectively one for possession, but couched in the form of a relief for mandatory injunction, plaintiff can not be denied relief merely on that score alone if the plaintiff establishes his entitlement to the said relief and wherever the relief for mandatory injunction is sought for there should be no delay in approaching the Court and the plaintiff would also have to establish that damages would not adequately compensate the plaintiff for the act complained of. In present case, the unlawful construction made by the defendant is certainly against the interest of the plaintiff and the plaintiff seeking for directional for removal of the encroachment is certainly entitled to such positive relief. The unlawful construction put-up and laying of pipes is something which certainly can not be compensated in monetary terms as the prejudice caused to the respondent plaintiff is continuos in nature. Thus, I do not see any illegality and perversity in the finding of Courts below in decreeing the suit and granting the relief of mandatory injunction.



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17.2. In the judgment of the Karnataka High Court in ***Chinnappa v. Srinivasa Reddy (C.R.P. No. 2678 of 1995, decided on 03.11.1995)***, it has been that, in terms of Section 39 of the Specific Relief Act, 1963 (Central Act No. 47 of 1963), a person seeking a decree of mandatory injunction must specifically plead and establish a legally enforceable right.

17.3. I do not see relief sought for plaint to be defective to deny the relief to the plaintiff. The plaintiff was not obligated to seek recovery of possession and the relief of mandatory injunction simpliciter was maintainable to adequately address the grievances of the plaintiff. In fact, the Courts below relied on the admissions of D.W.1 with regard to not only but also fixing of drainage pipes in Schedule C property. Substantial Question of law B is answered against the appellant.



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18.Result:

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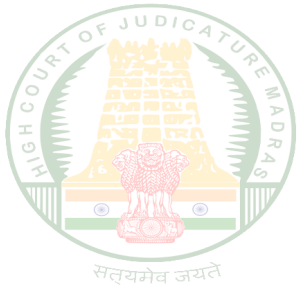
There is no merit in the second appeal. Accordingly, the Second Appeal is dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

10.04.2026

NCS : Yes/No
Index : Yes / No
Internet : Yes / No

TO

1. The Subordinate Judge,
Thirumangalam
2. The District Munsif cum Judicial Magistrate,
Peraiyur.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

Ls

**Pre- delivery Judgment made in
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10.04.2026