



S.A.No.340 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<b>16.10.2025</b>
<i>Pronounced on</i>	<b>09.01.2026</b>

Coram:

**The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI**

**Second Appeal No.340 of 2023**  
**and C.M.P.No.10244 of 2023**

1.Kamallammal  
2.Elumalai  
3.Subramani  
4.Dakshna  
5.Sankar

.. Appellants

versus

Sivalingam (died)

Parasuraman

.. Respondent

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 13.12.2022 made in A.S.No.07 of 2015 on the file of learned Sub-ordinate Judge, Arni, Tiruvannamalai District, reversing the well considered judgment and decree dated 10.03.2014 made in O.S.No.290 of 2007 on the file of the learned District Munsif, Arni.



S.A.No.340 of 2023

WEB COPY For Appellants : Mr.Mr.A.Gowthaman  
For Respondents : Mr.A.Ganapathy

## JUDGMENT

The above second appeal arise out of the judgment and decree dated 13.12.2022 made in A.S.No.07/2015 on the file of Sub Court, Arni, Tiruvannamalai District, reversing the judgment and decree dated 10.03.2014 made in O.S.No.290 of 2007 on the file of the District Munsif Court, Arni.

2.The plaintiffs in the above suit are the appellants.

3.Facts of the case:

The plaintiffs as appellants filed the above suit for declaration of title in the 'B' schedule property and for permanent injunction restraining the defendants from interfering with the plaintiffs' peaceful possession and enjoyment in the 'B' schedule property and for mandatory injunction directing the 2<sup>nd</sup> defendant to restore the pipeline in the 'B' schedule



*S.A.No.340 of 2023*

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property.

4.The trial Court after framing necessary issues and considering the oral and documentary evidence of the parties and the arguments advanced by the respective counsel decreed the suit in favour of the plaintiffs. Aggrieved by this, the defendants preferred an appeal in A.S.No.7 of 2015 before the Sub Court at Arni, against the judgment and decree passed by the trial Court. The first appellate Court reversed the judgment passed by the trial Court and dismissed the suit filed by the plaintiffs. Hence, this second appeal is preferred.

5.According to the plaintiffs, the suit 'A' schedule property was originally ancestral property of one Chinnapaiya Pillai who had constructed a tiled house in the front side and a terraced building and a kitchen behind it before 30 years and was in peaceful possession and enjoyment of the same. The said Chinnapaiya pillai died 20 years back and after his demise the plaintiffs succeeded to his estate as his legal heirs and removed the tiled



*S.A.No.340 of 2023*

WEB COPY

house and constructed a terraced house in the 'A' schedule property and are in peaceful possession and enjoyment of the same. The kitchen is in existence for more than 30 years, which is shown as 'B' schedule property in the plaint, which is a part of the 'A' schedule property and patta in respect of the suit property stands in the name of the 1<sup>st</sup> plaintiff who is the eldest member of the family. According to the plaintiffs, there exist a "Narasam" on the eastern side of the 'B' schedule property and the same belong to the 1<sup>st</sup> defendant. The 2<sup>nd</sup> defendant after purchasing the property from the 1<sup>st</sup> defendant on 02.08.2007 with incorrect measurement and excavated a mud portion on 02.09.2007 in the "AB" line as shown in the plaint plan due to which the wall of the plaintiffs' fell down. When the plaintiffs attempted to renovate the kitchen by removing the roof, the defendants objected the same and laid a false claim over the 'ABCD' portion as shown in the plaint plan. Hence, the plaintiffs were constrained to file the above suit.

6.The claim of the plaintiffs was resisted by the defendants stating that the 'A' schedule property originally belong to Chinnapaiya Pillai who



*S.A.No.340 of 2023*

WEB COPY

along with his brothers namely Kista Pillai and Manicka Pillai divided their properties on 04.09.1986 under a registered partition deed. In the said partition deed the 'B' schedule property was allotted to Chinnapaiya pillai which is 45 feet east west and 29 feet North South totalling an extent of 1305 sq. ft., as vacant site. The tiled house is east west 16 feet and north south 10 feet totalling an extent of 160 sq. ft. It is submitted that it is incorrect to state that the kitchen is in existence for more than 30 years and the suit is filed without disclosing the actual extent of the 'A' schedule property. No such kitchen was mentioned in the partition deed which was executed between Chinnapaiya Pillai and his brothers in the year 1986. The 'ABCD' portion as shown in the plaint plan do not belong to the plaintiffs. No document is produced on the side of the plaintiffs to show that the 'B' schedule property belong to them. The suit has been filed on the basis of approximate patta which was issued by the Natham Nialavari Scheme in contra to the partition deed dated 04.09.1986. Therefore, without filing any document of ownership in respect of 'B' schedule property, the plaintiffs cannot claim title over the said property. Even in the partition deed the



*S.A.No.340 of 2023*

WEB COPY

measurement of "B' schedule property is only shown as east west 45 feet and not more than that. However, the plaintiffs are claiming more extent than 45 feet without any basis. The 'B' schedule property originally belong to the 1<sup>st</sup> defendant who purchased the same with correct measurement and boundaries from one Sambasivam. The defendants have purchased the property from one Sivalingam and from the legal heirs of Muniyappa Mudaliar measuring east west 11 feet north south 21 feet under a registered sale deed bearing Document No.1172/2007 and 2054/2007. The said Sivalingam and Muniyappa Mudaliyar got the property under a settlement deed dated 17.02.1971 and the measurements have been decided as correct by the District Munsif Court, Arni in O.S.No.1029/1987. As per the above sale deed, the 'B' schedule property belong to the defendants. Hence, prayed for dismissal of the suit. The trial Court's judgment and decree was reversed by the first Appellate Court.

7.The learned counsel appearing for the appellants/plaintiffs would submit that the 'B' schedule property belong to the plaintiffs and they were



*S.A.No.340 of 2023*

WEB COPY

been in possession and enjoyment of the property for more than 30 years prior to filing of suit. Patta also stood in the name of the plaintiffs, which proves their possession and enjoyment of the suit property. The defendant's property is situated on the eastern side of 'Narasam Santhu'. Taking advantage of wrong purchase from his vendor, trying to interfere with the possession and enjoyment of the plaintiffs in the 'B' schedule property. Even in the sale deed of the 2<sup>nd</sup> defendant, the boundaries are clearly mentioned as eastern side of plaintiffs' building. He would further submit that there is a property measuring north south 51 feet and east west 46 feet on the eastern side of the property of Chinnapaiya Pillai and his brothers which belong to the 2<sup>nd</sup> defendant's aunt namely Sindhamani Ammal. The said Sindhamani Ammal executed a settlement deed in which the southern portion of the property was settled in favour of 2<sup>nd</sup> defendant and the middle portion was settled in favour of Muniyappan and northern portion settled in favour of one Sampath. As per Ex.A4 the 2<sup>nd</sup> defendant purchased an extent of 884 ½ sq. ft. In the schedule of property in the said sale deed it is clearly mentioned that the western side of the property belong to the plaintiffs. As per Ex.A5



*S.A.No.340 of 2023*

WEB COPY

sale deed executed by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant on 02.08.2007 it is mentioned that S.No.318/1 is on the eastern side of Chinnapaiyan Thottam. The plaintiffs are in possession of the suit property by paying kist. Moreover, the 1<sup>st</sup> defendant has admitted in his evidence about the existence of 'Narasam Santhu' on the eastern side of the 'B' schedule property. The partition deed clearly reveals that the 'B' schedule property was allotted to the share of plaintiffs' father. The rough sketch produced by the defendants in respect of 'B' schedule property do not tally with Ex.A1 and A.3 document. Even as per Ex.B3 and B.4 settlement deeds executed by Sindhamani Ammal in favour of Muniappa Mudalai and 1<sup>st</sup> defendant, the western boundary is shown as Appu Pillai and Kuppu Ammal. The judgment and decree passed in O.S.No.1029/1987 filed by the 1<sup>st</sup> defendant and Muniappan as against one Valliammal and Aadilakshmi will not bind the plaintiffs, since they were not parties in the above suit. It is further submitted that the sale deed executed by the 1<sup>st</sup> defendant in favour of the 2<sup>nd</sup> defendant is only in respect of property situate in new S.No.483/20 and the same is not connected with the suit property which is situate in



*S.A.No.340 of 2023*

WEB COPY

S.No.483/2K. The Advocate Commissioner has clearly deposed that the suit property is situate in S.No.483/2K and the kitchen is also situate in S.No.483/2K and that the property belonging to the defendant is situate in S.No.483/20. He would further submit that, D.W.1 has clearly admitted the existence of 'Narasam' on the eastern side of the 'B' schedule property and that he had purchased the property situate on the eastern side of 'Narasam' and therefore, the suit property lying on the western side of 'Narasam' belong to the plaintiffs. He would submit that Ex.B8 sale deed was purposely executed by the defendants with intention to grab the 'B' schedule property from the plaintiffs. In fact, the 1<sup>st</sup> defendant has clearly admitted that through Ex.B.7 he had sold the property to the 2<sup>nd</sup> defendant whatever he derived through a settlement deed executed by Sindhamani Ammal. Taking advantage of the incorrect measurement given in the partition deed entered between the plaintiffs' father and his brothers with regard to the house, which is referred as east west 15 feet instead of 11 feet and north south 10 feet instead of north south 21 feet, the defendants have demolished the kitchen portion and now trying to encroach the 'B' schedule



*S.A.No.340 of 2023*

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property. The existence of 'Narasam' was also noted by the Advocate Commissioner in his report. Hence, prayed for setting aside the judgment and decree passed by the lower appellate Court.

8. On the other hand, the learned counsel appearing for the respondents/defendants would submit that, the settled proposition of law is that the plaintiffs' have to prove their own case and cannot take advantage of the loopholes in the case of the defendants. He would submit that the plaintiffs derived their title only under registered partition deed dated 04.09.1986. The said document was not filed by the plaintiffs and the same was filed by the defendants which was marked as Ex.B.1. The plaintiffs' are solely relying on Ex.A1 patta issued under Natham Nialavari Scheme which is not a document of title. A perusal of the partition deed would clearly show that the suit 'B' schedule property was not allotted to the plaintiffs' father. At the time of inspection by the Advocate Commissioner, the plaintiffs' have made a makeshift arrangement to show that there was a kitchen in the 'B' schedule property. No such kitchen was mentioned in the partition deed and



S.A.No.340 of 2023

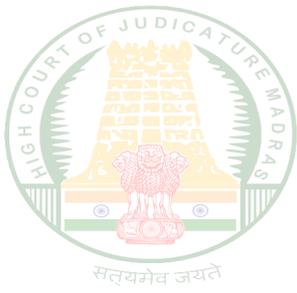
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there was no roofing at all. The measurements in the partition deed do not tally with the patta and the suit property. The defendants have right over the disputed property by virtue of settlement deed executed by Sindhamani Ammal which was confirmed in O.S.No.1027/89. Therefore, the disputed 'B' schedule property do not form part of 'A' schedule property and the same belongs to the defendants. Taking advantage of the fact that the property of the defendants being a vacant site, the plaintiffs have encroached and put up a wall, which will not give them any right or title over the same. The first Appellate Court after appreciating the materials on record in a right perspective, dismissed the suit which warrants any interference by this Court.

9.Heard on both sides, records perused.

10.At the time of admitting the second appeal, the following substantial questions of law are formulated:

*i. Whether the lower appellate Court was right in reversing the judgment and decree of trial Court, when*



S.A.No.340 of 2023

WEB COPY

*admittedly the plaintiffs have established their right and title to the suit property by producing partition deed and subsequent revenue records to the suit scheduled mentioned properties to prove their right and title and possession over the suit property?*

*ii) Was not the first Appellate Court in serious error in holding against the plaintiff for not challenging a sale deed that the 1<sup>st</sup> defendant had executed in favour of 2<sup>nd</sup> defendant when the plaintiff is not a party to the said document?*

*iii) Was not the first Appellate Court judgment is erroneous for not framing appropriate points under Order 41 Rule 31?*

*iv) Whether the Lower appellate Court was right in deciding the appeal without formulating the proper point for determination in appeal as duty cast upon the lower appellate Court under Order 41 Rule 31 of Civil Procedure Code?*

11.The plaintiffs are admitting that the property lying on the eastern side of the suit property belong to the defendants. According to the



*S.A.No.340 of 2023*

WEB COPY

plaintiffs, the suit 'A' & 'B' schedule property is situate in S.No.483/2K and the defendants' property is in S.No.483/20. It is not in dispute that the suit property originally belong to the brothers Kista Pillai, Chinnapaiya Pillai and Manickam Pillai. Chinnapaiya Pillai is the father of the plaintiff. The execution of the partition deed dated 04.09.1986 executed between the Chinnapaiya Pillai and his brothers is admitted by the plaintiffs during their examination. However, the same is not stated in the plaint and it was also not marked by the plaintiffs. The said partition deed was only marked through the defendants. Even in the plaint, the boundaries of the suit property was not mentioned. The plaintiffs have mainly relied upon Ex.A1 patta to claim ownership in the 'B' schedule property. Admittedly, the extent in the partition deed and the extent given in the patta differs. The 1<sup>st</sup> plaintiff examined as P.W.1 has clearly deposed that the partition deed was not handed over to the Advocate Commissioner who had inspected the suit property. As rightly pointed out by the learned counsel for the respondents/defendants patta is not document of title. Moreover, the report of the Advocate Commissioner and the Surveyor are solely based upon the



*S.A.No.340 of 2023*

WEB COPY

measurements given in the patta. A patta issued under the Natham Nilavari Scheme is generally not a title document. It is primarily a revenue record that indicates prima facie possession for the purpose of tax collection. The real proof of legal ownership is the registered title document. Therefore, patta does not by itself confer or extinguish a legal title to the property and it cannot be considered as document of title. Even in the report and plan filed by the Advocate Commissioner, the disputed portion is not shown as kitchen, but she had only stated that a stove has been embedded in that area. Admittedly, the plaintiffs derives title only under Ex.B1 partition deed dated 04.09.1986. Therefore, the plaintiffs can claim right over the property only as per the measurements given in the said partition deed, since patta is not a document of title. Absolutely, there is nothing on record to prove that the kitchen was in existence for more than 30 years as stated by the plaintiffs. Even in the said partition deed, the existence of the kitchen was not mentioned. Moreover, the plaintiffs failed to mention the boundaries to the suit properties which itself is fatal to the plaintiffs' case. Coming to the question whether the findings of the first Appellate Court is perverse for not



*S.A.No.340 of 2023*

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framing proper points for consideration as per Order 41 Rule 31 CPC. Non-compliance is always not fatal, if the Appellate Court has substantially complied by addressing all issues, giving reasons, showing overall fairness. In the present case, the Appellate Court has considered the case and evidence thoroughly, even without explicitly listing points, the judgment stands correct. Considering the above factual and legal aspects, the first Appellate Court rightly dismissed the suit filed by the plaintiffs. No infirmity or perversity found in the judgment and decree passed by the first appellate Court.

12.In the result,

(i) this second appeal is dismissed. No costs.

(i) the judgment and decree dated 13.12.2022 made in A.S.No.07/2015 on the file of Sub Court, Arni, Tiruvannamalai District, is upheld. Consequently, connected miscellaneous petition is closed.

**09. 01.2026**

vsn

15



*S.A.No.340 of 2023*

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To

- 1.The Sub Judge, Arni Court, Tiruvannamalai District,
2. The District Munsif, Arni Court
- 3.The Section Officer, VR Section, High Court, Madras.



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*S.A.No.340 of 2023*

**K.GOVINDARAJAN THILAKAVADI,J.**

vsn

**Pre- delivery judgment made in  
Second Appeal No.340 of 2023  
and C.M.P.No.10244 of 2023**

**09.01.2026**