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S.A.NOS.156 & 227 OF 2003

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

**JUDGMENT RESERVED ON : 08 / 03 / 2024**

**JUDGMENT PRONOUNCED ON : 07 / 06 / 2024**

**CORAM:**

**THE HON'BLE MR.JUSTICE R.SAKTHIVEL**

**S.A.NOS.156 AND 227 OF 2003**

**S.A.NO.156 OF 2003**

Ranganathan Pillai (Died) ... Plaintiff /Appellant/  
Appellant

A.2. Sekar S/o. Ranganathan Pillai  
A.3. Subbarayapillai Pillai S/o. Ranganathan Pillai  
A.4.Ramakrishnan S/o. Ranganathan Pillai  
A.5.Suseela D/o. Ranganathan Pillai ... Appellants  
(Sole appellant died, A2 to 5 brought on  
records as LRs' of the deceased sole appellant  
vide Court order dated 24.01.2023 made in  
CMP Nos.18424, 18428 and 18433 of 2022  
in S.A.No.156 of 2003)

***Versus***

1.The Tahsildar  
Villupuram,  
Villupuram District.



S.A.NOS.156 & 227 OF 2003

2.Santhanam (Died)  
3.Thiruvengadam Pillai  
4.Krishna Pillai  
5.Radhakrishana Pillai

... Defendants /  
Respondents /  
Respondents

6.Lalitha W/o. Late Santhanam  
7.Mathiarasu S/o. Late Santhanam  
8.Vijaya Baskar S/o. Santhanam  
(R2 died, R6 to 8 brought on record as LR's  
of the deceased R2 vide Court order dated  
24.01.2023 made in CMP Nos.231 to 233  
of 2013 in S.A.No.156 of 2003)

... Respondents

**PRAYER:** Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree passed in A.S.No.171 of 2000, dated 19.08.2002 on the file of the Additional District Judge, Villupuram confirming the judgment and decree passed by the District Munsif, Villupuram, in O.S.No.394 of 1995 dated 07.11.2000.

For Appellants : Dr.A.Thiyagarajan  
Senior Counsel for  
Mr.S.Ramesh Kumar

For Respondent-1 : Mr.C.Selvaraj  
Additional Government Pleader

For Respondents 3-5 : Mr.Selvakumaran

For Respondents 6-8 : Mr.T.S.Baskaran



S.A.NOS.156 & 227 OF 2003

**S.A.NO.227 OF 2003**

Ranganathan Pillai (Died)

... Plaintiff /Appellant/  
Appellant

A.2. Sekar S/o. Ranganathan Pillai

A.3. Subbarayapillai Pillai S/o. Ranganathan Pillai

A.4.Ramakrishnan S/o. Ranganathan Pillai

A.5.Suseela D/o. Ranganathan Pillai

... Appellants

(A1 died, A2 to 5 brought on record as LR's'  
of the A1 vide Court order dated 24.01.2023  
made in CMP Nos.18460, 18461 & 18462 of 2022  
in S.A.No.227 of 2003)

***Versus***

1.Santhanam (Died)

2.Rukku

3.Thiruvengadam Pillai

4.Krishna Pillai

5.Radhakrishana Pillai

6.Krishnaveni

7.Illaiyaperumal

8.Ramamurthy

9.Raja @ Thirumalai

10.Kaliyamurthy

... Defendants /  
Respondents /  
Respondents

11.Lalitha W/o. Late Santhanam

12.Mathiarasu S/o. Santhanam

13.Vijaya Baskar S/o. Santhanam

... Respondents

(R1 died, RR11 to 13 brought on record as LR's'  
of the deceased R1 vide Court order dated  
24.01.2023 made in CMP Nos.234 to 236  
of 2013 in S.A.No.227 of 2003)



S.A.NOS.156 & 227 OF 2003

**PRAYER:** Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree passed in A.S.No.172 of 2000, dated 19.08.2002 on the file of the Additional District Judge, Villupuram confirming the judgment and decree passed by the District Munsif, Villupuram, in O.S.No.401 of 1993 dated 07.11.2000.

For Appellants : Dr.A.Thiyagarajan  
Senior Counsel for  
Mr.S.Ramesh Kumar

For Respondents 3-5 : Mr.Selvakumaran

For Respondents 11 to 13: Mr.T.S.Baskaran

### **COMMON JUDGMENT**

This Common Judgment will govern the Second Appeals in *S.A.No.156 of 2003 and S.A.No.227 of 2003*. They are directed against the common judgment and decree dated *August 19, 2002*, passed in *A.S.Nos.172 and 171 of 2000* by the 'Additional District Court, Villupuram' [henceforth 'First Appellate Court'], confirming the common judgment and decree dated *November 7, 2000*, passed in *O.S.No.401 of 1993 and O.S.No.394 of 1995* by the 'District Munsif Court, Villupuram' [henceforth 'Trial Court' for the sake of brevity].



S.A.NOS.156 & 227 OF 2003

2.For the sake of convenience, hereinafter, parties common to /  
part of both Suits will be referred to as per their litigative status in  
*O.S.No.401 of 1993.*

### **3. Background**

3.1. Ranganathan Pillai is the plaintiff in both the Original Suits.  
An extent of 1 Acre 50 Cents in *Wet Survey No.43/2-B* and an extent of 1  
Acre 63 Cents in *Wet Survey No.18/5-A* of Kappiyampuliyur Village  
belonging to Villupuram Taluk constitutes the Suit Property in both the  
Original Suits. Initially, the plaintiff filed a Suit in *O.S.No.401 of 1993* on the  
file of the Trial Court against 9 defendants seeking the relief of permanent  
injunction restraining the defendants from interfering with his peaceful  
enjoyment and possession of the Suit Properties.

3.2. According to the plaintiff, pending the Suit in *O.S.No.401 of*  
*1993*, the Tahsildar, Villupuram (D1 in *O.S.No.394 of 1995*) transferred the  
Patta of the Suit Property in the name of Santhanam (D1) and Govindasamy

5/28



S.A.NOS.156 & 227 OF 2003

@ Krishnasamy (D2) behind the plaintiff's back. Hence, he filed a Suit in *O.S.No.394 of 1995* for declaration, permanent injunction and mandatory injunction to retransfer the Patta.

3.3. Since the Suit Properties are one and the same, both the Original Suits were tried jointly by the Trial Court. Through a common judgment and decree, the Trial Court dismissed the plaintiff's claim. Hence, the plaintiff preferred First Appeals in *A.S.Nos.172 and 171 of 2000* on the file of the First Appellate Court. The First Appellate Court dismissed both the First Appeals through a common judgment and decree, confirming the Trial Court's common judgment and decree. Aggrieved with the same, the plaintiff is before this Court.

#### **4. Plaintiff's Case**

4.1. The case of the plaintiff is that the Suit Properties absolutely belong to the plaintiff. He has been in continuous possession and enjoyment of the Suit Property for more than three decades. The Chitta has stood in the name of the plaintiff for more than past 25 years. UDR Patta also stands in



S.A.NOS.156 & 227 OF 2003

the name of the plaintiff. The plaintiff has also prescribed title to the Suit Property by Adverse Possession. While doing so, D1 and D2 along with their followers tried to interfere with the plaintiff's possession and enjoyment of the Suit Property. Hence, he filed a Suit for permanent injunction against D1, D2, and their men and agents. In these circumstances, Santhanam (D1) and Govindasamy (D2), with the help of the concerned Village Administrative Officer and Tahsildar, transferred the Revenue Records pertaining to the Suit Property in their names without the plaintiff's knowledge.

4.2. Further case of the plaintiff is that, he was not aware of the cases filed by D1, D2 and one another before Sub-Court, Pondicherry. He did not receive any summons and he never engaged any advocate on his behalf. Hence, the Suit in *O.S.No.394 of 1995* seeking declaration, permanent injunction and mandatory injunction to re-transfer the Patta to his name.

## **5. Defendant's case**

5.1. According to the defendants, the Suit Properties do not belong to plaintiff and he is not in exclusive enjoyment of the same as owner



S.A.NOS.156 & 227 OF 2003

for several (three) decades. It is false to allege that Patta for the Suit Properties were given to him under Patta No.31.The plaintiff has schemingly obtained Patta under the Updating of Registry Scheme (UDR Scheme).

5.2. Suit Property and other properties originally belonged to one Seetharama Pillai of Villiyanur. He died intestate on *October 4, 1971*, bearing no Class-I and Class-II legal heirs. Seetharama Pillai's close relatives claimed his properties as his nearest heir by filing three separate Suits before Sub-Court, Pondicherry in the year 1971. All three suits were transferred to one court, and a compromise decree dated *August 25, 1992* was passed in *O.S.No.53 of 1976*.

5.3. The plaintiff herein is arrayed as D8 in the said Suit. The plaintiff was described as a lessee under the deceased - Seetharama Pillai. In that proceeding, a receiver was appointed, and the receiver took possession of properties including the Suit Property after due proclamation on *November 17, 1971*. The plaintiff herein surrendered possession with the receiver. Then, on the same day, the plaintiff herein executed a lease chit in favour of the



S.A.NOS.156 & 227 OF 2003

receiver, agreeing to pay 30 Kalams of paddy every year. Therefore, the plaintiff is estopped from claiming title over the Suit Property.

5.4. During the time period when the re-settlement Patta stood only in the name of Seetharama Pillai, the plaintiff got the Patta pertaining to the Suit Property transferred in his name by misrepresenting the facts and by taking advantage of his long enjoyment as lessee of Seetharama Pillai and the absence of the landlord in the village.

5.5. It is further stated that as per the compromise decree, D1 and D2 took delivery of the property from the plaintiff on *December 27, 1992*. Later, when D4 to D6 (D2's children) came to know the transfer of Patta in the name of the plaintiff, they gave an application for transfer of Patta in their name by producing the decrees and relevant documents.

5.6. The Tahsildar, Villupuram (D1 in *O.S.No.394 of 1995*), after following the due procedures, transferred the Patta to the name of D1 and D2. Thus, the plaintiff has no title over the Suit Property.

9/28



S.A.NOS.156 & 227 OF 2003

6. Before the Trial Court, the plaintiff himself was examined as P.W.1 and one Thanikachalam (Village Administrative Officer of Kappiyampuliyur) was examined as P.W.2 and three other witnesses were examined as P.W.3 to P.W.5 and Ex-A.1 to Ex-A.16 were marked on the side of the plaintiff. Further, Ex-X.1 to Ex-X.17 were marked through P.W.2. On the side of the defendants, Santhanam (D1) was examined as D.W.1 and one Ramadass (Regional Deputy Tahsildar) was examined as D.W.2. Ex-B.1 to Ex-B.8 were marked.

6.1. The Trial Court, after hearing both sides, came to the conclusion that the plaintiff miserably failed to establish under what capacity he has been holding the property; that the plaintiff was merely a lessee, and he cannot claim title over the Suit Property; that a lessee is always a lessee and not entitled to get an order of injunction against the true owner; that the plaintiff was a party to *O.S.No.53 of 1976*, and hence, the compromise decree passed therein is binding on the plaintiff; that the Suit is barred by the principle of *res judicata* and the plaintiff is estopped to contend against the compromise decree; that the plaintiff has not established his plea of adverse



S.A.NOS.156 & 227 OF 2003

possession; that the Tahsildar only after following due procedure, has transferred the revenue records to the name of D1 and D2. Accordingly, the Trial Court dismissed both the Original Suits.

6.2. In the First Appeal, the First Appellate Court concurred with the above findings of the Trial Court and dismissed the appeals through a common judgement and decree.

6.3. Feeling aggrieved with the said common judgement and decree, the plaintiff preferred these Second Appeals.

7. These Second Appeals were admitted by this Court on *February 18, 2003* and the following substantial questions of law were framed:

*“1. Whether on the facts and in the circumstances of the case, the Courts below were right in holding that the transfer of Patta in the name of the respondent was proper and justifiable one?*

*2. Whether on the facts and in the circumstances of the case, the Courts below were right in dismissing the appeal when*



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S.A.NOS.156 & 227 OF 2003

*the mutation entries and physical possession of the properties were admittedly to the appellant is correct in law?*

*3. Whether on the facts and in the circumstances of the case, the Courts below were right in holding to transfer of Patta is created based on the judgment passed by the Subordinate Judge, Pondicherry in O.S.No.53 of 1976 is correct in law, when the prayer in the suit was for a declaration to declare the said Govindasami Pillai as legal heir of the deceased Seetharama Pillai?*

*4. Whether on the facts and in the circumstances of the case, the Courts below were right in denying the relief claimed by the appellant when the respondent has not filed any suit for declaration and possession of the property is correct in law?*

*5. Whether on the facts and in the circumstances of the case, the Courts below were right in holding that the appellant is not entitled for a judgment and decree on the ground of adverse possession is correct in law even after the appellant proving the continuous possession of the property for more than 30 years?*

*6. Whether on facts and in the circumstances of the case, the judgment passed by the Pondicherry Court in O.S.No.53 of 1976 is binding on the appellant and the property which is situated in Tamil Nadu is correct in law?"*

### **Arguments**

8. Learned Senior Counsel for the appellant / plaintiff would argue that the plaintiff is in possession and enjoyment of the Suit Property for



S.A.NOS.156 & 227 OF 2003

three decades. Patta has been in his name since 1981. The plaintiff has been paying land tax for the Suit Property since 1976. The said documents coupled with the oral evidence prove that the plaintiff has been cultivating the Suit Property and is in possession and enjoyment of the same in an open, continuous and uninterrupted manner for more than the statutory period. While so, D1 and D2, on the strength of the compromise decree attempted to interfere with the plaintiff's possession and enjoyment of the Suit Property. Hence, necessity arose for the plaintiff to file a Suit for permanent injunction against the D1, D2 and their men and agents. Accordingly, the plaintiff filed the Suit in *O.S.No.401 of 1993*. Further, since D1 and D2 surreptitiously obtained Patta in their name, the plaintiff filed a Suit for declaration of title and other remedies in *O.S.No.394 of 1995*.

8.1. Further would submit that the compromise decree was obtained behind the back of the plaintiff. The said decree is not binding on the plaintiff. The Tahsildar did not adhere to the principles of natural justice before effecting the name transfers in the revenue records. The plaintiff is in settled possession for three decades, and perfects title by adverse possession also.



8.2. Further would submit that, the Suit Property herein is not a subject matter in in *O.S.No.53 of 1976*. The said Suit was filed for declaring the legal heirs of Seetharama Pillai.

8.3. Further would submit that, even while assuming that the plaintiff has not established the plea of adverse possession, D1 and D2 has no right to interfere with the plaintiff's settled possession except through process of law. They cannot interfere with the plaintiff's peaceful possession by means of physical force. Both the Courts below have concurrently held that the plaintiff was in possession of the Suit Property on date of the Suit; but dismissed the Suit on the ground that the plaintiff failed to prove the plea of adverse possession. Accordingly, he prayed to allow these appeals.

9. In response, the learned counsels for the defendants, would argue that the plaintiff was a lessee, and being the cultivator, he was arrayed as D8 in *O.S.No.53 of 1976*. Though he initially entered appearance through advocate, later he did not appear and hence, he was placed *ex parte*. The plaintiff had filed an application to set aside the *ex parte* decree and the same was dismissed on *June 28, 1999* (Ex-B.7 and Ex-B.8).



S.A.NOS.156 & 227 OF 2003

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9.1. Further, inviting the attention of the Court to Ex-B.1, the Counsels would submit that, in the said Suit a receiver was appointed and the plaintiff surrendered possession of the Suit Property to the receiver. On the same day, the plaintiff herein executed a lease chit in favour of the receiver, agreeing to pay 30 *Kalams* of paddy every year and gained possession again. Therefore, the plaintiff is estopped from claiming title over the Suit Property.

9.2. Further would submit that, after the compromise decree, the plaintiff surrendered possession of the Suit Property to D1 and D2 and requested to waive off the lease amount, for which D1 and D2 agreed. Later, on learning that the Patta was in the name of the plaintiff, they have changed it to their name through process of law following proper procedures.

9.3. Further would submit that, the plaintiff as a lessee cannot claim title against the legal heirs of the true owner and cannot maintain a Suit for injunction against the true owners. The Courts below have concurrently held that the plaintiff is not entitled to the relief of declaration and injunction against the true owner. There is no need to interfere with the same.



S.A.NOS.156 & 227 OF 2003

Accordingly, they prayed to dismiss these two appeals.

### **Discussion and Decision**

10.Heard the submissions made on either side and perused the materials available on record.

### **Question of Law No.5**

11.This question pertains to the plea of adverse possession. According to the plaintiff, he perfected title by adverse possession also. This Court deems fit to summarise the law in this regard. Adverse Possession commences with wrongful possession and is asserted against rightful ownership. Essential pleadings include actual, conclusive, open and uninterrupted hostile possession with clear intent to claim ownership of the property in question, contrary to the true owner's rights. In order to claim adverse possession, specific averments as to when and how the possession became adverse to the true owner are necessary for computing the limitation period from thereon. The plea of adverse possession is essentially a factual plea and such plea should be pleaded specifically and proved by adducing substantive legal evidence. Long Possession by itself would not be sufficient



S.A.NOS.156 & 227 OF 2003

to prove adverse possession. *Animus Possidendi* against the true owner is also necessary. Further, permissive possession would never be adverse to the real owner.

12.Further, the Hon'ble Supreme Court in ***Karnataka Board of Wakf Vs. Government of India and Others*** reported in **2004 (10) SCC 779** held as follows:

*“11.In the eye of the law, an owner would be deemed to be in possession of a property so long as there is no intrusion. Non-use of the property by the owner even for a long time won't affect his title. But the position will be altered when another person takes possession of the property and asserts a right over it. Adverse possession is a hostile possession by clearly asserting hostile title in denial of the title of the true owner. It is a well-settled principle that a party claiming adverse possession must prove that his possession is “nec vi, nec clam, nec precario”, that is, peaceful, open and continuous. The possession must be adequate in continuity, in publicity and in extent to show that their possession is adverse to the true owner. It must start with a wrongful disposition of the rightful owner and be actual, visible, exclusive, hostile and continued over the statutory period. (See S.M. Karim v. Bibi Sakina [AIR 1964 SC 1254], Parsinni v. Sukhi [(1993) 4 SCC 375] and*



S.A.NOS.156 & 227 OF 2003

*D.N. Venkatarayappa v. State of Karnataka [(1997) 7 SCC 567] .)*

*Physical fact of exclusive possession and the animus possidendi to hold as owner in exclusion to the actual owner are the most important factors that are to be accounted in cases of this nature. Plea of adverse possession is not a pure question of law but a blended one of fact and law. Therefore, a person who claims adverse possession should show: (a) on what date he came into possession, (b) what was the nature of his possession, (c) whether the factum of possession was known to the other party, (d) how long his possession has continued, and (e) his possession was open and undisturbed. A person pleading adverse possession has no equities in his favour. Since he is trying to defeat the rights of the true owner, it is for him to clearly plead and establish all facts necessary to establish his adverse possession. [Mahesh Chand Sharma (Dr.) v. Raj Kumari Sharma [(1996) 8 SCC 128]]”*

13. In the case on hand, there is no specific averment as to when and how the possession of the defendant became adverse to that of the real owner. Perusal of the evidence of P.W.1 would reveal that he was a lessee under Seetharama Pillai who is the original owner of the Suit Property. Relevant extract is hereunder:

“ . . . வழக்கு சொத்து ஆதியில் சீத்தாராம



S.A.NOS.156 & 227 OF 2003

பிள்ளைக்கு பாத்தியமாக இருந்தது. . . 2ம் பிரதிவாதி பாண்டிச்சேரி சார்பு நீதிமன்றத்தில் சொத்திற்காக வழக்கு தாக்கல் செய்தது பற்றி எனக்கு தெரியாது. . . தற்போதும் 40 வருடங்களாக ஷை சொத்து என் வசம் தான் உள்ளது . . . ஷை பட்டாவை என் பெயரில் மாற்றி கொடுக்க வேண்டும் என்றுதான் ஓ.எஸ்.எண். 394/95 என்ற வழக்கில் தாக்கல் செய்துள்ளேன். எனவே எனக்கு ஷை சொத்தில் அனுபவ பாத்யத்தை தந்துவிட்டது. . . .

**சீத்தாராமபிள்ளை இறந்தபிறகு அவருடைய சொத்து என்று 14 வருட காலம் அனுபவித்து வந்தேன். ஷையார் இறந்தபிறகு, என்னுடைய சொந்த சொத்து என்று பாவித்து அனுபவித்து வந்தேன்.** ஷை சீத்தாராம பிள்ளை இறந்தபிறகு, பிரதிவாதிகள் என்னிடம் எந்தவித தகராறும் செய்ததில்லை. எனவே பிரதிவாதிகளுக்கு வழக்கு சொத்து எந்தவித சம்பந்தமும் கிடையாது...

. . . ஷை சீத்தாராமனுக்கு 1 அயிட்ட சொத்து பூர்வீக சொத்து. ஒரு அயிட்ட சொத்து கிரயம் வாங்கிய சொத்து. ஷை சொத்திற்கு பட்டா 384 ச.எண். தெரியாது. எனக்கு படிக்கத் தெரியாது. . . 48 வருடங்களில் **20 வருடங்கள் குத்தகை கொடுத்து வந்தேன்.** பாண்டிச்சேரியில் தாக்கல் செய்த 3



S.A.NOS.156 & 227 OF 2003

வழக்குகளை பற்றியும் எனக்கு எப்போதுமே  
தெரியாது. . . . சாட்சியிடம் வக்காலத்து  
காண்பிக்கப்பட்டது. . . . பிறகு 10.5.96-ல்  
பிரதிவாதிகளின் பெயரில் பட்டா மாறிவிட்டது  
என்றால், தவறான முறையில் அவ்வாறு  
மாற்றிக்கொண்டு இருப்பார்கள், நான் உடனே வழக்கு  
தாக்கல் செய்துவிட்டேன். . .”

*(Emphasis supplied)*

14.It is admitted case that Seetharama Pillai died without Class-I legal heirs. Three Civil Suits were pending with regard to declaration of legal heirs of Seetharama Pillai. In these circumstances, the plaintiff could not have necessary *animus* against true owner. The plaintiff's possession as a lessee cannot be adverse to the title of the real owner. Hence, he cannot claim title by adverse possession. Hence, the Courts below were right in their concurrent finding that the plaintiff has not established his plea of adverse possession. The **Question of Law No.5 is answered accordingly in favour of the defendants and against the plaintiff.**

**Question of Law Nos.1, 2, 3, 4 and 6.**



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15.As stated *supra*, P.W.1 has deposed that he was lessee under Seetharama Pillai who is the original owner of the Suit Property. The said Seetharama Pillai died intestate on *October 4, 1971* without any Class-I and Class-II legal heirs. The plaintiff has enjoyed the Suit Property as lessee for long years. Ex-A.1 to Ex-A.13 – Kist Receipts would prove that he has been in possession and enjoyment of the property since 1976. Further, in the year 1981, the Tahsildar under the Updating of Registry Scheme (UDR) has issued Ex-A.15 – Patta No.383, in the name of the plaintiff. Revenue records like Chitta and Adangal stood in the name of the plaintiff until *May 10, 1993*. The evidence of D.W.1 and D.W.2 would also establish that the plaintiff was in possession and enjoyment of the Suit Property on the date of Suit. Thus, it can be safely concluded that the plaintiff has been in effective and undisturbed possession of the Suit Property for long years as a lessee.

16.The Suit in *O.S.No.53 of 1976* was filed praying for declaration of legal heirs of the said Seetharama Pillai. There is no evidence on record to show that the Suit Property herein is a subject matter of the said



S.A.NOS.156 & 227 OF 2003

Suit. In such a scenario, this Court is unable to understand the appointment of receiver and execution of Ex-B.1 - Lease Chit in favour of the receiver. The plaintiff denied the factum of execution of the Lease Chit. Perusal of Ex-B.2 – Compromise Decree, reveals that fact that the Suit Properties of *O.S.No.53 of 1975* are all situated in Pondicherry and the Suit Properties herein have not been included in the said Suit. Hence, this Court is of the considered view that *O.S.No.53 of 1976* concerns only the declaration of the legal heirs of late Seetharama Pillai and not the title over the Suit Property herein.

17. Admittedly, the plaintiff was not a party to the joint compromise. According to the plaintiff, he did not receive any summons in respect of the said Suit and he never engaged any advocate on his behalf. Even while assuming that the plaintiff was a party to the Suit and that he was set *ex parte*, he was not a party to the joint compromise. Since the Suit Property herein was not a subject matter of the Suit in *O.S.No.53 of 1976*, if any compromise is entered with respect to the Suit Property herein, the court ought to have issued notice to the plaintiff even while he was set *ex parte*. In these circumstances, the compromise decree in respect of the Suit Property



S.A.NOS.156 & 227 OF 2003

herein is not binding on the plaintiff.

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18. But at the same time, as stated *supra*, the plaintiff has failed to establish his title over the Suit Property by plea of adverse possession. Admittedly, Seetharamapillai was the original title holder of the Suit Property. He died leaving no Class-I legal heir. D1 and D2 have been declared as his legal heirs under Ex-B.2 – Compromise Decree. Thus, the title of Seetharamapillai over the Suit Property devolves upon his legal heirs - D1 and D2. Hence, D1 and D2 are entitled to effect name transfer of revenue records pertaining to the Suit Property in their name.

19. However, D1 and D2 merely on the strength of the compromise decree cannot evict or interfere with the plaintiff's peaceful possession and enjoyment of the Suit Property except by due process of law. As stated *supra*, the plaintiff has established that he has been in possession and enjoyment of the Suit Property as lessee for long years. It is pertinent to note here that, D1 and D2 have admitted that the plaintiff is enjoying the Suit Property as a lessee. Hence, D1 and D2 can evict the plaintiff only by



S.A.NOS.156 & 227 OF 2003

resorting to due course of law. They have no right to interfere with the plaintiff's possession except through process of law.

20.Further, the Regional Deputy Tahsildar, Villupuram, examined as D.W.2, had deposed that Ex-A.15 – Notice was sent to the plaintiff for the hearing that was to be held on *March 29, 1993*, however, the hearing was conducted only on *March 30, 1993*. There is no evidence or document adduced to show that the plaintiff participated in the hearing. Further, Ex-B.5 is the proceedings of Regional Deputy Tahsildar dated *May 10, 1993*, whereby the Tahsildar passed final order on the petition filed by D1 and D2 seeking name transfer in Patta. It is also silent as to whether notice was served to the plaintiff and whether the plaintiff was heard before the final order was passed. Tahsildar ought to have issued proper notice to the plaintiff and provided him with an opportunity to put forth his contentions. In the absence of evidence to even suggest that the plaintiff was served for the hearing dates, this Court is of the view that the principles of natural justice have been violated by the Tahsildar and that Ex-B.5 has been passed in a



S.A.NOS.156 & 227 OF 2003

hurried manner without following due procedure. Further, Ex-B.5 – Order has been passed pending the Suit in *O.S.No.401 of 1993*. Hence, the argument of the defendants that the plaintiff ought to have filed revision before competent revenue authority if he is aggrieved with Ex-B.5 and he cannot agitate the issue before the Civil Court, does not hold water. Therefore, the Courts below are not justified in holding that the transfer of Patta in the name of D1 and D2 was proper and justifiable.

21.Nonetheless, the plaintiff has not established his title over the Suit Property and hence, he is not entitled to the relief of declaration against the defendants and mandatory injunction against the Tahsildar. As far as the relief of injunction is concerned, the plaintiff is entitled to a limited injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the Suit Property except by resorting to due course of law. To this extent alone, the plaintiff is entitled to the relief of injunction. Accordingly, the Question of Law Nos. 1, 2, 3, 4 and 6 are answered.



S.A.NOS.156 & 227 OF 2003

### **Conclusion**

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22.In fine, the Second Appeals in S.A.Nos.156 and 227 of 2003 are partly allowed in the following terms:

i) The plaintiff is **not entitled** to the relief of declaration against the defendants and mandatory injunction against the Tahsildar, Villupuram as prayed for.

ii) The plaintiff's peaceful possession and enjoyment of the Suit Property shall not be interfered with by the defendants except by resorting to due course of law. To this extent, the relief of limited injunction is granted in favour of the plaintiff.

iii) Considering the facts and circumstances of the case, there shall be no order as to costs.



S.A.NOS.156 & 227 OF 2003

**07 / 06 / 2024**

Index : Yes

Internet : Yes

Neutral Citation : Yes

Speaking order

TK

To

1.The Additional District Judge  
Villupuram.

2.The District Munsif  
Villupuram.



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S.A.NOS.156 & 227 OF 2003

**R.SAKTHIVEL, J.**

TK

**PRE-DELIVERY COMMON JUDGMENT MADE IN**  
**S.A.NOS.156 AND 227 OF 2003**

**07 / 06 / 2024**