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S.No.664 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	30.07.2025
<i>Pronounced on</i>	19.09.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.664 of 2019
and C.M.P.No.12294 of 2019

1.Subramanian (Died)

2.S.Thaiyalnayaki

3.S.Dinesh

[* Appellants 2 and 3 brought on record as legal heirs of the deceased sole appellant viz., Subramanian vide Court order dated 26.08.2021 made in C.M.P.No.11709 of 2021 in S.A.No.664 of 2019 (PTAJ)]

.Appellants

versus

Nagalingam

.. Respondent

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside



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the judgment and decree dated 23.01.2019 passed in A.S.No.29 of 2016 on the file of learned Principal Sub-Ordinate Court, Myiladuthurai, reversing the judgment and decree dated 25.04.2016 made in O.S.No.296 of 2014 on the file of Additional District Munsif Court, Myiladuthurai.

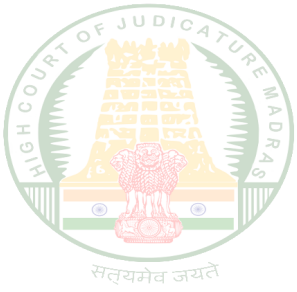
For Appellants : Mr.A.Prabakaran

For Respondent : Mr.B.Jawahar

JUDGMENT

Challenging in this Second Appeal as against the judgment and decree dated 23.01.2019 passed in A.S.No.29 of 2016 on the file of learned Principal Sub-Ordinate Court, Myiladuthurai, reversing the judgment and decree dated 25.04.2016 made in O.S.No.296 of 2014 on the file of Additional District Munsif Court, Myiladuthurai.

2.The defendant is on appeal the respondent is the plaintiff filed the above suit in O.S.No.296 of 2014 for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property by the plaintiff.



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WEB COPY 3. According to the plaintiff, the suit property belongs to one Kumar

@ Kumarasamy, Govindammal and they died about 40 years without any legal heirs. Their relative Ramamoorthy took the cultivation rights from Rajendran who cultivated the lands and out of the income, conducted Thimidhi function at Arulmigu Kathayi amman koil. Thereafter, the plaintiff is in possession and enjoyment of the suit property by virtue of an agreement dated 16.03.2006. It is submitted that the suit item no.1 is with the plaintiff and item no.2 is one Kasinathan and item no.3 is a dry land not suited for cultivation due to non-availability of irrigation. The defendants have no right over the suit properties. While so, the defendants attempted encroached upon the suit property. Hence, the plaintiff was constrained to file the above suit.

4. On the other hand, the claim of the plaintiff was resisted by the defendants stating that the originally suit property belongs to one Kumar @ Kumarasamy, Govindammal and they died without any legal heirs. Thereafter, the lands were kept uncultivated and the Nattama Panchayat

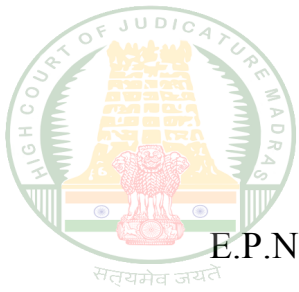


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took over the said land and cultivated the same. The money was used for conducting the Thimidhi function and other functions. Lastly, one Ramamoorthy as Nattamai cultivated the lands. At present the defendants as nattamai are cultivating the lands. The said Ramamoorthy did not give any deed in writing to the plaintiff. During the flood relief, the plaintiff has obtained the relief fraudulently by creating documents. The suit property is only used for performing pojās for the Kathaayi Amman Temple and also to conduct Thimidhi function and therefore, it has become the Charitable Trust Property. Without impleading the said Kathaayi Amman Temple, the suit is not maintainable, the suit properties are in possession and enjoyment of the defendants alone and therefore, the suit is liable to be dismissed.

5.The trial Court based on the materials placed before the trial Court decreed the suit by granting permanent injunction in favour of the plaintiff with a condition directing the plaintiff to pay a sum of Rs.3000/- every year to the Kathaayi Amman Temple for conducting Thimidhi and other functions.

6.Thereafter, the plaintiff decree holder filed the Execution Petition in



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E.P.No.166 of 2010 in O.S.No.314 of 2008 for executing the decree passed

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in the above suit. The Executive Court dismissed the execution petition stating that the plaintiff failed to pay the amount as per the conditional decree passed by the trial Court and that the decree of permanent injunction will operate only on complying the condition passed in the said decree. Thereafter, the plaintiff preferred an appeal in A.S.No.29 of 2016 on the file of Principal Sub Court, Mayiladuthurai set aside the decree passed by the trial Court and directed the defendants to handover the possession of the suit property within a period of two months and ordered for damages and also directed the plaintiff to file a separate petition for damages. Aggrieved over the same, the second appeal is preferred by the defendants.

7.At the time of admission, in this second appeal the following question of law was formulated:

a. Whether the 1st Appellate Court is right in reversing the Decree and Judgment of the Trial Court?

b. Whether the finding of the 1st Appellate Court, that for the relief of recovery of possession, determination of title pertaining to the suit property is not essential is correct ?

c. Whether the finding of the 1st Appellate Court with



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regard to Exs.A1 and A2 is legally valid ?

d. Whether it is mandatory upon the defendant in disproving the case of the plaintiff ?

8.The learned counsel appearing for the appellants/defendants submits that the 1st Appellate Court erroneously confirmed title upon the plaintiff in respect of the suit property by placing reliance upon Exs.A1 & A2. No title can be conferred upon the plaintiff based on Ex.A1 and A2 pertaining to the suit property. The 1st Appellate Court failed to consider that the suit filed without any declaratory relief of title is bad in the eye of law. The 1st Appellate Court failed to take note of the fact that the Executing Court in unequivocal terms held that the plaintiff do not have any right over the suit property, since the plaintiff failed to comply the conditional decree. The 1st Appellate Court is perverse in holding that the defendant failed to prove his case, which is contrary to the settled principle that plaintiff has to prove his case. The 1st Appellate Court has travelled outside the scope of the pleadings and prayer, by passing a decree for delivery of possession and awarding damages. Hence, prayed for the judgment and decree passed by the 1st Appellate Court.



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9. On the other hand, the learned counsel appearing for the respondent/plaintiff would submit that in Ex.A3, it is mentioned that the suit property originally belong to one Govindammal and after her demise one Ramamoorthy as legal representative of the said Govindammal was in possession and enjoyment of the suit property and thereafter on 16.06.2006 under an agreement, the plaintiff is in possession and enjoyment of the suit property. However, the trial Court erroneously held that the plaintiff failed to establish that he is the legal heir of the said Govindammal. The defendants have trespassed into the suit property and are cultivating the lands. The 1st Appellate Court appreciated the materials on record in a right perspective manner and set aside the judgment passed by the trial Court and directed the defendants to hand over the possession of the property to the plaintiff within a period of two months and also directed the plaintiff to file a separate petition under Order 20 Rule 12 CPC for damages which warrants no interference by this Court.

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10. Heard on both sides, records perused.



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11.The 1st Appellate Court based on the categorical admission made by the defendant during the cross examination came to the conclusion that the plaintiff was in lawful possession of the suit property and that the defendants have trespassed into the suit property.

12.The relevant portion of the 1st Appellate Court is extracted as hereunder:

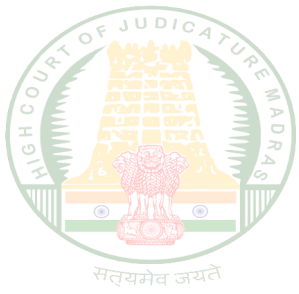
இந்த சூழ்நிலையில் தான் இந்த எதிர்வாதி தரப்பில் தாவா சொத்து அருள்மிகு காத்தாயி அம்மன் கோவில் அறங்காவலரால் நிர்வகிக்கப்பட்டு வருகிறது என்றும் அவாடிமிருந்து இந்த எதிர்வாதி குத்தகைக்கு பெற்று குத்தகை சாகுபடி செய்து வருவதாக கூறப்பட்டுள்ளது. வாதி தரப்பில் தாவா சொத்தில் அவருக்குள்ள சட்டரீதியான உரிமையை ஏற்கத்தக்க வகையில் நீரூபணம் செய்துள்ள சூழ்நிலையில் அதற்கு மாற்று வழக்கு கொண்டு வந்துள்ள இந்த எதிர்வாதியானவர் தாவா சொத்தில் அவருக்கு எவ்வாறு அனுபவம் வந்தது என்பதையும் அது சட்டரீதியாக ஏற்பட்டது என்பதையும் நீரூபணம் செய்ய வேண்டியது அவசியமாகும், ஆனால், இந்த எதிர்வாதி தரப்பில் கூறப்படுவது போல் தாவா சொத்தானது அருள்மிகு காத்தாயி அம்மன் கோவிலின் அறங்காவலரால் நிர்வகிக்கப்பட்டு வந்தது என்பதற்கும் அவாடிமிருந்து இந்த எதிர்வாதி அந்த சொத்தை குத்தகைக்கு பெற்று அனுபவம் செய்து வருகிறார் என்பதற்கும் எவ்வித ஆவணங்களையும் முன்னிறுத்த தவறி விட்டார். வாதி தரப்பில் அவருடைய வழக்கை நீரூபணம் செய்வதற்கு ஏற்கத்தக்க வகையில் ஆவணகளை தாக்கல் செய்துள்ள சூழ்நிலையில் வாதி மற்றும்



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எதிர்வாதியின் வழக்கை இந்நீதிமன்றம் சீர்தூக்கி பார்க்கும்போது வாதியின் வழக்கே ஏற்கத்தக்கதாக உள்ளதாக இந்நீதிமன்றம் முடிவுக்கு வருகிறது. எனவே, தாவா சொத்தில் கண்ட இந்த எதிர்வாதியின் அனுபவமானது சட்டரீதியானது இல்லை என்றும் அவருடைய அனுபவம் ஒரு ஆக்கிரமிப்புதாரர் என்றே இந்நீதிமன்றம் முடிவுக்கு வருகிறது. எனவே வாதி தாவா சொத்தினை பொறுத்து சட்டரீதியான அனுபவதாரர் என்பதால் அந்த சொத்தினை வசம் எடுக்க இந்த வாதிக்கு உரிமையுள்ளது என இந்நீதிமன்றம் முடிவுக்கு வந்து வாதிக்கு அவர் கோரியவாறு வசப்பரிகாரமும், ஆதனைத் தொடர்ந்து தாவாவில் கண்டவாறு தாவா சொத்து நஞ்சை நிலம் என்பதால் எதிர்வாதி வசம் எடுத்த காலத்திலிருந்து வழக்கு தாக்கல் செய்த தேதி வரையிலும் பின்னிட்டு வழக்கு தேதியிலிருந்து வசம் கொடுக்கும்வரை உள்ள வருமானத்தைப் பொறுத்தும் வாதிக்கும் அவர் கோரியவாறு பரிகாரம் கிடைக்கத்தக்கது என இந்நீதிமன்றம் முடிவுக்கு வருகிறது.

13.No perversity or infirmity is found in the suit findings of the 1st Appellate Court. Moreover, the decree passed in the suit in O.S.No.314 of 2008, does not say that the plaintiff loses his possessory right in the event of non-payment of Contribution to the temple. The Court has only directed the plaintiff to contribute funds to the temple. While so, the Executive Court went wrong in dismissing the execution petition.



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14.The defendants have filed Ex.B1 & B2 notebooks with regard to the collection and expenses incurred by the temple. Apart from the above documents, no other documents were produced on the side of the defendants to establish the fact that the suit land belongs to the temple and that they were cultivating the suit land as lessee to the temple and the income derived from the lands are utilized for the temple functions.

15.On the other hand, the plaintiff has relied upon Ex.A5 agreement deed dated 16.03.2006 in his favour said to have executed by one Ramamoorthy. According to the plaintiff, the said Ramamoorthy has conveyed the possession of the suit property to the plaintiff. In fact, the defendants themselves have admitted that the plaintiff was put in possession of the suit property in 2006 and the plaintiff has also paid money for the "Thee midhi" function to the Kathayee Amman Temple. Ex.A9, the signature of the 1st defendant in the notebook clearly established the fact that the plaintiff has paid a sum of Rs.3,120/- to the temple. The plaintiff has also produced Ex.A4 patta book to prove his possession in the suit property. Though, the defendants' contention is that the suit property was



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maintained by the Trustees of Kathayee Amman Temple and that the plaintiff was never in possession and enjoyment of the suit property and the defendants alone have cultivation rights, the same is not established by any tangible evidence. The 1st defendant himself admitted in the cross examination that based on the agreement dated 16.03.2006 executed by Ramamoorthy in favour of the plaintiff, the plaintiff took possession of the suit property, cultivating the same and contributed for the Thimidhi festival of Kathayee Amman Temple. The relevant portion of his evidence is extracted as hereunder:

அந்த உடன்படிக்கையின்படி தாவா சொத்தை வசம் எடுத்துக் கொண்டு
சாகுபடி செய்து காத்தாயி அம்மன் கோவில் தீமிதி திருவிழா 2006ம் வருடம்
முதல் வாதி நடத்தி வருகிறார் என்று சொன்னால் சரிதான்.

16.If really the said Ramamoorthy and the plaintiff were in wrongful possession, and the suit property was vested in the hands of the trustees of Kathayee Amman Temple, the defendants would have taken appropriate action to recover the property. The fact that no such action was taken by the defendants shows that, the plaintiff was in lawful possession of the suit property. Moreover, the defendants have also failed to prove that at what point of time the plaintiff was evicted from the suit property for non-



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payment of contribution and thereafter, cultivation rights were given to one Subramani. Furthermore, as per Ex.A1 and A2 the judgment and decree passed in O.S.No.314/2008, the possession and enjoyment of the plaintiff in the suit property was confirmed. Hence, the 1st Appellate Court has rightly held that the plaintiff is entitled for the relief of recovery of possession and damages which warrants any interference by this Court.

17. Accordingly, the substantial questions of law are answered as against the appellants /defendants.

18. In the result,

i. the second appeal is dismissed. No costs.

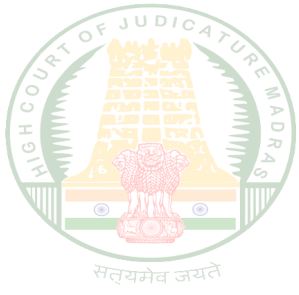
ii the judgment and decree dated 23.01.2019 passed in A.S.No.29 of 2016 on the file of learned Principal Sub-Ordinate Court, Myiladuthurai, is upheld. Consequently, connected miscellaneous petition is closed.

19.09.2025

vsn

Index: Yes/No

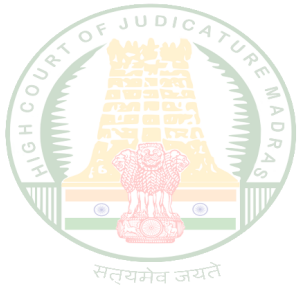
Speaking order / Non-speaking order



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WEB COPY To

- 1.The Additional District Munsif Court, Myiladuthurai
- 2.The Principal Sub-Ordinate Court, Myiladuthurai
- 3.The Section Officer,
V.R Section, High Court of Madras



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K.GOVINDARAJAN THILAKAVADI,J.

vsn

**Pre-delivery judgement made in
Second Appeal No.664 of 2019
and C.M.P.No.12294 of 2019**

19.09.2025