



A.S. No. 425 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.01.2026

PRONOUNCED ON : 28.07.2026

CORAM

THE HONOURABLE DR.JUSTICE A.D.MARIA CLETE

A.S. No. 425 of 2018

1. Mohammed Siddique
S/o.Mohammed Kasim,
M.Agaram Village,
Vridhachalam Taluk,
Cuddalore District.

2. Amanulla,
S/o.Abdul Rashid,
M.Agaram Village,
Vridhachalam Taluk,
Cuddalore District.

..Appellants/plaintiffs

[For themselves and as representing the Jamia
Mosque & Madrasa, M.Agaram]

Versus

1. The Special Officer,
M.Agaram Panchayat,
Karnatham Post,
Vridhachalam Taluk,
Cuddalore District.
2. The State of Tamil Nadu,
Rep By The Collector,
Cuddalore District, Cuddalore.
3. The Tahsildar
Vridhadhachalam,



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Vridhachalam Taluk,
Cuddalore District.

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..Respondent(s)/

Defendants

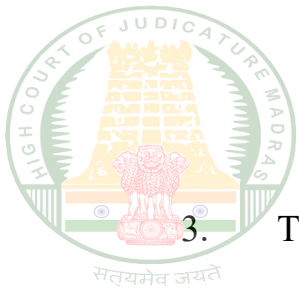
PRAYER: Appeal Suit is filed under Section 96 r/w. Order 41, Rule 1 of the Code of Civil Procedure, praying to set aside the judgment and decree dated 25.01.2018 passed in OS No.142 of 2011 on the file of the Principal District Judge, Cuddalore.

For Appellants : Mr.R.Gururaj
For Respondents : Mr.B.Tamil Nidhi, Government Advocate for R1.
Mr.M.Murali
Government Advocate for R2 & R3.

J U D G M E N T

This first appeal is directed against the judgment and decree of the Principal District Judge, Cuddalore, dated 25.01.2018, in O.S. No. 142 of 2011, by which the suit filed by the appellants was dismissed. The appellants were the plaintiffs and the respondents were the defendants before the trial court. They are referred to in this judgment by their rank in the suit.

2. The first plaintiff is the Muthavalli of the Jamia Mosque and Madrasa at M.Agaram, and the second plaintiff is a worshipper. The suit was brought by them for themselves and on behalf of the mosque, seeking a declaration of title to the suit property, recovery of possession, and, in the alternative, damages.



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3. The plaintiffs' case is that the mosque is a private mosque, about 200 years old, managed by the Muthavalli, and not registered with the Wakf Board, so the Wakf Act, 1995, is said not to apply to it. The plaintiffs' case is that the mosque holds various properties, either endowed in its favour or purchased by it, and that the suit property, an extent of about 3000 square feet in Gramanatham Survey No. 111/2 at M.Agaram Village, with a building on part of it, was purchased on 10.11.1953 under a registered sale deed. The building is said to have been damaged some years ago, leaving only portions of a wall. The plaintiffs allege that the Government wrongly entered the property in the revenue records as poramboke, and that an earlier suit, O.S. No. 85 of 2002, filed before the Principal Subordinate Judge, Cuddalore, sitting as the Wakf Tribunal, was dismissed on 23.04.2007 on the technical ground that an unregistered mosque could not maintain such a suit under the Wakf Act.

4. The plaintiffs further allege that on 08.08.2009 the first defendant, the Panchayat, demolished the walls of the building to construct a panchayat library, without acquisition, notice or compensation. The plaintiffs issued a legal notice dated 09.08.2009, calling upon the first defendant not to interfere with the plaintiffs' possession of the property and to pay compensation. The



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first defendant replied on 18.08.2009. The plaintiffs then filed W.P. No.

18113 of 2009, which was dismissed on 29.09.2009 on the ground that an unregistered wakf could not maintain a writ petition. However, in W.A. No. 144 of 2010, disposed of on 07.12.2010, the Division Bench granted the plaintiffs liberty to approach the civil court. Pursuant to that liberty, the present suit is filed for declaring that the suit property belongs to the Jamia Mosque & Madrasa, M.Agaram, and for directing the defendants to put the plaintiffs in possession of the suit property, failing which, through process of the court, and for future account to be determined in separate proceedings under Order 20 R.12 CPC, alternatively directing the defendants to pay the plaintiffs a sum of Rs. 12,00,000/- as damages with interest thereon at 12% p.a., from the date of the plaint till realisation, and for costs.

5. The first defendant, the Panchayat, resisted the suit. Its case is that the plaint does not correctly identify the property, its extent, or its boundaries; that Natham Survey No. 111/2 has been renumbered as R.S. No. 338, comprising 30 sub-divisions and a total extent of 0.39.0 hectares; that the first plaintiff holds 150 square metres in R.S. No. 338/23, where his dwelling house stands; that the adjacent extent of 089 square metres to the east is Government land; and that in the poramboke land in R.S. No. 338/29, a



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panchayat school functioned from 04.05.1955 until it was destroyed by fire and shifted elsewhere. The first defendant pleaded that funds were sanctioned for the construction of a library in R.S. No. 338/29 under a Government scheme, that the work was duly carried out, and that the library is now functioning with an electricity service connection. It further pleaded that the suit property is Government poramboke land over which the plaintiffs have no right, and that the present suit is barred by Section 11 of the Code of Civil Procedure by reason of the dismissal of O.S. No. 85 of 2002, the parties, property, title and cause of action being the same. The second and third defendants, the State and the Tahsildar, were represented but did not file a written statement.

6. The trial court framed the following issues :

1. Whether the plaintiff is entitled to relief for a declaration relating to the suit property as prayed for?
2. Whether the plaintiff is entitled to get relief to direct the defendants to put the plaintiff in possession of the suit Property?
3. Whether the plaintiff is entitled to seek a mandatory injunction under Order 20 Rule 12 CPC?



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4. Whether the plaintiff is entitled to alternative relief for Recovery of

the amount of Rs.12,00,000/- with a rate of interest of 12% for damages?

5. Whether the suit is maintainable for reasons without Correct survey numbers, description of property, and extent with boundaries?

6. Whether Resjudicata bars the suit?

7. To what other relief is the plaintiff entitled?

7. On the side of the plaintiffs, three witnesses were examined as P.W.1 to P.W.3 marked Ex.A.1 to Ex.A.13; Ex. A1 is a certified xerox copy of W.P.No. 18113/2009, Counter Affidavit, Additional affidavit and order of Hon'ble High Court of Madras in W.P.No, 18113/2009 and M.P.No. 1/2009 dated 29.09.2009. Ex.A2 is Certified Xerox copy of Judgment in O.S.No.85/2002 dated 23.04.2007, Proceedings of the District Collector, Cuddalore Administrative Sanction dated 01.07.2009, Proceedings of the Block Development Officer, Cuddalore Tender, dated 06.07.2009, Proceedings of the Block Development Officer, Cuddalore work order dated 17.07.2009, Village Adangal Extract Revenue Record dated 12.09.2009 and Field Map Book Sketch dated 12.09.2009. Ex.A3 is a certified copy of the



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sale deed executed by Abubajer, Ibrahim Sahib and Sukkur Sahib in favour

of Gulam Mohamed Sahib dated 10.11.1953. Ex.A4 is Judgment in Writ

Appeal No.144/2010 dated 07.12.2010. Ex.A5 is a photocopy. Ex.A6 is

notice issued by the Plaintiffs' Counsel to the President, M.Agaram

Panchayat, Vridhachalam Taluk dated 08.09.2009. Ex.A7 is notice issued by

the Plaintiffs' Counsel to the President, M.Agaram Panchayat, Vridhachalam

Taluk and Panchathcaram, S/o—Vaiyapuff, M.Agaram, dated 10.09.2009.

Ex.A8 is a Registered Sale Deed executed by Mohamed Kuthus in favour of

Habibullah Sahib, dated 04.10.1995. Ex.A9 is a Registered Sale Deed

executed by Haji SA Mohamed Kasimshaib in favour of Habibullah Sahib,

dated 04.10.1995. Ex.A10 is 2 photos of the dilapidated condition of the

building. Ex.A11 is 2 Photos of the old School Building. Ex.A12 is 1 photo

of the old School Building. Ex.A13 is a certified copy of the sale deed

executed by Abubaker, Ibrahim Sahib and Sukkur Sahib in favour of Gulam

Mohamed Sahib dated 10.11.1953.

8. On the defendants' side, two witnesses were examined as D.W.1 and

D.W.2 and marked Ex.B.1 to Ex.B.9. Ex.B.1 is a true copy of the

proceedings of the District Collector dated 01.07.2009, with connected

papers. Ex.B.2 is a true copy of the circular of the District Collector dated



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05.08.2009. Ex.B.3 is a true copy of the notice by Tom Tom dated

15.08.2009. Ex.B.4 is a true copy of the proceedings of the village committee dated 19.06.2009. Ex.B.5 is a true copy of the resolution of the village committee dated 15.08.2009. Ex.B.6 is E.B. cards – 2; Ex.B.7 is C.D. and 8 photos of the suit property. Ex.B.8 is a true copy of the resolution of the village committee dated 15.08.2010. Ex.B.9 is 3 photos with receipt for payment of Rs.210/- dated 24.01.2016.

9. On consideration of the evidence, the trial court held that the plaintiffs had failed to establish their title. It found that the 1953 sale deed (Ex.A.3) showed a purchase by one Gulam Mohamed Sahib in his individual capacity, and that nowhere in that deed was it stated that the property was purchased by or for the mosque; that no patta stood in the name of either the purchaser or the mosque; that the first plaintiff (P.W.1) admitted that the suit property was 3000 square feet but did not know the total extent of Survey No. 111/2 and did not deny that it had 30 sub-divisions; and that P.W.1 admitted that a panchayat school had functioned on the property from 1953 until 1982, when it was damaged by fire, and that a panchayat library now stands and functions there. The trial court held that the plaintiffs had not proved that the suit property belonged to the mosque, that it was in the possession of the



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purchaser under Ex.A.3, or how and when possession came to be transferred to the Panchayat, and that the evidence of P.W.2 and P.W.3 did not support the plaintiffs' case. The trial court held that the burden lay on the plaintiffs to establish their own title, which they had failed to discharge, and accordingly dismissed the suit.

10. Aggrieved by the Judgment and Decree, the plaintiff preferred this appeal. In the grounds of appeal, the plaintiffs contend that the judgment is against the weight of evidence; that the sale deed is an ancient document which shows that the property was purchased on behalf of the mosque; that the Government unilaterally and wrongly entered the property as poramboke; that the wakf property cannot be usurped, the principle being 'once a wakf, always a wakf'; and that the trial court failed to properly appreciate the documents or the cited authorities.

11. The learned counsel appearing for the appellants/plaintiffs would submit that O.S. No. 85 of 2002 was not disposed of on the merits but was dismissed solely on technical grounds, and therefore the principle of res judicata does not bar the present suit. It is further submitted that the Civil



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Court has jurisdiction to adjudicate the question of title to the suit property.

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According to the appellants, Ex. A3, the sale deed, clearly establishes that Gulab Mohideen purchased the suit property in his capacity as the Manager of the mosque. When the property belongs to the plaintiffs, the Government could not have constructed a library thereon without acquiring the property in accordance with law. The Government cannot perfect title merely by asserting long possession or adverse possession over property belonging to the mosque.

12. The learned counsel would further submit that the defendants have not produced any document of title in respect of the suit property. Mere letters, resolutions, entries in revenue records, or a description of the property as “poramboke” would neither create nor extinguish title. Although the defendants had the best evidence relating to the alleged Government title, they withheld it from the Court, and therefore an adverse inference ought to be drawn against them.

13. In support of the said contentions, reliance was placed upon **Sayyed Ali and others v. A.P. Wakf Board, Hyderabad and others, (1998) 2 SCC**



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642, for the proposition that once a property is dedicated as wakf, it retains its

character as wakf property; **Gitarani Paul v. Dibyendra Kundu alias**

Dibyendra Kumar Kundu, AIR 1991 SC 395, for the proposition that once

title is established, recovery of possession must follow; **Corporation of the**

City of Bangalore v. M. Papaiah and another, AIR 1989 SC 1809;

Senniappan v. The Deputy Tahsildar, Palladam and others, 2005 (2) LW

616; and M.E.A. Mohamed Ali and others v. The District Revenue

Officer, Ramanathapuram and others, 2005 (2) LW 196, for the

proposition that revenue entries and patta do not create or extinguish title.

Reliance was also placed upon **N.S. Kuppuswamy Odayar and another v.**

Panchayat Narthangudi, 1971 (1) MLJ 199, to contend that the mere

description of a property as poramboke in the resettlement register would not

make it Government property; **Varadarasu alias Devarasu v. Malone**

Veerasamy alias Thanapal and others, 2003 (2) LW 152, to contend that

title can be conclusively decided only by the Civil Court; **Surat Cotton**

Spinning and Weaving Mills Ltd. v. Secretary of State, AIR 1937 PC 152,

State of Punjab v. M/s. Modern Cultivators, AIR 1965 SC 17, and

Bhavnagar Municipality v. Union of India and another, AIR 1990 SC

717, in support of the contention that withholding material evidence warrants

an adverse inference and that mere resolutions or correspondence cannot



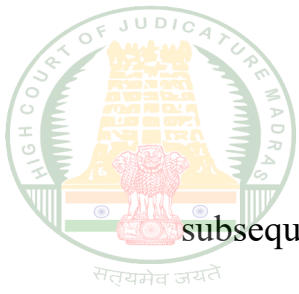
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confer title. It is therefore contended that the plaintiff established title through

Ex.A3, the defendants have failed to establish any lawful title over the suit property, and that the plaintiffs are entitled to the reliefs sought in the suit.

14. The learned counsel appearing for the respondents/defendants would submit that the plaintiffs have failed to establish that the suit property belongs to the mosque. Ex.A3, the sale deed, contains no recital indicating that the property was purchased for and on behalf of the plaintiffs' mosque. The trial Court, upon perusal of Ex.A3, found that Gulam Mohamed Sahib had purchased the property mentioned therein and that nowhere in the sale deed was it stated that the purchase was made for the plaintiffs' mosque. The trial Court therefore rightly concluded that the plaintiffs had failed to establish that the property covered by Ex.A3 belonged to the mosque.

15. It is further submitted that the plaintiffs have not proved that the property covered by Ex.A3 is the same property described in the suit. They have also failed to furnish the correct location, boundaries and extent of the property over which title is claimed. Natham Survey No.111/2 was



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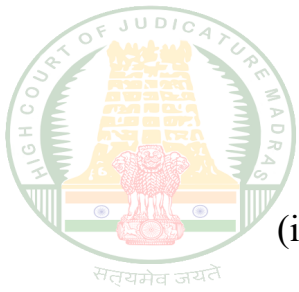
subsequently renumbered as R.S.No.338, with a total extent of 0.39.0

hectares, and was divided into 30 subdivisions. The first plaintiff holds only 150 square metres in R.S.No.338/23, where a dwelling house is situated. In contrast, the panchayat library has been constructed in R.S.No.338/29, which, according to the revenue records, belongs to the Government. Therefore, the plaintiffs have no right or title over the property on which the library is situated.

16. The learned counsel would accordingly submit that, upon proper appreciation of Ex.A3 and the revenue records, the trial Court rightly held that the plaintiffs failed to prove both their title and the identity of the suit property. Accordingly, the judgment and decree of the trial Court do not warrant interference, and the appeal is liable to be dismissed.

17. The following points arise for determination in this appeal:

- (i) Whether the suit is barred by res judicata under Section 11 of the Code of Civil Procedure by reason of the dismissal of O.S. No. 85 of 2002?



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(ii) Whether the plaintiffs have established their title to the suit property?

(iii) Whether the suit property is sufficiently identified to sustain a decree for the declaration of title and the recovery of possession?

(iv) Whether the plaintiffs are entitled to a declaration, recovery of possession, or, in the alternative, damages?

(v) To what relief are the parties entitled?

Point (i) :

18. It is convenient to address the plea of res judicata first, as it goes to the maintainability of the suit. For a matter to operate as res judicata under Section 11 of the Code of Civil Procedure, the former suit must have been heard and finally decided on its merits by a competent court. The earlier suit, O.S. No. 85 of 2002, was filed before the Principal Subordinate Judge, Cuddalore, sitting as the Wakf Tribunal, and was dismissed on the technical ground that an unregistered mosque could not maintain such a suit under the Wakf Act; it was not a decision on the merits of the question of title. A dismissal on such a preliminary or technical ground does not bar a subsequent suit on the principle of res judicata. This conclusion is reinforced by the fact that the Division Bench of this Court, in **W.A. No. 144 of 2010**, expressly



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granted the plaintiffs liberty to approach the civil court, which they did. The

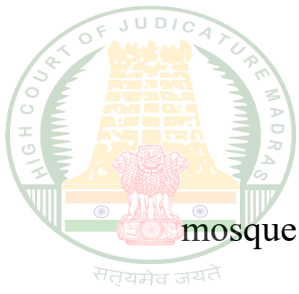
present suit is, therefore, maintainable and is not barred by res judicata. Point

(i) is answered in favour of the appellants/plaintiffs.

Point (ii) :

19. The law on the burden of proof in a suit for a declaration of title is well settled. A plaintiff seeking a declaration of title and recovery of possession must succeed on the strength of his own title, not on the weakness or absence of the defendant's title. It is not enough to show that the defendant has no title; the plaintiff must affirmatively establish that he, or those whom he represents, holds the title claimed.

20. The plaintiffs founded their claim of title on the registered sale deed dated 10.11.1953, marked as Ex.A3, contending that the property had been purchased for the mosque. However, on a perusal of Ex.A3, no reference to any mosque appears, and certain recitals are missing from the certified copy. It is, however, noted from the documentary evidence that another certified copy of the very same sale deed dated 10.11.1953 has also been marked as Ex.A13. In Ex.A13, the purchaser, Gulam Mohamed Sahib, is described as the Manager of a mosque. Nevertheless, the document does not identify the



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mosque referred to therein as the plaintiffs' Jamia Mosque and Madrasa at

M.Agaram, nor does it expressly state that the property was purchased for and on behalf of the plaintiffs' mosque. Therefore, the mere description of the purchaser as the Manager of a mosque is insufficient to establish that the property covered under Exs.A3 and A13 belonged to the plaintiffs' mosque. The reliance placed upon the presumption attaching to an ancient document does not bridge this evidentiary gap. The presumption under Section 90 of the Indian Evidence Act extends only to the genuineness and due execution of a document more than thirty years old and produced from proper custody; it neither establishes the truth of all the recitals contained therein nor proves that the property vested in the plaintiffs' mosque. In the absence of reliable evidence establishing such vesting, the plaintiffs' claim of title is not made out.

21. Their own evidence compounds the plaintiffs' difficulty. The first plaintiff, examined as P.W.1, admitted that no patta stood in the name of the purchaser or of the mosque, and, significantly, that a panchayat school functioned on the property from 1953 until 1982, after which, the building having been damaged by fire, the present library was constructed. That admission is wholly inconsistent with the assertion of continuous, exclusive



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ownership and possession by the mosque, and the plaintiffs led no evidence to explain by what arrangement and on what terms the property is said to have been made available to the Panchayat for a school over so long a period. The evidence of P.W.2 and P.W.3 added nothing, for, though they spoke of the existence of records, no such records were produced. While the entries in the revenue records produced by the defendants do not, by themselves, confer title on the Government, the burden was on the plaintiffs to prove their own title, and that burden remained undischarged. Point (ii) is therefore answered against the appellants/plaintiffs.

Point (iii) :

22. A decree for declaration of title and recovery of possession can be granted only in respect of property that is identified with certainty, for such a decree must be capable of execution. Here, the identity of the suit property was left in serious doubt. The plaintiffs described it as about 3000 square feet in Gramanatham Survey No. 111/2, but P.W.1 admitted that he did not know the total extent of that survey number and did not deny that it comprised 30 sub-divisions, now renumbered as R.S. No. 338. The plaintiffs did not establish in which sub-division the property purchased under Ex.A.3 lay, nor did they correlate it with the present survey numbers. In contrast, the defendants' specific case was that the library stands in R.S. No. 338/29 and



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that the first plaintiff's own house is in R.S. No. 338/23. In the absence of a clear identification of the property by reference to the current survey numbers, extent and boundaries, no decree for declaration or possession could in any event have been granted. Point (iii) is answered against the appellants/plaintiffs.

Point (iv) :

23. Since the plaintiffs have failed to prove their title to the suit property, and have also failed to identify it with the certainty necessary to sustain a decree, they are entitled neither to a declaration of title nor to recovery of possession. The alternative claim for damages must share the same fate, for that claim too rests upon the plaintiffs' ownership of the property said to have been demolished and built upon; ownership not having been established, no right to damages arises. The plea founded upon the maxim 'once a wakf, always a wakf' does not assist the plaintiffs, for that principle presupposes that the property was wakf property to begin with, which is the very thing the plaintiffs have failed to prove. The plaintiffs themselves pleaded that the mosque is a private, unregistered mosque to which the Wakf Act does not apply. The trial court was, therefore, right in dismissing the suit, and its conclusion calls for no interference. Point (iv) is answered against the appellants/plaintiffs.



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24. Accordingly, the appeal is dismissed, and the judgment and decree of the Principal District Judge, Cuddalore, dated 25.01.2018, in O.S. No. 142 of 2011, dismissing the suit, are confirmed. No order as to costs. Consequently, the connected miscellaneous petition, if any, is closed.

28.07.2026

Index: Yes / No

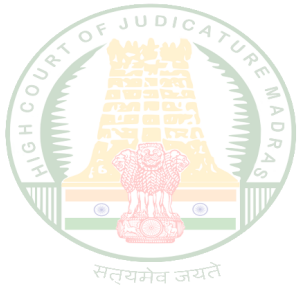
Speaking order/Non-Speaking order

Neutral Citation: Yes / No

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To

1. The Principal District Judge,
Cuddalore.
2. The Special Officer,
M.Agaram Panchayat,
Karnatham Post,
Vridhachalam Taluk,
Cuddalore District.
3. The Collector,
Cuddalore District,
Cuddalore.
4. The Tahsildar
Vridhachalam,
Vridhachalam Taluk,
Cuddalore District.



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DR. A.D. MARIA CLETE, J

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5. The Section Officer,
Vernacular Records,
High Court of Madras.

PRE-DELIVERY JUDGMENT MADE IN
A.S. No. 425 of 2018

28.07.2026