



S.A. No. 355 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 05.01.2026
PRONOUNCED ON : 14.07.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

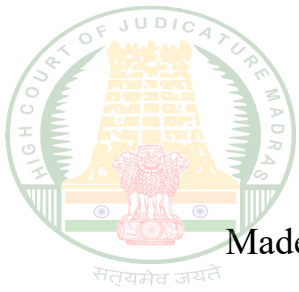
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1. Ramalingam
S/o Velu
2. Srinivasan
S/o Ramalingam
3. Pushpa
D/o Kaliaperumal
4. Chitra
W/o Soundarayar, All Are residing At
Kanjamanathanpettai, Kurinjipadi Tk,
Cuddalore Dt.

..Appellant(s)

Vs

1. A/m Siddhi Vinayagar Koil
Kanjamanathanpettai,
Rajamanickam S/o Palaniyandi,
Kanjamanathanpettai, Kurinjipadi Taluk,
Cuddalore District. Cause Title Amended Vide
Court Order Dated 03/01/2025 Made In Cmp
Nos 27267 Of 2024 In Sa No 355 Of
2014(rnmj)
2. A/m Siddhi Vinayagar Koil
Kanjamanathanpettai.
rep. By present Trustee, Rajamanickam S/o
Palaniyandi, Kanjamanathanpettai, Kurinjipadi
Taluk, Cuddalore District. Cause Title
Amended Vide Court Order Dated 03/01/2025



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Made In Cmp Nos 27267 Of 2024 In

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..Respondent(s)

PRAYER:- This Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 02.12.2013 passed in A.S.No.31 of 2013 on the file of the I Addl.Sub Court, Cuddalore, in reversing the judgment and decree dated 01.02.2013 passed in O.S.no.391 of 2010 on the file of the Prl.District Munsif Court, Cuddalore.

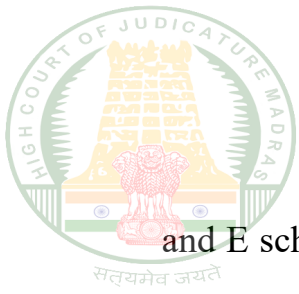
For Appellant(s): M/s.P.Mani
V.Murali

For Respondent(s): M/s. R.Gururaj
D.Baskar
Manjula Baskar For Sole Respondent

J U D G M E N T

This Second Appeal is filed against the judgment and decree dated 02.12.2013, passed in A.S.No.31 of 2013 on the file of the I Additional Sub Court, Cuddalore, reversing the judgment and decree dated 01.02.2013, passed in O.S.No.391 of 2010 on the file of the Principal District Munsif Court, Cuddalore.

2. The defendants in O.S.No.391 of 2010 are the appellants in this Second Appeal. The plaintiff temple filed the suit to recover possession of the B, C, D,



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and E schedule properties. The trial Court dismissed the suit. The first appellate

Court reversed the decree and directed delivery of possession. Accordingly, the defendants have filed this Second Appeal.

3. For convenience, the parties are referred to as they were before the trial court.

4. Brief Facts: The plaintiff is A/M Siddhi Vinayagar Koil, Kanjamanathanpettai. According to the plaintiff, the temple is a public temple but is not under the control of the Hindu Religious and Charitable Endowments Department. It is stated that the villagers manage the temple through elected trustees. The original plaintiffs claimed to be both trustees and worshippers of the temple.

5. The plaintiff's case is that the A schedule property, measuring 46½ feet east-west and 93 feet north-south, was purchased for the temple under a registered sale deed dated 04.05.1918. According to the plaintiff, the property was vacant at the time. It is further stated that, by a registered rent deed dated



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21.03.1940, one Chokkalinga Mudaliar became a tenant in respect of a portion

measuring 40 feet east-west and 45 feet north-south. He is said to have erected a superstructure, resided there, and later to have occupied the entire A schedule property. The plaintiff alleges that the present defendants are successors in interest of the said tenant, either as legal heirs or as persons claiming under an unauthorised transfer of tenancy. The plaintiff states that the trustees came to know that the "A" schedule property belongs to the temple. The defendants have not attorned to the temple. The defendants are estopped from denying the plaintiff's title.

6. The plaintiff has confined its claim to the suit site and has specifically stated that it is not interested in the buildings or superstructures erected thereon by the defendants. The plaintiff has further pleaded that, in the event the Court finds that the relationship of landlord and tenant has not been established, it seeks, in the alternative, recovery of possession based on its title. Accordingly, the suit has been instituted for a direction to the defendants to deliver vacant possession of the suit B, C, D and E Schedule properties, which are in their respective possession, to the plaintiff, and for future damages.



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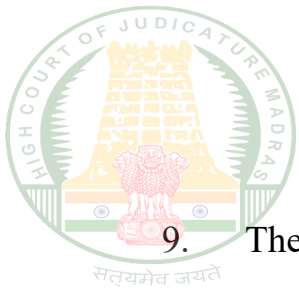
7. The defendants denied the claim. Their main defence was that there was

no landlord-tenant relationship between the plaintiff temple and the defendants.

They denied that the sale deed dated 04.05.1918 related to the suit property.

They also pleaded that the rent deed dated 21.03.1940 was not in favour of Siddhi Vinayagar Koil, but in favour of Vela—Vinayagar Temple, which, according to them, was a different temple.

8. The defendants further pleaded that the suit properties were originally Government natham poramboke lands. The defendants have also prescribed title by adverse possession. According to them, the Government assigned the properties to them or their predecessors and issued pattas. They pleaded that they had constructed houses, paid taxes, obtained electricity connections, and were in possession as absolute owners, not as tenants. The plaintiff is not entitled to seek eviction based on title. Alternatively, since the plaintiff has not sought a declaration of title, has not valued the suit for a declaration of title, and has not sought recovery of possession under Sec. 25 or 30 of the TNCF Act, the plaintiff is not entitled to seek recovery of possession from the defendants either based on a tenancy relationship or based on title. Hence, the defendants pray that the suit be dismissed with costs.



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9. The trial Court framed the following issues:

1. Is there a landlord-tenant relationship between the plaintiff temple and the defendants?

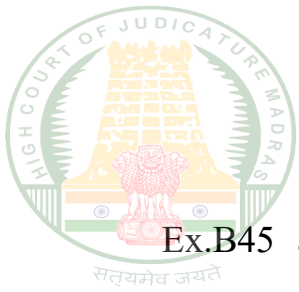
2. Whether the suit is properly valued?

3. Whether the plaintiff is entitled to the relief of delivery of possession of the suit properties?

4. To what other relief the plaintiff is entitled?

10. On the plaintiff's side, P.W.1 to P.W.5 were examined, and Exs.A1 to A4 were marked. Ex.A1 is the sale deed dated 09.08.1906 in favour of Sivabackiammal. Ex.A2 is the sale deed dated 04.05.1918 in favour of Duraisamy and another. Ex.A3 is the registered rent deed dated 21.03.1940. Ex.A4 is the resolution dated 08.02.2005.

11. On the defendants' side, D.W.1 to D.W.6 were examined, and Exs.B1 to Ex.B78 were marked. Ex.B6, Ex.B17, Ex.B35 and Ex.B44 relate to pattas/assignment records. Ex.B8, Ex.B9, Ex.B19, Ex.B20, Ex.B38, Ex.B39,

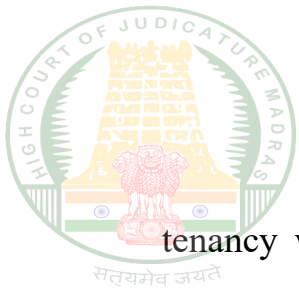


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Ex.B45 and Ex.B46 are chitta/adangal records. Ex.B10, Ex.B18, Ex.B37, Ex.B41 and Ex.B47 are survey notices. Several house tax and electricity receipts were also marked, including Ex.B11, Ex.B13, Ex.B15, Ex.B12 (a water tax receipt), Ex.B14 (the death certificate of one Velu), Ex.B21 to Ex.B34, Ex.B40, Ex.B48 to Ex.B61, and Ex.B63 to Ex.B78. Ex.B62 is the registered sale deed dated 28.07.2010 in favour of the fourth defendant.

12. The trial court held that the plaintiff had failed to prove the landlord-tenant relationship. It noted that P.W.1, the plaintiff's own witness, admitted in cross-examination that Ex.A3 was executed by the trustees of Vela Vinayagar Temple, not by the plaintiff temple; that the plaintiff produced no rent receipt, rent demand, rent account, or notice of attornment; and that P.W.3 and P.W.5, also examined for the plaintiff, admitted that the defendants had been in possession for ten to fifteen years and had obtained patta. On this material, it held that the plaintiff had failed to prove the landlord-tenant relationship. It noted that the plaintiff itself pleaded, in the alternative, that the plaintiff would seek eviction on title if tenancy failed, but held that, since no specific prayer to that effect was made in the prayer column, the suit remained correctly valued and fee-paid as a tenancy suit under Section 43 of the Tamil Nadu Court Fees and Suits Valuation Act. On the issue of entitlement to relief, it held that, once



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tenancy was not proved and no valid alternative prayer on title existed, the plaintiff was not entitled to recovery of possession. On this reasoning, the suit was dismissed with costs.

13. Aggrieved by the trial court judgment, the plaintiff preferred an appeal. The first appellate court allowed the appeal and decreed the suit. The judgment substantially reproduces the grounds of appeal and a series of decisions cited by the plaintiff's counsel, including the propositions that patta does not confer title, that a person cannot plead title and adverse possession together, and that the court can mould relief based on pleadings and evidence. It therefore directed the defendants to deliver possession of the B, C, D, and E-schedule properties within three months.

14. Aggrieved by the judgment and decree of the first appellate court, the present Second Appeal has been filed by the defendant. This Second Appeal was admitted on the following substantial questions of law:

1. Whether the lower appellate Court erred in law in decreeing the suit for recovery of possession without the relationship of landlord and tenant between the plaintiff and defendants being established, particularly when



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the plaintiff laid the suit for eviction as if the defendants are the tenants with respect to the suit properties?

2. Whether in law the defendants are entitled to remain in possession of the suit properties when the same are Government Natham poramboke land and the defendants are in possession of the same pursuant to assignment orders issued by the Government and when the patta, chitta and adangal stand in the name of the defendants and their predecessors for more than the statutory period?

3. Whether the judgment and decree passed by the lower appellate Court are sustainable in law when it has failed to frame necessary points for determination and render definite findings on such points and when it has simply allowed the appeal after extracting the grounds of appeal and the evidence of P.Ws. and D.Ws.?

15. Learned counsel appearing for the appellants/defendants submitted that the judgment of the first appellate Court is legally unsustainable for non-compliance with the mandatory requirements of Order XLI Rule 31 CPC. The first appellate Court failed to formulate or specify the necessary points for determination arising in the appeal. Although it allowed the appeal and reversed



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the judgment of the trial Court, it did not assign any proper or independent

reasons for doing so. In support of this contention, reliance was placed on **G.**

Saraswathi and another v. Rathinammal and others, Civil Appeal No.2112

of 2018; **K. Karuppuraj v. M. Ganesan**, Civil Appeal Nos.6014–6015 of

2021; and **Somakka (Dead) by LRs. v. K.P. Basavaraj (Dead) by LRs.**, Civil

Appeal No.1117 of 2009.

16. It was further submitted that the first appellate Court ought to have dismissed the appeal and confirmed the trial Court's judgment and decree, since the plaintiff had failed to establish any landlord-and-tenant relationship between the plaintiff temple and the defendants.

17. Learned counsel further submitted that the suit properties were originally Government Natham poramboke lands vested in the Government. Considering the long possession and enjoyment by the defendants and their predecessors, the Government assigned the respective portions of the suit properties to them by issuing “D” pattas and assignment orders. Consequently, the defendants and their predecessors acquired lawful rights over the properties under the Government assignments. The first appellate Court ought to have taken note of

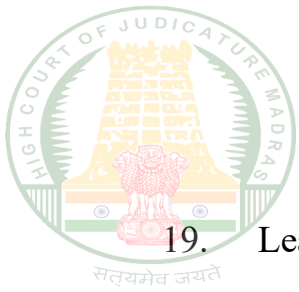


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these assignment proceedings and dismissed the plaintiff's appeal.

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18. It was further submitted that the plaintiff had failed to establish that the suit properties, or the survey number in which they were situated, formed part of the property allegedly purchased by the plaintiff temple under Ex.A2 sale deed dated 04.05.1918. It was submitted that the defendants had expressly disputed the plaintiff's title to the suit properties and had asserted absolute and independent rights over them under the Government assignments and "D" pattas. A bare suit for recovery of possession, without seeking the relief of declaration of title and without paying the necessary court fee for such declaratory relief, was not maintainable. In support of this submission, reliance was placed upon **Arulmigu Selva Vinayagar Koil, Manjakuppam and Arulmigu Dharmarajar Koil, Manjakuppam, Cuddalore, represented by its Executive Officer v. Mani alias Kalaimani and another**, S.A.No.1001 of 2014, decided on 23.05.2019, and **Padmavathi and others v. The Idol of Sri Renganathaswami, Srirangam, represented by its Joint Commissioner/Executive Officer and others**, A.S.(MD) No.143 of 2014, decided on 02.08.2024. On the above grounds, the appellants prayed that the Second Appeal be allowed.

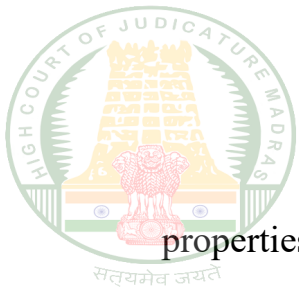


19. Learned counsel for the respondents/plaintiff temple submitted that the

temple purchased the suit property under Ex.A2 sale deed dated 04.05.1918 and subsequently leased it to Chokalingam Mudaliar under Ex.A3 lease deed dated 21.03.1940, thereby establishing the landlord-tenant relationship. The defendants, being the descendants or successors-in-interest of the original lessee, either as legal heirs or purchasers of the tenancy rights, were bound to attorn to the tenancy in favour of the plaintiff and to continue paying rent. Having derived possession through the original tenant, the defendants are estopped from denying the plaintiff's title.

20. It was further submitted that the suit property is not Natham poramboke land and that the pattas relied upon by the defendants were illegally obtained. A patta is merely a revenue record and, by itself, does not confer title. The defendants had not produced any acceptable document to prove that the suit property was classified as Natham poramboke.

21. Learned counsel further contended that, upon proper appreciation of the oral and documentary evidence, the first appellate court rightly decreed the suit and directed the defendants to deliver possession of the respective suit



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properties. On the burden of proof, reliance was placed on *Moran Mar Basseliõs Catholicos v. Thukalan Paulo Avira*, AIR 1959 SC 31. Regarding the grant of alternative relief, reliance was placed on *Srinivas Ram Kumar v. Mahabir Prasad*, AIR 1951 SC 177. On the right to institute and maintain the suit, reliance was placed on *Vemareddi Ramaraghava Reddy v. Konduru Seshu Reddy*, AIR 1967 SC 436, and *Ramchand v. Thakur Janki Ballabhji Maharaj*, AIR 1970 SC 532. Regarding title, reliance was placed on *Bhavnagar Municipality v. Union of India*, AIR 1990 SC 717.

22. On the plea of adverse possession and burden of proving, reliance was placed on *Thakur Kishan Singh v. Arvind Kumar*, AIR 1995 SC 73; *Annasaheb Bapusaheb Patil v. Balwant alias Balasaheb Babusaheb Patil*, AIR 1995 SC 895; *Ponnaiyan v. Munian (died) and others*, 1995 (1) LW 680; *Dr. Mahesh Chand Sharma v. Smt. Raj Kumari Sharma*, AIR 1996 SC 869; *D.N. Venkatarayappa v. State of Karnataka*, AIR 1997 SC 2930; *State of Tamil Nadu v. K. Purushothaman*, 1998 (2) LW 171; *Indira v. Arumugam*, AIR 1999 SC 1549; *State of Haryana v. Mukesh Kumar and others*, 2011 (5) LW 725; *K. Lubna v. Beevi*, reported in (2020) 2 SCC 524, particularly at page 529; *Government of Kerala v. Joseph and others*, 2023 (3) LW 731; and *Lincai Gamango v. Dayanidhi Jena*, (2004) 7 SCC 437.



23. On the evidentiary value of patta, reliance was placed on *Varadarasu*

alias *Devarasu v. Malone Veerasamy alias Thanapal and others*, 2003 (2) LW

152. Regarding the power of the Court to mould and grant appropriate relief, reliance was placed on *Smt. Gitarani Paul v. Dibyendra Kundu alias Dibyendra Kumar Kundu*, AIR 1991 SC 395. On these grounds, learned counsel sought dismissal of the Second Appeal.

Substantial Question of Law No 1 to 3

24. The present suit is not one based on title. It has been filed solely for eviction on the ground that the defendants are descendants of the original tenant or have derived tenancy rights through the original tenant or his successors. The defendants have denied any landlord-tenant relationship with the plaintiff temple and have set up an independent claim to title based on Government assignment proceedings. In such circumstances, the burden squarely lies on the plaintiff to establish the landlord-tenant relationship between the plaintiff temple and the defendants.

25. To establish the relationship, the plaintiff principally relies on Ex. A3, the lease deed. The defendants contend that the executant of Ex. A3 is not the



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plaintiff temple but Vela Vinayagar Temple. P.W.1, the plaintiff's own witness,

has admitted in cross-examination that Vela Vinayagar Temple executed A3. It is also admitted that Vela Vinayagar Temple is situated in the vicinity of the plaintiff temple and is under the administrative control of the Hindu Religious and Charitable Endowments Department. Apart from Ex. A3, the plaintiff has not produced any document establishing a landlord-tenant relationship between the plaintiff temple and the defendants. No rent receipt, rent demand notice, rent account, notice of attornment, or any other document evidencing payment of rent by the defendants or their predecessors to the plaintiff temple has been produced.

26. Once the plaintiff fails to establish the foundational fact of the landlord-tenant relationship, the suit necessarily fails. In such circumstances, the Court need not enquire into the source of the defendants' possession or the validity of the title they claim. The burden is on the plaintiff to prove its case, not on the defendants to establish the correctness of their defence.

27. The contention that the defendants have taken inconsistent pleas of title and adverse possession is of no consequence in the present case. It is well



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settled that a defendant is entitled to raise alternative or even inconsistent defences. Such inconsistency cannot relieve the plaintiff of the burden of proving the case pleaded in the plaint. A decree cannot be granted merely because the defendants have taken inconsistent pleas. The plaintiff must succeed on the strength of its own evidence and, not on the weakness of the defence.

28. The first appellate Court has not assigned any independent reasons for holding that the trial Court erred in finding that the landlord-tenant relationship was not proved. Although several precedents are cited in the judgment, there is no discussion of their applicability to the facts of the present case. The judgment proceeds straight to decree the suit without analysing the evidence on the crucial issue of tenancy. Such an approach is contrary to the mandate of Order XLI Rule 31 CPC.

29. It is true that a Court has power to mould the relief in appropriate cases. However, that power cannot be exercised to grant substantially different relief founded on a different cause of action. The suit before the trial Court was instituted as one for eviction based on a landlord-tenant relationship and was valued accordingly under Section 43 of the Tamil Nadu Court Fees and Suits



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Valuation Act. Upon failure to establish tenancy, the first appellate Court could

not convert the suit into one for recovery of possession based on title by invoking the doctrine of moulding relief. Such a course would defeat the provisions relating to pleadings, valuation, court fee and the burden of proof.

30. Order XLI Rule 33 CPC confers wide powers on the appellate Court to pass such decree or order as the justice of the case requires. Nevertheless, the exercise of that power does not dispense with the mandatory requirement under Order XLI Rule 31 CPC to formulate proper points for determination, record findings on each point and assign reasons therefor. Rule 33 supplements Rule 31; it does not override it.

31. The first appellate Court committed a manifest error in reversing the well-considered findings of the trial Court without recording cogent reasons for disagreeing with them. It further erred in decreeing the suit for recovery of possession despite the plaintiff's failure to establish the landlord-tenant relationship on which the suit was founded. The judgment of the first appellate Court is therefore unsustainable in law. Accordingly, the first three substantial questions of law are answered in favour of the appellants.



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32. Accordingly, the Second Appeal is allowed. The judgment and decree

dated 02.12.2013, passed in A.S.No.31 of 2013 on the file of the I Additional Sub Court, Cuddalore, are set aside. The judgment and decree dated 01.02.2013, passed in O.S.No.391 of 2010 on the file of the Principal District Munsif Court, Cuddalore, dismissing the suit, are restored. In the circumstances of the case, no order as to costs is made. Connected Miscellaneous petitions, if any, are closed except C.M.P.No.21759 of 2023 is dismissed as not maintainable vide separate orders. No costs.

14.07.2026

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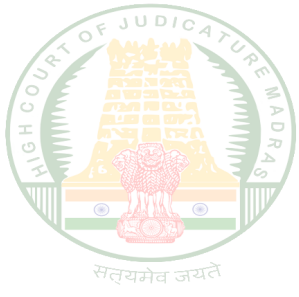
Index:Yes/No

Speaking Order /Non-speaking order

Neutral citation:Yes/No

To

1. The I Addl.Sub Court, Cuddalore.
2. The Principal District Munsif Court, Cuddalore.
3. The Section Officer,
V.R.Records,
Madras High Court.



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DR. A.D. MARIA CLETE, J

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**PRE DELIVERY JUDGMENT
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