



OSA No. 34 of 2020



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.06.2026
Pronounced on	20.07.2026

CORAM

THE HON'BLE MR JUSTICE P. VELMURUGAN

AND

THE HON'BLE MRS.JUSTICE K. GOVINDARAJAN THILAKAVADI

OSA No. 34 of 2020

and

CMP Nos. 1454 of 2020 & 8385 of 2021

1.Ida Selvaraj (Died)

2.R.Selvaraj

3.S.Erin Ross

4.S.Jerin Ross

[* Appellant 2 to 4 brought on record of LR's of the deceased 1st appellant viz. Mrs. Ida Selvaraj vide court order dated 25.11.2021 made in CMP.No.12207 of 2021 in OSA.No.34 of 2020 (PVJ and SSKJ)]

..Appellant(s)

Vs

1.D.Ramesh

2.B.Dhayanidhi

3.G.Saravanan



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..Respondent(s)

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Prayer: This Original Side Appeal is filed under Order XXXVI Rule1 of Original Side Rules R/W Clause 15 of Letters Patent, to set aside the judgment and decree of the Learned Judge made in C.S.No.517 of 2015, dated 14-08-2019 and allow this appeal.

For Appellant(s): Mr.V.K.Vijayaragavan
for Mr.R.Ramachandran

For Respondent(s): Mr. A.Palaniappan
R1 & R2
R3-No appearance

Judgment

(Judgment of the Court was delivered by K.Govindarajan Thilakavadi J.)

This appeal has been preferred against the judgment passed by the learned Single Judge in C.S.No.517 of 2015 dated 14.08.2019.

2.The respondents as plaintiffs filed the above suit in C.S.No.517 of 2015 for the following reliefs:



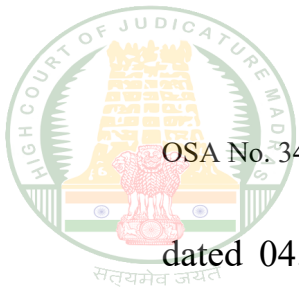
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a. Directing the defendant to hand over vacant possession of the suit property morefully described in the schedule.

b. To pay a sum of Rs. 10,000/- per month from 03.12.2014 till the date of handing over possession as sought for damages towards use and occupation to the plaintiffs for cost of the suit.

3.The case of the plaintiff is that they have purchased the suit property from one G.Sagunthala and others under a sale deed dated 11.11.2014 and registered the same as document No.4764 of 2014 in the office of the Sub Registrar, Anna Nagar. The first vendor viz., G.Sagunthala had obtained the suit property by way of a deed of settlement executed by her husband one Mr. P.Gajendiran on 20.03.2009 registered as document No.912 of 2009 in the office of Sub Registrar, Anna nagar.

4.It is the further claim of the plaintiff that the predecessor in interest viz., P.Gajendran who was in occupation of about 3200 sq. ft., of land in old S.No.225, T.S.No.58, Block No.6, Koyambedu Village was granted an assignment by the Special Tahsildar (Assignment) in K.Dis .No.3216 of 1976



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dated 04.09.1976. The extent assigned to him under the said document was about 4 ½ cents i.e., about 2000 sq. ft.

5.It is claimed that the defendant had been a tenant under the said P.Gajendran. The defendant had entered possession of the property by paying Rs.25,000/- to the said P.Gajendran and had obtained an unregistered instrument of sale from him. The plaintiffs would contend that the defendant cannot claim any right, title or interest in the suit property on the basis of the unregistered instrument dated 17.06.1988. Hence, the plaintiffs were constrained to file the Civil Suit.

6.Per contra, the defendant would contend that the property measuring 2000 Sq. ft. alone was sold by one Gajendiran and his wife G.Suganthala to the defendant on 17.06.1988 by an unregistered sale deed for a total consideration of Rs.25,000/-. Due to the escalation of price, the plaintiffs were attempting to dispossess the defendant from the suit property. Hence, the defendant was constrained to file a suit in O.S.No.7812 of 1994 on the file of the I Assistant City Civil Court, Chennai, seeking permanent injunction restraining the



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plaintiffs from interfering with the peaceful possession and enjoyment of the defendant in the suit property. In the said suit, the vendor of the defendant, admitted that the property belongs to the Government, which was recorded by the trial Court while granting permanent injunction as sought for by the defendant, in the judgement dated 25.04.1996. The defendant has been paying property taxes from the year 1987-1988 onwards continuously to the Corporation of Chennai. Meanwhile, show cause notice was issued to the defendant on 29.07.1990 by the VAO Koyambedu Village, invoking the Tamil Nadu Encroachment Act, 1905, demanding the defendant to appear before him and explain as to why she should not be evicted from the suit land along with fixation of taxes for the enjoyment of the land and for payment of penalty if any for such enjoyment. While so, a legal notice dated 03.12.2014 was issued by the plaintiffs, saying that based upon a settlement deed executed by the husband of G.Sagunthala, vendor of the defendant on 20.03.2009 in favour of his wife registered as document No.912 of 2009 on the file of Sub Registrar Anna Nagar, the property measuring about 3200 Sq. fts., the said Sagunthala did make a registered sale in favour of the plaintiffs on 11.11.2014. The defendant would further contend that since the said P.Gajendran was aware of the fact that the property belonged to the Government and that he could not make a regular



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sale of the said property, he has executed an unregistered sale deed on 17.06.1988. Hence, prayed for dismissal of the suit.

7.The learned Single Judge after framing necessary issues decreed the suit in favour of the plaintiffs vide judgement and decree dated 14.08.2019. Aggrieved by this, the defendant is on appeal.

8.Mr.V.K.Vijayaragavan, the learned counsel for the defendant would submit that the learned Single Judge erred in accepting Ex.P.1 assignment order in favour of P.Gajendran. He would contend that the defendant had purchased the suit property on 17.06.1988 which was also referred in the judgment dated 25.04.1996 in O.S.No.7812/1994 filed by the defendant for the relief of permanent injunction. The property as admitted by the vendors of the defendant, was promboke and B Memo charges were paid. While so, the land could not be assigned under Ex.P.1 on 06.07.1976 in favour of the defendant's vendor. Therefore, the learned Single Judge erred in decreeing the suit in favour of the plaintiffs on the basis of Ex.P.1 assignment order and the same is unsustainable. While the fact remains that the subject land belonged to the Government, the



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learned Single Judge ought not to have declared the title in favour of the plaintiffs. It is further submitted that as per Board Standing Order / Revenue Standing Order, assignment of land around Madras cannot be made since the lands are very valuable required for the purpose of Government. The learned counsel further submitted that the judgment in the suit for permanent injunction operate as *res judicata* and the plaintiffs are estopped from claiming the reliefs in the present suit. Further, the letter dated 04.02.2010 from Tahsildar, Egmore, Nungambakkam Taluk addressed to P.Gajendran, the vendor of the defendant, informing him that the subject land belongs to the Tamil Nadu Housing Board as per the permanent register maintained by the said Office, would strengthen the case of the defendant that the subject land belong to the Government. Further, the suit was bad for non-joinder of necessary parties. The vendor of the plaintiffs were not made as parties in the above suit. The plaintiffs' vendor had only possessory title and had no absolute title to execute a settlement deed or sale deed. The settlement deed dated 23.03.2009 in favour of the plaintiffs' vendor is created for the purpose of the case. The suit filed by the plaintiffs for possession in the absence of declaration of title was neither correct nor acceptable. The learned counsel further submitted that the person in peaceful possession has a right to remain in possession against the whole world except



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against the true owner and a suit for an injunction by such a person against any person, except the true owner, who threatened to dispossess him is maintainable. Therefore her possessory title is good against all except the true owner and establishment of prior possession of the defendant is sufficient and further possessory title is good against everyone who does not have a better one. He would further contend that the possession of the defendant is recognized by payment of penalty to the Government. Unless the bonafide purchaser in good faith, for value, without notice of original contract between person in actual possession and owner of the property has made appropriate enquiry, cannot establish that he is bonafide. Unless the Government, the paramount title holder is made as necessary party, no relief for declaration of possessory title can be granted to the plaintiffs. Hence, prayed for setting aside the judgment and decree passed by the learned Single Judge.

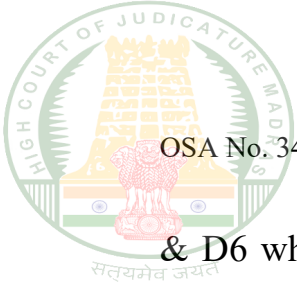
9. On the other hand, Mr. A. Palaniappan learned counsel for the plaintiff Nos. 1 & 2 would submit that the plaintiffs would claim title to the suit property under the sale deed dated 11.11.2014 and the assignment order issued by the Special Tahsildar (Assignment) dated 06.07.1976 assigning an extent of 44 of cents in favour of P. Gajendran son Poongavanam marked as Ex. P1. The above



document would show that P.Gajendran was assigned the property in question in 1976. He had executed a settlement in favour of his wife in 2009 and thereafter in 2014, his wife and children sold the property to the plaintiffs. The plaintiffs as the owners of the property sought for recovery of possession from the defendant who is in unlawful occupation of the property. The learned Single Judge has rightly decreed the suit in favour of the plaintiffs warrants any interference by this Court.

10.Heard on both sides and records perused.

11.The plaintiff has instituted the suit seeking recovery of possession of the suit property from the defendant. No relief of declaration of title has been sought. The plaintiffs contend that they are the owner of the suit property and that the defendant is in unlawful occupation. Whereas, the defendant disputes the plaintiffs' title and contends that the property is Government land and has relied upon Ex.D.2, D5, D6 & D15 respectively. Ex.D2 is a notice issued under Section 7 of the Tamil Nadu Encroachment Act, 1905 to the defendant on 29.07.1990 stating that the land belongs to the Housing Board. Further, Ex.D5



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& D6 which are the copies of judgment and decree passed in O.S.No.7812 of 1994 in which a competent Civil Court has held that the property belong to the Government and the same was also accepted by P.Gajendran in the above suit. The said judgment and decree was never challenged either by late P.Gajendran or by the plaintiffs till date. Further, the defendant has relied upon Ex.D15 to establish that Government is the owner of the suit property. Ex,D15 is nothing but a letter from Tahsildar, Egmore -Nungambakkam Taluk addressed to P.Gajendran. The said letter is dated 04.02.2010 reads as follows:-

தாங்கள் பட்டா கோரிய, கோயம்பேடு கிராமம் , பிளாக் எண்.6 , டி.எஸ். எண்.58 என்பது இவ்வலுவலக நிரந்தர நிலப் பதிவேட்டில் தமிழ்நாடு வீட்டு வசதி வாரியம் பெயரில் பதிவாகியுள்ளது என்பதைத் தெரிவித்துக் கொள்கிறேன்.

Hence, Ex.D2, D5, D6 & D15 produced by the defendant disclose a serious dispute regarding the very ownership of the suit property.

12. Therefore, it creates a substantial cloud over the plaintiff's title,



raising the question whether the property belongs to the Government or to the plaintiffs. It is well settled that when the plaintiffs' title is admitted or is not in serious dispute, a suit for possession may be maintained. However, where the defendant raises a bonafide dispute regarding the plaintiff's title and the materials on record disclose a genuine cloud over such title, a bare suit for recovery of possession is not maintainable without seeking the relief of declaration of title. The burden heavily lies on the plaintiffs to establish a better title than the defendant.

13. In the present case, the plaintiffs have deliberately omitted to seek a declaration despite the existence of a substantial dispute regarding title. Unless the issue of title is first adjudicated, the Court cannot grant the relief of possession.

14. The principles laid down by the Hon'ble Supreme Court in *Anthula Sudhakar Vs P. Buchi Reddy (dead) by Legal heirs & Others* reported in *AIR 2008 Supreme Court 2033* makes it clear that where there is cloud over the plaintiff's title, the proper remedy is to institute a suit for declaration of title



with consequential relief of possession. A suit for possession alone is not maintainable in such circumstances. The plaintiffs did not file the suit for declaration of their title when the defendant had set up title with the Government. Further, the vendors of the defendant have admitted in the earlier suit that the suit land is promboke and B.Memo charges were paid. While so, the learned Single Judge ought not to have decreed the suit on the basis of Ex.P1 assignment order without testing its veracity. The learned Single Judge ought to have seen, whether such assignment is possible when there is a ban under RSO-15 / Board Standing Order. The learned Single Judge ought to have called for further records from the Revenue to ascertain the character of the suit land. Therefore, the learned Single Judge was not justified in granting the relief of possession, since the issue is not merely one of possession but of ownership. Unless the plaintiffs first establishes their title by obtaining a declaration, no decree for possession can be granted.

15.This Court also finds that any finding on title rendered in the present suit would be beyond the scope of the pleadings, as no declaratory relief has been claimed and necessary parties, particularly if the property is alleged to be Government land, may also have to be impleaded. The dispute cannot be effectively adjudicated in the present form of the suit.



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16. Accordingly, the Original Side Appeal is allowed. The judgment and decree dated 14-08-2019 in C.S.No.517 of 2015 is set aside. It shall not preclude the plaintiffs from instituting a properly constituted suit for declaration of title and consequential recovery of possession if so advised. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(P.V.,J.) (K.G.T.,J.)
20-07-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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**P.VELMURUGAN J.
AND
K.GOVINDARAJAN THILAKAVADI J.**

VSN

**Pre-delivery judgement made in
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