



WEB COPY

SA No. 220 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-04-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 220 of 2020 and
CMP No.4545 of 2020**

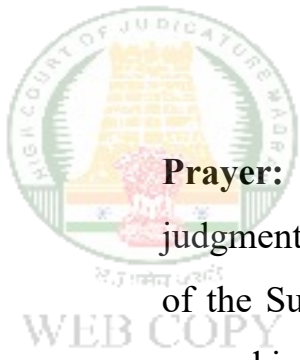
1. A.S.Muthusamy, S/o.Sundarasamy Gounder,
Agasthilingampalayam,
Kangayam Taluk.
2. Thilagavathy, W/o.Late Kumarasamy,
Agasthilingampalayam,
Kangayam Taluk.
3. Narmatha, W/o.Jeevanantham,
15, Kathir Nagar,
D.S.K.Hospital Opposite Near,
Kangayam Road, Kaspas Tiruppur Town,
Tiruppur Taluk, Tiruppur District.
4. Suresh, S/o.Lae Kumarasamy,
Kangayam Village,
Agasthilingampalayam, Kangayam Taluk.

..Appellant(s)

Vs

1. The District Collector
Collector Office, Tiruppur.
2. The Tahsildar
Tahsildar Office, Dharapuram.
3. The Conservator Of Forest,
Kangayam.
4. The Ranger,
Forest Department, Thalavaipattinam.

..Respondent(s)



Prayer: Second Appeal filed under Section 100 of CPC to set aside the judgment and decree passed in AS.No.20 of 2015 dated 14.02.2018 on the file of the Subordinate Judge, Dharampuram, confirming the judgment and decree passed in OS.No.268 of 2006 dated 26.03.2015 on the file of the District Munsif Court, Dharapuram.

For Appellant(s): Mr.P.Navaneetha Krishnan

For Respondent(s): Mr.A.Anandan, Government Advocate
for R1 to R4.

JUDGMENT

The unsuccessful plaintiffs in a suit in O.S.No.268 of 2006 are the appellants herein.

2. The plaintiffs/appellants filed a suit for declaration of title and recovery of possession of the suit property. The said suit was dismissed by the Trial Court and the appeal filed by the plaintiffs was also dismissed by the first appellate court. Aggrieved by the concurrent findings of the courts below, the plaintiffs have preferred the present second appeal.

3. The plaintiffs 1 and 2 are the sons of Sundarasamy Gounder and the plaintiffs 3 to 5 are wife and children of the deceased 2nd plaintiff, namely A.S.Kumarasamy respectively.



4. It is the case of the plaintiffs that the suit property is situated in survey No.368 in Thlavaipattinam Village with an extent of 15 acres 89 cents and the same was originally belonged to the grand father of plaintiffs 1 and 2 , namely Sundarappa Gounder. It is the further case of the plaintiffs that the said Sundarappa Gounder's only son was Sundarasamy Gounder, the father of the plaintiffs 1 and 2 and their family left the village long back to eak out their livelihood. However, they exercised control over the suit property through an agent called Chinnasamy Gounder. After death of Sundarappa Gounder and his son Sundarasamy Gounder, the plaintiffs inherited the suit property and as such they are entitled to the same. It is further pleaded by the plaintiffs that the respondents 1 and 2 without enquiry, included the suit property as a forest land and now, the respondents 3 and 4 have been in possession and enjoyment of the suit property as a forest land. Since the suit properties are inherited properties of the plaintiffs, the suit has been laid seeking declaration of title and recovery of possession.

5. The respondents 3 and 4/defendants 3 and 4 filed a written statement and resisted the suit by denying the title of the plaintiffs and their predecessor in interest. It was the case of the contesting defendants that the suit property has been in possession and enjoyment of the forest department as protected forest for the past 117 years along with the properties situated in survey Nos.333 and 328, as per the notification issued by the government in the gazette dated



05.05.1893. The defendants 3 and 4 further stated that the suit property has been in their direct possession and enjoyment and the plaintiffs never exercised any right over the same and hence, they prayed for dismissal of the suit.

6. Before the Trial Court, the first plaintiff was examined as PW1 and 5 documents were marked as Ex.A1 to Ex.A5. On the side of the defendants, a forest officer was examined as DW1 and 4 documents were marked as Ex.B1 to Ex.B4.

7. The trial court, on appreciation of evidence available on record, came to the conclusion that the plaintiffs failed to establish their title and entitlement of possession over the suit property and dismissed the suit. Aggrieved by the same, the plaintiffs filed an appeal in A.S.No.20 of 2015 on the file of Subordinate Judge, Dharapuram. Before the first appellate court, the plaintiffs filed an application for reception of additional evidence and it was allowed by marking the survey and settlement register as Ex.A6, and Field map survey No.368 as Ex.A7. The first appellate court, based on Ex.A6, came to the conclusion that originally the suit property was allotted in the name of Sundarappa Gounder, however, the plaintiffs failed to establish their relationship with Sundarappa Gounder and dismissed the first appeal. Challenging the concurrent findings of the courts below, the appellants have filed the present second appeal.



8. Pending second appeal, the appellants/plaintiffs filed a petition in CMP No.4545/2020 under Order 41 Rule 27 of CPC seeking reception of additional documents in, viz., the death certificate of father of plaintiffs 1 and 2, namely, Sundarasamy Gounder and legal heirship certificate of Sundarasamy Gounder as additional evidence.

9. The learned counsel for the appellants submitted that the first appellate court dismissed the appeal filed by the plaintiffs/appellants mainly on the ground that the plaintiffs failed to establish their relationship with Sundarappa Gounder. He further submitted that the death certificate of father of plaintiffs 1 and 2 and the legal heirship certificate of their father would establish that the father of 1st and 2nd plaintiffs, namely Sundarsamy Gounder was son of Sundarappa Gounder and the plaintiffs are sons of Sundarasamy Gounder. Therefore, according to the learned counsel for the appellants/plaintiffs, the additional documents produced by the plaintiffs proved the relationship of the plaintiffs with original owner Sundarappa Gounder and in such circumstances, there may not be any impediment for the court to grant declaration of title and recovery of possession in favour of the plaintiffs.

10. It is seen from the additional documents filed by the appellants that the death certificate of Sundarasamy Gounder was dated 13.10.2005. Likewise, the legal heirship certificate of Sundarasamy Gounder was dated 01.02.2006.



Therefore, it is clear that the above said documents were received by the plaintiffs/appellants even prior to the filing of the suit. In the written statement filed by the defendants, the relationship of the plaintiffs with Sundarasamy Gounder was specifically denied and inspite of the same, the plaintiffs failed to produce the said documents before the trial court. Likewise, before the first appellate court, the appellants filed an application seeking reception of additional documents i.e. survey and settlement register pertains to the suit property and field map survey No.368. However, the appellants have not established that, inspite of due diligence, they could not have filed the death certificate and legal heirship certificate of Sundarasamy Gounder before the first appellate court. The failure of the appellants to file these two documents before the trial court as well as the first appellate court would establish that the plaintiffs failed to exercise due diligence at the time of trial and also before the first appellate court. However, the documents filed by the plaintiffs are issued by the competent officials and there is no dispute with regard to the genuineness of the same. Further, the reception of documents will also enable the court to decide the controversy involved in the second appeal in a more comprehensive way. Therefore, this court is inclined to allow the said application in CMP No.4545 of 2020 by invoking its power under Order 41 Rule 27(b) of CPC.

11. Accordingly, the death certificate of Sundarasamy Gounder is ordered to be marked as Ex.A8 and the legal heirship certificate of the Sundarasamy Gounder is ordered to be marked as Ex.A9.



12. It is seen from the plaint averments that the plaintiffs categorically admitted that their family left the suit village long back to eke out their livelihood. The first plaintiff, while examining himself as PW1, has categorically admitted that the suit property is a protected forest and the same has been in possession and enjoyment of the forest department. He also admitted that his grand father left the suit village in the year 1911 to earn livelihood. He further stated that till the death of his father, he was not aware that the suit property belonged to their family. He also stated that neither he nor his father paid any tax to the government in respect of the suit property. The relevant portions of his evidence are extracted below.

இவ்வழக்கில் குறிப்பாக என்ன பரிகாரம் கேட்டுள்ளேன் என்று எனக்குத் தெரியாது. வழக்குச் சொத்து தொன்று தொட்டு 3, 4 பிரதிவாதிகளின் சுவாதீனத்தில் உள்ளது என்றால் சரிதான்.-----

தாவா சொத்து தற்போது தமிழ்நாடு வனத்துறைக்குப் பாத்தியப்பட்ட காப்புக்காடு என்றால் சரிதான். கடந்த 117 வருடங்களாக தாவா சொத்து வனத்துறையின் சுவாதீனத்தில் உள்ளது என்றால் அதுபற்றி எனக்கு 1991ம் ஆண்டு என் தாத்தா தாவா சொத்தை விட்டு பஞ்சம் பிழைக்க வெளியே சென்றுவிட்டார்.-----

என் தகப்பனார் இறக்கும் வரையிலும் அவருக்கு தாவா சொத்து பாத்தியப் பட்டிருந்தது எனக்குத் தெரியாது. என் தகப்பனார் காலத்திலோ, ஏன் காலத்திலோ நான் தாவா சொத்திற்கு வரி செலுத்தியுள்ளேனா என்றால் இல்லை. இவ்வழக்கில் தாவா சொத்து எனக்குப் பாத்தியப் பட்டதைக்காட்ட நான் வருவாய் ஆவணங்கள் ஏதம் ஒப்புவித்துள்ளேனா என்றால் இல்லை,



13. A perusal of the evidence of PW1 especially his admission, would categorically established that the 1st and 2nd plaintiffs' grand father Sundarappa Gounder left the suit village in the year 1911. The plaintiffs have not produced any acceptable evidence to show that the plaintiffs' family exercised control over the suit property after 1911. The PW1 also categorically admitted that the suit property has been enjoyed by the forest department as protected forest. Therefore, it is clear that the defendants are in possession and enjoyment of the suit property for more than statutory period i.e. from 1911 till the date of suit as protected forest. The plaintiffs never exercised any kind of right over the suit property after 1911. In such circumstances, only based on the revenue records i.e. Ex.A6, the plaintiffs cannot claim that they established their title over the suit property and seek declaration of title over the property and recovery of possession of the same. The plaintiffs have not produced any title documents to prove their right over the suit property. Mere entry of 1st and 2nd plaintiffs' grand father's name in the revenue records is not sufficient to establish their title, when the plaintiffs themselves admitted that they failed to exercise control over the suit property for more than 100 years i.e. from the year 1911. In such circumstances, both the courts below rightly appreciated the evidence available on record and negated the prayer for declaration of title and consequential relief of recovery of possession. I do not find any perversity in the findings reached by the courts below.



14. Accordingly, the second appeal stands dismissed, as no substantial question of law arising for consideration. There shall be no order as to costs.

CMP No.4545 of 2020 is allowed and Death Certificate and Legal Heirship certificate of Sundarasamy are marked as Ex.A8 and Ex.A9 respectively.

09-04-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

MST

Plaintiffs side documents:

Ex.A8 13.10.2005 Death certificate of Sundarasamy Gounder

Ex.A9 01.02.2006 Legal Heirship certificate of Sundarasamy Gounder.

To

1. The Subordinate Judge, Dharampuram.
2. The District Munsif Court, Dharapuram.



WEB COPY

SA No. 220 of 2



S.SOUNTHAR, J.

MST

SA No. 220 of 2020

09-04-2026