

S.A(MD)No.225 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.04.2026

Pronounced on : 22.07.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.225 of 2012

V.Amuthan @ Paraman,
S/o.Vellaichamy Thevar,
Karaiyampatti Village,
Pothampatti Post,
Usilampatti Taluk,
Madurai District.

...Appellant/Respondent/Plaintiff

Vs.

C.Murugesan (Died)

1.C. Singaraj,
S/o. Chella Samy,
Karaiyampatti Village,
Pothampatti Post,
Usilampatti Taluk,
Madurai District.

2.Murugeswari,
W/o. (Late) C. Murugesan,
Karaiyampatti Village,
Pothampatti Post,
Usilampatti Taluk,
Madurai District.

3.M.Menakha,
D/o. (Late) C.Murugesan,
Karaiyampatti Village,
Pothampatti Post,
Usilampatti Taluk,
Madurai District.



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4.M.Ganesan,
S/o (Late) C. Murugesan,
Karaiyampatti Village,
Pothampatti Post,
Usilampatti Taluk,
Madurai District.

...Respondents/Appellants/Defendants

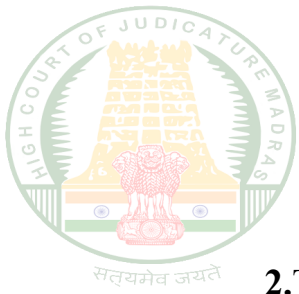
PRAYER: This Second Appeal is filed under Section 100 of the Civil Procedure Code, to allow this Second Appeal by setting aside the judgment and decree passed by the III Additional Sub Court, Madurai (Camp Court at Usilampatti) in A.S.No.83 of 2011, dated 30.09.2011 by reversing the judgment and decree passed by the District Munsif-cum-Judicial Magistrate No.1, Usilampatti in O.S.No.160 of 2004, dated 31.01.2011.

For Appellant : Mr.G.Prabhu Rajadurai
for Mr.N.Sathish Babu

For Respondents : Mr.PT.S.Narendra Vasan

JUDGMENT

This Second Appeal is preferred against the judgment and decree dated 30.09.2011 passed in A.S.No.83 of 2011 on the file of the III Additional Sub Court, Madurai, reversing the judgment and decree, dated 31.10.2011 passed in O.S.No.160 of 2004 on the file of the District Munsif-cum-Judicial Magistrate Court No.1, Usilampatti.



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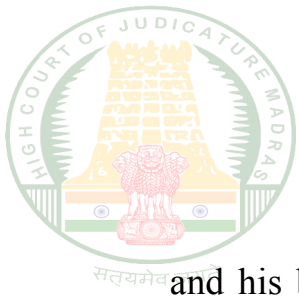
2.The appellant is the plaintiff in O.S.No.160 of 2004 on the file of the District Munsif-cum-Judicial Magistrate Court No.1, Usilampatti. The respondents are the defendants in that suit. The plaintiff has filed the suit for permanent injunction against the defendants.

2.1. For the sake of convenience, the parties are referred to as plaintiff and defendants in O.S.No.160 of 2004 on the file of the District Munsif-cum-Judicial Magistrate Court No.1, Usilampatti.

2.2. The suit was laid against the defendants 1 and 2. On the death of the 1st defendant, his legal heirs were added as defendants 3 to 5.

3.The Case of the plaintiff:-

It is the case of the plaintiff that the suit property originally belonged to the plaintiff's grandfather Periyamaya Thevar, who had two sons, Vellaichamy and Muthukannan. Muthukannan died as a bachelor. Vellaichamy had two sons, namely the plaintiff and his brother Thavamani. After the death of the grandfather, Periyamaya Thevar, the plaintiff's father solely enjoyed the properties till his death in October, 1972. After Vellaichamy died, the plaintiff



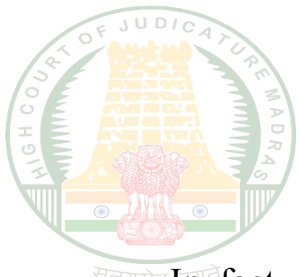
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and his brother Thavamani enjoyed the property. Thereafter, the plaintiff and his brother Thavamani entered into a registered partition deed, dated 12.01.1987. The suit property was allotted to the plaintiff as per the said partition deed and the plaintiff has been in continuous possession and enjoyment of the suit property. The revenue records were mutated in the name of the plaintiff and Patta was also issued to the plaintiff. The plaintiff has been paying kist for a long period. The defendants 1 and 2 were inimical towards the plaintiff due to various reasons. On 19.08.2003, the defendants 1 and 2 along with rowdy elements attempted to trespass into the suit property without any right and the same was prevented by the plaintiff. The defendants 1 and 2 went out by threatening to trespass into the suit property. Hence, the plaintiff has filed a suit for permanent injunction restraining the defendants from interfering with the plaintiff's possession and enjoyment of the suit property. During pendency of the suit, the 1st defendant died and his legal heirs were added as defendants 3 to 5.

4.The case of the Defendants:-

It is the case of the defendants that the suit property with a larger extent, i.e., 1 acre 96 cents, did not belong to the plaintiff's grandfather.

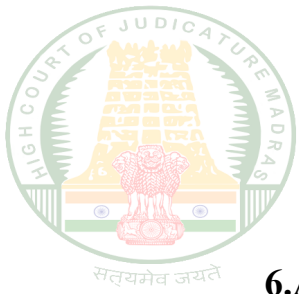


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In fact, the property was purchased by the defendants' forefathers, namely Ammavasi @ Solai Kurumba Thevar and Muthu Kurumba Thevar from one Chinna Karuppa Thevar in 1920. They had othied the suit property to one Sundaram Chettiar on 17.05.1943 with four boundaries. The plaintiff's grandfather Periyamaya Thevar was not shown in any of the boundaries. Moreover, the suit property was given othi by the defendants' forefathers on 12.07.1967, 09.08.1979 and 29.01.1983 and the same was redeemed. The defendants and their ancestors have been in possession and enjoyment of the suit property. The plaintiff has not been possession and enjoyment of the suit property. The plaintiff is the paternal uncle of the 1st defendant. The plaintiff deceived the 1st defendant at the time of survey measurement and obtained patta in his name as if he had the right over the suit property by forgery. The alleged trespass into the suit property by the defendants is false. The plaintiff has no cause of action. Therefore, the suit is liable to be dismissed.

5. During trial, the plaintiff examined himself as P.W.1 and marked 25 exhibits as Ex.A.1 to Ex.A.25. The defendants have examined D.W.1 to D.W.4 and marked 17 exhibits as Ex.B.1 to Ex.B.17.



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6.After hearing both sides, the trial Court decreed the suit in O.S.No.160 of 2004 by passing judgment and decree, dated 31.01.2011. Aggrieved by the judgment and decree, the defendants preferred a civil appeal in A.S.No.83 of 2011 before the III Additional Sub Court, Madurai. The first Appellate Court, after hearing both sides, passed judgment dated 30.09.2011 allowing the appeal by reversing the judgment and decree passed in O.S.No.160 of 2004 and dismissed the suit.

7.Challenging the judgment and decree of the First Appellate Court, the plaintiff has preferred this second appeal and the same has been admitted on 24.04.2012 on the following substantial questions of law:-

Whether the Lower Appellate Court is right in rejecting the claim of the appellant/plaintiff for permanent injunction, that too, after accepting the continuous possession and enjoyment of the suit property by the plaintiff?

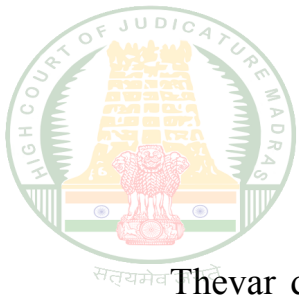
8.The learned counsel for the appellant/plaintiff has argued that the suit property is 74 cents in S.No.216/4A. The suit property originally belonged to his grandfather Periyamaya Thevar, whose sons are Vellaichamy and Muthukannan. Muthukannan died as a bachelor. Vellaichamy had two sons,



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ie., the plaintiff and Thavamani. The plaintiff's father, Vellaichamy, died in 1972. Thereafter, the plaintiff and his brother partitioned the properties of Vellaichamy, in which the suit property was allotted to the share of the plaintiff by way of Ex.A.1, a registered partition deed dated 12.01.1987. Based on the partition deed, the plaintiff has been in possession and enjoyment of the suit property from 1987 onwards. Separate patta was issued to the plaintiff. The plaintiff filed patta, adangal and chitta standing in his name as Ex.A.2 to Ex.A.6 and Ex.A.25. The plaintiff has also been paying kist continuously from 1987 to 2004 and produced the kist receipts as Ex.A.7 to Ex.A.13, Ex.A.17, Ex.A.18 and Ex.A.21 to Ex.A.24 to prove his possession. In addition, the plaintiff has marked the certificates issued by the concerned Village Administrative Officer as Ex.A.14 to Ex.A.16 to prove the plaintiff's enjoyment over the suit property. Since the defendants attempted to disturb the possession of the plaintiff, the plaintiff sought for injunction. For granting relief, the plaintiff has to prove his possession on the date of the plaint. The plaintiff has proved his possession from 1987. The defendants claim that the suit property was purchased by their ancestor Muthu Kurumba Thevar under Ex.B.2 sale deed. Ex.B.2 shows only 1 acre 20 cents out of 1.96 acres in the suit survey number. It is the case of the defendants that Muthu Kurumba



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Thevar died without any legal heir, so the suit property was obtained by his brother Ammavasi @ Solai Kurumba Thevar, who is the grandfather of the defendants through his son Chellasamy. The defendants filed Ex.B.1 - Genealogy. But as per the recitals in Ex.B8 produced by the defendants shows that the said Muthu Kurumba Thevar had two sons, so the defendants cannot claim any right in that property unless they make pleadings and adduce evidence regarding title. So, the defendants do not have any possession over the said 1 acre 20 cents covered under Ex.B.2 - Sale Deed. Moreover, Ex.B.2 is only a certified copy, the defendants have not produced the original sale deed, nor have they explained as to why they produced a certified copy. In the absence of any explanation for non-production of the original, the defendants cannot rely on Ex.B.2. Even for secondary evidence under Section 65 of the Indian Evidence Act, the defendants have to plead in their written statement or let in evidence about the existence of the original. But this aspect is totally silent on the defendants' side. Hence, Ex.B.2 cannot be accepted as admissible by relying on the decision of the Hon'ble Supreme Court in the case of **Vijay /v/ Union of India & Ors. reported in 2023 Live Law (SC) 1022**, it is held in paragraph No.33.4 as follows:

“33.4 A party must endeavor to adduce primary evidence of the contents, and only in



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exceptional cases will secondary evidence be admissible. The exceptions are designed to provide relief when a party is genuinely unable to produce the original through no fault of that party.”

9.The learned counsel for the appellant/plaintiff further submitted that the above position has been reiterated by the **Hon’ble Supreme Court in Tharammel Peethambaram and Anr. /v/ T.Ushakrishnan and Anr. case** reported in **2026 Live Law (SC) 128**, wherein it is held in paragraph No.20 as follows:

“20.The broad parameters summarising the procedure to be followed for introducing secondary evidence are reiterated and read thus:

20.1 The fundamental principle of the Indian Evidence Act is that facts have to be established by primary evidence. Section 64 mandates that documents must be proved by primary evidence, which is considered the “best evidence”. Primary evidence is the rule, while secondary evidence is an exception admissible only in the absence of primary evidence. A party is generally required to produce the best evidence available; so long as the superior evidence (the original) is within a party's



possession or reach, they cannot introduce inferior proof (secondary evidence).

20.2 Before secondary evidence can be admitted, the party relying on it must lay a factual foundation. This involves two steps: First, the party must prove that the original document actually existed and was executed. Secondly, the party must establish valid reasons as to why the original cannot be furnished.

20.3 Secondary evidence is inadmissible until the non-production of the original is accounted for in a manner that brings the case within the specific exceptions provided in Section 65. If the original itself is found to be inadmissible through failure of the party who files it to prove it to be valid, the same party is not entitled to introduce secondary evidence of its contents.

20.4 Section 65 of the Evidence Act is exhaustive and states the specific circumstances under which secondary evidence is permissible. To introduce secondary evidence, a party must satisfy the conditions of one of the clauses (a) through (g) of Section 65.

20.5 Further, admitting a document as secondary evidence does not automatically prove its contents. The secondary evidence must be



authenticated by foundational evidence showing that the alleged copy is, in fact, a true copy of the original. For instance, if a party wishes to introduce a photostat copy, they must explain the circumstances under which the copy was prepared and who possessed the original at the time the photograph was taken.

20.6 Mere admission of a document or making it an exhibit does not dispense with the requirement of proving it in accordance with the law. The court has an obligation to examine the probative value of the document and decide the question of admissibility before making an endorsement on the secondary evidence. If the foundational facts, such as the loss of the original or the explanation for its non-production, are not established, the court cannot legally allow the party to adduce secondary evidence.

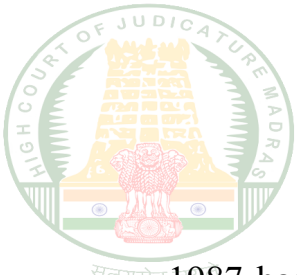
20.7 There is no requirement that an application must be filed to lead secondary evidence. While a party may choose to file such an application, secondary evidence cannot be ousted solely because no application was filed. It is sufficient if the party lays the necessary factual foundation for leading secondary evidence either in the pleadings or during the course of evidence.”



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10.The learned counsel for the appellant further argued that the trial Court came to the conclusion that both parties have not proved their respective ancestral title over the suit property, however, the plaintiff has proved his continuous settled possession of the suit property from 1987, particularly on the date of plaint and further trial Court held that the defendants have not proved their possession and hence, the trial Court decreed the suit based on proved possession. But the first Appellate Court concluded that Ex.A.2 took place only between the plaintiff and his brother, so Ex.A.2 did not bind the defendants, whereas the defendants claimed title from 1920 and hence, the first Appellate Court reversed the finding of the trial Court. The plaintiff's specific case is that the defendants' ancestor purchased only 1 acre 20 cents out of 1 acre 96 cents in the suit survey number, that too, the ancestor Muthu Kurumba Thevar had two sons, which is evidenced from Ex.B.8 sale deed produced by the defendants. But the defendants stated that Muthu Kurumba Thevar died without any legal heir. This version of the defendants is false and they did not come to Court with clean hands. The defendants pleaded that the plaintiff had not sought for declaration as there is a title dispute. The trial Court held that both sides have not produced documents to prove title, but the plaintiff is in continuous possession from



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1987 based on the revenue records and the same is sufficient for granting an
injunction.

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11.For these arguments, the learned counsel has relied on the rulings of this Court in the case of **Renganathan /v/ K.G.Kaliyaperumal Chettiyar (Died)**, dated 19.06.2024 in S.A.No.1064 of 2005 in which it is held in paragraph No.19 as follows:

“19.Though revenue records are not documents of title, Cultivation Adangal Records along with Kist Receipts and other revenue records can be relied on for the purpose of proof of possession when there is no evidence to suggest the contrary. The plaintiff filed Ex.A.3 - Adangal Extract for the Fasli years 1380 to 1387, 1389, 1390, 1391 and 1395 and Ex.A.37 Adangal Extract for the Fasli year 1400 which show that the plaintiff was in possession and enjoyment of the suit property until the year 1990. Further, the Kist Receipts and other revenue records would also establish the plaintiff's possession and title over the suit property.



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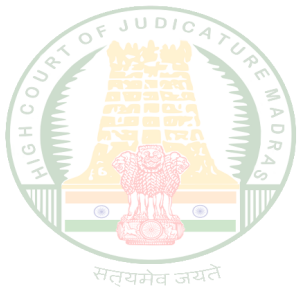
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12.The learned counsel for the appellant further relied on the judgment in the case of **M.Thirunavukkarasu /v/ Annamalai University, rep. by its Registrar, dated 19.05.2020 in S.A.No.1050 of 1999** held in paragraph Nos.43 to 45 as follows:

“43. For the aforesaid reasons this court is of the view that the plaintiff is not entitled to the relief of declaration of title and for permanent injunction. However, considering the fact that the plaintiff is in settled possession and that the defendant-University itself has filed a suit for declaration of its title and for recovery of possession in OS.No.100 of 2004 on the file of the District Munsif, Chidambaram, this court is of the view that the plaintiff's possession shall be protected atleast till he is evicted by due process of law i.e., till the defendant – University gets decree for possession OS.No.100 of 2004.

44. At this juncture, it would be relevant to refer to the decision in [Rame Gowda \(D\) by LRS Vs. M. Varadappa Naidu \(D\) by L.Rs & Another](#) (Appeal (Civil) No.7662 of 1997 on the file of the Hon'ble Supreme Court dated 15.12.2003) wherein a three Judge Bench of the Hon'ble Supreme Court after referring to various decisions has held as follows:-

“....If the trespasser is in settled



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possession of the property belonging to the rightful owner; the rightful owner shall have to take recourse to law, he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injunction even a rightful owner from using force or taking law in his own hands,.....”

45. In view of the aforesaid decision of the Hon'ble Supreme Court, the plaintiff is entitled to protect his possession till he is evicted by due process of law."

Therefore, the plaintiff is entitled to the relief of permanent injunction as rightly held by the trial Court. But the first Appellate Court has erred in reversing the finding of the trial Court. Hence, the learned counsel for the plaintiff prays that the judgment passed by the first Appellate Court has to be set aside by allowing this appeal.

13.Per contra, the learned counsel for the respondents/defendants has argued that as per the plaint averments, the plaintiff has pleaded that the suit property is his ancestral property, but has not produced any document to show title. The plaintiff has stated that the suit property was purchased by



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Periyamaya Thevar and after his death his son Vellaichamy inherited the property as his another son died as a bachelor. Vellaichamy died in the year 1972. Thereafter, the plaintiff claims that there was a partition between himself and his brother vide Ex.A.1 - Partition Deed. Ex.A.1 cannot be accepted as it was a self-serving document. There is no document prior to the date of Ex.A.1 dated 12.01.1987 to show the plaintiff's ancestor's title over the suit property. The defendants, in their written statement, specifically denied the plaintiff's title to the suit property. But the plaintiff has not filed any reply statement or any pleading opposing the defendants' contention. However, the plaintiff has to seek the relief of declaration of title by way of amendment as settled in **Anathula Sudhakar** case. So, in the absence of the relief of declaration, the suit for bare injunction is not maintainable. The first Appellate Court correctly discussed the case and rightly dismissed the suit. The trial Court failed to consider that the burden is on the plaintiff who comes to the Court seeking relief without finding fault on weakness of the defence. The trial Court has fully discussed the case of the defendants from paragraph Nos.11 to 28, but finally arrived at the conclusion that the plaintiff proved his possession.

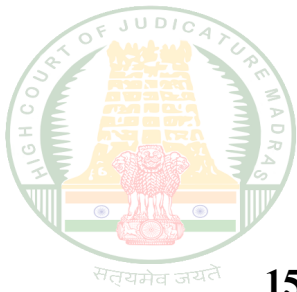


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14.The learned counsel for the respondents further argued that the above conclusion is against the settled position of the Hon'ble Supreme Court reported in **2011 (12) SCC 220 in the case of “Rangammal /v/ Kuppuswami and Anr.’** in which it is held in paragraph No.33 as follows:

“33.Since the High Court has misplaced burden of proof, it clearly vitiated its own judgments as also of the courts below since it is well-established dictum of the Evidence Act that misplacing burden of proof would vitiate the judgment. It is also equally and undoubtedly true that the burden of proof may not be of much consequence after both the parties lay evidence, but while appreciating the question of burden of proof, misplacing of burden of proof on a particular party and recording findings in a particular way definitely vitiates the judgment as it has happened in the instant matter. This position stands reinforced by several authorities including the one delivered in Koppula Koteshwara Rao vs. Koppula Hemantha Rao.”



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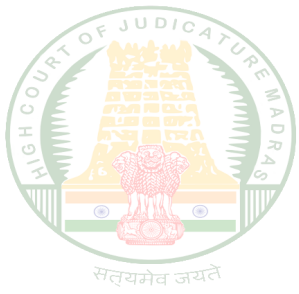
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15.The learned counsel for the respondents further argued that in the case of **Anathula Sudhakar /v/ P.Buchi Reddy (Dead) by LRs & Ors.** reported in **2009-2 Law Weekly 546**, it is held in paragraph No.17 as follows:

"17.To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a)Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the



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basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction."

16.The learned counsel further argued that the plaintiff is mainly relying on the Ex.A.1 and claims that the suit property as his ancestral property, but



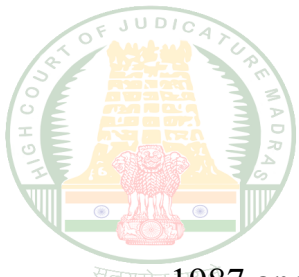
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there is no document to show his ancestor's title prior to Ex.A.1, so, the claim made by plaintiff based on Ex.A.1 is not legally valid and enforceable and relied on the judgment of Hon'ble Supreme Court rendered in **Civil Appeal No.8616 of 2017 in the case of Kizhakke Vattakandiyil Madhavan (Dead) Thr. LRs /v/ Thiyyurkunnath Meethal Janaki and Ors.**, in which it is held in paragraph No.18 as follows:

“18.The High Court as also the Trial Court have held that since the deeds were proved, implying that Cheruthey had the right to execute the lease deed on 14th July 1910 so far as the deed of re-lease is concerned, the same might entitled her to be the beneficiary as a lessee thereof. But, it would be trite to repeat that even if subsistence of a deed is proved in evidence, the title of the executing person (in this case Chiruthey) does not automatically stand confirmed....”.

17.The learned counsel for the respondents further argued that the plaintiff has not produced any documents to show title prior to 1987, i.e., Ex.A.1, under which the alleged partition took place between the plaintiff and his brother. Therefore, the plaintiff has not established his title prior to



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1987 and so, in the absence of relief of declaration of title, mere injunction suit is not maintainable. The first Appellate Court is a fact-finding Court and correctly appreciated the evidence and rightly reversed the judgment of the trial Court. In this second appeal, the facts cannot be re-appreciated. The first Appellate Court has correctly appreciated the evidence and correctly passed the judgment by setting aside the judgment and decree of the Trial Court. Therefore, this second appeal may be dismissed.

18.In reply, the learned counsel for the plaintiff has submitted that the plaintiff has clearly proved his possession from 1987. The defendants have not produced any document to show their title over the suit property. Even the purchaser of the property under Ex.B.2 has sons, as per contents in Ex.B.8, Ex.B.9 and Ex.B.10. But the defendants stated that the said purchaser died without any legal heir. In Ex.B.3, the father's name differs. The defendants have not come to court with clean hands. The defendant's side documents show only 1 acre 20 cents out of 1 acre 96 cents in the suit survey number. The suit property is 74 cents. The defendants have also not filed any document to show their possession in the suit property. But the plaintiff has clearly proved his possession by producing Ex.A.2 to Ex.A.25. So, when the possession is

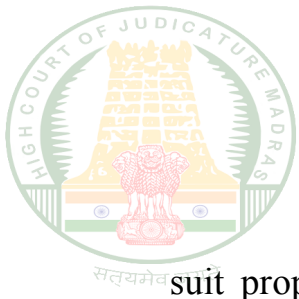


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proved, the plaintiff is entitled for injunction. The trial Court has correctly considered the settled positions and rightly decreed the suit, but the first appellate Court erred in reversing the same. So, the second appeal may be allowed.

19. Heard the arguments of both sides and perused the material records of the case. The suit property is measuring 0.31.5 hectares of punja land in old S.No.216/4 part and new S.No.216/4A of Pothampatti village, Usilampatti Taluk, Madurai District. The plaintiff has pleaded that the suit property is his ancestral property, which was purchased by his grandfather Periyamaya Thevar. It is his further case that Periyamaya Thevar had two sons Vellaichamy Thevar and Muthukannan, that Muthukannan died as a bachelor, then the Vellaichamy Thevar inherited the property and his sons, namely, the plaintiff and his brother Thavamani partitioned their father's properties as per Ex.A.1 registered partition deed dated 12.01.1987 and in that partition, the suit property was allotted to the plaintiff and he has been in continuous possession by paying kist from 1987. The plaintiff states that since the defendants attempted to trespass into the property, he filed the suit for a bare injunction. It is the specific case of the defendants that the plaintiff has no title over the

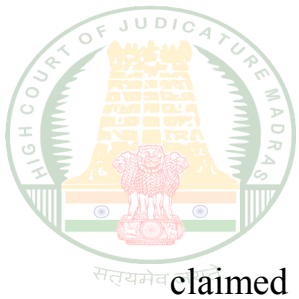


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suit property, whereas the suit property is their ancestral property and their great grandfather Muthu Kurumba Thevar purchased the suit property as per Ex.B.2 sale deed of the year 1920, thereby, the defendants traced title of the suit property from 1920, but the plaintiff has not proved title prior to Ex.A.1 of the year 1987. The plaintiff contends that the defendants' side documents are not related to the suit property, and they relate to 1 acre 20 cents out of 1 acre 96 cents in suit survey number S.No.216/4, while the suit property comprises remaining 74 cents.

20.A careful perusal of the records, makes it clear that the trial Court has clearly observed that both the plaintiff and defendants have produced documents to prove their respective title over the suit property. The trial Court further held that the defendants' side documents do not disclose the suit property. The pleadings and evidence of the defendants show that one Muthu Kurumba Thevar purchased the property covered under Ex.B.2, and that the said Muthu Kurumba Thevar died without any legal heirs. Consequently, his brother namely Ammavasi @ Solai Kurumba Thevar, the grandfather of the defendants, acquired right over that property and that after his death, his son Chellachamy got the property and on demise of Chellachamy, the defendants



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claimed title over the property covered in Ex.B.2. But from perusal of Ex.B.8 it is very clearly revealed that the said Muthu Kurumba Thevar othied the property on behalf of his minor sons Chinna Karuppan and Periyakaruppan, as rightly submitted by the plaintiff's counsel. This fact was not specifically denied by the defendants. So, the defendants have not proved a clear title over the property purchased in Ex.B2 as to how they derived title of the same. Hence, the trial Court concluded that the plaintiff and the defendants have not proved their respective title over the suit property and further held that the defendants' side documents have no reliance as to the suit property. But the first Appellate Court has not properly appreciated the facts and evidence of the defendants and erred in holding that the defendants have title over the suit property, reversing the correct conclusion of the trial Court in respect of the failure to prove the title by both.

21.It is a settled position of law that the litigant is entitled to an injunction restraining the defendant from disturbing his settled possession over the property. It is also a settled position that when both the plaintiff and the defendant have not proved their title and the defendant has not proved his superior title while denying the title of the plaintiff, then the plaintiff is entitled



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to an injunction for his established possession. The Hon'ble Three Judges Bench of the Supreme Court has clearly held in **Rame Gowda (D) By Lrs. vs M. Varadappa Naidu (D) By Lrs. & Anr. in AIR 2004 SUPREME COURT.**

“When the defendant fails in proving his title to the suit land the plaintiff can succeed in securing a decree for possession on the basis of his prior possession against the defendant who has dispossessed him. Such a suit will be founded on the averment of previous possession of the plaintiff and dispossession by the defendant.....

In the present case the trial Court has found the plaintiff as having failed in proving his title. Nevertheless, he has been found to be in settled possession of the property. Even the defendant failed in proving his title over the disputed land so as to substantiate his entitlement to evict the plaintiff. The Trial Court therefore left the question of title open and proceeded to determine the suit on the basis of possession, protecting the established possession and restraining the attempted interference therewith. The Trial Court and the High Court have rightly decided the suit.”



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22.So, the argument advanced by the learned counsel for the respondents/defendants that unless the relief of declaration is sought, when there is a dispute over the title of the plaintiff, the suit for injunction simplicitor and reliance on rulings are not acceptable is untenable in the facts and circumstances of the case. Because this Court is of the considered view that both parties have not proved title over the suit property. Hence, the plaintiff is entitled to injunction if he proves his settled possession. A careful perusal of oral and documentary evidence Ex.A.1 to Ex.A.29 makes it clear that the plaintiff has been in possession of the suit property by producing revenue records, whereas the defendants have not proved their possession by way of paying kist towards the suit property. The exhibits produced by the defendants only relate to purchase and othi in respect of part of the land in suit survey number and the defendants have not proved that their documents consist of the suit property. It is the repeated well settled position that the plaintiff is entitled to the relief of injunction protecting his possession on the date of the plaint, even if he is deemed to be a trespasser. In this case, the plaintiff has clearly proved his settled possession of the suit property. It is not the case of the defendants that they are co-owners and they have also not proved title over the suit property, as already discussed above. The first Appellate Court erred in



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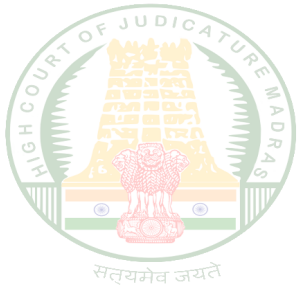
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holding that mere possession is not sufficient to grant an injunction when the documents show that there is no proof of title to the suit property by both. The first Appellate Court has failed to consider the oral and documentary evidence adduced by both. This Court holds that the possession of the plaintiff over the suit property is proved by him as correctly decided by the Trial Court. Accordingly, substantial question of law is answered in favour of the appellant. Thus, this second appeal succeeds.

23.In the result, the Second Appeal is allowed by setting aside the judgment and decree dated 30.09.2011 passed in A.S.No.83 of 2011 on the file of the III Additional Sub Court, Madurai, reversing the judgment and decree dated 31.10.2011 passed in O.S.No.160 of 2004 on the file of the District Munsif-cum-Judicial Magistrate Court No.1, Usilampatti. The judgment and decree, dated 31.01.2011 passed in O.S.No.160 of 2004 on the file of the District Munsif-cum-Judicial Magistrate Court No.1, Usilampatti, are restored. No costs.

22.07.2026

NCC : Yes / No
Internet : Yes / No
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VSD

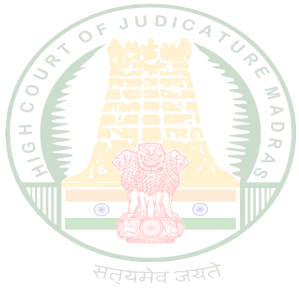


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To

- 1.The III Additional Sub Court,
Madurai.
- 2.The District Munsif-cum-Judicial Magistrate Court No.1,
Usilampatti.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
S.A(MD)No.225 of 2012**

22.07.2026