

SA(MD).No.92 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment reserved on 16.06.2026	Judgment pronounced on 10.07.2026
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THE HON'BLE MR. JUSTICE P.B.BALAJI

SA(MD) No.92 of 2021 and
CMP(MD).Nos.1453 of 2021 and 7446 of 2024

Velsamy

... Appellant / 1st defendant

Vs.

1. Nagalingam
2. Muniyasamy (died)
3. Ananthi
4. Ramesh
5. Suresh
6. Shanthi
7. Backiyalakshmi
8. Jahana Priyadharshini
(respondents 7 and 8 brought on
record as Lrs of the deceased 2nd respondent
vide order, dated 04.03.2026)

.. Respondents/Plaintiffs

Prayer : Second Appeal filed under Section 100 CPC to set aside the Judgment and decree passed in A.S.No.11 of 2013, dated 21.09.2020 on the file of the Sub Court, Ramanathapuram reversing the Judgment and decree passed in O.S.No.98 of 2010 dated 10.10.2011 on the file of the District Munsif Cum Judicial Magistrate, Rameshwaram.



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For Appellant

: Mr.H. Arumugm

For respondents 1, 3 to 5, 7 & 8 : Ms.Sakthi Bavatharani

JUDGMENT

This Second Appeal has been filed by the first defendant in O.S. No. 98 of 2010 on the file of the District Munsif-cum-Judicial Magistrate, Rameswaram, aggrieved by the reversal findings rendered by the first appellate Court in A.S. No.11 of 2013 on the file of the Sub Court, Ramanathapuram.

2. The Second Appeal was admitted by this Court on 23.02.2021 on the following four substantial questions of law:

a) When the plaintiff's have not produced any title deed but simply relied the boundary recitals of deed of simple mortgage and discharge receipt, whether the lower appellate Court is right in granting the decree of declaration and recovery of possession based upon the boundary recitals of those documents ignoring that the plaintiffs have not proved their title as contemplated under "Sections 102 and 103 of the Indian Evidence Act, 1872?

(b) Whether the lower appellate court is right in presuming the genealogy of the predecessors of the plaintiffs and as well as properties on the basis of boundary recitals in the mortgage deed without any oral or documentary evidence?



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(c) Whether there is a specific denial of the title of the plaintiff in the written statement under Order 8 Rule 5 of CPC whether the lower appellate Court is right in giving a finding that there is no specific denial?

(d) Whether the lower appellate Court is right in holding that the 1 defendant's title is with specific extent and therefore the remaining portion must be belong to the plaintiffs when the plaintiffs have not proved their title to get declaration under Section 34 of Specific Relief Act?"

3. The brief facts that may be necessary for adjudicating the Second Appeal are as follows:

(i) The respondents / plaintiffs claim that an extent of 1½ Kurukam comprised in S. No.588 originally belonged to Ayyam Perumal Nadar and his brother, Kalimuthu, and that, in the course of their enjoyment, Ayyam Perumal Nadar had created a usufructuary mortgage over the suit property in favour of Rakayee Ammal by a registered "Othi" deed dated 23.04.1942 and had also made over his "Othi" deed on 12.02.1945, wherein the plaint schedule property has been described as Item No.2.

ii) It is the further case of the plaintiffs that the said Rakayee Ammal



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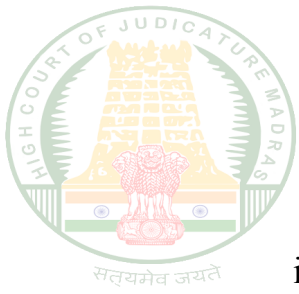
was in possession of the plaintiffs' suit property as a usufructuary mortgagee. The property of the predecessor-in-interest of the first defendant, Karadaichi Kone, lies to the west of the plaint schedule property. Since Rakayee Ammal and the first defendant are close relatives, they enjoyed the plaint schedule property and the property of Karadaichi Kone as a single property, and the same was surveyed accordingly. It is the further case of the plaintiffs that the brother of Ayyam Perumal Nadar, viz., Kalimuthu Nadar, died issueless, and his proportionate share in the suit property was inherited by his brother, Ayyam Perumal Nadar, and, subsequent to his demise, the same was inherited by the plaintiffs. It is also their case that, as Rakayee Ammal died, the first plaintiff subsequently redeemed the "Othi" from her son, Rakku Kone, and the discharge receipt was executed on 05.07.1999 and registered on 07.07.1999. Alleging that the defendants attempted to take possession of the suit property on 20.10.1999 and that the first defendant was denying the title of the plaintiffs, the first plaintiff issued a lawyer's notice on 28.10.1999, to which the first defendant sent a reply disputing the title of the plaintiffs. The cloud cast over the title of the plaintiffs by the said reply necessitated the filing of the suit for declaration and recovery of possession from the first defendant.



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iii) The suit was resisted by the first defendant, contending that the suit property had not been properly described, as Survey No.588 had already been subdivided into Survey Nos.588/1 and 588/2, and that Survey No.588/2 consists of an east-west highway road, while to the north of the said highway lies the land comprised in Survey No.588/1, measuring an extent of 12 acres. According to the first defendant, one Shanmuga Sundaram Pillai was the owner of the said 12 acres, and he had created a usufructuary mortgage in favour of Kaliammal, which was subsequently redeemed. Thereafter, the first defendant's grandfather, Rakappa Kone, had purchased the suit property as early as in the year 1928 by an unregistered sale deed for valuable sale consideration. The first defendant also claims that his grandfather was in peaceful possession and enjoyment of the suit property till his demise in 1935, and upon his demise, the suit property was inherited by his sons, Pachai Karuppa Kone and Udaiyar Kone, and his daughter, Velayee. Taking advantage of the inclusion of her name in the patta, Velayee executed an Inam Settlement Deed in favour of her grandson, Karmega Kone, which was challenged by Pachai Karuppa Kone and Udaiyar Kone in O.S. No.67 of 1970.

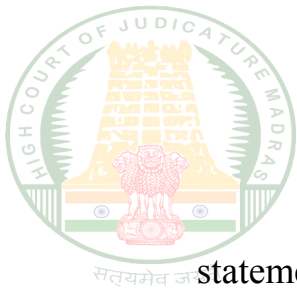


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iv) The plaintiffs in the said suit succeeded, and they also took possession of the suit property in E.P. No.138 of 1981. Thereby, according to the first defendant, Pachai Karuppa Kone and Udaiyar Kone became entitled to one-half share each. The one-half share of Udaiyar Kone was inherited by the first defendant, and the one-half share of Pachai Karuppa Kone was inherited by his legal heirs. It is further claimed that the patta in respect of the entire suit property stands in the name of the first defendant; six acres on the eastern side were allotted to the first defendant and Nagu, and six acres on the western side were allotted to the legal heirs of Pachai Karuppa Kone, and they have been in exclusive possession and enjoyment of their respective properties ever since.

v) The first defendant has also pleaded that the first defendant and his ancestors have been in long, continuous, and uninterrupted possession of the suit property for over a hundred years, hostile to the interest of the plaintiffs, and have, therefore, prescribed title by adverse possession. On these grounds, the first defendant sought dismissal of the suit. The defendants also raised the plea of non-joinder of necessary parties and contended that the plaintiffs are not entitled to any relief. The plaintiffs filed a reply statement denying the allegations made in the written



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statement and reiterating the averments made in the plaint.

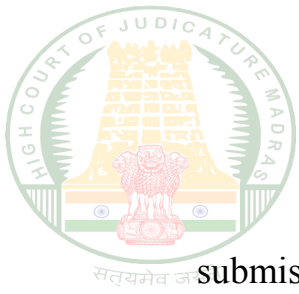
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4. Before the trial Court, on the side of the plaintiffs, P.W.1 was examined and Exs.A1 to A3 were marked. On the side of the defendants, D.W.1 and D.W.2 were examined and Exs.B1 to B11 were marked. Through D.W.2, Exs.X1 and X2 were marked.

5. The trial Court answered the issues against the plaintiffs and dismissed the suit. However, the First Appellate Court reversed the judgment and decree of the trial Court, mainly on the grounds that the suit was bad for non-joinder of necessary parties and that no proper issues had been framed by the trial Court. The First Appellate Court allowed the appeal and thereby decreed the suit, holding that the plaintiffs are entitled to the reliefs of declaration and recovery of possession.

6. I have heard Mr. H. Arumugam, learned counsel for the appellant, and Ms. Sakthi Bavatharani, learned counsel appearing for the respondents/plaintiffs.

7. Mr. H. Arumugam, learned counsel for the appellant, made



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submissions with reference to the substantial questions of law framed for consideration in the above Second Appeal. It is his principal contention that the plaintiffs have not produced any valid or acceptable title deeds, except by relying upon the boundary recitals contained in the mortgage deeds and the discharge receipt, which have been erroneously relied upon by the First Appellate Court. He would further submit that the predecessors-in-interest of the first defendant had acquired right, title, and interest in the suit property as early as in the year 1928, much prior to the alleged “Othi” deeds under which the plaintiffs claim their right. He would further submit that, despite the specific denial of the plaintiffs' title and entitlement in the written statement, as contemplated under Order VIII Rule 5 of the Code of Civil Procedure, the First Appellate Court has erroneously held that the first defendant had not specifically denied the title of the plaintiffs. In this connection, he also took me through the written statement filed by the first defendant. Therefore, Mr. H. Arumugam, learned counsel for the appellant, prayed that the Second Appeal be allowed.

8. In support of his contentions, he relied upon the decision of this Court, rendered by me, reported in **2024 (2) CTC 273**, in the case of



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S. Ekambaram vs. N. Nallathambi, wherein I held that recitals regarding boundaries cannot be imposed upon the first defendant, especially when they are found in documents to which he is not a party. He also relied upon the decision of this Court reported in **23 Law Weekly 675**, in the case of **N. V. Nageshwara Aiyar Vs. Alagu Srinivasa Aiyangar (dead) and others**, wherein this Court held that a usufructuary mortgage deed is only evidence of the fact that the mortgagor had dealt with the property and that, by no stretch of imagination, a mortgage deed can be considered to be a title deed of the mortgagor. He further relied upon the decision of the Hon'ble Supreme Court reported in **2014 (4) CTC 471**, in the case of **Union of India and others v. Vasavi Co-operative Housing Society Ltd. and others**, wherein the Hon'ble Supreme Court held that, in a suit for declaration of title and recovery of possession, the plaintiffs have to succeed on the strength of their own title, and that such success can be achieved only by adducing sufficient evidence to discharge the burden cast upon them, irrespective of whether the defendants have proved their case or not.

9. Per contra, Ms. Sakthi Bavatharani, learned counsel for the contesting respondents, would submit that the First Appellate Court had rightly appreciated the evidence in the light of the evidence adduced by the



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parties and had set aside the erroneous findings rendered by the trial Court, thereby granting the reliefs sought for by the plaintiffs. She would further submit that the First Appellate Court, being the final Court of fact, this Court cannot re-appreciate the evidence to arrive at any different conclusion. She would also submit that the decree in O.S. No.67 of 1970 would not bind the plaintiffs in any manner and that the First Appellate Court had rightly held that the suit was filed within time and was not barred by limitation. She would further submit that the findings of the First Appellate Court are not perverse, but are based on the pleadings as well as the evidence brought on record by the parties. Therefore, she contends that this Court need not interfere, in the absence of any substantial question of law arising for consideration.

10. I have carefully considered the submissions of the learned counsel appearing on either side.

11. The respondents/plaintiffs approached the Court seeking the reliefs of declaration and recovery of possession. The burden lay upon the plaintiffs to establish that they were the owners of the suit property and, consequently, that they were entitled to recovery of possession from the

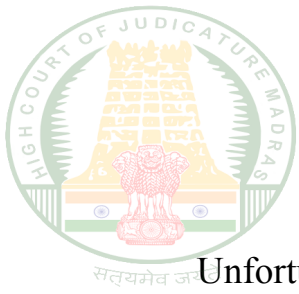


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first defendant. The only documents upon which the plaintiffs placed reliance were the “Othi” deeds of the years 1942 and 1945. Heavy reliance was placed on the boundary recitals contained in the “Othi” deed dated 1942. The plaintiffs also claimed that the “Othi” was discharged in the year 1999, and the said discharge deed has also been exhibited as Ex.A3. The case of the plaintiffs was that the first defendant owned property on the western side and had encroached upon the suit property and merged it with his own property. In the plaint, the suit property has been described as being situated in Survey No.588 and measuring an extent of ½ Kurukkam. It has been established by the appellant that Survey No.588 had already been subdivided and, in fact, the documents upon which reliance has been placed, especially Ex.A2, refer only to Survey No.586. The plaintiffs have miserably failed to establish any correlation between Survey No.586 and the suit property, leave alone the subdivisions subsequently effected to Survey No.588.

12. A mortgage deed is not a document of title under which the mortgagor can claim title to the mortgaged property. The plaintiffs, having approached the Court seeking the relief of declaration and consequential recovery of possession, were bound to independently establish their title.



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Unfortunately, in the present case, except for relying upon the “Othi” deeds, there is absolutely no independent or satisfactory evidence to establish the title of the plaintiffs to the suit property. Further, reliance has been placed only on the boundary recitals contained in the mortgage deeds, which, by no stretch of imagination, can be relied upon to raise a presumption of title, especially in the absence of the parties to the mortgage deeds being examined.

13. Unfortunately, the First Appellate Court proceeded on a misreading of the written statement as though the first defendant had not even denied the title of the plaintiffs. In the written statement, there is a specific denial of the title of the plaintiffs, and consequently, the entire burden of proof rested upon the plaintiffs to establish their title. Yet another aspect which assumes significance in the present case is that the first defendant claims title under a sale deed of the year 1928, which is even prior to the “Othi” deeds of the years 1942 and 1945. The first defendant has also established that possession of the suit property had been delivered through due process of Court and, consequently, the first defendant has been in lawful possession and enjoyment of the property. In such circumstances, the First Appellate Court, on a clear misreading of the



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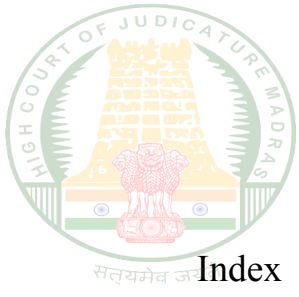
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pleadings and improper appreciation of the evidence adduced by the parties, came to the erroneous conclusion that the plaintiffs are entitled to the reliefs as prayed for, when the trial Court had rightly appreciated the pleadings and the evidence available on record and held that the plaintiffs had miserably failed to prove their title and, consequently, were not entitled to the reliefs of declaration and recovery of possession. The findings of the First Appellate Court are, therefore, clearly un-sustainable and liable to be set aside.

14. Accordingly, the substantial questions of law are answered in favour of the appellant. The Second Appeal is allowed. Consequently, the judgment and decree of the First Appellate Court made in A.S.No.11 of 2013, dated 21.09.2020, on the file of the Sub Court, Ramanathapuram, is set aside, restoring the judgment and decree of the trial Court made in O.S.No.98 of 2010, on the file of the District Munsif-cum-Judicial Magistrate, Rameswaram. No costs. Connected Civil Miscellaneous Petitions are closed.

10.07.2026

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

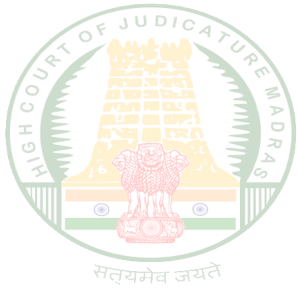


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To

- 1.The Sub Court, Ramanathapuram.
2. The District Munsif Cum Judicial Magistrate, Rameshwaram.



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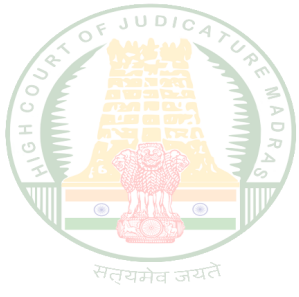


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P.B.BALAJI.J,

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Pre-delivery Judgment made in
SA(MD) No.92 of 2021 and
CMP(MD).Nos.1453 of 2021 and 7446 of 2024



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