



S.A.(MD)No.199 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.06.2026

DELIVERED ON : 10.07.2026

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

S.A.(MD)No.199 of 2019

and

C.M.P.(MD)No.4172 of 2019

M.Shanmugam Pillai (Died)

2.S.Pushpavalliyammal

3.M.S.Murugan

4.M.S.Chockalingam

5.S.Krishnan alias Annamalai

6.M.Shanmugam

7.M.Pushpavalli

... Appellants

[Appellants 2 to 7 are brought on record as legal heirs of the deceased sole appellant vide court order dated 30.06.2022 made in C.M.P.(MD)No.3794 of 2022 in S.A.(MD)No.199 of 2019]

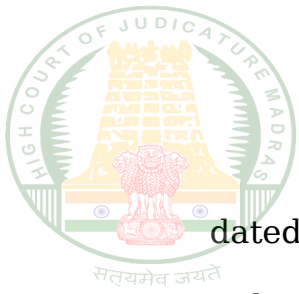
Vs.

P.Stanley Samraj

... Respondent

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree

1/20



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dated 07.12.2018 passed in A.S.No.58 of 2012, on the file of the Sub Court, Tuticorin, confirming the judgment and decree dated 22.11.2011 passed in O.S.No.142 of 2006, on the file of the Additional District Munsif Court, Tuticorin by allowing this Second Appeal.

For Appellants : Mr.V.Meenakshi Sundaram
For Respondent : Mr.M.Ajmal Khan,
Senior Counsel
for M/s.Ajmal Associates

JUDGMENT

The plaintiff in O.S.No.142 of 2006 is the appellant, now through his legal heirs, plaintiff having died pending Second Appeal. The challenge is to concurrent findings rendered by the Trial Court in O.S.No.142 of 2006 and by the First Appellate Court in A.S.No.58 of 2012.

2.The Second Appeal has been admitted by this Court on 30.03.2023, on the following three substantial questions of law:

“(a) Whether the Courts below were correct in dismissing the suit on the ground that no documents were filed by the appellant /



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plaintiff in respect of the remaining extent of 61 cents, which he has claimed that he has inherited the same through oral partition, which is reflected in the revenue records?

(b) Whether the Courts below were right in dismissing the suit, eventhough the defendant was not having any title to the suit schedule property as he has not filed any supporting evidence to support his pleadings in his written statement?

(c) Whether the approach of the first appellate Court rejecting the petitions in I.A.Nos.63 & 149 of 2013 in A.S.No.58 of 2012 filed under Order 41 Rule 27 of CPC is correct?"

3.I have heard Mr.V.Meenakshi Sundaram, learned Counsel for the appellants and Mr.M.Ajmal Khan, learned Senior Counsel for M/s.Ajmal Associates learned Counsel for the respondent.

4.The brief facts that are necessary for deciding the substantial questions of law are as hereunder:



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4.1.The suit schedule first item comprised in Old S.No. 570/A1, New S.No.570/A-1-A, measuring 1 acre and 19 cents, comprising of the second schedule item as well, originally belonged to senior Muthu Pillai. After his life time, it was inherited by his two sons Subramania Pillai and Eswaramoorthi Pillai, in the year 1904 vide Ex.A.1 sale deed. Subramania Pillai one of the sons of senior Muthu Pillai, sold his share of 61 cents to his elder brother Eswaramoorthi Pillai and Eswaramoorthi Pillai became the owner of the entire 1 acre and 22 cents.

4.2.Junior Muthu Pillai, son of Eswaramoorthi Pillai, died in the year 1968, leaving behind his wife Unnamalaiammal, sons Eswaramoorthi, Krishna Pillai, Arima Krishnan and the plaintiff Shanmuga Pillai as the legal heirs. Mother Unnamalaiammal, died in November 1968. According to the plaintiff, on 01.01.1983, there was an oral partition between the plaintiff and his three brothers in which, suit survey No.570/A1A of an extent of 1 acre and 19 cents was allotted to the plaintiff, separate patta in Patta No.3184 was also mutated in the name of the plaintiff. The defendant encroached into a portion of the suit property and hence, the suit has been filed for declaration and mandatory injunction as well as for recovery of possession.



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The case of the defendant:

4.3.The defendant contested the plaintiff's claims stating that the defendant had purchased an extent of 60 cents in S.No.570A/1A from one Sankaran, in and by sale deed dated 06.06.2005 and that the defendant's vendor in turn purchased the property from one Sundari Ammal, under sale deed dated 23.11.2004. According to the defendant, Sundari Ammal got the property from her father-in-law Vellaichamia Pillai, who had purchased the same from Chinnathambia Pillai in the year 1923. The defendant also pointed out that on the very same day, the defendant purchased 25 cents S.No.570A/2A1B from one Alagupushpammal and hence, the defendant traces separate title to the suit schedule second item and there is no question of any encroachment.

4.4.The defendant also denied the claim of oral partition on 01.01.1983. The Trial Court, in and by judgment and decree dated 22.11.2011, dismissed the suit, stating that the plaintiff had established title only to 61 cents under Ex.A.1 sale deed and that the redemption deed Ex.A.2, cannot establish title at the hands of the plaintiff and revenue records will also not be sufficient to uphold the alleged claim of the plaintiff. The Trial Court also found



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that patta, which has been relied on by the plaintiff was a joint patta, standing in the name of the plaintiff as well as his brothers and proceeded to accept the defence raised. On appeal by the plaintiff, the First Appellate Court concurred with the findings of the Trial Court and dismissed the appeal. Pending the first appeal, in fact the plaintiff took out three applications in I.A.Nos.107 of 2013, 149 of 2013 & 63 of 2013, under Order 41 Rule 27 of CPC, to receive additional documents. These applications according to the appellants were not even disposed of along with the appeal by the First Appellate Court.

5.Arguments of Mr.Meenakshi Sundaram learned Counsel for the appellants:

5.1.Taking me through the pleadings as well as oral and documentary evidence, Mr.Meenakshi Sundaram, would firstly contend that the plaintiff was not resting his case merely on Ex.A.1 sale deed. In this regard, he would take me through the plaint, where there is specific reference to have inherited the remaining 61 cents as well. He would also state that the plaintiff has clearly traced title to the entire extent of 1 acre and 22 cents and the fact that patta was also mutated in the name of the plaintiff, clearly corroborates the plaintiff's claim in this regard.



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5.2.As regards the case of the defendant, Mr.Meenakshi Sundaram, learned Counsel for the appellants would contend that the defendant claims title through Sundari Ammal, who in turn claims right through her father-in-law Vellaichamia Pillai, who never had any right in the subject suit properties in the first place and therefore, the defendant's case was without any substance whatsoever. He would also state that in respect of 61 cents covered by sale deed, Courts have upheld the right of the plaintiff and there is no difficulty. However, in respect of the other 61 cents claimed by way of inheritance, the Courts have rejected the title of the appellants.

5.3.Mr.Meenakshi Sundaram, would state that Ex.A.4 and A.5, revenue records are ancient documents, which are more than 30 years old and the Courts could have safely presumed genuineness of these documents. Inviting my attention to the findings of the First Appellate Court, Mr.Meenakshi Sundaram would submit that the findings are wholly misplaced and unsustainable. He would further state that though the Ex.A.3, mortgage deed of the year 1937, with the redemption endorsement, may not establish title, when the documents in Ex.A.4 and A.5, read with the revenue



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records clearly indicated that the suit property absolutely belonged to the plaintiff, the Courts ought to have placed reliance on the same.

5.4.He would also contend that there is no dispute amongst the brothers, namely, the plaintiff and his brothers and therefore, much reliance should not have been placed by the Courts with regard to the patta standing in the joint names of plaintiff and his brothers, especially when the dispute was only pertaining to the issue of encroachment by the defendant into the plaintiff's property. He would further state that even as a co-owner, the plaintiff was entitled to seek for recovery of possession and address the encroachment made by the defendant.

5.5.Mr.Meenakshi Sundaram, learned Counsel for the appellants would also state that in a civil suit of this nature, the Courts are entitled to see who has made out a better case and in this regard, preponderance of probabilities would come into play and the documents filed on either side would clearly and clinchingly demonstrate that the plaintiff had clearly established a *prima facie* better case than that of the defendants, which was sufficient to decree the suit in favour of the plaintiffs.



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6.Arguments of Mr.Ajmal Kahn learned Senior Counsel for the defendant:

6.1.Per contra, Mr.Ajmal Khan, learned Senior Counsel would firstly contend that no substantial questions of law arise for consideration and the Courts below have concurrently found the plaintiff has failed to establish any iota of right in the suit properties and he would therefore, state that no interference is warranted with the concurrent findings rendered by the Courts below.

6.2.On facts, Mr.Ajmal Khan, learned Senior Counsel would contend that the plaintiff having substantiated title to one half of the suit property, namely 61 cents and having come to Court seeking the relief of declaration, under Section 101 of the Evidence Act, 1872, the plaintiff was bound to establish his right by adducing satisfactory oral and documentary evidence and the plaintiff cannot pick holes in the weakness of the defence, if any.

6.3.He would also state that despite the plaintiff not establishing title, the defendant on his side had traced title and had filed registered documents right from 1923 onwards and



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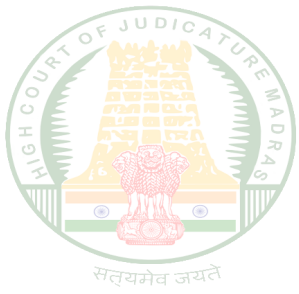
admittedly, the defendant is in possession, even according to the plaintiff. He would therefore, state that the Courts below have rightly rejected the case of the plaintiff and hence, questions of fact do not warrant interference under Section 100 of CPC. Learned Senior Counsel would also state that excepting Ex.A.3, mortgage deed with redemption endorsement and revenue records Ex.A.4 & Ex.A.5, the plaintiff has not filed any title deeds, claiming right to the other 61 cents. As a mortgage deed will not convey title by any stretch of imagination and he would state that the plaintiffs / appellants are not entitled to any relief in the present Second Appeal.

6.4. Learned Senior Counsel has relied on the following decisions in support of his submissions:

(i) *Smriti Debbarma (Dead) through LR Vs. Prabha Ranjan Debbarma and others*, reported in (2023) 19 SCC 782;

(ii) *P.Kishore Kumar Vs. Vittal K.Patkar*, reported in (2024) 13 SCC 553;

(iii) *Kishan Chand (Dead) through Lrs Vs. Gautam Gaur Hitkarak Sabha, Kota and others*, reported in 2026 SCC Online SC 803;



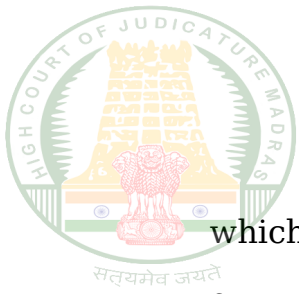
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(iv) ***Parvathy Thilagam and others Vs. Rengasamy Nadar (Died) and others, reported in (2016 7 MLJ 571.***

7.I have carefully considered the submissions advanced by the learned Counsel for the appellants and the learned Senior Counsel appearing for the respondents.

8.With regard to one 61 cents, there is absolutely no difficulty. The plaintiffs / appellants have established clear title to the same, vide Ex.A.1 sale deed. The defendant does not even dispute the said factum seriously. It is only in respect of the other 61 cents, which the plaintiff seeks declaration and the same is defended by the defendant, contending that the defendant has traced title to 60 cents out of 61 cents, under registered documents right from the deed of the year 1923, Ex.A.10. Coming to Ex.A.3 mortgage deed, with a redemption endorsement, it is of the year 1937, Ex.A.4 is a patta issued to senior Muthu Pillai in the year 1950. Ex.A.5, is the patta issued to junior Muthu Pillai. Ex.A.7 is the joint patta issued to the plaintiff and his brothers. Ex.A.8 & Ex.A.9 are kist receipts in the name of Muthu Pillai and the plaintiff, respectively. Ex.A.10 is the sale deed of the year 1923, in and by



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which, Chinna Thambiya Pillai has conveyed his entire extent in favour of his brother Velliachamia Pillai @ Murugavudaiya Pillai.

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9.At this juncture, straightaway, it is seen that the claim of the defendant has been falsified. The defendant though traced title to registered documents, claims that the father-in-law of Sundari Ammal had given the property to said Vellaichamia Pillai, the predecessor in interest of the defendant. However, as seen from the 1923 sale deed, Ex.A.10 dated 11.09.1923, Vellaichamia Pillai had already conveyed his entire extent in favour of his brother in and by registered sale deed. Thus, he had no right to give any property to his daughter-in-law Sundari Ammal, for her to in turn convey it and ultimately the property coming into the hands of the defendant.

10.This now leaves us with the question as to whether the plaintiff has established his right and title to the suit property. In the plaint, it is clearly averred by the plaintiff that in respect of 61 cents, he has inherited the same ancestrally and in respect of the remaining 61 cents, he had purchased it vide Ex.A.1. In order to substantiate that the plaintiff was in enjoyment of the entire extent of 1 acre and 22 cents, Ex.A.3 mortgage deed with redemption endorsement of the year 1937 has been exhibited and revenue



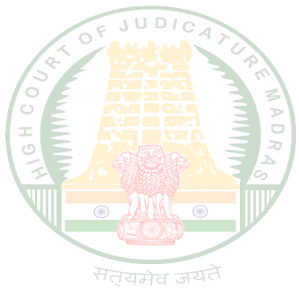
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records, to evidence the fact that entire 1 acre 22 cents has been in possession of the plaintiff have also been exhibited.

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11.No doubt, a mortgage will not evidence or establish title at the hands of the mortgagor. However, when pitched against the right and title of the defendant, a Civil Court is entitled to see which of the parties has made out a stronger preponderance of probabilities by adducing evidence. In fact, in a recent decision, in ***S.A.Nos.550 & 551 of 1999 dated 21.05.2026***, my learned brother Judge, ***Justice.V.Lakshminarayanan***, has elaborately discussed the manner in which a civil proceeding relating to a declaration of title has to be dealt with. I am usefully extracting the relevant paragraphs from the said judgment hereunder:

“53.Before I embark on a discussion, I have to appreciate the manner in which a civil proceeding, relating to a declaration of a title has to be dealt with. A Court, while dealing with a civil proceeding, deals so on the basis of the evidenciary rule of preponderance of probabilities, unlike in case of criminal proceeding, which goes on the basis of standard of proof beyond reasonable doubt.

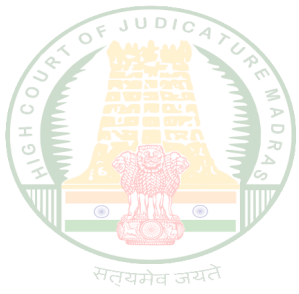


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54.What is then the principle of preponderance of probabilities? The test being, whether the plea raised by the plaintiff is more probable than its non~existence. The plaintiffs are required to prove that their case is more plausible than that of the defendants. In case, the proof let in by the plaintiffs and defendants are equally balanced, then the Court normally should come to the conclusion that the plaintiff has not met the standards required and should look against the plaintiff. It has been pointed out by Courts and Jurists that, the nature of exercise undertaken by a Court is not with mathematical precision or appreciation as done in science. It is the consideration of the Court, which involves the overall assessment of the evidences placed before it, keeping in mind reliability, credibility and the value of the evidence, in order to come to a conclusion which of the case projected by the parties is more probable. The conclusion is not absolute or scientific. I should refer here to Section 35 of the Specific Relief Act, which points out that a declaration of title could be binding only inter parties.”



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12.Coming to the facts of the present case, there was no necessity for the plaintiff to have asserted title in respect of the entire 1 acre 22 cents in the year 1937. Therefore, Ex.A.3 mortgage deed with the redemption endorsement can be safely looked into, being a document over 30 years, especially when Section 90 of the Indian Evidence Act, entitles the Court to presume the genuineness of the document which is 30 years old and more, when produced from proper custody. The Courts below have unfortunately rendered a perverse finding that the said mortgage deed has been created. The cause of action for filing the suit was only in May 2012 and therefore, I am at a loss of words as to how there was any necessity for the plaintiff to create the mortgage deed, that too, several decades earlier, even in the year 1937. The ratio laid down in S.A.Nos.550 & 551 of 1999, would squarely apply to the facts of the present case.

13.Further, Ex.A.3 is not a stand alone document, it is supported by revenue records as well, which have been exhibited before the Trial Court. Analysing all the exhibits filed on the side of the plaintiff together, it is clear that the plaintiff has been in a position to satisfactorily explain better right and title than the defendant, entitling him to the decree as prayed for. The defendant



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admittedly got possession only in the year 2005 and within a year, complaining of encroachment and trespass, a suit has been filed in the year 2006. No doubt, the weakness in the case of the defendant by itself will not entitle the plaintiff to a decree, but however, as already discussed hereinabove, the plaintiff has been able to establish a higher, probable and better title to the suit property than the defendant and as a co-owner, the plaintiff was certainly entitled to recover possession from the defendant, who is a stranger to the suit property.

14.Coming to the decisions that have been relied on by the learned Senior Counsel for the respondent, in ***Kishan Chand's*** case, the Hon'ble Supreme Court held that in a suit for declaration and consequential relief, the burden is always on the plaintiff to establish his title to the suit property and that the plaintiff must succeed on the strength of his own case and not on the weakness of the defendant's case. I have also discussed the said proposition hereinabove.

15.In ***Kishore Kumar's*** case, the Hon'ble Supreme Court held that revenue records neither create nor extinguish title and do not have any presumptive value of title. This position is also settled



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and as already discussed, it is not merely based on the revenue records but also other attendant circumstances, including the claim of ownership even in the year 1937, which weighs in favour of the plaintiff.

16.In *Smriti Debbarma's* case, the Hon'ble Supreme Court held that in a suit for declaration and recovery of possession, the defendants cannot be dispossessed unless the plaintiff has established a better title and rights over the suit property. Here, I have already come to the finding that the plaintiff / appellants have established better right and title than the defendants.

17.In *Parvathy Thilagam's* case, this Court reiterated the principle that in a suit for declaration of title and possession, the plaintiff has to succeed on the strength of his own title, by adducing sufficient evidence to discharge the onus, irrespective of the question whether the defendants have proved their case or not. The ratio laid down in this case is also a settled legal principle with which I have absolutely no quarrel.

18.For all the discussions made hereinabove and the findings arrived thereupon, I am unable to sustain the concurrent error



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committed by the Courts below in dismissing the suit, despite the plaintiff having made out a higher degree of right and better title than the defendant, entitling him to the suit reliefs. Accordingly, substantial questions of law are answered in favour of the appellants.

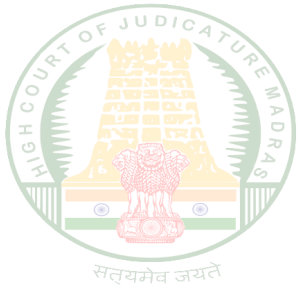
19.In fine, the Second Appeal is allowed and the judgment and decree in A.S.No.58 of 2012 dated 07.12.2018, on the file of the Sub Court, Tuticorin, confirming the judgment and decree dated 22.11.2011 in O.S.No.142 of 2006, on the file of the Additional District Munsif Court, Tuticorin are set aside. The respondent shall vacate and hand over vacant possession of second item of suit property on or before **31.10.2026**. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

10.07.2026

Index : Yes / No

NCC : Yes / No

MR



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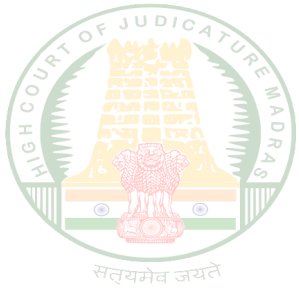
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To

1.The Subordinate Judge,
Tuticorin.

2.The Additional District Munsif,
Tuticorin.

3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI, J.

MR

PRE-DELIVERY JUDGMENT MADE IN

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10.07.2026