



S.A.(MD)No.96 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.03.2026**

CORAM

THE HONOURABLE **MR.JUSTICE V.LAKSHMINARAYANAN**

S.A.(MD)No.96 of 2015

and

C.M.P.(MD)Nos.3390 of 2023

P.Nagan (Died)

1.Palaniammal

2.Radhakrishnan

3.Ganesan

4.Kalaiselvi

5.Pasammal

6.Chitra

7.Selvi

8.Kalaiarasi

... Appellants

vs.

1.The Assistant Executive Engineer,
Public Works Department,
Construction and Maintenance Division No.3,
Paramakudi.

2.The Executive Engineer,
Public Works Department,
Construction and Maintenance Division No.3,
Paramakudi.



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3.The District Collector,
Ramanathapuram District,
Ramanathapuram.

4.Jeganathan

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree made in A.S.No.62 of 2010, dated 30.08.2011 on the file of Sub Court, Paramakudi reversing the judgment and decree of the District Munsif, Paramakudi in O.S.No.40 of 2006, dated 09.02.2009.

For Appellants : Mr.Vijay Anand
For Mr.R.Murali

For R-1 to R-3 : Mr.K.R.Badurus Zaman,
Government Advocate

For R-4 : No Appearance

JUDGMENT

The present Second Appeal assails the judgment and decree of the learned Subordinate Judge at Paramakudi in A.S.No.62 of 2010 dated 30.08.2011 in reversing the judgment and decree of the Court of the District Munsif at Paramakudi in O.S.No.40 of 2006 dated 09.02.2009 and thereby, dismissing the suit for permanent injunction presented by the appellant.



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2. The facts of the appeal are as follows:

The plaintiff is the appellant. He feared interference at the hands of defendants 1 to 4. Hence, he filed a suit for permanent injunction.

3. It is the case of the plaintiff that the suit schedule mentioned property belonged to one Ayyasamypillai, who on 02.06.1965 executed a registered othi deed in favor of his brother, one Chandran. On 12.02.1969, Sivagnanam Pillai executed another othi deed in favor of the plaintiff's maternal uncle's son, one Saravanan. It was pleaded that on 08.11.1978, Chandran bound over the othi deed in his favor by way of an unregistered document. The plaintiff pleaded that Saravanan had put one Valli, his sister, in possession of the property and she continued to be in possession thereof. As he feared unlawful dispossession at the hands of the defendants, he came forth with the suit.

4. Summons were served on the defendants and the 1st defendant, Jaganathan, remained ex-parte. The defendants 2 to 4 filed a common written statement. According to them, there is no survey No.278/2C as pleaded in the plaint and that the correct survey number is 278, which is a poromboke land. According to them, the



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plaintiff had encroached upon Survey No.298/2B1 and that the plaintiff was not entitled for the relief of injunction. They denied the execution of the bound over othi document on 08.11.1978 and further urged that the Government has put up a construction over the property and is enjoyment thereof. It was asserted that, as the Government is the owner of the property, the plaintiff is not entitled to the relief of permanent injunction.

5. On the basis of these pleadings, the learned Trial Judge framed the following issues:

- 1.தாவாச் சொத்து ஆதிகில் அய்யாச்சாமி மிள்ளை என்பவருக்குப் பாத்தியமானது என்பது உண்மையா?
- 2.வாதி சொல்வது அய்யாச்சாமி மிள்ளையிடம் 50 வருடத்திற்கு முன்பே ஒத்தி பெறப்பட்டதாகச் சொல்வது உண்மையா?
- 3.வாதி கோரும் பரிகாரத்தைப் பெற வாதி தகுதி படைத்தவரா?
- 4.வேறு என்ன பரிகாரம்?

6. On the plaintiff's side, he examined himself as P.W.1 and one, Kasi Achari as P.W.2. He marked Exhibit A1 to A13. On the side of the defendants, one Bashiyam entered the witness box and the Government did not tender any documents.



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7. On consideration of the evidence let before him, the learned District Munsif at Paramakudi came to the conclusion that the plaintiff, being in possession of the property, he is entitled for a decree of injunction and decreed the suit as prayed for.

8. Aggrieved by the same, defendants 2 to 4 preferred a regular appeal to the file of the learned Subordinate judge at Paramakudi.

9. The appeal had been filed with a delay. After the delay was condoned, it was received as A.S.No.62 of 2010. The learned Appellate Judge rejected Exhibit A8 as the same is unregistered document. Pending the appeal, he received additional documents from the appellant in I.A.No.212 of 2011 and marked the same as Exhibits B1 to B3. This application stood allowed on 26.08.2011. On the basis of Exhibits B1 to B3, which were marked in appeal, the learned Judge allowed the appeal and dismissed the suit. Hence, the present Second Appeal.

10. This Second Appeal was admitted by this Court on 16.02.2015 on the following substantial questions of law:

1. Whether the judgment and decree of lower appellate Court in reversing the well considered



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judgment and decree of Trial Court without reversing the findings is sustainable?

2. Whether the judgment and decree of lower Appellate Court in dismissing the injunction suit is sustainable when the defendant categorically admits the possession and enjoyment by the plaintiff?

3. Whether the judgment and decree of lower Appellate Court in reversing the Trial Court judgment without considering the Ex.A.8 is sustainable?

4. Whether the judgment and decree of lower Appellate Court is sustainable in reversing the Trial Court judgment without considering the Ex.A.5 and A.6 whereby and whereunder the plaintiff proved the possession and enjoyment?

11. I heard Mr.Vijay Anand representing Mr.R.Murali for Appellants and Mr.K.R.Badurus Zaman, learned Government Advocate for Respondents 1 to 3.

12. In view of the order that I am going to pass, the substantial questions of law are recast as follows:

(i) Whether the lower Appellate Court was correct in allowing the



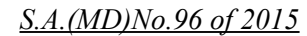
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application for additional documents in I.A.No.212 of 2011 de hors the appeal? and;

(ii) Whether reliance could have been placed on the documents so marked without adherence to Order XLI Rule 28 of the Code of Civil Procedure?

13. Under Order XLI Rule 27 of the Code of Civil Procedure, an Appellate Court is not barred from receiving additional documents. Prior to allowing such applications, the Court should strictly adhere to the three clauses of Order XLI Rule 27, namely, (a), (aa) and (b). Even though the Court is empowered to receive the documents, the manner of taking additional evidence is set forth under Order XLI Rule 28 of the Code.

14. The Supreme Court in ***Union of India v. Ibrahim Uddin and another, (2012) 8 SCC 148*** has held that it is not open to the Appellate Court to try an application for letting in additional evidence de hors the appeal. If during the course of discussion in the appeal, the Appellate Court feels that the document is essential for the purpose of pronouncing the judgment, it may do so by allowing the application under Order XLI Rule 27. This is the first error committed by the lower Appellate Court. The first Appellate Court records, which



“For clarification I.A.No.212 of 2011 allowed. Additional documents received. Exhibit B1 to B3 marked. Further arguments heard. For judgment by 30.08.2011”.

15. There is absolutely no endorsement by the learned Judge that he had received the documents under Exhibits B1 to B3 following the modes under Order XLI Rule 28 of the Code. Under Order XLI Rule 28, the Appellate Court can receive the evidence by itself or can direct the Court from whose decree the appeal has been preferred, to take such evidence and send the same to the Appellate Court.

16. For a mere fact that the appellant happened to be the State authorities, does not mean the procedure under Order XLI Rule 28 can be dispensed with. The learned Judge has allowed the appeal within four days of receiving the additional documents, without giving an opportunity to the appellant to let in rebuttal evidence or cross examine the person, through whom the documents were received, if at all. The receipt of additional evidence and allowing the appeal on the said basis, violates the manner of receipt of the same set forth under Order XLI Rule 28. Serious prejudice has been caused to the



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appellant, on account of the manner in which the appeal and additional documents have been received. Hence, the substantial questions of law recast by this Court are answered in favour of the appellant.

17. In view of the above, the Second Appeal is **allowed** in the following terms:

(i) The judgment and decree passed by the learned Subordinate Judge at Paramakudi in A.S.No.62 of 2010, dated 30.08.2011 is set aside.

(ii) The matter is remitted to the file of the learned Subordinate Judge at Paramakudi. He shall strictly adhere to the judgment of the Supreme Court referred to above.

(iii) In case, he decides to receive the additional documents, he shall follow the procedure set forth under Order XLI Rule 28.

(iv) He shall give an opportunity to the appellant/plaintiff to cross examine the witness, through whom the documents are being received. Thereafter, he shall hear the parties afresh and pass a judgment.

(v) The parties shall appear before the Appellate Court on **27.04.2026**.

(vi) Liberty is granted to both sides to let in any additional



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evidence. In case, those evidences are relevant, the learned Appellate Judge shall allow the same, if they come within the scope of Order XVI Rule 27 of the Code.

No costs. Consequently, the connected miscellaneous petitions are closed.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
Nsr

25.03.2026

Note to the Registry: The original records shall be sent forthwith to the Appellate Court to enable it to take up the appeal.

To:

- 1.The Sub Court, Paramakudi.
- 2.The District Munsif, Paramakudi.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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V.LAKSHMINARAYANAN, J.

Nsr

Order made in
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