

SA(MD). No.601 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 16.06.2026

Delivered On: 03.07.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B.BALAJI

**SA(MD). No.601 of 2022
and
CMP(MD)No.8297 of 2022**

1. Maragadhavel

2. Velayudham

3. Chendur

4. Muthuswamy

... Appellants/ Respondent1 tot4 /

Plaintiffs

Vs.

1. V.V.V.S. Sivagnana Pandian

2. Dhakshinamoorthy

3. Kandhan,

4. Subramanian

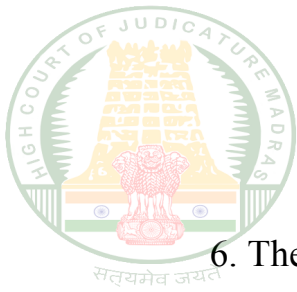
... Respondents 1to 4/ Appellants/

Defendants 5 to 7 & 10

5. The District Collector,,

Ramanathapuram District,

Ramanathapuram.



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6. The Sub Collector,,

Paramakudi,

Ramanathapuram District,

Ramanathapuram..

7.The Tahsildhar,,

Kadaladi,

Ramanathapuram District..

8. Pechiammal @ Karthigayini Nachiyar

... Respondents 5 to 8/ Respondents 5 to 8/
Defendants 1 to 3 & 9

PRAYER :- Second Appeal filed under Section 100 of Civil Procedure Code, against judgment and decree dated 28.10.2020 made in A.S. No. 81 of 2017 on the file of the Subordinate Judge, Muthukulathoor reversing the judgment and decree dated 14.07.2016 made in O.S. No. 69 of 2005 on the file of the District Munsif Court, Muthukulathoor for the following among other.

For Appellants : Ms.N.Krishnaveni, Senior Counsel
for Mr.P.Thiyagarajan,

For Respondents : Mr.Anand Chandrasekar,
for M/s.Polax Legal Solutions for R1 to R4
: Mr.S.I.Muthiah,
Counsel for State of Tamil Nadu (Civil side)
for R 5 to 7
: Mr. P.Subbaiah for R8



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JUDGMENT

The plaintiffs, in a suit for declaration and recovery of possession, are the appellants herein.

2. The second appeal has been admitted by this Court on 13.09.2022, on the following substantial questions of law:

(i) Whether the Lower Appellate Court is right in disbelieving the contents of Ex.A1 and Ex.A14, the certified copies of the Patta and the Village “A” Register under UDR Scheme, when no evidence to the contrary had been adduced by the defendants and the presumption as to official acts under Section 114 of the Indian Evidence Act, is in favour of the Plaintiffs/Appellants?

(ii) When there is no dispute with respect to the fact that Vellaiya Nadar is the son of Pichaiya Nadar and the father of Madasamy Nadar, the names appeared in the Exhibits A-1 and A14, the ancestors of the plaintiffs, whether the Lower Appellate Court is right in dismissing the suit only on the ground that it is not established that Vellaiyar Nadar is the Plaintiffs'



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ancestor, ignoring settled proposition of law that the undisputed facts need not be proved?

(iii) Whether the Lower Appellate Court is right in reversing the Judgment and Decree of the Trial Court in the absence of any new pleadings or any additional evidence before the Appellate Court so as to disagree with the findings of the Trial Court?

(iv) Whether the Judgment and Decree of the Lower Appellate Court are vitiated in law for not framing the necessary points for determination in the appeal and answering all the issues as required under Order 41 Rule 31 of C.P.C.?

3. I have heard Ms.N.Krishnaveni, learned Senior Counsel, Mr.P.Thiyagarajan, learned counsel for the appellants, Mr.Anand Chandrasekar, for M/s.Polax Legal Solutions, learned counsel for the respondents 1 to 4, Mr.S.I.Muthiah, learned Counsel for State of Tamil Nadu (Civil side) for the respondents 5 to 7 and Mr. P.Subbaiah, learned counsel for the eighth respondent.



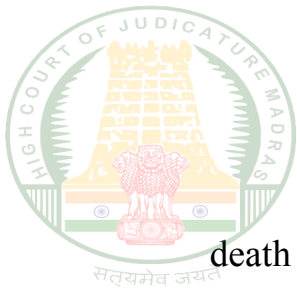
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4. Brief facts, that are necessary for adjudicating the second appeal on the above framed substantial questions of law, are as follows:

The appellants as plaintiffs in O.S.No.69 of 2005 before the District Munsif Court Mudukulathur, sought for a relief of declaration and recovery of possession and also mandatory injunction to restrain the official respondents from transferring patta in favour of the defendants 4 and 5, besides a relief of permanent injunction to restrain the defendants 4 and 5 from trespassing into the suit property. The plaintiffs also sought for a declaration to annul the sale deed dated 02.03.2007 executed by the fifth defendant in favour of the defendants 6 to 8, on the ground that it was null and void. According to the plaintiffs, the suit schedule property comprised in survey No.185/2B1A2, Sayalgudi village, of an extent of 45 cents was originally belonging to the plaintiff's ancestor, one Vellaiya Nadar and it was subject matter of joint patta No.53 pertaining to old Paimash No.394.

5. The case of the plaintiff is that after the demise of Vellaiya Nadar, his son-Madasamy Nadar inherited the property and after the



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death of Madadamy Nadar, his sons, viz., Shanmugam Nadar and Murugaiah Nadar, inherited the same and they are in peaceful possession and enjoyment. The plaintiffs 1 to 3 are the sons of Murugaiah Nadar and the plaintiffs 4 and 5 are the sons of Shanmugam Nadar.

6. According to the plaintiffs, they have permitted the defendants 1 to 3, official respondents, to put up a hospital in the suit property, however, subsequently, the hospital building was demolished and the official respondents/ defendants constructed a hospital at a different and convenient place. Taking advantage of the above, the defendants 4 and 5 attempted to change patta in their name and the fifth defendant also alienated the suit property in favour of the defendants 6 to 8.

7. Pending trial, the fourth defendant and eighth defendant passed away and their respective legal representatives were impleaded as defendants 9 and 10.

8. The defendants 4 and 5 contested the suit, stating that the fourth defendant is a Jamindhar and the suit property was his ancestral property.



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He had gifted 5 Acres for construction of School and Panchayat office.

According to the defendants 4 and 5, the fourth defendant had constructed a building in the suit property and he had granted permission for a Primary Health Centre being run from the said building. On coming to know that patta was erroneously issued in favour of the plaintiffs, the defendants 4 and 5 had applied for mutation of patta in their names and vide proceedings dated 28.07.2005, patta was also changed in their names, in respect of survey No.185/6.

9. The trial Court, after appreciating the pleadings as well as oral and documentary evidence, decreed the suit as prayed for, excepting for negating the prayer for permanent injunction by the judgment and decree dated 14.07.2016.

10. Aggrieved by the findings of the trial Court, the defendants 5 to 7 filed an appeal in A.S.No.81 of 2007, in which appeal, they also took out an application for additional evidence in I.A.No.49 of 2020 under Order 41 Rule 27 C.P.C. The said application was taken up along with the appeal. The first appellate Court dismissed that application for



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receipt of additional evidence and allowed the First Appeal, setting aside the judgment and decree of the trial Court.

11. As against the said reversal finding rendered by the first appellate Court, the present second appeal has been filed by the plaintiffs.

12. The learned Senior Counsel, Ms.N.Krishnaveni, would firstly contend that the first appellate Court has rendered finding based on surmises that the plaintiff had failed to establish that Vellaiya Nadar was the father of the Madasamy Nadar, when it had not even denied by the defendants. She would also invite my attention to the cross examination of P.W.1, where not even a suggestion was put to the plaintiffs with regard to his claim as being a legal representative of Madasamy Nadar and in turn, claiming right under the original ancestral / Vellaiya Nadar. The learned Senior Counsel would further state that though the defendants' claim that the fourth defendant was a Jamindar and has gifted several properties for laudable public place, no material was placed on record to establish the suit property was also gifted by him for the



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purpose of construction of a Primary Health Centre. The learned counsel would further state that by filing overwhelming documentary evidence in Ex.A1 and Ex.A29, the plaintiffs had established their title to the suit property and despite rightly rejecting the application for production of additional evidence, the first appellate Court has rendered erroneous findings, as if the plaintiffs had failed to prove their relationship with the original ancestral / owner/Vellaiya Nadar.

13. The learned Senior Counsel would further state that the defendants have also miserably failed to establish title and on the contrary, the plaintiff had clearly proved better title to the suit property, which is sufficient to hold that the plaintiffs were entitled to the suit property, especially, in civil proceedings.

14. The learned Senior Counsel would also draw my attention to the fact that excepting when it came to the suit properties all other properties dealt with by the fourth defendant, were by way of registered documents and therefore, the trial Court was right in decreeing the suit, while the first appellate Court clearly fell in error in setting aside the well



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considered findings of the trial Court. The learned Senior Counsel would pray for the second appeal being allowed, answering the substantial questions of law in favour of the appellants.

15. Per contra, Mr.Anand Chandrasekar, learned counsel for the respondents 1 to 4, would firstly contend that when the plaintiffs approached the Court and sought a relief of declaration of title, it is for the plaintiffs to make out a clear case entitling the plaintiffs to such relief and according to him, it is well settled law, that the plaintiffs cannot take advantage of the weakness in the defence set up by the defendant. He would contend that the suit property never belonged to Vellaiya Nadar in the first place, but, only to the fourth defendant's ancestors, who hail from a Jamindhar family and it was the fourth defendant, who permitted the Government to construct a Primary Health Centre in the suit property. The learned counsel would rely on Ex.A26, in this regard and also invite my attention to the proceedings, where the plaintiffs 1 and 4 had appeared for enquiry, before correcting the mistake in having issued patta in favour of Vellaiya Nadar. He would therefore state that the plaintiffs had clearly acquiesced and having not challenged the order in Ex.A26.

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The plaintiffs were estopped from claiming any right thereafter. Though it is the contention of the respondents that the plaintiffs 1 and 4, in fact, gave no objection for mutation in the name of the defendants, on going through the records, I do not find any such no objection having been given. However, it is borne out the record that the plaintiffs 1 and 4 were put on notice and participated in the enquiry. The said factum was also admitted by the plaintiffs' witness as well. In such circumstances, the plaintiffs ought to have challenged the order dated 28.07.2005 and taken it up further, in a manner known to law.

16. However, as rightly contended by the learned Senior Counsel, Ms.N.Krishnaveni, mere fact that revenue proceedings and mutation of records in favour of the defendants was not put to challenge, it will not take away the right of the competent civil Court, to declare their title. It is however to be seen whether the plaintiffs have been successful in establishing their title.

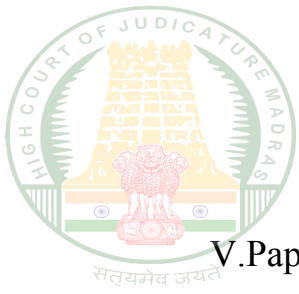
17. According to the plaintiffs, Madasamy Nadar, is the son of Vellaiya Nadar. The plaintiffs having come with a definite case, they are



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claiming 45 cents, have not adduced any material evidence to establish their entitlement to the said extent of lands. Further, having filed the suit after suffering an order before the Revenue Divisional Officer, which has been exhibited in Ex.A26, the plaintiffs have even suppressed material circumstances and have chosen to file the suit. Such suppression would certainly have a bearing, at the very least, in consideration of the discretionary and equitable relief of injunction that has to be sought for by the plaintiffs.

18. Ex.A1 patta bearing patta No.53 is not in dispute. It stands mutated in the names of the Madasamy S/o. Vellaiya Nadar, Pitchaiya Pillai and seven others. However, in Ex.A2-A register survey No. 185/2B1A, 7 Ares 185/1B2 stand in the name of M.Vellaiya Nadar and V.Pappathi Ammal. It would also be relevant to note that the next survey No.184/2B1A2, 11 Ares stands mutated in the name of M.Murugaiah Nadar and S.Muthusamy Nadar, who are none else than the plaintiffs' father under whom the plaintiffs claim right. If so, there is no explanation on the side of the plaintiffs as to why patta in respect of survey No. 285/2B1A and 1B2 was only in the names of M.Vellaiya Nadar and



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V.Pappathi Ammal and not the plaintiffs.

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19. On perusal of Ex.A1-patta, there is a discrepancy and a difference in the name reflected. I am unable to see how the plaintiffs can narrow down, the identity of the second joint pattadhar, Pitchaiya Nadar, who is also stated to be the father of Vellaiya Nadar. Though it is the consistent case of the plaintiffs that Vellaiya Nadar is the son of one Pitchaiya Nadar and father of one Madasamy Nadar, Ex.A1 mentions the initial of Vellaiya Nadar to be 'M'. If the case of the plaintiffs is to be believed, then the initial should have been 'P', referring to Pitchaiya Nadar. Therefore the plaintiffs ought to have established by adducing satisfactory evidence that they claimed under the rightful owner, viz.,M.Vellaiya Nadar. However, such is not their case. As already discussed, in a suit for declaration, the plaintiffs cannot expect the Courts to rely or fall back on the weakness in the case of the defendants. In depth, the plaintiffs have to establish their entitlement to the relief of declaration and the various other reliefs.

20. Further, I have already found that the plaintiffs participated in the enquiry before the Revenue District Officer and had not only not

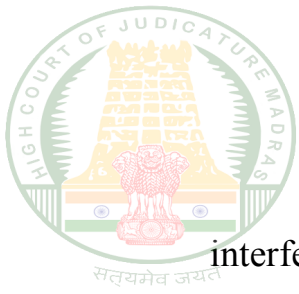


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challenged the order, but have also suppressed the same in the plaint.

Further P.W.2 also admits to the fact that it is only the defendants 4 and 5, who are in possession of the suit property. Ex.P1 and Ex.P2 also create a serious doubt with regard to the entitlement of the plaintiffs to an extent of 45 cents, as claimed in the suit. The plaintiffs cannot succeed falling back on revenue records. The burden is very heavily on the plaintiffs to establish title, especially, when they seek for declaration of their title to the suit property. In my considered opinion, the plaintiffs have miserably failed to discharge their burden. The first appellate Court has rightly appreciated the evidence, especially Ex.B1 and Ex.B2 and also the factum of Paimash No.391 to 394 standing in the name of P.K. Servai, who is admittedly the ancestor of the fourth defendant. In such circumstances, I do not see how the first appellate Court fell in error in re-appreciating the evidence and allowing the appeal, setting aside the judgment of the trial Court.

21. I do not see any perversity in the appreciation of the pleadings and evidence or any misreading of the evidence. The findings of the first appellate Court are also not based on no evidence and hence, exercising jurisdiction under Section 100 CPC, I do not see any scope for



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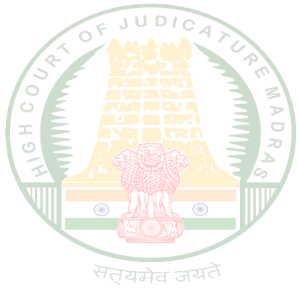
interference with the findings arrived at by the first appellate Court in the second appeal.

22. For all the above reasons, I do not see the substantial questions of law, that have been framed at the time of admission of the second appeal, being answered in favour of the appellants. The substantial questions of law are therefore answered against the appellants and in favour of the respondents.

23. In fine, the second appeal is dismissed and the judgment and decree dated 28.10.2020 made in A.S. No. 81 of 2017 on the file of the Subordinate Judge, Muthukulathoor reversing, the judgment and decree dated 14.07.2016 made in O.S. No. 69 of 2005 on the file of the District Munsif Court, Muthukulathoor is hereby confirmed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

NCC: Yes/No
Internet: Yes/No
Index: Yes/No
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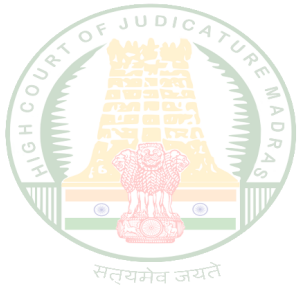
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TO

- 1.The Subordinate Judge,
Muthukulathoor.
2. The District Munsif Court,
Muthukulathoor
3. The District Collector,,
Ramanathapuram District,
Ramanathapuram.
4. The Sub Collector,,
Paramakudi,
Ramanathapuram District,
Ramanathapuram..
- 5.The Tahsildhar,,
Kadaladi,
Ramanathapuram District.
- 6.The Section Officer,
VR Section,
Madurai Bench Madras High Court,
Madurai.

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P.B.BALAJI,J

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**Pre-delivery Judgment made in
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