WEB COPY



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 10.06.2026**

**DELIVERED ON : 03.07.2026**

**CORAM:**

**THE HONOURABLE MR.JUSTICE P.B.BALAJI**

**S.A.(MD)No.586 of 2019**

**and**

**C.M.P.(MD)Nos.13891 of 2023 & 7617 of 2026**

Sethu Ramalingam (Died)
2.Vanaja
3.Balasubramanian
4.Mahalingam
5.Narayanaswamy ... Appellants

*[Appellants 2 to 5 are brought on record as legal heirs of the deceased sole appellant vide court order dated 01.12.2025 made in C.M.P.(MD)No.15047 of 2025 in S.A.(MD)No.586 of 2019 by KMSJ]*

Vs.

Balasundari ... Respondent

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code, praying to set aside the judgment and decree dated 22.02.2019 passed in A.S.No.20 of 2016 by the Principal District Court, Pudukkottai, reversing the judgment and decree dated 06.06.2016 passed in O.S.No.27 of 2004 by the Subordinate Court, Pudukkottai and allow the Second Appeal.



https://www.mhc.tn.gov.in/judis

WEB COPY



For Appellants : Mr.P.Thiagarajan
for Mr.D.Ramesh Kumar
For Respondent : Mr.N.Balakrishnan

**JUDGMENT**

The above Second Appeal was admitted by this Court on 09.12.2019, on the following two substantial questions of law:

> *"(i) Whether the lower Appellate Court is right in ignoring the evidentiary value of Ex.A.1 to Ex.A.4 on the ground that the suit property has been classified as Natham?*
>
> *(ii) Whether the lower Appellate Court is right in concluding that Ex.A.1 is a conditional assignment?"*

**2.**I have heard Mr.P.Thiagarajan, learned Counsel for Mr.D.Ramesh Kumar, learned Counsel for the appellants and Mr.N.Balakrishnan, learned Counsel for the respondent.

**3.**In fact, after judgment was reserved by me, on 10.06.2026, an application was taken out by the respondent in C.M.P.(MD) No.7617 of 2026 under Order 41 Rule 27 CPC, seeking permission



https://www.mhc.tn.gov.in/judis

WEB COPY



to file photostat copy of an unregistered sale deed dated 07.02.2002, as additional evidence in the Second Appeal. On 23.06.2026, the learned Counsel for the parties were heard with regard to the Civil Miscellaneous Petition and additional arguments were also advanced in the Second Appeal and again the matter was reserved for judgment.

**4.**The brief facts that are necessary for decision in the Second Appeal are as hereunder:

**4.1.**The plaintiff, Sethu Ramalingam filed O.S.No.27 of 2004, against the respondent herein for declaration that he was the owner of Schedule 'B' property, forming part of Schedule 'A' suit property and also for relief of recovery of possession from the defendant. The Trial Court decreed the suit, but however on appeal, the First Appellate Court in A.S.No.20 of 2016, reversed the findings of the Trial Court and dismissed the appeal. As against the reversal findings rendered by the Appellate Court, the present Second Appeal has been filed.

**The case of the plaintiff is as follows:**

**4.2.**According to the plaintiff, 'A' schedule property is an extent of 1955 sq.ft., comprised in T.S.No.257, Plot No.172, Ganesh



https://www.mhc.tn.gov.in/judis

WEB COPY



Nagar, 33rd Street, which consists of a house and other amenities. It originally belonged to one Hari Ramadoss, who subsequently conveyed it to one Ganesan in the year 1985, from whom the plaintiff purchased the property in 1988. According to the plaintiff, ever since, he has been in possession and enjoyment of the suit 'A' schedule property in his own right as absolute owner. The plaintiff had borrowed a sum of Rs.20,000/- from the defendant in the year 2002, which was subsequently repaid. However, the defendant had refused to hand over the blank signed papers given as security for the loan and manipulated the said blank signed papers and fabricated the document, as if the plaintiff has transferred 'B' schedule property to the defendant in the year 2004. The defendant has also put up an asbestos roof construction, taking advantage of the plaintiff being out of station. In view of the high-handed action of the respondent, the plaintiff filed a suit for declaration and recovery of possession.

**The case of the defendant is as follows:**

**4.3.**The defendant filed a written statement, denying the allegations made in the plaint. The defendant also contended that the plaintiff was not the absolute owner of the schedule 'A' property in the first place, much less schedule 'B' property. The sale deed



https://www.mhc.tn.gov.in/judis

WEB COPY



and patta relied on by the plaintiff do not confer any absolute right on the plaintiff and therefore, the defendant sought for dismissal of the suit.

**Proceedings before the Trial Court:**

**4.4.**The Trial Court framed as many as five issues and the parties went to trial. Plaintiff examined himself as P.W.1 and Exs. A.1 to A.29 were marked on the side of the plaintiff. On the side of the defendants, D.W.1 to D.W.3 were examined and Exs.B.1 to B.7 were marked. Court documents Ex.C.1 and C.2 and X.1 were also marked during trial of the suit.

**4.5.**The Trial Court, in and by judgment and decree dated 06.06.2016, decreed the suit upholding the title of the plaintiff to Schedule 'B' property, taking into account Exs.A.1 to A.4. Aggrieved by the findings of the Trial Court, the respondent herein preferred A.S.No.20 of 2016. The First Appellate Court allowed the appeal and thereby, dismissed the suit. Challenging the reversal findings, the present Second Appeal has been filed.

**5.**Before I proceed to deal with the merits of the Second Appeal, it is necessary for deciding C.M.P.(MD)No.7617 of 2026.



https://www.mhc.tn.gov.in/judis

WEB COPY



The said application has been taken out by the respondent / defendant in an attempt to mark the photostat copy of the unregistered sale deed dated 07.02.2002, conveying right and title in respect of Schedule 'B' property to the respondent.

**6.**Mr.N.Balakrishnan, learned Counsel for the petitioner in the C.M.P.(MD)No.7617 of 2026, would state that despite having conveyed schedule 'B' property to the respondent, the plaintiff has fraudulently and mischievously filed the suit, as if he continued to have right in the same and he seeks an opportunity to be given to the respondent to rely on the said document, which will throw light and assist this Court in adjudicating the issues arising in the Second Appeal.

**7.** Mr.N.Balakrishnan, learned counsel would further contend that the dismissal of the Application to receive the unregistered sale deed is not a bar for the Application to be filed under Order 41 Rule 27 CPC. In this regard, he would also point out Section 105 of CPC and contend that mere failure to challenge the order passed in Interlocutory Application by way of revision cannot be held to be fatal to the case of the defendants.



https://www.mhc.tn.gov.in/judis

WEB COPY



**8.**Per contra, Mr.P.Thiagarajan, learned Counsel for the respondent would invite my attention to Paragraph No.3 of the affidavit filed in support of the said CMP and contend that admittedly, the petitioner in the CMP has already attempted to file the very same document even before the Trial Court in I.A.No.856 of 2017. The said application was dismissed and the order has become final. He would also rely on the decision of the Hon'ble Supreme Court in the case of ***Bhanu Kumar Jain*** *Vs.* ***Archana Kumar and another,*** *reported in* ***(2005) 1 SCC 787.***

**9.**The short point for determination in this Civil Miscellaneous Petition is as to whether the petitioner herein and the respondents in the Second Appeal are entitled to adduce additional evidence. It is trite law that a party who seeks to produce additional evidence at the appellate stage has to necessarily comply with the mandate of Order 41 Rule 27 of CPC. Examining the present request made in the CMP, in the light of the letter and spirit of Order 41 Rule 27 of CPC, I am unable to see how the respondent, having already failed in her attempt to mark the very same document, is entitled to renew her request, that too before the Second Appellate Court. Further, as rightly pointed out by Mr.P.Thiagarajan, the photostat copy of the unregistered sale



https://www.mhc.tn.gov.in/judis

WEB COPY



deed alone is sought to be marked as additional evidence, which is again impermissible.

**10.**Moreover, the petitioner in the CMP claims right under the said unregistered document and the document is therefore, clearly inadmissible, in view of the bar under Section 17 of the Indian Registration Act as well. The Hon'ble Supreme Court in ***Bhanu Kumar Jain's*** case has discussed the distinction between *'issue estoppel'* and *'res judicata'* and held that *res judicata* debars a Court from exercising its jurisdiction to determine the *lis,* if it has attained finality between the parties, and referring to the case of ***Barber*** *Vs.* ***Staggordshire Country Council,*** reported in ***(1996) 2 ALL ER 748 (CA),*** the Hon'ble Supreme Court held that a cause of action estoppel would arise where, in two different proceedings, identical issues are raised, in which event, the latter proceedings between the same parties shall be dealt with similarly as was done in the previous proceedings.

**11.**Insofar as the argument of Mr.N.Balakrishnan, learned counsel referring to Section 105 CPC, Section 105 will apply only where no appeal is provided under the Code, against any order passed in the Interlocutory stage and in such circumstances it



https://www.mhc.tn.gov.in/judis

WEB COPY



would be open to the aggrieved party to set forth as a ground, any error, defect or irregularity in the I.A. order at the time of filing an appeal against the decree. I do not see how the petitioner was prevented from challenging the dismissal of his application in I.A. No.856 of 2017, where the very same unregistered sale deed was sought to be produced. Having failed in his attempt, even to mark the said unregistered sale deed, during the trial of the suit, I do not see how the petitioner can now fall back on Section 105 of CPC.

**12.** At best, even assuming Section 105 can be applied, the only argument that can be applied is with regard to the error committed by the Court in dismissing the application to receive the unregistered sale deed. However, presently the petitioner seeks to produce additional evidence invoking Order 41 Rule 27 CPC and it is not in the nature of a challenge or objection to the order passed in I.A. no.856 of 2017. Moreover as already discussed, only a photocopy of the unregistered sale deed is sought to be accepted as an additional document and there is no explanation with regard to why the original of the document is not being produced. In such circumstances, I am unable to countenance the argument of Mr.N.Balakrishnan, learned counsel in this regard.



https://www.mhc.tn.gov.in/judis

WEB COPY



**13.** In support of his submission, he also relied on *Thirunavukarasu Vs. Mariyayee Ammal and two others,* reported in *1998-1-L.W.49.* That was a case where this Court held that Section 105 CPC can be pressed into service only when the order was passed as an interlocutory order and not a final order. This Court further held that if the order is final, then the same cannot be a ground of appeal under Section 105 CPC and only to determine whether a particular order was interlocutory or not, **it** has to be seen whether it terminated the proceedings and if the order terminated the proceedings that it is a final order, if not, it remains to be an interlocutory order and only such interlocutory order can be challenged in an appeal filed against the final order.

**14.** This Court further held that an order passed under Order 9, Rule 13 CPC cannot be termed as an interlocutory order as it is in the nature of an independent proceedings, filed as an Interlocutory Application to have the decree set aside. The ratio laid down in *Thirunavukarasu's* case, is therefore clearly not applicable to the facts of the present case.

**15.**Even applying the ratio laid down by the Hon'ble Supreme Court in ***Bhanu Kumar Jain's*** case, to the facts of the present



https://www.mhc.tn.gov.in/judis

WEB COPY



case, having failed in her attempt to exhibit the very same document even before the Trial Court and having attempted and having been unsuccessful in such attempt, it is not open to the respondent to now take out an application under Order 41 Rule 27 of CPC and attempt to file the same document. For all the above reasons, I do not see any merit in the present Civil Miscellaneous Petition. Consequently, C.M.P.(MD)No.7617 of 2026 is dismissed.

**16.**Coming to the Second Appeal, the Trial Court after considering the oral and documentary evidence found that the plaintiff is entitled to the suit property, which was reversed by the First Appellate Court. Aggrieved by the same, the present Second Appeal has been filed. Pending Second Appeal, the sole appellant / plaintiff died and his legal representatives have come on record as appellants 2 to 5. It is the contention of the learned Counsel for the appellants that the First Appellate Court failed to judiciously consider the fact that the plaintiff had clearly substantiated his title to the suit property by production of Exs.A.1 to A.4 and the First Appellate Court has misinterpreted Ex.A.1, as if it is a conditional assignment. He would also state that the First Appellate Court has also failed to interpret the contradictory stand taken by the respondent, namely having got a release from the plaintiff by way



https://www.mhc.tn.gov.in/judis

WEB COPY



of unregistered sale on one hand and simultaneously, contending that the plaintiff as well as plaintiff's vendors cannot claim any right over the suit property being Natham poramboke and belonging to the Government absolutely. Learned Counsel would therefore, pray that the Second Appeal be allowed, answering the substantial questions of law in favour of the appellants.

**17.**Per contra, Mr.N.Balakrishnan, learned Counsel appearing for the respondent would submit that Ex.A.1 was only a conditional patta and not a title deed and therefore, when the plaintiff seeks for declaration, the burden is upon the plaintiff to establish his entitlement to the said relief. He would further state that when the plaintiff himself had admitted to the fact that he had signed documents, the burden was heavily cast on him to establish that he had only signed blank papers, which were misused by the respondent / defendant. In this context, referring to the evidence before the Trial Court, Mr.N.Balakrishnan, would contend that the plaintiff has failed to discharge the burden upon him.

**18.** Mr.N.Balakrishnan, learned counsel for the respondent would further contend that Ex.A1 Patta, had come into force, then there would be no necessity for a second round of enquiry to be



https://www.mhc.tn.gov.in/judis

WEB COPY



conducted by the Tahsildar, when the plaintiff has not challenged Nattham Patta in Ex.A1. If Ex.X1 of the year 1961 is looked into, it would only establish that Ex.A1 was never implemented.

**19.** Mr.N.Balakrishnan, would further contend that the plaintiff is an educated bank employee, whereas the defendant is a widow and doing cooking work, having no independent assistantance and it is unbelievable, that such a defendant would have fabricated the sale deed, that too, when the plaintiff's wife and daughter are signatories to the said sale deed as well. In short, his submission is that even witnesses may lie, but circumstances will not. He would therefore contend that the plaintiff's case that he did not take back the signed papers, while repaying the loan amounts has to be disbelieved *in toto*. He has also placed reliance on the decision of *Thirunavukarasu Vs. Mariyayee Ammal and two others,* reported in *1998-1-L.W.49,* and the Full Bench decision of, *Kama @ Kamatchi (Died), Nallasivam Vs. District Collecotr, Dindigul district, Dindigul and others,* reported in 2026 (2) CTC 257.

**20.** He would also state that admittedly, the law is settled that insofar as Grama Natham lands and occupied nathams, the



https://www.mhc.tn.gov.in/judis

WEB COPY



person in occupation is entitled to a right to possess the same and therefore, when admittedly it is the respondent who is in possession, even according to the plaintiff, the First Appellate Court had rightly reversed the erroneous findings of the Trial Court and patta was not issued to the respondent / plaintiff only because of the pendency of the suit and not for any other reason. Learned Counsel would therefore, pray for dismissal of the Second Appeal.

**21.**I have carefully considered the submissions advanced on either side.

**22.**Being a suit for declaration, it is not in dispute that as plaintiff, he is duty bound to establish his title. In an attempt to do so, Exs.A.1 to A.4 have been marked. Ex.A.1 is an order of assignment dated 14.01.1976. It is certainly not a revenue document or patta as contended by Mr.N.Balakrishnan, learned Counsel for the respondent. It is a certain and specific order of assignment of a house site measuring 1955 sq.ft in T.S.No.257, Plot No.172, Ganesh Nagar 33rd Street, Pudukkottai Town and Taluk. On going through the terms and conditions of the said assignment order issued by the Revenue Divisional Officer, Pudukkottai and counter-signed by the Tahsildar, Pudukkottai, I find that the only



https://www.mhc.tn.gov.in/judis

WEB COPY



restraint of enjoyment was vide clause (9), which stated that the alienation of the land without the sanction of the Government to a person other than citizen of India would invalidate the grant. The said condition has been misread and misinterpreted by the First Appellate Court, as if the assignment is a conditional assignment and therefore, is not a document conveying valid title in favour of the plaintiff.

**23.**The interpretation of Ex.A.1 by the First Appellate Court is clearly improper and contrary to the import of Ex.A.1 assignment deed. The First Appellate Court ought not to have treated Ex.A.1 as a revenue patta and ought to have dealt with the said document only as a document of title, conveying rightly absolutely on the plaintiff. Apart from Ex.A.1, plaintiff has also marked Exs.A.2 to A.4 which are all registered sale deeds, ultimately vesting title and interest with the plaintiff. In such circumstances, the findings of the First Appellate Court that the subject lands are Natham poramboke lands as per revenue records and it belongs to the Government and also being a conditional assignment, it does not confer any absolute right on the first owner Hari Ramadoss, is liable to be interfered with. The First Appellate Court failed to see that the plaintiff had established an absolute right to Schedule 'A' property and



https://www.mhc.tn.gov.in/judis

WEB COPY



consequently, was entitled to a declaration in respect of Schedule 'B', together with the relief of recovery of possession.

**24.**Further, as rightly contended by Mr.P.Thiagarajan, the defendant cannot ride two horses. Having denied the title of the plaintiff, claiming the lands to be Natham poramboke lands, belonging to the Government it is not open to the respondent / defendant to additionally contend that she had purchased schedule 'B' property from the plaintiff. The said destructive stand taken by the defendant is also impermissible in law. Though the defendant is entitled to take an inconsistent stand, he cannot take a mutually destructive stand.

**25.** The Hon'ble Supreme Court in the case of ***Hero Vinoth (minor)*** *Vs.* ***Seshammal*** *reported in* ***AIR 2006 SC 2234,*** has held that exercising powers under Section 100, the High Court can interfere only in exceptional cases where Courts below have ignored material evidence or acted on no evidence or where Courts have drawn wrong inference by proved facts or when the Courts have erroneously cast burden of proof. The First Appellate Court has misread the assignment deed and treated it as if it is a conditional assignment not conveying title on the assignee under



https://www.mhc.tn.gov.in/judis

WEB COPY



Ex.A.1 and therefore under Section 100 of CPC, this Court is certainly entitled to interfere when there is a glaring error of inference drawn by the First Appellate Court.

**26.** Insofar as the Full Bench decision in *Kama @ Kamatchi* case, (referred herein supra), I have no quarrel with regard to ratio laid down by the Full Bench (majority view) that "Occupied Grama Natham" cannot be treated as Sarkar Proamboke or Government land. This decision does not come to the rescue of the respondent for the various reasons already discussed herein above, especially when the respondent attempts to set up title herself, it is not open to her to claim by way of defence that she is entitled to be recognised as title holder having been in occupation of Grama Natham lands, in the context of the *lis* when the specific allegation of the plaintiff is that the defendant has trespassed into the suit property.

**27.**In fine, the substantial questions of law are answered in favour of the appellants and this Second Appeal stands allowed with costs. The judgment and decree passed by the Principal District Court, Pudukkottai, dated 22.02.2019 in A.S.No.20 of 2016, is set aside and the judgment of the Trial Court is restored. C.M.P.



https://www.mhc.tn.gov.in/judis

WEB COPY



(MD)No.7617 of 2026, is dismissed and C.M.P.(MD)No.13891 of 2023 is closed.

**03.07.2026**

Index : Yes / No
NCC : Yes / No
MR

To
1.The Principal District Judge,
Pudukkottai.

2.The Subordinate Judge,
Pudukkottai.

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



https://www.mhc.tn.gov.in/judis

WEB COPY



**P.B.BALAJI, J.**

MR

**PRE-DELIVERY JUDGMENT MADE IN**
**S.A.(MD)No.586 of 2019**

**03.07.2026**



https://www.mhc.tn.gov.in/judis