

SA(MD).No.1 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment reserved on 17.06.2026	Judgment pronounced on 03.07.2026
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THE HON'BLE MR. JUSTICE P.B.BALAJI

SA(MD) No.1 of 2025 and
CMP(MD).No.16 of 2025

1.P. Tamilarasi
3.P. Alagarsamy

... Appellants / defendants

Vs.

1.K.Mohamed Ibrahim (died)
2. Mohammed Aliyar (died)
3.M.Nagooraammal
4.M.Jajahan
5.M.Raja Mohamed
6.M.Mohamed Yusuf
7.M.Firthouse
(R3 to R7 implead as LR's of deceased R2)
8.Mumtaj
9.Musthafa
10.Aameena
(R8 to R10 implead as LR's of deceased R1) ..Respondents/Plaintiffs

Prayer : Second Appeal filed under Section 100 CPC against the Judgment and Decree passed in A.S.No.105 of 2019 dated 24.02.2021 on the file of the Sub Court, Melur, reversing the Judgment and Decree passed in O.S.No.211 of 2010 dated 05.10.2017 on the file of the District Munsif, Melur.



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For Appellants : Mr. S. Alagarsamy

For respondents 3 to 10 : Mr.G. Prabhu Rajadurai

JUDGMENT

The defendants in O.S. No.211 of 2010, on the file of the District Munsif Court, Melur, have filed the present Second Appeal challenging the reversal findings rendered by the first appellate Court in A.S. No.105 of 2019, on the file of the Sub Court, Melur.

2. The suit filed by the respondents / plaintiffs herein was dismissed by the trial Court. Aggrieved by the same, the respondents/plaintiffs preferred A.S. No.105 of 2019 on the file of the Sub Court, Melur. The first appellate Court allowed the said appeal and granted a decree in favour of the plaintiffs as prayed for. The present Second Appeal has been filed against the said Judgment and Decree passed by the first appellate Court in A.S. No.105 of 2019.

3. I have heard Mr. S. Alagarsmy, learned counsel for the appellants, and Mr. G. Prabhu Rajadurai, learned counsel appearing for respondents 3 to



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10, who are the legal heirs of the deceased respondents/plaintiffs.

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4. The Second Appeal was admitted by this Court on 11.11.2025 on the following four substantial questions of law:

(i) As per Section 58 of the Indian Evidence Act, no fact needs to be proved in any proceedings which the parties thereto agree to admit at the hearing before the trial Court or deemed to be or deemed to have admitted by their evidence. The trial Court on the ground that it is necessary to decide the admitted facts by the respondents?

(ii) Are they 1st Appellate Court justifying in ignoring the exhibits B19 to B24 official records in favour of the appellants proving their possession and enjoyment for over considerable period, establishing settled possession?

(iii) Whether the 1st Appellate Court considered the non-jointer of the necessary party in the suit, since the plaintiff's brother Sahul is the absolute owner of the suit property which has been observed in the judgment and also the respondent has no valid title over the suit property?

(iv) Whether the 1st Appellate Court considered the decree and judgment passed by the trial Court considering the evidence of the plaintiffs, which should be disposed on the basis of Order XII Rule VI of the Civil Procedure Code?

5. The learned counsel for the appellants / defendants, Mr. S. Alagarsamy, advanced his oral submissions on the aforesaid substantial questions of law.

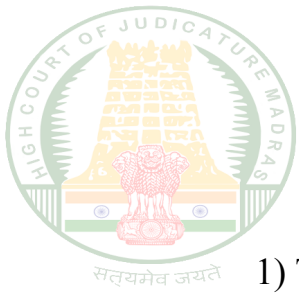


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6. In his foremost submission, Mr. S. Alagarsamy, learned counsel for the appellants, contended that the respondents / plaintiffs themselves had admitted that the defendants were in possession. During cross-examination, the first plaintiff, who was examined as P.W.1, admitted to the fact that the defendants were in possession of the suit property. However, the first appellate Court erroneously overlooked this vital admission, while reversing the well-considered finding of the trial Court.

7. It is also his contention that the plaintiffs were only co-sharers and that there was yet another co-owner who had a substantial interest in the suit property. In the absence of impleading the said co-owner, the plaintiffs could not have maintained the suit as prayed for. He would also take me through the exhibits filed on behalf of the appellants, more specifically Exs.B-4 and B-5, which, according to the learned counsel for the appellants, conclusively established the factum of the defendants being in possession of the suit property. In support of his submissions, the learned counsel for the appellants relied on the following decisions:



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1) The judgment of *this Court*, reported in **2006 (1) MLJ 313** in the case of ***Lalitha and another Vs. Selvaraj.***

2) The judgment of *this Court*, reported in **2008 (6) MLJ 597** in the case of ***Udhayakumar and others Vs. Krishnamoorthy @ S.K. Moorthy.***

3) The judgment of *the Hon'ble Supreme Court*, reported in **2024 (13) SCC 553** in the case of ***P.Kishore Kumar Vs. Vittal K.Patkar.***

4) The judgment of *this Court*, reported in **2003 (3) CTC 229** in the case of ***Saraswathy and two others Vs. Tamizharasi and another.***

8. The learned counsel for the appellants would, therefore, pray for allowing the Second Appeal, mainly on the grounds of non-joinder and the error committed by the first appellate Court in ignoring the categorical admission made by P.W.1, the first plaintiff, with regard to the defendants being in possession of the suit property.

9. Per contra, Mr. G. Prabhu Rajadurai, learned counsel appearing for respondents 3 to 10, who are none other than the legal representatives of the deceased plaintiffs 1 and 2, would contend that the evidence, namely the so-called admission, which is now sought to be put against the plaintiffs, cannot be read in isolation. If the evidence adduced by P.W.1 is examined as a whole, it would clearly indicate that there was no admission that the



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defendants were in possession of the entire suit property. As regards the plea of non-joinder, he would submit that, though the suit was primarily filed to protect the possession of the suit property by admittedly co-owners, the relief, though not happily worded, cannot be a ground to non-suit the present plaintiffs when they have admittedly established their title to the suit property.

10. Mr. G. Prabhu Rajadurai, learned counsel appearing for respondents 3 to 10 would further submit that in fact, across the Bar, it also brought to the notice of this Court that there is a delegation by the other legal heir, Sahul, who admittedly has a larger interest in the suit property than the original plaintiffs 1 and 2, under which respondents 3 to 10, have instructed the learned counsel, have stated that they do not have any interest adverse to that of the respondents / plaintiffs.

11. In any event, Mr. Prabhu Rajadurai would submit that this Court can always modify the decree if it comes to the conclusion that the relief requires to be suitably moulded. In support of his contentions he relied on the following decisions:

1) The judgment *of this Court, reported in 2010 (1) LW 541* in



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the case of ***Balu Pillai @ Balasubramanian Pillai and others Vs. Mahadevan and others.***

2) The Division Bench judgment of this Court, dated ***02.12.2024*** made in ***WA(MD).No.1408 of 2024*** in the case of ***S.Kulanthai (deceased) K. Inbarajan and others Vs. Rajina Jeyapaul.***

3) The judgment of this Court, dated ***11.01.2023*** made in ***CRP(MD).No.1451 of 2023*** in the case of ***P. Tamilarsi Vs. The District Revenue Officer and others.***

12. I have carefully considered the submissions of the learned counsel for the appellants and the respondents. I have also gone through the records, including the pleadings, the oral and documentary evidence, as well as the decisions on which the learned counsel on either side placed reliance.

13. The brief facts that are necessary for adjudicating the substantial questions of law framed in the Second Appeal are as follows:

Item No.1 of the suit property was purchased by one Kattu Baava Ravuthar, from one Mohammed Jahulkarni Ravuthar, under a registered sale deed dated 14.09.1960. The said Kattu Baava Ravuthar also purchased Items Nos.2 to 7 in his name, along with his daughter, Saithun Beevi, from Lakshmi Ammal under a registered sale deed dated 29.04.1978, for valuable



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sale consideration. The said Kattu Baava Ravuthar died on 09.02.1989, leaving behind three sons and one daughter. His daughter, Saithun Beevi, sold her half share in Items Nos.2 to 7 in favour of her brother, Sahul, who is not a party to the suit. She also executed a release deed dated 12.02.1990 in favour of all her three brothers, in respect of Item No.1, that she inherited a share consequent upon the demise of her father, Kattu Baava Ravuthar. These facts are not in dispute.

14. Let me first take up the argument with regard to the so-called admission, which is heavily relied upon by the learned counsel for the appellants, in the context of Section 58 of the Indian Evidence Act. It is the specific case of the respondents / plaintiffs that they are the co-owners of the suit property and that the defendants were attempting to interfere with their possession and enjoyment. It is also the specific case of the plaintiffs that they are in absolute physical possession and enjoyment of the suit property and that the defendants do not have an iota of title or interest over the same. In this context, upon going through the plaint, the chief examination of P.W. 1, as well as his cross-examination in its entirety, I do not find any unequivocal admission in favour of the appellants that they were in possession of the suit property.



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15. The relevant portion, to which my attention was invited, is extracted hereunder for easy reference:

□தாவா சொத்துக்களில் ஒரு கூரை செட் மற்றும் ஒரு ஓட்டு வீடு உள்ளது என்றால் சரிதான். அதில் இந்த 1ம் பிரதிவாதிதான் குடியிருந்து வருகிறார் என்றால் தற்போது இருந்து வருகிறார்.□

16. At best, therefore, the evidence of P.W.1 amounts to a stray admission and does not, in any manner, admit that the first defendant was in possession of the entire suit property. It is limited only to a small shed situated in the suit property, and that too at the time of giving evidence. There is no admission that the first defendant was in possession of either the entire suit property or even the said shed as on the date of institution of the suit. In such circumstances, I do not see how Section 58 of the Evidence Act can be pressed into service. It is settled law that the evidence of a witness has to be read as a whole and not in bits and pieces or in isolation.

17. Considering that the specific case of the plaintiffs is that they have valid title to the suit property and that they are in absolute possession and enjoyment thereof, that the defendants were attempting to interfere with their possession, that the shed forms part of the suit property, and that the defendants have neither any right nor interest over the suit property and have



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also not been in possession thereof, such a case cannot be displaced merely on the basis of a stray admission made by P.W.1. In fact, the suit property measures an extent of 1.21.00 hectares, comprised in several survey numbers. Even in the chief examination, by way of the proof affidavit filed by the first defendant, she has stated that she resides at Alampatti, Pattur Village, Melur Taluk. She has not even furnished the suit property as her residential address. Therefore, this only strengthens the conclusion that the admission of P.W.1 is merely a stray admission and cannot be read in isolation.

18. The first appellate Court has, therefore, rightly discarded the so-called admission of P.W.1 and, having found that the plaintiffs had established their title, rightly held that they were consequently entitled to possession as well. The first appellate Court reversed the findings of the trial Court, which were primarily based upon the alleged admission in the evidence of P.W.1. The said aspect has already been discussed hereinabove in detail. The respondents/plaintiffs have produced satisfactory oral and documentary evidence to establish their rights. Besides the registered sale deeds, they have also produced the Patta Passbook marked as Ex.A-3 and the kist receipts to establish their lawful possession.



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19. On the contrary, the appellants/defendants, who claimed to be cultivating tenants, have not been able to produce even a shred of evidence to substantiate their contention. The appellants claim to be cultivating tenants, that too under their predecessors-in-interest, who were allegedly cultivating tenants. Strangely, the first defendant claims that her father-in-law was the cultivating tenant. However, no proof has been produced to establish the said contention. Further, when the husband of the first defendant is very much alive, it has also not been explained as to how the first defendant can claim to be a cultivating tenant after the demise of her father-in-law. These aspects have been rightly appreciated by the first appellate Court while allowing the first appeal and granting a decree in favour of the respondents/plaintiffs.

20. In so far as the plea of non-joinder is concerned, I find force in the submissions made by the learned counsel for the appellants, Mr. Alagarsamy. However, the contentions put forth on behalf of the appellants, in my considered opinion, may not be sufficient to disentitle the plaintiffs to a decree. The relief sought for in the plaint is as follows:

□தாவா சொத்துக்களை வாதிகள் வகையறா பேர்கள் முழு உரிமையாளர்கள் என்ற முறையில் அனுபவித்துக்கொண்டு வருவதை பிரதிவாதிகளோ அல்லது அவர்களது ஆட்களோ எந்தவகையிலும், யாதொரு இடைஞ்சலும் செய்யக்கூடாதென்று நிரந்தர உருத்துக்கட்டளை உத்தரவு பிறப்பிக்கும் படிக்கும்□



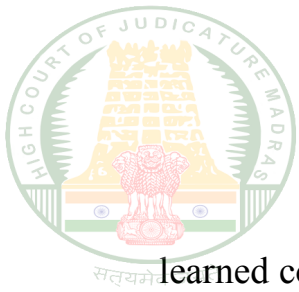
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21. Therefore, in a sense, the argument of Mr. Alagarsamy is that, in the absence of the brother, Sahul, who is admittedly entitled to a larger share than respondents 1 and 2, the plaintiffs could not have maintained such a prayer as if they were the owners of the entire suit property and, on that basis, claimed entitlement to a decree of permanent injunction. At the same time, when the plaintiffs have established their right, title, and interest in the suit property, as well as the fact that the defendants have no manner of right over the suit property, in such circumstances, merely because the said brother, Sahul, has not been impleaded, the plaintiffs cannot be denied the equitable relief of permanent injunction to which they are otherwise entitled. Moreover, the relief sought for is not one for declaration, but only for permanent injunction.

22. However, since the relief of permanent injunction has been sought in somewhat broad terms, I am inclined to mould the relief while confirming the Judgment of the first appellate Court. The suit cannot be held to be bad for non-joinder of the other brother, Sahul.

23. Coming to the decisions on which reliance has been placed by the



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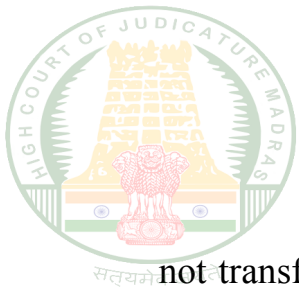
learned counsel on either side:

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(i) In ***Kishore Kumar's*** case, the Hon'ble Supreme Court held that the burden of proof is always on the plaintiff to plead and establish a clear case for the grant of declaratory relief. The weakness, if any, in the case set up by the defendants would not, by itself, be a ground to grant such relief. I do not find this decision to be applicable to the facts of the present case, since the relief sought for is admittedly only one of permanent injunction and not a declaratory relief. Further, the respondents / plaintiffs have also established their right by adducing satisfactory documentary evidence.

(ii) This Court, in ***Udhayakumar's*** case, reiterated the settled legal position that, in a suit for permanent injunction, the plaintiffs must establish their possession as on the date of institution of the suit, and that the burden of proof cannot be shifted to the defendants. I have already found that the plaintiffs have produced overwhelming documentary evidence to establish not only their title, but also their possession. Hence, this decision also does not come to the aid of the appellants.

(iii) The Division Bench of this Court, in the Writ Appeal in ***S. Kulanthai (deceased)***, referred to hereinabove, held that statutory tenancy is



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not transferable and that only an agricultural lessee who becomes a statutory tenant is entitled to the protection of the law. In the present case, having already held that the first defendant has not been able to establish that even her father-in-law was a cultivating tenant in the first place, the question of her claiming herself to be a cultivating tenant cannot be countenanced.

(iv) In **Balupillai's** case, this Court again held that a cultivating tenant has no right to alienate his individual rights in favour of a third party, though he may, at best, have a right under the Act to sublet the property to a third party. Ignoring the exclusive rights of the landlord, a cultivating tenant cannot simply alienate his leasehold rights in favour of a third party. In the context of Exs.B-3 and B-4, in the absence of the first defendant even establishing that her father-in-law was the original cultivating tenant, no credence can be given to the factum of a mortgage executed by the first defendant in favour of the second defendant. In any event, the said encumbrance does not confer any right or interest in favour of the first defendant.

(v) In **P. Tamilarasi's** case, the order passed in C.R.P. (MD) No.1451 of 2022, is in fact, related to the present Second Appeal. The 1st appellant



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herein was the revision petitioner in the said Civil Revision Petition, wherein she challenged the order of the District Revenue Officer allowing the appeal / revision filed by the respondents / plaintiffs and their legal heirs, thereby setting aside the orders of the Tahsildar and the Sub-Collector, which had been passed in favour of the first appellant. The said order has attained finality.

24. Therefore, when this Court has also held that the first appellant is not a cultivating tenant, the entire defence raised in the suit automatically falls to the ground. I do not find that the appellants are entitled to any relief, much less an affirmative answer to the substantial questions of law in their favour. Accordingly, the Second Appeal is dismissed. However, as already indicated, considering that the brother of the original respondents 1 and 2 / plaintiffs has a substantial interest in the suit property, I am inclined to mould the relief. Accordingly, there shall be a decree of permanent injunction restraining the defendants, or anybody claiming through or under them, from in any manner interfering with the peaceful possession and enjoyment of the suit property by the plaintiffs, now represented by their legal representatives, namely respondents 3 to 10. No costs. Consequently, the connected



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Miscellaneous Petition is closed.

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Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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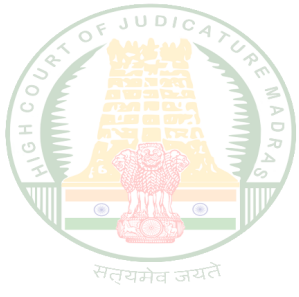
P.B.BALAJI.J,

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To

1. The Sub Court, Melur.
2. The District Munsif, Melur.

Pre-delivery Judgment made in
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