

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 01.10.2018

Orders Delivered on : 21.12.2018

CORUM

THE HON'BLE MR.JUSTICE R.SUBBIAH
and
THE HON'BLE MR.JUSTICE R.PONGIAPPAN

S.A.No.858 of 2001, A.S.No.89 of 2001 and W.A.No.449 of 2001

S.A.No.858 of 2001 & A.S.No.89/2001

- 1.Labonar Govindasamy (deceased)
- 2.Labonar Leelavathi
- 3.Labonar Calaivany Sivalingam (died)
- 4.Labonar Illangovane
- 5.Labonar Gounavathy candassamy
- 6.Labonar Bascaræ
- 7.Labonar Assogane
- 8.Labonar Vassoudevane
- 9.Sivalingam
- 10.Jamuna Rani
- 11.Vanila
- 12.S.Ganesh
- 13.S.Murthy

... Defendant/
Appellants in SA.858 & AS.89 of 2001

(appellants 2 to 8 were brought on record
as LRs of deceased 1st appellant
vide order dated 25.02.2015 made
in CMP.537/2009 in SA.858/2001 & CMP.536/2009 in AS.89/2001)

(appellants 9 to 13 were brought on record
as LRs of deceased 3rd defendant vide order
dated 26.06.2018 made in
C.M.P.10256/2018 in SA.858/2001
and CMP.10536/2018 in AS.89/2001)

Vs.

- 1.Dhanalatchoumy @ Radjaratiname (Deceased)
- 2.Janakiraman
- 3.T.Arumugam
- 4.T.Ayyanar & Alagesan

5.T.Govindarajulu

... Respondents in SA.858 & AS.89 of 2001/Plaintiffs

(R2 was brought on record as LR of
deceased sole respondent vide
order dated 25.02.2015 made in CMP.535/2009 in SA.858/2001
and CMP.533/2009 in AS.89/2001)

(RR3 to 5 were impleaded as party respondent
vide Order dated 24.03.2015
made in CMP.232/2015 in SA.858/2001
and CMP.79/2015 in AS.89/2001)

W.A.No.449 of 2001

1.Dhanalatchoumy @ Radjaratinam (Deceased).. Appellant/Petitioner

2.Janakiraman

3.Iyyanar

4. Govindarajulu

5.Arumugam (by his power of attorney S.Velmurugan

... 2 to 5 Appellants/LRs of the Sole Appellant

(appellants 2 to 5 brought on record
as LRs of deceased sol appellant vide order of court
dated 30.07.2013 made in WAMP.Nos.83/09, 14 & 15/2013)

Vs.

1.Union of India,
rep. by the Chief Secretary,
Govt. of Pondicherry

2.Pondicherry Planning Authority,
Town Country Planning Department,
Pondicherry.

3.Labonar Govindasamy (deceased)

4.Labonar Gounavathy candassamy

5.Labonar Baskaran

6.Labonar Illangovane

7.Labonar Calaiwany Sivlaingam (deceased)

8.Labonar Assogane

9.Jamuna Rani

10.Vanila

11.S.Ganesh

12.S.Murthy

.... Respondents

(RR9 to 12 were substituted as LRs of deceased R7 vide order of Court dated 25.02.2015 made in WAMP/18/2013)

(RR4 to 6 were recorded as legal heirs of the deceased R3 vide order of Court dated 21.02.2018 made in WA.449/2001)

Second Appeal:- Second Appeal has been filed under Section 100 of the Civil Procedure Court against the judgment and decree dated 23.03.2001 in A.S.No.18 of 2000 passed by the learned Principal District Judge at Pondicherry, reversing the judgment and decree dated 16.12.1999 in O.S.No.24 of 1999 passed by the learned Principal District Munsif, Pondicherry.

Appeal Suit:- Appeal Suit has been filed under Section 10 of the Family Courts Act against the judgment and decree dated 07.03.2001 in O.S.No.56 of 1999 passed by the Family Court at Pondicherry.

Writ Appeal:- Writ appeal has been filed under Clause 15 of the Letters Patent against the order passed by the learned Single Judge in W.P.No.14640 of 2000 dated 07.12.2000.

WP.NO.14640/2000:

Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records in proceedings NO.rpa/4208/26/PET/2000 dated 11/08/2000 on the file of the 2nd Respondent, and quash.

Appearance:-

Mr.S.Subbiah, Senior Counsel for Ms.G.Sumitra
for appellants in SA & AS and respondents 4 to 6 in WA

Mr.AR.L.Sundaresan for Mr.K.Balu
for R2 in SA & AS and for appellants in WA

Mr.Ethirajulu for Mr.M.R.Elavarasan
(For R3 to R5 in SA & AS and for

Mr.B.Nambiselvan, AGP (P) for R1 in WA

Mr.V.Ajaykumar (For R2 in WA)

Mr.Abrar Mohamed Abdullah For R9 to R12 in WA
R8 in WA- Given up

* * * * *

COMMON JUDGMENT

(R.SUBBIAH, J.,)

Second Appeal No.858 of 2001 has been filed by the appellant Labonar Govindasamy (deceased), who is the defendant in the suit filed by the respondent Dhanalatchoumy @ Radjarattiname (deceased) in O.S.No.24 of 1999 on the file of the learned Principal District Munsif, Pondicherry. The said suit was filed seeking for permanent injunction restraining the defendant and his men from trespassing into the suit property and not to put up any construction in the suit schedule property. But, the said suit was dismissed by the learned Principal District Munsif, Pondicherry by judgment and decree dated 16.12.1999. Aggrieved over the same, the respondent herein/plaintiff had filed an appeal in A.S.No.18 of 2000 before the Principal District Court at Pondicherry. The first appellate Court allowed the appeal, by reversing the judgment and decree of the Trial Court, and granted a decree restraining the appellant herein/defendant from carrying out any construction in the suit schedule property or from alienating the suit property in any manner.

2.To be noted, as against the judgment and decree in O.S.No.24 of 1999, the appellant/defendant had also filed a Cross Objection in A.S.No.18 of 2000 and the reason for filing the cross-objection is as follows:-

In the suit filed by the respondent/plaintiff for permanent injunction in respect of the suit schedule property, the appellant/defendant had taken a specific defence that the suit property was purchased by his brother Vengadessane from the money sent by the appellant/defendant in the name of his brother Vengadessane. His brother Vengadessane had died in the year 1973 and his wife Danalatchoumy pre-deceased him. After the death of the said Vengadessane, the respondent/plaintiff whose original name is Radjarattiname, who is the younger sister of Danalatchoumy, impersonated herself as if she is the wife of the said Vengadessane, by changing her name as Danalatchoumy @ Radjarattiname and claimed right over the suit property. Though the Trial Court had framed an issue as to whether the respondent herein/plaintiff is no way connected with the brother of the appellant/defendant, it was observed by the Trial Court in it's judgment that the identity of the plaintiff has to be established in accordance with law and when the dispute is raised with regard to the identity of the plaintiff, it is open to the plaintiff to establish such fact in accordance with law to claim any relief. Thus, the issue with regard to the identity of the respondent/plaintiff was not answered. In other words, the finding of the trial Court is that the identity of the plaintiff has to be established by way of separate legal

proceedings. Aggrieved over the same, though the suit was dismissed by the Trial Court, the appellant/respondent has filed the cross-objection as stated supra. But, the said cross-objection was dismissed by the first appellate Court.

3.Now, as against the dismissal of the cross-objection, no appeal has been filed by the appellant/defendant. However, as against the judgment and decree passed by the first appellate Court granting injunction in favour of the respondent/plaintiff, the above second appeal (S.A.No.858/2001) has been filed by the appellant/defendant.

4.In the meanwhile, since the appellant/defendant had denied the status of the respondent/plaintiff as wife of the said Vengadessane in O.S.No.24 of 1999, the respondent/plaintiff had filed another suit in O.S.No.56 of 1999 before the Family Court at Pondicherry against the appellant/defendant to declare that she is the legally wedded wife of Vengadessane, who is the brother of the 1st defendant Labonar Govindasamy. The said suit was contested by the appellant herein/defendant by filing a detailed written statement. After completion of trial, the said suit in O.S.No.56 of 1999 was decreed by the Family Court at Pondicherry. Aggrieved over the same, the appellant/defendant has filed the above first appeal (A.S.No.89 of 2001) before this Court.

5.Simultaneously, the respondent/plaintiff has filed a writ petition in W.P.No.14640 of 2000 before this Court praying to quash the planning permission granted to the Legal Heirs of the appellant/defendant to put up construction in the suit schedule property. The said writ petition was dismissed by this Court by order dated 07.12.2000, against which the respondent/plaintiff has filed a writ appeal in W.A.No.449 of 2001 before this Court.

6.Pending the appeals, the appellant/defendant viz., Labonar Govindasamy died, hence his legal heirs have been impleaded as appellants 2 to 8 and subsequently, since the 3rd appellant Labonar Kalaivani Sivalingam also died, the appellants 9 to 13 were impleaded as the legal heirs, in the first and second appeals. Similarly, since the respondent/plaintiff also died, respondents 2 to 5 were impleaded.

7.Since the issue involved in the above appeals are interconnected with each other, they are disposed of by way of this common judgment. For the sake of convenience and brevity, hereinafter the parties are referred to only as per the nomenclature in the suit in O.S.No.24 of 1999, as the plaintiff and the defendant.

Second Appeal:-

8.The brief facts of the case of the plaintiff

Dhanalatchoumy @ Radjaratiname are as follows:-

8-1. She is the legally wedded wife of late Vengadessane and their marriage took place on 22.01.1942, about 57 years back, at Salai Street Oulgaret, Pondicherry, as per Hindu Customs and Rites. During his life time, her husband Vengadessane used to work as Revenue Inspector at Ariyankuppam, Government of Pondicherry, Pondicherry. The suit property was purchased by her husband Vengadessane on 25.09.1951 from one Palanisamy Mudaliar by virtue of a registered sale deed. From the date of purchase of the suit schedule property, the plaintiff's husband Vengadessane and the plaintiff were enjoying the property peacefully without any interruption. The water connection and the electricity connection also stand in the name of the plaintiff's husband Vengadessane. Unfortunately her husband Vengadessane died on 11.06.1973, leaving behind her as his only legal heir. In this regard, she has also obtained a judgment and decree from the learned III Additional District Munsif at Pondicherry, in O.S.No.153 of 1998, on 23.03.1998, declaring that she is the legal heir of the deceased Vengadessane.

8-2. After the death of her husband Vengadessane, the plaintiff applied for settlement of death emoluments due to her husband and the Government of Pondicherry also paid the emoluments to the plaintiff. The plaintiff has been receiving pension amount from the Government of Pondicherry. After the death of her husband, the plaintiff started to reside at No.415, M.G.Road, Pondicherry. The suit schedule property is a dilapidated brick built house and a vacant manai, bearing Door No.29, the New No.38. Now, the suit schedule property is in the custody of her brother R.Janakiraman (2nd respondent herein).

8-3. While so, on 15.11.1998, the plaintiff came to know that the defendant Lebonar Govindasamy, who is the brother of her husband Vengadessane, is trying to trespass into the suit schedule property and also trying to put up a construction of a brick built house. Hence, on 16.11.1998, the plaintiff lodged a complaint with the Station House Officer at Reddiarpalayam and stopped the illegal act of the defendant. Again on 25.11.1998, the defendant started the foundation work in the suit schedule property, however the same was stopped by the Station House Officer at Reddiarpalayam by registering a criminal case under Section 145 of Cr.P.C., vide FIR.No.150 of 1998 against the defendant. Even after filing the said criminal case, the defendant has been threatening the plaintiff to handover the possession of the suit property to him. Hence, left with no other alternative, the plaintiff had filed the suit in O.S.No.24 of 1999 seeking for grant of permanent injunction as stated supra.

9. The said suit (O.S.No.24/1999) was resisted by the

defendant (appellant herein) by filing a written statement contending that the plaintiff does not have the name Dhanalatchoumy. The plaintiff is only Ranjitham @ Radjaratiname. The defendant has also denied that the plaintiff married his brother Vengadessane on 22.01.1942 and the plaintiff is the legal heir of the deceased Vengadessane. The defendant stated that the plaintiff appears to have obtained a decree on 23.03.1998 in O.S.No.153 of 1998 on the file of the learned III Additional District Munsif, Pondicherry to the effect that she is the legal heir of the deceased Vengadessane, by misrepresentation of facts. It is further case of the defendant that the suit property was purchased as land and when it was purchased in the year 1951, the defendant was serving in the French Army engaged in Warfare in Vietnam. The suit land was purchased with his money through his brother Vengadessane. As the defendant was not in India, the land was purchased in the name of his brother Vengadessane. After the purchase, the defendant had caused construction of a residential building with his money through his brother Vengadessane. During the construction of the building, he was not in India, hence, the electricity and water connections were taken in the name of his brother Vengadessane. In the year 1955, the defendant got married and he settled down in Pondicherry permanently in the year 1962. Since then, he was living with his wife and children in the suit property. The House tax assessment is in the name of the defendant and he has been paying the house tax. The patta for the property also stands in his name. The defendant's children having grown up got married and they are presently living in France. In the year 1997, he had alienated the suit property in favour of his children and the plaintiff is aware of all these facts. The defendant's brother Vengadessane lived in Reddychavady and died in the year 1973. The defendant denied that the said Vengadessane was in possession and enjoyment of the suit property till his death. The plaintiff never possessed and enjoyed the suit property at any point of time. As the house in the suit property got dilapidated over the years, the defendant had demolished the building in the middle of the year 1998, and obtained a permit from the Pondicherry Planning Authority and started raising a new construction thereon. After he had started demolishing the dilapidated house in the suit property, he had shifted his residence to his other residential house lying adjacently on the east. During the process of the construction, the plaintiff has filed the present suit at the instigation of her brother one Janakiraman (2nd respondent herein) making false and frivolous claims with ulterior motive. The defendant also denied that the Station House Officer, Reddiarpalayam stopped the construction work at the instance of the plaintiff. The plaintiff ought to have filed the suit for declaration and for recovery of possession. The suit for bare injunction is not maintainable in

view of the bar under Section 41(h) of the Specific Relief Act, 1963. Thus, he sought for dismissal of the suit.

10. In the said suit (O.S.No.24/1999), in order to prove her case, on the side of the plaintiff, the plaintiff's brother Janakiraman was examined as P.W.1 and one P.Hascaradoss, Sub-Inspector of Police was examined as P.W.2 and eight documents were marked as Ex.A.1 to Ex.A.8. Photocopy of the First Information Reported was marked as Ex.X.1 through P.W.2. On the side of the defendant, neither oral evidence nor documentary evidence was adduced.

11. The Trial Court, after analysing the entire evidence, has dismissed the suit. As stated supra, the trial Court while dealing with the issue with regard to the marital status of the plaintiff, has held that when the dispute is raised with regard to the identity of the plaintiff, it is open to the plaintiff to establish such fact in accordance with law to claim any relief.

12. As against the dismissal of the suit, the plaintiff filed the appeal in A.S.No.18 of 2001 and the said appeal was allowed by granting permanent injunction not to do any construction work in the suit schedule property. Though the suit was filed with a prayer for permanent injunction against the defendant from trespassing and not to do any construction work in the suit schedule property, the appeal was allowed granting injunction only in respect of putting up of any construction in the suit schedule property, due to the admission made by the plaintiff in her cross-examination that the defendant is in possession of the suit property and he was residing in the suit property from the year 1980 and he alienated the property in favour of his children in the year 1997. Thus, the first appellate Court granted permanent injunction restraining the defendant from putting up any construction in the suit property, on the reasoning that mere possession of the defendant will not confer upon any title or right to alienate the property. So far as the marital status of the plaintiff is concerned, on the basis of Ex.A.2-a copy of the marriage certificate, the first appellate Court has come to the conclusion that the identity of the plaintiff has been proved beyond any reasonable doubt that she is the wife of late Vengadessane. As stated supra, cross-objection filed by the defendant was consequently dismissed by the first appellate Court. Hence, the second appeal has been filed by the appellant/defendant before this Court.

13. On 14.06.2001, the Second Appeal was admitted by this Court on the following substantial questions of law:-

- 1) Whether the lower appellate Court was right in holding that the defendant has not established his case more so when the

possession of the defendant is admitted by P.W.1?

2) Whether the lower appellate Court was right in going into the question of title to the property in the absence of prayer for declaration?

Appeal Suit:-

14. In the meanwhile, even before passing the judgment and decree in O.S.No.24 of 1999, the plaintiff Danalatchoumy @ Radjaratiname has filed another suit in O.S.No.59 of 1999 before the Family Court at Pondicherry seeking to declare that she is the legally wedded wife of late Vengadessane. The averments made in the suit in O.S.No.59 of 1999 are almost similarly to the averments made in the earlier suit filed by her in O.S.No.24 of 1999. The defendant has also resisted the said suit by filing written statement with almost similar contentions made in the written statement filed by him in the earlier suit. Hence, We are not dealing with the averments made by either parties in the suit in O.S.No.59 of 1999 in detail.

15. In O.S.No.59 of 1999, before the Trial Court, in order to prove the case, on the side of the plaintiff, the plaintiff examined herself as P.W.1 besides examining two other witnesses as P.W.2 & P.W.3 and marked ten documents as Ex.A.1 to Ex.A.10. On the side of the defendant, the defendant examined himself as D.W.1, besides examining one Vijaya Durairaja Perumal as D.W.2 and marked Ex.B.1 to Ex.B.9.

16. The Trial Court, viz., Family Court at Pondicherry, after analysing the entire evidence adduced on either side, has decreed the suit in O.S.No.59 of 1999 holding that the plaintiff is the legally wedded of late Vengadessane. Aggrieved over the same, the appellant/defendant has filed the above first appeal in A.S.No.89 of 2001 before this Court as stated supra.

Common submissions in Second Appeal and First Appeal:-

17. The learned Senior Counsel for the appellants herein (defendant/s) as well as the learned Senior Counsel for the respondents (plaintiff/s) have made their submissions in respect of the first and second appeals in common.

18. The learned Senior Counsel for the appellants herein (defendant/s) submitted that the defendant Labonar Govindasamy is the brother of one Vengadessane. His brother Vengadessane married one Dhanalatchoumy on 22.01.1942. The said Dhanalatchoumy was born on 13.05.1923, which is evident from Ex.B.6-Birth Certificate issued by the Pondicherry Corporation. The plaintiff in both the suits is one Ranjitham @ Radjarattiname, who is the sister of the said Dhanalatchoumy and she was born on 11.05.1928 i.e., after five years from the birth

of the said Dhanalatchoumy. The said Dhanalatchoumy's husband Vengadessane, who is the brother of the appellant/defendant, was working as Revenue Inspector at Ariyankuppam, Government of Pondicherry. The defendant's brother Vengadessane died on 11.06.1973 and his wife Dhanalatchoumy pre-deceased her husband. After the death of the said Vengadessane, the plaintiff who was born on 11.05.1928, impersonated herself as if she is the wife of the said Vengadessane, by changing her name as Dhanalatchoumy @ Radjarattiname and she had filed the suit in O.S.No.153 of 1998 on the file of the III Additional District Munsif at Pondicherry, against the third party by setting up one R.Ramakrishnan as Defendant, for declaration that she is the legal heir of the deceased Vengadessane, who died on 11.06.1973 at Pondicherry and obtained a decree dated 23.03.1998, upon the said defendant remaining exparte. Further, the respondent/plaintiff is also receiving the pension and other terminal benefits from the year 1983 onwards by impersonation. Under such circumstances, the plaintiff has also filed the suit in O.S.No.24 of 1999 on the file of the Principal District Munsif, Pondicherry, as against the appellant/defendant, who is the brother of the said Vengadessane in respect of the suit property measuring to an extent of 10 ares and 50 santhiars together with a residential house in Vallianur Main Road, Reddiyar Palayam, projecting a case that the said property belongs to her husband Vengadessane and the appellant/defendant is trying to trespass into the suit property and trying to put up construction of a house.

19. In this regard, the learned senior counsel for the appellants (defendant/s) submitted that the said property was purchased from the money sent by the appellant/defendant, who was working in the French Army at the relevant point of time. In fact, the appellant/defendant alone is in possession of the property and only in order to grab the suit property from the defendant, the plaintiff has filed a false case at the instance of her brother Janakiraman. In the said suit (O.S.No.24/1999), the appellant/defendant has specifically denied the marriage of the plaintiff with his brother Vengadessane, contending that she impersonated herself as if she is Dhanalatchoumy, who was born on 13.05.1923, wife of Vengadessane. Further, the said suit was contested by the appellant/defendant pleading that the plaintiff is not the wife of the said Vengadessane, disputing the marriage and that his brother Vengadessane was married to Dhanalatchoumy and the plaintiff is none other than the sister of the said Dhanalatchoumy. Though the trial Court has not dealt with the issue relating to the identity of the plaintiff, the Trial Court observed in its judgment that the identity of the plaintiff has to be established in accordance with law and when the dispute is raised with regard to the identity of the plaintiff, it is open to the plaintiff to establish such fact in accordance with

law to claim any relief. However, so far as the prayer for injunction is concerned, the Trial Court has come to the conclusion that the balance of convenience is not in favour of the plaintiff as she has not made out any prima facie case. Thus, the Trial Court has dismissed the suit (O.S.No.24/1999) in toto. Aggrieved over the same, the plaintiff has filed an appeal in A.S.No.18 of 2000 before the Principal District Court at Pondicherry. Since the identity of the plaintiff was not decided by the Trial Court, the defendant has also filed a Cross-Objection in the said appeal. But, the Cross-objection was dismissed by the first appellate Court. Though the suit was filed with a prayer for permanent injunction against the defendant from trespassing and not to do any construction work in the suit schedule property, the appeal was allowed by the first appellate Court granting injunction only in respect of putting up any construction in the suit schedule property, due to the admission made by the plaintiff in her cross-examination that the defendant is in possession of the suit property and he was residing in the suit property from the year 1980 and he alienated the property in favour of his children in the year 1997. Thus, the first appellate Court granted permanent injunction restraining the defendant from putting up any construction in the suit property, on the reasoning that mere possession of the defendant will not confer upon any title or right to alienate the property. So far as the marital status of the plaintiff is concerned, on the basis of Ex.A.2-a copy of the marriage certificate, the first appellate Court has wrongly come to the conclusion that the identity of the plaintiff has been proved beyond any reasonable doubt that she is the wife of late Vengadessane.

20.Assailing the judgment of the first appellate Court in granting permanent injunction, the learned Senior Counsel for the appellants/defendant submitted that when the title claimed by the plaintiff has been denied by the defendant, the remedy available to the plaintiff could only be to seek declaration of her alleged right over the suit property in O.S.No.24 of 1999 and seek appropriate further reliefs, either for permanent injunction or for recovery of possession as she might be advised. Even in spite of the adverse finding given by the Trial Court against her possession, the plaintiff had not sought for amendment of the plaint to include the prayer for declaration. But, in spite of the absence of the prayer for declaration, the first appellate Court has granted the permanent injunction against the defendant not to put up any construction in the suit property. When the suit itself is not maintainable, the question of granting injunction not to put up any construction in the suit property will not arise. Therefore, according to the learned Senior Counsel for the appellants (defendant/s), the judgment and decree passed by the first

appellate Court has to be set side. In this regard, the learned senior counsel for the appellants (defendant/s) invited the attention of this Court to Section 34 of Specific Relief Act, which reads as follows:-

"34. Discretion of court as to declaration of status or right_ Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief.

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation_ A trustee of property is a "person interested to deny" a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee."

Relying upon the above said provision of law, the learned senior counsel for the appellant would submit that in the instant case, as could be seen from the allegations in the plaint and also the written statement filed by the contesting defendant namely the brother of the deceased Vengadessane, that the dispute was with reference to the immovable properties, standing in the name of the deceased Vengadessane and those rights over the immovable properties as claimed by the plaintiff (Rajarathinamal) came to be denied on account of the legal status, as claimed by her. So what was to be claimed by the said plaintiff (Radjarattinam) could be not only for the declaration of her marital status as the legally wedded wife of the deceased Vengadessane, but appropriately in respect to the properties as well standing in his name, for the declaration of her title over the suit properties, and for the consequent relief either for permanent injunction or for recovery of possession; whereas though the dispute relating to the properties were also referred to in the plaint, still no relief had been claimed for by her pertaining to the properties standing in the name of the deceased Vengadessane. Thus, according to the learned senior counsel for the appellant/defendant, the suit is not maintainable. In support of his contention, the learned senior counsel for the appellants (defendant/s) has also relied upon the decision reported in 1973 (2) SCC 60 [Saran Vs. Smt. Ganga Devi] wherein it has been held as follows:-

"4. We are in agreement with the High Court

that the suit is hit by Section 42 of the Specific Relief Act (of the old Act). As found by the fact-finding Courts, Ganga Devi is in possession of some of the suit properties. The plaintiffs have not sought possession of those properties. They merely claimed a declaration that they are the owners of the suit properties. Hence, the suit is not maintainable. In these circumstances, it is not necessary to go into the other contention that the suit is barred by limitation."

Thus, the learned senior counsel for the appellant/defendant submitted that the plaintiff, who was not in possession of the suit property, had claimed only injunction relief in the suit. The plaintiff being out of possession, the relief of recovery of possession was a further relief which ought to have been claimed by the plaintiff. The suit filed by the plaintiff for a mere injunction without relief of recovery of possession is clearly not maintainable and the trial Court has rightly dismissed the suit.

21. It is further contended by the learned Senior Counsel for the appellants (defendant/s) that though the issue relating to the bar under Section 34 of the Specific Relief Act had not been specifically raised either in the written statement or in the grounds of appeal, this question being a pure question of law, on the facts which are not in dispute, on which such plea not requiring any further evidence, then, this question can be raised at any stage of the proceedings. So far as the present proceedings are concerned, this issue has been raised during the course of the hearing of the above appeals. Therefore, the maintainability of the suit can be raised without any specific pleading. In support of this contention, the learned Senior Counsel for the appellants (defendant/s) has also relied upon the decision reported in AIR 1971 SC 2108 [State of Rajasthan Vs. Rao Raja Kalyansingh (dead) by his legal representatives].

"6. Though this issue is not very specific but undoubtedly it covers the plea taken by the respondent in paragraph 1 of his written statement. That apart the plea of maintainability of the suit is essentially a legal plea. If the suit on the face of it is not maintainable, the fact that no specific pleas were taken or not precise issues were framed is of little consequence."

Relying upon the said decision, the learned Senior Counsel for the appellants (defendant/s) submitted that in the present case, the plaintiff having been found not to be in possession and having sought for injunction relief only, the suit was clearly not maintainable and it has rightly been dismissed by the trial

court. Therefore, the first appellate Court ought to have confirmed the judgment and decree of the trial Court, but instead of doing so, it has erroneously granted injunction in favour of the plaintiff. Thus, according to the learned senior counsel for the appellants (defendant/s), the same is liable to be set aside.

22. So far as the first appeal A.S.No.89/2001 is concerned, the learned Senior Counsel for the appellants (defendant/s) would submit that at the outset, the defendant had made a preliminary objection with regard to the maintainability of the suit before the Family Court, contending that the plaintiff has filed the suit (O.S.No.56/1999) for declaration of her marital status, as against the defendant, who is brother of the said Vengadessane. The suit before the Family Court is maintainable only between the parties to the marriage and not against the stranger to the marriage. Even in the written statement filed by the defendant before the Family Court, the defendant has specifically raised the question of jurisdiction of the Family Court to decide the issue on the ground that the defendant is a stranger to the marriage and that the suit is not between spouses. Therefore, according to the learned Senior Counsel for the appellants (defendant/s), on the ground of maintainability the suit itself is liable to be dismissed, but the Trial Court, without properly appreciating the facts, has wrongly allowed the suit.

23. Further, the learned Senior Counsel for the appellants (defendant/s) submitted that in fact, the defendant had raised the preliminary objection by filing a petition, to decide the jurisdiction of the Family Court on the plaintiff allegations; but, the Family Court rejected the preliminary objection holding that it has got jurisdiction. As against the said rejection order, the defendant had filed a Civil Revision Petition in C.R.P.No.3003 of 2000 before this Court and the order passed by the Family Court was confirmed by this Court by an order dated 24.10.2000.

24. The learned Senior Counsel for the appellants (defendant/s) would further submit that normally, the question of jurisdiction of the Family Court could not have been raised by the appellant again in the appeal, but for a categorical judgment rendered by the Honourable Supreme Court of India reported in 2018(5) SCC 353 (R.Kasthuri and others Vs. M.Kasthuri and others), on the very same question.

25. For the same proposition, the learned senior counsel for the appellants (defendants) has also relied upon another

decision reported in (2017) 9 SCC 591 (Samar Kumar Roy Vs. Jharna Bera), wherein it has been held as follows:-

"16. On a reading of the aforesaid propositions, it is clear that the examination of the remedies provided and the scheme of the Hindu Marriage Act and of the Special Marriage Act show that the statute creates special rights or liabilities and provides for determination of rights relating to marriage. The Acts do not lay down that all questions relating to the said rights and liabilities shall be determined only by the Tribunals which are constituted under the said Act. Section 8(a) of the Family Courts Act excludes the Civil Court's jurisdiction in respect of a suit or proceeding which is between the parties and filed under the Hindu Marriage Act or Special Marriage Act, where the suit is to annul or dissolve a marriage, or is for restitution of conjugal rights or judicial separation. It does not purport to bar the jurisdiction of the Civil Court if a suit is filed under Section 34 of the Specific Relief Act for a declaration as to the legal character of an alleged marriage. Also as was pointed out, an exclusion of the jurisdiction of the civil courts is not readily inferred. Given the line of judgments referred to by the High Courts, and given the fact that a suit for declaration as to legal character which includes the matrimonial status of parties to a marriage when it comes to a marriage which allegedly has never taken place either de jure or de facto, it is clear that the civil court's jurisdiction to determine the aforesaid legal character is not barred either expressly or impliedly by any law."

By relying upon the above said judgment, the learned counsel for the appellants (defendant/s) submitted that when the Family Court had been constituted, only for the limited purposes of adjudicating the rights of the parties, covered under a marriage, as applicable to their personal laws, just for the purpose of promoting conciliation in and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith and especially when a right of third party is questioned, for example, as claimed by the plaintiff in the present suit against the defendant, such right cannot be adjudicated by a Family Court in derogation of the rights and if adjudicated it must be in the manner as provided under Section 5 of the Specific Relief Act. In this regard, the learned Senior Counsel for the appellants (defendant/s) has also invited the attention of this Court to Section 5 of the Specific Relief Act:-

"Section 5:- Recovery of Specific

Immovable Property:-

A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908."

Thus, the learned counsel for the appellants (defendant/s) submitted that in view of the above categorical judgment pronounced by the Hon'ble Supreme Court, it has got to be held that the Family Court at Puducherry had no jurisdiction to try the present suit, especially when the plaintiff's marriage is with the brother of the defendant.

26. Further, the learned Senior Counsel for the appellants (defendant/s) would submit that admittedly, the deceased Vengadessane had other brothers, who were never made parties to the suit and the relief in the suit as legally wedded wife of the deceased Vengadessane was sought only against the defendant Lebonor Govindasamy and not against any of the other brothers and sister of the deceased Vengadessane. The suit came to be instituted by the plaintiff only against the defendant Lebonor Govindasamy, as he alone claimed the right of ownership and title over the suit property, standing in the name of his brother Vengadessane and others did not make any claim and that is the reason exactly why the plaintiff had chosen to file the suit against the defendant Labonar Govindasamy alone, leaving out the other brothers of the deceased Vengadessane. The learned Senior Counsel for the appellants (defendant/s) submitted that even without going into the facts of the case, the suit instituted by the plaintiff is not maintainable before the Family Court.

27. With regard to the merits of the claim made by the plaintiff, the learned senior counsel for the appellants (defendant/s) submitted that the plaintiff claimed that she was born on 13.05.1923 and in order to prove the same, she marked Ex.A.2, Birth certificate of Dhanalatchoumy, and the name recorded therein was a female child named only as "Danalatchoumy". Absolutely there is no documentary evidence to show that her name is 'Danalatchoumy @ Radjarattiname'; whereas in her own evidence as P.W.1, the plaintiff had admitted that she used to sign only as 'Radjarattiname' in Tamil. Even in the plaint, she has signed only as 'Radjaratiname'. Further, the learned senior counsel for the appellants (defendant/s) submitted that Ex.A.9-Family Card is a clinching document, which was produced by the plaintiff during her examination as P.W.1 and in the said document-Ex.A.9, the name of the plaintiff has been clearly stated as 'V/uh\$uj;jpdk;khs;" and not as 'Dhanalatchoumy'. Further, her age has been shown as 68 years. If her age is reckoned from 11.05.1928, as per Exhibit-B8 & B9,

the age 68 clearly tallies by taking into account the date of its issue as 07.03.1996. Therefore, from Ex.A.9, it could be easily presumed that the plaintiff has committed an act of fraud even on the Courts. Further, there is nothing on record to show that she was named as 'Danalatchoumy'. In the absence of any proof to show that she was called as 'Dhanalatchoumy' with original name, the theory of the plaintiff goes to the root of the matter damaging her own foundation of the case.

28.Further, the learned counsel for the appellants (defendant/s), by inviting the attention of this Court to Ex.A.10-Passport produced by the plaintiff herself, submitted that the plaintiff did not travel abroad by using the passport and it is thus clear that for the purpose of creating records as if she was Rajarattiname @ Dhanalatchoumy, she has created the said document. So, those documents are not at all relevant for this case. It is further contended by the learned senior counsel that though the plaintiff, as P.W.1, claimed that she married the said Vengadessane, she did not produce marriage invitation card to show her alleged marriage with the said Vengadessane. Moreover, even though the plaintiff is stated to have married to Vengadessane even on 22.01.1942, and the said Vengadessane passed away on 11.06.1973, she had not produced any document or correspondence or even a photograph with him, as it is a part and parcel of the normal life and common in India. Without any iota of evidence, by making a false case by impersonating her deceased sister Dhanalatchoumy (who was born on 13.05.1923 and married to Vengadessane), the suit had been filed by the plaintiff in a fraudulent manner, at the instance of her brother, to grab the property belonging to the defendant, by taking advantage of the fact that the property stood in the name of Vengadessane, when the defendant alone was in possession of the properties and continued to be in possession. Thus, the learned senior counsel for the appellants (defendant/s) submitted that the defendant has clearly established before the trial Court that the plaintiff is not the wife of the said Vengadessane and she is only Radjarattiname, who was born on 11.05.1928, by producing her birth certificate under Ex.B.8 before the trial Court. Thus, the learned senior counsel for the appellants (defendant/s) submitted that on merits also, the present first appeal deserves to be allowed and the suit is liable to be dismissed.

29.Countering the submissions made by the learned senior counsel for the appellants (defendant/s), it is contended by the learned senior counsel appearing for the respondents (plaintiff/s) that a suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court. In this regard, the learned senior counsel for the respondents

(plaintiff/s) invited the attention of this Court to Section 7 (1) of the Family Court Act. The learned Senior Counsel for the respondents (plaintiff/s) submitted that as per Explanation (c) to Section 7(1), if a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them can be filed before the Family Court. The learned senior counsel for the respondent/plaintiff would further submit that as per Explanation (b) to Section 7(1) of the Family Courts Act, 1984, a suit or proceedings for declaration as to the validity of a marriage or as to the matrimonial status of any person, is maintainable before the Family Court. Therefore, absolutely the parties need not be the parties of the marriage alone. If any person denies the marital status of a person, the suit can be filed before the Family Court for declaration of his/her marital status as against the person, who denies his/her marital status. In this regard, the learned senior counsel for the respondents (plaintiff/s) has also relied upon the decision of the Hon'ble Supreme Court reported in (2016) 13 SCC 308 [Balram Yadav Vs. Fulmaniya Yadav]. Relying upon the above said decision, the learned senior counsel for the respondents (plaintiff/s) submitted that in the instant case, the suit in O.S.No.56 of 1999 filed by the plaintiff seeming to declare the plaintiff as the legally wedded wife of her deceased husband Vengadessane is very well maintainable before the Family Court, against the defendant, who is denying her marital status. Hence, the judgments relied upon by the learned senior counsel for the appellants (defendant/s) in this regard, are not applicable to the present facts of the case, as they are on different set of facts.

30. With regard to the merits of the case, the learned senior counsel for the respondents (plaintiff/s) submitted that in order to prove her identity, the plaintiff has produced Ex.A.1-Marriage Certificate, Ex.A.2-Birth Certificate, Ex.A.3-Death Certificate of her husband Vengadessan, Ex.A.4-Pension Book, Ex.A.9-Family Ration Card and Ex.A.10-Passport of the plaintiff. The name of the plaintiff is Dhanalatchoumy @ Radjarattiname and in Ex.A.1 the said name is seen as a party to the marriage. In Ex.A.2-Birth Certificate the name is shown as Dhanalatchoumy alone. However, there is no dispute that Dhanalatchoumy is also known as Radjarattiname. The learned senior counsel for the respondents (plaintiff/s) would further submit that the plaintiff has exhaustively proved her identity by marking the above said documents. In fact, among these documents, Ex.A.4 and Ex.A.10 are Photo Identification proofs, which would show that the plaintiff is the wife of deceased Vengadessane. On the side of the defendant, Ex.B-8 (Birth Certificate of one Radjarattiname) and Ex.B-9 (English Translation of Ex.B.8) were marked to show that the plaintiff's date of birth is 11.05.1928;

but mere filing of a birth certificate and pleading that it is the birth certificate of the plaintiff is not sufficient. Therefore, by relying upon Ex.B.8 & Ex.B.9, it cannot be concluded that the plaintiff is not Dhanalatchoumy and she is only Radjarattiname born on 11.05.1928.

31.Further, the learned counsel for the respondents (plaintiff/s) submitted that the marriage took place between the plaintiff and her husband Vengadessane in the year 1942 and the said marriage certificate of the year 1942 was marked as Ex.A.1. Moreover, the plaintiff was receiving pension right from the year 1975. The pension book was marked as Ex.A-4. In the pension book, name of the plaintiff was mentioned as Dhanalatchoumy @ Rajarattinamme. Passport of the plaintiff was marked as Ex.A.10, in which also the name of the plaintiff has been mentioned as Dhanalatchoumy @ Rajarattiname. In fact, Ex.B-8, Birth Certificate of one Radjartiname, containing the date of birth 11.05.1928 was marked through D.W.2, who is one of the sambathi of the defendant, and he is not a competent person to speak about the date of birth of the plaintiff. Further, the learned senior counsel for the respondents (plaintiff/s) submitted that the plaintiff has clearly established before the trial Court, by producing public documents viz., Ex.A.4 & Ex.A.10 that the plaintiff is none other than the wife of Vengadessane. The trial Court by considering all these documents has correctly granted the decree in favour of the plaintiff. Thus, the learned senior counsel for the respondents (plaintiff/s) submitted that there is no need for interfering with the judgment and decree in O.S.No.56 of 1999 passed by the Family Court.

32.So far as Second Appeal is concerned, the learned senior counsel for the respondents (plaintiff/s) submitted that the suit property was purchased by the plaintiff's husband Vengadessane by a sale deed dated 25.09.1951. After the demise of her husband, the plaintiff inherited the property being the sole legal heir. Since the defendant, who is the brother of the deceased husband of the plaintiff, tried to trespass and put up construction in the suit property, the plaintiff filed the suit in O.S.No.24 of 1999 for permanent injunction to restrain the defendant from trespassing and constructing any building in the suit property. Though the trial Court dismissed the suit, it has not made any positive remarks on the defendant's rights to the property. However, on the appeal, the learned First Appellate Court has rightly held that though the defendant has taken a different plea including that the suit property was purchased by him through his brother, he has not substantiated any of his plea through oral and documentary evidence. Further, nothing is on record to show that the defendant is in lawful possession and enjoyment of the suit property and that he

has also got a clear valid and conveyable title over the suit property. Further, the learned senior counsel for the respondents (plaintiff/s) would submit that the defendant in his written statement raised a plea that the suit properties were brought out of his earnings in the name of his deceased brother through the funds sent by him; however, the defendant has failed to produce even a piece of paper to substantiate any transaction between him and his brother. Moreover, the defendant has not entered into the box to depose to that effect. The lower appellate Court has rightly held that merely because the plaintiff has admitted that the defendant is in possession of the suit property, it will not empower him to carry out any construction therein or alienate the same in any manner. In view of the admission made by the plaintiff that the defendant is in possession of the suit property, the first appellate Court has granted injunction only in respect of putting up construction. In this regard, the learned senior counsel for the respondents/plaintiff(s) relied upon the decision of the Honourable Supreme Court reported in (1975) 5 SCC 518 [Puran Singh and others Vs. The State of Punjab]. Relying upon the above said decision, the learned senior counsel for the respondents (plaintiff/s) submitted that in the present case, the possession of the defendant cannot be classified as settled possession as it is absolutely illegal and the true owner has not acquiesced in the possession. The true owner, the plaintiff, has filed the suit seeking injunction from trespassing and this would prove that the owner never acquiesced in the possession of the defendant.

33. Thus, the learned senior counsel for the respondents (plaintiff/s) submitted that the first appellate Court, after due deliberations, has rightly allowed the appeal and granted the relief of permanent injunction in favour of the plaintiff. Therefore, absolutely no substantial question of law involves to entertain the second appeal. There is no need for making any interference with the judgment and decree passed by the first appellate Court. Thus, the learned senior Counsel for the respondents (plaintiff/s) sought for dismissal of the second appeal.

34. On a careful consideration of the submissions made on either side and taking into account the facts of the case, the following questions arose for consideration in the first and second appeals:-

- (1) Whether the Suit (in O.S.No.56/1999) is maintainable before the family Court?
- (2) Whether the plaintiff had established that she is the legally wedded wife of Vengadessane?
- (3) Whether any substantial question of law is

involved in the Second Appeal to reverse the findings of the first appellate Court?

Point No.1:-

35.It is the submission of the learned senior counsel for the appellants (defendants) that it is the preliminary objection of the defendant that the suit for declaration with regard to the plaintiff's marital status as against the defendant (who is a third party to the marriage), who is the brother of the said Vengadessane, is not maintainable before the Family Court. In other words, it is the submission of the learned senior counsel for the appellants (defendant/s) that a party to the marriage alone can maintain a suit before the Family Court; therefore, Family Court ought to have dismissed the suit (O.S.No.56/1999) filed by the plaintiff as against the defendant for a declaration of her marital status. In support of his contention, the learned senior counsel for the appellant/defendant has also relied upon the judgment reported in 2018(5) SCC 353 (R.Kasthuri and others Vs. M.Kasthuri and others). It is seen that in the said case, the suit had been filed for declaring the 1st plaintiff therein as legally wedded wife of the deceased Gunaseelan and declaring the plaintiffs 2 to 4 therein as the legitimate children of the 1st plaintiff and late Gunaseelan. In the said case, the dispute arose after the demise of Gunaseelan to whom both plaintiff 1 and defendant 1 claim to be married. Under such circumstances, the Honourable Supreme Court held as follows:-

"7.The above would indicate that the dispute between the parties is purely a civil dispute and has no bearing on any dispute within a family which needs to be resolved by a special procedure as provided under the Act. No issue with regard to the institution of marriage and the need to preserve the same also arises in the present case. That apart, the dispute between the parties can only be resolved on the basis of evidence to be tendered by the parties, admissibility of which has to be adjudged within the four corners of the provisions of the Evidence Act, 1872. In such a proceeding it would be clearly wrong to deprive the parties of the benefit of the services of counsel.

8.Taking into account all that has been said above we are of the view that the High Court was not correct in holding the suit filed by the appellant-plaintiffs to be not maintainable in law. Accordingly, we set aside the order of the High Court dated 15.06.2015 passed in M.Kasthuri Vs. R.Kasthuri and remand the matter to the High Court for a decision on merits of the second

appeal filed by the defendants."

From a perusal of the above decision, it is seen that in the said case, the suit was filed for declaring the plaintiffs as legal heirs of the deceased. Under such circumstance, the civil Court alone has jurisdiction to try the suit. Hence, the said judgment can not be applicable to the present facts of the case.

36. The other decision relied upon by the learned senior counsel for the appellant/defendant is (2017) 9 SCC 591 (Samar Kumar Roy Vs. Jharna Bera). In the said case, the issue involved was that whether the legal heirs of the deceased plaintiff can continue the litigation after the demise of the plaintiff. Hence, the facts of the said case is totally different and the said decision will not be applicable to the present facts of the case.

37. But, in the present case, the plaintiff is a legally wedded wife, who seeks declaration of her marital status, which is squarely maintainable under Explanation (b) to Sub-Section (1) to Section 7 of the Family Courts Act. In this regard, it would be appropriate to extract Section 7 hereunder:-

" 7. Jurisdiction.-

(1) Subject to the other provisions of this Act, a Family Court shall-

(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and

(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.

Explanation.-The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:-

(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;

(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;

(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;

(d) a suit or proceeding for an order or

injunction in circumstance arising out of a marital relationship;

(e) a suit or proceeding for a declaration as to the legitimacy of any person;

(f) a suit or proceeding for maintenance;

(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.

A reading of Explanation (a) would show that a suit or proceedings between the "parties to a marriage" for a decree of nullity of marriage or restitution of conjugal rights or judicial separation or dissolution of marriage is maintainable before the Family Court. Similarly, as per Explanation (c), a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them, is maintainable before the Family Court. Hence, under Explanations (a) & (c), it is intended that the proceedings should be between the parties to the marriage. Whereas considering the Explanation (b), it would show that a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person is maintainable before the Family Court. It is to be noted that in Explanation (b), which speaks about a suit or proceeding for a declaration as to the validity of marriage, the words "parties to a marriage" are conspicuously omitted by the Legislators, which indicates that it is not intended to be between the parties to the marriage. Therefore, it is clear that in the instant case, the suit filed by the plaintiff as against the defendant, who is the brother of her deceased husband, to declare that she is the legally wedded wife of Vengadessane, is very much maintainable before the Family Court, since the defendant is disputing the plaintiff's marital status as the wife of his deceased brother Vengadessane.

38. In this regard, a reference could be placed in the decision reported in Honourable supreme Court in the case of Balram Yadav Vs. Fulmaniya Yadav reported in (2016) 13 SCC 308, wherein it has been held as follows:-

"Under Section 7(1) Explanation (b), a suit or a proceeding for a declaration as to the validity of both marriage and matrimonial status of a person is within the exclusive jurisdiction of the Family Court, Since under Section 8, all those jurisdictions covered under Section 7 are excluded from the purview of the jurisdiction of the civil Courts. In case there is a dispute on the matrimonial status of any person, a declaration in that regard has to be sought only before the Family Court. It makes no difference as to whether it is an affirmative relief or negative

relief."

The dictum laid down in the above judgement is squarely applicable to the present facts of the case. In the light of the said decision, it is clear that a declaration as to the marital status of the plaintiff is within the exclusive jurisdiction of the Family Court only. Hence, the suit (O.S.No.56/1999) filed by the plaintiff is very well maintainable before the Family Court.

Point No.2:-

39.It is the case of the defendant that the plaintiff claimed that she was born on 13.05.1923. But, if Exs.A2 & B6 (birth certificate of Dhanalatchoumy) are considered, it could be seen that the name recorded therein was a female child named as 'Dhanalatchoumy' and that is the reason exactly, the plaintiff claimed her name as 'Dhanalatchoumy @ Radjarattiname'. But, no documentary evidence was produced by the plaintiff to show that her name is 'Dhanalatchoumy & Radjarattiname'. In fact, the plaintiff in her own evidence as P.W.1 had admitted that she used to sign only as 'Rajarathinamal' in Tamil. Further, the Family Card, which was marked as Ex.A.9, is a clinching document, which was produced by the deceased plaintiff herself during her examination as P.W.1 in the suit. If Ex.A.9 is considered, it cuts the very root of the case of the plaintiff. In Ex.P.9 her age has been shown as 68 years against her name and if the age is reckoned from 11.05.1928, it tallies by taking into account the date of its issue as 07.03.1996. Therefore, according to the counsel for appellant/defendant, it is clear that the plaintiff is not the said Dhanalatchoumy, who was born on 13.05.1923. Ex.A.10-Passport was only of recent origin created just before the institution of the suit. Further, the plaintiff had admitted that she did not travel abroad, by using the passport. Thus, according to the appellant/defendant, it is clear that just to show that for the purpose of creating records as if she was Rajarathinam @ Dhanalakshmi, she had been creating all those records. So, those documents are not at all reliable and they cannot at all be acted upon. Thus, the learned senior counsel for the appellants (defendant/s) submitted that the plaintiff is not Dhanalatchoumy and it was not established by the plaintiff that she is the legally wedded wife of the said Vengadessane.

40.But, We are of the opinion that mere filing of a birth certificate and pleading that it is the birth certificate of the plaintiff, is not sufficient and the defendant has to relate the document to the plaintiff. The defendant has failed to do so. Though it is claimed by the defendant that Dhanalatchoumy, who is the wife of the said Vengadessane, died in the year 1968 and thereafter, the plaintiff, who is Rajarattiname impersonated

herself as Dhanalatchoumy, the defendant has not produced any death certificate of the said Dhanalatchoumy. The defendant has also failed to examine any independent witness, who can corroborate the same. The failure on the part of the defendant to prove the death of the said Dhanalatchoumy is fatal to the case of the defendant. Further, it is admitted case that after the demise of the said Vengadessane, the plaintiff has been receiving the pension benefits from the Government. The defendant is also well aware of the fact that his brother Vengadessane was in a Government service, but he failed to raise any claim to the same on time, as he was well aware that his wife, the plaintiff, is very much alive. Inaction on the part of the defendant to claim any death-cum-retirement benefits of the deceased would go to prove his awareness of his non-existent claim.

41. It is yet another submission of the learned senior counsel for the appellants (defendant/s) that in Ex.A9-Family Card, age of Radjarattinamme was mentioned as 68 years, which clearly tallies with the birth of the plaintiff Radjarattinamme who was born on 11.5.1928 and not the birth of the Dhanalatchoumy, who was born on 13.05.1923. But, We are of the opinion that merely because the Family Card- Ex.A.9 contains the name Rajarattinamme aged about 68 years, it will not be helpful in way to decide the marital status of the plaintiff. In fact, as contended by the learned senior counsel for the respondent (plaintiff/s), all the documents marked on the side of the plaintiff are to be perused together. Among the documents produced by the plaintiff, Ex.A.2 (Birth Certificate), Ex.A.4 (Pension Book), Ex.A.9 (Family Ration card) and Ex.A.10 (Passport of the plaintiff) would clearly show the identity of the plaintiff. Among these documents, particularly in Ex.A.4 & Ex.A.10 Pension Book and Passport respectively, the name has been clearly mentioned as Dhanalathoumy @ Rajarathinamme. Whereas the birth certificate Ex.A.2 contains the name Dhanalatchoumy. From a cogent reading of all these documents, it could be concluded that the plaintiff is Dhanalatchoumy, who is also known as Radjarattinamme. Above all, the marriage certificate of the year 1942 viz., Ex.A.1 contains the name only as Dhanalatchoumy & Radjarattinamme. The relevant portion from the English transaction of Ex.A.1 reads as follows:-

"On twenty second January one thousand nine hundred and forty two at then hours, Vengadessane, aged twenty seven yeas, bill collector, born at Saleterouvou, Culgaret on seventh July one thousand nine hundred and fifteen, No.278, residing at the above place, to late Narayanasamy and Ponnammalle, his widow, has contractd marriage in the house of Rassoumoudaliar at Saleterouvou, Culgaret,

with Danalatchoumy dite Radjarattiname, aged eighteen years, unemployed, born at Pondicherry on thirteenth May one thousand nine hundred and twenty three, No.501, residing at the above place, to late Radjagobalounaiker and to Radjamballe, his widow."

The above said Marriage Certificate-Ex.A.1 clearly proves the factum of marriage between the plaintiff with her husband Vengadessane and her name was mentioned only as Danalatchoumy @Radjarattinamme. Further, Ex.A.7, Death Certificate of Vengadessane (English transaction copy of the same is Ex.A.8), also contains the name Radjarattinammalle. The relevant portion in Ex.A.8 reads as follows:-

"On eleventh June one thousand nine hundred seventy three at twenty three hours fifty, died at the General Hospital, Pondicherry, Vengadessin, fifty eight years, retired amina (Huissier), born at Moolakulam, (Oulgaret), domiciled at Pondicherry, Mahatma Ghandhi Street, Number hundred seventy three, Son of late Narayanassamy and of late Ponnamballe, his wife, Husband of Radjarattinammalle, without profession, residing at the said place."

All the above said documents came into existence much prior to filing of the suit. Further, the crucial part of these documents is that those documents show that the wife of the said Vengadessane viz., Radjarattinamme did not predecease him. Moreover, the name Radjarattinamme (name of the plaintiff) has been clearly mentioned in those documents. Further, from the Death Certificate of Vengadessane viz., Ex.A.7, it could be construed that the plaintiff has proved that she is the legally wedded wife of the said Vengadessane and the said Vengadessane predeceased her. Hence, by considering all those documents, the Family Court has rightly declared the status of the plaintiff as the legally wedded wife of her husband Vengadessane. Absolutely, We do not find any infirmity in the judgment passed by the Family Court.
Point No.3:-

42. So far as the Second Appeal is concerned, it is the submission of the learned senior counsel for the appellants (defendant/s) that the plaintiff has denied the title of the defendant and under such circumstances, there should be a prayer for declaration of title. But, in the absence of any prayer for declaration of title, the first appellate Court has wrongly granted the injunction against the defendant not to put up any construction in the suit property. Therefore, according to the

learned senior counsel for the appellants (defendant/s), the suit is not maintainable and that the question of granting injunction does not arise.

43. But, a careful perusal of the prayer made in the suit (O.S.No.24/1999) would show that the plaintiff has prayed for permanent injunction restraining the defendant and his men from trespassing and making construction in the suit property. However, during the course of trial, the plaintiff as P.W.1 has admitted that only the defendant, with his family members, is in possession and enjoyment of the suit property. Therefore, based on the said admission made by the plaintiff, the first appellate court has granted injunction in respect of making construction only, by holding that there is nothing on record to show that the defendant is in lawful possession and enjoyment of the suit property and that he has also got a clear, valid, and conveyable title over the suit property and that mere possession of the suit property by the defendant will not confer upon him any title or right to alienate the property or raise any construction therein.

44. In this regard, it would be appropriate to place reliance on the decision of the Honourable Supreme Court reported in (1975) 5 SCC 518 [Puran Singh and others Vs. The State of Punjab] wherein it has been held as follows:-

" 12..... Thus in our opinion the nature of possession in such cases which may entitle a trespasser to exercise the right of private defence of property and person should contain the following attributes:

i. That the trespasser must be in actual possession of the property over a sufficiently long period.

ii. That the possession must be to the knowledge either express or implied of the owner or without any attempt at concealment and which contains an element of animus possendie. The nature of possession of the trespasser would however be a matter to be decided on facts and circumstances of each cases;

iii. The process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced in by the true owner; and

iv. That one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession had grown any crop."

The dictum laid down in the above said decision is squarely applicable to the present facts of the case. In the instant case, as contended by the learned senior counsel for the respondents (plaintiff/s), the possession of the defendant cannot be classified as settled possession as it is absolutely illegal and the true owner has not acquiesced in the possession. The true owner, the plaintiff, has filed the suit seeking injunction from trespassing and this would prove that the owner never acquiesced in the possession of the defendant. The defendant has failed to prove his title over the suit property, by producing tangible evidence. Therefore, the first appellate Court has correctly granted injunction in respect of putting up construction in the suit schedule property. Absolutely, We do not find any infirmity in the said findings rendered by the first appellate Court. Moreover, no substantial question of law much less is involved in this second appeal to entertain the same. Hence, the Second Appeal is liable to be dismissed.

Writ Appeal:-

45. So far as the Writ Appeal is concerned, it is seen that on the basis of the settlement deeds executed by the defendant, the Pondicherry Planning Authority has granted Planning Permission to the children of the defendant to construction building in the suit schedule property. Hence, the plaintiff had made a petition dated 03.12.1999 to the Pondicherry Planning Authority to revoke the said Planning Permission. But, the said petition of the plaintiff was dismissed by the Pondicherry Planning Authority vide order dated 11.08.2000. Challenging the same, the plaintiff has filed a writ petition in W.P.No.14640 of 2000 seeking to quash the order of the Pondicherry Planning Authority. The learned Single Judge of this Court dismissed the writ petition by order dated 07.12.2000 observing that the plaintiff cannot claim right over the suit property as the issue with regard to her marital status was pending before the Family Court. Aggrieved over the same, the present writ appeal has been filed.

46. Now, in view of the findings of the first appellate Court, which was confirmed by this Court as stated supra, that the plaintiff is the legally wedded wife of her husband Vengadessane and mere possession of the suit property by the defendant will not confer upon him any title or right to alienate the property or raise any construction therein, We are of the opinion that the Planning Permission granted to the children of the defendant is liable to be set aside. Accordingly, the writ appeal deserves to be allowed as prayed for and the impugned order passed by the learned Single Judge is set aside.

47.In the result, the following order is passed:-

i)Appeal Suit in A.S.No.89 of 2001 is dismissed confirming the judgment and decree in O.S.No.56 of 1999 dated 07.03.2001 passed by the Family Court at Pondicherry.

ii)Second Appeal No.858 of 2001 is dismissed confirming the judgment and decree dated 23.03.2001 in A.S.No.18 of 2000 passed by the learned Principal District Judge at Pondicherry.

iii)Writ Appeal No.449 of 2001 is allowed as prayed for and the impugned order passed by the learned Single Judge in W.P.No.14640 of 2000 dated 07.12.2000 is set aside.

No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssv

To,

- 1.The Judge, Family Court at Pondicherry.
- 2.The Principal District Judge at Pondicherry.
- 3.The Chief Secretary,
Union of India,
Govt. of Pondicherry
- 4.The Pondicherry Planning Authority,
Town Country Planning Department,
Pondicherry.
- 5.The Principal District Munsif,
Pondicherry.

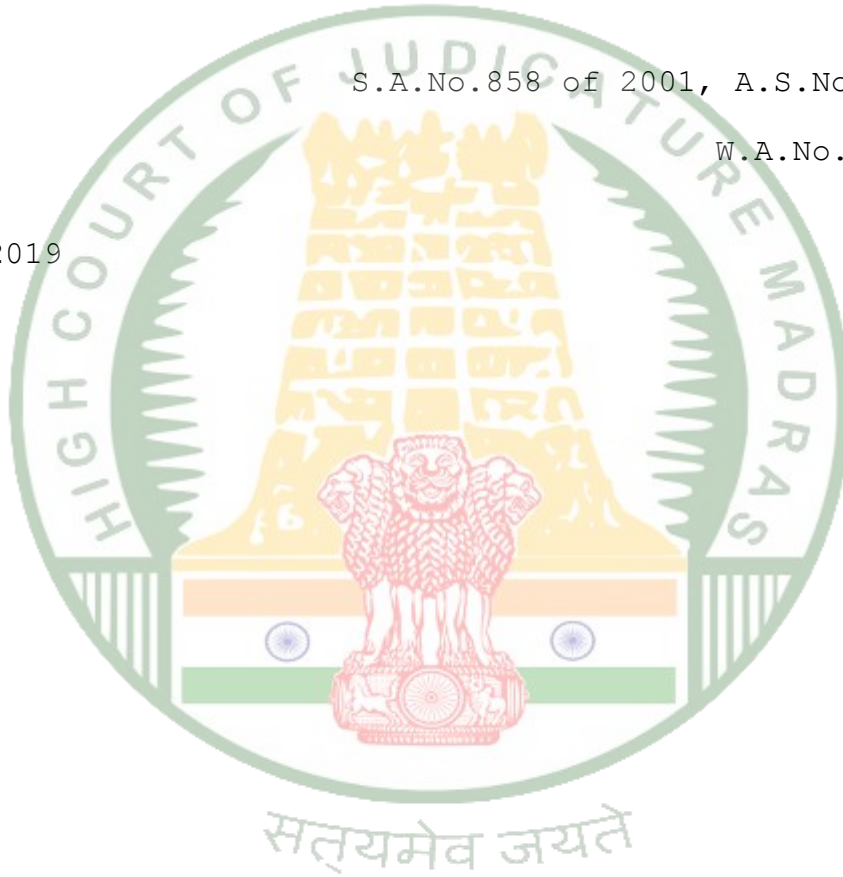
Copy to:

The Section Officer,
VR Section,
High Court, Madras.

+3cc to M/s.G.Sumitra, Advocate sr.no.89401, 89399, 89400
+1cc to Mr.M.R.Elavarasan, Advocate sr.no.89672
+1cc to Mr.K.Balu, Advocate sr.no.89671
+1cc to Government Pleader(Puducherry) sr.no.89173

S.A.No.858 of 2001, A.S.No.89 of 2001
and
W.A.No.449 of 2001

mp(co)
nr 28/02/2019



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