

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 20.03.2018**

**PRONOUNCED ON : 04.04.2018**

**CORAM**

**THE HONOURABLE MR.JUSTICE T.RAVINDRAN**

**S.A.No.2155 of 2003**

Shanbagavalli

...  
Vs.

Appellant

1. Ramasamy (died)  
2. Rajan @ Muthukumarasamy  
3. Paunammal  
(3<sup>rd</sup> respondent brought on record  
as Legal representatives of the  
deceased 1<sup>st</sup> respondent vide  
order of Court dated 16.03.2006  
made in CMP.No.612 of 2004)

...

Respondents

**Prayer :-** Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 05.08.2003 passed in A.S.No.20 of 2003 on the file of the Additional District Court (Fast Track No.2), Cuddalore, reversing the Judgment and Decree dated 04.07.2002 passed in O.S.No.472 of 2000 on the file of the Additional District Munsif Court, Cuddalore.

**WEB COPY**

For Appellant : Mrs.R.Meenal

For Respondent : Died  
No.1

For Respondents : Mr.Kinston Jerold  
Nos.2 & 3 Mr.S.K.Rakhunathan

### **JUDGMENT**

This second appeal is directed against the Judgement and Decree dated 05.08.2003 passed in A.S.No.20 of 2003 on the file of the Additional District Judge (Fast Track No.2), Cuddalore, reversing the Judgment and Decree dated 04.07.2002 passed in O.S.No.472 of 2000 on the file of the Additional District Munsif Court, Cuddalore.

2. Parties are referred to as per their rankings in the trial Court.

3. Suit for Declaration and Permanent Injunction.

4. The case of the plaintiff, in brief, is that the suit property is Government Natham property and used only as house site and not for any cultivation purpose and the plaintiff being a native of Siruthondamadevi Village, after her marriage, which took place in 1989, she joined her husband in the suit village and at the time of the marriage, the suit property was in the possession of her mother-in-law and after the marriage, the plaintiff took possession of the property and her possession was recognised by the Government by issuing B memo and the plaintiff put up a thatched house in the suit property on the eastern portion and using the remaining area as garden and the plaintiff and her mother-in-

property for several years and the defendants have no right, title or interest in the suit property and the suit property is lying to the west of the Nellikuppam Sugarcane Road and the defendants are residing in the property situated to the east of the abovesaid road and taking advantage that the plaintiff is a woman and her husband is far away and working in Chennai, the defendants attempted to interfere with the peaceful possession and enjoyment of the plaintiff in respect of the suit property and hence, according to the plaintiff, she has been necessitated to lay the suit for appropriate reliefs.

5. The case of the defendants, in brief, is that the suit laid by the plaintiff is not maintainable either in law or on facts and a mere reading of the plaint filed by the plaintiff in O.S.No.212 of 1998 would expose the falsity of the plaintiff's claim and in the above said suit, the plaintiff has averred that she took possession of the suit property prior to the filing of the said suit 15 years ago and made it fit for cultivation and on the defendants exposing the abovesaid claim of the plaintiff being false, the plaintiff withdrew the said suit and has come forward with the present suit with totally different allegations and the plaint plan and the description of the property are incorrect. The suit property is Oor natham property and it is false to state that after the marriage, the plaintiff took possession of the suit property from her mother-in-law and enjoying the same by putting up a thatched house in one portion and enjoying the

remaining portion as garden and it is false to state that the plaintiff and her mother-in-law have been in possession and enjoyment of the suit property for several years and that, their possession had been recognised by the government by issuing B memo. In the previous suit, the plaintiff has described the suit property as a cultivatable land and in the present suit, she has come forward with the case as if the suit property is not fit for cultivation and the same is only a house site. In the previous suit, the plaintiff has not stated anything about the possession and enjoyment of the suit property by her mother-in-law and in the present suit, she has come forward with a new case that her mother-in-law had been in possession and enjoyment of the suit property for several years prior to the plaintiff's marriage in 1989 and on the other hand, neither the plaintiff nor her mother-in-law has been in possession and enjoyment of the suit property at any point of time and the same is always only in the possession and enjoyment of the defendants. The suit property is just opposite to the houses of the defendants and occupied by them and enjoyed by them as their own property. The second defendant had reconstructed the house in the suit property, which had become dilapidated and the same is assessed in his name and the said house had been let out to one R.Thangavel and K.Selvan and the second defendant had also raised trees in the suit property and in fact, when the Block Development Officer, Cuddalore Panchayat Union attempted to put up a shop in the suit property, the second defendant resisted the same by

issuing letter dated 25.03.1998 not to put up any shop in the suit property and the remaining portion of the suit property is in the possession of the first defendant and enjoyed by him by raising trees and the plaintiff's husband is employed in the survey department and on that basis, the plaintiff seems to have procured certain documents in support of her case and laid the suit falsely. The plaintiff has no right whatsoever in respect of the suit property and hence, the suit is liable to be dismissed.

6. In support of the plaintiff's case, PWs1 and 2 were examined and Exs.A1 to A6 were marked. On the side of the defendants, DWs1 to 5 were examined and Exs.B1 to B14 were marked.

7. On a consideration of the oral and documentary evidence adduced by the respective parties and the submissions made, the trial Court was pleased to decree the suit. On appeal, the first appellate Court, on an appreciation of the materials placed, was pleased to set aside the judgement and decree of the trial Court and by way of allowing the appeal preferred by the defendants, dismissed the suit laid by the plaintiff. Aggrieved over the same, the present second appeal has been laid.

8. At the time of admission of the second appeal, the following substantial questions of law were formulated for consideration:

**" (i) Whether unregistered lease deeds Exs.B9 and B10, which are inadmissible could be relied upon for the purpose of establishing possession and whether unregistered lease deeds could be relied upon for collateral purposes?**

**(ii) Whether the first appellate Court erred in law and misdirected itself in refusing to grant the relief of injunction in favour of the appellant as prayed for, while the appellant is entitled to injunction against the whole word excepting the true owner?"**

9. Materials placed on record go to show that the parties are in agreement that the suit property is a Natham property. The plaintiff has claimed that she is in possession and enjoyment of the suit property for several years and thereby, she has sought for the declaratory relief of her possessory right in respect of the suit property and also for the relief of permanent injunction restraining the defendants from interfering with her possession and enjoyment in respect of the suit property. The defendants have taken a specific plea that the plaintiff has never been in possession and enjoyment of the suit property at any point of time as claimed in the **plaint.**

10. In the light of the above said defence set out by the defendants, it is found that it is for the plaintiff to establish her claim of possession and enjoyment of the suit property as put forth in the plaint. It is found that prior to this suit, the plaintiff has laid a suit in O.S.No.212 of 1998 against the defendants and it is also noted that the said suit has come to be withdrawn by the plaintiff with liberty to file a fresh suit and accordingly, it is seen that the present suit has come to be laid. It is also not in dispute that the suit property is the same in both the suits. In the present plaint, according to the plaintiff's case, the suit property is only a house site and not fit for cultivation and further, according to the plaintiff, after her marriage in 1989, on coming to the suit Village to live with her husband, she has come to be in possession and enjoyment of the suit property from her mother-in-law and further, according to the plaintiff, her mother-in-law had been in possession and enjoyment of the suit property for several years and thus, it is the case of the plaintiff that the suit property is in the possession and enjoyment of the plaintiff. It is stated by the plaintiff that she has put a thatched house in a portion of the suit property and been enjoying the remaining area as garden. However, as rightly noted by the first appellate Court in the previous suit in O.S.No.212 of 1998, according to the plaintiff, she has taken the possession of the suit property 15 years prior to the institution of the said suit and made it fit for cultivation and accordingly, the suit property has

been in her possession and enjoyment. However, quite contradictory to the above said recitals, a new plea has been raised in the present case, as if the suit property is not fit for cultivation and it is only a house site and she has come to enjoy the suit property only after her marriage in 1989 and prior to the same, the suit property had been in the possession and enjoyment of her mother-in-law and in the earlier suit, the plaintiff has not pleaded anything about the possession and enjoyment of the suit property by her mother-in-law, it is thus found that inconsistent pleas have been projected by the plaintiff as regards her claim of possession and enjoyment of the suit property in the earlier suit as well as in the present suit.

11. That apart, it is found that the materials placed on the part of the plaintiff do not support her case to establish that she has been in possession and enjoyment of the suit property as claimed. In this connection, the plaintiff examined as PW1, during the course of cross examination, has admitted that she does not know as to whether the plaint plan relate to the suit property and further, according to the plaintiff, she is not aware of the total extent of the suit property, the measurement and the boundaries of the same. It is thus found that the plaintiff is completely ignorant of the nature of the suit property as such and such being the position, the claim of the plaintiff that as described in the plaint, the suit property is in her possession and enjoyment as such

cannot be countenanced. That apart, the plaintiff, during the course of further cross examination, has also admitted that the suit property is located opposite to the defendants' houses and according to her, she is not aware as to the quantum of tax paid by her in respect of the suit property and further, according to the plaintiff, she is not aware as to whether the documents projected by her pertain to the suit property as such and it has been admitted by her that the adangal extract filed by her does not relate to the suit property and in addition to that, she has also admitted that it is only the defendants, who had put up the houses in the suit property and accordingly, she has admitted that three houses had been put up by the defendants in the suit property and the same had been let out by them to Selvan, Thangaval and Mani and the defendants are in the occupation of the said houses and such being the position, the claim of the plaintiff that she is in possession and enjoyment of the suit property by raising the thatched house and using the remaining area as garden as such cannot be accepted in any manner. In addition to that, the plaintiff has also admitted that she is residing in a thatched house, which is situated one fur long away from the suit property, with her family and the documents projected by her only relate to the said house and in such view of the matter, it is evident that as rightly noted by the first appellate Court, none of the document projected by the plaintiff relates to the suit property. Inasmuch as the suit property has never been in possession and enjoyment of the plaintiff at any point of time as

put forth in the plaint, it is found that the plaintiff is unable to place any material pointing to the same and accordingly, she is unable to place consistent pleas with reference to her possession and enjoyment of the suit property and resultantly, as above noted, contradictory claims had been made by the plaintiff as regards the possession and enjoyment of the suit property in the previous suit and in the present suit.

12. From the admission of the plaintiff, as above noted as well as from the oral and documentary evidence adduced by the defendants, it is seen that prima facie that it is only the defendants, who are in possession and enjoyment of the property by raising thatched houses and letting out the same to the various tenants and the tenants have also tendered evidence with reference to their enjoyment of the thatched houses in the suit property and that apart, it is also noted that the defendants have alienated the property situated to the north of the suit property to DW5 Amirthalingam and in the said document, the boundaries recital recites that the suit property is only in the occupation of the defendants as such and that apart, the B memo marked as Ex.B6 issued by the Thasilar also would go to show that the same had come to be issued in favour of the defendants on the strength of their possession and enjoyment and the defendants have also placed documents to show that they are in possession and enjoyment of the thatched houses put up by the defendants by paying tax etc., and accordingly, when it is noted that the

plaintiff has miserably failed to establish her claim of possession and enjoyment of the suit property, as above discussed, considering the fact that the plaintiff's husband is working in the survey department, it is found that as rightly put forth by the defendants, taking advantage of the above said position of her husband, it appears that the plaintiff has secured certain documents and come forward with the false suit, as if she is in possession and enjoyment of the suit property. However, when the materials placed on record do not support the case of the plaintiff as above discussed, it is seen that the first appellate Court has rightly assessed the materials on record in the correct perspective and accordingly, held that the plaintiff is not in the possession and enjoyment of the suit property as claimed in the plaint.

13. The counsel for the plaintiff contended that the lease deeds projected by the defendants are inadmissible as they being unregistered documents and therefore, on the strength of the same, the defendants' case should not be accepted. However, it is found that the first appellate Court has not mainly relied upon the abovesaid lease deeds for upholding the defence version. On the other hand, it is found that the first appellate Court, on an analysis of all the materials placed on record both oral and documentary, particularly, noting that as per the admission of the plaintiff herself, she is not in possession and enjoyment of the suit property and on the other hand, it is only the defendants, who are in possession and

enjoyment of the suit property by raising thatched houses and letting out the same to the various parties and coupled with the other materials placed by the defendants, it is found that the first appellate Court, did not found acceptance with the plaintiff's case and accordingly, dismissed the plaintiff's suit. In the light of the above position, it has to be held that the first appellate Court has not squarely relied upon Exs.B9 & B10 lease deeds for rejecting the plaintiff's case and on the other hand, the said documents are also taken into consideration by the first appellate Court to hold that the defendants have established their claim of possession and enjoyment of the suit property. When it is noted that the plaintiff has miserably failed to establish her claim of possession and enjoyment of the suit property, it is found that the plaintiff's suit has been rightly rejected by the first appellate Court. The substantial questions of law formulated in this second appeal are accordingly, answered against the plaintiff and in favour of the defendants.

In conclusion, the second appeal fails and is, accordingly, dismissed with costs. Consequently, connected miscellaneous petition, if any, is closed.

Index : Yes / No  
Internet : Yes / No  
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04.04.2018

To

1. The Additional District Court (Fast Track No.2),  
Cuddalore.
2. The Additional District Munsif Court, Cuddalore.
3. The Section Officer, V.R. Section, High Court, Madras.



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**T.RAVINDRAN, J.**

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**Pre-Delivery Judgment made  
in S.A.No.2155 of 2003**

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**04.04.2018**