



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2022

CORAM

**THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN**

S.A. (MD) No. 924 of 2010

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Valliammal (Died)

... Appellant / Respondent /  
Defendant

2. K.Jeyalakshmi
3. K.Muthukutty
4. K.Mariappan
5. Sivasakthi

(Appellants 2 to 5 were *suo motu* impleaded  
vide Order dated 23.02.2022)

... Appellants 2 to 5

Vs.

1. Ponnusamy
2. Shanmugaraja

... Respondents / Appellants /  
Plaintiffs

**Prayer:** Second appeal filed under Section 100 of C.P.C., to set aside the Judgment and Decree dated 22.06.2010 made in A.S.No.10 of 2010 on the file of the learned Additional Subordinate Judge, Tirunelveli, reversing the Judgment and Decree of the trial Court dated 06.07.2009 made in O.S.No.467 of 2007 on the file of the learned Principal District Munsif, Tirunelveli and to allow the second appeal.

For Appellants : Mr.D.Srinivasaragavan,  
for Mr.S.P.Maharajan.

For Respondents : Mr.H.Arumugam

### J U D G M E N T

Heard the learned counsel appearing for the appellants and the learned counsel appearing for the respondents.

2. The defendant in O.S.No.467 of 2007 on the file of the Principal District Munsif Court, Tirunelveli, filed this second appeal.

3. During the pendency of the second appeal, the defendant passed away. Her legal heirs have come on record. The suit was filed for the relief of recovery of possession. The suit property is comprised in Survey No.49/2, Sindhupoonthurai East Street, Tirunelveli Taluk bears door No.14-G.A.6. The defendant filed written statement controverting the plaint averments. Based on the



divergent pleadings, the trial Court framed necessary issues. The first plaintiff Ponnusamy examined himself as P.W.1 and marked Ex.A.1 to Ex.A.12. On the side of the defendant, three witnesses were examined and Ex.B.1 to Ex.B.13 were marked. After considering the evidence on record, the trial Court by judgment and decree dated 06.07.2009 dismissed the suit. Challenging the same, the plaintiffs filed A.S.No.10 of 2010 before the Additional Sub Court, Tirunelveli. By the impugned judgment and decree dated 22.06.2010, the first appellate Court reversed the decision of the trial Court and allowed the appeal and decreed the suit as prayed for. Challenging the same, this second appeal came to be filed.

4. The second appeal was admitted on 09.12.2010 on the following substantial questions of law:-

" (1) Whether the lower appellate Court has committed an error in holding that the judgments under Ex.A.2 and A4 are judgments in rem binding on the appellant / defendant also?

2. Whether the lower appellate Court has committed an error in law in holding that the present suit is not hit by the principle of *res judicata* in the light of the judgment in O.S. No.198 of 2002, which was confirmed by the lower appellate Court in A.S.No.184 of 2004?

3. Whether the lower appellate Court has committed an error in disagreeing with the finding of the trial Court that the permissive possession of the defendant pleaded by the plaintiffs was not established and reversing the said finding of the trial Court? "

5. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds and called upon this Court to answer the substantial questions of law in favour of the appellants and set aside the impugned judgment and decree and restore the decision of the trial Court.

6. Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment and decree do not call for any interference.

7. I carefully considered the rival contentions and went through the evidence on record.

8. I am satisfied that the suit property is covered under Ex.A.1. Of course under Ex.A.1, 5 cents of land were conveyed to the purchaser. The suit property is of much smaller extent. But a careful perusal of the suit schedule and the four boundaries mentioned in Ex.A.1 would indicate that the suit property is very much covered under Ex.A.1.

9. Now the primary question that falls for consideration is whether the first appellate Court was justified in decreeing the suit based on Ex.A.2 and Ex.A.4 to which the defendant was not a party. Of course Ex.A.2 and Ex.A.4 judgments cannot be considered as judgments in rem but they are certainly admissible in evidence under Section 13 of the Indian Evidence Act. The Hon'ble Supreme Court in



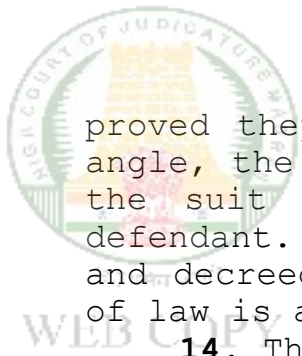
the decision reported in 1998 (3) SCC 331 (**Tirumala Tirupati Devasthanams V. K.M.Krishnaiah**) had held that a judgment not inter partes is admissible in evidence under Section 13 of the Evidence Act as evidence of an assertion of a right to property in dispute. Therefore, they may not be considered as judgments in rem. The first substantial question of law is answered accordingly.

10. The next question that falls for consideration is whether the defendant has shown better title compared to that of the plaintiffs. Even according to the defendant, her father-in-law Lakshmana Nadar was in possession of the suit property and that following his demise, she is in possession and occupation of the suit property. The defendant had marked only Ex.B.1 and Ex.B.2 the judgment and decree in A.S.No.184 of 2004 on the file of the II Additional Sub Court, Tirunelveli. It was only an injunction suit. Under Ex.B.1 and Ex.B.2, the decree of permanent injunction had been granted in favour of the defendant taking note of her possession over the suit property. That is why, the present suit was filed for recovery of possession. A person in settled possession can be dispossessed only by due process of law. Ex.B.1 and Ex.B.2 cannot come in the way of a suit for recovery of possession. The suit on hand is not hit by *res judicata*. The second substantial question of law is answered against the appellants.

11. I went through the evidence adduced by the defendant. The defendant does not have any title document in her favour. ' B ' memos have been marked as Ex.B.11. It appears that the suit property was classified as nandhavanam poramboke. Therefore, the plaintiffs herein along with their mother filed O.S.No.97 of 1987 before the Principal District Munsif, Tirunelveli in respect of the suit property against the Tamil Nadu Government. They obtained declaration in their favour. This effectively undermines the entire defence put forth by the defendant herein.

12. The specific case of the plaintiffs is that their father had permitted the defendant's father-in-law to be in occupation of the suit property; it was only a permissive possession. Once the permission is revoked, then the defendant has to surrender possession. In this case, the plaintiffs issued notice dated 08.08.2007 calling upon the defendant to hand over possession. Though she received the notice as evidenced by acknowledgment Ex.A.11, she did not give any reply. Only a caveat was filed.

13. The learned counsel appearing for the appellants argued that without seeking the relief of declaration, the plaintiffs could not have maintained a simple suit for recovery of possession. Such a stand was in fact taken in the written statement. I do not find any merit in the said contention. Only if the defendant can place sufficient materials so as to cast cloud on the plaintiffs' title, the plaintiffs would be obliged to include the prayer for declaration also. In this case, the defendant has not placed any material to prove her claim of title over the suit property. On the other hand, the plaintiffs trace their title to Ex.A.1. Ex.A.2 to Ex.A.4 are decrees which show that the plaintiffs had asserted and



proved they have title over the suit property. Looked at from any angle, the plaintiffs have convincingly established their title over the suit property. There is zero evidence on the side of the defendant. The first appellate Court rightly approached the issue and decreed the suit as prayed for. The third substantial question of law is also answered against the appellants.

**14.** This second appeal is dismissed. No costs.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

**To:**

1. The Additional Subordinate Judge,  
Tirunelveli.
2. The Principal District Munsif,  
Tirunelveli.
3. The Record Keeper, V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.H. ARUMUGAM, Advocate ( SR-17866[F] dated 11/04/2022 )

+1 CC to M/s.S.P. MAHARAJAN, Advocate( SR-17687[F] dated 11/04/2022 )

S.A.(MD)No.924 of 2010  
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MGJ(12.05.2022) 4P 7C