



S.A(MD)No.11 of 2006

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**DATED: 22.02.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE S.SOUNTHAR**

**S.A(MD)No.11 of 2006**  
**and**  
**C.M.P(MD)No.93 of 2006**

1.Ariyan

2.Muthiah

...Appellants

-Vs-

1.Lakshmi

2.Mariammal

3.Pushpam

4.Muthuiruli

5.Sekhar

... Respondents

**PRAYER:** Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree passed by the Subordinate Court, Kovilpatti, in A.S.No.24 of 2001, dated 17.03.2004 confirming the judgment and decree made in O.S.No.31 of 2000 dated 27.04.2001 on the file of the District Munsif cum Judicial Magistrate, Vilathikulam.

For Appellant : Mr.K.Sathiya Singh  
for Mr.J.John



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For R1 : No appearance

For R2 to R5 : Dismissed for default vide  
Court order dated 22.01.2019

### **JUDGMENT**

The defendants in the suit are the appellants. The suit for declaration of title and injunction, was filed by the respondents. The suit was decreed by the trial Court and the findings of the trial Court was affirmed in the first appeal. Aggrieved by the concurrent findings, the appellants are before this Court.

2. According to the Plaintiffs, the suit property is originally belonged to one Shanmugam and the first respondent / second plaintiff Lakshmi is the daughter of Shanmugam's sister Ramuammal. After death of Shanmugam and Ramuammal, the property devolved upon the plaintiffs. The first respondent/second plaintiff is the daughter of Ramuammal and the deceased first plaintiff Gurupatham was the husband of Ramuammal. It was further averred in the plaint that the first respondent and the deceased first plaintiff Gurupatham enjoyed the suit property and they allowed P.W.2-Karuppasamy to manage the



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property. The appellants herein without having any manner of right or possession over the suit property tried to interfere with the enjoyment of the suit property by the plaintiffs and hence, the plaintiffs are constrained to file a suit for declaration of title and injunction.

3. The said suit was resisted by the appellants/defendants herein by filing the written statement denying title as well as possession of the plaintiffs. The appellants in the written statement admitted that the property belonged to one Shanmugam, but however, they pleaded that the fathers of the appellants, namely, Karuppannan and Kulanthaivelu purchased the suit property orally from the said Shanmugam and from then onwards the fathers of the appellants and after their death, the appellants had been in possession and enjoyment of the suit property.

4. Before the trial Court, the first respondent/second plaintiff was examined as P.W.1 and the agent of the plaintiffs was examined as P.W.2. Two other independent witnesses were examined as P.W.3 and P.W.4. The respondents also marked four documents on their side as Ex.A.1 to Ex.A.4. On behalf of the appellants, the first appellant was examined as D.W.1 and yet another witness was



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examined as D.W.2. On behalf of the appellants, four documents were marked as Ex.B.1 to Ex.B4.

5. The trial Court, on consideration of oral and documentary evidences available on record, came to the conclusion that the plaintiffs were entitled to declaration of title and injunction as prayed for. Aggrieved by the same, the appellants herein filed first appeal in A.S.No.24 of 2001 on the file of Sub Court Kovilpatti. The first appellate Court also concurred with the findings rendered by the trial Court. Aggrieved by the said concurrent findings, the appellants are before this Court.

6. The learned counsel for the appellants assailing the judgments of the Courts below submitted that the respondents failed to prove that the mother of first respondent / second plaintiff, namely, Ramuammal was the sister of original owner Shanmugam and hence, the Courts below erred in granting declaration of title in favour of the respondents. The learned counsel further submitted that the respondents failed to prove their exclusive possession over the suit property and hence, the Courts below ought not to have granted the relief of injunction as



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prayed for by them. It is also submitted by the learned counsel for the appellants that though the appellants failed to prove the oral sale pleaded by them, the weakness of the defence cannot be a ground to grant a decree for declaration of title and injunction in favour of the respondents.

7.The second appeal was already dismissed against the respondents 2 to 5. Therefore, the judgment of the first appellate Court had attained finality as far as the respondents 2 to 5 are concerned.

8. The respondents, in order to prove that the suit property originally belonged to one Shanmugam, produced Ex.A1-Patta that stood in the name of Shanmugam for the suit property. Even in the pleadings, the appellants themselves admitted the title of Shanmugam and pleaded oral sale from him. Therefore, there is no doubt that Shanmugam was the original owner of the suit property. D.W.1 in his evidence admitted that the first respondent / second plaintiff Lakshmi is the daughter of Ramuammal. He also admitted that the deceased first plaintiff is the husband of Ramuammal. However, there is no evidence to show that Ramuammal is the sister of deceased Shanmugam, except



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the oral testimony of witnesses examined on behalf of the respondents. The first appellate Court also found that there is evidence available on record to show that the first respondent / second plaintiff Lakshmi is the legal heir of original owner Shanmugam. It has also given a factual finding that the appellants failed to prove the oral sale pleaded by them. The respondents examined agent Karuppasamy as P.W.2, who deposed that he has been managing the property on behalf of the respondents. Two other independent witnesses examined by the respondents, namely, P.W.3 and P.W.4 in their evidence deposed that they put up a house and cattle shed in the suit property under permission from the respondents' agent namely, P.W.2.

9. Based on the evidence of P.W.2 and P.W.3, the first appellate Court came to the conclusion that after death of Shanmugam, the property has been possessed and enjoyed by the first respondent/second plaintiff and as her agent, P.W.2 Karuppasamy had been managing the property. Therefore, even though the respondents failed to prove their title over the suit property by leading any evidence to show that the mother of the first respondent, namely, Ramuammal is



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the sister of Karuppasamy, they proved their possessory title over the suit property. The Courts below based on the evidence available on record, had given a factual finding that after death of Shanmugam, the suit property had been enjoyed by the second plaintiff, Lakshmi Ammal. Therefore, though the respondents failed to prove their title over the suit property by proving relationship between Shanmugam and Ramuammal, they succeeded in proving their possessory title over the suit property. Consequently, the respondents are entitled to declaration of possessory title and injunction. It is settled law that in a suit for declaration of title even though the plaintiff failed to prove his title, in case, he succeed in proving his possessory title, he is entitled to lesser relief of declaration of possessory title as held in **1971 (84) LW 252 in Mohammed Sulaiman Nachi and others Vs Chena Ena Mohideen Thambi and another.**

10. In Mohammed Sulaiman Nachi and others Vs Chena Ena Mohideen Thambi and another reported in **1971 (84) LW 252 (cited supra)**, this Court held as follows:

*The Judicial Committee found “that the plaintiff was entitled to a declaration as against the defendant that he was lawfully entitled to possession and the relief consequent thereon. It was*



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*unnecessary to decide as to the validity of the wakf for the purpose of the suit or in the absence of the parties interested'. In Narayan Rao v. Dharmachar(2) Bhashyam Alyangar and Moore, JJ. have held "Possession is, under the Indian, as under the English law, good title against all but the true owner. S. 9 of the Specific Relief Act is in no way inconsistent with the position that as against a wrongdoer, prior possession of the plaintiff, in an action of ejectment is sufficient title, even if the suit be brought more than six months after the act of dispossession complained of and that the wrong-doer cannot successfully resist the suit by showing that the title and right to possession are in a third person. The only effect of S. 9 of the Specific Relief Act is that a person who has been dispossessed otherwise than in due course of law and who brings a summary suit within the time prescribed by that section, is entitled to be reinstated even if the defendant by whom he was dispossessed be the true owner or a person authorised by or claiming under him. But a decree passed in such a suit will not have the force of res judicata on the question of title." in the very same judgment there is a reference to Imall Ariff v. Mahomed Ghouse,(3) wherein it was held that possession of land was sufficient evidence of right as owner as against a person who had no title whatever, and that the plaintiff was entitled to obtain a declaratory decree and an injunction restraining the wrong-doer from interfering with his*



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11. In the case on hand the respondents/plaintiff proved their possession over suit property as found by both the Courts below. The appellant herein set up oral sale from Shanmugam under whom respondent claimed right but failed to prove better title pleaded by them. Hence respondents are entitled to declaration of their possessory title less than what they prayed for.

12. Therefore, in the case on hand, the respondents are entitled to the reliefs of declaration of possessory title and injunction. With these modification, the Second appeal is dismissed.

13. In nutshell.

(i) The second appeal is dismissed with a modification that the respondents are entitled to declaration of possessory title and injunction;

(ii) In the facts and circumstances of the case, there will be no order as to costs; and



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WEB COPY (iii) Connected miscellaneous petition is closed.

**22.02.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
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To

- 1.The Subordinate Court, Kovilpatti.
2. The District Munsif cum Judicial Magistrate, Vilathikulam.
- 3.The Record Keeper,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SOUNTHAR, J.**

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