



*S.A.(MD).No.395 of 2017*

WEB COPY

**THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 13.12.2023**

**CORAM:**

**THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

**S.A.(MD).No.395 of 2017**

**Ramachandran**

**... Appellant**

**/Vs./**

**1. Poovayee**

**2. Muniyappan**

**3. The Tahsildar,  
Kulithalai,  
Karur District.**

**...Respondents**

*[3<sup>rd</sup> respondent is Suo Motu impleaded as per Order of this Court, dated 06.12.2023. ]*

**PRAYER:** Second Appeal filed under Section 100 of the Civil Procedure Code against the Judgment and Decree dated 13.12.2011 passed in A.S.No.9 of 2011 on the file of the Subordinate Court, Kulithalai, reversing the Judgment and Decree in O.SNo.173 of 2007 on the file of the District Munsif Court, Kulithalai.



WEB COPY



*S.A.(MD).No.395 of 2017*

For Appellant : Mr.N.Rahamadullah

For Respondents : Mr.M.Maria Viola, for R-1 & R-2

Mr.A.Kannan,  
Additional Government Pleader, for R-3

### **JUDGMENT**

This Second Appeal is filed against Judgment and Decree, dated 13.12.2011 passed in A.S.No.9 of 2011 on the file of the Subordinate Court, Kulithalai, reversing the Judgment and Decree in O.S.No.173 of 2007 on the file of the District Munsif Court, Kulithalai.

2. The Defendant is the Appellant herein and the Plaintiffs are the Respondents herein. For the sake of convenience, the contesting parties shall be referred to as plaintiffs and defendants per the ranking in the suit.

3. The plaintiffs have filed the suit for permanent injunction, restraining the defendant from interfering in the possession and enjoyment of the suit property. The plaintiffs claim right over the property based on the Natham Patta, dated 26.03.2002. The plaintiff



*S.A.(MD).No.395 of 2017*

states that he is entitled to 5 cents however, the Natham Patta was issued only for 1.25 cents. The claim of the plaintiffs is that even though Patta was issued for 1.25 cents, for remaining property they are in possession and enjoyment laying drainage, by planting trees and by fencing the property. The Trial Court has dismissed the suit. Aggrieved over the same, the Plaintiffs have preferred an appeal in A.S.No.9 of 2011 before the Appellate Court. The Appellate Court has relied on the report of the Advocate Commissioner and has come to the conclusion that the plaintiffs are in possession and enjoyment of larger extent of property. Since the Advocate Commissioner report has stated that the plaintiffs have planted trees and by taking the age of the trees, the Advocate Commissioner has come to conclusion that the plaintiffs are in possession and enjoyment for a long period. Based on the Advocate Commissioner's report, the Appellate Court has granted injunction. Aggrieved over the same, the defendant has preferred this Second Appeal.

4. The contention of the defendant is that the suit cannot be decreed based on the report. The plaintiffs have to prove the case based



*S.A.(MD).No.395 of 2017*

on the documents and other necessary revenue records. But the plaintiffs have vehemently opposed the claim of the defendant stating that the Appellate Court has held that the defendant is having right to the land in S.No.238/1. But the plaintiff is claiming right to the land in S.No.239 and hence the defendant cannot oppose injunction plea of the plaintiffs to the land in S.No.239.

5. In order to ascertain the fact that who is in real possession of S.Nos.238 & 239, this Court *Suo Motu* impleaded the Tahsildar, Kulithalai, Karur District and directed to submit a report. The Tahsildar has submitted a report, wherein it is stated that the defendant is in possession of the suit property in S.No.238/1. And also 26 other persons are in possession of the said suit property in S.No.238 and to this effect, 'A' register is produced. As far as, S.No.239 is concerned, 'A' register states the classification of the said place as 'மலை'. However, the Patta granted to the plaintiffs state the classification as 'Natham'. The patta further states that the plaintiff was granted patta for 1.25 cents. The Tahsildar has also submitted, even though it is stated as 'மலை' the property was subsequently changed as 'Natham'. The remaining



*S.A.(MD).No.395 of 2017*

properties to the extent of 3.75 cents, the plaintiffs are in occupation without any Patta, which is admitted by the Tahsildar also. Therefore, the plaintiffs are entitled to injunction against the defendant, as far as the S.No.239 for the entire 5 cents is concerned. Therefore, this Court is inclined to interfere with the Judgment and Decree passed by the Appellate Court. However, the plaintiffs can claim injunction only against the defendant. But the Government has power either consider to grant Patta or to vacate the plaintiff from the remaining portion of 3.75 cents in S.No.239. The plaintiffs are entitled to Patta for 1.25 cents alone and for the remaining land of 3.75 cents liberty is granted to the Government to act as per Law.

6. For the reasons stated supra, this Second Appeal stands dismissed. No Costs.

**13.12.2023**

Index : Yes / No  
NCC : Yes / No

KSA



*S.A.(MD).No.395 of 2017*

WEB COPY

**TO:**

1. The Subordinate Court, Kulithalai.
2. The District Munsif Court, Kulithalai.
3. The Section Officer,  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



WEB COPY



*S.A.(MD).No.395 of 2017*

**S.SRIMATHY, J.**

KSA

Judgment made in  
**S.A.(MD).No.395 of 2017**

Dated:  
**13.12.2023**