



S.A.No.1153 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.09.2024

DELIVERED ON : 25.10.2024

CORAM:

THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR

S.A.No.1153 of 2011 &
M.P.No.1 of 2011

S.Jagadeesan

...Appellant

Vs.

S.Kumaravel

... Respondent

Prayer : Second Appeal filed Under Section 100 of CPC, to set aside the Judgment and Decree dated 26.07.2010 made in A.S.No.4 of 2007 passed by the learned Subordinate Judge, Chidambaram confirming the Judgment and decree dated 15.03.2006 made in O.S.No.407 of 2004 on the file of the Additional District Munsif Court, Chidambaram

For Appellant : Mr.R.Thiagarajan
M/s Vasudha Thiagarajan

For Respondent : No appearance

J U D G M E N T

The Second Appeal has been preferred against the Judgment and Decree dated 26.07.2010 made in A.S.No.4 of 2007 passed by the learned Subordinate Judge, Chidambaram confirming the Judgment and decree dated



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15.03.2006 made in O.S.No.407 of 2004 on the file of the Additional District

Munsif Court, Chidambaram.

2. The appellant is the defendant in the suit. The appellant has lost before the Trial Court and the First Appellate Court. For the sake of convenience, the parties will be referred as plaintiff and the defendant, as described in the suit before the trial court. The suit was filed with a prayer to confirm the possession and enjoyment of the plaintiff and for permanent injunction as against the defendant.

3. The case of the plaintiff is that Azhagappa Padayachi and Muthulinga Padayachi are brothers, Azhagappa Padayachi is the elder brother and Muthulinga Padayachi is the younger brother. Muthulinga Padayachi married one Thangammal and Azhagappa Padayachi married Rajammal. The suit property was in possession and enjoyment of Muthulinga Padayachi and Azhagappa Padayachi without effecting partition amongst themselves.

4. After the death of Azhagappa Padayachi, a release deed was executed by Muthulinga Padayachi in favour of Rajammal, wife of Azhagappa Padayachi with respect to the share of Azhagappa padayachi on 04.04.1941. The said document was marked as Ex.A.1. Rajammal settled the property obtained vide Ex.A1 in the name of her younger daughter's son, viz.,



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Ramachandran who is the grandson of Rajammal, by way of settlement deed dated 20.07.1967, which was marked as Ex.A2. One of the conditions in the settlement deed is that after the death of Ramachandran, his legal heirs are entitled to enjoy the same. In the absence of any legal heirs to the said Ramachandran, the legal heirs of his brothers and sisters will be entitled to the property which was settled in the name of said Ramachandran. Ramachandran is survived by his two sisters namely, Jyothi and Rajalakshmi. The said Jyothi and Rajalakshmi will have absolute right over the property inherited by Rajammal which was originally the share of Azhagappa Padayachi.

5. At this juncture, Muthulinga Padayachi and Thangammal also died without any children. Therefore, Jyothi and Rajalakshmi had inherited the share belonging to Muthulinga Padayachi and Thangammal as well. Jyothi and Rajalakshmi, by way of inheritance and continuous possession enjoyed the suit schedule property which was originally the unpartitioned property of both the brothers viz., Azhagappa Padayachi and Muthulinga padayachi.

6. The said Jyothi and Rajalakshmi had executed a sale deed in favour of the plaintiff on 30.07.2003 for a sale consideration of Rs.15,400/- which was marked as Ex.A3. According to the plaintiff, the plaintiff is in continuous possession of the suit schedule property from the date of execution



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of Ex. A3. The plaintiff contends that the defendant, on 22.11.2004 had made an attempt to tie his cattles in the suit property and therefore, the present suit came to be filed.

7. The defendant had filed written statement contending that originally the property belonged to one Kuppa Padayachi. Azhagappa Padayachi and Muthulinga Padayachi are the two sons of the said Kuppa Padayachi. Originally, the suit scheduled property was in R.S.No.44/3 and sub- divided as no.265/5 in Jayakondam Village. The extent of the suit property is East to West 32 Feet, North to South, 28 feet and totally 896 Sq.ft. The said extent belonged to the two brothers namely Azhagappa Padayachi and Muthulinga Padayachi. Both Azhagappa Padayachi and Muthulinga Padayachi were in enjoyment of the property without effecting any partition. Muthulinga Padayachi and Rajambal, wife of Azhagappa Padayachi had partitioned the suit property and each of them obtained east to west 16 feet, and north to south 28 feet respectively. Precisely, the western side portion of the property was enjoyed by the plaintiff and the portion abutting north to south road was enjoyed by the defendant.

8. The defendant's specific contention is that the plaintiff was not clear in mentioning the boundaries, survey number and the correct extent of the suit scheduled property. The defendant's specific case is that the boundaries



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of entire extent of 82 sq.meters in R.S.No.265/5 are West to street, East and South to the defendant's family (Shanmugam) property, North to Porambokku property (Kali Natham) in which Azhagappan share was within the boundaries of East and South to the defendant's property (Shanmugam) west to Muthulingam property, North to Kali Natham. Likewise, the boundaries of Muthulingam share is south to defendant's property, north to Kali Natham, west to road, East to Azhagappan share.

9. Further, the defendant's specific contention is that the defendant is able to give clear boundaries, survey number and the exact extent. The defendant contended that Jyothi and Rajalakshmi are not the legal heirs as projected by the plaintiff for the share of the property belonging to Muthulinga Padayachi. After the demise of Muthulinga padayachi, entire share belonging to Muthulinga padayachi was in possession of his wife Thangammal. The said Thangammal had died without any Class I legal heirs and in view of the same, the remaining surviving legal heirs are one brother and five sisters who are Class II legal heirs entitled to inherit the estates of Thangammal.

10. The defendant contends that in a family arrangement between brothers and sisters of Thangammal, the only brother, Veerappan was permitted to enjoy the property of Thangammal. After the demise of the said



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Veerappan, his son Radhakrishnan has become the absolute owner of the property which was the share of Thangammal. A sale deed was executed by the said Radhakrishnan to an extent of 41 sq. meters on 29.07.2003 in favour of the defendant's son by name, Vishwa, who was then aged about 2 ½ years. The defendant categorically claimed that the property in R.C.No.265/6 to an extent of 48 sq.meter is poramboke property to which the plaintiff had no right or title.

11. The Trial Court upon considering the plaint and the written statement filed by the plaintiff and the defendant, had formulated the following issues for consideration, namely,

1. Whether the plaintiff is entitled for the relief of permanent injunction?
2. Any other relief could be granted in favour of the plaintiff?

12. Further, the trial court has examined the plaintiff as P.W,1 and one Valiammai as P.W.2 and Jyothi as P.W.3 and Exs.A.1 to A.9 were marked on the side of the plaintiff. On the side of the defendant, D.W.1 to D.W.3 were examined and marked Exhibits Ex.B.1 to B22.



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13. The trial court on evaluation of exhibits marked on either side and the oral evidence adduced by either side, primarily found that the sale deed in favour of the plaintiff was executed on 30.07.2003, which is marked as Ex.A.3 and the sale deed in favour of the defendant was executed on 29.07.2003, which was one day prior to the date of the sale deed in favour of the plaintiff. The trial court while examining Ex.A.1, which is the registered release deed, had come to the conclusion that while reading the recitals in Ex.A.1, Muthulinga padayachi had partitioned the share belonging to his elder brother Azhagappa Padayachi. Since Azhagappa Padayachi had pre-deceased Rajammal, Muthulinga Padayachi has only given the share belonging to Azhagappa Padayachi by way of a release deed in favour of Rajammal, the wife of Azhagappa Padayachi. The trial court on examination of Ex.A.1 had come to the conclusion that the plaintiff was in enjoyment of the property in the western side, which was the share of Muthulinga padayachi and Thangammal's share on the eastern side of the property.

14. Further, the trial court while examining Ex.A.3, sale deed, which was executed by Jyothi and Rajalakshmi in favour of the plaintiff noted that the portion belonging to the Muthulinga padayachi was also included in the sale deed. The trial court had considered the objection raised by the defendant that



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Jyothi and Rajalakshmi had no right in the share belonging to Muthulinga padayachi.

15. The trial court found that the documents marked by the defendant namely, Ex.B.4 is only the death certificate of Thangammal and Ex.B.1 and B.2 are only tax receipts issued in favour of Thangammal by the Tahsildar and exhibits, Ex.B.12 and B.13 are with regard to Survey No.173/1. The documents marked by the defendants have nothing to do with the suit scheduled property. However, the claim made by the defendant is that after the demise of the said Thangammal, her brother Veerappan has inherited the property by way of family arrangement and thereafter, the said Veerappan and his son Radhakrishnan were in continuous possession and enjoyment of the property which was subsequently sold to the defendant.

16. The trial court evaluated the rights of the plaintiff's predecessor in title and the defendant's predecessor in title by examining section 15 (1) of the Hindu succession Act, 1956 and found that as Thangammal's husband, Muthulinga Padayachi died much earlier, the share of Muthulinga Padayachi was enjoyed by Thangammal and she was in possession and enjoyment of the property. The vendors of the plaintiff have inherited the property as the legal heirs.



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17. As the suit is only filed for permanent injunction, the trial court, after considering the facts and circumstances and the evidence adduced by PW1 to PW3 along with Exs.A1 to A3 which clearly indicated that the plaintiff was in possession and enjoyment of the property, decreed the suit as prayed for. Aggrieved by the Judgment and Decree in O.S.No.407 of 2004 by the Additional District Munsif Court, Chidambaram, the defendant has filed the appeal before the Sub-Court, Chidambaram in AS No.4 of 2007.

18. The First Appellate Court, while considering the correctness of the Judgment passed by the trial court, had taken two issues for consideration which are as follows:

(i) Whether the Judgment and Decree passed by the Trial court is in accordance with law?

(ii) Whether the appeal could be entertained?

19. The First Appellate Court considered the documents marked by the plaintiff in Exs.A.1 to A.3, the documents marked by the defendant in Ex.B.7 and other documents, viz., Ex.B.1 to B.22 which are only tax receipts, stood in the name of Thangammal and examined the Hindu Succession Act, 1956. The First Appellate Court also considered the additional documents filed as



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Ex.B.23, i.e., the deposition of Anjammal in O.S.No.406 of 2004 dated 03.07.2006 and Ex.B.24, a copy of the letter given by Kumaravel to the Tahsildar, Chidambaram.

20. The First Appellate Court had categorically come to the conclusion that the plaintiff is entitled for the relief of permanent injunction. The First Appellate Court while confirming the Judgment and decree passed by the trial court, dismissed the appeal filed by the defendant. Aggrieved by the Judgment and decree passed by the First Appellate Court, this Second Appeal has been filed.

21. The Second Appeal is admitted on the following substantial questions of law:-

“a. When the respondent himself has admitted the possession of the appellant, is the suit for injunction simplicitor filed by the respondent maintainable in law in the absence of declaratory and possessory reliefs sought for, by him?

b. When there are rival claims by the parties on the basis of their respective sale deeds, dated 30.07.2003 in favour of the respondent / plaintiff and 29.07.2003 in favour of the appellant / defendant, whether the Courts below are right in decreeing the suit in favour of the respondent ignoring overwhelming evidence produced by the appellant?



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c. Whether the decree of the Courts below are sustainable in the light of Ex.B-14-20 kist receipts produced by the appellant which would prove his possession and enjoyment of the suit property?

d. Is the conclusion reached by the Trial Court as confirmed by the appellate Court tenable in law, in light of Ex.B.11-13, B-6, B-8, B-14-20 produced by the Appellant?

e. When the appellant had produced patta under Ex.B6 and adangal under Ex.B.8, whether the decree passed and confirmed by the Courts below sustainable in law?

f. When the appellants predecessor in title has been exercising exclusive right of ownership and possession over the suit property by virtue of Ex.B1 to 13, is the decree for injunction granted in favour of the respondent sustainable in law?

22. The learned counsel appearing for the appellant would contend that the respondent had not shown clear boundaries, correct survey number and clear extent of the suit scheduled property and the respondent did not challenge the sale deed in favour of the appellant, which was executed prior to the sale deed executed in favour of the plaintiff dated 29.07.2003.



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23. The learned counsel for the appellant had relied upon the Judgment of the Hon'ble Supreme Court in Civil Appeal No.1382 of 2002 [Padhiyar Prahladji Chenaji (Deceased) through Lrs Vs. Maniben Jagmalbhai (Deceased) through Lrs and Ors]. Paragraph Nos. 11 and 11.1 of the Judgment are extracted hereunder:-

“11. From the impugned judgment and order passed by the High Court, it appears that the High Court has not properly appreciated the distinction between a substantive relief and a consequential relief. The High Court has observed that in the instant case the relief of permanent injunction can be said to be a substantive relief, which is clearly an erroneous view. It is to be noted that the main reliefs sought by the plaintiff in the suit were cancellation of the sale deed and declaration and the prayer of permanent injunction restraining defendant No.1 from disturbing her possession can be said to be a consequential relief. Therefore, the title to the property was the basis of the relief of possession. If that be so, in the present case, the relief for permanent injunction can be said to be a consequential relief and not a substantive relief as observed and held by the High Court. Therefore, once the plaintiff has failed to get any substantive relief of cancellation of the sale deed and failed to get any declaratory relief, and as observed hereinabove, relief of injunction can be said to be a consequential relief. Therefore, the prayer for permanent injunction must fail. In the instant case as the plaintiff cannot be said to be in lawful possession of the suit land, i.e., the possession of the plaintiff is



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“not legal or authorised by the law”, the plaintiff shall not be entitled to any permanent injunction.

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11.1 An injunction is a consequential relief and in a suit for declaration with a consequential relief of injunction, it is not a suit for declaration simpliciter, it is a suit for declaration with a further relief. Whether the further relief claimed has, in a particular case as consequential upon a declaration is adequate must always depend upon the facts and circumstances of each case. Where once a suit is held not maintainable, no relief of injunction can be granted. Injunction may be granted even against the true owner of the property, only when the person seeking the relief is in lawful possession and enjoyment of the property and also legally entitled to be in possession, not to disposes him, except in due process of law.”

24. The above facts are not applicable to the present case, as the suit was filed only on the ground of possessory right and for permanent injunction, therefore, the Judgment relied by the appellant is not applicable to the facts of the present case.

25. That apart, the learned counsel for the appellant relied on the Judgment of the **Hon'ble Supreme Court in Special Appeal no.5577 of 2021 [T.V.Ramakrishna Reddy Vs. M.Mallappa & Another]**. Paragraph

No.11 of the Judgment is extracted hereunder:-



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“11. No doubt, this Court has held that where there are necessary pleadings regarding title and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straightforward, the court may decide upon the issue regarding title, even in a suit for injunction. However, it has been held that such cases are the exception to the normal rule that question of title will not be decided in suits for injunction.”

26. Besides the above, the Judgement of the Hon'ble Supreme Court in **Civil Appeal Nos.5575-5576 of 2021 [Arising out of SLP(C) Nos.9948-49 of 2020] [Kayalulla Parambath Moidu Haji Vs. Namoodiyil Vinodan]**, was relied on by the learned counsel for the appellant. Paragraph no.19 of the above Judgment is extracted hereunder:

“19. We find that the present case would be covered by clause (b) of paragraph 21 of the judgment of this Court in Anathula Sudhakar (supra). We find that, in the present case, the question of de jure possession has to be established on the basis of the title over the property. Since the said property is a vacant site, the issue of title would directly and substantially arise for consideration, inasmuch as without the finding thereon, it will not be possible to decide the issue of possession. As observed in clause (c) of paragraph 21 of the judgment cited supra, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in the suit for mere injunction. We do not find that the present



case would fall in exception carved out in clause (d) in paragraph 21 of the judgment cited supra inasmuch as the matter involved cannot be said to be simple and straightforward wherein the Court would decide upon the issue regarding title, even in the suit for injunction.”

27. The Hon'ble Supreme Court in the above said Paragraph had referred the celebrated Judgment of **Anathula Sudhakar Vs. P. Buchi Reddy**, reported in **(2008) 4 SCC 594**. The relevant portion is extracted hereunder:

13. The general principles as to when a mere suit for permanent injunction will lie, and when it is necessary to file a suit for declaration and/or possession with injunction as a consequential relief, are well settled. We may refer to them briefly.

13.1. Where a plaintiff is in lawful or peaceful possession of a property and such possession is interfered or threatened by the defendant, a suit for an injunction simpliciter will lie. A person has a right to protect his possession against any person who does not prove a better title by seeking a prohibitory injunction. But a person in wrongful possession is not entitled to an injunction against the rightful owner.



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13.2. Where the title of the plaintiff is not disputed, but he is not in possession, his remedy is to file a suit for possession and seek in addition, if necessary, an injunction. A person out of possession, cannot seek the relief of injunction simpliciter, without claiming the relief of possession.

13.3. Where the plaintiff is in possession, but his title to the property is in dispute, or under a cloud, or where the defendant asserts title thereto and there is also a threat of dispossession from the defendant, the plaintiff will have to sue for declaration of title and the consequential relief of injunction. Where the title of the plaintiff is under a cloud or in dispute and he is not in possession or not able to establish possession, necessarily the plaintiff will have to file a suit for declaration, possession and injunction.

28. As stated supra, the respondent/plaintiff had filed a suit for possessory right and for permanent injunction. The plaintiff had marked Ex.A1 -Release Deed, Ex.A2 - Settlement Deed executed in favour of the plaintiff's predecessors in title and Ex.A3 -Sale Deed in favour of the plaintiff. In the absence of any contrary evidence adduced by the appellant/defendant in the



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suit, the appellant cannot now claim that the Courts below had passed the judgment contrary to the facts.

29. It is settled law that in a suit for possessory right, the plaintiff /respondent to show whether there is actual possession of the suit schedule property. The finding of the Trial Court and the First Appellate Court would clearly show that as per Ex.A1-Release Deed in favour of Rajammal dated 04.04.1941 and Ex.A2, Settlement deed in favour of Ramachandran dated 20.07.1967 and the sale deed in favour of the respondent / plaintiff dated 30.07.2003, the respondent / plaintiff was in actual possession of the suit scheduled property. The said proposition has been reiterated by the Hon'ble Supreme Court, as explained supra.

30. When the Second Appeal was listed for hearing on 08.08.2024, 16.08.2024, 02.09.2024, 11.09.2024, 18.09.2024 and 30.09.2024, there was no representation on the side of the respondent whereas the learned counsel for the appellant was ready.

31. Despite service of notice to the respondent, the respondent has not appeared either in-person or through counsel. Though the respondent did not appear before this Court, this Court is inclined to pass the present Judgment



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by hearing the appellant, as per Order 41, Rule 17(2) Civil Procedure Code, the

same is extracted hereunder:-

17.Dismissal of appeal for appellant's default

(1) Where on the day fixed, or on any other day to which the hearing may be adjourned, the appellant does not appear when the appeal is called on for hearing, the Court may make an order that the appeal be dismissed.

(2)Hearing appeal ex parte – Where the appellant appears and the respondent does not appear, the appeal shall be heard exparte.

32. As the respondent failed to appear before this Court to prosecute this case, this Court proceeded to hear arguments advanced by the appellant. As per Order 41 Rule 17(2) CPC, this Court has jurisdiction to pass orders when the respondent is not present to advance his arguments. However, based on the examination of the documents marked on the side of the respondent as well as the evidence adduced before the Trial Court, this Court has proceeded to arrive at a conclusion.

33. From the evidence of the plaintiff, it is seen that after the death of

Muthulinga Padayachi and Thangammal who had no children out of their



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wedlock, the property which stood in the name of Thangammal was inherited by

Jothi and Rajalakshmi who were the daughters of Thangammal's sister.

34. For better appreciation, Sections 15 & 16 of the Hindu Succession Act, 1956 is extracted hereunder:

15. General rules of succession in the case of female Hindus.

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;

(b) secondly, upon the heirs of the husband;

(c) thirdly, upon the mother and father;

(d) fourthly, upon the heirs of the father; and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to



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*in sub-section (1) in the order specified therein,
but upon the heirs of the father; and*

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

16. Order of succession and manner of distribution among heirs of a female Hindu

The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestates property among those heirs shall take place according to the following rules, namely:

Rule 1.—Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry and those included in the same entry shall take simultaneously.

Rule 2.—If any son or daughter of the intestate had pre-deceased the intestate leaving



his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.—The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) to section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death.

35. As per Section 15 and 16 of the Hindu Succession Act on the order of succession, the property of Thangammal was rightly inherited by the daughters of Thangammal's sister. Therefore Ex. A3 sale deed is valid and legally tenable even though Ex. B7 is executed prior to Ex. A3 as rightly found by the courts below. Therefore, Judgment and Decree passed by the First Appellate Court calls for no interference.

36. The documents marked by the Respondent/Defendant in Ex.A1 to A3 clearly show the title of the Respondent and his predecessors in title. The



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appellant has failed to prove his title by producing material evidence before the Trial Court. The courts below have given a finding that Ex.B6, B23 and Ex. B24 does not prove the possession of the appellant and other documents marked by the appellant (Ex. B11 to Ex.B13, Ex. B8, Ex. B14 to Ex. B20) to prove his possession of the suit property does not appear to be the documents related to the suit properties.

37. The documents marked as Exs. A1 to A3 and Ex. B7 makes it clear that the Appellant and his vendor do not have any right or title over the suit properties. The vendor of the appellant is not entitled to inherit the properties of the said Thangammal as per Sec. 15 and 16 of the Hindu Succession Act, 1956. Therefore, there is no necessity to file a suit for declaration of title by the Respondent to prove his title.

38. In view of the above, all the substantial questions of law are answered in favour of the Respondent.

39. Accordingly, the Second Appeal is dismissed. The Judgment and Decree in A.S No.4/2007 dated 26.07.2010 passed by the Subordinate Court, Chidambaram is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

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Internet: Yes

Index : Yes/No

Speaking/Non Speaking order
ssd

To

- 1.The Principal Sub-ordinate Judge, Gobichettipalayam.
- 2.The District Munsif Court, Gobichettipalayam.



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N.SENTHILKUMAR, J,

ssd

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