



WEB COPY



S.A No. 259 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27-03-2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA No. 259 of 2025

AND

CMP NO. 7712 OF 2025

1. The State Of Tamilnadu
Rep. by its District Collector, Ariyalur
District. In the place of The State of
Tamil Nadu, Rep. by its District
Collector, Perambalur, Perambalur
District.

2. The Tahsildar
Having office at, Market Street,
Ariyalur, Ariyalur Taluk.

Appellant(s)

Vs

1. R.Ramalingam
S/o. Ramasamy, Konerirayampuram,
Ariyalur Taluk.

Respondent(s)

PRAYER

To set aside the Judgment and Decree passed in A.S.No.112/2008 on the file of the Additional district Judge, Fast Track Court Ariyalur, Dated 20-12-2010 confirming the Judgment and Decree passed in O.S.No.246/200 on the file of Additional District Munsif Court Ariyalur dated 31-03-2003.



WEB COPY



S.A No. 259 of 2025

For Appellant(s): Mr.R.Siddharth Special
Government Pleader

For Respondent(s): Mr.A.V.Raja

JUDGEMENT

Challenging the concurrent findings of the Additional District Court, Ariyalur and Additional District Munsif Court, Ariyalur, in A.S No. 112 of 2008 and OS No. 246 of 2006, the respondents/defendants preferred this appeal. Before the Trial Court respondent herein/plaintiff filed the against the District Collector, Tahsildar of Ariyalur District/appellants herein for the relief of mandatory injunction directing the defendants to issue patta for the suit property to the platintiff by changing the classification of the land from Poramboke to Ryotwari and carryout the same in all revenue records based on the decree obtained by him in OS No. 185 of 1987. For the sake of convenience the parties are denoted as per the suit. Contesting defendants filed the written statement stating that plaintiff purchased the property in S.F No. 272/1 by way of sale deed by relying the said sale deed he obtained decree in OS No. 185/1987 to an extent of 1.42 cents in S.No. 272/3 which is Mayanam Porboke (Burrial ground poramboke) as per A register belongs to the State. Now, based on the fraudulent decree he come forward with the



S.A No. 259 of 2025

WEB COPY

present suit for the issuance of the patta by way of mandatory injunction as such is not maintainable prayed to dismiss the suit.

2. Considering the both side evidence, the trial court framed issues whether the plaintiff is entitled to get patta as per the decree in OS No. 185/87 and whether S.No. 272/3 belongs to plaintiff or it is Mayanam Poramboke as claimed by the defendant/state.

3. On considering the evidence on record, the Trial court held that in the earlier suit proceedings in OS No. 185/87 filed by the present plaintiff by mentioning S.No. 272/3 as suit property and obtained a decree, declared him as absolute owner of the property. Though he relied the sale deed pertaining to S.No. 272/1 but the suit property in S.No. 272/3 also enjoyed by him along with patta land thereby his right was declared in that suit as such is maintainable.

4. But the objection raised by the defendant is that plaintiff suppressed the real fact and obtained fraudulent exparte decree in OS No. 185 of 1987 and same would not bind them, to that effect he relied the judgement reported in 1994 SCC 2 Civil LJ 114:

".... It is settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eye of law. Such a judgment/decree by the first appellate Court or by the highest Court to be treated as a nullity by every court, whether superior or



S.A No. 259 of 2025

inferior. It can be challenged in any court even in collateral proceedings."

WEB COPY

4.1. Relied another judgment reported in AR 1974 Supreme Court 1764.

....It is a well established principle of private international law that if a foreign judgment was obtained by fraud, or if the proceedings in which it was obtained were opposed to natural justice. It will not operate as res judicata.....

4.2. But the plaintiff contended that he enjoyed the suit property in S.No.272/3 along with adjacent land and cultivated the said land, after sub division S.No. 272/1 for (patta land) and adjacent land assigned as S.No. 272/3 also under his enjoyment. Though, it was sub divided as Mayanam Poramboke (burrial ground poramboke) he cultivated the said land by digging bore well hence he is entitled to get right over the said property but the his claim has not been objected by the defendant in earlier suit. As on date decree is in force. Records reveals that Government Pleader appeared before the Trial court, however they have not appeared at that time of trail, so, the Government Pleader set exparte. Therefore, the exparte decree passed in favour of the plaintiff and no steps was taken by the defendant to set aside the exparte decree. Therefore, based on the decree in OS No. 185/87 authorities bound to issue the patta in favour of the plaintiff. So also claim



S.A No. 259 of 2025

WEB COPY

made by the plaintiff as such is not barred by principle of resjudicata for the reason that relief was different in both suits. Nor the defendant set aside the findings of the earlier suit decree. Accordingly, suit was decreed directing the defendant to issue the patta in favour of the plaintiff in respect of suit S.No. 272/3. Challenging the said findings appeal was preferred in A.S No. 112/2008 before the Additional District Judge, Ariyalur the first appellate Judge analyzed the facts on record held that decree passed in OS No. 185/87 is still alive. Though it is exparte decree as on date it is not set aside. Further, observed that as per Ex.B1 & Ex.B3 suit property was classified as Mayanam Poramboke(Burrial ground) still there is a decree in favour of the plaintiff which shows that he is the owner of the suit property. As the plaintiff was in possession of the property it is not mayanam poraboke (burrial ground Poramboke) such as it is cultivable land hence the authorities bound to issue the patta in favour of the plaintiff to that effect findings rendered by the Trial Court is justifiable. Accordingly, appeal was dismissed by the first appellate Court.

5. Challenging the concurrent findings of the Courts below present appeal was filed on the following grounds.



S.A No. 259 of 2025

i. Both the Court below failed to note that the suit laid down by the plaintiff for a relief of mandatory injunction to issue patta for the suit property by changing the classification of the land from poromboke to ryotwari is not maintainable both factually and legally as well.

ii. The learned Additional Munsif Judge ought to have struck out the plaint in limine as the cause of action is not maintainable.

iii. Both the courts have failed to note that under Section 14 of Tamil Nadu patta passbook Act, there is a clear and express bar against the respondent herein in instituting a suit against the appellants.

iv. Both the Courts have failed to note that only if a person is aggrieved as to any right of which he is in possession, by an entry made under the Tamil Nadu Patta Passbook Act, can file a suit for declaration of civil suit, and for all other reliefs to be claimed under the above act the jurisdiction of the Civil Court is expressly barred as per Section 14 of the Tamil Nadu patta passbook Act.

v. Both the courts have failed to note that as per Section 9 of the CPC, the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

vi. Both the Courts have failed to note that as the Civil Court has no



S.A No. 259 of 2025

jurisdiction to take up this case as per Section of 14 of Tamil Nadu Patta Passbook Act, the Civil Court cannot take cognizance of this case under Section 9 of CPC.

vii. Both the courts below failed to take note that the property described in sale deed dated 12.07.1983 is S.No. 272/1 with an extend of 3.18 acres rather the property described in the suit is S.No. 272/3 with an extent of 1.42 acres.

viii. Both the Courts below failed to note that property described in the sale deed dated 12.07.1983 and property described in the plaint are two different properties

ix. Both the courts below failed to note that S.No. 272/3 is a Burrial land poromboke for which state is the custodian and owner of the property.

x. Both the Courts below failed to note that the appellants have established that the suit property is Burrial Ground Proromboke through ? Ex.B1 to Ex.B3.

xi. The suit is also bad for non-joinder of necessary party as commissioner of land administration is not arranged as party who is the condition of Government Poramboke lands on behalf of state of Tamil Nadu.



S.A No. 259 of 2025

6. This Court admitted the appeal with the following substantial

questions of law:

Whether the Court below failed to consider the alleged exparte decree relied by the plaintiff in OS No. 185/87 as such is obtained without producing any document to prove his claim nor said decree fulfilled the requirements as required under Order 20 Rule 4 Civil Procedure Code as such is valid decree or not ?

ii. Whether the learned Additional District Munsif Judge was correct in taking the cognizance of the suit unde Section 9 of the CPC, when there is a clear and express bar under Section 14 of Tamil Nadu Pass Book Act?

iii. Whether both the courts below are correct in decreeing the suit as prayed for when the description of the property involved in the present suit(S.No. 272/3 with an extent of 1.42 acres) is completely different from the property described in the sale deed (S.No. 272/1 with an extent of 3.18 Acres) dated 12.07.1983?

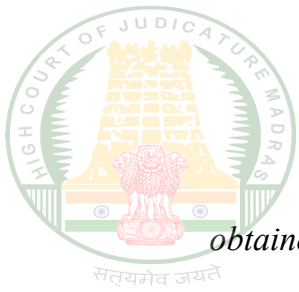
7. The learned counsel for the defendants argued that the Court below totally failed to take note of the fact that S.No. 272/3 classified as Mayanam Poramboke(Burrial Ground Poramboke) as per revenue records and the same



S.A No. 259 of 2025

was produced before the Trial Court which was marked as Ex.B2/FMB & Ex.B3/A-register extract. In spite of that by relying the exparte decree passed in OS No. 185/87 which was obtained by the plaintiff/respondent by suppressing real facts in existence by producing sale deed/Ex.A1 pertaining to patta land and obtained order of the declaration in respect of S.No. 272/3 which is not purchased by him nor it related to the said sale deed but the Trial Court passed exparte decree without verifying the records nor assigned any reason to grant said relief of declaration. It is cryptic order of the decree not adjudicated the issues nor complied other requirements as required under Order 20 Rule 4 Civil Procedure Code but the Court below failed to appreciate the same and erroneously held that as on date exparte decree is valid one. Accordingly, suit was decreed which is misconception of law and facts, perverse which is liable to be set aside. Besides, the plaintiff not approached the Court with clean hands and obtained decree fraudulently Therefore, at any stage of the proceedings it can be thrown out to that effect he relied the judgement of the Apex Court in the case of A.V. Papayya Sastry and Others Vs. Government of A.P and others reported in 2002 4 SCC page 221:

22. It is thus settled proposition of law that a judgment, decree or order



S.A No. 259 of 2025

WEB COPY

obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings. In the leading case of Lazarus Estates Ltd. v. Beasley, (1956) 1 All ER 341 : (1956) 1 QB 702 : (1956) 2 WLR 502, Lord Denning observed:

"No judgment of a court, no order of a Minister, can be allowed to stand, if it has been obtained by fraud."

8. Order 20 Rule 4, CPC requires following components for valid decree:

(1) Judgments of a Court of Small Causes need not contain more than the points for determination and the decision thereon.

(2) Judgments of other Courts- Judgments of other Courts contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

9. Relying the proposition laid down in above referred cases, the learned Government Pleader argued that the alleged exparte decree obtained by the respondent/plaintiff as such is non est in the eye of law. Therefore, he



S.A No. 259 of 2025

prayed to set aside the findings of the Courts below.

WEB COPY

10. By way of reply, the learned counsel for the respondent/plaintiff submits that in earlier suit OS No. 185 of 1987 the plaintiff approached the Court for the relief of declaration stating that he possessed and enjoyed the suit property in S.No. 272/3 along with his patta land in S.No. 272/1, to prove his claim he relied the said sale deed and he was examined as P.W.1 but not been cross examined by the defendant hence they set exparte. Therefore, the Trial Court by relying the pleadings as well as Ex.A1/sale deed decree was granted in his favour. Though it is exparte decree but as on date defendant/District Collector has not taken any steps to set aside the exparte decree. Hence, the Court rightly held that said decree is still in force in respect of S.No. 272/3 declaring the plaintiff as owner in S.No. 272/3 thereby the directed the defendants to issue patta as such is sustainable one needs no interference nor any fraud played upon the Court. Therefore, he prayed to dismiss this appeal as no substantial question of law involved in this case.

11. Heard the learned counsel for the appellant and respondents and perused the materials available on record.



S.A No. 259 of 2025

WEB COM

12. Considering the both side submissions the foremost objection of

the Government Pleader is that if any entry made in the patta passbook the plaintiff has to approach the revenue authorities, jurisdiction of the Civil Courts is barred as per Section 14 of patta pass book Act. Section 14 read thus:

14. Bar of suits.

No suit shall lie against the Government or any officer of the Government in respect of a claim to have an entry made in any patta pass book that is maintained under this Act or to have any such entry omitted or amended:

Provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in the patta pass book under this Act, he may institute a suit for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963); and the entry in the patta pass book shall be amended in accordance with any such declaration.

13. Admittedly, no suit lie against the Government in respect of a claim to have an entry made in any patta pass book maintained under the Act. The brief facts of the present case is that plaintiff filed OS No. 185 of 1987 against the same defendants in the present suit for the relief of declaration of title in respect of S.No. 272/3 stating that an extent of 1.43 acres said to be possessed and enjoyed by him along with patta land in S.No.



S.A No. 259 of 2025

WEB COPY

272/1 which belongs to him by way of purchase through sale deed. In that suit, admittedly the District Collector remains exparte and thereafter exparte decree was passed by declaring plaintiff's right in S.No. 272/3 and the said exparte decree was not been set aside as per manner known to law. Therefore, the Court below held that till date decree is in force in favour of plaintiff hence the authorities are bound to issue patta. Accordingly suit was decreed and the same was confirmed by the first appellate Court.

14. At this juncture, the learned Government Pleader, pointed out that alleged exparte decree is cryptic order and no reason was assigned by the Trial judge to grant declaratory relief in respect of S.No. 272/3 by relying Ex.B1/sale deed, indeed the said sale deed is not relating to S.No.272/3 but it is only related to S.No. 272/1 and no issue was framed nor adjudication was made with reason thereby, the said decree is non est in the eye of law eventhough it is not set aside till date.

15. Perused the exparte decree passed in OS No. 185/87. The learned Trial Judge passed the decree and judgment as described below.

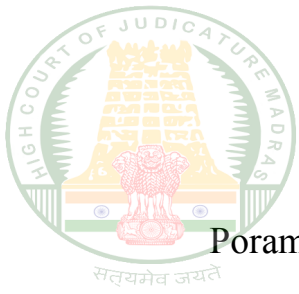
" P.W.1 examined, Ex.A1 and Ex.A2 marked, evidence of P.W.1 as



S.A No. 259 of 2025

well as said document proved the claim. Accordingly, suit was decreed with cost."

16. In that suit, on the side of the plaintiff, Ex.A1/sale deed dated 12.08.1983 was marked, Tax receipts marked as Ex.A2. As rightly pointed by the Government Pleader, the Trial Court not framed any issue nor made any discussion before granting relief of declaration. Therefore, ex parte decree is a cryptic decree and no reason was assigned by the Trial Judge to grant such relief of declaration in favour of the plaintiff nor it contains requirements as per Order 20 Rule 4 CPC for valid decree. Even though it is ex parte decree but the said decree does not contain any reason for decision. Therefore, in the eye of law it is non est as rightly pointed by the Government Pleader. Furthermore, by relying Ex.A2/sale deed pertaining to patta land but obtained decree for S.No. 272/3 which is classified as Mayanam Poramboke(burrial ground proamboke) belongs to the Government. Even assuming that plaintiff possessed the said property along with his patta land, as discussed above no document was produced to prove his long possession as he alleged before the Trial Court but the Trial judge without any such document mechanically granted the relief of declaration in respect of said property which is not a patta land and it is Mayanam



S.A No. 259 of 2025

WEB COPY

Poramboke(burrial ground poramboke) as per the classification in FMB and A register. Even though it has not been set aside, by suppressing the real facts the plaintiff fraudulently obtained the said decree as it has established by the appellant/defendant that is burrial ground poramboke. Therefore, the decree obtained by fraud as such is illegal non est in law. Further, to substantiate his claim the Government Pleader relied the above referred judgment as such is sustainable. Accordingly question of law 1 is answered.

17. Considering the findings of the Court below, both the Court below concurrently held that as on date exparte decree is not set aside. thereby directing the authorities concerned are bound to give patta as per the said decree, the learned counsel for the respondent argued that the plaintiff came forward with present based on the decree obtained in O.S NO. 185/87 and not challenging any of the revenue order, therefore, provisions of patta passbook would not apply here. But admittedly, now the relief claimed in present suit seeking direction to the revenue authorities to issue patta in respect of S.NO. 272/3 based on the decree in O.S No. 185/87 but issuance of patta in respect of property concerned is bound by the provisions of Tamil Nadu Patta pass book Act . Section 14 of the said Act clearly barred that no civil suit is lie against the Government in respect of claim to have entry



S.A No. 259 of 2025

WEB.COM

made in patta passbook maintained under this Act. Though the plaintiff has obtained exparte decree, he want to make entry in patta pass book to that effect Civil Court has no jurisdiction to issue such direction as it is barred under Section 14 of the Act. Accordingly, question of law 2 is answered.

18. As per the revenue records, S.No. 272/3 is classified as burrial ground and S.No. 272/2 also classified as burrial ground poramboke in between those lands S.No. 272/1 patta land belongs to the plaintiff is exist. A register clearly shows that S.No. 272/1 with an extent of 3.18 cents belongs to the individual and S.No. 272/2, S.No. 272/3 is classified as burrial ground poraboke but the Court below without appreciating the revenue records by relying the said cryptic exparte decree, with blind eye granted relief as such is perverse and liable to be set aside. Accordingly, question of law 3 is answered.

19. From the year 1987 onwards, the plaintiff enjoyed the suit property without any right and title but based on the exparte decree wherein he has no right for possession. While passing decree the Trial Court should have decided the same with judicious mind but mechanically passed the exparte decree in OS No. 185/87 as such is illegal, non est in the eye of law as it does not satisfy the requirements in Order 20 Rule 4 CPC. Therefore,



S.A No. 259 of 2025

the appeal is allowed. The findings rendered by the Courts below is set aside. Thus, the suit is dismissed as no merits. No Costs. Consequently, pending petition(s), if any, is/are closed.

27-03-2025

pbl

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1. The Additional district Judge, Fast Track Court Ariyalur.
2. The Additional District Munsif, Ariyalur.
3. The Section Officer, VR Section, High Court, Madras.

T.V.THAMILSELVI J.

pbl



WEB COPY



S.A No. 259 of 2025

**SA No. 259 of 2025
AND CMP NO. 7712
OF 2025**

27-03-2025