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S.A.No.1042 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.06.2025

DELIVERED ON : 18.07.2025

CORAM

THE HONOURABLE Mr. JUSTICE C.V.KARTHIKEYAN

S.A.No.1042 of 2009

- 1.M.Ganesan
- 2.M.Kannappan
- 3.M.Jayaraman
- 4.Krishna Mandiri
- 5.Settu
- 6.Mani

.. Appellants

Vs

- 1.Kanniappan (deceased)
- 2.K.Kantha
- 3.K.Ganasekar
- 4.K.Babu Shanker
- 5.K.Thamaraiselan

.. Respondents

(RR2 to 5 brought on record as legal heirs of the deceased R1
vide order dt.26.07.2023 in C.M.P.No.13477 of 2023)

Second Appeal filed under Section 100 C.P.C. to set aside the judgment and decree dated 31.07.2009 made in A.S.No.56 of 2008 on the file of the Sub Court, Vellore, Vellore District, reversing the judgment and decree dated 13.08.2008 made in O.S.No.503 of 2005 on the file of the Principal District Munsif Court, Vellore, Vellore District.



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For Appellants : Mr.T.Dhanyakumar
R1 : Died
For RR2 to 5 : Mr.R.Karthik
for M/s.R.K.Law Firm

J U D G M E N T

The defendants in O.S.No.503 of 2005 on the file of the Principal District Munsif Court at Vellore are the appellants herein. The suit in O.S.No.503 of 2005 had been filed by the 1st respondent who died during pending the Second Appeal, seeking a judgment and decree of permanent injunction restraining the defendants therein/appellants herein, from interfering with peaceful possession and enjoyment of the suit properties. By judgment dated 13.08.2008, the suit was dismissed. The plaintiff then filed A.S.No.56 of 2008 which came up for consideration before the Sub Court at Vellore and by judgment dated 31.07.2009, the Appeal Suit was allowed. This has necessitated the appellants herein to file the present Second Appeal.

2. The Second Appeal had been admitted on the following substantial questions of law :



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- i. *Whether the decision of the lower appellate court is vitiated for relying on oral and documentary evidence without any pleadings relating to core issue namely the cancellation of Ex.B2 agreement of sale under Ex.A23 cancellation deed.*
- ii. *Whether Ex.B6 issued under Section 3 of the Tamil Nadu Patta Pass Book is prima facie evidence of title and possession of the defendants 1 to 3.*
- iii. *Whether the decision of lower appellate court is contrary to evidence and erred in relying on exhibits came into existence after the commencement of litigation and further failed to consider Ex.B1 to Ex.B6.*

3. O.S.No.503 of 2005 on the file of Principal District Munsif Court,

Vellore :

In the suit, the plaintiff Kanniappan had stated that the suit schedule properties were the absolute properties of the plaintiff and his father Annamalai Mandri and they enjoyed possession from the date of purchase. The suit schedule properties viz., item Nos.1 to 5 had been purchased by his father Annamalai Mandri through a registered sale deed dated 31.01.1974 from Thangavelu Mudaliar. The said Thangavelu Mudaliar had earlier purchased the said properties from S.Ramamurthy by a registered sale deed dated 03.03.1972. It had been contended that the 6th item of the suit schedule property in Sethuvalai Village,

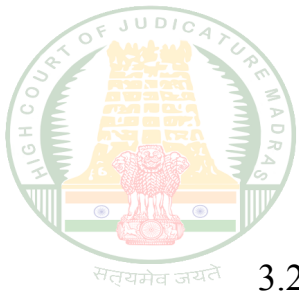


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originally belonged to Subburaya Iyer and his sons. They had sold the property to one Rathna Mudaliar, who thereafter, sold the property to the father of the plaintiff, Annamalai Mandri under a registered sale deed dated 31.01.1974. It had been contended that the plaintiff had been in possession of all the item Nos.1 to 6 of suit schedule properties and they paid kisth to the Government. It had been further stated that after the death of the father, Annamalai Mandri, the plaintiff had been paying the taxes to the Government. The patta also stands in the name of the plaintiff. It had been stated that some of the original documents have been destroyed in a fire in the house of the plaintiff. It had been claimed that the defendants have no right over the properties and as strangers, they had been attempting to trespass into the suit properties claiming to be the title holders. It is under those circumstances, that the suit had been filed seeking permanent injunction against the defendants from interfering with peaceful possession.

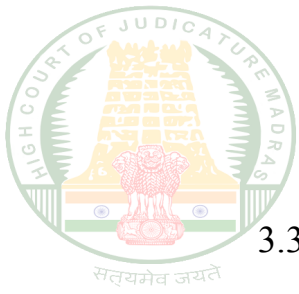
3.1. Along with the plaint, the plaintiff had filed copies of the sale deeds with respect to the properties, discharge of a mortgage deed which had been executed by his father, patta passbook, adangal extract, chitta and kisth receipts and also the death extract of his father.



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3.2. In the written statement filed by the defendants, it had been admitted that the suit properties belonged to the father of the plaintiff. It had been however stated that the plaintiff and his father Annamalai Mandri had entered into an agreement of sale for a sum of Rs.27,000/- on 11.01.1980 in favour of the father of the defendants, Maya Mandri, after receiving an advance of Rs.25,000/-. It had been stated that in pursuance of the agreement, the father of the defendants was also put in possession of the suit schedule properties. It had also been stated that on 26.02.1981, the balance sale consideration of Rs.2,000/- had also been paid, but out of trust, the sale deed was not executed and registered. It had been stated that Maya Mandri was in possession of the suit properties, till his death in 1992. The defendants No.1 to 3 were his legal representatives and it is claimed that they had been paying kisth to the Government. It had been stated that the plaintiff was not in possession for the past 25 years. It had been further stated that the defendants had filed O.S.No.250 of 1998 for permanent injunction restraining the plaintiff from interfering with the peaceful possession. That suit was dismissed on 10.03.2005, since the defendants therein had assured not to lay any claim over the suit properties. It had been stated that the plaintiff had obtained mutation of records, without the knowledge of the defendants. Therefore, it was stated that the suit should be dismissed.



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3.3. On the basis of the pleadings, the learned Principal District Munsif,

Vellore had framed the following issues, for trial :

- (1) Whether the plaintiff is entitled to injunction as sought for?*
- (2) Whether the defendants 1 to 3 have perfected title to the suit property by adverse possession?*
- (3) Whether the plaintiff is not in possession of the suit property.*
- (4) Whether there is no cause of action for the suit?*

3.4. During trial, two witnesses were examined on the side of the plaintiff viz., A.Kanniappan, the plaintiff and Kannan as P.W.1 and P.W.2, respectively. On the side of the defendants, the 2nd defendant M.Kannappan was examined as D.W.1 and the defendants also examined two other witnesses viz., Saminathan as D.W.2 and Murthy as D.W.3.

3.5. The plaintiff marked Exs.A1 to A31. The documents relating to the purchase of the properties were marked as Exs.A1 to A4. The document relating to the mortgage executed by the father of the plaintiff and its discharge were marked as Exs.A5 and A6, respectively. The patta passbook was marked as Ex.A7. The chitta was marked as Ex.A8. Adangal extract was marked as Ex.A9.



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The kisth receipts were marked as Exs.A10 to A21 and A26 to A30. Orders of the Tahsildar were marked as Exs.A24 and A25. The decree copy in O.S.No.250 of 1998 was marked as Ex.A31. On the side of the defendants, Exs.B1 to B6 were marked. These included an agreement dated 11.01.1980 as Ex.B2 and the signature of Annamalai Mandri and the plaintiff as Ex.B1. The kisth receipts (11 nos) were marked as Ex.B3 and the adangal extract was marked as Ex.B4 and the patta passbook was marked as Ex.B6.

3.6. The learned District Munsif, while analysing the pleadings and evidence produced, observed that Ex.A7 was issued in the year 1998 and chitta and adangal in Exs.A8 and A9, did not relate to the period 1980 and 1998. It had been further observed that Exs.A10 and A21 kisth receipts related to the period 1998 to 2004 and Exs.A26 to A30 kisth receipts related to the period 2003 to 2007. The order of the Tahsildar in Ex.A25 was also examined and it was observed that the patta was issued in the name of the plaintiff. With respect to the documents filed by the defendants, it had been observed that Ex.B6 stood in the name of defendants No.1 to 3, but, the date was not mentioned in the document. It had been stated that both the plaintiff and the defendants did not examine the



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revenue officials regarding the documents relied by them. In those circumstances,

the learned trial Judge held that no evidence was let in by the plaintiff to show that Ex.A23 was a true and valid document. It had been contended that the signature of Maya Mandri was not admitted in Ex.A23. It had been further observed that the plaintiff had not filed any document to show possession from 1980 to 1998, whereas, the defendants had established that they are in possession. Since possession had not been proved, the suit was dismissed.

4. A.S.No.56 of 2008 on the file of the Sub Court, Vellore :

The plaintiff then filed A.S.No.56 of 2008, which came up for consideration before the learned Sub Judge, Vellore on 31.07.2009. The learned Sub Judge, framed points for consideration as required under Order XLI Rule 30 CPC. One of the points framed was, whether the 1st, 2nd and 3rd defendants can claim adverse possession against the plaintiff. The learned Sub Judge placed reliance on Exs.A1 to A4, the sale deeds in favour of the plaintiff and his father. It was observed that though an agreement of sale had been entered into on 11.01.1980 under Ex.B2, no reason had been advanced, as to why, the sale deed had been executed in favour of the father of the defendants. The learned Sub Judge had further examined the sale



deeds and clearly held that possession was with the plaintiff. It had been further observed that on examination of Exs.A24 and A25, patta had been changed on the orders of the Deputy Tahsildar to the name of the plaintiff by cancelling the name of the father of the defendants, Maya Mandri. In view of those aspects, the learned Sub Judge had allowed the Appeal Suit and had decreed the Original Suit.

5. S.A.No.1042 of 2009 :

The defendants have then filed the present Second Appeal. The Second Appeal had been admitted on the following three substantial questions of law :

- i. Whether the decision of the lower appellate court is vitiated for relying on oral and documentary evidence without any pleadings relating to core issue namely the cancellation of Ex.B2 agreement of sale under Ex.A23 cancellation deed.*
- ii. Whether Ex.B6 issued under Section 3 of the Tamil Nadu Patta Pass Book is prima facie evidence of title and possession of the defendants 1 to 3.*
- iii. Whether the decision of lower appellate court is contrary to evidence and erred in relying on exhibits came into existence after the commencement of litigation and further failed to consider Ex.B1 to Ex.B6.*



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6. The parties would be referred to as plaintiffs and defendants. The appellants were the defendants in O.S.No.503 of 2005. The legal representatives of the plaintiff have been impleaded as respondents in the Second Appeal.

7. The plaintiff, Kanniappan, had filed the suit with respect to six items of suit properties seeking permanent injunction restraining the defendants from interfering with the peaceful possession. The claim of the plaintiff was based on the sale deeds in the name of his father, Annamalai Mandri.

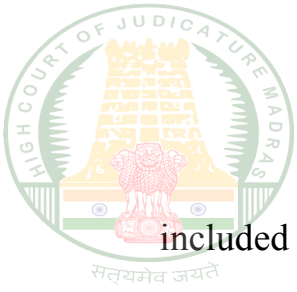
8. The sale deeds had been marked as Exs.A1 to A4. Very unfortunately, the learned Trial Judge had not examined the said sale deeds. They established title in the name of the plaintiff/legal heirs of the plaintiff. Both sides have produced kisth receipts and therefore, no conclusion can be drawn over the said documents. But at any rate, even the learned trial Judge had observed that the plaintiff had produced kisth receipts till the year 2003.



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9. The Original Suit had been filed in the year 2005. The first substantial question of law is, whether the first Appellate Court was correct in relying on Ex.A23 Cancellation Deed of Ex.B2/agreement of sale, in the absence of any pleadings of the same. It must be pointed out that Ex.B2 is an agreement of sale dated 11.01.1980 said to have been executed by the father of the plaintiff, Annamalai Mandri in favour of the father of the defendants, Maya Mandri, to convey the properties for a total consideration of Rs.27,000/-. It had been contended that an advance of Rs.25,000/- had been initially paid and a further sum of Rs.2,000/- had also been paid, but, the sale deed had not been executed, but however, possession had been handed over.

10. The said document had been cancelled under Ex.A23. The plaintiff had filed Ex.A23. The defendants, in their written statement had however not stated anything about Ex.A23. Since the document in Ex.B2 had been cancelled by Ex.A23, there is no requirement to state about Ex.B2 in the pleadings. The said document has been cancelled under Ex.A23. The plaintiff had established title to the property. The plaintiff had also established possession by producing kisth receipts. The Deputy Tahsildar had cancelled the name of Maya Mandri and



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included the names of the father of the plaintiff and plaintiff in Ex.B6. With

respect to the first substantial question of law, I hold that the first Appellate Court was correct in relying on Ex.A23, which cancelled the agreement of sale under Ex.B2. By this cancellation, the defendants cannot claim any title or possession over the suit properties.

11. The first substantial question of law is answered that the first Appellate Court had correctly appreciated Ex.A23.

12. With respect to the second substantial question of law, Ex.B6 had been issued under Section 3 of the Tamil Nadu Patta Pass Book Act, 1983. The Deputy Tahsildar had issued the same by cancelling the name of the father of the defendants, Maya Mandri and incorporating the name of the plaintiff. The passbook is a document of possession. The plaintiff had produced Exs.A1 to A4, which evidence title. The plaintiff had also produced Exs.A24 and A25. These are conclusive documents, which establishes the holding of the plaintiff. Ex.B6 cannot be relied on in the face of Exs.A1 to A7.



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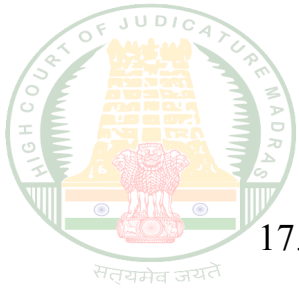
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13. I hold that Ex.B6 cannot be evidence of title and cannot be the sole ground to hold that the defendants were in possession of the property. The title documents override any revenue record.

14. The second substantial question of law is answered that Exs.A1 to A4 override Ex.B6. I hold that Ex.B6 cannot be evidence of title as claimed by the defendants 1 to 3.

15. With respect to the third substantial question of law, I hold that the first Appellate Court had come to a correct decision on the basis of Exs.A1 to A4 sale deeds and Exs.A10 to A21 the kisth receipts which clearly show that the plaintiff was in possession of the suit property on the date of filing the suit. The plaintiff had thus established title and possession.

16. The third substantial question of law is answered that the decision of the first Appellate Court is not contrary to the evidence produced.



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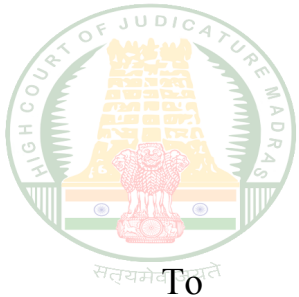
17. In view of the reasonings given above, I hold that the first Appellate Court had come to a correct conclusion about the factum of possession of the plaintiff and that the said judgment requires no interference. Accordingly, the Second Appeal stands dismissed however with out costs.

18.07.2025

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Index : Yes/No

Neutral Citation : Yes



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C.V.KARTHIKEYAN, J.

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