



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.08.2025
Pronounced on	19.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

S.A.No.1084 of 2009

1.Sengottuvel
2.Arjunan

... Appellants / Plaintiffs

Vs.

1.Appavoo (Died)
2.Palanivelu
3.Seerangan

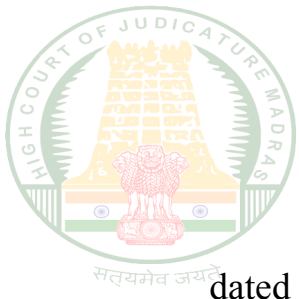
(R1 died, RR2 & 3 already on record are recorded as legal heirs of the deceased R1. Memo dated 25.06.2025 (23052) is recorded vide Court order dated 03.07.2025 made in S.A.No.1084 of 2009)

... Respondents / Defendants

Prayer: Second Appeal filed under Section 100 of CPC., praying to set aside the judgment and decree dated 10.12.2008 in A.S.No.79 of 2008 on the file of the Sub Court, Tiruchengode, reversing the judgment and decree dated 28.12.2005 in O.S.No.181 of 1998 on the file of the Principal District Munsif, Tiruchengode.

For Appellants : Mr.P.Jagadeesan
For Respondents : Mr.P.K.Shivakumar for R2 & R3

JUDGMENT



WEB COPY

The Second Appeal has been filed against the judgment and decree dated 10.12.2008 in A.S.No.79 of 2008 on the file of the Sub Court, Tiruchengode, reversing the judgment and decree dated 28.12.2005 in O.S.No.181 of 1998 on the file of the Principal District Munsif, Tiruchengode.

2. Heard the learned counsels for the appellants and the respondents and perused the materials available on record.

3. The plaintiffs in O.S.No.181 of 1998 on the file of the District Munsif Court at Tiruchengode are the appellants herein. The suit in O.S.No.181 of 1998 had been filed by the plaintiffs seeking permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property and for costs of the suit. The suit property had been described in the schedule as being situated in Vattur Village, Tiruchengode Taluk, Namakkal District in patta No.1038, S.No.8/4, Punjai, 0.01.5 Hectares with easementary rights thereon. By judgment dated 28.12.2005, the suit was decreed. This had necessitated the defendants to file A.S.No.79 of 2008 which came up for consideration before the Sub Court, Tiruchengode on 10.12.2008. The learned Sub Judge had allowed the



Appeal Suit and set aside the decree of the Trial Court. The plaintiffs have therefore filed the present Second Appeal.

WEB COPY

4. During the pendency of the Second Appeal, the first respondent died. But, the respondents 2 and 3 were recorded as his legal heirs by a memo dated 25.06.2025, by order of the Court dated 03.07.2025.

O.S.No.181 of 1998, District Munsif Court, Tiruchengode:

5. In the plaint, it had been contended that the plaintiffs had purchased the suit property by a registered sale deed dated 16.09.1978 with specific boundaries and later, the land was sub-divided. The plaintiffs claimed that they were the owners of the suit property. Patta had also been issued to the plaintiffs. The revenue records also stood in the name of the plaintiffs. The plaintiffs were also paying kists to the Government for the suit property. It had been further contended that the defendants were strangers and belonged to Arunthathiar Community who were having residence near the suit property. They have no right over the suit property.

6. It had been stated that there was an enmity between the plaintiffs and the defendants regarding other poramboke land in S.No.2/4, Vattur Village, Tiruchengode. Therefore, the defendants had tried to take



WEB COPY

possession of the suit property and had disturbed the peaceful possession of the plaintiffs. It was under those circumstances, the suit had been filed seeking permanent injunction. The defendants filed their written statement, wherein, they had contended that they belonged to Arunthathiar Community, but, they were in possession of a poramboke land along with the suit property and more specifically, they were in possession of the property in S.No.8/4, Vattur Village, as absolute owners from the time immemorial.

7. It had been contended that the sale deed dated 16.09.1978 in favour of the plaintiffs was a self-serving document and on the basis of the same, the plaintiffs had obtained patta. It had been stated that the plaintiffs had suppressed the true fact that the house of the defendants was situated in the suit property and the plaintiffs tried to evict the defendants and had set fire to the house of the defendants. It had also been stated that the plaintiffs have not come to Court with clean hands. Therefore, it had been stated that the suit should be dismissed.

8. On the basis of the above pleadings, the learned District Munsif had framed the following issues:



WEB COPY



"1. Whether the plaintiffs are entitled for the relief of permanent injunction?

2. Whether the contention of the defendants that they are in possession of the property in S.No.8/4 is correct?

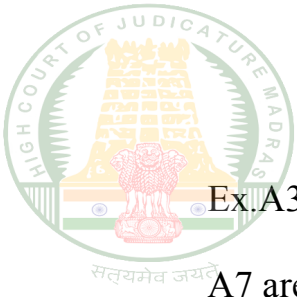
3. Whether the contention of the defendants that the plaintiffs have suppressed the fact that the defendants are in possession for over 100 years by constructing a house in the suit property is correct?

4. Whether the contention of the defendants that the plaintiffs tried to dispossess the defendants by using force and on failure, have filed the present suit, is correct?

5. Whether the defendants are entitled for the cost under Section 35(A) of CPC?

6. To what other reliefs, are the parties entitled to?"

9. During the course of evidence, the first plaintiff examined himself as P.W.1 and examined another witness as P.W.2. On the side of the defendants, the second defendant examined himself as D.W.1 and examined five other witnesses as D.W.2 to D.W.6. The plaintiffs marked Exs.A1 to A8. Ex.A2 is the sale deed in favour of the plaintiffs dated 16.09.1978.



Ex.A3 is the patta bearing No.1038 in the name of the plaintiffs. Ex.A4 to A7 are the kist receipts in the name of the plaintiffs.

WEB COPY

10. The defendants marked Exs.B1 to B7. Ex.B1 dated 20.10.1988 is the unregistered sale deed. Exs.B2 to B6 are the documents relating to the electricity connection. Ex.B7 is the property tax receipts in the name of the second defendant. During the trial, Exs.C1 & C2 were also marked. Ex.C1 is the application form seeking electricity connection given by the second defendant and Ex.C2 is the property tax receipt in the name of the second defendant.

11. On the basis of the evidence produced, the learned District Munsif had found that the plaintiffs had purchased the suit property under Ex.A2 and patta had also been issued under Ex.A3. It had been noted that the property was situated in S.No.8/4 of Vattur Village and it had been observed that the defendants had stated that they were in possession of the adjacent portion and therefore, holding that the plaintiffs had established the title owing to the sale deed and the patta, the suit was decreed.

A.S.No.79 of 2008, Sub Court, Tiruchengode:



WEB COPY

12. The defendants filed the said Appeal Suit. The Appeal Suit came up for consideration before the Sub Court on 10.12.2008. The learned Sub-Judge re-appreciated the evidence and found that it was the case of the defendants that they had been in possession for over 100 years by constructing a house and that, the plaintiffs had burned the house and then, claimed to be in possession. In this connection, the learned Sub Judge placed reliance on the evidence of P.W.1 who had stated that as against the second plaintiff, a complaint was given in Crime No.293 of 1998 and the trial had taken place, but the second plaintiff had been acquitted of all the charges. However, the learned First Appellate Court had relied on the fact that the house was burnt and was of the opinion that the house was in S.No.8/4 and therefore, held that the defendants had been in possession and that this fact had been suppressed in the plaint and therefore, allowed the Appeal Suit.

S.A.No.1084 of 2009 :

13. The plaintiffs have filed the present Second Appeal. The Second Appeal had been admitted on the following substantial question of law.

"Whether the First Appellate Court is right in holding that the plaintiffs are not in possession of the suit property, ignoring that the plaintiffs have



purchased the suit property under Ex.A2 and subsequently, patta was issued in their favour under Ex.A3 and they are in possession of the suit property right from the date of purchase as per Ex.A4 to A7? Is not the Judgment of the First Appellate Court is perverse and against law?"

14. It is the case of the plaintiffs that they were in possession of the land in S.No.8/4, Vattur Village, Tiruchengode Taluk, Namakkal District. They had filed Exs.A2 & A3. Ex.A2 is the sale deed dated 16.09.1978 and registered as document No.1346 of 1978 in the office of the Sub-Registrar at Tiruchengode. The schedule is with respect to the land in S.No.8. It is the case of the appellants that they had subsequently sub-divided the land and they were in possession of S.No.8/4. To establish this particular fact, the appellants had also produced Ex.A3 which was the patta in the name of the first appellant. But P.W.1 / first appellant, in his cross examination, had admitted that in S.No.8/4, there was a house. But, he had stated that in that house, his grandfather was residing. It had been stated that the house had been demolished after the death of his grandfather about 15 years before the institution of the suit. He however further admitted in his cross examination



WEB COPY

that his grandfather was residing in the house belonging to Palanivelu's family. The exact words of P.W.1 / first appellant is as follows:

"பழனிகவுண்டருக்கு பாத்தியப்பட்ட சொத்தில்தான் எங்கள் தாத்தா குடியிருந்தாரா என்றால் ஆமாம். என் தாத்தா பழனிகவுண்டர் வகையறா வீட்டில்தான் குடியிருந்தாரா என்றால் குடியிருந்தார். என் தாத்தா குடியிருந்த வீடு யாருக்கு பாத்தியம் என்றால் பழனிகவுண்டருக்கு பாத்தியம். என் தாத்தா வாடகைக்கு குடியிருந்தாரா அல்லது இலவசமாக குடியிருந்தாரா என்றால் வாய்பேச்சின் அடிப்படையில் இலவசமாக குடியிருந்தார்."

15. The case of the appellants is that there was a house and his grandfather was residing in that particular house. That particular house got burnt. In this connection, it is seen that the respondents have questioned the title of the appellants. Once the title is questioned, then the appellants should have sought for a declaration of title and without that, the suit for mere possession would not be maintainable. So far as Exs.A2 and A3 are concerned, it relates to S.No.8. The property in question is S.No.8/4. It is the case of the respondents that they have been in possession from the time immemorial as true owners and they have questioned the title of the appellants herein.

16. In *AIR (2008) SCC 2033 equivalent to 2008 (4) SCC 594, in the case of Anathula Sudhakar vs P. Buchi Reddy (Dead) By Lrs & Ors*, the



WEB COPY

Hon'ble Supreme Court has stated that when a cloud is raised over the title of the plaintiff, then, the plaintiff should file a suit for declaration of title and not merely for permanent injunction. For a better clarity, the relevant paragraph is extracted hereunder:

"17. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :

(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.

(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in



WEB COPY



Annaimuthu Thevar (supra)]]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, 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 a suit for mere injunction.

(d) 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 straight-forward, the court may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction.

But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case."

17. In view of the position of law as stated above, I hold that even though the appellants have produced Exs.A2 & A3, both the exhibits relating to S.No.8 and since the relief for declaration of title had not been



WEB COPY

claimed, the suit suffers from formal defect. I hold that the plaint is not maintainable, since the relief of declaration had not been claimed. In view of that particular fact, I hold that this Second Appeal necessarily has to fail and I would uphold the judgment of the First Appellate Court in A.S.No.79 of 2008 dated 10.12.2008 and dismiss the suit in O.S.No.181 of 1998.

18. In the result, this Second Appeal is dismissed. No orders as to costs.

19.08.2025

Index : Yes
Neutral Citation : Yes
Speaking
gsk

To

- 1.The Sub Court,
Tiruchengode,
- 2.The Principal District Munsif,
Tiruchengode.



WEB COPY

S.A.No.1084 of 20



C.V.KARTHIKEYAN, J.

gsk

S.A.No.1084 of 2009

19.08.2025