



S.A. Nos.1410 & 1411 of 2010

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 12.06.2025

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THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.Nos.1410 & 1411 of 2010

S.A.No.1410 of 2010

B.Narasimhulu naidu (Deceased)

1.M.Rajeswari ammal

2.P.Damodaran

3.P.Munirathanam

4.B.Nagarathnam

... Appellants in S.A.No.1410 / 2010

* Cause title accepted vide order of Court dated 16.09.2010 made in M.P.No.2 of 2010 in S.A.SR.No.2416 of 2009.

Vs

1.Sanjeevi naidu

2.Ramamoorthy

3.Damodharan

4.Nagabooshanam

.. Respondents in S.A.No.1410 / 2010

S.A.No.1411 of 2010

B.Narasimhulu naidu (Deceased)

1.M.Rajeswari ammal

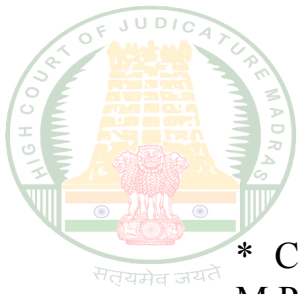
2.P.Damodaran

3.P.Munirathanam

4.B.Nagarathnam

... Appellants in S.A.No.1411 / 2010

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S.A. Nos.1410 & 1411 of 2010

* Cause title accepted vide order of Court dated 28.09.2010 made in M.P.No.2 of 2010.

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Vs

1.Sanjeevi naidu
2.Ramamoorthy
3.Damodharan
4.Nagabooshanam
5.G.Badmavathi Devi

.. Respondents in S.A.No.1411 / 2010

PRAYER in S.A.No.1410 of 2010: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 11.09.2008 made in A.S.No.34 of 2007 on the file of the Subordinate Court, Trivallur, thereby dismissing the appeal and confirming the judgement and decree, dated 01.06.2006 made in O.S.No.142 of 1997, on the file of the District Munsif, Thiruthani.

PRAYER in S.A.No.1411 of 2010: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 11.09.2008 made in A.S.No.35 of 2007 on the file of the Subordinate Court, Trivallur, thereby dismissing the appeal and confirming the judgement and decree, dated 01.06.2006 made in O.S.No.26 of 2005, on the file of the District Munsif, Thiruthani.

2\16



S.A. Nos.1410 & 1411 of 2010

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For Appellants in both SAs : Mr.A.Panneerselvam

For Respondents in both SAs : Mr.T.Sundaravadhanam

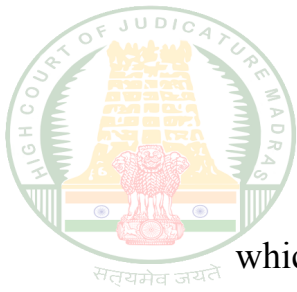
JUDGMENT

The appellant has filed these Second Appeals against the Judgment and decree dated 11.09.2008 made in A.S.Nos.34 & 35 of 2007, respectively, on the file of the Subordinate Court, Trivallur, thereby dismissing the appeal and confirming the judgement and decree, dated 01.06.2006 made in O.S.Nos.142 of 1997 and 26 of 2005, respectively, on the file of the District Munsif, Thiruthani.

2. For the purpose of convenience, the parties herein are referred to as they were ranked in the suit, O.S.No.142 of 1997.

3. Challenging the concurrent findings of the courts below, the original plaintiff, Narasimhulu Naidu in O.S. No.142 of 1997 and the 1st defendant in O.S. No.26 of 2005, has preferred these appeals. The appeals arose from the judgments passed in A.S.Nos.34 of 2007 and 35 of 2007,

3\16



S.A. Nos.1410 & 1411 of 2010

which are in turn from O.S. No.142 of 1997 and O.S. No.26 of 2005 respectively.

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4. The brief facts of the case as follows: One Narasimhulu naidu, son of Krishnappa Naidu, filed a suit in O.S. No.142 of 1997 before the District Munsif Court, Tiruttani, seeking a declaration of his right and title over the suit property situated at Ramapuram Village, Thiruthani Taluk, Thiruvallur District, in old S.No.148/6, new S.No.148/5, measuring 32 cents. The suit was filed against four defendants, including Sanjeevi Naidu and others. According to Narasimhulu Naidu, his father, Krishnappa Naidu, purchased the suit property through a registered sale deed dated 14.10.1937 for valid consideration. Thereafter, the patta stood in his father's name. Upon his father's demise, the property devolved upon him as the only legal heir, and he had been in continuous possession and enjoyment of the property for over 20 years. He also claimed title by way of adverse possession. However, the defendants, who are his neighbors and adjacent landowners, unlawfully claimed right and title over the property and attempted to interfere with his possession, leading to the filing of the suit.



S.A. Nos.1410 & 1411 of 2010

WEB COPY

5. The defendants contested the suit, stating that neither the plaintiff nor his father ever owned the suit property and denied the claim of adverse possession. They contended that the plaintiff was never in possession or enjoyment of the suit property. According to them, the new S.No.148/5 is part of a larger tract, including sub-divisions S.Nos.148, 148/2, 148/3, and 148/4, and is a single undivided piece of land. They further argued that S.No.148/6, as claimed by the plaintiff, did not exist.

6. The defendants claimed that the property originally belonged to one Rajammal, who inherited it from her husband, Errabba Naidu, the grandfather of defendants 2 to 4. Rajammal had bequeathed the suit property through a registered Will dated 05.08.1973 in favor of defendants 2 to 4. After her demise, the patta was also transferred in their names. They claimed possession and enjoyment of the suit property for more than the statutory period. Subsequently, the defendants, including Sanjeevi Naidu, filed a separate suit in O.S. No.26 of 2005 before the District Munsif, Tiruttani, against Narasimhulu Naidu and his sons, seeking a declaration of

5\16



S.A. Nos.1410 & 1411 of 2010

title over the same property in S.No.148/5, measuring 58 cents. Both suits were tried jointly and contested.

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7. Before the trial court, both parties adduced oral and documentary evidence. The learned trial judge framed separate issues in both suits. The main issue was "whether the property in new S.No.148/5, measuring 32 cents, belonged to the plaintiff or to the defendants by virtue of the Will executed by Rajammal dated 05.08.1973?

8. Upon considering the evidence, the court found that the plaintiff did not produce the original sale deed allegedly executed in favor of Krishnappa Naidu. Instead, only a xerox copy (Ex.A1) was filed, which referred to old S.No.148/6. There was no corroborative evidence to show that S.No.148/6 was reclassified as new S.No.148/5. The kist receipts and A-register extracts also did not establish this link. Hence, the trial court held that the plaintiff failed to prove that his father purchased the suit property and that it later became S.No.148/5. Accordingly, the suit filed by Narasimhulu Naidu in O.S. No.142 of 1997 was dismissed.



S.A. Nos.1410 & 1411 of 2010

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9. On the other hand, the trial court considered the Will executed by Rajammal (Ex.B1) dated 05.08.1973, which included the suit property in S.No.148/5. The Will was proved through the scribe (D.W.4) and another witness (D.W.3), was examined through the Advocate Commissioner. After the death of Rajammal, the patta was changed in favor of the defendants, marked as Ex.B20, and a joint patta (Ex.B25) was also issued with Patta No.50. The land, including 58 cents in S.No.148/5, was partitioned among the defendants' family. Ex.B2 also showed that S.No.148/6, measuring 58 cents, stood in Rajammal's name. The trial court held that the property in S.No.148/5, to the extent of 58 cents, rightfully belonged to Sanjeevi Naidu and others, and decreed the suit O.S. No.26 of 2005 in their favor.

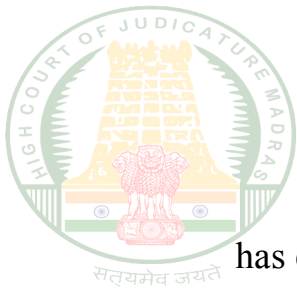
10. Challenging the trial court's findings, the plaintiff, Narasimhulu Naidu, filed A.S. Nos.34 and 35 of 2007 before the Sub-Court, Thiruvallur. The first appellate court independently analyzed the evidence on record and framed separate points for consideration. The learned first appellate judge held that the plaintiff failed to prove title to the suit property based on purchase, and also failed to substantiate the adverse possession claim.



S.A. Nos.1410 & 1411 of 2010

Conversely, the plaintiffs/defendants in O.S. No.26 of 2005 had proved their title through the Will and subsequent patta transfers. Accordingly, the first appellate court confirmed the findings of the trial court and dismissed both appeals. Challenging the concurrent findings of both the courts below, the present second appeals have been filed.

11. The learned counsel for the appellant argues that the courts below failed to give due importance to Ex.A1 (sale deed dated 14.10.1937) executed by Sambathammal in favor of Krishnappa Naidu, the plaintiff's father. The appellant, being the son of Krishnappa Naidu, claimed ownership based on this document. Therefore, the courts ought to have accepted the appellant's case and granted the relief sought in O.S. No.142 of 1997, consequently, the suit O.S. No.26 of 2005 should have been dismissed. He further argues that the first appellate Court has failed to see that the suit of the appellant herein (O.S.No.142 of 1997) was dismissed by giving undue importance to the documents stands in favour of the defendants viz. patta chitta which will not help the defendants in any way in deciding the title of the property and by doing so the First appellate Court



S.A. Nos.1410 & 1411 of 2010

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has erred in deciding the title of the plaintiff and therefore the judgment and decree of the Courts below is liable to be set aside. He also argues that the first appellate Court has failed to see that the Will dated 05.08.1973 Ex.B1 has not been proved in accordance with law and therefore the Courts below have failed in accepting the said Will as a document to decide the title and such decision has ended in rendering a verdict against the appellant herein (the plaintiff in O.S.Npo.142 of 1997). He further argues that the Courts below have erred in taking the Will as a parent document in deciding the ownership of the property instead of going into the question under what document the ownership is claimed by the parties in O.S.No.26 of 2005 apart from the Will.

12. This Court admits these second appeals on the following substantial questions of law.

"A. Whether the Courts below can grant title to the suit property purely on the basis of patta and kist receipts, when the opposite party also produced patta and kist receipt?

B. Whether the Will can be treated as a parent document to confer



S.A. Nos.1410 & 1411 of 2010

title on the plaintiff?

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C. When a party to the suit produces a " Sale Deed" that is more than 30 years old, can it be disbelieved and questioned by a Court of law?

D. Whether the non-production of supporting parent documents to the sale deed, to prove the title to the suit property, can be considered as fatal to the grant of an order of injunction?"

13. By way of reply, the learned counsel for the respondents submits that before the Trial Court, they proved the right and title of their ancestors and also established uninterrupted long possession and enjoyment over the suit property in S.No.148/6. The same was rightly appreciated by the Courts below. Further, the original owner Rajammal executed a Will in favour of defendants 2 to 4 (her grandchildren), and both the attester and the scribe were examined to prove the said Will. The counsel also pointed out that the appellant/plaintiff failed to produce any relevant document to prove his right and title over the suit property. This aspect too was rightly appreciated by the Courts below, and therefore, no interference is required. Hence, he prays for the dismissal of the appeals as devoid of merits.

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S.A. Nos.1410 & 1411 of 2010

WEB COPY

14. On considering the submissions from both sides, the appellant, Narasimhulu, claimed that the suit property described in the schedule, S.No.148/6, measuring 32 cents in Ramapuram Village, Thiruthani Taluk, Thiruvallur District, was originally purchased by his father through a sale deed, Ex.A1, in the year 1937. Since then, he had been in possession and enjoyment of the property as its absolute owner. He further stated that the said survey number was later changed to S.No.148/5, and the defendants have no right or title in it, yet caused interference. Therefore, the plaintiff filed the suit seeking declaration and other consequential reliefs.

15. The defendants contested the suit stating that the suit property belonged to Rajammal, the mother of the 1st defendant and grandmother of defendants 2 to 4. She executed a Will in favour of D2 to D4 through Ex.B1 in 1973. After her demise, they came into possession and enjoyment of the property along with other assets, and they paid kist, and the revenue records were also transferred to their names.



S.A. Nos.1410 & 1411 of 2010

WEB COPY

16. As the plaintiff is claiming right and title over the suit property, he is bound to prove that the property was indeed purchased by his father through Ex.A1. Upon perusal of Ex.A1, it is found to be only a translated copy of a Telugu document indicating that S.No.148/6, an extent of 32 cents, along with other properties stood in the name of the plaintiff's father. However, the original sale deed was not produced by the plaintiff, and no reason was provided for the non-production of the original document.

17. Even assuming that the purchase was of S.No.148/6 measuring 32 cents, the plaintiff tried to establish enjoyment through Ex.A2, an A-register extract of revenue records. But upon examination, there is no proper reference to the plaintiff's father in the said document. The main contention of the plaintiff is that S.No.148/6 was later assigned as S.No.148/5. However, he failed to produce any evidence to support this claim, which was rightly noted by the Courts below and needs no interference.



S.A. Nos.1410 & 1411 of 2010

18. On the other hand, the defendants proved the execution of a Will by Rajammal (mother of D1 and grandmother of D2 to D4). They also produced Ex.A2, the patta passbook, which stood in Rajammal's name. According to the defendants, S.No.148/5, measuring 58 cents along with other properties, was in the name of Rajammal. In 1973, through Ex.B1 Will, Rajammal bequeathed the property including suit S.No.148/6 (58 cents) in favour of D2 to D4. This was also proved by examining one of the attesting witnesses as well as the scribe, with the assistance of the Advocate Commissioner. Therefore, as per the Will, the defendants have right and title over the suit property in S.No.148/6.

19. Moreover, the plaintiff failed to produce any document such as revenue records (e.g., adangal extract) to show that he was in possession and enjoyment of S.No.148/6 or that it was converted into S.No.148/5. On the contrary, the defendants proved that S.No.148/5 belongs to their family, and that they have possessed and enjoyed it by paying kist, and had the patta mutated in their names.

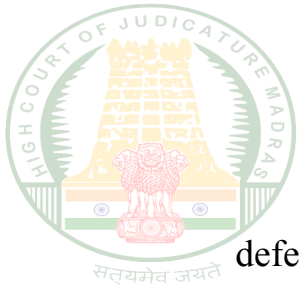


S.A. Nos.1410 & 1411 of 2010

20. The plaintiff contended that Ex.A1 (the sale deed) is over 30 years old and thus requires no further proof. However, admittedly, it does not correlate with the alleged new S.No.148/5, and therefore, the objection raised on that basis is unsustainable. Due to the non-production of the parent documents, the Courts below rightly held that the plaintiff had not proved his right and title to seek a declaration. As such, their findings are sustainable. Accordingly, questions of law A and B are answered.

21. As discussed above, the defendants proved their right and title by producing the patta and Will dated 05.08.1973, wherein the suit S.No.148/6 stood in the name of Rajammal. She subsequently bequeathed it to defendants 2 to 4, and thereafter the revenue records were mutated accordingly. Therefore, the findings rendered in O.S.No.26 of 2005 are sustainable. Questions of law C and D are accordingly answered.

22. **Therefore, both appeals are dismissed** as being without merits. The findings of the Courts below are confirmed. The suit filed by the plaintiff in O.S.No.142 of 1997 is dismissed, and the suit filed by the



S.A. Nos.1410 & 1411 of 2010

defendants in O.S.No.26 of 2005 is decreed as prayed for. There shall be no order as to costs.

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12.06.2025

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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To

1. The Subordinate Judge, Trivallur.
2. The District Munsif, Thiruthani.
3. The Section Officer, VR Section, High Court of Madras.

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S.A. Nos.1410 & 1411 of 2010

T.V.THAMILSELVI, J.

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S.A.Nos.1410 & 1411 of 2010

12.06.2025