



WEB COPY



S.A. No.210 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2025

CORAM :

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

S.A.No.210 of 2019

and

C.M.P.No.3471 of 2019

Pious Raj

... Appellant/Defendant

Vs.

1.Mrs.S.Pushparajam

2.Minor Anto Sagaya Vargheese,

rep. by its Next Friend and

mother S.Pushparajam

Door No.6 A, Premier Nagar,

Othakkalmandapam, Coimbatore.

... Respondents/Plaintiffs

PRAYER: Second Appeal filed Under Section 100 of Civil Procedure Code against the Judgment and Decree dated 30.08.1996 made in O.S.No.456 of 1990 on the file of the III Additional Subordinate Court, Coimbatore, confirming the Judgment and Decree made in dated 31.08.2000 made in A.S.No.181 of 1996 on the file of the I Additional District cum Chief Judicial Magistrate, Coimbatore.

For Appellant : Mr.S.James



S.A. No.210 of 2017

For Respondents : No appearance

WEB COPY

JUDGMENT

This Second Appeal has been filed by second defendant in the suit in O.S.No.456 of 1990 challenging the decree passed against the defendants. wherein both the Courts have decreed the suit filed by the plaintiffs for recovery of possession.

2. According to the plaintiffs, they are the wife and son of one deceased Vargheese Raj. During the lifetime of Vargheese Raj, he purchased 'A' schedule property. He was having some movable properties described as 'D' schedule properties, married the first plaintiff and blessed with the second plaintiff/Son. He was a teacher till his life time and he was in possession and enjoyment of the suit property along with his family members.

2a. The defendants are the mother and younger brother of the deceased Vargheese Raj and they were permitted to stay in the house. After the death of Vargheese Raj, the defendants claimed a share in his death benefits and also opposed full disbursement to the plaintiffs, and the claim was successfully defended by the plaintiffs. The deceased Vargheese Raj had subscribed a chit



scheme with SPIM Private Limited, Coimbatore, and received the chit amount by executing a security document over the suit property. The defendants had forcibly dispossessed the plaintiffs from the suit properties, and prevented them from residing in the suit properties. Hence, they have come forward with the suit for recovery of possession.

3. The defendants filed a written statement and contested the suit on the ground that the first defendant sold her jewels to advance Rs.1 lakh to Vargheese Raj for purchasing the 'A' schedule property. Hence, the property is not exclusively belongs to the Vargheese Raj. After the death of Vargheese Raj, difference of opinion arose between the parties, prompting the plaintiffs to remove all movables from the house. The first plaintiff is duty bound and responsible to maintain the first defendant and has failed to do so. Moreover, the plaintiffs are still in possession of the suit property and have not dispossessed or ejected by the defendants therefrom. Hence, the plaintiffs are not entitled to the relief of possession.

4. Based on the pleadings made on both sides, the Trial Court had framed the following issues:



S.A. No.210 of 2017

“1. Whether the plaintiffs are entitled for possession as prayed for?

2. Whether the plaintiffs are entitled for damages and if so to what extent?

3. Whether Court fee paid is proper or not?

4. What other relief plaintiffs are entitled to?”

5. After framing of issues, the Trial Court decreed the suit in favour of the plaintiffs based on the evidence placed on record. Against which, the defendants have preferred an Appeal. The Lower Appellate Court, after appreciating the evidence placed on record, partly allowed the appeal, confirming the Trial Court's Judgment and Decree dated 30.08.1997 in O.S.No.456 of 1990 insofar as it relates to the relief of recovery of possession of the 'A' schedule property and while partly allowing the appeal by setting aside the decree for recovery of possession of the 'B' schedule property and for damages.

6. Aggrieved by this judgment, the second defendant has filed the present appeal before this Court.

7. When the matter is listed for admission, this Court has ordered notice to the respondents and since the matter arising out of concurrent findings, this Court has heard the arguments before framing of substantial question of law.



WEB COPY

8. The learned counsel for the appellant submits that the defendants have established their case that they were also contributed for purchasing the suit property. There are ample evidence produced in this regard. These evidence were not properly appreciated by both the Courts below. He further submitted that the suit for recovery of possession alone is not sufficient when especially the defendants herein have disputed the title of the plaintiffs. He further relied on the judgment of the Hon'ble Apex Court in **Ananthula Sudhakar vs. P.Buchi Reddy (Dead) by the Lrs and others** reported in **(2008) 4 SCC 594**.

9. There is no representation for the respondents though notices were served, their names also printed in the cause list, none appeared.

10. I have considered the submissions made by the learned counsel on both sides and also perused the records.

11. On perusal of records, it reveals that the major defence taken by the defendants is that after admitting the relationship, it is contended that the first defendant has contributed a sum of Rs.1 lakh for purchasing the first item of the



suit property thereby, Vargheese Raj was not having exclusive right to claim title over the suit properties, and on his death, the plaintiffs are not entitled to claim absolute title over the property. Both the Courts below held that there was no evidence placed on record by the defendant to show that the mother has contributed a sum of Rs.1 lakh, for the purpose of purchasing the suit property. Without any iota of evidence, the allegations have been made disputing the title of Vargheese Raj. Admittedly, Vargheese Raj has not executed any testamentary document to give exclusive rights on the plaintiffs, and as per Section 33 of the Indian Succession Act, 1925, the plaintiffs are entitled to inherit the same.

12. It is also stated that the mother of Vargheese Raj (first defendant) has since died, questioning the title by the present defendant who is not having any valid right, does not arise at all. The plaintiffs need not be forced to file a suit for declaration of title in this regard. Hence, I am of the view that the suit filed by the plaintiffs is maintainable and this Court finds there is no substantial questions of law involved in this case and both Courts below correctly decreed in favour of the plaintiffs, rightly rejecting the defendant's claims and this Court finds that no substantial questions of law is involved in this case.



S.A. No.210 of 2025

WEB COPY

13. In the result, the Second Appeal stands dismissed. The Judgment and Decree dated 30.08.1996 made in O.S.No.456 of 1990 on the file of the III Additional Subordinate Court, Coimbatore, confirming the Judgment and Decree made in dated 31.08.2000 made in A.S.No.181 of 1996 on the file of the I Additional District cum Chief Judicial Magistrate, Coimbatore, is confirmed. There shall be no order as to costs. Consequently, the connected miscellaneous petition stands closed.

11.09.2025

ssi

Index:Yes/No

Speaking Order : Yes/No

Neutral Citation Case : Yes/No

To:

- 1.The III Additional subordinate Judge, Coimbatore.
- 2.The I Additional District cum Chief Judicial Magistrate, Coimbatore.
- 3.The Section Officer, VR Section, High Court, Madras.

K. RAJASEKAR, J.

ssi



WEB COPY



S.A. No.210 of 2019

S.A.No.210 of 2019

11.09.2025