



S.A.No.229 of 2019  
and C.M.P.No.3608 of 2019

**WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 18.03.2025**

**CORAM**

**THE HONOURABLE MRS. JUSTICE R.HEMALATHA**

**S.A.No.229 of 2019**  
**and C.M.P.No.3608 of 2019**

Malarvizhi

... Appellant

Vs.

1.Viswanathan (Died)  
2.Ravi  
3.Giri  
4.Rajashekar  
5.Latha  
6.Sakila

... Respondents

(The first respondent died, R3 to R6 are brought on record as the legal heirs of the deceased first respondent vide Court order dated 22.01.2024 in C.M.P.No.14240 of 2022 in S.A.No.229 of 2019)

**Prayer :** Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 27.09.2018 passed in A.S. No.23 of 2014, on the file of the Sub Court, Ponneri, upholding the decree and judgment dated 20.12.2013 passed in O.S.No.99 of 2006, on the file of the District



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WEB COPY Munsif Court, Ponneri.

For Appellant : Ms.A.L.Ganthimathi  
Senior Counsel  
Assisted by Mr.S.Abimanyu  
For RR2 to 6 : Mr.R.Munuswamy

### **JUDGMENT**

The unsuccessful plaintiff before both the Courts below has filed the present second appeal.

2. The plaintiff filed the suit in O.S.No.99 of 2006 before the District Munsif Court, Ponneri, for a permanent injunction restraining the defendants, their men and agents, from interfering with her peaceful possession and enjoyment of the suit property. The suit property, morefully described in the plaint schedule is an agricultural land in survey number 396/2D of Keizhmudalabedu Village, Gummidipoondi Taluk, Chennai admeasuring 17 cents within the boundaries specified therein.



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3. For the sake of convenience, the parties are referred to as per their rank in the trial court and at appropriate places, their rank in the present second appeal would also be indicated.

4. The case of the plaintiff in a nutshell is as follows :

The plaintiff is the absolute owner of the suit property. Her mother Raniammal executed a registered settlement deed dated 10.10.2001 (Ex.A1) in her favour and ever since the date of the settlement deed, the plaintiff is in possession and enjoyment of the suit property. The patta also stands in her name. The defendants who are the adjacent land owners are attempting to disturb the plaintiff's peaceful possession and enjoyment of the suit property. She therefore filed the present suit for a permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit property.



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5. The suit was resisted by the defendants on the following grounds:

- i. All the allegations contained in the plaint are false.
- ii. The plaintiff is not the owner of the suit property.
- iii. Even in the settlement deed dated 10.10.2001 (Ex.A1), Raniammal has not specifically mentioned as to how she got the title to the suit property.
- iv. The suit property absolutely belonged to the first defendant's paternal grandfather Ellappa Mudali. The patta for the said property also stands in his name.
- v. After the death of Ellappa Mudali, his sons Chenchu Mudali, Perumal Mudali (the first defendant's father) and Madurai Mudali succeeded the estate of Ellappa Mudali.
- vi. The suit property was also mortgaged to third parties and thereafter, the property was purchased by the first defendant's mother Nacharammal through a registered sale deed dated 04.01.1946 (Ex.B1). Ever since the date of purchase,



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**WEB COPY** Nacharammal has been in possession and enjoyment of the same.

vii.The Special Tahsildar, Gummidipoondi, also issued a patta in her favour (Ex.B2) .

viii.The total extent of the suit property is 43 cents in survey number 396/2. There is no separate sub division as 396/2D as alleged by the plaintiff.

ix. There is no cause of action for filing the suit and therefore the suit is liable to be dismissed.

6. On the basis of the above pleadings, the trial Court framed the following issues :

*"(i) Whether the plaintiff is entitled to a permanent injunction as prayed for ?*

*(ii) To what relief is the plaintiff entitled ?"*

7. In the trial Court, three witnesses were examined on the side of the plaintiff and Ex.A1 to Ex.A8 were marked. The first defendant examined himself and one another witness and marked Ex.B1 to Ex.B5.



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WEB COPY The revenue records were marked as Ex.X1 to Ex.X21 through a revenue official (PW2).

8. The learned trial court judge, on considering the evidence on record, dismissed the suit filed by the plaintiff, vide her decree and judgment dated 20.12.2013, on the following grounds:

- i. The evidence on record shows that patta stands in the name of Nacharammal, the mother of the first defendant, in respect of the survey number 396/2.
- ii. It is also clear from Ex.X4 to Ex.X7, survey number 396/2 has not been sub divided subsequently.
- iii. The first defendant was able to show his title and possession over the suit property through Ex.B1 to Ex.B5 and has questioned the title of the plaintiff. In the circumstances, the plaintiff has not chosen to amend the plaint seeking the relief of declaration of title to the suit property.
- iv. In the settlement deed dated 10.10.2001 (Ex.A1) it has not been stated as to how the plaintiff's mother got title over the suit



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WEB COPY property.

- v. On the other hand, the plaintiff's father who was examined as PW1 had stated that he purchased the suit property orally.
- vi. Thus, there are several contradictions in the case of the plaintiff and therefore, the suit filed by the plaintiff is liable to be dismissed.

9. Aggrieved over the decree and judgment passed by the trial court judge, the plaintiff filed an appeal in A.S. No.23 of 2014, before the Sub Court, Ponneri. The learned Subordinate Judge, Ponneri, after analysing the evidence on record, upheld the findings recorded by the trial court judge vide his decree and judgment dated 27.09.2018, as against which the present second appeal is filed.

10. Though the second appeal is filed in the year 2019 it has not been admitted till date.



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11. Heard Ms.A.L.Ganthimathi, learned Senior Counsel assisted by Mr.S.Abimanyu, learned counsel for the appellant and Mr.R.Munuswamy, learned counsel for the respondents 2 to 6.

12. Ms.A.L.Ganthimathi, learned Senior Counsel for the appellant would contend that the plaintiff was able to show her possession over the suit property by adducing sufficient documentary evidence like settlement deed dated 10.10.2001 (Ex.A1) and the original patta dated 16.05.1974 (Ex.A3). She would also contend that 'A' register extract (Ex.X1) would go to show that the survey number 396/2 stands in the name of the plaintiff's father. Both the Courts below without taking these aspects into consideration dismissed the suit filed by the plaintiff and she therefore prayed for allowing the present second appeal.

13. Per contra Mr.R.Munuswamy, learned counsel for the respondents 2 to 6 would contend that both the Courts below, after analysing the oral and documentary evidence adduced on both sides have



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WEB COM rightly dismissed the suit and he prayed for dismissal of the present appeal.

14. The plaintiff has filed the suit for a permanent injunction restraining the defendants from interfering with her peaceful possession and enjoyment of the suit property. In order to prove her possession over the suit property, the plaintiff mainly relied on the settlement deed dated 10.10.2001 (Ex.A1). The settlement deed was executed by the mother of the plaintiff and it is a registered instrument. In the settlement deed, it is stated that the property settled in favour of the plaintiff situate in survey number 396/2D of Keizhmudalabedu Village, Gummidipoondi Taluk, North Madras Registration District, measuring 17 cents and it belongs to the mother of the plaintiff ancestrally. However, the plaintiff's father who was examined as PW1 in his evidence had stated that he purchased the property orally.

15. It is pertinent to point out that the plaintiff filed the suit stating that she is in possession and enjoyment of the suit property ever



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since the date of the settlement deed, but she has not chosen to examine herself as a witness to prove her contention. The specific case of the defendants is that the entire extent in survey number 396/2 is 43 cents and there was no subdivision as 396/2D. The plaintiff has not filed any acceptable evidence to show that the survey number 396/2 was subsequently subdivided as survey number 396/2D. The patta (Ex.A3) stands in the name of Ramamurudha Pillai and the survey numbers are shown as 270/1 and 396/2. The adangal extract (Ex.A5) stands in the name of Subramani (PW1) for the fasli year 1403. A computerised patta (Ex.A8) was obtained by the plaintiff for the purpose of getting a loan from the Indian Overseas Bank. This is issued subsequent to the year 2002. The Assistant, Gummidipoondi Taluk office who was examined as PW2 had filed various Revenue Records including 'A' Register, chitta, adangal etc. None of the above documents would show that the plaintiff has been in possession and enjoyment of the suit property which according to the plaintiff is in survey number 396/2D. On the other hand, the first defendant had filed original sale deed dated 04.01.1946 (Ex.B1) in favour of his mother Nacharammal and patta (Ex.B2) in respect of the

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WEB COPY survey number 396/2 measuring 43 cents.

16. Ms.A.L.Ganthimathi, learned Senior Counsel for the appellant would contend that the property claimed by the defendants is totally different from the property claimed by the plaintiff and therefore, the suit filed by the plaintiff has to be decreed.

17. It is pertinent to point out that the plaintiff has not shown that the survey number 396/2 has been further subdivided as survey number 396/2D. She has not also shown her continuous possession over the suit property. Moreover, the defendants had disputed the title of the plaintiff by adducing acceptable evidence. In the circumstances, the plaintiff should have amended the plaint seeking for the relief of declaration and injunction. Since this has not been done by the plaintiff, the suit filed by her has to be dismissed.

18. Both the Courts below had analysed each and every aspect of the case and had come to a conclusion that the plaintiff has not proved her possession over the suit property. In fact the trial court in its judgment had observed thus :



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**WEB COPY** "11. The plaintiff has to prove her lawful possession to the suit property. The plaintiff had filed the adangal extract, the 'A' register, the chitta for the suit property. 'A' register extract show that the suit property extent is 16.5 acres and entered in the name of the PW1. Whereas the plaintiff is claiming only 6.5 acres. The plaintiff counsel argued that the adangal extract will proves that the PW1 and thereafter the plaintiff alone is in possession of the suit property. Adangal extract is the document to proves ones possession, but the VAO are not visiting the field and they are making adangal entries. Admittedly, Nachammal died but till this date the adangal entry stands in the name of Nachammal for survey number 392/2E which itself proves that the adangal entries are not correct. Even the some of the adangal extract stands for the 16.5 acres in the name of the plaintiff's father PW1. The plaintiff is support of her possession she had not examined any other independent witness from the vicinity. If some of the villagers were examined to prove the plaintiff's possession, then the adangal entry can be taken into consideration along with the evidence of the villagers. The plaintiff had not explained why she had not examined any independent witness from the vicinity. Further the adangal extract upto 1397 for the entire survey number 396/2 stands in the name of the first defendant's mother only which is evidence through Ex.X4 to Ex.X7. The plaintiff had



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**WEB COPY** *not filed the original patta that was issued to PW1, and it has been pleaded and proved by the plaintiff how the patta for the suit property transferred to PW1, and when he got the patta. So the plaintiff case is full of lacunas.*

*12. The learned counsel for the plaintiff argued that in Ex.B1 the suit survey number does not find place so it is not acceptable that through Ex.B1 first defendant's mother purchased the property in suit survey number. Admittedly in the Ex.B1 the suit survey number does not find place. The learned counsel for the defendants argued that the Paimash number alone is given in Ex.B1. But it is not so. The defendant had filed Ex.B4 to show that the Paimash number 1066 is the survey number 396/2 only. The defendants pleaded that they are having 43 cents in the survey number 396/2. The learned counsel for the plaintiff argued that the defendants are claiming only 43 cents in the survey number 396/2 which is intact in survey number 396/2E and the patta for the same is standing in the name of the first defendant's mother, so the defendants had not right over the suit property. The plaintiff has to prove her case they cannot pick up holes in the defendants case. If really the plaintiff and her father is and was in possession and enjoyment of the suit property then the plaintiff would definitely pay the kist for the suit property. But neither the PW1 nor the plaintiff the kist before the filing of this*



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**WEB COPY** *suit which itself shows that the plaintiff and her father is not in possession of the suit property. So the plaintiff miserably fails to prove the actual possession and enjoyment of the suit property."*

19. The observations of the trial court judge cannot be found fault with. In fact, there is no substantial question of law involved in the present second appeal. Therefore, the second appeal fails and is dismissed.

20. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.
- ii. the decree and judgment dated 27.09.2018 passed in A.S. No.23 of 2014, on the file of the Sub Court, Ponneri, and the decree and judgment dated 20.12.2013 passed in O.S.No.99 of 2006, on the file of the District Munsif Court, Ponneri, are upheld.

**18.03.2025**

Index: Yes/No  
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Speaking/Non-Speaking order  
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To

1. The Sub Court, Ponneri.
2. The District Munsif Court, Ponneri.
3. The Section Officer, VR Section, High Court, Madras.



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**R. HEMALATHA, J.**

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