



A.S.No.132 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated 27.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.132 of 2025
and CMP.No.2797 of 2025

B.Madevappa

... Appellant

Versus

Sharmila Sriram

... Respondent

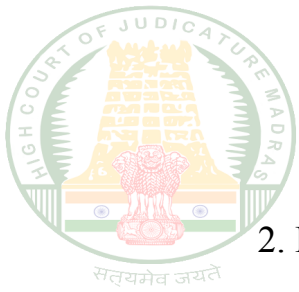
Prayer: Appeal filed under Section 96 of Code of Civil Procedure, to set aside the judgment and decree dated 24.10.2024 passed in O.S.No.94 of 2019 on the file of III Additional District Judge, Erode at Gobichettipalayam.

For Appellant : Mr.S.Mukunth, Senior Counsel
for Mr.C.E.Prathap

For respondent : Mr.P.V.Balasubramaniam, Senior Counsel
for Mr.M.Roshan Atiq

JUDGMENT

Challenge has been made to the decree and judgment of the Trial Court decreeing the suit for declaration and recovery of possession, the present appeal has been filed.



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2. Brief background of the appeal is as follows:

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2.a. It is the case of the plaintiff that the suit property originally belonged to Siddhalinga Thevar and Nataraj Asari. By registered sale deed dated 21.12.1987, they had sold the property to one G.V.Viswanathan. Thereafter, the plaintiff has purchased the property from G.V.Viswanathan and two others on 01.09.2006 and the plaintiff also delivered possession of the property. While so, the Income Tax Department in the process of recovery of tax arrears from the plaintiff's vendor has erroneously attached the property along with the other properties by the attachment order dated 03.12.2006. Subsequently, that attachment was raised on 14.11.2007. It is the further case of the plaintiff that the revenue records were also mutated in their name. In the month of October, 2008, defendant had offered to purchase the property for a meager price, as the plaintiff refused to sell the property, since he is a permanent resident of Bangalore, the defendant in order to grab the property made attempts to trespass the property which resulted in filing of the suit in O.S.No.265 of 2009 on the file of District Munsif Court, Sathyamangalam for permanent injunction. The suit was processed by the power agent, however, the suit was dismissed for default on 04.02.2013. Therefore, the plaintiff had also taken steps to restore the suit by engaging another



lawyer. On 11.08.2019, when the plaintiff visited the suit property, they came to

know that the defendant had illegally trespassed on 09.08.2019 and tried to plough the land. Hence, the suit for declaration and recovery of possession.

2.b. The defence of the defendant in the written statement is that conditional patta was issued in favour of her father in law, Mr.Mallukappa, based on that, he was in possession of the property. Those documents were given to VAO in order to avail loan. However, neither has the loan been arranged nor have the documents been returned. According to the defendant, after the death of his father in law, he is in possession of the property for more than 50 years and the plaintiff has created the sale deed fraudulently. The earlier suit filed by the plaintiff for bare injunction is without seeking declaration and the allegations that the defendant trespassed the property is also denied.

2.c. The Trial Court, based on the pleadings, framed the following issues:

- a. Whether the plaintiff has purchased the property for a valid consideration?
- b. Whether the plaintiff is the absolute owner of the property?
- c. Whether the defendant has encroached the suit property after purchase made by



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the plaintiff?

WEB d. Whether the plaintiff is entitled for declaration and recovery of possession as
prayed for?

e. Whether the sale deed in favour of the plaintiff was fabricated?

f. Whether the suit is barred by principle of res judicata?

g. To what other reliefs?

2.d. On the side of the plaintiff, PW1 to PW3 were examined and Ex.A1 and Ex.A19 were marked. Through PW3, Ex.X1 was marked. On the side of the defendant, DW1 to DW3 were examined and Ex.B1 to Ex.B3 were marked.

2.e. On appreciation of the documentary and oral evidences, the Trial Court decreed the suit. Challenging the decree and judgment, the unsuccessful defendant has filed the present appeal suit.

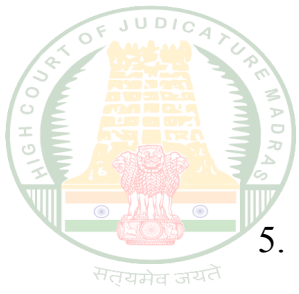
3. Mr.S.Mukunth, the learned senior counsel for the appellant mainly contended that the suit for declaration has not been filed despite the fact that there was a threat to the plaintiff's title as early as in the year 2009, whereas, the



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declaration was sought only in the year 2019 by way of this suit, this aspect has not been considered by the Trial Court. Further, the defendant is also in possession of the suit property from long back and the earlier suit operates as res judicata. Further, the present suit is barred by limitation. It is also the specific case of the defendant that he is in possession of the property for more than 50 years. Though Exs.B1 to B3 was obtained during the pendency of the suit, the fact remains that those documents were obtained only on the basis of the possession of the defendants. Hence, seeks for allowing this appeal.

4. Mr.P.V.Balasubramaniam, learned senior counsel for the respondent submitted that the appellant's contention that he is in possession of the property for more than 60 years has not been established and no materials whatsoever have been filed in this regard. The so-called revenue records produced by the defendant have been fabricated during the pendency of the suit. At any event, even assuming that the defendant was in possession of the property, same will not give him absolute right to resist the suit, whereas, the plaintiff has established the title. Exs.A1 & A2 clinchingly establishes the title of the plaintiff. Therefore, the judgement and decree of the Trial Court does not require interference. Hence, seeks for dismissal of this appeal.



5. Based on the above pleadings, now, the following issues arise for

consideration in this appeal:

- (i). Whether the defendant has established the contention that he is in continuous possession of the property for more than 60 years?
- (ii) Whether the plaintiff is entitled for declaration and recovery of possession as sought for?

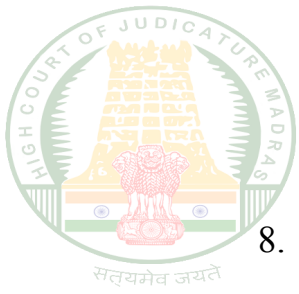
Points (i) and (ii)

6. The plaintiff bases her claim on the basis of purchase made by her in Ex.A2. Ex.A2 is the sale deed dated 01.09.2006. The plaintiff has purchased the property from G.V.Viswanathan, who had purchased the property under Ex.A1 from Siddhalinga Thevar and Nataraj Asari. Exs.A3 to A5 are the revenue records dated 07.10.2009, 07.10.2009 and 06.10.2009. Ex.A3 would make it clear that patta is issued in the name of the plaintiff. Ex.A4 & Ex.A5/A-Registers also clearly indicate the name of the plaintiff. The evidence of the defendant in his cross examination also clearly indicate that he was aware of the purchase and his evidence also further indicate both the sale deeds, i.e., Exs.A1 and A2 were known to him. If really the defendant was in possession for more than 60 years based on



the so-called conditional patta, the normal human conduct is to at-least oppose the sale and challenge the sale deed which was executed on 21.12.1987 and 01.09.2006 which has not been done so.

7. Further to show that the defendant and his father in law were in continuous possession for more than 50 years, there are no materials whatsoever placed on record. Exs.B1 to B3 were obtained during the pendency of the suit and there were no materials whatsoever available on record to prove their possession. It is relevant to note that even assuming the defendant was in possession of the property, such possession alone will not take away the right of the rightful owner seeking declaration and recovery of possession. As the plea of adverse possession never pleaded and proved in the manner known to law. In the absence of animus to treat the properties hostile to the interest of the owner particularly in the absence of any pleadings and evidence, mere long possession, howsoever it may be, may not be a ground to deny the right of the plaintiff. Considering the entire aspects, this Court is of the view that mere oral evidence without any documents on the side of the defendant to prove that he is in continuous possession of the property, such contention of the defendant cannot be countenanced.



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8. That apart, the plaintiff has clearly proved her title as well as the predecessor's title under Exs.A1 and A2 followed by revenue records transferred in their name. Further, though the plaintiff has filed a suit for permanent injunction in earlier occasion which was dismissed for default, that suit will not operate as res judicata. Admittedly, there was no decision on merits in the said suit. Therefore, the contention that earlier suit will operate as res judicata has no legs to stand. Exs.A13 to A17, property tax receipts paid by the predecessor in title proves the fact that the suit property was in the control of the predecessor in title not in the possession of the defendant. The plaintiff has also under Ex.A18 paid the property tax. All these facts clearly substantiate the case of the plaintiff. Accordingly, these points are answered.

9. In fine, this appeal suit stands dismissed and the judgment and decree of the Trial Court in O.S.No.94 of 2019 dated 24.10.2024 on the file of learned III Additional District Court, Gobichettipalayam stands confirmed. No costs. Consequently, connected miscellaneous petition stands closed.

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Index : Yes / No
Speaking/non speaking order
dhk

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To,

1. The III Additional District Judge
III Additional District Court, Gobichettipalayam
Erode

2.The Section Officer
VR Section, Madras High Court

N. SATHISH KUMAR, J.



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