



S.A.No.397 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21.08.2025
Pronounced on	14.11.2025

CORAM

**THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI**

S.A.No.397 of 2019 and
C.M.P. No.5797 of 2019

Bhoopathy

... Appellant

vs.

1. Sivakami @ Pappathi

Krishnaveni (died)

2. Gopal

3. Chandrasekaran

4. Ponnambalam

...Respondents

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the judgment and decree dated 18.09.2017 passed in A.S. No.28 of 2014, on the file of the Principal District Court, Thiruvallur, confirming the Judgment and decree dated 27.03.2014 passed in O.S.No.86 of 2008, on the file of the Subordinate Court, Poonamallee.



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For Appellant : Mr. J.R.K. Bhavanantham
For Respondents : No appearance.

JUDGMENT

In this Second Appeal, challenge is made to the judgment and decree dated 18.09.2017 passed in A.S. No.28 of 2014, on the file of the Principal District Court, Thiruvallur, confirming the Judgment and decree dated 27.03.2014 passed in O.S.No.86 of 2008, on the file of the Subordinate Court, Poonamallee.

2. The unsuccessful plaintiff before both the courts below has filed the present Second Appeal. He filed a suit in O.S. No.86/2008 before the learned Subordinate Judge, Poonamallee, for the following reliefs:

- 1) Declaration that the plaintiff is the owner of the suit property.
- 2) Recovery of possession after removing all the structures in the suit property.



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3) Directing the defendants to pay future mesne profits at the rate of Rs.2,000/- per month from the date of plaint till the date of delivery of vacant possession of the suit property and for costs.

3. The case of the plaintiff is that the suit property with larger extent was originally owned by one Kovappa and he has sold 0.32 cents to one Ramasamy by virtue of sale deed dated 20.07.1956 and retained remaining 0.2 cents on the southern side. It is the contention of the plaintiff that the said 0.2 cents was settled in favour of one Kesava Naicker by a settlement deed dated 19.08.1957 and handed over possession to Kesava Naicker. It is the further contention of the plaintiff that Kesava Naicker in turn sold the said property to plaintiff's wife Bhanumathi under the sale deed dated 26.07.1988. According to the plaintiff, he and his wife Bhanumathi have put up a small structure in the suit property and on 01.03.2008 the defendants have demolished the said structure and had put up a small shed inspite of the objections made by



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the plaintiff. Plaintiff's wife is not alive. With the above contentions the suit has been filed for the reliefs above stated.

4. The claim of the plaintiff was resisted by the defendants by stating that even though Kovappa Reddy sold 0.32 cents to Ramasamy, he had handed over possession of entire 0.34 cents to Ramasamy. It is the further contention of the defendants that by sale deed dated 07.03.1958, the said Ramasamy has sold the entire 0.34 cents in favour of one Pachaiammal. The legal heirs of Pachaiammal, i.e., the defendants 2 to 5 have settled 0.2 cents in favour of the 1st defendant by settlement deed dated 05.07.2007. According to the defendants, the 1st defendant has obtained Ex.B2 patta in her favour. Ex.B2 is dated 12.05.2008. The settlement deed in favour of 1st defendant has been marked as Ex.B1 by the defendants and the certified copy of the same was produced as Ex.A5 by the plaintiff. It is the contention of the defendants that after the sale in favour of Ramasamy, Kovappa was not at all in possession of the suit property and the defendants and their predecessor in title are in possession and enjoyment of the suit property



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for past 50 years. Hence prayed for dismissal of the suit.

5. The learned trial judge, on an appreciation of evidence, came to the conclusion that the suit is clearly barred by limitation and that the plaintiff failed to prove his possession in the suit property from 1957. Accordingly the learned trial judge by a judgment and decree dated 27.03.2014 dismissed the suit without costs.

6. The said decree of the trial court, when challenged before the lower appellate court, namely, the Principal District Court, Tiruvallur, the learned lower appellate judge, on a re appreciation of evidence, concurred with the findings of the trial court and confirmed the decree passed by the trial court by a judgment and decree dated 18.09.2017. It is as against the said decree of the lower appellate court confirming the decree of the trial court, by which, the suit filed by the plaintiff was dismissed, the present second appeal has been filed.



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WEB COPY 7. Heard Mr. J.R.K. Bhavanantham, learned counsel for the appellant. Despite notice, there is no representation on behalf of the respondents.

8. The only contention of the learned counsel for the appellant / plaintiff is that, the courts below having observed that the land measuring 34 cents comprised in S.No.74/2B belonged to one Kovappa Reddy and the plaintiff having proved that the said Kovappa Reddy had sold only 32 cents to one Ramasamy under a sale deed dated 20.07.1956 under whom the defendants are tracing title, and that the said Kovappa Reddy retained 0.2 cents on the southern portion and the same was sold to the plaintiff on 26.07.1988 under Ex.A2, the courts below ought to have decreed the suit to an extent of 0.2 cents in favour of the plaintiff. It is not in dispute that the plaintiff and the defendants are tracing their title from Kovappa Reddy who originally owned 0.34 cents of land in S.No.74/2B. According to the plaintiff, the said Kovappa Reddy executed a sale deed in favour of one Ramasamy under Ex.A3 to an extent of 0.32 cents alone and retained 0.2 cents with him. It is further submitted that the southern



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He then executed a settlement deed under Ex.A1 in favour of one Kesavan on 19.08.1957, i.e., one year after execution of Ex.A3 sale deed.

Whereas, the contention of the defendants is that though the said Kovappa Reddy sold 0.32 cents of land under Ex.A3 sale deed in favour of Ramasamy, he handed over possession of entire 0.34 cents to Ramasamy. Therefore, the burden is on the plaintiff to prove that the possession of 0.2 cents was retained by Kovappa Reddy and that the settlement deed in favour of Kesavan was acted upon and he was in possession of the said property. No revenue records was produced on the side of the plaintiff to establish the same. It is also not established by the plaintiff as to who has constructed the superstructure in the above 0.2 cents of land. Though it is contended that on 01.03.2008 the plaintiff was dispossessed by the defendants, the plaintiff failed to prove that he was in possession of the suit property prior to the alleged dispossession on 01.03.2008. No doubt, Ex.A3 sale deed reveals that only 0.32 cents was sold to Ramasamy and the southern boundary of the property conveyed under the said sale deed is shown to be retained by Kovappa Reddy. But,



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the burden is on the plaintiff to show that the possession was handed over by Kovappa Reddy to Kesavan and thereafter, the plaintiff's wife Banumathy and the plaintiff were in possession of the above 0.2 cents of land. As rightly pointed out by the courts below, as per Article 65 of the Limitation Act, 1963, claiming for possession of immovable property based on title, the suit ought to have been filed within a period of 12 years from the date when the possession of the defendants becomes adverse to the plaintiff. Since the plaintiff failed to prove that the plaintiff and his predecessor in title were in possession and enjoyment of the suit property from 1957, the year of execution of Ex.A1 sale deed and was dispossessed on 01.03.2008, the suit is hopelessly barred by limitation. Moreover, the plaintiff himself admitted that he visited the suit property lastly only during 1988. Hence, the contention of the appellant/plaintiff that he was dispossessed on 01.03.2008 cannot be sustained. No perversity or infirmity is found in the said findings of the courts below.



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WEB COPY 9. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.
- ii. the judgment and decree dated 18.09.2017 passed in A.S. No.28 of 2014, on the file of the Principal District Court, Thiruvallur, confirming the Judgment and decree dated 27.03.2014 passed in O.S.No.86 of 2008, on the file of the Subordinate Court, Poonamallee, is upheld.

14.11.2025

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Principal District Court, Thiruvallur.
2. The Subordinate Court, Poonamallee
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
bga

Pre delivery Judgment in
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