



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.07.2025
Pronounced on	28.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

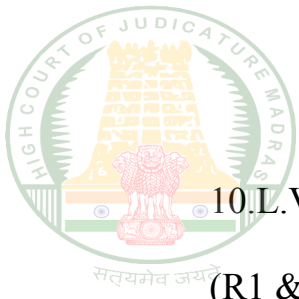
S.A.No.477 of 2011 and
M.P.Nos.1 and 2 of 2011

1.S.R.Dominic (died)
 2.Reeta
 (A2 brought on record as legal heir of the deceased sole
 appellant vide Court order dated 10.07.2025 made in
 C.M.P.Nos.26995, 26987 & 26999 of 2023)

... Appellants / Plaintiffs

Vs.

1.S.K.Padmanabhan (died)
 2.Irudhayamary (died)
 3.P.Louis Arokiaraj
 4.P.Amalraj
 5.P.Albert Victor
 6.P.Albert James
 7.Amolooper Leelamary (Died)
 8.Maria Selvaraj
 9.L.Samsolomon



10.L.Vasundra

(R1 & R2 died. RR3 to 8 are brought on record as legal heirs of the deceased R1 & R2. R7 died. RR9 and 10 are brought on record as legal heirs of the deceased R7 vide order dated 10.07.2025 made in CMP.Nos.13642, 13647 & 13650 of 2025 & CMP.Nos.26982, 26984, 26988, 26993 & 26994 of 2023)

... Respondents / Defendants

Prayer: Second Appeal filed under Section 100 of CPC., praying to set aside the judgment and decree of the learned Subordinate Judge, Kanchipuram made in A.S.No.17 of 2006 dated 11.02.2010 confirming the judgment and decree of the learned Additional District Munsif, Kanchipuram made in O.S.No.190 of 2001 dated 31.01.2005.

For Appellants : Mr.K.Nagarajan for
M/s.Majestic Law Firm

For Respondents : Mr.Y.Jyothish Chander for
R3, R4 & R6
R1, R2 & R7 died

JUDGMENT

The Second Appeal has been filed against the judgment and decree of the learned Subordinate Judge, Kanchipuram made in A.S.No.17 of 2006 dated 11.02.2010 confirming the judgment and decree of the learned Additional District Munsif, Kanchipuram made in O.S.No.190 of 2001 dated 31.01.2005.



WEB COPY

2. Heard the learned counsels for the appellants and the respondents and perused the materials available on record.

3. The plaintiff in O.S.No.190 of 2001, on the file of the Additional District Munsif Court, Kanchipuram, is the first appellant herein. O.S.No.190 of 2001 had been filed by the plaintiff, S. R. Dominic, seeking a judgment and decree against the defendants, S.K.Padmanaban and Irudayamary for a declaration that the plaintiff is absolutely entitled for the possession of the suit property and to grant permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property, and for costs of the suit.

4. The said property had been described as Punjai land, bearing S.No. 276/2, measuring 0.99 cents out of a total area of 1.91 acres in Molasoor Village, Sriperumbudur Taluk, Kanchipuram District. By judgment dated 31.01.2005, the Additional District Munsif at Kanchipuram dismissed the suit. Thereafter, the plaintiff filed A.S.No.17 of 2006 before the Sub Court, Kanchipuram. By judgment dated 11.02.2010, the Appeal Suit was also dismissed and the decree and judgment of the Trial Court was confirmed and



WEB COPY

the present Second Appeal has been filed by the plaintiff. Pending the Second Appeal, the first appellant died and his legal heir has been brought on record as the second appellant in this Second Appeal. The first and second respondents also died, and their legal heirs have been brought on record as 3rd to 8th respondents. R7 had died and the legal heirs of R7 had been impleaded as R9 and R10.

O.S.No.190 of 2001 (Additional District Munsif Court, Kanchipuram)

5. In the plaint, the plaintiff, S.R.Dominic, had contended that the suit property, namely Punjai land bearing S.No.276/2, measuring 0.99 cents out of a larger area of 1.91 acres in Molasur village, Sriperumbudur Taluk, Kanchipuram District, absolutely belonged to him. It originally belonged to one Josephine, wife of Lourdhusamy. The plaintiff had purchased the suit property for adequate consideration by a sale deed dated 19.11.1999. The plaintiff had been raising crops in the suit property and was in actual possession. It had been further stated that the suit property in S.No.276/2 totally measures 1.91 acres, and the adjacent property in survey number 276/1 totally measures 1.92 acres. Both the lands and other properties



originally belonged to the family of the Savarayya Naidu and there was a koorchit dated 04.07.1980.

WEB COPY

6. It had been stated that the suit schedule property in S.No.276/2, measuring 0.99 cents out of a larger area of 1.91 acres had fallen to the share of Lourdhusamy under 'D' schedule in Koorchit. It had been stated that all the sharers have signed the Koorchit. However, while describing the property, the survey number has been wrongly given as 275/2 instead of 276/2. It had been stated that the land in S.No.276/1, measuring 1 acre out of the larger area of 1.92 acres, fell to the share of Santhammal under 'E' schedule. There also the Survey Number was wrongly given as 275/1 instead of 276/1. Annammal was given with 1 acre out of a larger area of 1.92 acres under 'F' schedule. It was also again wrongly mentioned as S.No.275/1 instead of 276/1.

7. It had been stated that the total land in S.No.276/2 was shared between Lourdhusamy and Augustine. Lourdhusamy was given 0.96 cents in D schedule, and Augustine was given the remaining 0.96 cents under B



WEB COPY

schedule. B schedule was also wrongly mentioned as S.No.275/2 in the Koorchit. It had been further stated that Lourdhusamy deserted his wife Josephine and his whereabouts were not known. The suit lands were cultivated by another family member by name John, who executed Muchalika in favour of Josephine. It had been further stated that Josephine filed a suit in O.S.No.955 of 1990 before the Principal District Munsif Court at Kanchipuram against John for recovery of possession and recovery of arrears. The suit was decreed for recovery of arrears but dismissed for recovery of possession. Josephine then filed A.S.No.19 of 1995 before the Sub Court, Kanchipuram. The said Appeal was allowed by directing John to surrender possession of the land to Josephine who in turn took possession of the suit property through Court and conveyed the land in favour of the plaintiff.

8. It had been stated that the first defendant had purchased an extent of 0.92 cents in S.No.276/2 on 23.9.1994 from Santhammal. She then had given power of attorney to one Xavier for 0.25 cents out of a larger area of one acre. The power of attorney agent, Xavier, sold 0.25 cents in S.No.276/2 to the second defendant. It had been stated that Annammal herself had no



WEB COPY

right of title with respect to the lands in S.No.276/2, which had been shared by Augustine and Lourdhusamy. It had been contended that Santhammal and Annammal were entitled to portions of land in S.No.276/1 alone. It had been stated that both Santhammal and Annammal had no right in the entire land in S.No.276/2 and they were entitled only to the land in S.No.276/1. However, taking advantage of the wrong description of the survey number and also the extent in the sale deed in favour of the first defendant as well as the second defendant, both the defendants were trying to disturb the peaceful position of the plaintiff. It had been stated that since there was a rival claim of title, the suit had been filed seeking declaration of title and permanent injunction to protect possession.

9. A written statement had been filed on behalf of the defendants, denying the contentions raised by the plaintiff. It had been stated that the vendor of the plaintiff, Josephine, wife of Lourdhusamy, did not have any right or title to convey the suit schedule property to the plaintiff. It was denied that the plaintiff was in possession of the suit property. It was further denied that Lourdhusamy was allotted with the suit schedule property under the Koorchit. It had further been stated that the claim made by the plaintiff



WEB COPY

has to be rejected. It had however been stated that some confusion had arisen in giving the correct survey number in the family division. It had been stated that the correct survey numbers are S.No.276/1 and S.No.276/2. It had been stated that lands were allotted under the Koorchit and there was no division by metes and bounds and there was no demarcation of boundaries. It had been stated that therefore on or about 1983, with the help of village mediators and relatives, the lands in survey number 276/1 and 276/2 were divided into four shares. The first share was allotted to Augustine, the second share was allotted to Lourdhusamy, the third share was allotted to Santhammal and the fourth share was allotted to Annammal.

10. It had been further stated that there had been further encumbrances made over the property. It had also been stated that Lourdhusamy was allotted an undivided 0.96 cents in the composite field in S.No.276. It had been stated that the first defendant had purchased a share of the property from Santhammal in a registered sale deed dated 23.09.1994. She had earlier purchased the property from Augustine under the sale deed dated 21.05.1985. It had been contended that over that portion, the defendants had constructed poultry shed and were carrying on poultry and farming



activities. It had been further stated that the first defendant had purchased further property from Santhammal under a registered sale deed dated 13.02.1995 for adequate consideration. He also purchased the share which had been allotted to Annammal and took delivery of the respective shares and claimed that he was in continuous and exclusive possession.

11. It had been further stated that the first defendant had to obtain electricity connection and therefore, granted power of attorney to Xavier. The plaintiff had also dug a bore well and constructed shed over the suit schedule property. The power of attorney Xavier, later sold 0.25 cents to the second defendant. The defendants stated that they were together growing paddy crops and also raising several fruit bearing trees. It had been stated that the plaintiff was entitled only to the demarcated share, which was barren and vacant, which was surrendered by John to Josephine, measuring 0.96 cents. In the written statement, all the contentions raised by the plaintiff had been denied.

12. On the basis of the above pleadings, the learned Additional District Munsif, Kanchipuram, had framed the following issues.



WEB COPY

S.A.No.477 of 20



"1. Whether the plaintiff is in actual possession and enjoyment of the suit property?

2. Whether the plaintiff is entitled for declaration for the portion marked as ABCD in the plaint plan?

3. Whether the plaintiff is entitled to permanent injunction as prayed for?

4. To what reliefs?"

13. During the course of the trial, the plaintiff had examined himself as P.W.1 and marked exhibits Ex.A1 to Ex.A14. Ex.A1 was the sale deed in the name of the plaintiff dated 19.11.1999. Ex.A2 is the certified copy of the sale deed executed by Santhammal in favour of S.K.Padmanabhan. Ex.A3 is the certified copy of the sale deed executed by Santhammal in favour of S.K.Padmanabhan. Ex.A4 is the certified copy of the sale deed executed by Augustine in favour of Santhammal. Ex.A6 is the certified copy of the sale deed executed by P.J.Xavier in favour of Irudhayamari. Ex.A7 is the certified copy of the sale deed executed by Annammal in favour of S.K.Padmanabhan. Exs.A8 to A11 are the certified copies of the judgment and decree in O.S.No.955 of 1990, before the Principal District Munsif



Court, Kanchipuram and A.S.No.19 of 1996 before the Sub Court,
Kanchipuram.

WEB COPY

14. The first defendant was examined as D.W.1. He marked exhibits Ex.B1 to Ex.B8. Ex.B1 to B3 and B6 were sale deeds executed by Augustine, Santhammal, Annammal and Xavier in favour of Santhammal, S.K.Padmanabhan and Irudhayamari. Ex.B4 was a Patta in favour of S.K.Padmanabhan. Exhibits B7 & B8 were the adangal and kist receipts.

15. An Advocate Commissioner was appointed and his rough sketch, plan and report were marked as Exhibits C1, C2 and C3 respectively. On the basis of the above pleading and evidence adduced, the learned Additional District Munsif had observed that though it is admitted that the survey number mentioned in the schedule of the property was wrongly given as 275/2 instead of 276/2, it cannot be concluded that Josephine was in possession and enjoyment of the land in S.No.276/2. It had been further observed that no revenue records were brought to show either Josephine or the plaintiff was in possession. It had been further stated that no boundaries



WEB COPY

of the suit property and no records to show possession had been produced. It had been further stated that there was no document to show that Josephine took possession of the suit property. On the other hand, the learned Additional District Munsif examined Ex.B4 Patta and Ex.B5 adangal showing that the first defendant was in possession and enjoyment of the property in S.No.276/2 and Ex.B8 kist receipt also established that the first defendant was paying tax to the government.

16. With respect to the purchase of 0.25 cents of property in S.No.276/2 by the second defendant from her husband through power of attorney agent Xavier, it had been stated that it was the specific case of the second defendant that she had purchased 0.25 cents of property in S.No.276/2. But she had not taken any steps to mutate even the patta in her name. It had been stated that the burden was on the plaintiff to prove possession and enjoyment of the suit property and that the plaintiff had not established the same. The said issues were therefore answered against the plaintiff. Thereafter, the learned Additional District Munsif had also examined the issue of declaration of title and stated that there was no document produced to show that the vendor of the plaintiff had title to the



WEB COPY

property. It had been stated in the plaint that the enjoyment of the property was not on the basis of the Koorchit. It had been stated that there was no document produced to show either possession or title of the vendor of the plaintiff. It had finally been held that the plaintiff had failed to prove title and possession and the suit was therefore dismissed.

A.S.No.17 of 2006 before the Sub Court, Kanchipuram :

17. The plaintiff then filed a First Appeal before the Sub Court, Kanchipuram. The learned Sub Judge re-examined the evidence and again found that there was no document to show title in the name of Josephine, the previous vendor of the plaintiff. It had been stated that though Josephine was declared as owner of 0.96 cents out of 1.92 acres in S.No.276/2, the boundaries had not been given, the delivery receipt had also not been given and it was therefore evident that Josephine was originally having 0.96 cents out of a larger area of 1.92 acres in S.No.276/2 has not been established in the manner known to law. The learned Sub Judge had examined in detail the evidence adduced and it had been finally held that the plaintiff / appellant had failed to prove that the suit property was in his possession either under Ex.A5 or that, his vendor had title to the portion in S.No.276/2. It had been



again stated that there was no boundaries provided for the land. In view of all these reasons, the Appeal Suit had been dismissed.

WEB COPY

S.No.477 of 2011

18. The plaintiff had then filed the present Second Appeal. Pending the Second Appeal, the first appellant and both the respondents had died and their legal heirs have been brought on record. The Second Appeal had not yet been admitted. The first appellant had filed the Second Appeal claiming that both the Suit and the First Appeal had been wrongfully dismissed and further claiming that the decree of declaration of title must be granted to him.

19. The land in S.No.276/1 and S.No.276/2 originally belonged to Savarayya Naidu. Savarayya Naidu and his wife Rejina Ammal and their children, Augustine, John, Lourdhusamy, Santhammal, Annammal, Selvaraj, Benji alias Benjamin, Irudhayam and Amalraj had entered into a Koorchit dated 04.07.1980. It is contended that the Survey Number was wrongly given as S.No.275/1 and S.No.275/2. It had been contended that each one of the children had been allotted lands. It is seen from the facts that the plaintiff will necessarily have to prove the title over the lands. Since the lands are vacant lands, possession will follow title. The first appellant placed strong



WEB COPY

reliance on the sale deed in his name which was marked as Ex.A1 dated 19.11.1999. In the sale deed, the mistake in survey number continued. It is an admitted fact that the plaintiff had purchased the lands in S.No.276/1 and 276/2. But this has to be weighed with the patta Ex.B4 produced by the defendants and also the Adangal and Chitta issued for doing cultivation by the defendants. Both the Courts below had given a specific finding that the lands were not been demarcated into metes and bounds and that therefore, even the title of Josephine was under the cloud.

20. Both the Courts below had again consistently stated that the first appellant had not produced any document to show possession of the land. It had only been contended that the lands were used in common and there were no boundaries and there was also no evidence produced by the plaintiff / first appellant to establish possession of the lands and that he was doing cultivation over the lands. The patta in the name of the first defendant and the Adangal and Kist receipts have been marked as Ex.B4, Ex.B7 and Ex.B8 and they very clearly establish that the defendants were in possession. The reasoning of the First Appellate Court was that even though Josephine was declared as owner as per the judgment of the Appellate Court in A.S.No.19



WEB COPY

of 1995 with respect to 0.96 cents, the boundaries of the property had not been given and delivery receipts had also not been given.

21. It is seen that even in the sale deed, the four boundaries do not tally with Ex.C3. In Ex.C3, bore well and shed had been constructed in the eastern portion of S.No.276/2. There was a confusion among the family members relating to survey numbers as well as the lay of the property. It is seen that the first appellant / plaintiff was himself not able to localize where his property was situated. It has to be held that the first appellant had failed to exercise due diligence by producing documents for the property. Therefore, it is held that the relief sought namely declaration of title and permanent injunction cannot be granted by this Court.

22. In view of these reasons, I hold that no substantial question of law arises for consideration. The entire issues surround only facts which have been conclusively determined by both the Trial Court and the First Appellate Court.

23. In view of the same, this Second Appeal fails. I would however grant liberty to the second appellant to apply to the authorities to conduct a



WEB COPY

survey of the total lands in both the survey numbers in S.No.276/1, S.No.276/2 and examine whether the lands purchased under the sale deed from Josephine could be identified. This exercise would also benefit the respondents. All of them can thereafter, if possible, come to some agreement over the possession of their respective shares.

24. The Second Appeal is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

28.08.2025

Index : Yes
Neutral Citation : Yes
Speaking Order
gsk



WEB COPY

S.A.No.477 of 20



C.V.KARTHIKEYAN, J.

gsk

To

- 1.The Subordinate Judge,
Kanchipuram.
- 2.The Additional District Munsif,
Kanchipuram.

S.A.No.477 of 2011 and
M.P.Nos.1 and 2 of 2011

28.08.2025