



S.A.No.648 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.05.2025

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

S.A.No.648 of 2011
and M.P.No.1 of 2011

1. Sivalingam
- 2.Chokkalingam
- 3.Ramakrishnan

... Appellants / Defendants

vs.

- 1.Gunasekaran
- 2.The Thasildar, Harur.
- 3.The District Collector, Dharmapuri.
- 4.Varugiyammal
- 5.Nagaraj
- 6.Suguna

(Defendants 3 to 6 are suo motu arrayed as
respondents 2 to 6 vide Court Order dated
26.02.2025 made in CMP.No.3529 of 2017
in S.A.No.648/2011)

... Respondents / Plaintiffs

PRAYER: This Second Appeal is filed under Section 100 of C.P.C., against the judgment and decree in A.S.No.13 of 2010, dated 08.02.2011 on the file of Subordinate Court, Harur, confirming the judgment and decree in O.S.No.262 of 2003 dated 14.12.2009 on the file of the District Munsif

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Court, Harur.

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For Appellants : Mr.R.Balasubramanian
For R1 : Mr.S.Saravanakumar
for M/s.I.Abrar Mohamed Abdulla

For R2 & R3 : Mr.P.Gurunathan
Addl.Govt.Pleader

For R4 to R6 : No Appearance

JUDGMENT

This second appeal has been preferred by the defendant Nos.2, 7 & 8 against the Judgment and Decree dated 08.02.2011 passed by the Subordinate Court, Harur in A.S.No.13 of 2010.

2. The parties are indicated herein as per their litigative status and ranking made before the Trial Court.



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3. According to the plaintiffs, the suit property is the ancestral property. The first plaintiff is the son of Chinnappa Gounder and the second plaintiff is the son of Late.Vengan. The second plaintiff's grandfather Ratchan @ Vengan also is no more. The abovesaid Chinnappa Gounder and Ratchan @ Vengan are brothers. Patta for the suit property stands in the name of one Chinnappa Gounder and other Vengan jointly. The plaintiffs are in exclusive possession and enjoyment of the suit property after the death of Chinnappa Gounder and Vengan from 1995, the defendants no.1 and 2 are father and son and they own land next to the suit property. Names of the second plaintiff's father and the first defendant are one and the same and their father's name are in different. The second plaintiff's father name is Vengan S/o.Ratchan @ Vengan. The first defendant name is Thaliyan @ Vengan. There is no other relationship between the plaintiffs and the defendant Nos.1 & 2. The first defendant along with the second defendant fraudulently changed the name of the second plaintiff's father in respect of patta and as per the order of defendant Nos.3 & 4 in Order No.1230 of 1992 dated 06.08.1992,



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patta was granted in favour of defendant Nos.1 & 2 and they encroached

into the suit property in the year 1992. Hence the suit is laid for the relief

of declaration of title, for recovery of possession from the defendant Nos.1

& 2 and to declare that the order of the third defendant dated 06.08.1992

is null and void.

4. Contending contra, the defendant Nos.2 , 7 & 8 would contend that it is incorrect to state that the suit property belonged to the plaintiffs.

It is also incorrect that the persons namely Ratchan @ Vengan and Thaliyan @ Vengan are called as “Vengan”. It is also incorrect to state that the impugned order is not a legal one. The suit property has been in possession and enjoyment of the second defendant for the past 80 years and they have prescribed title by adverse possession.

5. Based on the divergent pleadings, the Trial Court framed the following issues :-

- i)Whether the plaintiffs are entitled to relief of declaration of title in respect of the suit property?



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- ii)
- iii) Whether the plaintiffs are entitled for the relief of recovery of possession?
- iv)
- v) Whether the plaintiffs are entitled for the relief of declaration in respect of the order of third defendant dated 06.08.1992?
- vi)
- vii) Whether the defendants have prescribed title by adverse possession?
- viii)
- ix) To what other relief, the plaintiffs are entitled to?

6. At trial, to substantiate the plaint details, on the plaintiffs' side two witnesses have been examined and five documents were marked. Ex.A1 is the patta notice dated 30.12.1986. Ex.A2 is the UDR patta in the namer of Chinnappa Gounder, Ratchan @ Vengan. Ex.A3 to A5 are the kist receipts. On the defendants 1 and 2 side, two witnesses have been examined and two documents have been marked. Ex.B1 is the patta dated 01.06.2009.

7. Upon consideration of oral and documentary evidence and after



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hearing the arguments advanced by both sides, the Trial Court has concluded that the plaintiff is entitled for the relief sought for in the plaint and decreed the suit in entirety.

8. Aggrieved, the defendant Nos.2, 7 & 8 preferred appeal before the Subordinate Court, Harur in A.S.No.13 of 2010. Upon persual of the entire case records and after hearing the arguments advanced by both sides counsels, the First Appellate Court observed that the plaintiffs have proved their case based on Ex.A1 to Ex.A5 and confirmed the Judgment and decree of the Trial Court by dismissing the first appeal.

9. Aggrieved of the above said findings of the First Appellate Court, the defendant Nos.2, 7 & 8 have preferred this Second Appeal.

10. The following substantial question of law arises for consideration”-



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Whether the Court below were justified in decreeing the suit filed by the respondents without production of any material documents of title relating to the suit property by the respondents?

11. Sum and substance of the plaintiffs' case is that the suit property is the ancestral property of the plaintiffs and the revenue records stand in the name of the plaintiffs' ancestors and the defendants have encroached into the suit property in the year 1992 and declaration of title, recovery of possession in respect of the suit property with other relieves were sought for.

12. Whereas on the defendant Nos.1, 2, 7 & 8 side, it is strongly contended that the suit property has been in possession and enjoyment of the defendants 1 and 2 and their predecessors for the past 80 years. The first plaintiff's father Chinnasamy Gounder, the second plaintiff's paternal grandfather viz., Ratchan @ Vengan are brothers. Ex.A1 is the notice



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issued in the name of Chinnasamy Gounder and Vengan S/o.Ratchan @

Vengan dated 30.12.1996 in respect of the suit property namely

S.No.53/2010 for an extent of 0.01.5 ares. Ex.A2 is the patta in the name

of the above said two persons in respect of the suit property. Patta

Number.39 is granted under UDR Scheme. Ex.A3 to A5 are the kist

receipts in the name of Vengan S/o.Ratchan in respect of the suit property

for the Pasali year i.e. 1400, 1402 & 1405. It is relevant to note that P.W.1

would state that the defendant Nos.1, 2 , 7 & 8 have encroached in the

suit property in the year 1992. Whereas, Ex.A5 is the kist receipt dated

07.04.1996. Kist is Rs.62/- paid in respect of the suit property also.

Ex.B1 is the patta dated 01.06.2009 granted in the name of Sivalingam,

S/o.Thalian @ Vengan. In Ex.P.1 – Patta, suit property found as a item

No.1.

13. As per Section 101 of Indian Evidence Act, one who pleads to prove. The burden of proof lies on the plaintiffs to prove his case and he has discharged the said burden of proof to effect that the property belongs



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to the plaintiffs. As per Sections 101 & 102 of Indian Evidence Act, 1872,

the plaintiffs to succeed, it has to be established that the plaintiffs is legally

title to the suit property and consequently they are entitled for the decree

of possession. Suit has been laid for the relief of declaration of title to the

suit property. It is well settled that patta is not a document of title. When

the plaintiffs have stated that the suit property is the ancestral property of

the plaintiffs, how the suit property came to the hands of their

predecessors is not stated and no documents of title in respect of the suit

property is filed and marked during trial in order to prove the fact that the

suit property belongs to the plaintiffs' ancestors so as to prove the title of

the suit property. Ex.A2 – patta alone is marked and it is granted in the

year 1986 under UDR Scheme. The main relief sought for in the plaint is

for declaration of title to the suit property. Based on Ex.A2 – patta alone

suit is decreed by the trial Court and it has been confirmed by the First

Appellate Court which is incorrect and therefore the Judgment of the First

Appellate Court has to be necessarily interfered with. Based on the

aforesaid discussions, the substantial question of law is answered in



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favour of the appellants/defendants herein.

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14. Based on the aforesaid observations and discussions, this second appeal stands allowed. Sequel to this, the Judgment and Decree dated 08.02.2011 passed by the Subordinate Court, Harur in A.S.No.13 of 2010 stands set aside and the suit in O.S.No.262 of 2003 on the file of the District Munsif Court, Harur, stands dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

29.05.2025

Index : Yes/No

Speaking / Non-speaking order

kkd

To

1. The Subordinate Court, Harur,
2. The District Munsif Court, Harur.



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R.KALAIMATHI, J.,
kkd

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