IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 24.11.2025

CORAM:

THE HON'BLE Mr.JUSTICE **P.DHANABAL**

S.A.No.344 of 2015 &
M.P.No.1 of 2015

G.Shantha ... Appellant

Vs.

1. G.Nagalingam
2. Shantha Kumari ... Respondents

Prayer:

Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 12.03.2015 made in A.S.No.46 of 2014 on the file of the Sub Court, Vellore in reversing the Judgment and Decree dated 26.06.2014 passed in O.S.No.85 of 2011 on the file of the District Munsif Court, Katpadi

For Appellant : Mr.P.Mani

For Respondents : No appearance

JUDGMENT

This Second Appeal has been preferred as against the decree and Judgment passed by the learned Subordinate Judge, Vellore in Appeal Suit in A.S.No.46 of 2014 dated 12.03.2015. The appellant herein, being the plaintiff, has filed the suit in O.S.No.85 of 2011 on the file of the learned District Munsif, Katpadi for the relief of Declaration and Recovery of Possession and the same was decreed in favour of the plaintiff. Aggrieved by the said Decree and Judgment, the defendants have preferred the appeal before the learned Subordinate Judge, Vellore in A.S.No.46 of 2014. The First Appellate Court reversed the Decree and Judgment passed by the trial court and dismissed the suit. Challenging the said Decree and Judgment, the present Second Appeal has been filed by the plaintiff.

2. For the sake of convenience and brevity, the parties in this Second Appeal are referred as plaintiff and defendants as referred before the trial court.

3. The brief averments of the plaint are as follows:-

(i) The suit property originally belonged to the father of the plaintiff, viz., Kesava Achari and he purchased the suit property on 02.04.1945 from one Chinnapa Gounder for joint family, thereafter, on 01.04.1967, the plaintiff's father and his brother, Kannappa Achari partitioned the properties through partition deed and the suit property was allotted to the share of the plaintiff's father. The plaintiff's father, Kesava Achari enjoyed the property as the owner till his death and the plaintiff's father had two sons, the plaintiff and one Janarthanam. Further, the father of the plaintiff died intestate on 07.12.1982. After the demise of plaintiff's father, the another son, viz., Janarthanam was missing for long time and his whereabouts were not known to the plaintiff and thereby he was not added as party to the suit. Further, patta also granted in the name of the plaintiff for the suit property and she is also paying house tax to the Panchayat.

(ii) Further, the 2nd defendant is the cousin sister to the plaintiff and the 1st defendant is the husband of the 2nd defendant. The plaintiff is living in Neyveli with her family and since the defendants are not owning any house for their shelter, on humanitarian grounds, at the request of the defendants, the plaintiff permitted the defendants to reside in the suit property. The plaintiff's name is Shantha and the 2nd defendant name is Santha Kumari, therefore, taking advantage of the similarity of the name, the 2nd defendant filed a suit in O.S.No.135 of 2010 for permanent injunction against the plaintiff alleging that she is enjoying the property for the past 25 years and thereby got title over the property by way of adverse possession. In fact, the defendants are in permissive possession and now the defendants are denying the title of the property and also refused to vacate the premises and thereby filed the suit.

4. The brief averments of the Written Statement filed by the defendants are as follows:-

(i) The suit is not maintainable and the same is liable to be dismissed. The plaintiff has to prove all the averments in the plaint, except those that are specifically admitted by the defendants. The allegation that the suit property originally belonged to one Kesava Achari, who is the father of the plaintiff and thereafter, the plaintiff's father and his brother, Kannappa Achari, partitioned joint family property and the said property was allotted to the plaintiff's father, are all denied. In fact, the suit property is natham poramboke land and the 2nd defendant has been in peaceful possession and enjoyment of the property for the past 25 years. After taking possession of the property, the 2nd defendant constructed a thatched house in the suit property and living along with her husband and children by regularly paying taxes to the revenue authorities.

(ii) Further, the 2nd defendant also obtained ration card and voter ID in the said address. The 2nd defendant also applied for patta before the concerned authorities and the same is pending. The plaintiff is the close relative, but she is not connected with the suit property and the plaintiff is living far away from the suit property but without title interest whatsoever, but with ulterior motive, in order to grab the suit property created lot of problems. Therefore, the 2nd defendant filed a suit in O.S.No.135 of 2010 as against the plaintiff and the same is pending. During the pendency of the above said suit, the plaintiff has filed this Suit in O.S.No.85 of 2011. The brother of the plaintiff, Janarthanam is very much available in Gudiyatham by suppressing the fact, the suit has been filed, therefore, the suit is bad for non-joinder of parties and liable to be dismissed.

5. Based on the above said pleadings and after perusing the records and hearing both sides, the trial court framed the following issues for trial:-

"1. Whether the plaintiff is entitled to the relief of declaration and possession?

2. To what other reliefs, the plaintiff is entitled to?'

Before the trial court, on the side of the plaintiff, P.W.1 and P.W.2 were examined and marked Exhibits A.1 to A.15. On the side of the defendants, D.W.1 and D.W.2 were examined and marked Exhibits D.1 to D.3. After evaluating the oral documents adduced on both sides, the trial court decreed the suit. Aggrieved by the said Decree and Judgment, the defendants have preferred appeal before the First

Appellate Court in A.S.No.46 of 2014 on the file of the Sub Court, Vellore on various grounds.

6. The First Appellate Court framed the following points for determination:-

'1. Whether the Judgment and Decree dated 26.06.2014 passed in O.S.No.85 of 2011 on the file of District Munsif Court, Katpadi is liable to be set aside?

2. To what other relief the appellants are entitled to?

After hearing both sides and perusing the records, the First Appellate Court reversed the Decree and Judgment passed by the trial court and dismissed the suit filed by the plaintiff. Aggrieved by the said Decree and Judgment, the plaintiff has preferred this Second Appeal.

7. At the time of admitting the present Second Appeal, this Court formulated the following Substantial Question of Law for consideration on 07.10.2016:-

"Whether the lower appellate Court erred in law and misdirected in holding that Ex.A2 does not relate to the suit property merely because the present boundaries differ from the boundaries as stated in Ex.A.12 executed 45 years ago and when

the door number stated in Ex.A.2 as well as in the house tax receipts produced by the defendant are one and the same?"

8. The learned counsel for the appellant would submit as follows:-

(i) The suit property was purchased by the plaintiff's father for the joint family through Ex.A.1, sale deed dated 02.04.1945. Thereafter, the plaintiff's father and his brother, Kannappa Achari, father of the 2nd defendant partitioned the properties through partition deed dated 01.04.1967. The said partition deed has been marked as Ex.A.2. As per the said partition deed, the suit schedule property was allotted to the share of the plaintiff's father, Kesava Achari. The plaintiff's father was in possession and enjoyment of the suit property and he died intestate on 07.12.1982 leaving behind the plaintiff and his brother, Janarthanam, whose whereabouts not known to the plaintiff. Further, Ex.A.4-Patta was also issued in the name of the plaintiff, in respect of the suit property, the plaintiff also paid house taxes from 23.07.1990 to 20.08.2009 under Ex.A.6 to Ex.A.15.

(ii) The 2nd defendant is none other than the plaintiff's cousin sister. Since the plaintiff is residing at Neyveli along with her family, she permitted the 2nd defendant to reside in the suit property and thereby the possession of the 2nd defendant is permissive possession. Taking advantage of the similarity in the names, by utilising tax receipts in the name of the plaintiff, 2nd defendant filed a suit in O.S.No.135 of 2010 for permanent injunction and the same is pending. Since the 2nd defendant denied the plaintiff's title over the property, the plaintiff has filed the suit for declaration and recovery of possession.

(ii) The defence of the defendants is that the property is natham poramboke land and the 2nd defendant is in peaceful possession and enjoyment of the property and she constructed a thatched house thereby she has been in possession and enjoyment of the property for more than 25 years. The plaintiff has not included her brother as one of the party to the suit, therefore, the defendants prayed to dismiss the suit.

(iii) The trial court after hearing both sides and after perusing the records, decreed the suit by holding that the plaintiff proved her case through oral and documentary evidences and the documents filed by the plaintiff shows that the property was purchased by the father of the plaintiff and thereafter, the plaintiff's father and his brother partitioned the property on 01.04.1967. As per the said partition, the suit properties were allotted to the share of the plaintiff's father and the plaintiff also produced patta and kist and house tax receipts, therefore, decreed the suit. However, the First Appellate Court erroneously reversed the Judgment of the trial court by holding that the suit property is not tallied with the properties mentioned in Exs.A.1 and A.2 and the patta and tax receipts are not related to the suit property and declaring the suit property without impleading brother of the plaintiff is bad for non-joinder of party. In fact, suit property and the property described in Ex.A.2, Partition deed are one and the same. The boundary description that existed at the time of filing the suit in the year 2011 has mentioned in the suit property, whereas the boundary description that existed at the time of execution of Ex.A.2, Partition Deed in the year 1967 had been mentioned in the Ex.A.2, partition deed.

(iv) Further, the Door number of the suit property as stated in Ex.A.2 Partition Deed is 3/19, the house tax receipts Exs.A.10, 11 and 12 filed by the plaintiff and Ex.B.1, House Tax Receipts Ex.B.2, Family card and Ex.B.3, Aadhar Card, filed by the defendants, the Door number has been correctly stated as 3/19. Subsequently, new Door No.3/38 has been assigned to the suit property. The defendants also admitted the door number and also she admitted the door number mentioned in Ex.A.2 is also 3/19. The patta also stands in the name of the plaintiff of the suit property and D.W.1 also admitted that in the receipts filed by her, the patta no.478 has been mentioned and in the patta no.478, the name of the plaintiff is mentioned. The old survey number of the suit property is 239/3 and the new survey no.239/26, the survey number has been mentioned in Ex.A.4, patta issued in the name of the plaintiff. In Ex.A.2, partition deed, 'B' Schedule, the western boundary is stated as 'Mel Street' in the suit schedule property western boundary is stated as 'Street'. The suit schedule eastern boundary is the property belongs to 'Muthu Mudaliar'. Ex.A.2, partition deed, 'B' Schedule, eastern side boundary is mentioned as 'Balamuthu Mudaliar Puzhakadai'. The sons of Balamuthu Mudaliar sold the property on the eastern side to one Rukmani, as per sale deed dated 12.09.1997 and the suit schedule the northern boundary has been mentioned in 'Varadaraj @ Abbai Mandri'. In Ex.A.2, northern boundary 'B' schedule property was allotted to the father of the 2nd defendant. The father of the 2nd defendant sold his property to Kuppusamy Achari through sale deed dated 05.04.1969. As per suit schedule, the extent is mentioned as East to West – 80 feet, North to South - 40 feet and total extent as 3200 sq.ft.,

(v) As per Ex.A.2, partition deed, 'B' Schedule, East – West – 26 3/4 Gajam, ie., 80.25 feet, north-south on the western side – 14 Gajam, i.e., 42 feet, on the eastern side – 12 Gajam i.e., 36 feet, total, 3130 sq.f.t, therefore, the measurements also, both in suit schedule and exhibits are more or less are the same. The defendants also did not raise any plea with respect to the identity of the property in the written statement nor any issue or point of determination was framed by the trial court and the Lower appellate court with respect to the identity of the property, therefore, the First appellate court has erroneously allowed the appeal and dismissed the suit. Therefore, the decree and judgment passed by the first appellate court are liable to be set aside.

9. Though the name of the respondents are printed in the cause list and already ample chances were given to the respondents by this Court, there is no representation for the respondents. Therefore, this Court after hearing the appellant's side and perusing the records passed this Judgment.

10. In this case, the plaintiff, who is the appellant herein has filed a suit for declaration and recovery of possession in respect of the suit property. According to the plaintiff, the suit property was purchased by the plaintiff's father through sale deed dated 02.04.1945. The said Original sale deed has been marked as Ex.A.1, thereafter, the father of the plaintiff and his brother, who is the father of the 2nd defendant entered into partition deed dated 01.04.1967. The said original deed was marked as Ex.A.2. The Ex.A.4 is the original patta, in the name of the plaintiff, Exs.A.6 to A.15 are the house tax receipts.

11.On careful perusal of the documents, it is clear that the property was purchased by the plaintiff's father and thereafter, the plaintiff's father and his brother partitioned the property. In the partition deed, Door number was mentioned as 3/19. The extent was mentioned as East-West = 26 ¾ Gajam; North South on Western side – 14 Gajam; on Eastern side – 12 Gajam. One Gajam is equal to 3 feet, therefore, the extent of property, East-West – 26 ¾ = 80.25 feet. On the North-South : Western side – 42 feet; Eastern side – 36 feet. The suit property also described as East-West: 80 feet; North-South – 40 feet and Survey Number mentioned as 239/3, New Survey Number 239/26. The defendants also not disputed the identity of the property. According to the defendants, the plaintiff is no way connected to the suit property and the 2nd defendant along with the 1st defendant enjoying the property as natham property and the defendants are enjoying the same for more than 25 years and they are paying kist, tax receipts for the property. There is no dispute in identity of the property. Ex.A4 – Patta also stands in the name of the plaintiff and the plaintiff also paid property tax receipts. In the property tax receipt, the door number has been clearly mentioned. In Ex.A.2, partition deed also, the door number has been clearly mentioned as 3/19 and the tax receipts also revealed the same.

12. That apart, the 2nd defendant also in the cross examination admitted that in Ex.B-1 series, the door number has been mentioned as 3/19 and in Ex.A.15 also, the door number mentioned as 3/19 and the name of the owner is mentioned as Santha and also admitted Exs.A.7 to A.15, that the door number mentioned as 3/19. D.W.2 also admitted the door numbers found in the Ex.A.2 and tax receipts. D.W.1 also admitted that patta stands in the name of the plaintiff, therefore, the plaintiff has proved her case. The defendants have marked Exs.B.1 to B.3. Ex.B.1 is the tax receipts series stands in the name of the 1st defendant's wife. The name of the plaintiff is Santha and the name of the 2nd defendant as Santhakumari, therefore, mere tax receipts stands in the name of the 2nd defendant are not sufficient to prove the case of the defendants, Ex.B.2 and B.3 are Aadhar cards, therefore, the plaintiff proved her case and the defendants have failed to prove their case as to how they came into possession. In the absence of any evidence and when the plaintiff has documentary evidences in her favour in establishing the suit property, the contention of the plaintiff that the defendants are on permissive occupation is acceptable. Therefore, the trial court has correctly held that the plaintiff is entitled to the relief of declaration and recovery of possession.

13. The First Appellate Court without any issues in respect of non-joinder of necessary parties, held that suit is bad for non-joinder of necessary parties for non-inclusion of brother of the plaintiff, namely, Janarthanam. The plaintiff in the suit itself pleaded that his brother, Janarthanam whereabouts were not known and the suit is only against the third parties and thereby in the absence of brother of the plaintiff, the suit is maintainable and if the brother of the plaintiff claims any right over the property, that is between the plaintiff and her brother. Now the suit is as against the defendants, who are third parties to the property and the plaintiff is also a co-sharer the suit is maintainable. The first appellate court failed to consider that the door number mentioned in the Ex.A.2 and tax receipt are one and the same and the extent also tallied. The defendants without any records simply denied the plaintiff's averments and pleaded that the defendants are in possession and enjoyment of the suit property. When the plaintiff produced the original title deeds and also produced the revenue records in her name, the first appellate court erroneously disbelieved those documents particularly, the defendants has not denied the identity of the property. Therefore, the First Appellate Court has erroneously dismissed the suit by reversing the Judgment and Decree of the trial court.

14. As far as the Substantial Question of Law that **“Whether the lower appellate Court erred in law and misdirected in holding that Ex.A2 does not relate to the suit property merely because the present boundaries differ from the boundaries as stated in Ex.A.12 executed 45 years ago and when the door number stated in Ex.A.2 as well as in the house tax receipts produced by the defendant are one and the same?”** is concerned,

(i) The First Appellate Court came to the conclusion that the suit property and the property mentioned in Ex.A.2 are not one and the same and the property mentioned in Ex.A.2 does not relate to the suit property. Ex.A.2 is in the year 1967, where the door number has been mentioned as 3/19 and the house tax receipt also paid for the same door number. The four boundaries found in Ex.A.2 may not tally with the suit property, due to transfer of ownership, during the interregnum period. Moreover the suit was filed in the year 2011 and Ex.A.2 was pertaining to the year 1967, in the meantime, so many transactions happened and thereby the same four boundaries may not be possible as the same four boundaries mentioned in Ex.A.2, suit property. Therefore, the first appellate court failed to consider and appreciate the evidences in a proper perspective manner and the First appellate court erred in law and mis-directed by holding that the Ex.A.2 does not relate to the suit property, merely, because the present boundaries differ from the boundaries as stated in Ex.A.2 executed 55 years ago and when the door number stated in Ex.A2 as well as the house tax receipts produced by the defendants are one and the same. Thus, the Substantial Question of Law is answered.

In view of the above said discussions and answers to the Substantial Question of Law, the present Second Appeal is allowed and the Judgment and Decree passed by the First Appellate Court in A.S.No.46 of 2014 passed by the Sub Court, Vellore is set aside and the Judgment and Decree dated 26.06.2014 passed in O.S.No.85 of 2011 on the file of the District Munsif Court, Katpadi is restored. Considering the nature of the suit and the relationship between the parties, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

24.11.2025

Index:Yes/No
Internet:Yes/No
Speaking / Nonspeaking order
ssd

To

1. The Subordinate Judge,
   Vellore

2. The District Munsif,
   Katpadi

P.DHANABAL, J.

ssd

S.A.No.344 of 2015

24.11.2025