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SA No.43 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2025

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No.43 of 2015

Mahalakshmi (Died)

2.P.Kaliyaperumal

3.K.Kannan

4.S.Puvaneshwari

5.P.Rajendraprasad

: Appellants

A2 to A5 are B/R as Lrs of the
deceased sole appellant vide order
dated 07.02.2025 in
CMP No.10522/2023 in
SA No.43/2012 (KRSJ)
versus

Marimuthu

: Respondent

Prayer: Appeal filed against the judgment and decree dated 18.07.2014 in
AS No.9 of 2013 on the file of the Court of Subordinate Judge at
Nagapattinam reversing the judgment and decree dated 12.06.2013 in
O.S.No.275 of 2009 on the file of the Court of District Munsif at
Nagapattinam.



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For Appellants : Mrs.R.T.Shyamala

For Respondent : Mr.K.Raghuraman

JUDGMENT

This second appeal has been preferred as against the decree and judgment passed by the Sub Court, Nagapattinam in AS No.9 of 2013 dated 18.07.2014.

2. The appellant herein has filed the suit before the District Munsif Court, Nagapattinam in OS No.275 of 2009 for the relief of recovery of possession and the same was decreed in favour of the plaintiff. Aggrieved by the said decree and judgment of the trial court, the defendant had preferred appeal in AS No.9 of 2013 before the Sub Judge, Nagapattinam and the same was allowed and the decree and judgment passed by the Trial Court were set aside and the suit was dismissed. Aggrieved by the said decree and judgment, the present second appeal has been preferred by the appellant/plaintiff.



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

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3.1. The suit property and adjacent properties were purchased by the plaintiff through sale deed dated 06.03.1995 and he is in possession and enjoyment of the property. The plaintiff also purchased an extent of 40 cents land in RS No.22/5A at Puthur, Vadamalaiyan Pillan Thottam, where an extent of 8.25 cents land was sold and the remaining extent of 31.75 cents was retained with him. While so, in the month of February, 2006, on the eastern side, the defendant encroached 12x10 feet land and stored the straw and also put thorn bushes. After knowing that, when the plaintiff questioned the defendant, he assured to remove the straw, however, the same was not removed. Therefore, the plaintiff filed the suit for the relief of recovery of possession.

4. The brief averments of the written statement filed by the defendant are as follows:

4.1. The suit is not maintainable either in law or on facts and the plaintiff is put to strict proof of the averments made in the plaint except those that are specifically admitted herein. It is incorrect to state that the

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property belongs to plaintiff, in fact the property was given to Aanjaneyar

Temple as an inam by the king of Tanjore. Patta was also given in favour of the Aanjaneyar Temple. Therefore, the property belongs to Nagapattinam, Aanjaneyar Temple. Under the Inam Abolition Act, patta was given in the name of trustee, Venkataramana Rao. The plaintiff purchased the property through power agent and the same is forged one and the alleged sale deed also forged one. The said Venkataramana Rao had never executed any sale deed in favour of the plaintiff. The said power deed as well as the sale deed are not valid. Since the property belongs to the Temple, the plaintiff cannot claim any right over the property. In the suit survey number to an extent of EW 20 feet and NS 35 feet has been under the possession and enjoyment of the defendant's family for more than 75 years and there is a fencing around the said property. On the southern side of the suit schedule property, he constructed house and residing therein. The description of the property is not correct and the defendant is entitled to the property by way of adverse possession also. Therefore, the suit is liable to be dismissed.



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

- i) Whether the plaintiff is entitled to get possession as prayed for?
- ii) To what other reliefs?

6. Before the trial court, on the side of the plaintiff, PW.1 was examined and Ex.A1 to A14 were marked. On the side of the defendant, DW.1 was examined and Ex.B1 to B4 were marked. After analyzing the evidence adduced on both sides, the trial court decreed the suit by directing the defendant to handover the possession of the property to the plaintiff after removing the straw and thorns within two months.

7. Aggrieved by the said decree and judgment, the defendant has preferred an appeal in AS No.9 of 2013 on the file of the Sub Judge, Nagapattinam. The First Appellate Court framed the following points for determination:

- i) Whether the decree and judgment passed by the trial court dated 12.06.2013 in OS No.275 of 2009 is liable to be set aside by allowing this appeal.



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8. After analyzing the evidence adduced on both sides, and perusing the records, the First Appellate Court allowed the appeal and set aside the decree and judgment passed by the trial court and dismissed the suit.

9. Aggrieved by the said decree and judgment, the plaintiff has preferred this second appeal on various grounds. This Court at the time of admitting the appeal, framed the following substantial questions of law:

i) Whether the Lower Appellate Court was right in holding that for the sale of the property to the plaintiff, permission from the competent authority under the Tamil Nadu Hindu Religious and Charitable Endowment Act is necessary? and

ii) Whether the Lower Appellate Court was right in holding that the suit property belongs to the temple and not belongs absolute to one Mr.Venkataramana Rao.?

10. For the sake of convenience and brevity, parties will be referred as plaintiff and defendant as referred in the trial court.



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11. The learned counsel for the appellant would submit that the plaintiff, who is the appellant herein, has filed the suit for the relief of recovery of possession. Originally, the property was purchased by the plaintiff through sale deed dated 06.03.1995. The defendant in the month of February 2006, encroached northern side of the property to an extent of 12x10 feet and stored the straw by putting the thorn bushes around the place. When the same was asked by the plaintiff, the defendant refused to remove the said straw. Therefore filed the suit. In order to prove the case of the plaintiff, PW.1 was examined and marked Ex.A1 to A14. On the side of the defendant, DW.1 was examined and marked Exs.B1 to B4. The evidence of PW.1 and Exs.A1 to A14 clearly proved the case of the plaintiff whereas the defendant pleaded in one place that the property belongs to Aanjaneyar Temple and in other place, he stated that he is entitled to property by way of adverse possession since he is in possession and enjoyment of the property for more than 75 years. Once the defendant taken a plea of adverse possession, he should admit the title of the plaintiff.

11.1.The trial court after considering the evidences adduced on both sides, correctly decreed the suit but the First Appellate Court failed to

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appreciate the evidence in a proper prospective manner and erroneously allowed the appeal and dismissed the suit by holding that the property belongs to Temple. The First Appellate Court failed to consider that settlement patta relied on by the defendant, Ex.B2 is in the name of Ramachandra Rao and the son of Ramachandra Rao namely Venkataramana Rao sold the property through his power of attorney and already the said power deed was challenged through OS No.136 of 2006 on the file of the District Munsif Court, Nagapattinam for declaration that the power of attorney executed by Venkataramana Rao in favour of Kaliyaperumal is null and void and the same was dismissed and the second appeal in SA.No.835 of 2011 was partly allowed and the permanent injunction was granted in respect of SF No.22/5C.

11.2. The First Appellant Court first time came to erroneous conclusion without any basis that the suit schedule property belongs to HR &CE Department and the same cannot be alienated. The First Appellate Court failed to consider that the defendant himself admitted that he encroached the property along with his property in SF No.22/5C. In such circumstances, the First Appellate Court ought to have confirmed the

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judgment of the trial court. There was no pleadings that the suit schedule property belongs to HR & CE Department. Therefore, the judgment and decree passed by the First Appellant Court is erroneous and the same is liable to be set aside and the judgment and decree of the trial court is to be restored. The First Appellant Court without any issues in respect of permission from HR & CE Department and without considering the object of grant of Ryotwari patta to every person who was lawfully entitled to kudivaram rights in an inam land allowed the appeal and dismissed the suit.

12. Learned counsel for the respondent would submit that the suit property originally belonged to Aanjaneyar Temple, which was given as inam by king of Tanjore. After Inam Abolition Act, the patta for the suit property was given in the name of the trustee of the temple, Ramachandra Rao. Thereafter, the plaintiff has created the forged power deed in favour of her husband and also created the sale deed and the temple property cannot be sold by individual person. The defendant and his predecessors are in possession and enjoyment of the property, EW 20 ft NS 35 ft in the suit survey number for the past 75 years by putting up live fence and the defendant has house is in southern side of the suit property and the

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defendant is using the suit property as rear portion i.e. back yard of his house and therefore, the defendant is entitled to property by way of adverse possession. The plaintiff has not proved his case and the temple property cannot be sold without any permission of the Commissioner of the HR & CE Department. Further, on the side of the defendant, they examined DW.1 and marked Ex.B1 to B4. Without appreciating the evidences, the trial court erroneously decreed the suit. The defendant preferred an appeal and the First Appellant Court correctly appreciated the facts of the case and allowed the appeal, and held that since the property belongs to temple, without permission of the HR & CE Department, the property cannot be sold.

12.1. The Settlement Officer had recorded that the names of the grantees and the terms of original grant are not known but despite the same, held that kudiwaram interest prior to the appointed date in favour of predecessor in interest of the plaintiff. Merely in the absence of rival claim grant of patta under Section 8(1) of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, is illegal. By a wrong decision on kuduvaram interest, it shall not preclude this Court to go into the possession of title of the plaintiff. The patta issued under Section 11 of the Act is only

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for the purpose of assessing revenue and only incidentally on the nature and character of the land for the purpose of grant or refusal of Ryotwari patta.

Therefore the appeal is liable to be dismissed.

13. This Court heard both sides and perused the records.

14. In this case, the plaintiff filed the suit for recovery of possession. According to the plaintiff, he purchased the property through sale deed dated 06.03.1995. The defendant is adjacent land owner of the property. While so, in the northern side of the suit property, the defendant encroached some portion of 25x10 feet and thereby filed the suit for recovery of possession.

15. According to the defendant, the property belongs to Aanjaneyar Temple and the same was granted to the temple by the king of Tanjore and thereafter, the patta was issued in the name of trustee of the temple. However, the plaintiff fraudulently obtained power deed in the name of her husband and also got sale deed from her husband for the temple property. Further, the defendant pleaded that the said property is under the possession and enjoyment of the defendant's family for more than 75 years and

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therefore, he is entitled to the property by way of adverse possession. In order to prove the case of the plaintiff, he was examined as PW.1 and marked Ex.A1 to A14. On the side of the defendant, DW.1 was examined and marked Ex.B1 to Ex.B4. The trial court, after considering the evidences adduced on both sides, came to a conclusion that the documents filed by the plaintiff would show that the plaintiff purchased the property through Ex.A1 and patta also granted in her favour through Ex.A4. The Andagal and Chita are also in the name of plaintiff. The defendant have relied upon Ex.B1 to Ex.B4 alleging that the property belongs to temple and the defendant is in enjoyment and possession of the property for more than 75 years. In Ex.B2, order of Settlement Tahsildar, nowhere stated that the patta has been granted to Aanjaneyar Temple and the DW.1 has constructed his house in SF No.22/5D and during the cross examination, he admitted that he is residing in SF 22/5D, immediately on the northern side of the property, 25/5A is situated. Already the defendant attempted upon to encroach upon the Survey No.22/5A and the plaintiff filed a suit in OS No.93/99 and the same was decreed. Therefore, challenging the power deed executed in favour of the husband of the plaintiff, a suit was filed in OS No.136 of 2006 and the same was dismissed, First Appeal was also dismissed. The said decree and

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judgment were challenged through appeal and the appeal was also dismissed in the Second Appeal in 835/2011 and patta also granted in favour of Venkataramana Rao. Based on the above said evidences adduced on both sides, the trial court decreed the suit.

16. The First Appellate Court in the judgment held that the property in SF No.22/5A, the defendant has not claimed any right and only he is claiming right of enjoyment of the property and Ex.B2, patta was granted as the trustee of the temple. Since the plaintiff filed the suit for recovery of possession and the defendant is enjoying the property for more than 3 decades, he is entitled for adverse possession. Again, the First Appellate Court observed that without permission of the temple, the properties cannot be sold. The judgment of the First Appellant court is not in clarity, in one place, in paragraph No.10 held that the defendant is entitled to adverse possession, in another place, stated that the defendant is not claiming any right over of title of the property, only he is claiming possession of the property. Already the defendant was restrained by an order of this Court through decree and judgment in OS No.93 of 99, in respect of the Survey No.22/5A. Without considering the same, the First Appellate Court came to

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a conclusion that the defendant has been in possession and enjoyment of the property and he is entitled for adverse possession without any pleadings and evidence. Therefore, the abovesaid findings of the First Appellate Court are erroneous and unsustainable and liable to be set aside.

17. As far as the first substantial question of law that whether the Lower Appellate Court was right in holding that for the sale of the property to the plaintiff, permission from the competent authority under the Tamil Nadu Hindu Religious and Charitable Endowment Act is necessary is concerned, as per Ex.A1, the property was purchased by the plaintiff through sale deed dated 06.03.1995. The suit property has been mentioned as RS No.22/5A. The plaintiff also produced Exs.A2 to A5, Adangal extract, chitta extract and patta for RS No.22/5A. He also filed Exs.A6 and A7, tax receipts.

18. According to the plaintiff, she purchased the property through power agent Venkataramana Rao. The said power deed executed by Venkataramana Rao in favour of the husband of the plaintiff namely Kaliyaperumal was challenged through OS No.136 of 2006 and the same

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was dismissed. Again an appeal was preferred and the appeal also dismissed. As against the same, second appeal was preferred and the second appeal, was also dismissed except the property in respect of 22/5D. According to the defendant, the property has been encroached by him for more than 75 years and claiming the property through adverse possession. Already the defendant attempted to encroach the property in RS No.22/5A and the same was averted by the plaintiff and a suit in OS No.93 of 99 was also filed. The plaintiff obtained permanent injunction in respect of that property and the same was also admitted by the defendant through his cross examination. Therefore, the contention of the defendant that the property belongs to the temple is not acceptable.

19. Moreover, the defendant has produced Exs.B1 to B4. Ex.B1 is the evidence of cross examination of one Kaliyaperumal, deposed in O.S.No.136 of 2006, who is the one of the appellant herein. As far as relevancy of Ex.B1 is concerned, as per Section 33 of Evidence Act, evidence given by a witness in a judicial proceedings or before any person authorized by law to take is relevant for the purpose of proving in a subsequent judicial proceedings or in a later stage of the same judicial

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proceedings, to truth of the facts which is states when the witness is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense, which under the circumstances of the case, the Court considering unreasonable, provided that the proceeding was between the same parties or their representatives in interest that the adverse party in a first proceedings has the right of opportunity to cross examine, then the question in issue were substantially the same in the first as in the second proceedings.

20. In the case on hand, the said witness mentioned in Ex.B1, Kaliyaperumal was not a party to the present suit at the time of marking the document and the conditions mentioned in Section 33 have not been fulfilled to rely on the said Ex.B-1, as the said witness Kaliyaperumal was alive on the date of marking the said Ex.B-1. Therefore, the said Ex.B-1 cannot be relied upon. Ex.B2 is order of Settlement Tahsildar. Ex.B2 only pertaining to temple property belongs to Kaliyamman temple and patta was granted to the Kudiwaram in the name of Ramachandra Rao, whereas the suit property was purchased by the plaintiff from one Venkataramana Rao son of

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Ramachandra Rao. Therefore, the patta was granted in the name of Ramachandra Rao as Kudivaram of Kaliyamman temple and thereafter, the property was enjoyed by his son and the same was sold to the plaintiff. The plaintiff also produced the copy of the judgment in OS No.136 of 2006, wherein the said power executed by Venkataramana Rao in favour of Kaliyaperumal, who is husband of the plaintiff was challenged and the same was dismissed. The said judgment and decree were challenged through appeal and the first appeal was also dismissed. Against which, the second appeal has been preferred. This Court in second appeal No.835 of 2011 dismissed the second appeal except Survey No.22/5C.

21. It is an admitted fact that this suit is in respect of SF No.22/5A. Once the power deed executed by Venkataramana Rao was tested by the competent court, this court need not suspect the above said power deed. Therefore, there are no records to show that the property belongs to the Aanjaneyar temple and the defendant failed to prove that the property belongs to Aanjaneyar Temple. Even assuming that the property belongs to Aanjaneyar Temple, whether it was under the control of HR & CE Department or not, also one of the question and there are no records to show

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that the property belongs to temple and the temple is under the control of HR

& CE Department. The HR & CE department is also not party to the suit.

Therefore, without any records, the First Appellant Court wrongly came to the conclusion that the property belongs to temple and permission from the competent authority has to be obtained under the Tamil Hindu Religious and Endowment Act. Since patta was granted in favour of Ramachandra Rao, who is father of Venkataramana Rao and thereafter, the said Venkataramana Rao executed a power deed in favour of Kaliyaperumal and Kaliyaperumal sold the property to the plaintiff and the plaintiff is the owner of the suit property. Therefore, there are no records that the property belongs to temple.

22. The learned counsel for the respondent relied upon the following judgments:

i) Gurbux Singh vs Bhooralal reported in AIR 1964 Supreme Court 1810

ii) Ramalingam and 2 others vs Idol of Sri Thayumanasamy at Sri Thayumanasamy Devasthanam Arasaloor, Musiri Taluk, by its Executive Officer reported in 1998 (III) CTC 665

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iii) Srinivasan and 6 others vs Si Madhyarjuneswaraswami

Pattaviathalai, Tiruchirapally District by its Executive Officer reported in 1998 (I) CTC 630

iv) Bachhaj Nahar vs Nilima Mandal and Others reported in AIR 2009

Supreme Court 1103

v) R.Sundaram vs Raja Theaters, Dissolved firm, represented by its Erstwhile

Partner Ravindranath, and others reported in (2019) 8 MLJ 295.

23. On the careful perusal of the judgments produced by learned counsel for the respondent cited supra, this court is of the opinion that they will not be applicable to the present facts of the case because in this case, the defendant has not filed any suit challenging the Ryotwari patta granted to plaintiff's predecessor. Further, in this case, no relief was granted without any plea.



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25. As far as the second substantial question of law that Whether the Lower Appellate Court was right in holding that the suit property belongs to the temple and not belongs absolute to one Mr.Venkataramana Rao, is correct.

26. The plaintiff purchased the property from the power agent of Venkataramana Rao through sale deed 06.03.1995. The defendant raised a plea that the property belongs to Aanjaneyar Temple. There are no records produced by the defendant to prove that the property belongs to Aanjaneyar Temple. As per Ex.B2, patta was granted in the name of trustee of Kaliasammal temple, Kudiwaram, Ramachandra Rao. After demise of Ramachandra Rao, his son Venkataramana Rao executed power of attorney deed in favour of Kaliyaperumal. The power deed was challenged through court of law and the said suit was dismissed and it went up to High Court and this Court in second appeal upheld the judgment and decree of the courts below except the property of SF No. 22/5C. Therefore, the First Appellate Court, without any records came to the conclusion that the

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property belongs to Aanjaneyar temple when the records Ex.B2 itself shows the name of Kaliyamman temple, and the kudiwaram right, patta has been granted, however, the First Appellant Court held that the property belongs to the Aanjaneyar Temple. Therefore, the First Appellate Court is wrong in holding that the suit property belongs to the temple and not belongs absolute to one, Venkataramana Rao. Thus the substantial question of law is answered.

27. In view of the abovesaid discussions, and the answers to the substantial questions of law, the First Appellate Court had wrongly come to conclusion that the property belongs to Aanjaneyar Temple and without permission of the HR &CE Department, the temple property cannot be sold. Whereas the trial court came to the conclusion based on the records that the property was purchased by the plaintiff and thereby granted decree for recovery of possession.

28. Since, there is no cloud over the title of the property, the suit for recovery of possession without declaration is maintainable. Therefore, the decree and judgment passed by the trial court are to be restored and the

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judgment and decree of First Appellate Court are to be set aside. In the result, the second appeal is allowed and the decree and judgment passed by the First Appellate Court in AS No.9 of 2013 dated 19.07.2014 are set aside and the decree and judgment passed by the lower court in OS No.275 of 2009 dated 12.06.2013 are restored. Consequently, MP No.1 of 2015 is closed.

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