



S.A.No.920 of 2019

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.07.2025
Pronounced on	19.09.2025

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A.No.920 of 2019

1. Vijayakumar
2. Manavalan
3. Malarvannan ...Appellants

Vs.

S. Sivaraman ... Respondent

Prayer : Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 15.04.2019 made in A.S. No.8 of 2019 on the file of the learned Additional Subordinate Judge, Puducherry, confirming the judgment and decree dated 03.01.2019 made in O.S. No.979 of 2010 on the file of the learned II Additional District Munsif, Puducherry, in O.S. No.979 of 2010.

For Appellants : Mr. R. Thiagarajan
For Respondent : Mr. C. Umashankar
for Mr. M. Selvam



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JUDGMENT

This appeal is directed against the judgment and decree dated 15.04.2019 made in A.S. No.8/2019 on the file of the Additional Sub Judge, Puducherry, confirming the judgment and decree dated 03.01.2019 made in O.S. No.979/2010 on the file of the II Additional District Munsif, Puducherry.

2. The appellants are the defendants in the above suit. The respondent/plaintiff filed the above suit for permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

4. The case of the plaintiff is that the suit property consists of two vacant plots situate at Saram Revenue Village, Oulgaret, Pondicherry in Cad No.307, RS No.239/5pt to an extent of 3600 sq. ft. as plot Nos. 23



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and 24 respectively. According to the plaintiff, Ex.A2 sale deed was executed on 14.07.2010 by virtue of the Award passed on 28.05.2010 under Ex.A1. The plaintiff from then onwards is in possession and enjoyment of the suit property and since the defendants were interfering with his peaceful possession and enjoyment of the suit property, he was constrained to file the above suit for permanent injunction against the defendants.

5. On the other hand, the contention of the defendants is that the 1st defendant has purchased the suit properties under Ex.B25 and Ex.B29 on 17.09.2004 from the 2nd defendant, who was the power agent of one Kaliyamurthy. Thereafter, the 1st defendant has given power to the 3rd defendant under Ex.B3 and Ex.B4 to take care of the suit property.

6. The trial court, based on the materials placed on record, decreed the suit in favour of the plaintiff. Assailing the judgment and decree of the trial court, the defendants preferred the appeal suit in A.S. No.8 of 2019 before the Additional Sub-Court, Puducherry. The first appellate court



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dismissed the above appeal suit, confirming the judgment and decree passed by the trial court. Aggrieved by this, the present second appeal is preferred by the defendants.

7. The second appeal has been admitted on the following substantial questions of law:

- I. Whether the courts below erred in decreeing the suit for bare injunction in the absence of prayer for declaration, more so when the defendants have disputed the title of the plaintiff and there are serious issues regarding the identity of the property?*
- II. Whether the findings of the courts below can be termed as perverse in as much as they had not gone into the title of the plaintiff by examining the sale deeds, viz., Ex.A2, Ex.B2 and Ex.B29?*

8. The learned counsel for the appellants/defendants submits that the 1st defendant has purchased two vacant plots vide sale deed dated



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17.09.2004 from the 2nd defendant under Ex.B25 and Ex.B29 respectively. The 2nd defendant was the power agent of one Kaliyamurthy. Thereafter, the 1st defendant gave power to the 3rd defendant to take care of the suit properties under Ex.B3 and Ex.B4. According to the defendants the above properties is comprised in Cad No.307, R.S. No.239/5pt and one plot is measuring 1800 sq.ft. and another plot is measuring 2295 sq.ft. He would further submit that the 1st defendant's vendor Kaliyamurthy became owner of property in Cad No.307, R.S. No.239/5pt to an extent of 61 Kuzhies 8 veesams out of 1 Kani 23 kuzhies on the northern side of the property vide Ex.B24 release deed dated 15.06.1998. The plaintiff's vendor's father was one Ganapathy who became owner of property in Cad No.307, R.S. No.239/5 Pt to an extent of 61 kuzhies 8 veesams out of 1 kani 23 kuzhies on the southern side of the property vide Ex.B8 release deed dated 24.09.1992 and sold the entire extent in the year 1992-1993 under various sale deeds marked as Ex.B5 to Ex.B7, Ex.B9 to Ex.B17 before the trial court. The learned counsel vehemently contented that the plaintiff's vendor has no title over the suit property, since her father Ganapathy himself sold the entire



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properties owned by him and thus there was no land available for his daughter Gandhimathy to inherit after his demise. The learned counsel further submits that the plaintiff's vendor Gandhimathy has fabricated documents and created the sale deeds. The plaintiff is unable to identify the property mentioned in his sale deed and had given wrong description of property in the suit schedule. The plaintiff has no right or title over the suit property. Neither the plaintiff nor his vendor were in possession or enjoyment of suit property. Therefore, the suit for bare injunction is not maintainable and the plaintiff has to file a suit for declaration of title since the 1st defendant raised serious doubts and cloud over the suit properties on the strength of his title deeds. However, the courts below disbelieved the sale deeds executed by the power agent of Kaliyamurthy in favour of the 1st defendant by accepting Ex.B8 settlement deed executed by plaintiff's vendor's father Ganapathy in favour of his daughter Gandhimathy. The courts below erroneously held that the plaintiff has proved his possession through Ex.A1 to A5, B1, B8, B18 and B27. The first appellate court erroneously cast onus on the defendants regarding identification of the suit property and also held that the sale deeds marked



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as B5, B6,B7, B9 to 17 are not valid since the above sale deeds were executed by the power agent after the death of the principal Ganapathy.

8.1. The learned counsel further submits that plot No.35 and 36 in the combined layout of R.S. No.142/11 pt is in Karuvadikuppam village and R.S. No.239/5A pt in Saram Village is the same as plot No.23 and 24 of the old layout plan. Before that no plot numbers were given. That is why the sale deeds of the appellants do not contain plot numbers. Added to the complexity is that there are two plan layouts. First layout plan of Cad No.307, RS No.239/5 pt in Saram Village and the second one is combined layout of RS No.142/11 pt in Karuvadikuppam Village and RS No.239/5A pt in Saram Village and that is the reason for two different plot numbers. He further submits that this Court may take judicial notice of the fact that Karuvadikuppam Village and Saram Village were adjacent villages. Plaintiff's vendor's father Ganapathy got the property vide release deed dated 24.09.1992 (Ex.B8) and sold vide sale deeds Ex.B5, Ex.B6, Ex.B7, Ex.B9, Ex.B10, Ex.B11, Ex.B12, Ex.B13, Ex.B14, Ex.B15, Ex.B16 and Ex.B17 through power agent Kalamurthy and all of



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them who purchased the property constructed houses thereon and no vacant lands were available. Vacant plots were available only in the northern portion of the land that defendants' vendor Kaliyamurthy got vide Ex.B24 release deed dated 15.06.1988. Thus the learned counsel for the appellants/defendants submit that in the facts of the case mere suit for injunction is not maintainable when the defendants denied the title of the plaintiff in the suit property. He would submit that when there is a dispute and the defendants asserts a title, the only remedy for the plaintiff is to file a suit for declaration of title and a suit for injunction simpliciter is not maintainable. To support his contention, he has relied upon following judgments:

- i. Anathula Sudhakar vs. P. Buchi Reddy* reported in *2008(6) CTC 237.*
- ii. N.R. Shanmugam vs. Baskar BI* reported in *2020(1) CTC 427.*
- iii. Sivasankaran vs. SB Raman* reported in *2020(2) CTC 690.*
- iv. Ramalingam @ MGR vs. Jayaraman* reported in *2020(4) CTC 101.*



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WEB COPY 9. On the other hand the learned counsel appearing for the respondent/plaintiff submits that the courts below extensively dealt the issue of title based upon the documents produced by the parties. The plaintiff's vendor namely Gandhimathy derives title to the suit property through her father after his demise by way of succession. Under Ex.B8, the said Ganapathy got the southern side property in R.S. NO.239/5 to an extent of 61 kuzhie and 8 veesam. Whereas, the defendants' vendor Kaliyamurthy got the property under Ex.B24 release deed on the northern side. Hence, the suit property and the defendants' property are not one and the same. The plaintiff is alone is in possession and enjoyment of the suit property which is established by Ex.A3 to Ex.A5 documents. The same is also admitted by D.W.2 during his cross examination. The learned counsel further submits that though the defendants have relied upon Ex.B5 to B18 sale deeds executed by Ganapathy through his power agent Kaliyamurthy, the above sale deeds are not valid in the eye of law since they were executed by the power agent after the demise of the principal Ganapathy. The learned counsel further submits that once there is no dispute with regard to title, the



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plaintiff need not ask for declaration of title since the plaintiff is alone in possession and enjoyment of Plot No.23 and 24, and that possession is not a question of law and the appellants cannot seek indulgence of this court to reappraise the evidence and interfere with the findings of the courts below. He would submit that in a second appeal under Section 100 CPC the findings of fact arrived by the first appellate court based upon appreciation of relevant evidence cannot be interfered by the High Court. To support his contentions he has relied upon the following judgments:

- i. Anathula Sudhakar vs. P. Buchi Reddy* reported in **2008(4) SCC 594**
- ii. Narayanan, Rajendran and ors vs. Lekshmy Sarojini and ors* reported in **(2009) 5 SCC 264.**

10. Heard on both sides. Records perused.

11. No doubt where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without consequential injunction is the remedy. Where there is merely an interference with the plaintiff's lawful possession or threat of



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dispossession, it is sufficient to file a suit for an injunction simpliciter.

But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title. It is also settled legal position that if the property is a vacant site, which is not physically possessed, used or enjoyed, in such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the *de jure* possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title so as to decide the question of *de jure* possession even though the suit is for a mere injunction. But, where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate



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the plaintiff to the remedy of a full fledged suit for declaration and consequential reliefs (Ref: *Anathula Sudhakar vs. P. Buchi Reddy* (cited supra).

12. The case of the plaintiff in this suit is that he is the absolute owner of the suit property by virtue of sale deed dated 14.07.2010. The 1st defendant's contention is that, he purchased the suit property on 17.09.2004 under two sale deeds from the 2nd defendant. According to the plaintiff, the suit property consists of two vacant plots situate at Saram Revenue Village, Oulgaret, Pondicherry in Cad No.307, RS No.249/5pt to an extent of 3600 sq. ft., Plot Nos. 23 and 24. Where as, the 1st defendant's contention is that, he has purchased two plots in Cad No.307, RS No.239/5pt, one measuring 1800 sq. ft and another measuring 2295 sq. ft.

13. It is not in dispute that the 1st defendant's vendor Kaliyamurthy became owner of the property in Cad No.307, RS No.239/5pt to an extent of 61 kuzhies 8 veesam out of 1 Kani 23 kuzhies on the northern side of the property vide Release deed dated 15.06.1998 under Ex.B24.



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Likewise, the plaintiff's vendor's father, namely Ganapathy became owner of the property in Cad No.307, RS. No.239/5pt to an extent of 61 kuzhies 8 veesam out of 1 Kani 23 kuzhies on the southern side of the property vide Release deed dated 24.09.1992 under Ex.B8. The plaintiff is seeking a decree of permanent injunction for plot number 23 and 24. Whereas, the defendants are claiming right over plot numbers 35 and 36 respectively. The suit schedule wherein plot number 23 and 24 is shown in RS No.239/5A to the extent of 3600 sq. ft. in Saram Village and Patta number 2544 is assigned to the plaintiff. According to the plaintiff plot numbers 35 and 36 situate in RS. No.238/5A part at Saram Village and RS No.142/11 part Karuvadikuppam village. Thus, the courts below have found that the suit property is different from the property of the defendants based on Ex.B3, Ex.B4, Ex.B2 and Ex.B29 and oral evidence adduced by D.W.1.

13.1. It is not established by the defendants that the property claimed by them is the suit property. Moreover, the courts below observed that the 1st defendant himself admitted that the plaintiff is in



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possession of the suit property, and since the defendants have failed to establish their title in the suit property, there is no need for seeking declaratory relief. The courts below have extensively dealt the issue of title based upon the documents produced by the defendants themselves. On the other hand, the plaintiff has produced documents (Ex.A3, A4 and A5) to establish his possession in the suit property. Without establishing their title to the suit property, the defendants cannot claim possession. Moreover, the properties lying on the northern side was alone owned by the defendants' vendor under Ex.B24 release deed. Thus the courts below have passed the judgments by dealing with oral and documentary evidence in a proper perspective. As held by the Hon'ble Supreme Court of India in **(2008)4 SCC 594** in **Anathula Sudhakar vs. P. Buchi Reddy (dead) by LRs and ors (circulated MANU/SC/7376/2008)**, where there is interference with the plaintiff's lawful possession or threat of dispossession, it is sufficient to file a suit for injunction simpliciter. As stated supra, plaintiff has got no doubt about the title and there is no need for him to ask for declaration. It is already held by the Hon'ble Supreme Court of India that, possession is not a question of law and in this case it



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is found that plaintiff is in possession of Plot Nos. 23 & 24 with the documentary evidence. Therefore, It cannot be a substantial question of law and appellants cannot seek indulgence of this court to re-appreciate the evidence/interfere with the finding of the decision. In this regard the learned counsel for the respondent/plaintiff relied on the decision of the Hon'ble Supreme Court reported in (2009) 5 SCC 264 (*circulated MANU/SC/0212/2009*) *Narayanan Rajendran and ors vs. Lekshmy Sarojini and ors*). No infirmity or perversity is found in the findings of the courts below which warrants interference by this court. Therefore, I do not see any question of law much less a substantial question of law in order to enable me to entertain this appeal.

14. In the result,

- i. The Second Appeal is dismissed. No costs.
- ii. The decree and judgment dated 15.04.2019 made in A.S. No.8 of



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WEB COPY 2019 on the file of the learned Additional Subordinate Judge, Puducherry, confirming the judgment and decree dated 03.01.2019 made in O.S. No.979 of 2010 on the file of the learned II Additional District Munsif, Puducherry, in O.S. No.979 of 2010, is upheld.

19.09.2025

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

To

1. The Additional Subordinate Judge, Puducherry
2. The II Additional District Munsif, Puducherry.
3. The Section Officer, VR Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J
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Pre-delivery judgment in
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