



S.A.No.186 of 2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	20.08.2025
<i>Pronounced on</i>	--.11.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.186 of 2021

1.Chandran
2.Rajendran
3.Elango

.. Appellants

versus

Thangammal

.. Respondent

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 20.08.2019 made in A.S.No.96 of 2017 on the file of learned Additional Subordinate Judge, Namakkal, confirming the judgment and decree dated 31.08.2017 made in O.S.No.304 of 2014 on the file of the learned Additional District Munsif, Namakkal.

For Appellants : Mr.M.Sridhar

For Respondents : Mr.S.Saravanakumar

for Mr.I.Abrar Md.Abdullah



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JUDGMENT

The above second appeal arise out of the judgment and decree dated 20.08.2019 made in A.S.No.96 of 2017 on the file of learned Additional Subordinate Judge, Namakkal , confirming the judgment and decree dated 31.08.2017 made in O.S.No.304 of 2014 on the file of the learned Additional District Munsif, Namakkal.

2.The defendants in O.S.No.304 of 2014 on the file of the Additional District Munsif, Namakkal is the appellants in the second appeal. The respondent as plaintiff has filed the suit for permanent injunction restraining the defendants from interfering with the plaintiff's possession and enjoyment of the suit property.

3.According to the plaintiff, the plaintiff has filed a suit for bare injunction against the defendants claiming that the suit property belongs to



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father by virtue of patta dated 03.06.2003 granted in favour and after life time she has been enjoying the same as his legal heir. She further claimed that her father was issued with thoraaya patta (not regular patta) and VAO issued the thooya chitta. Since the defendant attempted to interfere with her possession and enjoyment in the suit property, plaintiff was constrained to file the present suit.

4.The claim of the plaintiffs was resisted by the defendants and in the written statement the defendants vehemently disputed plaintiff's alleged possession of the suit property on the following grounds:

4.1. The suit property was originally purchased by one Ponnappa Udayar in the year 1917. At that time, there was a thatched hut in the suit property. From 1917 onwards, the descendants of Ponnappa Udayar were enjoying the same. Moreover in 1917 sale deed itself, boundaries were clearly mentioned. Taxes were also paid regularly till 1993 and also the Ground Rent record stood in the name of Samidurai the great-grandson of



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Ponnappa Udayar. Thereafter, the father of the plaintiff attempted to disturb the possession and enjoyment of the suit property claiming that he has purchased the same from one Janagi Ammal. Hence, the appellants'/defendants' ancestors filed a suit in O.S.No. 1150 of 1988 on the file of Additional District Munsif, Namakkal seeking bare injunction restraining the plaintiff's parents from disturbing their possession and the said suit was decreed on 23.06.1993 in favour of the defendants' predecessors. As, no appeal was filed and the decree and judgment had attained finality, the present suit is not maintainable. The appellants/defendants herein further objected the suit on the ground that since the appellants/defendants have disputed the respondent's title in the suit property, mere bare injunction suit is not maintainable. The Exhibits A.1 & A.2 are forged documents. The Trial Court and First Appellate Court granted relief as claimed by the plaintiff without framing any issues in regard. Hence, prayed for dismissal of the suit.

5.The trial Court framed the necessary issues and on the oral and



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documentary evidence held that the plaintiff is in possession of the suit property, decreed the suit in favour of the plaintiff. The defendants filed appeal in A.S.No.96 of 2017 before the Additional Sub Court, Namakkal. The learned Subordinate Judge, by judgment and decree dated 20.08.2019 confirmed the decision of the trial Court and dismissed the appeal. It is as against, the present second appeal has been filed.

6.The learned counsel for the appellants/defendants submits that the plaintiff is claiming title and possession over the suit property under Ex.A.1 patta and Ex.A2. Chitta. According to the learned counsel for the appellants/defendants, Ex.X1 to Ex.X6 would reveal that patta no.2716 for survey No.296/14 was issued in favour of one Gunasekaran son of Palanisamy Nayakkar and the same patta no.2716 is issued in favour of the plaintiff's father under Ex.A.1 to survey no.327/14 after scoring off the name of Gunasekaran in the Adangal register marked as Ex.A4. He would submit that the suit property is a vacant land and no patta will be issued to



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vacant natham promboke land and that the plaintiff failed to establish as to whether a regular patta was issued in her favour. He would further submit that Ex.A2 chitta was not issued by the competent authority, the Deputy Tahsildar, Senthamangalam Village since the suit property lies in Senthamangalam Village. He would further submit that a bare injunction suit is not maintainable, when the plaintiff's title is in dispute. Further contention is that the decree passed in O.S.No.1150/1988 operates as *res judicata* in filing the present suit. It is further submitted that the plaintiff failed to establish how she came into possession of the suit property. He would submit that the plaintiff has to prove her case on her own evidence and the weakness of the defendant's case will not give any advantage to the plaintiff. While so, the Courts below erroneously shifted the burden on the defendants to establish their case. The defendants are alone in possession and enjoyment of the suit property and therefore the question of executing the decree passed in O.S.No.1150/1988 does not arise. To support contention, he has relied upon the judgment in the cases of



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(i) *Bandhu Daadn another Vs. Uttam Charan Pattanaik* reported in ***AIR 2007 ORI 24.***

(ii) *Tehsildar, Urban Improvement Trust & Another Vs. Ganga Bai Menariya (Dead) through Lrs. And Others*

reported in ***2024 SCC Online SC 169,***

(iii) *T.V. Ramakrishna Reddy Vs. M. Mallappa and another*
reported in ***(2021) 13 Supreme Court Cases 135.***

(iv) *Panneer Vs Anjalai (Deceased) and Others*
reported in ***2018 (8) MLJ 246***

Hence, prayed for setting aside the judgment and decree passed by the Courts below.

7.On the other hand, the learned counsel for the respondent/plaintiff submits that the plaintiff has established her possession in the suit property by producing the patta and chitta extract of the suit property marked as Ex.A.1 and Ex.A2 respectively. He would further submit that the D.W1



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himself admitted that the defendants are not in possession of the suit property for more than 15 years and that the relationship between the defendants and their ancestors were not pleaded. The learned counsel further submits that when the contention of the plaintiff is that she is in lawful possession of the property, and her possession is threatened by the defendants who has no better title, the plaintiff is entitled to sue for mere injunction without adding the prayer for declaration of her right. He would further contend that unless there is a substantial question of law the findings of the first Appellate Court which is the final Court on facts cannot be interfered. To support contention, he relied upon the judgment in the cases of

(i) ***A.P. Kuppusamy & 5 others Vs. P. Kumarapalayam Municipality, P. Kumarapalayam rep. by its Commissioner, P. Komarapalayam, Thiruchengode Tk.*** reported in 2007 (2) LW 445, and

(ii) ***Mallanagouda and others Vs. Ninganagouda and others*** reported in 2021 (16) SCC 367.



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Hence, the Courts below having appreciated the above facts, rightly decreed the suit in favour of the plaintiff which warrants any interference by this Court.

8.Heard on both sides and records perused.

9. In the present case, the defendants have raised a dispute with regard to the title of the plaintiff. Admittedly, the revenue records stands in the name of the Plaintiff's father in respect of the suit property. It is also not in dispute that the appellant's ancestors have filed a suit in O.S.No.1150/1988 on the file of Additional District Munsif, Namakkal seeking bare injunction restraining the plaintiff's father from disturbing their possession and the said suit was decreed on 23.06.1993 in favour of the appellants/defendants' predecessors, in respect of the land in Survey No.133/399 and patta No.2781. According to the appellants/defendants the corresponding new Survey Number for the old Survey No.133/399 is Survey No.327/14. The patta number for the suit property is 2716.



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However, the defendants failed to establish that they are in possession and enjoyment of the suit property. The defendants themselves admitted that they have not paid taxes to the Government for the past 15 years before filing the suit. Hence, the Courts below rightly held that since the defendants are not in possession and enjoyment of the suit property. It is well settled that in a suit for injunction, primary question to be considered is one of, possession on the date of filing the suit. It is also well settled that a person in possession, though, without title, can resist interference from another who has no better title than himself and get injunction. Therefore, injunction can be granted to the plaintiff when the defendants threatens to invades right to or enjoyment of the property.

10.The case of the appellants/defendants is that on 27.07.1917 one Ponnappa Udayar purchased the suit property with specific boundaries and after demise sole legal heir Muthukumar was in possession and enjoyment of the suit property. After death legal heirs Periyathambi and



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Chinnathambi were in possession and enjoyment of the suit property and thereafter, their legal heirs partitioned the family properties on 11.02.1952 in which the suit property was kept in common. Thereafter, the father of the defendants 1 & 2 namely Swamydurai, legal heir of Periyathambi along with the legal heirs of Chinnathambi filed a suit in O.S.No.1150/1988 against the parents of the plaintiff and obtained a decree in their favour on 23.06.1993 and therefore, the said decree is binding on the plaintiff. However, the defendants have not taken any steps to transfer the revenue records in their names and the same is also admitted during the cross examination of D.W1. The defendants failed to establish that they are in possession of the suit property.

11.On the other hand, the plaintiff through oral and documentary evidence had established that the suit property is a promboke land and patta was issued in favour of her father based on possession. The Village Administrative Officer examined as P.W.2 also support the case of the



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plaintiff. Therefore, when the plaintiff claims to be in lawful possession of the property and her possession is interfered by the defendants she is entitled to sue for mere injunction without a prayer for declaration of her right. The Courts below have categorically held that the plaintiff is in possession of the suit property and granted the relief accordingly. No perversity or infirmity found in the said findings of the Courts below.

12. Moreover, it has been repeatedly held by this Court and by the Hon'ble Apex Court that the judgment of the First Appellate Court should not be interfered under Section 100 CPC, unless there is a substantial question of law.

13. In the result,

(i) the second appeal is dismissed.

(ii) the judgment and decree dated 20.08.2019 made in A.S.No.96 of 2017 on the file of learned Additional Subordinate Judge, Namakkal,



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confirming the judgment and decree dated 31.08.2017 made in O.S.No.304 of 2014 on the file of the learned Additional District Munsif, Namakkal is upheld. No costs.

14.11.2025

vsn

Index: Yes/No
Speaking order / Non-speaking order

To

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



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K.GOVINDARAJAN THILAKAVADI,J.

vsn

**Pre- delivery judgment made in
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