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S.No.255 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	17.07.2025
<i>Pronounced on</i>	12.09.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.255 of 2019

N.Kandasamy

.. Appellant

versus

S.Govindammal

.. Respondent

Prayer: Second Appeal is filed under Section 100 CPC, praying to set aside the judgment and decree dated 06.04.2017 in A.S.No.35 of 2012 on the file of learned Principal Subordinate Judge, Tiruppur, confirming the judgment and decree dated 09.03.2012 made in O.S.No.198 of 2006 on the file of learned District Munsif, Tiruppur.

For Appellant : Mr.J.Franklin

For Respondent : Ms.D.Chitra Maragatham



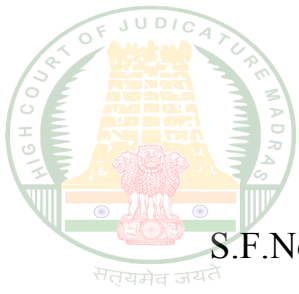
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JUDGMENT

WEB COPY This Second Appeal is directed against the judgment and decree dated 06.04.2017 in A.S.No.35 of 2012 on the file of learned Principal Subordinate Judge, Tiruppur, confirming the judgment and decree dated 09.03.2012 made in O.S.No.198 of 2006 on the file of learned District Munsif, Tiruppur.

2.The respondent as plaintiff filed the suit for permanent injunction restraining the defendant from any manner disturbing her peaceful possession and enjoyment of the property.

3.The case of the plaintiff is that the suit property and the property enjoyed by the defendants are Natham lands. The father-in-law of the plaintiff, namely Nachimuthu gounder encroached the natham land about 50 years back and constructed a house and had been in possession and enjoyment along with his son namely Subramanian, the husband of the plaintiff till his death and that the father in law of the plaintiff constructed a building in S.F.872/27 and was also in enjoyment of the land in



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S.F.No.872/43 and SF.No.872/28 as vacant site with cattle shed. The plaintiff's father-in-law and the plaintiff were granted pattas jointly with regard to the lands in S.F.No.872/27 and SF.No.872/28. After the demise of her father-in-law and her husband, the plaintiff is in possession and enjoyment of the said property for about 30 years. It is further submitted that the land in S.F.No.872/17 is north south street, and land in S.F.No.872/26 is east west street which turns towards south parallel to the street in S.F.No.872/17. The lands in S.F.No.875/15 and S.F.No.875/16 are enjoyed by the defendant. The defendant was also granted patta to the said lands. The mother of the defendant obtained patta to the land in S.F.No.872/24. Therefore, the defendant is not having any right over the land in S.F.No.872/28. The plaintiff alone is in possession and enjoyment of the suit property by paying house tax and electricity conception charges. It is further submitted that the plaintiff is maintaining her north south wall on the eastern side of the property through the street in S.F.No.875/17 for the past 30 years. While so, on 30.06.2006 when the plaintiff was doing repair works the defendants unlawfully prevented the same. Hence, the plaintiff was constrained to file the above suit for permanent injunction.



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4. On the other hand, the claim of the plaintiff was resisted by the defendant stating that there is a cattle shed in S.F.No.872/43 and S.F.No.872/28. But they belong to the defendant. The defendant and his ancestors were in possession and enjoyment of the same. The land in S.F.872/43 is in 'L' shaped and is false to state that 872/17 is the North South-Pathway and that 872/26 is the East-West Road. The said places are meant for house site allotted freely by the Government. It is false to state that East-West lane turns south and proceeds parallel to North-South Road. The Defendant is exclusively entitled to S.F.No.872/28. The documents produced by the Plaintiff is related to S. F.No.872/27; there is no dispute regarding the said Sub-Division. The Plaintiff is not entitled to the suit property and there-fore it is false to state that she had been white washing her North-South wall through S. F.No.872/17. There is no misunderstanding between the parties. This defendant did not try to trespass into the suit property on 30.06.2006. The defendant is in possession and enjoyment of S.F.No. 872/43 and 872/28 for the past 40 years and was not encroached by him. The Plaintiff has no right, title or possession over the suit property. Therefore she is not entitled to the relief of permanent injunction. There is



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no cause of action for the suit; The documents produced by the Plaintiff do not relate to the suit property. The Defendant's mother Sellammal purchased a part of the suit property in S.F.No.872/28 and 872/43 under sale deed dated 19-10-1956 from one Govindammal, w/o Chennimalai Gounder, registered as Document No.1787/1956 on the file of Tiruppur SRO. The said Sellammal was in possession of the same till 13.05.1996 and then she executed a Settlement Deed in respect of the same in favour of the defendant on 14-05-1996. The defendant has pledged the same in Tiruppur, Thiyaagu Kumaran Co-operative Society and the loan was advanced to him only after verifying the defendant's possession of the suit property. The defendant is entitled to the suit property by way of adverse possession.

5.The trial court, based on the materials placed on record, decreed the suit and the same was confirmed by the 1st Appellate Court. Aggrieved by the same, the present second appeal has been filed.

6.The following substantial questions of law were raised along with the memorandum of appeal:

a. *Whether the suit is filed by the respondent/plaintiff for bare injunction without*



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declaration is maintainable?

b. Whether the courts below are right in decreeing the suit when the respondent / plaintiff herself admitted that she has no title deed or patta in respect of S.F.No.872/28?

c. Whether the courts below are right in decreeing the suit when the evidence of the respondent / plaintiff itself make it clear that she is not possession of the suit properties?

d. When the findings of the courts below in correct in decreeing the suit, when the defendant / appellant proved his title to the suit properties from the purchase of his mother and by way of adverse possession?

7.The learned counsel for the appellant/defendant submits that the plaintiff has no right over the land in S.F.No.872/28 and she is not in possession and enjoyment of the suit properties. Ex.A.1 & A2 patta granted in favour of the plaintiff do not correlate with the actual physical features of the suit property. Moreover, the suit filed for injunction simpliciter without the relief of declaration, when particularly the title of the suit property is in



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question. The Courts below ought not to have decreed the suit in favour of the plaintiff. In fact, the suit property was encroached and enjoyed by the father-in-law of the plaintiff and therefore, the claim made by the plaintiff over the suit property cannot be accepted. The cattle sheds in S.F.No.872/43 and 872/28 belong, to the defendant and he is in possession and enjoyment of the same. The lands in S.F.No.872/43 and SF.No.872/28 were purchased by the defendant's mother Sellammal on 19.10.1956 and settled the same in favour of the defendant under registered settlement deed dated 14.05.1996. Therefore, the defendant has perfected his title over the suit property by way of adverse possession. Hence, the learned counsel submits that the Courts below erred in granting the decree in favour of the plaintiff warrants interference by this Court.

8.On the other hand, the learned counsel appearing for the respondent/plaintiff submits that the plaintiff's father-in-law namely Govindasamy Gounder encroached the natham land about 50 years back and constructed a house building and had been in possession and enjoyment along with his son namely Subramanian. After the demise of the plaintiff's

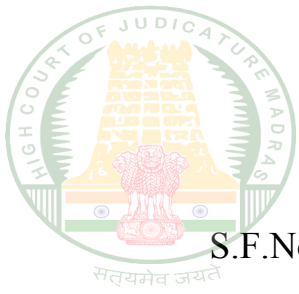


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father-in-law, the plaintiff is in possession and enjoyment of the suit land and according to the plaintiff the house building was constructed on the land in S.F.No.872/27 and lands in SF.No. 872/43 and S.F.No.872/28 were enjoyed as vacant land by putting up cattle shed thereon. Since the defendant interrupted with the possession and enjoyment of the plaintiff over the suit property, she was constrained to file the above suit. However, the Courts below having found that the plaintiff is in possession and enjoyment of the suit property rightly decreed the suit in favour of the plaintiff which warrants no interference by this Court.

9. Heard on both sides and records perused.

10.It is the specific case of the plaintiff that S.F.Nos.872/43 and 872/28 is enjoyed by the plaintiff by putting up a cattle shed in the above land. It is also the case of the plaintiff that the defendant is owning lands only in S.F.No.875/15 and S.F.No875/16. Whereas, the defendant claims title in S.F.Nos.872/28 and 872/43. It is the case of the defendant that the same was purchased by his mother Sellammal from one Govindammal under sale deed dated 19.10.1956 and the same was settled in favour of the defendant. It is not in dispute that the house of the plaintiff situated in



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S.F.No.872/27, Ex.A2 joint patta in the name of the plaintiff and her father-

in-law Govindasamy establishes the same. The dispute is only with regard to S.F.Nos.872/28 and 872/43. It is also not in dispute that the above land is vacant having a cattle shed. Both the plaintiff and the defendant claims possession and enjoyment of the lands in S.No.872/28 and 872/43. The plaintiff herself admitted that a joint patta for S.F.No.872/43 was granted in favour of the plaintiff and her father-in-law and that patta was not granted in their name for S.F.No.872/28 although the said land was enjoyed by them as single unit by putting up the cattle shed. The plaintiff has also produced the joint patta as Ex.A1 relating to S.F.No.872/43. On perusal of the said patta, it is seen that the land in S.F.No.872/43 is 'L' shaped adjoining S.F.No.872/27 and described backyard. The plaint plan marked as Ex.A3 shows that the property of the defendant lying further north in S.F.Nos.872/24, 872/15 and 872/6. The field map for S.F.No.875 and 872 marked as Ex.A.11 related to Nallur village shows that S.F.No.872/27, 872/28 and 872/43 are adjacent lands and also shows that S.F.No.872/15, 872/16 and 872/24 lies further north. In between the above subdivisions lies S.F.Nos.872/26 and 872/25. The plaintiff has established that she is in



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possession and enjoyment of S.F.No.872/43 by producing Ex.A1 joint patta,

A11 field map Ex.A6 Adangal and A8 Chitta extract. Therefore, the Courts below confirmed that the land in S.F.No.827/43 absolutely belongs to the plaintiff. However, the plaintiff herself admitted that patta was not granted in her favour in respect of land in S.F.No.872/28.

11.The case of the defendant that S.F.No.872/43, S.F.No.872/28 belongs to the defendant by virtue of Ex.B1 sale deed and Ex.B3 settlement deed. But the boundaries mentioned in the above documents do not tally with the suit property i.e., S.F.No.872/28 and S.F.No.872/43. The defendant failed to produce any documents to show that he is in possession and enjoyment of the land in S.F.No.872/28 and S.F.No.872/43. The Courts below rightly held that since the disputed land is only a cattle shed, the tax receipts produced by the defendant do not relate to the disputed property, and since S.F.No.872/28 and S.F.No.872/43 is a single unit as per Ex.A.11 FMB and the same has been used as a cattle shed shows that only the plaintiff could be in possession and enjoyment of S.F.No.872/28.

12.The 1st appellate Court has rightly held that the layout of the land which is evident from the field plan shows that the plaintiff had far more



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possibility of enjoying adjacent disputed property as cattle shed than the defendant who lives much further far. Hence, the suit of the plaintiff for bare injunction without seeking declaration of title is maintainable having regard to the facts of the present case. No perversity or infirmity is found in the findings rendered by the Courts below which warrants no interference by this Court. No substantial questions of law is involved in the present appeal.

13. In the result,

i. The second appeal is dismissed. No costs.

ii. The judgment and decree dated 06.04.2017 in A.S.No.35 of 2012 on the file of learned Principal Subordinate Judge, Tiruppur, confirming the judgment and decree dated 09.03.2012 made in O.S.No.198 of 2006 on the file of learned District Munsif, Tiruppur, is upheld.

12.09.2025

vsn

Index: Yes/No

Speaking order / Non-speaking order



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To

- 1.The Principal Subordinate Judge, Tiruppur
- 2.The District Munsif, Tiruppur
- 3.The Section Officer, V.R.Section, High Court, Madras.



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K.GOVINDARAJAN THILAKAVADI,J.

vsn

**Pre-delivery judgement made in
Second Appeal No.255 of 2019**

12 .09.2025