

S.A.(MD)No.202 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 12.09.2025

CORAM

THE HON'BLE MS.JUSTICE R.POORNIMA,

S.A(MD)No.202 of 2008

Subbulakshmi @ Chellathai

... Appellant/Appellant/

1st Defendant

Vs.

1.Smt.Chellathayammal(Died)

2.Subbulakshmi

3.Jaishankar

4.Rajaguru

(Memo dated 18.06.2025 presented before this Court on
10.07.2025 is recorded as R1 died and RR2 to RR4, who
are already on record)

... Respondents 1 to 4/ Respondents 1 to 4/

Plaintiffs 1 to 4

5.Subburaj

...5th respondent/5th Respondent/

2nd Defendant

1/15



S.A.(MD)No.202 of 2008

WEB COPY

PRAYER : Second Appeal is filed under Section 100 Cr.P.C., as against the judgment and decree made in A.S.No.35/07 dated 03.10.2007 on the file of the Sub-Court, Kovilpatti, confirming the judgment and decree made in O.S.No.177 of 2005 dated 10.01.2007 on the file of the District Munsif Court, Kovilpatti.

For Appellant : Mr.M.Thirunavukkarasu
For R2 to R4 : Mr.S.Pon Senthil Kumaran
For R1 : Died(Memo Recorded)
For R5 : Dispense with Memo filed
USR No.430451

JUDGMENT

This Second Appeal is filed against the judgment and decree dated 03.10.2007 made in A.S.No.35/07 by the Sub-Court, Kovilpatti, confirming the judgment and decree dated 10.01.2007 made in O.S.No.177 of 2005 by the District Munsif Court, Kovilpatti.



S.A.(MD)No.202 of 2008

WEB COPY

follows:

2. The plaintiff's case in O.S.No.177 of 2005 in brief, is as

(a) The suit properties has been in possession and enjoyment of the plaintiffs and their ancestors for over 50 years. The father of plaintiffs 2 to 4, 2nd defendant and the husband of the first plaintiff viz., Late. Kondusamy Naicker constructed a house on the suit property about 50 years ago, where he resided with his wife and children. In the the year 1981, he also obtained a patta from the Special Tahsildar, Kovilpatti.

(b) On 03.12.1995 the said Kondusamy Naicker died. Upon his demise, the plaintiffs and the second defendant succeeded to the suit property. Thiru.Kondusamy Naicker obtained electricity connection and paid taxes to the Chathirapatti Panchayat. After his death, the plaintiffs have been paying taxes for the land and building and have been in possession and enjoyment of the suit property.

(c) Presently, the plaintiffs are residing in Kovilpatti for their livelihood. Taking advantage of their absence and with an intention to unlawfully grab the suit property, the first defendant who is the daughter of one Gurusamy, brother of Kondusamy Naicker, attempted to interfere with



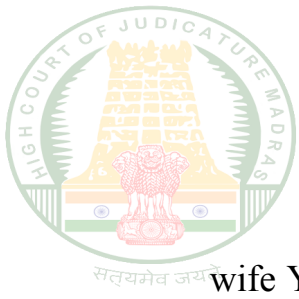
S.A.(MD)No.202 of 2008

WEB COPY

the peaceful possession and enjoyment of the plaintiffs and approach upon the suit property. The first defendant has further proclaimed herself to be the owner of the suit property. Hence, the suit was filed seeking decree of permanent injunction, restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property.

3. Brief averments contained in the Written Statement filed by the 1st Defendant are as follows:

(a) The suit property along with other properties originally belonged to one Gurusamy, who had two sons viz., Gurusamy and Kondusamy. The original owner died long ago. After his demise, both of his sons had partitioned the properties under a registered partition deed dated 01.07.1959. They had orally partitioned the suit property. As per terms of the said oral partition, the western side of the suit property was allotted to Gurusway and the eastern side was allotted to Kondusamy. Subsequently Gurusway constructed a mud house with zing sheet roof and has been residing there, paying all the taxes and other payments to the Government. The said Guruswamy died 40 years back, leaving behind his



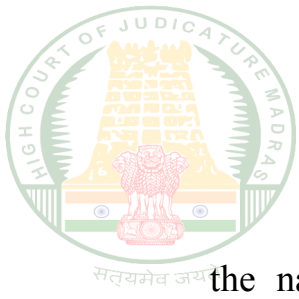
S.A.(MD)No.202 of 2008

WEB COPY

wife Yengammal, three daughters as his sole surviving legal heirs. The first defendant, one among the daughters was married to one Perumal Samy, of Chathirapatti. The house earlier constructed by Gurusamy was subsequently, demolished due to heavy rains and at present there is no structure remains to evidence the existence of said building.

(b) Smt.Yengammal, wife of Gurusamy executed a Will on 20.02.1995, in respect of the suit property and other properties in favour of the first defendant. She also handed over possession of the house property measuring 22 x 20 feet of land. Subsequently, she passed away and after her demise, the first defendant alone is in possession and enjoyment of the said property. The said fact was within the knowledge of the plaintiffs and the second defendant.

(c) In the mean time, the first defendant came to know that Thiru.Kondusamy Naicker had fraudulently obtained patta in his name covering the entire suit property including the western portion of the suit property belonging to the first respondent. On coming to know about this, the first defendant filed a petition before the Tahsildar, Kovilpatti for inclusion of her name also in the patta. The said petition was allowed and



S.A.(MD)No.202 of 2008

the name of the first defendant was accordingly included in the patta No.546, on 21.03.2000. Challenging the said order, the plaintiffs have filed this suit. Hence, the first defendant prayed for dismissal of the suit.

4. On the basis of the rival pleadings, the trial Court framed the following issues for consideration:

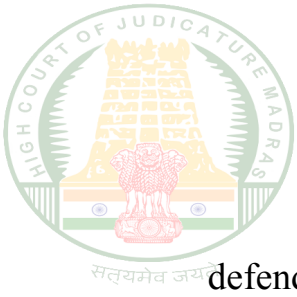
i) Whether the suit scheduled property was separately owned by the plaintiffs and the 2nd defendant?

ii) Is the plaintiff entitled to the relief of injunction as claimed?

iii) Whether permanent injunction be granted restraining the 1st defendant and her people from interfering with the enjoyment of the property by the plaintiffs and the 2nd defendant?

iv) Any other appropriate remedy?

5. On the side of the plaintiffs, the 1st plaintiff examined herself was P.W.1 and Ex.A.1 to Ex.A.5 were marked. On the side of the



S.A.(MD)No.202 of 2008

WEB COPY

defendants D.W.1 and D.W.2 were examined and Ex.B1 to Ex.B3 were marked.

6. The trial Court/ District Munsif Court, Kovilpatti, has decreed the suit in O.S.No.177 of 2005 dated 10.01.2007, against which the 1st defendant filed A.S.No.35 of 2007, with a prayer to set aside the judgment in O.S.No.177 of 2005, whereas, the First Appellate Court / Subordinate Judge, Kovilpatti has dismissed the appeal, by confirming the decree and judgment of the trial Court, against which, the present Second Appeal has been filed by the 1st defendant.

7. This Second Appeal was admitted on the following substantial question of law:-

“(i) Whether the judgment and decree of the Courts below are perverse on account of its misconstruction of documents in Ex.A1, Exs.B1 to B3?”



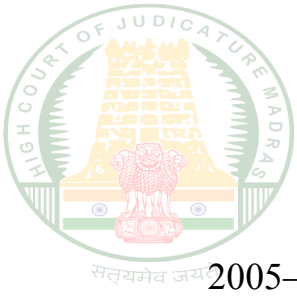
S.A.(MD)No.202 of 2008

WEB COPY

8. For the sake of convenience, the parties are referred to herein, as their own ranking as before the trial Court.

9. In a suit for permanent injunction, the burden lies on the plaintiffs to establish lawful possession of the property, as on the date of filing the suit and to prove that the interference or threat of interference by the defendants.

10. The plaintiffs claimed possession as well as ownership of the suit property on the basis of long, continuous uninterrupted possession by his father, Thiru.Kondusway for more than 50 years. They further relied upon a house site Patta granted to his father during the year 1991 by the Special Tahsildar, Natham Land Tax Scheme. Ex.A1 patta issued in favour of Thiru.Kondusamy clearly establishes that the Special Thasildar, Natham Land Tax Scheme issued patta bearing No.546 in favour of the 1st plaintiff's husband Kondusamy for the total extent of the suit schedule property on 10.06.1991. Ex.A4 is the house tax receipt evidences the assessment of the house under assessment 148 in the name of Kondusamy from the 1985, upto



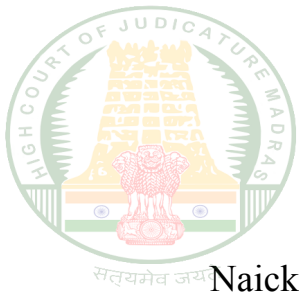
S.A.(MD)No.202 of 2008

WEB COPY

2005–2006, till the date of filing the suit. Further, the plaintiffs also produced the electricity bill receipts under Ex.A5 to substantiate their possession and enjoyment of the suit property.

11. As per the defendants, Ex.A1 patta was fraudulently obtained by the father of the plaintiffs 2 to 5 and husband of the plaintiff No.1. The defendant further contends that her father Thiru.Gurusamy and Thiru.Kondusami, had effected a partition in the year 1959, with respect to other properties. In so far as the suit properties concerned, the parties had entered into an oral partition under which, the eastern portion of the suit schedule property is allotted to Thiru.Kondusway, and the western side of the property was alerted to her father Gurusamy. In the said portion, so allotted, Thiru.Gurusamy constructed a mud house with roofing, pay the taxes thereon and was in possession and enjoyment of the said property until his death about 40 years ago.

12. Ex.B1 is the registered partition deed dated 17.02.1959, registered Document No.1283/1959, entered into between Guruswamy



S.A.(MD)No.202 of 2008

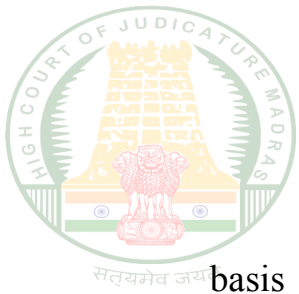
WEB COPY

Naicker, father of the applicant and Kondusamy Naicker, father of the plaintiffs 2 to 4 and husband of plaintiff No.1. In that said document, no recital to the effect that apart from the properties specifically partitioned between the brothers, any other property was also left out.

13. Though the 1st defendant has claimed that they have been in continuous possession and enjoyment of the suit property from the year 1959, no document has been produced to substantiate that they were enjoying possession along with the plaintiffs' father. She also not produced any tax receipts to prove that the father of defendants was in possession and enjoyment of the suit property by paying tax to the house constructed in the said property.

14. The 1st defendant relied upon Ex.B3, Patta to show that her name was included in the revenue records in the year 2000. However, the learned counsel appearing for the respondents/plaintiffs contended that such inclusion was only subsequent to the Will executed by the mother of the first defendant, and that her name came to be entered in the Patta on the

10/15



S.A.(MD)No.202 of 2008

WEB COPY

basis of the said Will, which contention appears to be correct. The 1st defendant has not examined the Revenue Authority to prove that her name was included on the basis of oral partition. On the contrary, it is established that she had applied before the Revenue Authority for inclusion of name only subsequent to the Will dated 20.02.1995. If the Patta had truly been issued on the basis of oral partition, the name of the legal heirs of Guruswamy would have been reflected in the revenue records. Hence, it can be inferred that the Revenue Authority had not included her name on the basis of oral partition, but included her name on the basis of the Will. Except the above the 1st defendant has not produced any other document to establish that her father and her family members were in continuous possession and enjoyment of the property pursuant to the alleged oral partition between her father and Kondusamy.

15. Further, she relied upon the Will alleged to have been executed by her mother in her favour in respect of the suit property. The learned counsel for the respondent argued that without admitting its validity, even if it is assumed that the property was allotted to her, all the



S.A.(MD)No.202 of 2008

WEB COPY

legal heirs of late. Thiru.Gurusamy would still be entitled to an equal share in the property. In such circumstances, the mother had no right to bequeathing the entire suit property in favour of the appellant /1st defendant who is one among legal heirs along with other daughters. The 1st defendant, therefore is not entitled to claim the exclusive right over the suit property in support of the Will alleged to be executed by her mother. He further contented the appellant/1st defendant therefore, is not entitled to claim exclusive right over the suit property and document must be produced strictly in accordance with the procedure prescribed by law.

16. The argument advanced by learned Counsel for the respondents appears to be correct, for the reason that as admitted by the 1st defendnat late.Thiru.Guruswamy died, leaving behind his wife Smt.Subbulakshmi and four daughters as his sole surviving legal heirs. In such circumstances, Smt.Subbulakshmi, being one of the legal heirs, could not have acquired an absolute and exclusive right over the entire suit property. Consequently, she was not competent to execute a Will bequeathing the whole of the property in favour of the appellant /1st



S.A.(MD)No.202 of 2008

WEB COPY

defendant, to the exclusion of other daughters. Further, in the alleged Will, the survey numbers of the property have not been properly mentioned. Moreover, the Will has not been proved in accordance with Section 63 the Indian Succession Act, 1925 r/w. Section 68 of the Indian Evidence Act, 1872. Hence, the said Will cannot be treated as reliable document for conferring any right upon the 1st defendant. Except for the aforesaid Will, the 1st defendant has not produced any other document to establish her absolute possession and enjoyment of the suit property. On the other hand, the plaintiffs have succeeded in proving their possession and enjoyment and over the suit property.

17. Therefore, the trial Court after perused the records and documents decreed the suit and the same was confirmed by the First Appellant Court. This Court find no reason to interfere with the said judgment. The Second Appeal has no merit and the same is liable to be dismissed.



WEB COPY



S.A.(MD)No.202 of 2008

18. In the result, the Second Appeal is dismissed. No costs.

12.09.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Ns/RM

To

- 1.The Sub-Court,
Kovilpatti,
- 2.The District Munsif Court,
Kovilpatti.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

14/15



WEB COPY



S.A.(MD)No.202 of 2008

R.POORNIMA, J.

Ns/RM

S.A.(MD)No.202 of 2008

12.09.2025

15/15