

S.A.(MD)No.249 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Dated : 25.07.2025

CORAM

THE HONOURABLE MS.JUSTICE R.POORNIMA

S.A(MD)No.249 of 2008

and

M.P.(MD)No.1 of 2012

1.T.Dharmakrishnan @ Guruswamy

2.T.Dharma Nadar @ Chennakani

3.T.Balakrishnan @ Durai (died)

4.T.Rajagopal

5.T.Saroja Balakrishnan

6.B.S.Iwin Arul

... Appellants/Appellants/Defendants

(Appellants 5 and 6 are brought on records as legal heirs of the deceased 3rd appellant vide Court order dated 10.06.2024 made in C.M.P(MD)Nos.6774 to 6776 of 2024)

Vs.

A.Rajan

...Respondent/ Respondent/Plaintiff



S.A.(MD)No.249 of 2008

PRAYER : Second Appeal is filed under Section 100 of Civil Procedure Code, against the Judgment and Decree in A.S. No.74 of 2006 on the file of the Principal Subordinate Court, Nagercoil, dated 19.09.2007 confirming the Judgment and Decree in O.S.No.346 of 2002 dated 06.04.2006 on the file of the II Additional District Munsif Court, Nagercoil.

For Appellant : Mr.P.Thiyagarajan

For Respondent : Mr.S.Ramesh

JUDGMENT

This Second Appeal had been filed by the defendants in O.S.No.346 of 2002 on the file of the II Additional District Munsif Court, Nagercoil.

2.O.S.No.346 of 2002 had been filed by the plaintiff against the defendants, with prayer for declaration of title and for recovery of possession the schedule property.



S.A.(MD)No.249 of 2008

WEB COPY

3.The suit came up for consideration before the learned II Additional District Munsif, Nagercoil, by judgment and decree dated 06.04.2006, decreed the suit. Against which the 1st appeal in A.S.No.74 of 2006, filed by the defendants came up for consideration, the Principal Subordinate Court, Nagercoil. By judgment and decree dated 19.09.2007, dismissed the appeal and confirmed the judgment in O.S.No.346 of 2002. Challenging that judgment, the defendants have filed the present Second Appeal.

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

5. The plaintiff's case in O.S.No.346 of 2002 in brief, is as follows :

The plaintiff is in possession of 27 cents of plaint schedule lands situated in Survey No.887/9 situated in Neendakarai 'B' Village, Rajakkamangalam, Agasteeswaram Taluk, Kanyakumari, which is lying along with survey Nos.887/3 and 887/6. Originally the suit schedule of



S.A.(MD)No.249 of 2008

property belonged to the plaintiff's father Asirvatham. After his death on 31.01.1994 the property devolved on the plaintiff. The plaint schedule property is the part of 1 acre 31 cents of coconut garden comprising in survey Nos. 887/3, 887/6 and 887/9. After the death of the plaintiff's father, a release deed of the plaint schedule property was executed from his mother and sister by a registered Release deed dated 11.02.1994. Thereafter, the plaintiff is in absolute possession and enjoyment of the property. The defendants are residing nearby the plaint schedule property. While measuring the plaint schedule property in the 1st week of November, 2001 the plaintiff came to know that out of the total area of 1 acre 31 cents of coconut garden about 27 cents of land in Resurvey No.887/9 is in the custody of the defendants, which was illegally encroached by the defendants without the plaintiff's knowledge as the plaintiff and his father were away from the town for a long time, because of their employment. Immediately, the plaintiff sent a suit notice to the defendants to vacate and hand over the possession of the said 27 cents of land in survey No.887/9 to the plaintiff. The defendants received the notice, but did not send reply to it. Hence, the suit.



S.A.(MD)No.249 of 2008

6. The defendants filed a written statement in brief are as

follows :

The defendants denied the entire averments in the plaint by stating that the defendant's title over the suit extent has to be traced back to a registered family partition dated 04.09.1951 between their father Thankayya and his brother Chinnayya born to Dharma Nadar of Neendakarai 'B' village. Now the plaint schedule R.S.No.887/9 corresponding to old Survey No.14584 of that village as per that settlement since Rayatwari patta No.7314 is originally solely on defendant's father Thankayya Nadar. That item of property became vested on him. The alleged survey conducted by the plaintiff to claim over a forsaken plaint schedule property is in order to save the limitation. The plaintiff's effort to have his name being materialized as pattadar in respect of settlement patta No.7314. He has to circumvent the registered family partition deed dated 04.09.1951 of defendants and since being recognized as an outcome of resurvey settlement operations done on it more than 30 years back and as such the defendant's right cannot be challenged. Further the defendants father Thankayya, S/o.Dharmar had bequeathed suit property along with rest to all the defendants equally by a registered Will No.12/3 dated 07.02.1997 of



S.A.(MD)No.249 of 2008

Rajakkamangalam Sub Registry which came into effect after his demise dated 24.07.1998. The defendants planted coconut trees aged more than 35 years within well defined survey marked bunds and also holding the tombs of the parents of the defendants dating back to more than 5 years by virtue of long adverse possession in their favour and by judicial declaration in their favour. The suit is barred by limitation and there is no valid cause of action. Hence, prayed for dismissal.

7. On the basis of the rival pleadings, the learned II Additional District Munsif, Nagercoil framed and recasted the following issues for consideration :

- 1. Whether the plaintiff is entitled for declaration of title and recovery of possession over the suit property ?*
- 2. Whether the defendants have prescribed title over the suit property by adverse possession ?*
- 3. What other reliefs the parties are entitled and cost of the suit ?*



S.A.(MD)No.249 of 2008

8. During trial, on the side of the plaintiff, the plaintiff examined himself as P.W.1 and Exs.A1 to Exs.A10 were marked. On the side of the defendants two witnesses were examined as D.W.1 and D.W.2. and Exs.B.1 to Exs.B.16 were marked. The Commissioner's report and plan were marked as Ex.C.1 and Ex.C.2.

9. The Trial Court/ II Additional District Munsif, Nagercoil, has granted a decree for declaration and recovery of possession in O.S. No.346 of 2002 dated 06.04.2006, whereas, the First Appellate Court/ the Principal Subordinate Court, Nagercoil has dismissed the appeal in A.S. No.74 of 2006, filed by the defendants by confirming the judgment in O.S.No.346 of 2002, as against which, the present Second Appeal has been filed by the defendants.

10. While admitting the Second Appeal, the following substantial questions of law have been framed for consideration :

1. Whether the judgment and decree of the Court below is erroneous on account of its mis-construction of the documentary evidence exhibited on the side of the appellant to show adverse possession ?

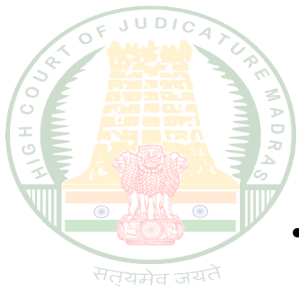


S.A.(MD)No.249 of 2008

11. The learned counsel for the appellants submitted that they are in possession of the suit property by virtue of a registered partition deed, dated 04.09.1951, executed between their father, Mr.Thankayya Nadar and his brother Mr.Chinnayya Nadar. Patta No.7314 was granted in the name of Mr.Thankayya Nadar for the old Survey No.14584, which corresponds to present Survey No.887/9.

12. He further submitted that the appellants and their predecessors-in-interest have been in peaceful, open, and continuous possession of the suit property since 1951, by cultivating the land, planting coconut trees aged over 35 years, and constructing tombs for their parents within the property. Aggrieved over the same, the appellants preferred A.S.No.74 of 2006 on the file of the Principal Subordinate Judge, Nagercoil. The First Appellate Court, by judgment dated 19.09.2007, dismissed the appeal and declined to receive the appellants' additional documentary evidence, which included:

- *The original Partition Deed dated 04.09.1951*
- *Ryotwari patta notices were issued by the settlement officer to the Thankyya Nadar and Chinnaiya Nadar*



S.A.(MD)No.249 of 2008

WEB COPY

- *Sale deeds and FMB plans*
- *Death certificate of Mr. Thankayya Nadar*
- *Sale deed executed by the respondent on 11.10.2006 alienating his remaining land in SF. Nos. 887/3 and 887/6.*

13. He further submitted that the Appellate Court erroneously held that the documents were not material and that the partition deed did not conclusively allot the suit property to the appellants' father, ignoring the residuary clause therein. He further submitted that the suit is barred by limitation, in view of their uninterrupted and adverse possession for well over the statutory period. Hence, prayed to allow the Second Appeal and dismiss the suit filed by the respondent/plaintiff.

14. The learned counsel for the respondent submitted that the respondent/plaintiff reiterated that possession follows title, citing that the suit was filed within the statutory limitation period under Articles 58 and 65 of the Limitation Act, 1963. The plaintiff argued that the defendants' claim of adverse possession was inconsistent with their initial claim of title and was legally untenable and hence, prayed to dismiss the Second Appeal.



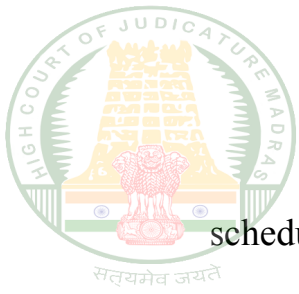
S.A.(MD)No.249 of 2008

WEB COPY

15. The learned counsel for the respondent relying upon the judgment in *Marappa Gounder (deceased) and Others Vs. Ramalingam (deceased) and Others* reported in *2002 Supreme (Mad) 567* categorically pointed out the requisite conditions to be met when adverse possession is pleaded.

16. Heard the learned counsel on either side and perused the materials available on record.

17. In order to prove the title, the plaintiff produced Ex.A1, registered sale deed dated 23.10.1969 executed by one Ponnumuthu Nadar in favour of his father Aasirvadam. The extent conveyed under this document is an extent of 1.31 acres in Survey No.14584A of Neendakarai Village. The extent conveyed is bounded with specific boundaries. The parent title deeds were marked as Ex.A11, Ex.A12. After the death of the original owner, Thiru.Ashirvadam, his legal heirs released their share in favour of the plaintiff by virtue of Ex.A4 release deed. The Plaintiff had also filed Ex.A3 revenue receipt to establish that he had paid tax for suit



S.A.(MD)No.249 of 2008

schedule property. Ex.A10 is the patta passbook issued by the Revenue Authority in favour of his father which has been transferred to the plaintiff's name which includes suit survey number. The Advocate Commissioner in his report, categorically stated that the suit property is surrounded by the remaining extent of the plaintiff.

18. On the other hand, the defendants claimed ownership based on a partition deed of the year 1951 purportedly entered between his father, Thangaiah and his uncle Chinnaiah. He asserted that the suit scheduled property was allotted in favour of his father by virtue of a partition deed. However, he has not filed the partition deed either before the trial Court or before First Appellate Court.

19. During the second appeal, the defendants filed an interim application in M.P(MD)No.1 of 2012 under Order 41 Rule 27 CPC to receive additional documents to show that the suit property does not belong to the plaintiff and the same belongs to the appellants/defendants ancestors. The respondent/plaintiff seriously objected for production of the document at this belated stage.



S.A.(MD)No.249 of 2008

20. On perusal, though the appellants did not stated any acceptable reason for not producing the document before the trial Court or before First Appellate Court, in the interest of justice this Court allowed the petition in M.P.(MD)No.1 of 2012 in order to provide fair opportunity.

21. This Court has perused the documents produced by the defendants, one of which is a partition deed dated 04.09.1951 referred in the written statement. As per the deed the defendants claimed that his father was allotted 'B' schedule properties in the above document which is the suit schedule property. However, on perusal, it is evident that his father was not allotted any property in S.No.14594A which is the suit schedule property. The other documents produced does not contain any evidence to establish that the defendants derived title to the suit property. Therefore, it is clearly proved that the defendants' ancestors did not derive any title to the suit properties. In the absence of a valid title deed, the defendants cannot claim that the suit properties are his father's property.

22. The appellants further claimed ownership of the property by way of adverse possession.



S.A.(MD)No.249 of 2008

23. Perfecting title by adverse position is well settled. A

person claiming title by adverse possession has to be proved three essential

"a) Nec vi, b) nec clam, c) nec precario" which means, the claimant must prove that their possession must be a continuous, exclusive, open, and hostile to the interest of the true owner for a statutory period.

24. A person claiming title by way adverse possession of a specific property, he must prove the following :-

- 1. He is in open physically possess their property viz., building, cultivation etc.,*
- 2. The possession must be uninterrupted for the statutory period of 12 years,*
- 3. The possession must be interrupted, exclude others, namely, the true owner from possession*
- 4. The possession must be visible and obvious such that the true owner is a notice of adverse claim*
- 5. Possession must be without permission of the true owner. It must be inconsistent with the title or interest of the real owner.*
- 6. He must possess the property with intention to own it.*



S.A.(MD)No.249 of 2008

WEB COPY

25. On careful perusal of the records, it is noted that the defendants has not accepted the plaintiff's title over the suit schedule property. To successfully claim adverse possession the claimant must admit the title of the person to prove that he will continuous possession against whom he claim adverse possession.

26. In the judgment relied upon by the respondent/plaintiff ***Marappa Gounder (deceased) and Others Vs. Ramalingam (deceased) and Others*** reported in ***2002 Supreme (Mad) 567***, in paragraph No.16(i) this Court has held as follows :

“16. The following are the principles laid down in the abovesaid decisions of this Court as well as the Supreme Court and the discussion in relation to the applicability of the said decisions in this case:-

(i) It is well settled that a party can plead adverse possession only when he admits that another person has got title. In this case, admittedly, the title of the plaintiff or the plaintiff's vendor has not been admitted. It is the case of the defendants that there was an oral exchange in



WEB COPY



S.A.(MD)No.249 of 2008

1957, in pursuance of which, they were in exclusive possession of the suit property. As indicated earlier, this oral exchange was not accepted by the civil Court in the earlier suit. In this case, no material has been placed by the defendants to prove that the defendants, in pursuance of the oral exchange, have been in exclusive possession of the suit property. In the absence of the said material with reference to the oral exchange, it can be stated that the suit property was in common possession and enjoyment by the plaintiff's vendor as well as the defendants. As such, the plaintiff's vendor can be the co-owner."

27. Further, he failed to prove his continuous possession and enjoyment of the property over a period of 12 years. The defendants produced certain documents in an attempt to establish his continuous possession.

28. The appellants stated that the Advocate Commissioner who had visited the property mentioned in his report that he found coconut trees



S.A.(MD)No.249 of 2008

aged about 35 years. The defendants, therefore, claimed that their father planted coconut trees found on the lands which are approximately 35 year old. They also stated that the coconuts were sold to P.W.2 Thiru.Ravichandran's society. It is true that the Advocate Commissioner inspected the property on 19.11.2005, has mentioned in his report that during his visit, he found 17 numbers of yielding coconut trees available in the plaint suit property each approximately 35 years. The plaintiff's claimed that coconut trees were planted by his father after he purchased the property. However, if the father of the defendants planted coconut trees, soon after partition, in the year 1951 the age of the trees would exceed 54 years not 35 years as observed. The defendants examined one Ravichandran as D.W.2 and produced some receipts (Ex.B10 to Ex.B.13) pertaining to the years 2005-2006, to show that coconuts were sold to D.W.2 society. However, they did not produce any receipts prior to this period. Furthermore, the Appellants failed to produce adangal extract to establish that the land was cultivated with coconut trees.

29. On the other hand, the respondent/plaintiff purchased the property during the year 1969. If the coconut trees were planted subsequent



S.A.(MD)No.249 of 2008

to their purchase, the age of the trees would be 35 years, supports the case of the plaintiff that the coconut trees were planted not by the appellants but by the father of the plaintiff.

30. Further the appellants did not examine any witness to prove that they were in continuous possession and enjoyment of the property over the statutory period.

31. He claimed that his parents were buried in the said land, and tombs were constructed in the year 1996 and 1998, but that is alone not a proof to show that he is in continuous possession and enjoyment of the property. His parents were died in the year 1996 and 1998. The plaintiff stated that since the father of the appellants was employed with his father, at the request of the family, his parents were permitted to cremate in a portion of the land in the suit property.

32. The defendants produced tax paid receipts for S.No.887/9 but these were issued only for the year 2002 around the time of filing the suit. The defendants failed to produce any earlier tax receipt, to establish

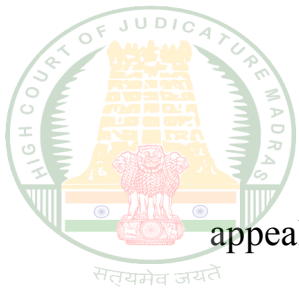


S.A.(MD)No.249 of 2008

their continuous possession and enjoyment of the subject matter of property prior to that period. They filed Ex.P15, patta stands in the joint name of plaintiff and defendants was issued in the year 2010 subsequent to the filing of the suit. The defendants' name appears along with the plaintiff indicating it is a joint Patta. D.W.1, in his evidence stated that their name was enter in the patta only during the year 2001. However, the defendants failed to examine any Revenue Authority, on which basis the mutation was effected. Mere production of revenue records alone doesn't established valid title or prove possession. There is absolutely no proof available to show the defendants derive title by adverse possession

33. Further, a person cannot simultaneously claim title based on a document and also through adverse possession of the same property. Both are mutually exclusive legal claims. The party must choose one or the other. The two claims are fundamentally contradictory.

34. The trial Court and the First Appellate Court after analysing the evidence comes to the conclusion that the respondent/plaintiff is the absolute owner of the property and allowed the suit, and dismissed the first



S.A.(MD)No.249 of 2008

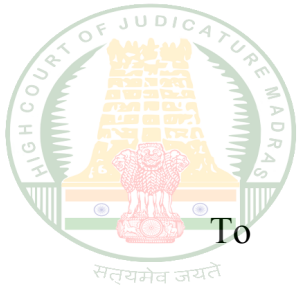
appeal filed by the appellants as they failed to prove that they are in continuous possession and enjoyment of the property. I do not find any merit in the Second Appeal filed by the defendants and hence, the Second Appeal deserves to be dismissed. The substantial question of law is answered accordingly.

35. In the result, the Second Appeal is dismissed with costs. The judgments and decrees of both the Courts below are confirmed. Consequently, connected miscellaneous petition in M.P.(MD)No.1 of 2012 is allowed. The appellants are directed to hand over the possession of the suit schedule property within one month from the date of this judgment.

25.07.2025

Index :Yes/No
NCC :Yes/No

RM



S.A.(MD)No.249 of 2008

To

WEB COPY

1. The Principal Subordinate Court,
Nagercoil.
2. The II Additional District Munsif,
Nagercoil.
3. The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



S.A.(MD)No.249 of 2008

R.POORNIMA, J.

RM

Judgment in
S.A(MD)No.249 of 2008

25.07.2025