



S.A.(MD) No.817 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 10.12.2025

CORAM:

THE HONOURABLE MRS JUSTICE N. MALA

S.A.(MD) No.817 of 2009
and M.P(MD)No.2 of 2009

1.Lakshmi
2.Santhi

... Appellants/Respondents/Defendants

Vs.

1.Ponnammal
Navu (Died)
2.Pappa
3.Nallusami
4.Neelavathi
5.Sevaiya
6.Karunakaran
7.Mathialagan

... Respondents/Appellants/Plaintiffs

(7th respondent herein was added as L.R of
2nd Respondent as per order in I.A.No.47 of 2007
dated 07.08.2007)

(Appellants 1 to 5 are represented by their power of
attorney 6th respondent Karunakaran)

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the judgment and decree passed by the learned Principal District Judge, Thanjavur dated 18.03.2008 made in A.S. No.78 of 2006 reversing the judgment and decree dated 27.01.2006 made in O.S. No.232 of 2004 on the file of District Munsif, Thiruvaiyaru.



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For Appellants : Mr.V.Balaji

For Respondents : Mr.V.Chandrasekar

JUDGMENT

The Second Appeal is filed by the unsuccessful defendants before the lower Appellate Court against the reversal judgment in A.S.No.78 of 2006 dated 27.01.2007, on the file of the Principal District Judge, Thanjavur.

2. The suit was originally filed by the respondents herein/plaintiffs before the trial court for permanent injunction restraining the appellants/defendants in any way interfering with their peaceful possession and enjoyment of the suit property.

3. The trial court dismissed the suit holding that the plaintiffs had failed to prove by adducing evidence their possession of the entire property. The Appellate Court reversed the judgment of the trial court and decreed the suit. Aggrieved by the reversing judgment of the lower Appellate Court, the appellants/defendants have filed the above Second Appeal.

4. The parties will be referred to as per their rank before the trial court.



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5. The case of the plaintiffs is that the suit property comprised in Survey No.150/1 measuring east-west 25 feet and north-south 50 feet bearing Door No.63, New No.483, at Illangadu @ Rajagiri Village, Thriukattuppalli Sub Division, in Thanjavur District, originally belonged to one Mahamayee Ammal, the mother of the plaintiffs 1 to 5 and the grand mother of the plaintiffs 6 and 7, she having purchased the same under a registered sale deed dated 16.12.1953. The said Mahamayee Ammal as the absolute owner of the property constructed a small thatched house in old Door No.63, New No.483 and was residing there. The house tax was assessed in her name. The said Mahamayee Ammal died on 12.09.1995, leaving behind the plaintiffs as her legal heirs to succeed to the suit property. After the demise of Mahamayee Ammal, her legal heirs, the plaintiffs were jointly enjoying the suit property with the second plaintiff residing there. According to the plaintiffs, on 23.09.2004, the defendants attempted to trespass into the property which the plaintiffs successfully prevented. The plaintiffs thereafter filed the suit for the aforesaid relief.

5. The defendants filed a written statement denying the plaint averments. According to the defendants, the suit property in old Survey No.



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150/1, new Survey No.150/83 measuring east-west 9.6 metres south-north upper 10.8 metres lower 10.6 metres Survey No.150/1 was originally classified as Natham land belonging to the Government. The defendants stated that the suit property was in the possession and enjoyment of the ancestors and that during natham survey, pattas were granted to them under the Land Reforms Scheme. The defendants therefore stated that their predecessors were enjoying the suit property ancestrally by constructing a house and thereafter the defendants were enjoying the property. The defendants stated that the plaintiffs suppressed the aforesaid facts and filed the suit making false claims and therefore the suit deserved to be dismissed.

6. Before the trial court, the plaintiffs examined 4 witnesses as P.W.1 to P.W.4 and marked as Ex.P.1 to Ex.P.8 and the defendants examined 5 witnesses as D.W.1 to D.W.5 and marked nine documents as Ex.P.1 to Ex.P.9.

7. On consideration of the oral and documentary evidence filed by both sides, the trial court dismissed the suit with costs. Aggrieved by the judgment of the trial court, the plaintiffs filed an appeal in A.S.No.78 of 2006 along with an I.A.NO.178/06 for inclusion of the relief of declaration. The



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lower Appellate Court allowed I.A.NO.178 of 2006 on 18.03.2008 and thereafter on examining the materials on record, allowed the appeal declaring the plaintiffs' title and for permanent injunction. Aggrieved by the judgment of the lower Appellate Court, the defendants filed the present Second Appeal.

8. The learned counsel for the appellants submitted that Interlocutory Application for including the relief of declaration in I.A.No.178 of 2006, was allowed by the lower Appellate Court, without affording an opportunity to the appellants to contest the same. The learned counsel further submitted that on the same day the appeal was also heard and decided on merits. The learned counsel for the appellants submitted that the procedure adopted by the lower Appellate Court was erroneous and against all canons of law and therefore he prayed that the judgment of the lower Appellate Court be set aside.

9. The learned counsel for the respondents supported the judgment of the lower Appellate Court.

10. Heard both sides and perused the materials available on record.



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11. It is seen that originally the suit was filed by the plaintiffs only for bare injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit property. The said suit was dismissed by the trial court by holding that the plaintiffs had not proved their possession of the entire suit properties. Aggrieved by the dismissal of their suit, the plaintiffs preferred an appeal in A.S.NO.78 of 2006. Along with the appeal, they also filed I.A.No.178 of 2006, for amendment for including the prayer for declaration of title. The lower Appellate Court in all fairness ought to have given the defendants an opportunity to contest the Interlocutory Application for amendment of the prayer. The lower Appellate Court by allowing the said Interlocutory Application without any opportunity to the defendants, has deprived them of their valuable right to contest on merits the amendment by raising vital issues like limitation. Such denial of opportunity to contest the Interlocutory Application on merits strikes to the root of fair procedure and is in clear violation of the principles of natural justice. Further, it is difficult to comprehend the undue haste with which the appellate court disposed of the appeal on the very same day.



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12. The appellate court, being the final court on facts, ought not to have allowed the amendment of prayer without giving reasonable opportunity to the defendants to effectively present their case. This Court is therefore of the considered view that the procedure adopted by the appellate court is erroneous and unsustainable in law, warranting interference by this Court. Therefore, without entering into the merits of the matter, the judgment and decree of the lower appellate court is set aside and the matter is remanded to the appellate court for fresh consideration. The lower Appellate Court shall afford due and reasonable opportunity to the defendants to file a counter in the Interlocutory Application and thereafter consider the entire matter on merits and in accordance with law. The lower Appellate Court shall decide the appeal within a period of six months from the date of receipt of a copy of this judgment.

13. In fine, this Second Appeal is allowed. No costs. Consequently, connected miscellaneous petition is closed.

10.12.2025

Index : Yes/ No
Speaking order / Non-speaking order
Neutral Citation : Yes / no
CM



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To:

- 1.The Principal District Judge,
Thanjavur
- 2.The District Munsif,
Thiruvaiyaru.
- 3.The Section Officer,
VR Section,
Madurai Bench of Madras High Court
Madurai.



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N.MALA.J.,

CM

Judgment in
S.A.(MD) No.817 of 2009
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