

S.A.(MD).No.324 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 16.04.2025

DELIVERED ON : 13.05.2025

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

S.A.(MD).No.324 of 2006

1.Vasanthi

2.Salini

... Appellants/ Respondents 1 & 2/ Plaintiffs

Vs.

1.Mobitha Beevi

2.Krishna Pillai (Died)

(Memo filed dated 08.07.2004 filed and recorded.)

3.Achuthan (Died)

4.Subhathra

5.Sreekala

6.Raman Nair (Died)

... Respondents/ Appellants/ Defendants 1 to 6

(Memo dated 06.01.2024 is recorded to the effect that R3 and R6 died and the appellants are exempted from substituting their legal heirs V.C.O 12.09.2024 made in S.A.(MD).No.324 of 2006)

PRAYER : Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 29.04.2005 of the learned Subordinate Judge, Kuzhithurai (Camp Court), made in A.S.No.72 of 2002 on his file reversing the Judgment and Decree dated 11.04.2002 of the learned II Additional District Munsif of Kuzhithurai, and made in O.S.No.416 of 1996.

For Appellants

: Mr.K.N.Thampi



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For Respondents : Mr.T.Antony Arulraj for R1
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JUDGMENT

This appeal has been filed against the Judgment and Decree dated 29.04.2005 of the learned Subordinate Judge, Kuzhithurai (Camp Court), made in A.S.No.72 of 2002 on his file reversing the Judgment and Decree dated 11.04.2002 of the learned II Additional District Munsif of Kuzhithurai, and made in O.S.No.416 of 1996.

2.The averments in the plaint:

The suit property originally belonged to one Ramar Panicker. He mortgaged the property to one Ponnann Panicker on 23.03.1122 Malabar era. Later Ramar Panicker executed a gift settlement deed on 09.04.1952 in favour of his son Gopal Panicker with a direction to redeem the mortgage. Gopala Panicker in turn sold the property to one Sukumara Panicker through a sale deed dated 25.09.1961, with liberty to redeem the mortgage. Sukumara Panicker died leaving behind the first plaintiff as his wife and the second plaintiff as daughter. They filed a suit in O.S.No. 95 of 1987 for redemption of mortgage. Suit was decreed. Final decree was passed and the property was delivered on 28.08.1995.

3.The defendant has no right over the properties. Taking advantage of the absence of the plaintiffs in the suit locality, attempt was made on 07.03.1996 to



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encroach the property, but, it was prevented.

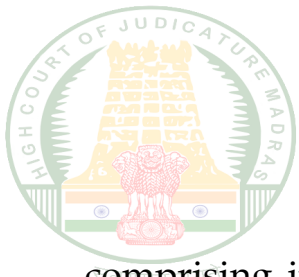
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4.The first defendant filed a statement with the following averments:

Ponnan Panicker was entitled to 1 acre forming part in Re.Survey No.1/2A, purchase made by him on 27.04.1119 malabar era from one Pethiru Harris and others. Prior to that he was in possession of the property by virtue of an assignment of mortgage. Ponnan Panicker died leaving behind the children by name Arjunan Panicker, Omana and others. They sold the property to one Chithrangathan. on 10.10.1983. He inturn Sold the property on 03.04.1989 to the 6th defendant. He was in possession of the property. He planted rubber trees aged about 30 years now. The property under mortgage was redeemed by the plaintiff comprised in S.A.No.1/2A. The plaintiffs have no right or possession in respect of the properties comprised in S.No.1/2A. Actual delivery was effected as per the decree of mortgage. The right of the plaintiffs is extinguished by way of adverse possession.

5.The brief averments made in the written Statement of the defendants 4 and 5:

There is no property as mentioned by the plaintiff. They have no right or interest in any portion of the survey number mentioned in the plaint. The defendants are in exclusive possession. The plot measured about 44 cents



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comprising in Re.Sy.No.1/2. The door number is IV-2, situated in Manjalumoodu Village. The above said property originally belonged to the father of the defendants 4 and 5 namely Janardhanan Pillai. He purchased the property from Omala and Premakumari, Narayani and Arjunan. Omala and Premakumari obtained 20 cents from one Sreemathi and remaining 24 cents were obtained by Narayani and Arjuna under a Will executed by Ponnann Panicker.

6.The brief averments made in the Written Statement of 6th defendant:

He is in possession of Re.S.No.491/2 corresponding to S.No.907/8A. He planted rubber trees on the east of the S.No.491/2 having 58 ares. The plaintiff has right only in S.No.1/2A in Arumanai Village. In that property this defendants has no right or title. Now he is unnecessary party to the suit.

7.On the basis of the pleadings of the respective parties, the trial Court formulated 8 issues.

1. Whether the plaintiffs are entitled to declaration of title and possession as prayed for?
2. Whether the plaintiffs are entitled to permanent injunction as prayed for?
3. Whether there exist any property on land as described in the plaint?



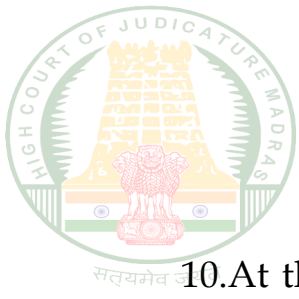
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4. Whether the mortgage mentioned in the plaint has not taken effect as claimed by the defendant?
5. Whether the gift deed dated 09.09.1952 has not taken effect as claimed by the defendant?
6. Whether the delivery taken through the decree passed in O.S.No.95/97 is a paper delivery as claimed by the defendant?
7. Whether the suit is maintainable?
8. What other reliefs the plaintiffs entitled to?

8.To substantiate the case, on the side of the plaintiffs one witness was examined and 9 documents were marked. On the side of the defendants one witness was examined and 25 documents were marked.

9.At the conclusion of the trial process the trial Court decreed the suit as prayed for with cost. Against which, appeal was preferred before the appellate Court namely Sub Court, Kulithurai in A.S.No.72 of 2002. The appellate Court reversed the finding of the trial Court allowed the appeal, dismissed the suit without any cost. Against the same, the plaintiff filed the present second appeal.



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framed.

10. At that time of admission, the following substantial questions of law were

1. Whether the Judgment and decree of the 1st appellate Court is correct and sustainable, when the 1st defendant has not properly pleaded or proved his case under Ex.A7?
2. Whether the Judgment of the 1st appellate Court is correct and sustainable in view of the admissions of DW1 with regard to the appellants' earlier suit and the Court delivery under Ex.A7?

11. Heard both sides.

12. At the outset it is seen that some issue regarding identification of the property under dispute is primarily involved. We will see that issue in brief, so that we can have a clear idea regarding the issue.

13. The plaintiffs claim right on the basis of the purchases. In the pleading and in the evidence it is specifically stated that the property is situated in Re.S.No.1/2A in Arumanai Village measuring about 45 cents. This is the property, which according to the plaintiffs, it devolved upon them after the death of Sukumara Panicker. Now it is the primary duty of the plaintiff to prove that they got right and title in R.S.No.1/2A.



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14.The reason for me to make this primary observation is that the contesting defendants would say that plaintiffs' property did not lie in R.S.No.1/2A, but, on the contrary, somewhere else. No corresponding correlation document was produced by the plaintiffs to correlate the old survey number mentioned in his document and with that of the new survey number. The first defendant claims right over the property in R.S.No.1/2A. The defendants 4 and 5 claim right over the property situated in R.S.No.1/2 situated in Manjalumoodu Village. The 6th defendant would say that he did not concern about the R.S.No.1/2A, but in R.S.No.491/2 measuring about 58 cents. With this primary issue in mind, now, let us go to the respective titles.

15.The respondent has filed a short note regarding the tracing of title by the respective parties.

16.As per the case of the plaintiffs as mentioned above, Ramar Panicker was the original owner. Ramar Panicker mortgaged the entire one Acre to one Ponnan Panicker, under Ex.A1 and Ex.A2 on 23.03.1122 malabar era, which is not under dispute. Later Ramar Panicker executed two settlement deeds on 09.04.1963, one in favour of his second wife Karthikayeni for 55 cents and Gopalan Panicker for rest of 45 cents. Gopalan Panicker in turn sold the property to Sukumara Panicker on 25.09.1961 under Exs.A5 & A6. This tracing of title is not disputed by the appellant



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during the course of arguments.

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17.Ponnan Panicker after getting the mortgage assigned the same for entire one acre to one Sivarajan Panicker under Exs.A20 and A21.

18.The plaintiff filed the suit in O.S.No.55 of 1987 against the Sivarajan Panicker for redemption of mortgage in respect of their 45 cents. Delivery was also effected under Ex.A7.

19.Now coming to the tracing of title by the first defendant. Ponnan Panicker purchased 1 acre, out of 1 acre 36 cents, on 13.12.1943 from one Harris. He executed a Will dated 07.10.1970 dividing the property equally namely 50 cents in favour of Omana his daughter in law and Prema the granddaughter and remaining 50 cents to his granddaughter Girija. Later that 50 cents given to Girija was settled by her in favour of one Srimathi on 21.06.1976 under Ex.B3 and Ex.B4. Later Srimathi executed a settlement deed under Exs.B5 and B6 in respect of the 50 cents in favour of Prema, who already received 50 cents through the Will from Ponnan Panicker. Now they are entitled for 1 acre in total. They sold the same to Chitrangkathar on 10.10.1983 under Exs.B7 and B8, who in turn sold the property to the first defendant through the sale deeds dated 03.04.1993 under Exs.B24 and B25. This is the tracing of title of respective parties.



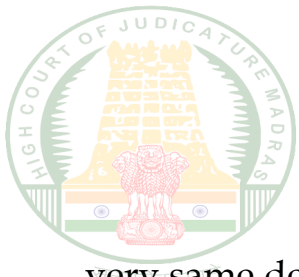
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20. At one point of time, this Court entertained a doubt as to whether property delivered under Ex.A7 to the plaintiff is overlapping with that of the first defendant's property. So, the matter was reopened for clarification. Clarification was heard from both sides. Now it is evident that both are claiming title through different persons and the question of overlapping is a matter for consideration. It is left open to be decided by the trial Court at the relevant point of time.

21. Now we will go to the records available. We will straight away go to Ex.A7 the tracing of title by the plaintiffs. The survey number is mentioned as 4851-7-16 measured about 45 cents. It appears that the amin after identifying the property delivered the same to the plaintiffs. But, the problem lies in the plaint description of property, wherein, it has been mentioned that the old S.No. 4851-7-16 is corresponding to new S.No.1/2A. As mentioned by the respondent, no correlating document is produced by the plaintiffs.

22. During the course of arguments, the learned counsel for the appellant would rely upon the admission made by the first defendant. But, admission during the course of evidence will not create any title, when dispute is apparent on the face of record regarding the identity of the property. In the mortgage deed executed by Ramar Panicker in favour of Ponnan Panicker, the survey number is mentioned as 4851-7-16 measuring about 1 acre. In the subsequent documents also we find the



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very same description of the property.

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23.Now coming to the documents of the defendant, in Ex.B2, the sale deed executed by Harris in favour of Ponnan Panicker the description is mentioned as S.No. 4851-7-16 out of 1 acre 36 cents 1 acre on the west leaving 36 cents on the east. This creates doubt, as mentioned above, as to the issue of or the question of overlapping between the plaintiffs' property with that of the first defendant's. But, when this point was raised as a doubt by this Court, the learned counsel for the respondent would submit that it will not overlap since tracing of title of both the parties are entirely different. He has no objection to remand the matter back to the trial Court to appoint a Commissioner to locate the disputed property.

24.As mentioned above, both sides documents are referring to survey number namely old S.No.4851-7-16. So I am of the considered view that unless a Commissioner is appointed to locate the disputed property with reference to the title documents of both the parties, the matter cannot be resolved. For such proposal both sides are agreeing.

25.On the sole ground, without going into the merits of the matter, and discussing the rival title, I am of the considered view that the matter may be remitted back to the trial Court with some directions.

(i)The judgment of the trial Court as well as the appellate Court are hereby set



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(ii)The matter is remitted back to the trial Court with direction to appoint a Commissioner to measure the properties with reference to the title documents of both parties and locate the disputed property.

(iii)The parties are advised to make available the relevant revenue records old and new.

(iv)If the parties are unable to get the relevant records from the concerned office, then steps may be taken to send for the relevant records from the revenue department concerned by the Trial Court, on the application to be made by the parties.

(v)The Commissioner may be directed to file his report within a period of **three months** from the date of issuance of Commissioner Warrant. The Commissioner's fees may be fixed at the discretion of the trial Court to be paid by the plaintiff.

(vi)The parties are also permitted to give memo of instructions to the Commissioner in this regard.

(vii)On the basis of the Commissioner report, parties may be permitted to lead oral or documentary evidence further, if any and so willing.

(viii)Let the entire process be completed namely the trial process be completed



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within a period of **six months** from the date of receipt of a copy of this order.

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(ix)The trial Court shall decide same without being influenced by any of the observation made either by its own judgment or by the appellate Court or by this Court in the second appeal.

(x)Parties are directed to bear their own costs.

*** (xi) Parties are directed to appear before the trial Court on 16/07/2025**

26.This second appeal stands disposed of accordingly.

*** in corporate as per the order dated 25/06/2025
made by RVJ in S.A.(MD).No.324 of 2006**

Sd/-
Assistant Registrar (CS I)

Sd/-
Assistant Registrar(CS I)

// True Copy //

/ /2025
Sub Assistant Registrar (CS I)
(CS- I/ II / III / IV)

TM

To

(*)To be substituted to the order already despatched on 11/06/2025

1.The Subordinate Judge, Kuzhithurai.

2.The II Additional District Munsif, Kuzhithurai.



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Copy to:

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The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.N.THAMPI, Advocate (SR-30843[F] dated 13/05/2025)

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13.05.2025

MGJ (28.05.2025) 13P 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from
17.07.2023

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CT (30/06/2025) 13P/6C

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