



S.A.(MD)No.302 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)No.302 of 2025

Janaki

... Appellant

-vs-

Krishnamani

..Respondent

PRAYER: Second Appeal filed under Section 100 Code of Civil Procedure, against the judgment and decree dated 19.11.2024 made in A.S.No.13 of 2021 on the file of II Additional Sub Court, Nagercoil confirming the judgment and decree dated 20.04.2021 made in O.S.No.187 of 2015 on the file of the Principal District Munsif Court, Nagercoil.

For Appellant

... Mr.S.Sureshkumar



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JUDGMENT

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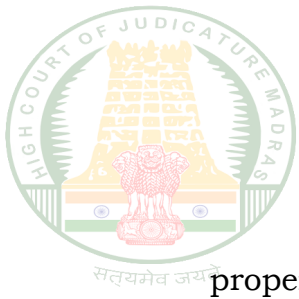
The unsuccessful plaintiff is before this court on appeal.

2. The second appeal is filed challenging the judgment and decree dated 19.11.2024 in A.S.No.13 of 2021 on the file of the II Additional Sub Court, Nagercoil, confirming the judgment and decree dated 20.04.2021 in O.S.No.187 of 2015 on the file of the Principal District Munsif Court, Nagercoil.

3. For the sake of convenience, the parties are referred to as per their litigative status before the trial Court.

4. This second appeal is heard and disposed of at the stage of admission itself.

5. It is the case of the plaintiff that the suit property originally belonged to the mother of the plaintiff's husband. After the death of the plaintiff's mother-in-law and the death of the plaintiff's husband, the plaintiff inherited the suit property. It is the further case of the plaintiff that the defendant, who was houseless and who wanted to construct a house, sought permission to temporarily reside in the suit



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property. The plaintiff had accepted the same and gave the suit property to the defendant on tenancy, fixing the monthly rent at Rs. 750/-. The tenancy commenced on 01.01.1997. It is the further case of the plaintiff that even though the defendant had been paying the rent, from the year 2013, the defendant stopped payment of rent and further converted the thatched shed into a concrete building. Further, the defendant had also transferred the property records in his name. As such, the plaintiff had come up with the suit for eviction.

6. The defendant resisted the suit, contending that the suit property absolutely belonged to the defendant. The defendant had disputed that the property is situated in [S.No.320/8](#) but it is situated in [S.No.320/7](#). The defendant had got the property through the partition. Further, the defendant had purchased 1.45 cents in [S.No. 320/7](#) from one J.Rajalsam on 12.09.2001 and thereby, the defendant had denied the tenancy and sought for dismissal of the suit.

7. During the trial, the plaintiff examined herself as P.W.1 and marked Exs.A1 and A2. On the side of the defendant, none of the witnesses have been examined, and no document has been marked. An Advocate Commissioner was appointed and his report, was marked as Ex.C1.



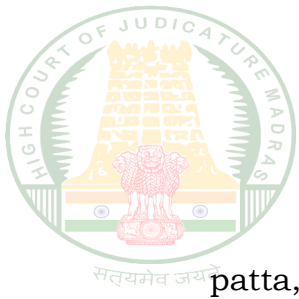
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8. The trial court, after analyzing the evidence, came to the conclusion that when the plaintiff had come up with the suit for eviction, the plaintiff had failed to prove her title over the suit property and also tenancy. The trial court concluded that from the two documents marked, no right enured in favour of the plaintiff, and therefore, the suit filed for eviction cannot be sustained.

9. On appeal, the lower appellate court rejected the contention of the plaintiff that since the defendant claims that the house is only in [S.No.320/7](#), but however, from the Advocate Commissioner's report, it is found that the house is in [S.No.320/8](#), they are not entitled for any relief, particularly, in the absence of establishing title over the suit property, and dismissed the appeal, confirming the judgment and decree of the trial court. Assailing the concurrent finding of fact, the plaintiff has preferred the above second appeal.

10. The learned counsel appearing for the appellant/plaintiff argued that even though the plaintiff has enormous documents to show that she has the right and title over the suit property, only two documents were filed in the court, which are the tax receipts and



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patta, and in view of the documents that are in her possession, the plaintiff is to be accepted as the lawful owner, by which she will be entitled for eviction. The learned counsel further contended that when the defendant does not dispute the claim of the plaintiff in [S.No.320/8](#) and has claimed only in respect of [S.No.320/7](#), the plaintiff is entitled for the decree. The courts below have not appreciated this aspect in a proper perspective, and therefore, the findings rendered are perverse and sought for interference of this court.

11. Heard the learned counsel for the appellant, and perused the materials available on record.

12. The plaintiff had come up with the suit to evict the defendant, contending that the defendant/tenant had failed to pay the rent, and in view of the default on payment of rent, the plaintiff is entitled to recover the possession. When the plaintiff had approached the court seeking to evict the defendant and the defendant denies tenancy and claims title to the suit property, it was for the plaintiff to establish her right and title over the suit property, and on proving the title, it was for the plaintiff to establish that tenancy had been entered into, and pursuant to the tenancy, there was a landlord and tenant relationship existing between the parties. Only then, on establishing



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these foundational facts, the plaintiff could thereafter file evidence establishing that there had been default in payment of rent by the defendant, based on which the plaintiff would be entitled for decree of eviction.

13. In the instant case, when the plaintiff seeks to evict the defendant, only two documents have been filed on the side of the plaintiff, which are tax receipts and a copy of the patta. When the defendant, even at the time of filing the written statement, had categorically disputed the title over the suit property and also the tenancy, then the plaintiff, who is admittedly not in possession of the suit property, is not entitled to the relief of eviction unless the plaintiff seeks a declaration and consequential relief of recovery of possession. Even after the written statement filed by the defendant disputing the title of the plaintiff and also claiming exclusive ownership of the suit property, the plaintiff failed to seek a declaration of title of the suit property and has not filed any document to establish his title. When the title of the plaintiff is denied, and admittedly when the plaintiff seeks for recovery of possession, the suit filed for mere recovery of possession without seeking a declaration is not maintainable.



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14. It is the vehement contention of the learned counsel for the appellant that since there are other documents in her possession, that also has to be considered in ascertaining the rights of the plaintiff. This court is not able to accept such a contention that in the civil proceedings, there should be pleadings, and based on the pleadings, documents have to be filed, and evidence is to be let in. In the absence of any pleadings and any documents filed establishing the title or right of the plaintiff, the submission made by the appellant in this regard is rejected.

15. In the absence of documents establishing her right over the suit property and also failing to prove the tenancy, and further when the suit has been filed for mere recovery of possession without seeking declaration even after denial of title, the suit filed is not maintainable. The courts below have rightly assessed the legal aspects and thereby arrived at concurrent findings of fact which are based on the available record.

16. This court does not find any illegality or perversity in the finding arrived at. No substantial question of law is involved in this second appeal.



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17. In the result, the Second Appeal fails and the same is dismissed. No costs.

17.07.2025

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

To:

- 1.The II Additional Sub Judge, Nagercoil.
- 2.The Principal District Munsif, Nagercoil.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

skn

Judgment made in

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