



S.A.(MD)No.190 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2025

CORAM

THE HON'BLE MR.JUSTICE **G.ARUL MURUGAN**

S.A.(MD)No.190 of 2025

and

C.M.P.(MD)No.7337 of 2025

1. Kalaiyarasi
2. Karthick Balan ... Appellants/Appellants/Plaintiffs
Vs.

1. The Veterinary Assistant Doctor,
Veterinary Branch Pharmacy,
Puliyampatti Village,
Palani Taluk.
2. The Assistant Director
Animal Husbandary Department,
Thattankulam, Sivaigirpatti Panachayat,
Palani Taluk.

3. The Director,
Animal Husbandry Department,
Secretariat, Chennai. ... Respondents / Respondents /
Defendants

PRAYER : Second Appeal filed under Section 100 Cr.P.C., to set aside the judgment and decree dated 02.12.2024 passed in A.S.No.28 of 2023 on the file Additional Sub Court, Palani confirming the judgment and



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decree dated 30.06.2023 passed in O.S.No.64 of 2019 on the file of District Munsif Court, Palani.

For Appellants : Mr.M.P.Senthil

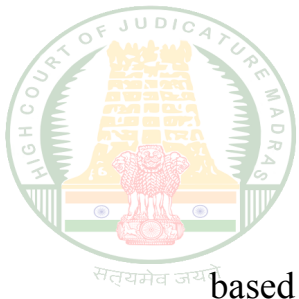
For Respondents : M/s.P.B.Ahamed Yasmin Parvin
Government Advocate

JUDGMENT

This second appeal has been filed challenging the judgment and decree dated 02.12.2024 made in A.S.No.28 of 2023 on the file Additional Sub Court, Palani, confirming the judgment and decree dated 30.06.2023 made in O.S.No.64 of 2019 on the file of District Munsif Court, Palani

2. The unsuccessful plaintiffs are before this Court on Appeal. The parties are referred, as per the litigative status before the trial Court.

3. It is the case of the plaintiffs that in respect of the suit property and several other properties, a compromise decree was passed in O.S.No. 321 of 2010, dated 07.03.2011 before Subordinate Court, Palani and



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based on that compromise decree, the plaintiffs became the owner of the suit properties. While so, it is their further case that the defendants had encroached upon 10 cents of land in Survey No.56/3 and they constructed a building. It is the specific case of the plaintiffs that the lands measuring to an extent of 1.03.5 Hectres in Survey No.56/3 covered under patta No.681 belong to the plaintiffs and they have been in possession and enjoyment of the same. While so, the plaintiffs came to know that the lands were subdivided as Survey Nos.56/3 and 56/4 and for an extent of 0.04.0 Hectres in survey No.56/4 and patta has been issued in patta No.727 in favour of the defendants. In this regard, they have sent a legal notice on 04.03.2014 to the Revenue Department, seeking cancellation of the said patta. Even though the Revenue Department did not respond to the notice, the defendant Veterinary Department issued a notice on 18.03.2014 stating that the Veterinary Hospital has been constructed in the suit property on 21.10.1962 itself and the hospital was in use all along and in the year 2011, the old building was demolished and fresh building was constructed. It is the further case of the plaintiffs that even on receipt of such notice, they did not proceed further, but, on the other hand, they had been trying to sort



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out the issue through the local people and ultimately, issued further legal notice on 15.04.2019, calling upon the defendants to handover the possession of the encroached property. Thereafter, the plaintiffs have come up with the suit for declaration, mandatory injunction and recovery of possession.

4. The defendants resisted the suit by filing a written statement, by contending that, in fact, the plaintiffs had already issued a legal notice on 04.03.2014, for which they have issued a detailed reply on 18.03.2014 itself and that reply has been also filed by the plaintiffs themselves along with the suit. It is the specific case of the defendants that a Veterinary Hospital has been constructed in the suit property in the year 1962 and it has been in public use, since then. The defendants had also raised the issue of limitation that when the legal notice was issued in the year 2014 and the ownership of the defendants pertaining to the Veterinary Hospital has also been responded to them in 2014 itself, the suit filed only in the year 2019, i.e., after the period of five years, is barred by limitation.

5. During trial, the plaintiff examined herself as P.W.1, and



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marked Ex.A1 to Ex.A12. On the side of the defendants, none has been examined and no document has been marked.

6. The trial Court, after analyzing the documents and evidences, dismissed the suit on the ground that the plaintiffs have not established the title and the fact that there was an extent of 2.56 Acres in survey No. 56/3. Further, on finding that the plaintiffs had been only issued patta in respect of the lands in Survey No.56/3 and for the suit property, which is in survey No.56/4, patta has been issued in favour of the defendants, concluded that the plaintiffs have not proved their case. The trial Court also found that since it is admitted by the plaintiffs that the construction was made in the year 2014 and the suit is only filed in the year 2019, the relief of mandatory injunction sought for is barred by limitation.

7. Aggrieved by the decree of the trial Court, the plaintiffs preferred an appeal. On appeal, the lower Appellate Court confirmed the judgment and decree of the trial Court, as the plaintiffs failed to establish their title over the suit property and had ultimately, dismissed the appeal. Assailing the concurrent findings of the Courts below, the plaintiffs



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have preferred the above Second Appeal.

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8. The learned counsel appearing for the appellants argued that the plaintiffs have marked the compromise decree as Ex.A1 and Ex.A2 and also the patta and the other revenue documents, including the reply issued by the defendants to establish the ownership of the plaintiffs. The learned counsel by relying on the reply notice issued by the defendants in Ex.A12, contended that in the reply itself it is stated that the suit property in New Survey No.56/4 had old survey No.64/2 measuring 10 cents. When this Court posed a question as to the basis on which document the plaintiffs are tracing title to the property, he submitted that partition deeds are available and they may allowed to file it as typed set of papers.

9. It is the vehement contention of the learned counsel for the appellants by placing reliance on the decision of the Hon'ble Supreme Court in the case of ***R.V.E.Venkatachala Gounder V. Arulmigu Viswesaraswami & V.P. Temple*** reported in ***2003-8-SCC-752***, to contend that the plaintiffs were not expected to prove beyond reasonable doubt and it was sufficient for the plaintiffs to prove their title to a high



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degree of probability and the plaintiffs by filing this documents have established the title to a high degree of probability.

10. Reliance was also made to the decision of the Hon'ble Supreme Court reported in **2024-SCC-Online-Sc-3037** in the case of ***N.Thajudeen V. Tamil Nadu Khadi and Village Industries Board***, to contend that when relief is sought for declaration coupled with recovery of possession, then, the limitation would be 12 years. Therefore, the finding of the Courts below that the relief sought for is barred by limitation is not correct.

11. The learned counsel for the appellants further submitted that the defendants ought to have proved that the Veterinary Hospital has been constructed in survey No.56/4 belongs to them. They have not come forward to establish the title. As such, he contended that the Courts below have rendered findings, which is not based on the documents and evidences available and therefore, the findings are perverse and sought for interference of this Court.



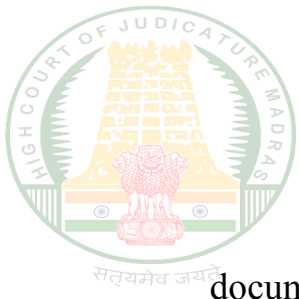
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12. The learned Government Advocate, took notice and appeared for the respondents, submitted that the suit property belongs to the Veterinary Hospital and the Hospital has been constructed in the year 1962 itself and all along it has been in public use and now, the plaintiffs by relying on some self serving document is making an attempt to usurp the Government property. It is their further contention that since the plaintiffs had not established the title, the Courts below had rightly dismissed the suit and sought for dismissal of the Appeal.

13. Heard the submission advanced by the learned counsel on either side and perused the materials available on record.

14. The plaintiffs had come up with the above suit claiming declaration, mandatory injunction and recovery of possession. The plaintiffs claim title to the suit property through a compromise decree entered into in Ex.A1 and Ex.A2 dated 07.03.2011. In the present suit, where the plaintiffs claim title over the suit property in survey No.56/4, admittedly, in which a Veterinary Hospital has been constructed and is in public use, the plaintiffs in order to succeed, have to establish through

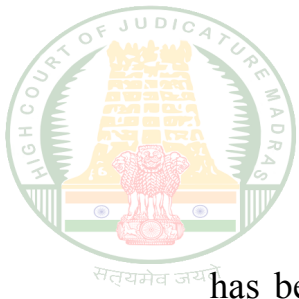


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documents that they have title to the suit property. Except the two documents in Ex.A1 and Ex.A2, which is only a compromise decree entered into between the parties, that too, in the year 2011 and also a self serving document, no other document is produced. When the fact remains that the Veterinary Hospital is in use from the year 1962, the plaintiffs by merely relying on Ex.A1 and Ex.A2 cannot contend that they are having title to the properties. Even assuming that the compromise was entered into, it is for the plaintiffs to trace the title, by which, they got right. In the absence of any materials and the plaintiffs having not come forward with any documents to establish the title, the suit filed by the plaintiffs, seeking for declaration over the suit property is bound to fail.

15. The learned counsel for the appellants made an attempt before this Court by contending that they are having partition deeds to establish their title, but, however, they have not produced the document. In a suit that too, particularly for declaration of title, the plaintiffs are bound to prove and are expected to produce the best evidence available to succeed in their claim. The plaintiffs knowing well that the Veterinary Hospital

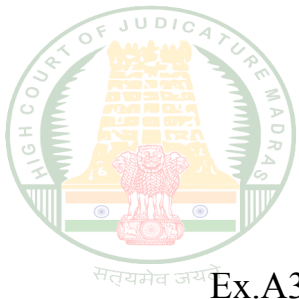


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has been constructed in the suit property and has been in use from the year 1962, according to the defendants, and atleast from the year 2014 as admitted by the plaintiffs, for which, they have also sought for a mandatory injunction and recovery of possession, the plaintiffs are bound to produce all the materials to prove their case. As per Section 101 of the Indian Evidence Act, the burden is on the plaintiffs to prove the claim made by them and only on discharge of the onus, the burden shifts on to the defendants. The further contention of the learned counsel for the appellants is that the defendants failed to prove their title by producing any documents, may not be of much use to the appellants, in view of Section 102 of the Indian Evidence Act, where the party, who asserts the facts is bound to fail, in a case, where if either party fails to produce materials. As such, the plaintiffs having not come forward with any documents to establish the title to the suit property in survey No.56/4 cannot succeed as against the defendants by merely relying on Ex.A1 and Ex.A2.

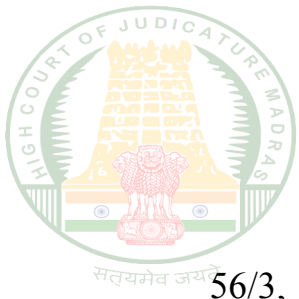
16. It is also relevant to note that the patta issued in survey No. 56/3 is in favour of the plaintiffs and the 'A' register have been filed as



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Ex.A3 and Ex.A4. These two documents in Ex.A3 and Ex.A4 are in respect of 0.99.50 Hectres issued in favour of the plaintiffs for the lands in survey No.56/3. The patta in respect of lands in survey No.56/4 has also been filed by the plaintiffs in Ex.A5. The perusal of the patta in Ex.A5 reveals that the patta has been issued for 0.04.00 Ares, which is in survey No.56/4 in favour of the defendants Veterinary Department. The three documents clearly establish the fact that there is no dispute in respect of the lands of the plaintiffs in survey No.56/3, for which the patta and A register stands in their favour in Ex.A3 and Ex.A4, the patta in respect of ten cents, which is in survey No.56/4 stands in the name of the defendants Veterinary Department. The plaintiffs have also filed F.M.B in Ex.A8. The perusal of the FMB in Ex.A8 reveals that there are four subdivisions in survey No.56 having 56/1, 56/2, 56/3 and 56/4. The Hospital building has also been marked in the FMB in survey No.56/4. In the present case, the claim of the plaintiffs is that original survey No.56/3 included the lands in survey No.56/4 and only on subdivision this 10 cents was carved out from the lands in survey No.56/3 and a new subdivision was given as survey No.56/4. In this regard, if already the lands have been subdivided and if any subdivision is made in Survey No.



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56/3, then in the usual course, the subdivision is only as survey No. 56/3A and 56/3B etc. The fact that the subdivision in Survey No.56 is having Survey Nos.56/1 to 56/4 makes it clear that 10 cents which is found in Survey No.56/4 cannot have been carved out from the lands in and out of Survey No.56/3 by making a subdivision. In this regard, the plaintiffs have also miserably failed to prove that the subdivision has been carried out by creating Survey No.56/4 from and out of the lands in survey No.56/3.

17. Both the Courts below have analysed this aspect and rendered a specific finding that in the absence of the plaintiffs filing any document to trace their title and also the fact that there are two pattas standing in the name of the plaintiffs and the defendants independently, one in favour of the plaintiffs for lands in Survey No.56/3 and one for the suit property in favour of the defendants in Survey No.56/4 and the plaintiffs having failed to show that there had been a subdivision of survey No. 56/4 from Survey No.56/3, had rightly arrived at a conclusion that the claim made by the plaintiffs for declaration of title and consequential recovery of possession, mandatory injunction cannot be sustained.



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18. Insofar as the finding on limitation, it is to be seen that in fact it has been pleaded that the Veterinary Hospital has been constructed in the year 1962 and has been in public use. Though the defendants have not come forward to produce any documents or examine any witnesses, that alone will not enure to the benefit of the plaintiffs. In a suit for title, the plaintiffs have to succeed on their own strength and not relying on the weakness on the defence of the defendants. When admittedly the patta has been issued in favour of the defendants even in the year 2011 and they issued a legal notice to the Revenue Department, the plaintiffs did not choose to proceed further. Further, even admittedly according to the plaintiffs, when the constructions have been made in the year 2014 and they have issued a legal notice in the year 2014 itself in Ex.A11, for which, the defendants have also issued a reply notice in the year 2014 itself in Ex.A12, the plaintiffs for the reasons best known did not choose to file any suit immediately and has come up with the suit only in the year 2019. Since the suit has been filed after five years, from the date of issuance of the legal notice, the Courts below found that the relief of declaration ought to have been filed within three years and the mandatory

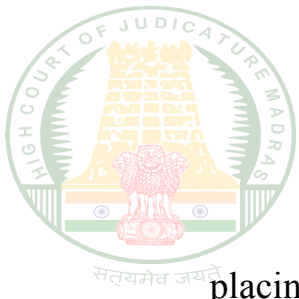


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injunction sought to demolish the building also ought to have been filed within the time. In such regard, the Courts have only held that the relief insofar as the mandatory injunction cannot be sustained, after the period of limitation but have not given any finding in respect of the relief sought for recovery of possession as time barred.

19. The learned counsel for the appellants placed reliance on the above referred decisions, particularly, to the proposition that the plaintiffs are expected to prove their title only on a high degree of probability and not beyond doubt. It is true that the plaintiffs need not prove their case beyond reasonable doubt and once the plaintiffs are able to discharge the onus, by proving title based on preponderance of probability, the onus shifts on to the defendants, but however, in the present case, as referred earlier, the plaintiffs have not proved the case even to a high degree of probability. Admittedly the suit property vest with the Government, where the Veterinary Hospital has been constructed and is being used right from 1962. The plaintiffs approached the Courts seeking declaration as against the property vested with the Government. Knowing well, the plaintiffs have only come to the Court



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placing reliance on the compromise decree in Ex.A1 and Ex.A2, which are self serving documents, which came into existence only in the year 2011. These two documents Ex.A1 and Ex.A2 cannot be taken to the effect that the plaintiffs have proved the title to a high degree of probability. Further, even the patta filed by the plaintiffs in Ex.A3 and Ex.A5 shows that they have been issued in favour of the plaintiffs only for survey No.56/3, for which, there is no dispute and as far as the suit property in survey No.56/4, it stands in the name of the defendants, in which, a Veterinary Hospital has been constructed and in existence for public use.

20. In view of the above deliberations, the Courts below have rightly arrived at a conclusion, which is based on the findings rendered by analyzing the documents and evidences and this Court is not able to find any illegality or perversity in the concurrent findings of fact arrived at. In the absence of any document and failure on the part of the plaintiffs to prove their title, necessarily, the plaintiffs are bound to fail. No question of law much less a substantial question of law arise in the above appeal for the consideration of this Court.



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21. Accordingly, this Second Appeal stands dismissed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

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

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



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