BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.07.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.207 of 2025

Thangavel ... Appellant / Appellant / Defendant

Vs

1.Govindammal
2.Kamaraj ... Respondents/ Respondents/ Plaintiffs

Prayer : This Second Appeal is filed under Section 100 C.P.C., against the judgment and decree order dated 14.10.2024 made in A.S.No.08 of 2024 on the file of the learned Subordinate Judge, Musiri, confirming the judgment and decree dated 28.11.2023 made in O.S.No.695 of 2022 on the file of the learned District Munsif cum Judicial Magistrate, Thottiyam.

For Appellant : Mr.G.Sridharan

For Respondents : Mr.G.Kandhavadivelan

JUDGMENT

The defendant is before this Court on appeal. The appeal is filed challenging the judgment and decree dated 14.10.2024 in A.S.No.8 of 2024 on the file of the learned Subordinate Judge, Musiri, confirming the judgment and decree dated 28.11.2023 in O.S.No.695 of 2022 on the file of the learned District Munsif cum Judicial Magistrate, Thottiyam.

2. The parties are referred to as per the ranking before the trial Court.

3. According to the plaintiffs, the suit property is the ancestral property of Kumaran. The first plaintiff is the daughter and one Narayanan is the son of Kumaran. The second plaintiff is the son of the first plaintiff. Further, according to the plaintiffs, the son Narayanan had relinguished his right over the suit property in favour of his sister, the first plaintiff. Thereafter, the plaintiffs had put up a thatched shed in the suit property and the property tax has been assessed in the name of the second plaintiff. The plaintiffs have filed the Adangal registers in the name of Kumaran and also the tax receipts paid in the name of the

second plaintiff evidencing their possession. So the second plaintiff who was away from the family due to his work however had visited the village at Balapuram and had been looking after the house put up in the suit property. The defendant who is an influenced person had attempted to grab the suit property. It is the case of the plaintiffs that the defendant who has no right over the property, is also continuing his threat to some how disturb the possession of the plaintiffs and as such the plaintiffs have come up with the suit for permanent injunction.

4. The defendant had resisted the suit by filing a written statement had admitted that the suit property originally belong to Kumaran. However, it is the case of the defendant that the wife of the defendant namely one Ponnammal had purchased the suit property from Kumaran for a sale consideration of Rs.90/- on 18.11.1989. She was put in possession of the suit property. It is the further case of the defendant that pursuant to the sale, she had constructed a house. The property has been assessed to property tax in Door No.2/28-1. Eventhough, the defendant's wife had been paying the tax, the patta has not been mutated and by taking advantage over the same, the plaintiffs are claiming right over the

suit property. The defendant has denied the title of the plaintiffs to the suit property and also disputed the possession of the plaintiffs and as such sought for dismissal of the suit.

5. During trial, the first plaintiff examined herself as P.W.1 and one Pounnuraman as P.W.2, two official witnesses particularly the Deputy Block Development Officer as P.W.3, the Secretary of the Panchayat as P.W.4 and marked Ex.A1 to Ex.A7. On the side of the defendant, the defendant had examined himself as D.W.1 and one Sekar as D.W.2 and marked as Ex.B1 and Ex.B2. Through the witnesses, Court document Ex.X1 was marked. The trial Court after analyzing the evidences came to the conclusion that the plaintiffs had by filing the documents in Ex.A1 and Ex.A2 established that they are the legal heirs of the Kumaran, who was the admitted owner and also by filing the documents in Ex.A4 to Ex.A6, coupled with the examination of the official witnesses established the possession over the suit property. However, the defendant who had claimed right through the unregistered sale deed in Ex.B2 failed to prove the document. Therefore, decreed the suit. On appeal, the lower appellate Court concurred with the findings of

the trial Court and also by observing that even documents relied on by the defendant in Ex.B2 is not genuine as the perusal of the document reveals that it was purchased by some one else and the name of the defendant's wife has been entered and further the wife of the defendant is not a party to the suit and she has not deposed, dismissed the appeal. Assailing the concurrent finding of fact, the defendant is before this Court for relief.

6. Learned counsel appearing for the appellant argued that the plaintiff has not established the right over the suit property particularly when Narayanan was the son of Kumaran and simply a claim has been made that he relinguished the right, but no such document evidencing the same has been produced. It is the further contention of the learned counsel that the defendant had filed a sale deed executed by Kumaran himself in Ex.B2 in favour of the defendant's wife Ponnammal and therefore the defendant is the rightful owner of the suit property. It is the further vehement contention of the learned counsel that when even in the written statement, the defendant has disputed the title of the plaintiffs and has raised a cloud on title, then the suit for mere injunction is not

maintainable and the plaintiffs ought to have amended the relief seeking for declaration and in this regard, relied on the decision of the Hon'ble Supreme Court in the case of ***Ananthula Sudhakar Vs P.Buchi Reddy,*** reported in ***(2008) 4 Supreme Court Cases 594***.

7. It is the further contention of the learned counsel that the defendant had also filed the series of tax receipts in Ex.B1 to evidence the possession of the defendant in the suit property. The Courts below have not rightly appraised the documents and considered the legal position but have decreed the suit which is erroneous and perverse and sought for interference of this Court.

8. Per contra, Mr.G.Kandhavadivelan, learned counsel appearing for the respondent argued that admittedly Kumaran is the owner of the suit property and the first plaintiff is the daughter. The plaintiffs have filed the legal heir certificate in Ex.A2 to establish the right and it is suffice for the plaintiffs to contend that her brother also relinguished his right over the suit property and if at all to dispute, it is only for the brother Narayanan and the defendant who is the third party cannot

dispute over the factual position. It is his further contention that the documents relied on by the defendant does not pertain to the suit property at all and further an unregistered sale cannot be relied on to establish the purchase and title of the defendant. It is his further contention that it is not that in all the cases where a dispute is raised on title, the plaintiffs are expected to seek for declaration but however only in cases where a genuine dispute is raised, with some documents ascertaining their right, raising a cloud on title, the plaintiffs are expected to seek for a declaration. It is submitted that the Courts below have rightly analyzed the documents and decreed the suit which need no interference and sought for dismissal of the appeal.

9. Heard the rival submissions and perused the materials available on record.

10. Admittedly, the suit property measuring an extent of 5 cents in survey No.212/1 of Balapuram Village of Seethapatti Panchayat, Kattuputhur post, belongs to one Kumaran. As per the documents filed by the plaintiffs in Ex.A1 and Ex.A2 it could be seen that the admitted

owner of the suit property Kumaran died and as per the legal heir certificate in Ex.A2, the first plaintiff namely Govindammal and one Narayanan are the legal heirs of Kumaran. As such when Kumaran had died, the property, unless there is an instrument, would devolve on the legal heirs by succession. When the first plaintiff would naturally inherit the 1/2 share in the suit property, it is the claim of the plaintiff that her brother Narayanan had relinguished his half share in the suit property in favour of the first plaintiff. Since, there is no dispute with the said Narayanan, as per the claim of the plaintiff, the entire suit property had come to the hands of the first plaintiff. The Adangal issued in the name of Kumaran had been filed by the plaintiff in Ex.A3. The second plaintiff who is the son of the first plaintiff had put up a house in the suit property and pursuant to which the suit property has been assessed to property tax in Door No.2/212 and the plaintiffs have paid the property tax in the name of the second plaintiff and the receipts have been filed in Ex.A4 to Ex.A6. From the documents filed in Ex.A1 to Ex.A6, the plaintiffs have established that the plaintiffs are the legal heirs of the admitted owner and they have put up a house which has been assessed in their name and they are in possession of the suit property.

11. It is the case of the defendant that the admitted owner Kumaran himself had executed a sale deed dated 18.11.1981 in favour of the defendant's wife Ponnammal. The perusal of the sale deed filed in Ex.B2, reveals that the suit property is conveyed to the defendant for a sum of Rs.99/-. In this regard, it is to be noted that any document through which an immovable property is conveyed which has more than an value of Rs. 100/-, is compulsory registrable under Section 17 of the Tamilnadu Registration Act. Therefore, to circumvent the same, the sale deed relied on by the defendant in Ex.B2 has been prepared by showing the sale consideration as Rs.99/-. The lower appellate Court has rightly observed that even the stamp paper in which Ex.B2 was prepared, was purchased in the name of some third party, which it has been erased and the name of the defendant's wife has been entered into. When the defendant relies on this document and claims that a sale was executed in favour of his wife, the defendant's wife had not impleaded herself as a party to the suit to claim any title and ascertain her right. Further when the defendant claims right over the suit property through Ex.B2, the onus was on him to establish that the property was purchased by his wife. To discharge the

onus, the defendant has to bring in the best available evidence to prove his claim. In the instant case when admittedly the defendant's wife claims to have purchased the property, she has not been examined before the Court and the failure on the part of the defendant to bring in the best available evidence who would speak about the purchase made by her, only leads to an adverse inference to be drawn against the defendant.

12. It is the vehement contention of the learned counsel for the appellant that when the defendant had disputed the title of the appellant, even at the time of filing written statement, then in view of the decision of the Hon'ble Supreme Court in the case of ***Ananthula Sudhakar (Stated supra),*** the plaintiff ought to have amended the relief seeking for declaration and a suit for mere possession would not have maintainable. In this regard, it is to be noted that even from the aforesaid decision itself, it is not that in all cases where a simple denial is made on title the plaintiff is expected to seek for a relief of declaration but only when the defendant by some reliable materials claims a right and disputes the title where the dispute raised is true and genuine and a valid cloud is raised on title, then only in such case, the plaintiff is expected to seek for a relief of

declaration. In the instant case, when the defendant completely rely on the document in Ex.B1 and Ex.B2, it is to be noted that none of these documents pertains to the suit property which is in Door Nos.2/212, whereas the documents pertain to a property having Door No.218/1. Further, the nature of the documents in Ex.B2 has been explained above and in view of the same, the defendant has not, by valid materials, raised a genuine cloud on the title of the plaintiff which necessitates the plaintiff to seek for any declaration.

13. The plaintiffs had further examined two official witnesses P.W. 3 and P.W.4 who are the Block Development Officer and the Panchayat Secretary, who had also filed documents in Ex.X1 and had given evidence to the effect that the suit property pertains to Door No.2/212, the property tax has been assessed in the name of the plaintiffs and the claim of the defendant pertains to Door No.218/1 which does not pertain to the suit property. In view of the above evidence available and also the documents filed by the plaintiffs in Ex.A1 to Ex.A6, wherein the property tax was assessed and they are in possession of the suit property by paying taxes, the Courts below have rightly arrived at a finding of fact

and decreed the suit and this Court does not find any illegality or perversity in the findings arrived at. No substantial question of law arise for the consideration of this Court in the Second Appeal.

14. Accordingly, this Second Appeal is dismissed. However, there shall be no order as to costs.

08.07.2025

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

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To

1. The Subordinate Judge, Musiri.
2. The District Munsif cum Judicial Magistrate, Thottiyam.
3. The Section Officer, VR Section,
   Madurai Bench of Madras High Court, Madurai.

G.ARUL MURUGAN, J.

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