

S.A.(MD)No.294 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.07.2025

PRONOUNCED ON : 30.07.2025

CORAM

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

S.A.(MD)No.294 of 2019

1.Sankara Subramanian
2.Seethapathy

... Appellants

VS

1.Selvaraj (Died)
2.Vellathai
3.Suresh
4.Thangam
5.Chelladurai
6.Viji
7.Anand
8.Mahesh
9.Anitha

...Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the judgment and decree, dated 10.01.2019 made in A.S.No.04 of 2014 on the file of the Additional Subordinate Court, Tenkasi reversing the well consider judgment, dated 12.08.2012 made in O.S.No.47 of 2002 on the file of the District Munsif-cum-Judicial Magistrate Court, Shencottah.



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For Appellant : **(*)Mr.T.S.R.Venkatramana, Senior Counsel for**
Mr.S.Prithiviraj
For R1 to R8 : Mr.V.M.Bala Mohan Thambi

JUDGMENT

The plaintiffs are before this Court on appeal. The Second Appeal is filed challenging the judgment and decree, dated 10.01.2019, made in A.S.No.4 of 2014 on the file of the Additional Subordinate Court, Tenkasi, reversing the judgment and decree, dated 12.08.2012, made in O.S.No.47 of 2002 on the file of the District Munsif-cum-Judicial Magistrate Court, Shencottah.

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

3.It is the case of the plaintiffs that the suit property originally belonged to one P.T.Pillai. The two sons of P.T.Pillai, namely, Bhagavathy Pillai and Chidambaram Pillai, had, thereafter, got the suit property and were in enjoyment of the same. From them, the plaintiffs have purchased the suit property on 31.07.1990. During the time of purchase, the second plaintiff was a minor and his mother, as a natural



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guardian, had participated in the execution of the sale deed. Now, the second
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plaintiff became major.

4.It is the further case of the plaintiffs that in the lower side of the suit property, the properties of the first defendant and Arumuga Mudaliyar are situated. The first defendant had purchased that property in the year 1997 from the relatives of the plaintiffs' vendor, Sethupillai. The extent purchased by him was around two acres. The suit property had old S.No.137/4, correlation new S.No.474/3 having 2.33 acres and old S.No.137/2, correlation new S.No.474/2 having 47 cents. As such, the total extent of the suit property is 2 acres 80 cents. It is the further case of the plaintiffs that in the suit property in new S.No.474/2, the defendants tried to encroach upon a portion of 100 feet to take over the trees on 10.07.2002. As such, the plaintiffs have come up with the suit for declaration and permanent injunction.

5.Pending the suit, the first defendant died and therefore, the defendants 3 to 9 were impleaded in the suit.

6.Based on the Advocate Commissioner's report, the suit relief was amended for a further relief of recovery of possession in respect of 13 cents, as per "DF"



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portion marked in the Advocate Commissioner's plan.

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7.The defendants resisted the suit by filing a written statement disputing claim of the plaintiffs. It is the case of the defendants that the vendor of the plaintiffs, P.T.Pillai and the vendors of the defendants, Sethuramalingam Pillai and one Seetharama Pillai were brothers and in the partition executed among them, the suit properties were allotted to the share of P.T.Pillai and the property purchased by the defendants were allotted to Sethuramalingam Pillai. The first defendant's father, Subbiah Pandian had purchased the property measuring 1.18.0 hectares in R.S.No. 499/1 on 30.04.1968 for valuable consideration. Pursuant to the death of the father of the first defendant, the first defendant and his brother, Mohandas through an oral partition had been enjoying the property, as upper and lower portion.

8.It is the specific case of the defendants that the first defendant's father and thereafter, by the first defendant, are in possession and enjoyment of the properties, as purchased and handed over at the time of purchase and the extent of the portion of the suit property in the possession of the first defendant belongs to them, as they have perfected the title by adverse possession. The defendants had contended that the vendors of the plaintiffs, Bagavathy Muthu Pillai and his son Chidambaram



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Pillai had already instituted a suit in O.S.No.59 of 1985 on the file of the District Munsif Court, Sengottai as against the first defendant and others, which came to be dismissed. The appeal filed by their vendors in A.S.No.106 of 1986 also came to be dismissed as withdrawn and therefore, the present suit is hit by *res judicata*. The defendants had, further, disputed the claim of the plaintiffs that they have interfered with the possession on 10.07.2002 and a false claim has been made by the plaintiffs and as such, sought for dismissal of the suit.

9.During trial, the first plaintiff examined himself as PW-1 and the Village Administrative Officer as PW-2 and marked Ex-A1 to Ex-A8. On the side of the defendants, the first defendant examined himself as DW-1 and marked Ex-B1 to Ex-B4 and an Advocate Commissioner was appointed and his report and plan were marked as Ex-C1 and Ex-C2.

10.The trial Court, after analysing the oral and documentary evidences, came to the conclusion that the plaintiffs by filing the sale deed in Ex-A1 coupled with 'A' register and revenue documents in Ex-A2 to Ex-A6, have established the title and possession and had thereby, decreed the suit. The trial Court found that the sale deed relied on by the defendants in Ex-B3 does not pertain to the suit property and



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therefore, a declaration decree was granted excluding the Government channel. The trial Court also granted the relief of recovery of possession in respect of 13 cents, as per the Advocate Commissioner's plan. The trial Court came to the conclusion that in view of Article 65 of the Limitation Act, for the relief of recovery of possession based on title, the non mentioning of the date of encroachment is not relevant and further, even if there is no separate schedule, the relief could be granted in view of the Commissioner's plan.

11. On appeal preferred by the defendants, the lower appellate Court reappraised the evidences and came to the conclusion that the plaintiffs have not approached the Court with clean hands, since PW-1 himself has admitted that the claim made by him in the plaint is false. The appellate Court also found that as per the correlation register and also the admission of PW-1, the extent, as claimed in New S.No.474/3, is not available in the field and only a lesser extent, as per old survey number, is available. As such, in view of the correlation register, the relief of recovery of possession cannot be granted for the lands, which are not available in the field and further, when admittedly, the property of the defendants is lying **(*)10 feet below** than the lands of the plaintiffs, there is no possibility for the defendants to encroach, as claimed by the plaintiffs pending the suit. The lower



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appellate Court had, thereby, allowed the appeal reversing the judgment and decree of the trial Court dismissing the suit in entirety. Assailing the same, the plaintiffs are before this Court.

12.This Court by order, dated 03.07.2019, admitted the Second Appeal on the following substantial questions of law:

“a)Whether the suit for declaration of title can be dismissed in toto, even though the plaintiff's title in respect of major portion of the suit property is not in dispute?

b)When the plaintiff has amended the relief for recovery of possession in respect of 13 cents, are not the Courts below committed serious error in refusing to grant the relief for declaration of title in respect of remaining extent of the suit property?”

13.Mr.T.S.R.Venkatramana, learned Senior Counsel for the appellants argued that the lower appellate Court had reversed the decree of the trial Court merely by relying on some inconsistencies in the evidence of PW-1. The learned Senior Counsel further contended that some stray sentences, which are found based on the Advocate cross examination, cannot be taken to conclude that the first plaintiff had himself admitted that he had lied and thereby, he has not approached the Court with clean hands. It is his further contention that when an Advocate Commissioner



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was appointed and the plaintiffs came to know that a portion of the suit property had been encroached and is in the possession of the defendants, there is nothing wrong on the plaintiffs to seek for recovery of possession on that basis, when he has filed the documents to establish his title to the suit property. The learned Senior Counsel further contended that when the trial Court, by accepting the documents, had declared the title and also granted the consequential injunction and recovery of possession, the lower appellate Court, by erroneously relying on a correlation register and some portion of the evidence, had reversed the decree in entirety.

14.Further, it is vehemently contended that when the defendants sought to rely on the earlier decisions in Ex-B1 and Ex-B2 to contend that the suit is hit by *res judicata*, both the Courts below have consistently held that the same will not be a *res judicata* and therefore, when there is no other defence and also admittedly, the defendants are the owners in respect of lands in S.No.499/1, which is not the suit property, the lower appellate Court had grossly erred in reversing the decree of the trial Court. Further, when the plaintiffs have established the title, they are entitled for recovery of possession of the portion encroached by the defendants and unless the defendants plead and prove that they have perfected title through adverse



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possession, they will not be entitled for any relief and therefore, the finding arrived
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at by the lower appellate Court is perverse and sought for interference of this Court.

15.*Per contra*, Mr.V.M.Bala Mohan Thambi, learned Counsel for the respondents 1 to 8 argued that the plaintiffs have come with a suit for declaration and injunction on the ground that the defendants attempted to encroach upon a portion of the suit property on 10.07.2002. In the suit, they filed an amendment application contending that pending suit, encroachment was made by the defendants in the year 2003, but, however, it is admitted in the evidence of PW-1 that even on the date of filing of the suit, portion of the suit property was in the possession of the defendants and therefore, the lower appellate Court has rightly dismissed the suit, since there was no cause of action. It is his further contention that for seeking the relief of recovery of possession, the suit has to be filed within a period of twelve years from the date on which the possession of the defendant becomes adverse, as per Article 65 of the Limitation Act.

16.The learned Counsel further contended that even in the earlier suit filed by the plaintiffs' vendor in Ex-B1 and Ex-B2, there is a specific finding that the first defendant's father had been in long possession and perfected title by adverse



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possession and therefore, the amended relief sought for by the plaintiffs is barred by limitation. He further contended that even in the absence of any defence, the Court has to dismiss the suit, if it is found that the suit is not filed within the time period, as per Section 3 of the Limitation Act. He further contended that when once the suit relief was amended seeking for recovery of possession, no separate schedule has been given earmarking the portion, in which the recovery of possession is sought for and as such, the findings of the lower appellate Court are based on the evidence and need not interference and sought for dismissal of the appeal.

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

18.Admittedly, the suit properties and other properties belong to one P.T.Pillai, Sethuramalingam Pillai and Seetharama Pillai, who are brothers. There had been a partition among the brothers and in the partition, the suit property was allotted to the share of P.T.Pillai and the adjacent property in S.No.499/1 measuring 1.18 hectares was allotted to the share of Sethuramalingam Pillai. Admittedly, the plaintiffs have purchased the suit property from Bagavathy Pillai and Chidambaram Pillai, who are the sons of P.T.Pillai, through a registered sale deed on 31.07.1990 in Ex-A1. The field map and the copy of the 'A' register for S.No.474 were marked as



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Ex-A2 and Ex-A3. The Adangal, 10(1) statement and the kist receipts are filed in Ex-

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A4 to Ex-A7. The correlation statement has been filed in Ex-A8.

19. According to the plaintiffs, the suit property at old S.No.137/3, as per correlation register, New S.No.474/3, consisting of 2.33 acres and Old S.No.137/2, correlation register new S.No.474/2, consisting of 47 cents and as such, the total suit property measuring to an extent of 2 acres 80 cents. As per the plaint, since on 10.07.2002, the defendants attempted to encroach upon 100 feet land in New S.No. 474/2, they have come up with the suit for declaration and injunction.

20. The defendants are the purchasers of property measuring 1.18 hectares in S.No.499/1 through a sale deed, dated 30.04.1968 in Ex-B3. The first defendant's father, Subbiah Pandian purchased the same from one Sethuramalingam Pillai. Therefore, the properties purchased by the plaintiffs and the defendants are no way connected to each other, except the fact that they are adjacent properties and originally belonged to three brothers.

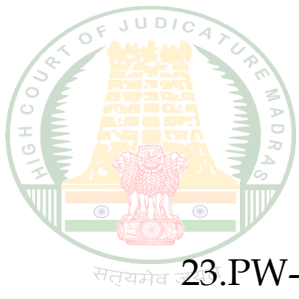
21. In the suit, an Advocate Commissioner was appointed and his report along



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with a plan was marked as Ex-C1 and Ex-C2. As per the Advocate Commissioner's
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report, a portion of 13 cents in S.No.474/3 is annexed with the land in S.No.499/1,
which is in the possession of the defendants. The plaintiffs have filed an application
seeking to amend the suit relief contending that the encroachment was made by the
defendants pending suit in the year 2003 and therefore, sought for recovery of
possession in respect of 13 cents in S.No.474/3, as marked in Ex-C2, plan.

22.The trial Court had decreed the suit mainly on the ground that when the
plaintiffs have filed the documents, particularly the sale deed in respect of the suit
property and had admittedly, when the defendants are the owner of some other
properties in S.No.499/1 through Ex-B3, the title of the plaintiffs is not in dispute
and therefore, granted the declaration and consequential injunction. The further
relief of recovery of possession was also granted on the ground that when the
plaintiffs have established their title, the onus was on the defendants to prove that
their possession was adverse and thereby, had perfected any right or title and in the
absence of the same, the plaintiffs are entitled for the relief of recovery of
possession.



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23.PW-1 in his cross examination had admitted that even prior to the filing of the suit, the defendants were in possession of the portion of the property for which, the recovery of possession has been sought. PW-1 had further admitted that he has falsely stated in the plaint that on 10.07.2002, the defendants have attempted to encroach into the suit property and also had admitted that it is false that the defendants have encroached into the portion of 13 cents pending suit in the year 2003. As such, the categorical admission by PW-1 goes to show that even prior to filing of the suit, the defendants are in possession of an extent of 13 cents, which has been marked in the Advocate Commissioner's plan in Ex-C2.

24.The lower appellate Court apart from re-appraising this admission of PW-1 in coming to the conclusion that the plaintiffs have not approached the Court with clean hands, had further, from the correlation register in Ex-A8 coupled with admission of PW-1, come to the conclusion that the extent of land, as claimed by the plaintiffs through sale deed in Ex-A1, was not available in the field. In this regard, PW-1 had further admitted that 0.94.5 hectares, as per Re.S.No.474/3 is not available in the field and only 1.40 acres, as per the old survey number, is available. Further, he had categorically admitted that the excess land portion, that is shown in the Re-Survey Number, is not in his possession. The lower appellate Court had also



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considered the admission of PW-1 to the effect that the lands of the plaintiffs are situated in an elevated area and the lands of the defendants are situated at least 10 feet lower in level and the defendants have not filled up the encroached portion by bringing in the soil and thereby, there was no possibility for the defendants to encroach upon a 10 feet higher portion of the plaintiffs' land to an extent of 13 cents. By placing reliance on this admission of PW-1 and the correlation register in Ex-A8, the lower appellate Court had reversed the decree of the trial Court and dismissed the suit in entirety.

25. Even though the plaintiffs have originally filed the suit seeking for declaration and permanent injunction, pending suit, they have amended the suit relief by including the prayer of recovery of possession. For seeking the relief of recovery of possession, the suit ought to have been filed within a period of twelve years from the date on which the possession of the defendant becomes adverse, as per Article 65 of the Limitation Act.

26. The plaintiffs, while filing the suit, averred that the defendants have attempted to trespass into a portion of 100 feet as on 10.07.2002 and at the time of seeking to amend the suit relief, have contended that pending suit, the



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encroachment was made in the year 2003 and thereby, had sought for recovery of possession. When the plaintiffs ought to have sought the relief within a period of twelve years from the date on which the possession of the defendants becomes adverse, the admission of the plaintiffs, as relied on by the lower appellate Court, becomes crucial. As per the categorical admission of PW-1, the defendants have been in possession of the suit property in respect of 13 cents even prior to the date of filing of the suit and the plaintiffs have falsely averred in the plaint and also in the petition seeking to amend the suit relief, that there was an attempt to encroach in the year 2002 and further, the encroachment was made pending suit in the year 2003. When these claims have been admitted to be false, then unless the plaintiffs come forward with the actual date on which the encroachment was made by the defendant and establish that the relief is sought for within the time period, as stipulated under Article 65 of the Limitation Act, the suit seeking for additional relief for recovery of possession cannot be maintained.

27. In this regard, even though both the Courts below have concurrently held that the earlier suit filed in O.S.No.59 of 1985 by the plaintiffs' vendor, as against the first defendant's father and others cannot be construed as *res judicata* for the present suit, still, the findings arrived therein become more crucial at least for the additional



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suit relief sought for by the plaintiffs. Though, as held, the decision in Ex-B1 and Ex-B2, cannot be *res judicata* for the present suit, the trial Court in the judgment in Ex-B1, had rendered a categorical finding in respect of Issue No.6 to the effect that the defendants 1, 2 and 4, therein, (D1, Seetharam Pillai and D-4 Sethuramalingam Pillai) are in possession of portion of the property for a period of more than twelve years and as the defendants therein were in possession of a portion of the property belonging to the plaintiffs therein, who are the vendors of the present plaintiffs, they have perfected the title by adverse possession.

28.As such, in the suit filed by the plaintiffs' vendor as against the vendor of the first defendant, the trial Court in Ex-B1 had rendered a categorical finding that a portion of the property is in the possession of the first defendant's father and his vendor and they also perfected the title by adverse possession. When the appeal filed by the plaintiff's vendor has also been withdrawn in Ex-B2, from the finding arrived at in the earlier suit, it is proved that this portion of 13 cents, for which the plaintiffs have sought for recovery of possession, had been in the possession of the first defendant and his vendor at least 12 years even prior to the earlier suit in O.S.No.58 of 1985. Hence, the plaintiffs cannot claim right over a portion, particularly, 13 cents, which right has been lost by the plaintiffs' vendors



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themselves. Knowing well, the plaintiffs' have not disclosed this earlier proceedings initiated by the vendor, had alleged a false cause of action in the year 2002 and by making a claim based on the Advocate Commissioner's report, contending that the encroachment was made in the year 2003 pending suit, which had all been admitted to false, had sought for further relief of recovery of possession.

29.As rightly contended by the learned Counsel for the respondents 1 to 8, even in the absence of any defence in respect of limitation, as per Section 3 of the Limitation Act, any suit filed after the prescribed period shall be dismissed. When the defendants have been in possession of the suit property even at least from the year 1973, the relief sought for by the plaintiffs in seeking to recover the 13 cents, as marked in the Advocate Commissioner's plan, and seeking a relief in the year 2003 is barred by limitation.

30.The lower appellate Court while reversing the judgment and decree of the trial Court had dismissed the suit in entirety. From the documents filed, it is clear that the plaintiffs have purchased the property in old S.Nos.137/2 and 137/3, correlation New S.Nos.474/2 and 474/3. Except the 13 cents, which is in the possession of the defendants, admittedly, the defendants have purchased a different



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land in S.No.499/1, which is adjacent to the suit property. There is no dispute in respect to the title of the plaintiffs over the suit property by the defendant excluding this 13 cents. Any declaratory decree would be a decision in personam and not in rem. When there is no dispute with the defendants in respect to the title of the plaintiffs for the suit property excluding 13 cents and the title has been established by the sale deed produced by them in Ex-A1 and 'A' register and the other revenue documents, the lower appellate Court by relying on a correlation register in Ex-A8 had dismissed the suit in entirety. At the best, the findings rendered based on Ex-A8 would be made applicable only to the extent of 13 cents, which is, admittedly, in the possession of the defendants. Even though the plaintiffs have sought for declaration for a larger extent, the lower appellate Court while reappraising the documents and on coming to the conclusion that the plaintiffs have title only to a lesser extent, could have granted the decree by restricting the relief to the admitted portion, however, had allowed the appeal and dismissed the suit in entirety. To this extent, the judgment and decree of the lower appellate Court is perverse and is to be modified and the appeal is to be partly allowed.

31.In view of the above, both the substantial questions of law framed are answered in favour of the appellants and against respondents, since both the substantial questions of law are in respect of the title for the portion excluding the 13



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32.In view of the above deliberations, the Second Appeal is partly allowed and the judgment and decree of the lower appellate Court is set aside in respect of the dismissal of the suit relief for declaration and consequential permanent injunction. Resultantly, the suit in **(*)O.S.No.47 of 2002** is partly decreed in respect of the declaration of title and consequential permanent injunction for the suit property excluding the Government channel and 13 cents of lands in New S.No.474/3 marked in blue colour in Ex-C2. The suit in **(*)O.S.No.47 of 2002** is dismissed in respect of further relief of recovery of possession in respect of 13 cents in S.No.474/3 from the defendants. No costs.

Sd/-

30.07.2025

(*)Amended as per order of this Court dated 05/08/2025 made in SA(MD)No.294 of 2019

Sd/-

Assistant Registrar (CS II)

// True Copy //

/08/2025

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

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To:-

(*)To be substituted to the order already despatched on 27/01/2025

- 1.The Additional Subordinate Judge, Tenkasi.
- 2.The District Munsif-cum-Judicial Magistrate, Shencottah.
- 3.The Record Keeper,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.PRITHIVIRAJ, Advocate (SR-47152[F] dated 30/07/2025)

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