



SA(MD)Nos.102 of 2018
and 190 to 192 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.07.2025

CORAM :

THE HONOURABLE Mr. JUSTICE G.ARUL MURUGAN

S.A.(MD)No.102 of 2018

and

S.A.(MD) Nos.190, 191 and 192 of 2019

and

C.M.P.(MD)No.2355 of 2018

S.A.(MD) No.102 of 2018:

1.Rajendran

2.Valarmathi

... Appellants/Respondents/Defendants

Vs

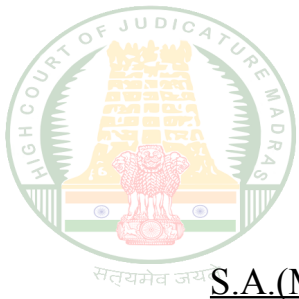
T.Kuppusamy

... Respondent/Appellant/Plaintiff

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 04.09.2017 made in A.S.No.23 of 2014 on the file of the Subordinate Judge, Devakottai reversing the judgment and decree dated 17.12.2013 made in O.S.No.107 of 2006 on the file of the District Munsif, Devakottai.

For Appellants : Mr.J.Anandkumar

For Respondent : Mr.B.Muruganandam



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S.A.(MD) No.190 of 2019:

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1.Subbiah

2.Rajendran

... Appellants/Appellants/Plaintiffs

Vs

Kuppusamy

... Respondent/Respondent/Defendant

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 04.09.2017 made in A.S.No.25 of 2015 on the file of the Subordinate Judge, Devakottai confirming the judgment and decree dated 26.03.2014 made in O.S.No.108 of 2006 on the file of the District Munsif, Devakottai.

For Appellants : Mr.J.Anandkumar

For Respondent : Mr.B.Muruganandam

S.A.(MD) No.191 of 2019:

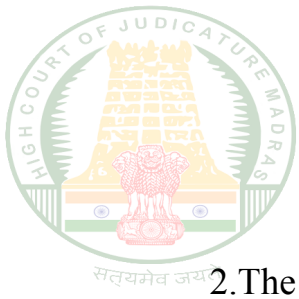
1.Subbiah

2.Rajendran

... Appellants/Appellants/Plaintiffs

Vs

1.The Assistant Executive Engineer (South Limit),
Tamil Nadu Electricity Board,
Devakottai Nagar, Sivagangai District.



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2.The Executive Engineer,
Tamil Nadu Electricity Board,
Devakottai Nagar, Sivagangai District.

3.Kuppusamy

... Respondents/Respondents/
Defendants

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 04.09.2017 made in A.S.No.49 of 2016 on the file of the Sub-Court, Devakottai confirming the judgment and decree dated 26.03.2014 made in O.S.No.132 of 2008 on the file of the District Munsif, Devakottai.

For Appellants : Mr.J.Anandkumar

For RR1 & 2 : Mr.B.Ramanathan
Standing Counsel

For R3 : Mr.B.Muruganandam

S.A.(MD) No.192 of 2019:

1.Subbiah

2.Rajendran

... Appellants/Appellants/
Defendants 3 & 4

Vs

1.Kuppusamy

2.Pandiyan

... Respondents 1 & 2/
Respondents 1 & 2/Plaintiffs

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3.The State of Tamil Nadu,
Rep., by The District Collector,
Sivagangai District.

4.The Tahsildar,
Taluk Office, Ramnagar,
Devakottai Nagar,
Sivagangai District.

... Respondents 3 & 4/
Respondents 3 & 4/Defendants

Prayer : Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decree dated 04.09.2017 made in A.S.No.16 of 2017 on the file of the Sub-Court, Devakottai confirming the judgment and decree dated 10.02.2014 made in O.S.No.136 of 2006 on the file of the District Munsif, Devakottai.

For Appellants : Mr.J.Anandkumar

For R1 : Mr.B.Muruganandam

For RR3 & 4 : Ms.P.B.Ahamed Yasmin Parvin
Government Advocate

For R2 : No appearance

COMMON JUDGMENT

The Second Appeal in S.A.(MD) No.192 of 2019 is filed challenging the judgment and decree dated 04.09.2017 in A.S.No.16 of



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2017 on the file of the learned Subordinate Court, Devakottai, confirming the judgment and decree dated 10.02.2014, in O.S.No.136 of 2006 on the file of the learned District Munsif, Devakottai. The suit was originally filed as against the Government seeking for declaration and permanent injunction in respect of two items of the suit schedule properties. Later, the 3rd and 4th defendants were impleaded in the suit and as against the judgment and decree of the trial Court in granting declaration and injunction, in respect of Survey No.393/7 (second item) and granting injunction in respect of S.No.393/5 (first item), the private defendants 3 and 4 had filed the first appeal which came to be dismissed and against which the S.A.(MD) No.192 of 2019 is filed.

2. SA(MD)No.190 of 2019 is filed challenging the judgment decree dated 04.09.2017 in A.S.No.25 of 2015 on the file of the learned Subordinate Court, Devakottai, confirming the judgment and decree dated 26.03.2014 in O.S.No.108 of 2006 on the file of the learned District Munsif, Devakottai.



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3. S.A.(MD) No.191 of 2019 is filed challenging the judgment and decree dated 04.09.2017 in A.S.No.49 of 2016 on the file of the Subordinate Court, Devakottai confirming the judgment and decree dated 26.03.2014 in O.S.No.132 of 2008 on the file of the District Munsif, Devakottai.

4. S.A(MD)No.102 of 2018 is filed challenging the judgment and decree dated 04.09.2017 in A.S.No.23 of 2014 on the file of the Subordinate Court, Devakottai reversing the judgment and decree dated 17.12.2013 made in O.S.No.107 of 2006 on the file of the District Munsif, Devakottai.

5. Since the parties involved and the dispute in respect of the properties are almost common or interlinked in all the four suits, which had resulted in the above four Second Appeals, with the consent of the parties, all the appeals are heard together and disposed of by this common judgment.



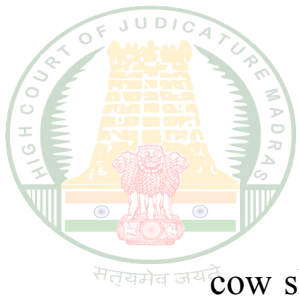
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6. For the sake of convenience, the parties are referred to as per their litigative status before the trial Court in O.S.No.136 of 2006, wherein a larger relief of declaration was also sought for.

7. Admittedly, all the suit properties covered under the four suits are Natham properties, in which, the parties claim right. All the four suits have been filed in respect of Survey Nos.393/5, 393/6, 393/7, 393/8 and 393/9 with different reliefs in each suit.

8. According to the plaintiffs in the comprehensive suit filed against the Government in O.S.No.136 of 2006, the suit property having two schedule, first schedule in Survey No.393/5 and the second schedule in Survey No.393/7, ancestrally, belong to them. It is the case of the plaintiffs that they had constructed a house and residing in the East of Survey Nos.393/5 in 393/6 and 393/8 for which patta was granted in favour of the first plaintiff by the second defendant. It is the further case of the first plaintiff that he had been in possession and enjoyment of the property in Survey No.393/7, measuring 140 sq.ft along with the other properties for the past 30 years by putting up a fencing and using it as

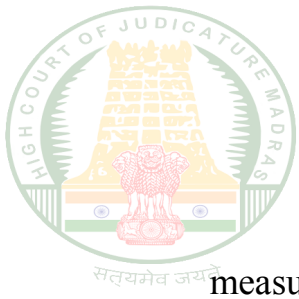


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cow shelter. In the year 2005, the first plaintiff had constructed a house in Survey Nos.393/6 and 393/8 and the same has also been assessed to the property tax. In between the ancestral property of the first plaintiff in S.No.393/4 and the house constructed in S.No.393/6 and 393/8 in the year 2005, the plaintiffs have been in possession and enjoyment of the property lying in the middle in Survey No.393/5 also, as their own property. It is the further case of the plaintiffs that while so, the defendants had wrongly entered the S.No.393/5 in the natham survey as “pathway” and also has entered Survey No.393/7 as “Natham Poromboke”. It is the further case of the plaintiffs that the defendants have no right in the natham land occupied and enjoyed by the parties by putting up their houses. Therefore, any entry wrongly made by the defendants will not bind the plaintiffs. In this regard, since based on the entries, there were intervention from the third parties who have also filed other suits, the plaintiffs have come up with the suit for declaration and permanent injunction in respect of the suit properties.

9. The defendants 1 and 2-Government had resisted the suit by filing a written statement denying the claim that the strip of lands



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measuring 200 feet in Survey No.393/5 and an extent of 140 sq.ft, in Survey No.393/7 in Karkalathur Village, Devakottai Taluk, is a house site. According to the defendants Survey No.393/5 is a public lane and Survey No.393/7 is a Sarkar Natham. Since it is an unoccupied portion in the village Natham, it vest with the State. It is the further case of the defendants that when admittedly, the plaintiffs have got assignment for lands in Survey No.393/6 and Survey No.393/8, they cannot make a further claim for any other portions of the land as they are not entitled to. It is further stated that if they had been in the possession of these portions, then they would not have been entitled for an assessment in Survey No.393/6 and Survey No.393/8, as they will not come under the category of “landless poor”. Further, if plaintiff's contention is true, then they would have obtained a natham patta in the survey settlement in the year 1992 and when they have not made any such claim or further appeal before the competent authorities, in respect of revenue entry, they are not entitled to the suit relief.

10. The third and fourth defendants who were impleaded in the suit filed a written statement disputing the claim. It is their claim that the

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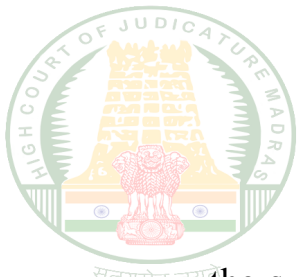
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land in Survey No.393/7 vacant site belongs to them and they are in possession and enjoyment. Their house is situated adjacent to the same. In fact, the entrance to the house is through the land in Survey No.393/7. During natham survey, the patta has been granted for the defendants 3 and 4 in survey No.393/10 A and by mistake they have entered the land in Survey No.393/7 as natham site but however in the records prior to that survey in the Survey Field Instruction (SFI), Survey No.393/7, the name of the fourth respondent's father Pachamuthu Udayar is entered in the records. Further, the land in survey No.393/6 adjacent to the pathway in Survey No.393/5 also has been entered in the name of the legal heirs of Patchamuthu Udayar. It is the further stand of the defendants that by wrongly obtaining a patta in Survey No.393/6 and Survey No.393/8 by his influence, the first plaintiff had also encroached the pathway in Survey No.393/5 and is also making a claim in Survey No.393/7 and sought for dismissal of the suit.

11. In respect of the same issue in Survey No.393/5, the defendants 3 and 4 filed a separate suit in O.S.No.108 of 2006 as against the first plaintiff, seeking for mandatory injunction and permanent injunction. In

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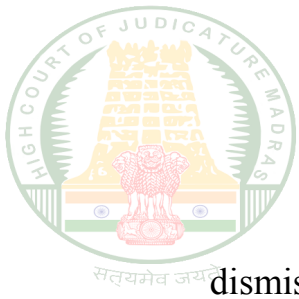
the suit, Survey No.393/5 is the first item and Survey Nos.393/7, 393/8 and 393/9 are shown as the second item of the suit property.

12. The plaintiff in view of the assignment granted in his favour in Survey No.393/6 and Survey No.393/8 had filed the suit in O.S.No.107 of 2006 as against the second defendant and his wife Valarmathi, seeking for bare injunction.

13. The defendants 3 and 4 also filed another suit in O.S.No.132 of 2008 for the Survey Nos.393/6 and 393/8 as against the defendants 1 and 2 Electricity Board and the first plaintiff seeking for a mandatory injunction and permanent injunction.

14. By separate judgments, as referred earlier, O.S.No.107 of 2006, 132 of 2008 and O.S.No.108 of 2006 came to be dismissed, when the suit in O.S.No.136 of 2006 was partly decreed.

15. The first appeal filed by the third and fourth defendants in A.S.No.49 of 2016 for Survey Nos.393/6 and 393/8 came to be



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dismissed. Also A.S.No.25 of 2015 filed by the defendants 3 and 4 as against the suit in O.S.No.108 of 2006 and A.S.No.16 of 2017 filed by them, came to be dismissed. However, A.S.No.23 of 2014 filed by the first plaintiff in respect of the dismissal of his suit in O.S.No.107 of 2006 came to be allowed. As such, the appellants herein who had lost in all the suits and also the appeals, by challenging the findings of the courts below had filed the above four Second Appeals.

16. The Second Appeals have been admitted on the following substantial questions of law:

i) S.A.(MD) No.102 of 2018:

“A. When the trial Court has dismissed the suit holding that the plaintiff has not proved his title and lawful possession over the suit property, is not the lower appellate Court wrong in reversing the findings of the trial Court based on some documents, which are only revenue records, to prove possession?

B. Whether the appellate Court is right in receiving the additional documents without following the procedure contemplated under Order 41 Rule 27?”

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“A. Whether both the Courts right in refusing to shift the burden of proof, when the appellant rightly discharged his initial burden under Section 101 of the Evidence Act?

B. Whether both the Courts right in accepting the case of the defendants, in the absence of any title deed?

C. Whether the trial Court is right in taking the house tax receipt Ex.B.4 as a document of title to decide in favour of the defendant thereby nonsuit the plaintiff?

D. Whether the trial Court is right in not granting the decree of mandatory injunction when the first item of suit scheduled property is admittedly a pathway and having held so? ”

(iii) S.A.(MD) No.191 of 2019:

“A. Whether the Courts below are right in treating the possession of the respondents in respect of the first item of the suit scheduled properties as lawful possession to grant the relief of injunction, when admittedly the land is classified as a pathway?



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B. Whether the Courts below is right in decreeing the suit when admittedly burden of proof was not properly discharged by the plaintiffs as required under Section 101 of Evidence Act

C. Whether the Court below are right in non suiting the appellant without framing any issues as to the procedures contemplated under the Tamil Nadu Electricity Code 2004?

D. Whether the Courts below are right in not conducting the joint trial in decide the issues of all the suits when the parties and the Lis are one and the same?”

iv) S.A.(MD) No.192 of 2019:

“A. Whether the Courts below are right in treating the possession of the respondents in respect of the first item of the suit scheduled properties as lawful possession to grant the relief of injunction, when admittedly the land is classified as a pathway?

B. Whether the Court below is entitled to grant the decree of injunction admittedly the scheduled property is classified as government porompoke pathway?



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C. Whether commissioner report is sufficient to grant decree of permanent injunction in the absence of title documents by the Courts below?

D. Whether the Courts below is right in decreeing the suit when admittedly burden of proof was not properly discharged by the plaintiffs as required under Section 101 of Evidence Act? ”

17. Learned counsel appearing for the appellants mainly contended that even though the plaintiffs 1 and 2 have filed the Natham patta issued in their favour for Survey Nos.393/6 and 393/8, admittedly have no document to establish their right in respect of Survey Nos.393/5 and Survey No.393/7. It is his further contention that when admittedly Survey No.393/5 has been earmarked as “public lane” in the survey register, then the land belongs to the public and no one can claim any exclusive right over the public lane. It is his further contention that when the plaintiffs had sought for a declaration in respect of the land in Survey No.393/7, he has not filed any documents to establish his title over the claim made by him and in the absence of any such document, the Courts below have erroneously decreed the suit declaring the title simply



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placing reliance on a statement as admission made by D.W.1. Learned counsel further contended that when the Courts below have rightly declined the relief of declaration in respect of Survey No.393/5, they had erroneously granted an injunction. When the relief of declaration is denied, then the parties are not entitled for the consequential relief of injunction.

18. Learned counsel further submitted that the Courts below ignoring the specific statement filed by the official defendants 1 and 2 had come to an erroneous conclusion that during the survey register, it has been wrongly entered as 'lane' for Survey No.393/5, when even according to the plaintiffs, the first plaintiff is not having any documents to establish his right and he has not produced any other material to substantiate that it was not a lane. Learned counsel however fairly submitted that in respect of the claim made in Survey Nos.393/6 and 393/8, even though in one suit, the pattas in favour of the plaintiffs were filed and received in appeal, however the pattas were already before the Court marked as the evidence in the other suits filed by the appellants in respect of the same survey numbers.

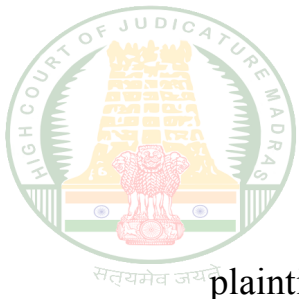


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19. Learned counsel contended that when Survey Nos.393/5 and 393/7 would be the only way of access to his property in Survey No. 393/10A, the Courts below had erroneously granted declaration partly in favour of the plaintiffs which is not based on the documents and evidences and therefore, the findings are perverse and sought for interference of this Court.

20. Mr.B.Muruganandam, learned counsel appearing for the respondents 1 and 2 argued that since they have filed the documents particularly the patta issued in their favour for Survey No.393/6 and Survey No.393/8, the suit filed by them has rightly been decreed and the suit filed by the defendants came to be dismissed. Therefore, the appeals in S.A(MD)No.191 of 2019 and 102 of 2018 cannot be sustained, as the findings have been arrived at, based on the right and title of the respondents 1 and 2 for Survey No.393/6 and Survey No.393/8. It is the further contention that in so far as the claim made by them in O.S.No.136 of 2006 is concerned, Survey No.393/5 is adjoining to their lands and further the land beyond Survey No.393/5 is their ancestral property. The



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plaintiffs having been in long possession and enjoyment over the land in Survey No.393/5 which was never used as a pathway, has been wrongly entered as a 'lane' in the survey register and that would not bind them and further the land in Survey No.393/7 has been in their exclusive possession and enjoyment and even the official witnesses D.W.1 had in his cross examination admitted that the plaintiffs are in possession of the property. When admittedly, Survey No.393/5 is a natham land and the plaintiff is in possession, the Courts below have rightly granted the decree in part declaring the title for Survey No.393/7 and on finding that the plaintiffs have been in possession, had only granted injunction in respect of Survey No.393/5.

21. It is his further contentions that even though the appellants sought to file documents and claim right over the suit properties, the Courts below rightly found that the documents filed by them have no relevance particularly Ex.B5, as the same does not find place in the survey register. The Courts below have arrived at the decision which is based on the records and needs no interference and sought for dismissal of the appeals.

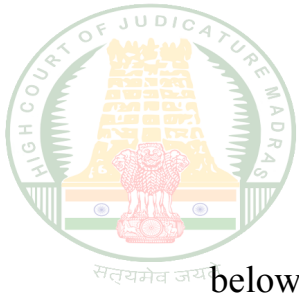


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22. Ms.P.B.Ahamed Yasmin Parvin, learned Government Advocate appearing for the respondents 3 and 4 argued that they have filed a detailed written statement disputing the claim of the plaintiffs, as Item-I of the suit property has been earmarked as 'lane' and also the property in Survey No.393/7 is 'Natham poromboke'. It is the contention of the learned counsel that when the lane in Survey No.393/5 is a public lane, no one can claim any exclusive right, which has to be maintained as a lane for the enjoyment of the public concerned and when the land in Survey No.393/7 is natham poromboke, it is for the Government to deal with it and consider any claim made by parties in accordance to the Revenue Standing Orders.

23. Learned Government Advocate further argued that when admittedly the assignment patta has been granted for Survey Nos.393/6 and 393/8, the plaintiffs cannot make any further claim for the lane and natham poromboke also. Even though the defendants 1 and 2 have not preferred any appeal, the learned counsel argued that when it is the property of the Government particularly, a lane, which is intended for a public purpose, the same ought to be protected and saved and the Courts



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below erroneously declared title in favour of the plaintiffs which is not in consonance with the legal provisions and sought for interference of this Court.

24. Mr.B.Ramanathan, learned Standing Counsel appearing for the Electricity Board who are the respondents 1 and 2 in S.A.(MD)No.191 of 2019, argued that they are only effecting the power connections as per the documents filed by the parties and they are bound by the ultimate decree passed by the civil Courts and any claim would be entertained and dealt with, as per the final decision in the civil proceedings.

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

26. First, in respect of the land in Survey Nos.393/6 and 393/8 is concerned, there are two suits filed in O.S.No.107 of 2006 and O.S.No. 132 of 2008. The first plaintiff had filed the suit in O.S.No.107 of 2006, for a bare injunction, in respect of Survey Nos.393/6 and 393/8 placing reliance on the assignment patta granted in his favour. The defendants 3

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and 4 had filed a separate suit in O.S.No.132 of 2008, seeking for a mandatory injunction and permanent injunction for the same property. The suit filed by the 3rd and 4th defendants came to be dismissed and also the suit filed by the first plaintiff came to be dismissed. However on appeal, by placing reliance on the assignment patta granted to first plaintiff, the appeal filed by him came to be allowed and the other appeal filed by defendants 3 and 4 came to be dismissed. As far as these two Second Appeals in S.A.(MD) No.191 of 2019 and 102 of 2018 are concerned, the entire dispute relates only to Survey Nos.393/6 and 393/8. Admittedly, the plaintiff had filed the patta and marked as exhibits before the Court. Even though in one of the suits, filed for the same property by the defendants 3 and 4, the patta has been marked, however in the suit filed by the first plaintiff, the same has been filed only during the appeal. However, it is not in dispute that the defendants 1 and 2 had issued the Natham patta in favour of the first plaintiff for Survey Nos.393/6 and 393/8.

27. When admittedly, two lands are natham lands and the first plaintiff had been in possession and enjoyment and the Government had



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also issued patta, in favour of the first plaintiff, the first plaintiff is the absolute owner having title over the two lands in Survey Nos.393/6 and 393/8 and therefore, in view of holding the title, the plaintiffs are entitled for the decree of permanent injunction. In view of the same, the suit filed by the defendants 3 and 4 seeking for a mandatory injunction and permanent injunction for the same lands cannot be sustained, as the defendants 3 and 4 had not substantiated their right over the two survey numbers by any other acceptable documents. As such, in view of the title of the first plaintiff in view of the settlement patta granted and the copy of patta also available in the Court in the other suit, the finding arrived at by the Courts below in granting a decree of injunction in favour of the first plaintiff is sustainable and this Court does not find any infirmity in the finding arrived at. As such the two appeals in S.A(MD)No.191 of 2019 and SA(MD)No.102 of 2018 are liable to be dismissed and the Substantial Questions of Law are answered against the appellants and in favour of the respondents.

28. The issue in respect of the other two suits in O.S.No.136 and 108 of 2006 are pertaining to S.Nos.393/5 and 393/7 in both the suits.



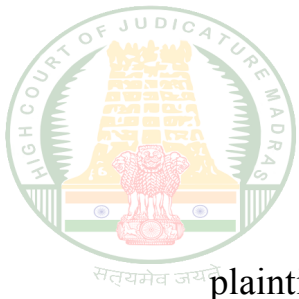
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Since the suit in O.S.No.136 of 2006 was decreed, granting declaration in favour of the plaintiffs for S.No.393/7 and a relief of injunction was granted for Survey No.393/5, the other suit filed for the same property in O.S.No.108 of 2006 by the defendants 3 and 4 came to be dismissed.

29. Now, it is to be seen as to whether the plaintiffs who had come up with the suit claiming for declaration and permanent injunction in respect of S.Nos.393/5 and 393/7 are entitled for the relief. Admittedly, even as per the averments in the plaint, the plaintiffs have not been granted any patta in respect of Survey Nos.393/5 and 393/7. Admittedly, the two properties are natham lands. The plaintiffs even though had been granted patta for the other lands in Survey Nos.393/6 and 393/8, they had not been granted with any patta in respect of Survey Nos.393/5 and 393/7.

30. It is the case of the plaintiffs that Survey No.393/5 lies in between his property in Survey No.393/6 and other ancestral property belonging to him. According to him, he had been enclosing this property and has been in enjoyment for a long period of time. It is the claim of the



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plaintiffs that they were also in possession of the survey No.393/7 by fencing it and using it as a cattle shed.

31. When the plaintiffs had come up with the suit seeking for declaration, the onus is on the part of the plaintiffs to prove their title by sufficient oral and document evidence. In this regard, the plaintiffs were not able to file any documents to establish the title in respect of these two survey numbers. Admittedly, the land measuring 200 sq.feet in S.No. 393/5, has been earmarked as a 'lane' in the survey register. The Courts below had rendered a finding that without any notice, the authorities had wrongly entered the land in S.No.393/5 as a 'public lane'.

32. In this regard, it is to be noted that when admittedly, the two lands in S.Nos.393/5 and 393/7 are natham lands, then the parties, who had been in possession and enjoyment will be entitled to file a claim based on which, the natham pattas are issued. When it is the claim of the plaintiffs that he had been enjoying the property in Survey No.393/5, measuring 200 sq.feet, it is for the plaintiff to establish his possession and make necessary application before the authorities seeking for patta in

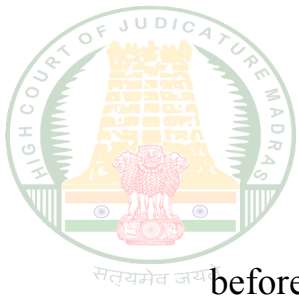


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respect of the first item of the suit properties bearing Survey No.393/5.

The plaintiffs have not filed any such application and produced before this Court that either their application has been under consideration or any patta has been granted in their favour. Further the plaintiffs had also not filed any documents to the effect that prior to making the entry as 'lane', they had been in possession and enjoyment of the first item of the suit property as a part of his house. Therefore, in the absence of these materials, the finding of the Courts that since no notice had been issued to the plaintiffs, any entry made by entering the land in Survey No.393/5 as a lane, will not bind the plaintiffs, is unsustainable and is perverse. If a wrong entry has been made and if the plaintiffs had been in possession and enjoyment, as a part of his house, then it is for the plaintiffs to make necessary application or appeal before the competent authorities to make appropriate correction. In the absence of any document filed by the plaintiff to that effect that they had been in possession of the property as a part of his house or prior to the entry made in the survey register, the 200 sq.ft for the Survey No.393/5 stood as 'natham vacant land', the conclusion arrived at by the Courts that an entry has been wrongly made as lane, cannot be accepted and not on based on any materials produced



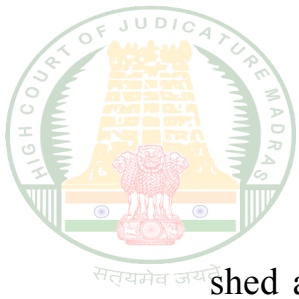
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before the Court. The Courts below had also relied on the admission of DW.1, Village Administrative Officer.

33. As far as the claim made by the plaintiffs in Survey No.393/7 in the second item of the suit property is concerned, admittedly, the property stood as a village Natham in the revenue records. It is the claim of the plaintiffs that even though no patta has been issued in their favour, the plaintiff has been in long possession and enjoyment of the property and he has been using it as a cattle shed by fencing the second item of the suit property.

34. In this regard, it is contended by the official respondents that when already settlement patta has been issued in favour of the plaintiffs, for the other two lands in Survey Nos.393/6 and 393/8, they will not be entitled for any patta for further extent of land, as they will not come under the landless poor category. However, from the evidence of DW.1, the Village Administrative Officer, wherein he has admitted during cross examination that the plaintiffs had been using the property as a cattle

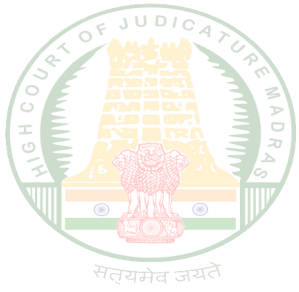


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shed and the Courts below have also relied on this admission made by the official respondent in coming to the conclusion that the plaintiffs are in possession and enjoyment of the property had declared the title and granted consequential injunction in favour of the plaintiffs.

35. In this regard, it is to be noted that when the plaintiffs have not filed any document to show that he has been in long possession by putting up any house in the nathan land, in Survey No.393/7 and he has also been not granted with any patta, the Courts below had merely relying on a portion of the statement made by the D.W.1, had come to the conclusion that since D.W.1 has admitted that the plaintiff was having a cattle shed, the plaintiff would be entitled for the relief of declaration. In the absence of any materials filed and the patta having been issued in favour of the plaintiffs and when the official respondents dispute the claim made by the plaintiffs particularly, contending that the second item of the suit property is a natham poromboke, the decree granted by the Courts below declaring title in favour of the plaintiffs in respect of Survey No.393/7, cannot be sustained.

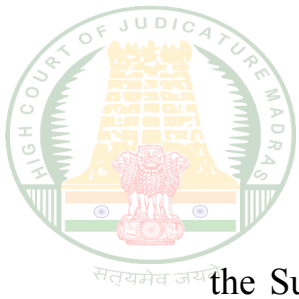


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36. However, as per the evidence let in by the plaintiffs and also the admission of D.W.1 to the effect that the plaintiffs have been using the property in the Survey No.393/7 by putting up a cattle shed and also the Advocate Commissioner's report and plan filed would go to show that the plaintiffs had put up a house by enclosing a portion of the property in Survey No.393/5, it is clear that since the plaintiffs are in enjoyment of the portion of the property in S.No.393/5 and also the land in Survey No. 393/7, the plaintiffs are entitled to protect their possession. While the Courts below had rightly restricted the relief of the plaintiffs by granting injunction alone in respect of Survey No.393/5, ought to have also restricted the relief by granting injunction alone for the other Survey No. 393/7, but however went ahead and merely by relying on the admission made by D.W.1 that the first plaintiff is using the place for cattle, had granted the relief of declaration. To this extent, the finding arrived at and the decree granted is perverse and the same is liable to be interfered with.

37. It is to be noted that when the land in S.No.393/7 is admittedly unassessed Village Natham, which is entered as Natham Poramboke in



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the Survey Register, then the plaintiff who seek for declaration of title, has to establish his prescription of right, in view of his long possession and enjoyment of the properties which was recognized and he has been dealing with the same by executing documents and thereby proves title. In the absence of the same, the property vest with the State and the authorities are entitled to deal with any claim made in accordance with the provisions of the Revenue Standing Orders. As such the declaration granted in the absence of the first plaintiff proving title, is unsustainable and perverse.

38. In view of the above deliberations, this Court is of the considered opinion that while confirming the injunction granted both for Survey No.393/5 and 393/7, the relief of declaration granted by the Courts below for Survey No.393/7 are perverse and the substantial questions of law in this regard is answered in favour of the appellants and as against the respondents.

39. In view of the above deliberations, the following orders are passed.



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i) S.A(MD)No.191 of 2019, S.A(MD)No.102 of 2018 and S.A(MD)No.190 of 2019 are dismissed.

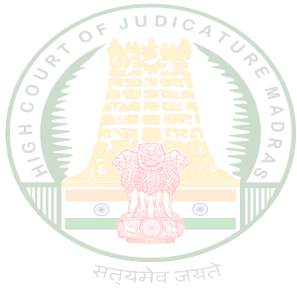
(ii) S.A(MD)No.192 of 2019 is partly allowed and the decree granting declaration in respect of Survey No.393/7 is set aside and the decree granting permanent injunction both for S.No.393/5 and S.No. 393/7 is confirmed.

iii) However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

10.07.2025

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

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To

- 1.The Subordinate Judge,
Devakottai.
- 2.The District Munsif,
Devakottai.
- 3.The District Collector,
State of Tamil Nadu,
Sivagangai District.
- 4.The Tahsildar,
Taluk Office, Ramnagar,
Devakottai Nagar,
Sivagangai District.
- 5.The Assistant Executive Engineer (South Limit),
Tamil Nadu Electricity Board,
Devakottai Nagar,
Sivagangai District.
- 6.The Executive Engineer,
Tamil Nadu Electricity Board,
Devakottai Nagar, Sivagangai District.
- 7.The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai.



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G.ARUL MURUGAN, J.

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S.A.(MD)No.102 of 2018
and
S.A.(MD) Nos.190, 191
and 192 of 2019
and
C.M.P.(MD)No.2355 of 2018

10.07.2025