



A.S.(MD)No.117 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 21.04.2025

Pronounced on : 30.04.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN**

**A.S.(MD)No.117 of 2018
and
C.M.P.(MD)No.5957 of 2018**

P.Seeniammal (Died)

1.P.Rajmohan
2.P.Selvaraj
3.P.Ayyathurai

P.Samuthirakani @ Kani (Died)

4.J.Ponmathi
5.J.Amarnath
6.J.Premnath
7.Rajkumar
8.R.Aravind
9.Archana

... Appellants /
Plaintiffs 2 to 4 & 6 to 11

Vs.

1.Antony Thangam
2.Mariapushpam

1/16



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3.Gnanaprakasam

4.Panjavarnam

5.Jesuraja

6.P.Jerina

7.Fathima Paldona

8.Kamalam

9.Gunasekaran

10.P.Kasimani (Died)

11.R.Chandramani

***(R.1 to R.5 remain exparte in
lower Court. Hence notice may
be dispense)***

... Respondents /

12.K.Ponmariyammal

13.K.Ramkumar

14.A.Kohilamalar

15.Esakkiyammal

16.Ramakrishnan

17.Manikandan

18.Muthukumar

***(R.12 to R.14 are brought on record
as LR's of the deceased 10th Respondent
and R.15 to R.18 are brought on record
as LR's of the deceased 11th Respondent
vide common order dated 17.04.2025
made in C.M.P(MD)Nos.5300, 5302, 5303,
5306, 5307 & 5308 of 2025)***

... Respondents

Prayer : Appeal Suit filed under Section 96 of Civil Procedure Code to allow the appeal by setting aside the judgment and decree passed in O.S.No.7 of 2011 on the file of II Additional District Court, Tuticorin dated 16.12.2017.

For Appellants : Mr.S.Parthasarathy
for Mr.A.Robinson



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For Respondents : Mr.Ananth C.Rajesh
for R.6 to R.9

Mr.M.P.Senthil
for R.12 to R.18

R.1 to R.5 – Exparte

R.10 & R.11 - died

JUDGMENT

(Judgment of the Court was made by G.R.Swaminathan J.)

This Appeal is directed against the judgment and decree dated 16.12.2017 made in O.S.No.7 of 2011 on the file of II Additional District Judge, Tuticorin. The plaintiffs are the appellants herein. The suit was for declaration and recovery of possession. The trial Court by the impugned judgment and decree dismissed the suit.

2.The suit was instituted by Seeniammal and her sons. During the pendency of the suit, the first plaintiff and her daughter / fifth plaintiff passed away. The plaintiffs 9 to 11 are the legal heirs of the deceased fifth respondent.



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3.The case of the plaintiffs is as follows:

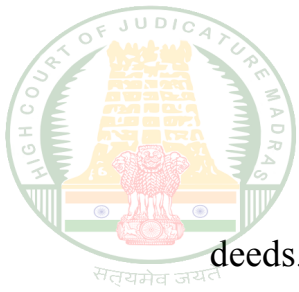
V.L.G.V.L.G.Paulrajan / husband of the first plaintiff and the father of the plaintiffs 2 to 5 purchased the suit property vide registered sale deed dated 18.09.1963. It had been described as ABCDA in the rough plan annexed to the plaint. The property earlier belonged to Diocesan Association. In paragraph 5, the title of the suit property had been traced. V.L.G.Paulrajan passed away on 01.12.1998. During his life time, after purchasing the property, V.L.G.Paulrajan got the revenue record subdivided and mutated in his name. He was paying kist under Patta No.1130. While so, during August 1990, one Pattu Nadar, who was residing in a portion of the suit property got his name also entered as joint pattadhar. Following the objection raised by V.L.G.Paulrajan, the name of Pattu Nadar as joint pattadhar was deleted from the town survey register. After the demise of Pattu Nadar, his wife Ponnammal and her sons obtained joint patta. Before doing so, no notice was issued by the jurisdictional Tahsildar to V.L.G.Paulrajan. Such an order was obtained on 25.09.1998. Thereafter, the legal heirs of Pattu Nadar executed power of attorney dated 06.10.1998 in favour of one Packiaraj. Based on the said power of attorney, 5 cents of land was sold in favour of the sixth



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defendant on 15.03.1999. Another 5 cents of land was sold in favour of the seventh defendant on 19.03.1999. 5.138 cents was sold in favour of the eighth defendant on 04.06.1999. 4.885 cents of land was sold in favour of ninth defendant on 13.07.1999. Thus, the names of the defendants 6 to 9 were also entered as joint pattadhars in the revenue record. After the second plaintiff came to know about the mutation in the revenue record, he raised objection and the Revenue Divisional Officer, Tuticorin deleted the names of the defendants vide order dated 31.07.2002. The defendants filed revision before the District Revenue Officer, Tuticorin. The revision petition was dismissed on 28.11.2005. Since the defendants did not handover possession of the suit property even after repeated demands, the plaintiffs had to lay the suit for declaration of title and recovery of possession.

4.The defendants 6 to 9 filed written statement controverting the plaint averments. According to them, the suit property originally belonged only to Pattu Nadar and that the names of the legal heirs of Pattu Nadar were duly reflected in the revenue record. The defendants 6 to 9 have purchased only from lawful owners through registered sale



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deeds. The defendants contended that the suit was barred by limitation and that the defendants 6 to 9 as well as the predecessor in title have been in peaceful and hostile possession of the suit property beyond the statutory period and thus they had perfected their title also.

5. Based on the rival pleadings, the trial Judge framed the necessary issues. The second plaintiff examined himself as PW1. One Selvakumar was examined as PW2. Ex.A1 to Ex.A15 were marked. On the side of the defendants, defendants 6, 7, 8, 10 & 11 examined themselves as DW1 to DW5. Ex.B1 to Ex.B13 were marked. Through witnesses, 2 documents were marked. After considering the evidence on record, the trial Court dismissed the suit. Challenging the same, this Appeal came to be filed.

6. The learned counsel appearing for the appellants reiterated all the contentions set out in the memorandum of grounds of appeal. He pointed out that the plaintiffs trace their title through a registered sale deed of the year 1963 (Ex.A6). When Pattu Nadar's name was fraudulently entered in the revenue record, it was deleted at the instance of V.L.G.Paulrajan.



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Following the demise of Pattu Nadar, once again the names of his legal heirs were fraudulently entered. Again the said order was set aside by the jurisdictional Revenue Divisional Officer which was confirmed by the District Revenue Officer. The limitation in this case commenced only on 15.03.1999 when Ex.B2 sale deed dated 15.03.1999 was executed in favour of the sixth defendant. The suit for recovery of possession was filed on 01.03.2011. Since the suit was filed within 12 years period prescribed under Article 65 of the Limitation Act, the suit may not be said to be time barred.

7.The learned counsel also assailed the other findings of the trial Court as perverse. He relied on a number of case laws in support of his contentions.

8.Per contra, the learned counsel appearing for the respondents submitted that the impugned judgment is well reasoned and that interference is not warranted. They pointed out that the trial Judge has dismissed the suit on the ground of limitation since it was categorically found that the defendants have been in open and continuous possession



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over the suit property by putting up construction and obtaining electricity service connection. The plaintiffs knew about the same but did not file the suit within a period of 12 years. Therefore, the suit was liable to be dismissed on the ground of limitation under Article 64 of the Limitation Act, 1963. They pointed out that the plaintiffs themselves conceded that Pattu Nadar was in possession of the suit schedule property for several decades even during his life time. The limitation for filing the suit would arise when the name of Pattu Nadar was first included in the joint patta. The plaintiffs have conceded that the name of Pattu Nadar was included in the joint patta in the year 1990. Therefore, the limitation should be reckoned only from the year 1990. The plaintiffs had not filed any document to show that the revenue records were mutated in the name of V.L.G.Paulrajan after purchasing the suit property under Ex.A6. The learned counsel called upon this Court to dismiss this Appeal.

9.We carefully considered the rival contentions and perused the evidence on record.



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10.The points that arises for determination are as follows:

- a) Whether the plaintiffs have proved that they have title over the property?
- b) Whether the suit filed by them is liable to be dismissed on the ground of limitation?

11.There is no difficulty in answering the first question.

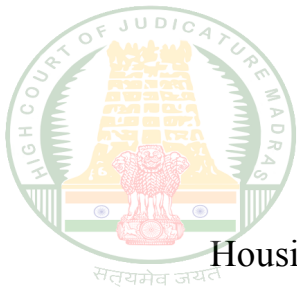
V.L.G.Paulrajan, from whom the plaintiffs claim the title, purchased the suit property vide Ex.A6 registered sale deed dated 18.09.1963. His vendor traced his title to Ex.A5 dated 12.11.1962. The title is eventually traced to Ex.A4 dated 24.08.1937. Thus, registered transactions dating back to the year 1937 have been projected by the plaintiffs. It is also relevant to note that when Pattu Nadar's name was entered in the revenue record, it was set aside at the instance of the plaintiffs. Ex.A9 dated 28.11.2005 is the order passed by the District Revenue Officer, Tuticorin. A careful reading of the said order would show that when Pattu Nadar's name was entered in the year 1990, it was deleted at the instance of V.L.G.Paulrajan. Likewise when the names of the legal heirs of the Pattu Nadar were entered in the revenue record, again it was deleted at the instance of the plaintiffs. From a careful reading of the aforementioned



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evidence, one can come to the safe conclusion that V.L.G.Paulrajan had title over the property and since the plaintiffs are his legal heirs, the title devolved on them. To controvert this claim, the defendants have not adduced any evidence. The defendants 6 to 9 claim title from the defendants 1 to 5. The defendants 1 to 5 claimed their title through Pattu Nadar. But there is no title document standing in the name of Pattu Nadar. On the strength of the entry made in the revenue record, the defendants 1 to 5 executed Ex.B1 power of attorney dated 07.09.1998 based on which the subsequent sale deeds in favour of the other defendants came to be executed. From the revenue record, all the names of the defendants were subsequently deleted.

12.In these circumstances, one has to come to the conclusion that the plaintiffs have convincingly proved that they have title over the suit property. The trial Court did not even bother to consider the evidence adduced on the side of the plaintiffs. After mechanically summarizing the contentions urged on either side, the trial Court noted that since the defendants 6 to 9 have availed housing loans from Thoothukudi Taluk Housing Society, the suit was bad for non-joinder of Thoothukudi



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Housing Society. The trial Court declined to grant relief to the plaintiffs

since the Housing Society which had advanced loans to the defendants 6 to 9 was not made a party. Such a reason can only be characterized as shocking to one's judicial conscience. We fail to understand as to how the Housing Society could be a necessary party to the suit proceedings. If the Housing Society has advanced loans without proper verification of the borrowers' title, Society has to blame itself. The plaintiffs seeking the relief of declaration and recovery of possession were not obliged to implead the defendants' creditors. The other reason assigned by the Court below for non-suiting the plaintiffs was that the suit was barred by virtue of Article 64 of the Limitation Act, 1963. It is true that the plaintiffs admitted that Pattu Nadar was in possession of a portion of the suit property. He also got his name entered as joint pattadhar in the year 1990 and his name was deleted only in the year 1991 following the objection raised by V.L.G.Paulrajan. After the demise of Pattu Nadar, once again the legal heirs as well as the purchasers got their names entered in the revenue record. Once again at the instance of the second plaintiff, their names were deleted.



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13.The question that calls for consideration is whether in view of these facts, the suit can be said to be time barred. The defendants 6 to 9 had purchased portions of the suit property vide sale deeds dated 15.03.1999, 19.03.1999, 04.06.1999 and 13.07.1999. Since the suit was filed on 01.03.2011, the defendants 6 to 9 cannot plead adverse possession. Of course, they are entitled to take advantage of the adverse possession of their vendors. But unfortunately for them, the defendants 1 to 5 not only did not file any written statement but remained ex-parte. They did not even contest the suit proceedings. Even in the written statements of the defendants 6 to 9, no specific date has been set out to reckon the period of limitation. The sale deeds executed by the defendants 1 to 5 through their power agent in favour of the defendants 6 to 9 contain the recital that Pattu Nadar was ancestrally enjoying the property. To prove the plea of adverse possession, the title of the opposite party must be admitted and hostile possession and assertion of title must be established. The elementary ingredients constituting adverse possession (*nec vi, nec clam and nec precario*) are wholly absent in this case.



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14. In any event, there is no pleading in the record and therefore there cannot be any proof and when there cannot be any proof, argument without any foundation cannot be entertained. The plea of adverse possession is only advanced by the learned counsel for the respondents at the time of arguments.

15. The perversity characterizing the findings of the Court below is evident from the fact that a false premise is projected. The trial Court has proceeded as if the plaintiffs have sought recovery of possession on the strength of previous possession. The Court below failed to note that this is a case of declaration and recovery of possession. Once the title is found in favour of the plaintiffs, recovery of possession ought to be granted unless the defendants are able to resist the said prayer on the strength of adverse possession. As already pointed out, there is no plea of adverse possession in the written statement.

16. The Court below had also held that only after cancellation of the defendants' registered sale deeds, the plaintiff's prayer can be considered. There is again no legal basis for arriving at such a



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conclusion. The Court below ought to have held that it is only Article 65 which is relevant and not Article 64.

17.The defendants have specifically stated that they purchased the lands covered under the respective sale deeds only on the basis of the joint patta standing in the names of their vendors. These were ordered to be cancelled. This joint patta issued in the names of Pattu Nadar, his legal heirs and the defendants 6 to 9 were cancelled by Ex.X1 to Ex.X2. Therefore, the very foundation on which the contesting defendants rest their claim has been totally undermined. The defendants 6 to 11 did not also examine their vendors. Thus, there is no evidence whatsoever to sustain the title of the vendors of the contesting defendants.

18.The defendants also cannot resist the suit on the strength of acquiescence on the part of the plaintiffs. It is true that the suit was filed literally on the eve of the expiry of the limitation period. Merely because the plaintiffs did not seek to restrain the defendants 6 to 9 when they were putting up construction it cannot mean that they cannot seek the relief of recovery of possession by filing a comprehensive suit before the expiry of the limitation period. If the plaintiffs have sought only the



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relief of injunction, then, equitable considerations may be at play. Where the reliefs of declaration and recovery of possession are sought, the issue has to be decided by adjudicating the competing rights of the parties. The Court below erred in invoking the doctrine of acquiescence. The findings of the Court below are utterly perverse and based on no evidence.

19.Looked at from any angle, the impugned judgment of the trial Court cannot be sustained. Both the points are answered in favour of the appellants. The impugned judgment and decree are set aside. This suit is decreed as prayed for.

20.This Appeal is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.) & (M.J.R. J.)
30.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

and

M.JOTHIRAMAN, J.

MGA

To:

II Additional District Court, Tuticorin.

Copy to:

The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.

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