



S.A.(MD)No.268 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 17.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

**S.A.(MD)No.268 of 2018**

Pitchai (died)

1.Bathaviya  
2.Syed Ali  
3.Mohammed Mohaideen  
4.Malar Nisha  
5.Fathima Beevi  
6.Amjathu Beevi

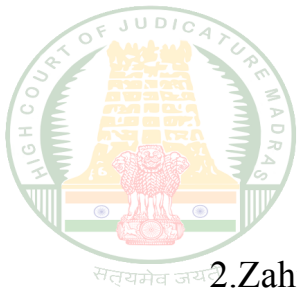
... Appellants/LRs of the deceased sole  
appellant in A.S./LRs of the deceased  
Plaintiff  
.. 7<sup>th</sup> appellant /LR of the deceased sole  
appellant in A.S./LR of the deceased  
Plaintiff

(2<sup>nd</sup> respondent is transposed as  
7<sup>th</sup> appellant, vide order dated  
09.12.2021 made in C.M.P.(MD)No.  
9989 of 2021)

VS

1.Mariappan(died)

... 1<sup>st</sup> Respondent/1<sup>st</sup> Respondent/  
Defendant



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2.Zahir Hussain Pitchai

(2<sup>nd</sup> respondent is transposed as  
7<sup>th</sup> appellant, vide order dated  
09.12.2021 made in C.M.P.(MD)No.  
9989 of 2021)

3.Kaliammal

4.Maruthupandi

5.Boopathi

6.Vijayarani

7.Malliga

: Respondents

(Respondents 3 to 7 are brought on  
record as LR's of the deceased 1<sup>st</sup> respondent  
vide Court order dated 09.12.2021 made  
in C.M.P.(MD)No.990 of 2021)

**PRAYER:** Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree, dated 25.08.2014, made in A.S.No.30 of 2011, on the file of the Sub-Court, Ramanathapuram, confirming the judgment and decree, dated 23.06.2008 made in O.S.No.20 of 2006, on the file of the District Munsif Court, Ramanathapuram.

For Appellants : Mr.V.George Raja  
for M/s Ajmal Associates

For Respondents : Mr.S.Ramesh  
for R.3 to R.7  
: R.1- died  
: R.2 transposed as 7<sup>th</sup> appellant



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## **JUDGMENT**

The unsuccessful plaintiff is before this Court on appeal.

2. The Second Appeal is filed challenging the judgment and decree, dated 25.08.2014 in A.S.No.30 of 2011, on the file of the Subordinate Court, Ramanathapuram, confirming the judgment and decree, dated 23.06.2008 in O.S.No.20 of 2006, on the file of the District Munsif Court, Ramanathapuram.

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

4. It is the case of the plaintiff that the suit property measuring 0.03 Ares in Survey No.53/27 was granted assignment by the Government in favour of the plaintiff on 31.07.1976. Pursuant to the assignment granted, the plaintiff had constructed a house and was in possession and enjoyment of the same. The revenue records have been mutated in favour of the



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plaintiff. The house was assessed to property tax and the plaintiff had been paying the house tax. As such, the plaintiff is the absolute owner and in possession of the suit property. It is the further case of the plaintiff that the defendant, who is a resident of Vallimadan Valasai Village of Thiruppullani, wanted to come and reside in his Village and therefore, requested the plaintiff to give the suit property. The plaintiff accepted the request and had permitted the defendant to occupy the suit property. The plaintiff, who was doing fishing for his livelihood, had gone to Kakinada in Andhra Pradesh for doing fishing. Since the suit property is situated away from the other residents, he had settled his family members in his brother's house at Periyapattinam and only during such time, the defendant was permitted to occupy the suit property. When the defendant was a permissive occupant and since the plaintiff returned back and wanted the house in the year 1999 and requested the defendant to hand over the possession, the defendant had instituted a suit in O.S.No.220 of 1999 as against this plaintiff. When the plaintiff, as defendant therein, was ready to contest the suit, the defendant herein did not choose to proceed with the suit and the suit came to be dismissed. Pursuant to the proceedings, the plaintiff had issued a notice on 23.08.2005, cancelling the permission granted and



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called upon the defendant to hand over the possession. Since notice was returned, the plaintiff had come up with the suit for recovery of possession.

5. The defendant resisted the suit disputing that the suit property was assigned in favour of the plaintiff. It is the case of the defendant that the suit property belonged to the Government and this defendant along with 11 other persons have constructed a house in the year 1977 and are residing there. Since the defendant is in long possession of the suit property, he had requested for issuance of patta from the Government and the officers had delayed the grant of patta for various reasons. While so, since the plaintiff issued the notice claiming right over the suit property and is seeking for eviction, the suit is not maintainable. The plaintiff had come up with this suit only to grab the suit property and sought for dismissal of the suit.

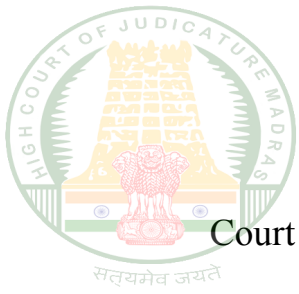
6. During trial, the plaintiff examined himself as P.W.1 and one Mohammed Sahib as P.W.2 and marked Exhibits A.1 to A.7. On the side of the defendant, the defendant examined himself as D.W.1 and one Shanmugavel as D.W.2 and marked Exhibits B.1 to B.5. Two other documents were marked through the witnesses as Exs.X.1 and X.2.



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7. The trial Court, on appreciation of evidences, came to the conclusion that the plaintiff had established his right and title over the suit property. However, the trial Court, by finding that since even according to the plaintiff, he had permitted the defendant to occupy the suit property in the year 1986 and the defendant had filed the suit in O.S.No.220 of 1999 and even prior to filing of the suit, the defendant had been in possession for the period of 12 years and thereby the defendant had perfected title by adverse possession. The trial Court also by relying on the tax receipts filed by the defendant in Exs.B.2 to B.6 for the period from 1991 to 1999, came to the conclusion that since the suit was not filed even till 2003, based on the tax receipts filed by the defendant from the year 1991, again held that the suit filed by the plaintiff for recovery of possession is not maintainable, since the suit is not filed within the time. On appeal, the lower appellate Court reappraise the evidences and had rendered a finding that when the defendant himself has not pleaded any right through adverse possession, the trial Court had erroneously held that the defendant had perfected the title by adverse possession and therefore, such a conclusion and finding was perverse. Further, even after rendering such a finding, the lower appellate



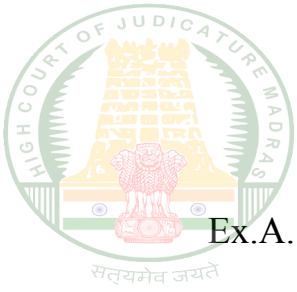
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Court came to the conclusion that merely because such an error has been committed by the trial Court and the defendant had not sought for any adverse possession, that alone will not entitle the plaintiff for the suit relief and the plaintiff has to prove his case for a decree of recovery of possession and thereby had dismissed the appeal, confirming the conclusion of the trial Court. Assailing on the concurrent findings of facts, the plaintiff had preferred the above Second Appeal.

8. This Court, by order dated 23.08.2018, admitted the Second Appeal on the following Substantial Question of Law:

*“Whether the Courts below have right applied the letter, spirit and scope of Articles 64 and 65 of Limitation Act, 1963 to the facts and circumstances of the case, especially, when the Court below came to the conclusion that the plaintiff is the owner of the property and the defendant never admitted the title of the plaintiff at any point of time?”*

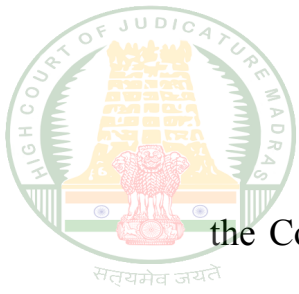
9. Mr.V.George Raja, learned Counsel appearing for the appellants argued that when admittedly the suit property is a Government land and the Government has assigned the suit property in favour of the plaintiff in



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Ex.A.1 and the property was also handed over to the plaintiff through the proceedings of the Tahsildar in Ex.A.2, the plaintiff is the absolute owner having valid title to the suit property. The learned Counsel further contended that the trial Court had erroneously, even in the absence of pleadings and claim in respect of adverse possession, went ahead in dismissing the suit, holding that the defendant had perfected title by adverse possession, which was rightly found to be erroneous by the lower appellate Court.

10. It is his further contention that on setting right the anomaly, the lower appellate Court had simply dismissed the appeal by holding that the plaintiff has to prove his claim for recovery of possession and had not adduced any reasoning for dismissing the suit. He further contended that the plaintiff had also filed chitta and the property tax receipts in Exs.A.3 to A.5 evidencing his possession over the suit property. Further when the defendant had already filed a suit seeking right over the suit property, which had been dismissed, the defendant cannot dispute the title of the plaintiff. When once the plaintiff is found to be the rightful owner having valid title, he is entitled to recover the possession from the permissive occupant, which

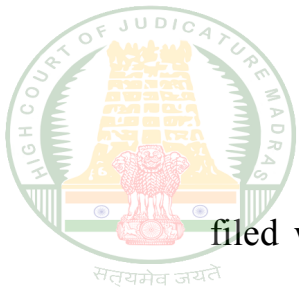


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the Courts below have not considered in proper perspective, therefore, the findings rendered are perverse and sought for interference of this Court.

11. Contending contra, the learned Counsel appearing for the respondents argued that when the defendant, even in the written statement, had denied the title of the plaintiff and had raised a cloud on the title, then the plaintiff ought to have amended the suit seeking for declaration and the suit for mere recovery of possession without declaration is not maintainable. In this regard, the learned Counsel also relied on the decision of this Court in *N.Kaliamoorthy Vs. Vairavan Chettiar* reported in (2014)5 CTC 801.

12. It is his further contention that when the plaintiff had come up with the claim that he had permitted the defendant to occupy the suit property, the onus was on the plaintiff to prove that the defendant is in possession of the suit property, as a permissive occupant, which the plaintiff has miserably failed to prove so. Even though, it has been wrongly held that the defendant had perfected the title by adverse possession, in the absence of necessary pleadings, but still, the suit filed by the plaintiff is barred by limitation under Article 65 of the Limitation Act, as the suit has not been



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filed within the period of 12 years. The defendant has also filed the tax receipts in Ex.B.2 to B.6 series and whereby established his possession.

The Courts below have considered these legal aspects and had rightly dismissed the suit which needs no interference and sought for dismissal of the appeal.

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

14. Admittedly, the suit property is a Government poramboke land. The Government is the paramount title holder. The plaintiff had filed the documents in Exs.A.1 and A.2 by which the Government had granted assignment in favour of the plaintiff. As per the assignment order issued on 31.07.1976 in Ex.A.1, the Tahsildar, Ramanathapuram had assigned the suit property in favour of the plaintiff. Pursuant to the assignment order in Ex.A.1, the possession of the suit property was handed over to the plaintiff through the proceedings of the Tahsildar in Ex.A.2. Thereby from the documents in Exs.A.1 and A.2, it could be seen that the Government being the paramount title holder, had granted assignment in favour of the plaintiff

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and in view of the assignment granted, the plaintiff had become the absolute owner of the suit property. The plaintiff had further filed the documents in Exs.A.4 and A.5 series, which are tax receipts that corresponds to the period from 1997-2002 in Ex.A.5 and 2010-2013 in Ex.A.4.

15. It is the case of the plaintiff that the defendant was permitted to occupy the suit property in the year 1986 and based on which, the defendant was in possession of the suit property and since the plaintiff wanted the suit property for his personal occupation, he had demanded the possession of the property in the year 1999. Further the defendant had filed the suit in O.S.No.220/1999 against the plaintiff claiming right over the suit property. The suit came to be dismissed. After this proceedings, the plaintiff had issued legal notice in Ex.A.6 on 23.08.2005 calling upon the defendant to hand over the possession of the suit property and thereafter had filed the suit.

16. The trial Court had dismissed the suit on two grounds. The trial Court, by observing that since the plaintiff had himself admitted that he permitted the defendant to occupy the suit property in the year 1986, the



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defendant had been in possession of the suit property for 12 years, even prior to filing of O.S.No.220 of 1999 and thereby had perfected title by adverse possession. Secondly, the trial Court, by considering the tax receipts filed by the defendant, came to the conclusion that since the tax receipt is filed from the year 1991, it can be safely taken that the defendant has been in possession from the year 1991. The plaintiff ought to have filed any suit before the year 2003 within 12 years and since the suit came to be filed only in the year 2006, the suit is not filed within the time and therefore, the plaintiff is not entitled for the suit relief.

17. The lower appellate Court had rendered a finding that the conclusion arrived at by the trial Court in holding that the defendant had perfected title by adverse possession is erroneous, in the absence of any pleadings and claim to that effect. However, the lower appellate Court had still dismissed the suit only on the ground that the plaintiff who had come up with the suit for recovery of possession, have to prove his claim. The lower appellate Court has not considered the documents filed by the plaintiff and had not rendered a finding as to how the lower appellate Court



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had come to the conclusion that the plaintiff has not proved his case for claiming the suit relief.

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18. During arguments, it is the vehement contention of the learned Counsel for the respondent that when once the defendant had filed a written statement, disputing the title, then the plaintiff ought to have amended the suit for declaration and the prayer for mere recovery of possession without declaration is not sustainable. In this regard, it is useful to refer the decision of the Hon'ble Supreme Court in **Anathula Sudhakar Vs. P.Buchi Reddy (dead) by LRs., and others** reported in **(2008)4 SCC 594** and paragraph No. 21 is extracted hereunder:

*“21. To summarize, the position in regard to suits for prohibitory injunction relating to immovable property, is as under :*

*(a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.*



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*(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession.*

*(c) But a finding on title cannot be recorded in a suit for injunction, unless there are necessary pleadings and appropriate issue regarding title [either specific, or implied as noticed in Annaimuthu Thevar (supra)]. Where the averments regarding title are absent in a plaint and where there is no issue relating to title, the court will not investigate or examine or render a finding on a question of title, in a suit for injunction. Even where there are necessary pleadings and issue, if the matter involves complicated questions of fact and law relating to title, the court will relegate the parties to the remedy by way of comprehensive suit for declaration of title, instead of deciding the issue in a suit for mere injunction.*

*(d) Where there are necessary pleadings regarding title, and appropriate issue relating to title on which parties lead evidence, if the matter involved is simple and straight-forward, the court*



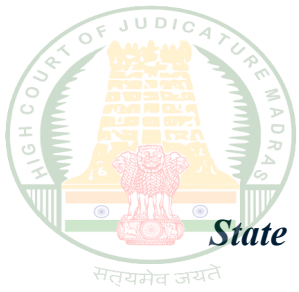
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*may decide upon the issue regarding title, even in a suit for injunction. But such cases, are the exception to the normal rule that question of title will not be decided in suits for injunction. But persons having clear title and possession suing for injunction, should not be driven to the costlier and more cumbersome remedy of a suit for declaration, merely because some meddler vexatiously or wrongfully makes a claim or tries to encroach upon his property. The court should use its discretion carefully to identify cases where it will enquire into title and cases where it will refer to plaintiff to a more comprehensive declaratory suit, depending upon the facts of the case.”*

19. It is true that when the plaintiff had come with the suit for recovery of possession, where a cloud is raised on the title, then it is for the plaintiff to seek for declaration and for recovery of possession and a suit for mere injunction would not be maintainable. However, it is to be noted that a mere denial is not sufficient and that will not make it mandatory for the plaintiff to seek for a declaration. The defendant has to assert some right by filing appropriate documents and only where a true and genuine cloud is raised, a need arises for the plaintiff to seek for declaration. In this regard, it is useful to refer the decision of the Hon'ble Supreme Court in ***Jharkhand***



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***State Housing Board Vs. Didar Singh and another*** reported in (2019)17

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**SCC 692**, and paragraph Nos.10 and 11 are extracted hereunder:

*“10. The issue that fall for our consideration is : “Whether the suit for permanent injunction is maintainable when the defendant disputes the title of the plaintiff?”*

*11. It is well settled by catena of judgments of this Court that in each and every case where the defendant disputes the title of the plaintiff it is not necessary that in all those cases plaintiff has to seek the relief of declaration. A suit for mere injunction does not lie only when the defendant raises genuine dispute with regard to title and when he raises a cloud over the title of the plaintiff, then necessarily in those circumstances, plaintiff cannot maintain a suit for bare injunction.”*

20. In the above case, it is held by the Hon'ble Supreme Court that where a true and genuine defence is raised raising a cloud on title, the plaintiff is required to seek for declaration and not in every case. In the instant case, when admittedly, the Government is the paramount title holder and assignment has been granted in favour of the plaintiff in Ex.A.1 and the possession has been handed over in Ex.A.2. The defendant had not brought any materials and even as per the documents filed by the defendant, he has



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submitted an application before the Government authorities seeking for patta and that will not give him any right. A mere denial made by the defendant in the written statement does not amount to raising a valid cloud over the title of the plaintiff. As such, the plaintiff being the absolute title holder can maintain the suit for mere recovery of possession and there was no necessity on the part of the plaintiff to seek for declaration.

21. It is the further vehement contention of the learned Counsel for the respondents that since the suit has not been filed within the period of 12 years, it is barred by limitation under Article 65 of the Limitation Act. In this regard, it is to be noted that even according to the plaintiff, the suit property had been handed over to the defendant only as a permissive occupant in the year 1986. When the defendant has not produced any material or evidence to assert his right over the suit property, then it can only be accepted that he is in possession of the suit property based on the permission granted by the absolute title holder - the plaintiff. When it is found that the defendant has been in permissive possession of the suit property, the defendant had for the first time in the year 1999, filed a suit in O.S.No.220 of 1999 claiming right over the suit property against the



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plaintiff. As such, this suit filed by the defendant in O.S.No.220 of 1999 can be considered as an effective assertion of the title by the defendant as against the plaintiff. Only when the defendant had filed the suit in the year 1999 and the defendant has denied the rights of the plaintiff in the suit property, then the possession of the defendant becomes adverse to the plaintiff.

22. In the instant case, when the suit has been filed in the year 1999, the plaintiff had issued a legal notice dated 23.08.2005 in Ex.A.6 calling upon the defendant to evict and hand over the property and had also filed the suit in the year 2006. From the filing of the suit in the year 1999 by the defendant, the legal notice issued in Ex.A.6 and the suit filed by the plaintiff is well within the period of 12 years as contemplated under Article 65 of the Limitation Act. When the plaintiff had approached well within the time, the decisions of the Courts below in dismissing the suit on holding that the plaintiff had not proved his claim and the suit has not been initiated within the period of limitation are perverse and necessarily the findings rendered cannot be sustained and are liable to be interfered with.



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23. In the view of the above findings, the Substantial Question of

Law is answered in favour of the appellants and as against the respondents.

Accordingly, the Judgments and decrees of the Courts below are set aside.

The Second Appeal stands allowed. However, considering the facts and circumstances, there is no order as to costs.

**17.07.2025**

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

SSL  
To

1. The Subordinate Court, Ramanathapuram.
2. The District Munsif Court, Ramanathapuram.
3. The Record Keeper,  
V.R.Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**G.ARUL MURUGAN, J.**

SSL

Judgment made in  
**S.A.(MD)No.268 of 2018**

**17.07.2025**