



S.A.(MD)Nos.298 & 299 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.07.2025

CORAM

THE HON'BLE MR.JUSTICE G.ARUL MURUGAN

S.A.(MD)Nos.298 & 299 of 2025

and

C.M.P(MD)No.10501 of 2025

Dhurairaj

... Appellant in both appeals

-vs-

R.Muthusamy

... Respondent in both appeals

PRAYER S.A.(MD)No.298 of 2025: Second Appeal filed under Section 100 Code of Civil Procedure, against the judgment and decree dated 27.03.2024 made in A.S.No.17 of 2011 on the file of Sub Court, Kulithalai, confirming the judgment and decree dated 30.11.2010 made in O.S.No.192 of 2008 on the file of the District Munsif Court, Kulithalai.

PRAYER S.A.(MD)No.299 of 2025: Second Appeal filed under Section 100 Code of Civil Procedure, against the judgment and decree dated 27.03.2024 made in A.S.No.18 of 2011 on the file of Sub Court, Kulithalai, confirming the judgment and decree dated 30.11.2010 made in O.S.No.218 of 2006 on the file of the District Munsif Court, Kulithalai.

In both appeals:

For Appellant

... Mr.G.Sridharan



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COMMON JUDGMENT

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The defendant is before this court on appeal in both the second appeals.

2. S.A(MD)No.298 of 2025 is filed challenging the judgment and decree dated 27.03.2024 in A.S.No.17 of 2011 on the file of the Sub Court, Kulithalai, confirming the judgment and decree dated 30.11.2010 in O.S.No.192 of 2008 on the file of the District Munsif Court, Kulithalai.

3. S.A(MD)No.299 of 2025 is filed challenging the judgment and decree dated 27.03.2024 in A.S.No.18 of 2011 on the file of the Sub Court, Kulithalai, confirming the judgment and decree dated 30.11.2010 in O.S.No.218 of 2006 on the file of the District Munsif Court, Kulithalai.

4. For the sake of convenient, the parties are referred to as per their litigative status before the trial Court.

5. Since the issue involved in both the second appeals is in respect of the same suit property between the same parties, both the appeals are heard together and disposed of by this common judgment at the admission stage itself.



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6. According to the plaintiff, the suit property originally belonged to one Ramasamy Gounder, and he sold the property to the plaintiff's father, namely, Reddiyappa Gounder, through a sale deed dated 27.06.1961 for the valuable consideration. From the date of purchase, the plaintiff's father was in exclusive possession and enjoyment and carried on cultivation. A dispute arose between the plaintiff's father and his vendor's family. As such, the plaintiff's father had filed the suit for partition against the vendor's family in [O.S.No. 536 of 1962](#), wherein a preliminary decree followed by a final decree was passed. However, in the appeal in [A.S.No.408 of 1972](#), the decree was partly modified, and the suit property was allotted in favour of the plaintiff's father. It is the further case of the plaintiff that his father had ancestral properties in S.F.Nos.10/2, and 10/3. After the plaintiff's father got the entire suit property through partition, he had taken delivery of the property in the execution proceeding in [E.P.No. 121 of 1978](#). The plaintiff's father, being the owner, had sold an extent of 22-1/2 cents in [S.F.No.10/4](#) in favour of the defendant's father, namely, Periyasamy Gounder, on 16.07.1979. Having purchased only this 22-1/2 cents on the southwest side of the suit property, the defendant does not have rights over the suit property. After the death of the plaintiff's father, the plaintiff had inherited the suit property and was in possession and enjoyment of the same. Since the



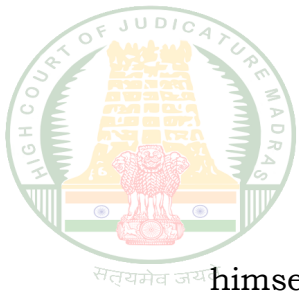
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defendant attempted to cut the trees in the suit property, he had filed the suit in [O.S.No.218](#) of 2016. Further, since the defendant also attempted to lay a pipeline in the suit property, the plaintiff had come up with the suit in [O.S.No.192](#) of 2008.

7. The defendant resisted the suit, admitting that the plaintiff's father got the suit property through the final decree passed in the earlier suit and also that possession was handed over in the execution proceedings. It is the case of the defendant that after the plaintiff's father became the owner of the suit properties, he sold an extent of 22-1/2 cents in [S.F.No.10/4](#) through a registered sale deed dated 16.07.1979. It is the further case of the defendant that the plaintiff's father had in fact granted lease in favour of one S.P.Raju Chettiar, and from the lessee, Raju Chettiar, the defendant had got a sublease, and he is in possession of the suit property. As such, the plaintiff is not in possession of the suit property and sought for dismissal of the suit.

8. During trial, in both the suits, the plaintiff examined herself as P.W.1 and one Eruthi Gounder as P.W.2 and marked Exs.A1 to A4 in O.S.No.192 of 2008 and Exs.A1 to A14 in O.S.No.218 of 2006. On the side of the defendant, in both the suits, the defendant examined



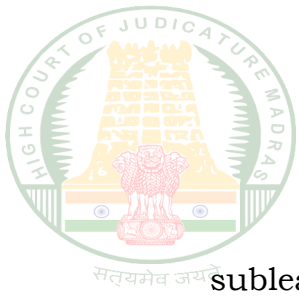
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himself as D.W.1 and one Raju Chettiar, who was the earlier lessee, as D.W.2 and marked Exs.B1 and B2 in O.S.No.216 of 2006 and Exs.B1 to B3 in O.S.No.218 of 2006. Apart from that Exs.C1 and C3 were marked in O.S.No.218 of 2006.

9. The trial court, after analyzing the evidence, concluded that the plaintiff's father had become the absolute owner of the suit properties through the earlier decree granted, and after his demise, the plaintiff, being the son, has inherited the suit property. The trial court also found that when admittedly the registered lease was granted in favour of D.W.2 only for a period of five years, there has been no document to show that the lease had been extended. Further, when the plaintiff had filed the document to establish his title and enjoyment over the suit property, the defendant, who had only claimed a sublease, failed to prove the same by filing any document in that regard. As such, the trial court, by two separate judgments, had decreed in both the suits.

10. On appeal, the lower appellate court came to the conclusion that even D.W.2, who was examined, did not support the case of the defendant, and nothing was spoken by him about the extension of the lease or executing any document in favour of the defendant granting



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sublease. As such, the lower appellate court, by two separate judgments, dismissed both the first appeals and confirmed the judgments and decrees of the trial court. Assailing the concurrent finding of fact, the defendant is before this court with two separate second appeals.

11. The learned counsel for the appellant/defendant argued that when the plaintiff had come up with the suit seeking an injunction, the onus was on the plaintiff to establish that he has valid and proper title, based on which he is in possession. However, when admittedly, the registered lease was granted in favour of D.W.2, the plaintiff failed to prove that pursuant to the expiry of the lease, possession of the suit property was handed over by the lessee, D.W.2, to the plaintiff, and in the absence of any such materials, the courts below have shifted the burden on the defendant and had concluded that since the defendant had not marked any document, the plaintiff is entitled for the relief. The learned counsel vehemently contended that this conclusion arrived at by the courts below is perverse, and further, the courts below have not appreciated the document filed by the defendant and the oral evidence let by the defendant by examining the admitted leaseholder Raju Chettiar as D.W.2 and sought for interference of this court.



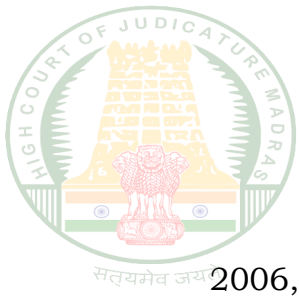
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12. Heard the learned counsel for the appellant, and perused the materials available on record.

13. Admittedly, the plaintiff's father had purchased the suit property through the sale deed dated 27.06.1961. Pursuant to the purchase, since there had been some dispute between the plaintiff and the plaintiff's vendor's family, the plaintiff's father had instituted a suit in [O.S.No.536](#) of 1962 seeking for partition. In the suit, initially, a preliminary decree was passed, and after appointing an Advocate Commissioner, a final decree came to be passed allotting the suit property in favour of the plaintiff's father and also making other divisions. However, the first appeal in [A.S.No.408](#) of 1972 came to be disposed of by modifying the decree granted. In respect of the decree passed by the first appellate court, the suit property came to the share of the plaintiff's father. Pursuant to the judgment and decree, the plaintiff's father had filed an execution petition in [E.P.No.121](#) of 1978, wherein possession was handed over to the plaintiff's father.

14. In view of the documents filed by the plaintiff, which include the sale deed executed in favour of the plaintiff's father in Ex.A1 and also the judgment and decree filed by the plaintiff in O.S.No.218 of



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2006, the plaintiff had established that the plaintiff's father had title to the suit property.

15. Further, the plaintiff's father, being the absolute owner of the property, measuring an extent of 3.15 acres, had executed a sale deed in favour of the defendant, conveying an extent of 22-1/2 cents through the sale deed in Ex.A2 dated 16.07.1979. As such, in view of the purchase made, the defendant had become the owner of the property measuring an extent of 22-1/2 cents, which lies adjacent to the suit property.

16. It is also the admitted case of the parties that the plaintiff's father had executed a lease in favour of Raju Chettiar, who has been examined as D.W.2, granting a lease for the suit property for a period of 5 years. On 12.12.1979, while the lessee D.W.2 was carrying on cultivation based on the lease granted, there had been a dispute with the defendant's father, who was neighbour to the suit property, and in this regard, D.W.2 himself as lessee had earlier instituted a suit in [O.S.No.324](#) of 1980 against the defendant's father and had obtained a decree of injunction. Further, as per the lease deed, admittedly, the lease period, which was granted for 5 years, expired in the year 1984 itself.

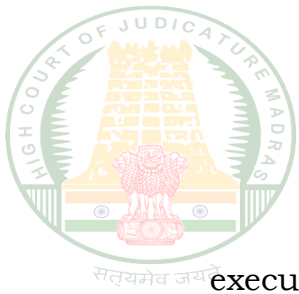


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17. The plaintiff, by filing these documents, had established that after the death of his father, he, being the only son, had inherited the suit properties and become the absolute owner of the suit property, and the revenue records have been mutated in his name, and the plaintiff had filed the patta issued in his favour and also the tax receipts for all these years in Exs.A9 to A14 in [O.S.No.218](#) of 2006. When the plaintiff had established his title and enjoyment over the suit property, it was the contention of the defendant that they are holding possession over the suit property as a sublessee from D.W.2 Raju Chettiar. When the defendant had come up with such a claim, then the onus is on the defendant to prove the fact that they are in possession as a sublessee. As per Section 103 of the Evidence Act, the onus is on the party who wants to establish the fact to make a claim.

18. When a claim sublease is made, in the instant case, the onus is on the defendant to prove that D.W.2 original lessee, was in possession of the property through an extension of the lease and further, based on the sublease, that was executed in favor of the defendant, he is holding possession over the suit property. In this regard, the defendant miserably failed to file any document to prove that he has been granted the sublease through any document



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executed in his favour by the earlier lessee, D.W.2. The defendant had also not established that even after the expiry period of 1984, D.W.2 had continued the possession by extension of lease.

19. When it is the claim of the defendant that he is in possession as a sublessee and when this fact has not been proved, the courts below have rightly analyzed the documents filed by either side and have come to the concurrent finding of fact that the plaintiff had established his title and enjoyment over the suit property, had thereby decreed the suits.

20. In view of the above, since the finding has been rendered based on the materials available on record, this court does not find any illegality or perversity in the finding arrived at. No substantial question of law arises for consideration in this second appeal.

21. In the result, these Second Appeals fail and the same are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

17.07.2025

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

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- 1.The Sub Judge, Kulithalai.
- 2.The District Munsif, Kulithalai.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ARUL MURUGAN, J.

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Common Judgment made in

S.A.(MD)Nos.298 & 299 of 2025

and

C.M.P(MD)No.10501 of 2025

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