



S.A.No.1835 of 1998

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 11.03.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

S.A.No.1835 of 1998

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Salath Mary

.. Appellant

Vs.

1. R.M.Arockiyasamy
2. Maria Susai (alias) Soosai (died)
3. M.Alis Mary (died)
4. M.John Britto
5. M.Mary Grazy
6. M.Anthony Raj
7. M.Vimal Anand (died)
8. V.Vinolia
9. V.Kinsilin

(Respondents 3 to 7 are brought on record as LR's of the deceased 2nd respondent, vide Court order dated 08.02.2022 made in C.M.P.(MD).Nos.3409 to 3411 of 2016 in S.A.No.1835 of 1998)

(Respondents 8 and 9 are brought on record as LR's of the deceased seventh respondent, vide Court order dated 31.02.2022 made in C.M.P.(MD).No.1973, 1974 and 1976 of 2022

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in S.A.No.1835 of 1998)

(Memo dated 05.04.2023 filed on 06.04.2023

in USR No.12135 is recorded as

respondents 4 to 7, who are already on

record, and recorded as LR's of the

deceased third respondent, vide

Court order dated 21.04.2023 made

in S.A.No.1835 of 1998)

.. Respondents

Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 31.07.1998 made in A.S.No.108 of 1992, on the file of the Subordinate Court, Thanjavur, against the judgment and decree dated 16.03.1992 made in O.S.No.514 of 1990 on the file of the District Munsif Court, Thiruvayyaru.

For appellants : Mr.V.K.Vijayaraghavan

For respondents: RR-1, 4 to 6 and 8 and 9 - served

RR-2 and 7 - died

R-3 died

JUDGMENT

This Second Appeal has been filed challenging the judgment and decree dated 31.07.1998 made in A.S.No.108 of 1992 on the file of the Subordinate Court, Thanjavur, reversing the judgment and decree dated 16.03.1992 made in O.S.No.514 of 1990 on the file of the District Munsif Court, Thiruvayyaru.

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2. The averments made in the plaint are as follows:

(a) The plaintiffs are the sons of Late Masilamani Nadar. The property originally belonged to one Arogyasamy Nadar, who has settled the properties by registered Settlement Deed, dated 19.01.1924 in favour of three sons and grandsons Masilamani Nadar and another grandson through his son Rayappa Nadar alias Rethinasamy Nadar. The suit property described in the plaint documents by referring to the name of the seller with boundaries. It is also mentioned as Panchanatham Pillai's lands. Panchanatham Pillai alias Govinda Pillai, sold the property in favour of Arogyasamy Nadar - the settlor. 10 Mahas of lands were purchased from Panchabanathan Pillai alias Govinda Pillai and the properties had been given to Ponnusamy Nadar - 2 Mahas 60 Kuzhis, Masilamani Nadar - 2 Mahas and 50 Kuzhis and Yagappa Nadar - 2 Mahas and 50 Kuzhis. The balance of the land out of 10 Mahas are without mentioning the extent given to Yesumuthu Nadar. The balance of the land available after the specified extent in 2 Mahas and 40 Kuzhis. Thus, Yesumuthu Nadar has derived title to only 2 Mahas and 40 Kuzhis, equivalent to 80 cents. The properties allotted to Masilamani Nadar had been given to the plaintiffs under a list of partition arrangement dated 14.05.1958. The said partition list has been given effect to and the respective properties are enjoyed by the respective persons. The

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plaintiffs are in enjoyment of 2 Mahas and 50 Kuzhis and it is continuously enjoyed by the plaintiff by cultivating paddy. The second plaintiff is in enjoyment of 2 Mahas 50 Kuzhis, allotted to Yagappa Nadar.

(b) The defendant is alleged to have purchased some properties in Panchanatha Pillai alias Govinda Pillai's land from Lourdu Mary Ammal, wife of Yesmuthu Nadar. Yesmuthu Nadar himself had got only 2 Mahas and 40 Kuzhis and that alone could be partitioned between the members of the family. The defendant is alleged to have claimed 2 acres 10 cents in Old Survey No.538/9. The old Survey No.538/9 is sub-divided into 538/5, 538/6 and 538/7. The sub-division has no reference according to enjoyment. Even though 538/6 is entered in the name of Masilamani Nadar with a lesser extent of 54 cents, the extent mentioned is not correct as per the enjoyment. The plaintiffs are in actual enjoyment of 2 Mahas 50 Kuzhis East of this. This extent is well within the boundary, which demarcates the plaintiff's enjoyment by a big ridge extending to the width of 1/2 feet to 2 feet, and to a height of 1/2 feet to 2 feet. The defendant who is a recent purchaser is trying to shift the bund (ridge) by exercising the influence of her husband who is employed as Grama Sevak. Recently, the defendant's husband secured some persons and had measured the extent as per her sale deed and has put up a stone in the plaintiff's land and also put up a small ridge without the knowledge of the plaintiffs. Neither the



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defendant, nor her predecessor-in-title, are entitled to more than 2 Mahas and 40 Kuzhis and the defendant cannot claim more extent than this.

(c) The plaintiffs are entitled to have a decree for declaration that they are entitled to 2 Mahas and 50 Kuzhis and also for recovery of possession as regards 29 and 1/3 cents. This extent is now covered in between the newly formed ridge at the instance of the defendant and the old ridge which is the boundary line of the plaintiff's extent. The new ridge has been formed by the defendant on 30.07.1985. She has taken advantage of the wrong sub-divisions without reference to the enjoyment. As per the wrong sub-division, the plaintiff's land of the extent of 29 and 1/3rd cents, seems to be covered in 538/5 also as regards Masilamani Nadar's share.

(d) The suit property is situated in Soorakkottai Revenue Village. As the cause of action had arisen, the suit property is situated in Soorakkottai Village, within the jurisdiction of this Court, the suit is filed.

3. The defendant has filed written statement stating as follows:

(a) The suit is not maintainable either in law or on facts and may be dismissed in-limine. The suit is also false and frivolous and filed by the plaintiff with ulterior objects.

(b) It is not correct to say that Panjanatha Pillai had another name as



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Govinda Pillai. On the other hand, Panjanatha Pillai and Govinda Pillai are two different individuals from whom with the Arokia Nadar purchased the properties under different sale deeds and with ulterior objects. The plaintiffs have falsely stated that Panjanathan Pillai was also called Govinda Pillai who was a different individual. The said Arokia Nadar purchased 9 Mahas 30 Kuzhis and not 10 Mahas from Panchanatha Pillai under two registered sale deeds, dated 27.06.1985 and 03.07.1986. Under the sale deed dated 27.06.1985, he purchased 4 Mahas and 10 Kuzhis, while under the sale deed, dated 03.07.1986, he purchased 5 Mahas and 20 Kuzhis. Thus, the total extent of 9 Mahas and 30 Kuzhis alone were purchased and not 10 Mahas, as incorrectly stated in the plaint. The said Arokia Nadar purchased 3 Mahas and 70 Kuzhis under the sale deed, dated 28.08.1924 from Govinda Pillai (S/o Rengasamy Pillai) for Rs.48/-. The said Arokial Nadar owned a total extent of 13 Mahas in the said area. All the said lands are adjacent to each other and in possession and enjoyment of a total extent of 15 Mahas as lawful owner.

(c) The Punja was originally rain-fed lands and only after the advent of C.M.P. in 1939, the cultivable Punja had irrigation facilities and Nanjai crops were rained.

(d) The said Arokia Nadar had 4 sons, Yagappa, Ponnusamy, Rathinasamy and Yesumurhu and out of the said 13 Mahas, a total of 10 Mahas were



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cultivable lands, which were Punja on the ground, while 3 Mahas are un-cultivable higher level lands (in tamil, it is 'Medu') and Challeni. As per the document of 1924, 13 Mahas of cultivable un-cultivable lands, Arokia Nadar allotted 260 Kuzhis to Ponnusamy 250 Kuzhis to Rathinasamy (plaintiff's grandfather) and another 250 Kuzhis to Yagappa. The remaining extent of 540 Kuzhis was allotted to Yesumuthu and not 240 Kuzhis, as incorrectly alleged in the plaint, which proceeds on the wrong basis that Arokia Nagar owned only 10 Mahas in the said area in which he owned 13 Mahas. Therefore, it is incorrect to state that Yesumuthu was allottees 240 Kuzhis out of 10 Mahas, while in fact, he was allotted the entire remaining extent if 5 Mahas 40 Kuzhis out of 13 Mahas. In other words, the balance available was not 40 Kuzhis, but 540 Kuzhis in 1924 and the documents that came into being subsequently in his family, would prove that he was in possession of 540 Kuzhis in his own right.

(e) The truth and validity of an alleged partition list dated 14.06.1958 in the plaintiff's family is not admitted. Similarly, it is also not admitted that the said partition list was given effect to. The plaintiffs have suppressed the fact that Yesumuthu who sustained heavy loss in Toddy business, was given 260 Kuzhis by his elder brother Ponnusamy, who was in a very affluent position and the same was several decades ago. Thus, Yesumuthu was in possession of a total extent of 8 Mahas, i.e. 540 Kuzhis and 260 Kuzhis given to him by Ponnusamy.



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The said fact is evidenced by the subsequent transactions, apart from what was given to him by Ponnusamy. The said fact is evident by subsequent transactions.

Apart from giving up 260 Kuzhis in favour of his younger brother Yesumuthu, the said Ponnusamy purchased some other lands from and out of his own funds for the benefit of his younger brother Yesumuthu who incurred huge loss in business. He purchased 82 cents of lands in the name of Yesumuthu in the said S.Nos.539/2 and 538/11 under the registered sale deed, dated 31.10.1939 from Samiyappa Kothanar of Thanjavur.

(f) Out of the said 13 Mahas, Rathinasamy's 250 Kuzhis and Yagappa's 250 Kuzhis, are on the Southern side, while Ponnusamy's 260 Kuzhis and Yesumuthu's 540 Kuzhis, are on the Northern side. On the Southern side, Rathinasamy's 250 Kuzhis are on the West, while Yagappa's 250 Kuzhis are just East of Ponnusamy's land. After Ponnusamy gave up his 260 Kuzhis in his favour, Yesumuthu became the lawful owner of a total extent of 8 Mahas on the Northern side out of the entire 13 Mahas. In the 1935 survey, an extent of 119 Kuzhis on the West, was taken over by the Government from and out of the said 8 Mahas of Yesumuthu for Channel Poramboke. In other words, the said extent was taken from and out of 260 Kuzhis originally allotted to Ponnusamy. Similarly, an extent of 97 Kuzhis, was taken over on the West from and out of Rathinasamy's 250 Kuzhis. Thus, a total extent of 260 Kuzhis was taken over by



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the Government for Channel purposes on the Western side of the lands allotted to Ponnusamy and Rathinasamay. The said 260 Kuzhis were given a separate R.S.No.575 measuring 72 cents in Survey of 1935. After parting with 97 Kuzhis out of 250 Kuzhis, Rathinasamy's sons Masilamani (father of the plaintiffs) and Thambusamy were in possession of 153 Kuzhis, which are cultivable Nanja on the West. On the Southern side of the said 13 Mahas, actually now the plaintiff is in possession of 162 Kuzhis (54 cents) in R.S.No.538/6, instead of 153 Kuzhis regarding Ponnusamy's 260 Kuzhis and on the Northern side after 1935 survey, it was reduced to 141 Kuzhis, which was in possession of Yesumuthu, who had 540 Kuzhis just on the East of the said 141 Kuzhis. Thus, after 1935 Survey, Yesumuthu was in possession of total extent of 681 Kuzhis (2A.27 Cents) out of 8 Mahas, as 119 Kuzhis were taken for Voikal from and out of 260 Kuzhis originally allotted to Ponnusamy. Yagappa's 250 Kuzhis were not disturbed in the year 1935 settlement proceedings and it was left in-tact.

(g) After the death of Yesumuthu in 1946, his sons, daughters and widow partitioned the properties left by Yesumuthu by means of a registered partition deed, dated 15.05.1952, in which, the said 2.A 27C (881 Kuzhis) fell to the share of his wife Lourdumary in Schedule-H to the said deed. In the subsequent 1957 settlement proceedings, an extent of 51 Kuzhis (17c) which are un-cultivable higher level land on the East, was separated and included in the holdings of



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Yagappa in R.S.538/8, which measures a total extent of 27 cents including the said 17 cents. Thereafter, the extent of Yagappa was increased to 291 Kuzhis from his original of 250 Kuzhis. Thus, he had got 70 cents of cultivable Nanja in 538/7 and 27 cents in 539/8, which is un-cultivable high level lands. Correspondingly, the extent of Lourdummy got reduced to 2A-10 cents in 538/5 after separating 17 cents and including the same in the holdings of Yagappa, with a separate R.S.No.538/8 in the 1957 settlement proceedings. Patta 1140 for 2A.10c in R.S.538/5 was issued to Lourdummy in 1957 settlement proceedings. She was in possession and enjoyment of the same in her own right as absolute owner, since the partition on 15.05.1952. As absolute owner, she ZXhad the Kist until she sold the said 2A.10c for value to the defendant by two registered sale deeds dated 15.04.1980 for 1 acre and another dated 07.05.1981 for 1A.10c. The defendant initially purchased 1A only out of 2A.10c in 1980 and the remaining 1A.10c on the very next year.

(h) The defendant is the bona-fide purchaser for value of the entire 2A.10 cents from the widow of Yesumuthu. The defendant had become the absolute owner in possession and enjoyment of the entire total cultivable extent of 2A.10c in old R.S.No.538/9, which was subsequently re-surveyed as R.S.No.538/5 in the said settlement proceedings. Patta was duly transferred to the defendant with Patta No.1496. The defendant has been and is paying Kist for the said lands in



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her name as lawful owner. In the recent updating of Survey in 1984, Patta No. 278 was granted to her for the said lands 2A.10c. on 25.10.1985. It is not correct to state that Yesumuthu got only 240 Kuzhis in 1924 partition. There is clinching documentary evidence to prove that Yesumuthu was originally in possession and enjoyment of 8 Mahas, which were ultimately reduced to 2A.10c (630 Kuzhis) as a result of the said two settlement proceedings in 1935 and 1957 with new R.S.No.538/5 equivalent to old R.S.No.538/9.

(i) After the two settlements in 1935 and 1957, the first plaintiff was in possession of 162 Kuzhis only, out of 250 Kuzhis in R.S.No.538/6, while the plaintiff is in possession of 210 Kuzhis in R.S.538/7, which was originally part of Yagappa's 250 Kuzhis. The same is the position in the recent updating of survey, which has not changed the position of 1957 settlement proceedings. Patta for the said 210 Kuzhis, was given to the second plaintiff in UDR (i.e., Updating the Registry) survey. Regarding 538/8, it is un-cultivable high level lands measuring 27 cents, now standing in the name of Junior Yagappa, the great grand-son of Yagappa, son of Arokia Nadar. The plaintiffs have completely suppressed the said fact about the changes made in the 1935 and 1957 settlement proceedings, which had reduced the individual holdings of the original sharers by taking over portions of lands for 'Voikal' and 'Medu' on the West with separate Survey Number as 575 and another 27 cents including the defendant's 17 cents of Punja



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high level lands on the East in the name of Minor A.V.Yagappa by Guarding and Mother Elizabeth in 1957 settlement proceedings, with a separate S.No.538/8.

Therefore, the first plaintiff is in actual possession of 162 Kuzhis of lands with a separate R.S.538/6 after a considerable portion on the West was taken for Voikal and Medu in the Survey of 1935. Similarly, the second plaintiff is in possession of 219 Kuzhis of Nanja of Yagappa's share in R.S.538/7, while the remaining extent is un-cultivable 'medu', now standing in the name of Junior Yagappa with R.S.538/8. Thus, both the plaintiffs are in actual possession of a total cultivable extent of 372 Kuzhis in R.S.538/8 and 538/7, while the un-cultivable 27 cents on the East stands in the name of Junoir Yagappa in T.S.538/8.

(j) Both the plaintiffs are in actual possession of total cultivable extent of 372 Kuzhis of Nanja, out of total extent of 500 Kuzhis and the remaining 128 Kuzhis represent Voikal and Medu on the West and other Medu on the East. The said cultivable extent is divided by a smaller ridge from the defendant's Nanja land of 2A.10 cents on the North. An extent of about 30 cents out of 2A.10 cents belonging to the defendant, had been used as seed bed land, which is slightly on a higher level from the rest of 180 cents, which is further North of the said 30 cents of seed bed lands, which are in dispute, shown as ABCD in the suit schedule properties as shown in the plaint. The seed bed lands of 30 cents are separated by a higher ridge from the rest of the defendant's lands on the North.

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The plaintiffs are bent upon annexing the seed bed lands of 30 cents belonging to the defendant and forming part and parcel of her 2A.10 cents. Both the plaintiffs deliberately omitted to include the lands taken for 'Voikal' and 'Medu' in their respective shares of Yagappa and Rathinasamy. Both of them encroached the 'Voikal' and 'Medu' portions taken over out of their original total extent of 500 Kuzhis, which were sub-divided in the two settlements in 1935 and 1957 and reduced to 372 Kuzhis in enjoyment of the plaintiffs 1 and 2.

(k) This defendant did not attempt to shift the smaller bund or ridge with the help of her husband. No question of shifting the smaller ridge which is the dividing line and Southern boundary of her 2A.10 cents arises. The plaintiff's lands of 372 Kuzhis are on the said smaller ridge. They have nothing to do with the defendant's lands 2A.10 cents on the North of the said smaller ridge, which belongs to the defendant. The said ridge is there for several decades and shown in the Survey of 1957. It is only the plaintiffs who initially made an unlawful attempt to remove the small ridge with ulterior objects of annexing a portion of the defendant's 2A.10 cents. A Police complaint was also filed by the defendant's husband on 02.08.1985. The first plaintiff caused bodily injuries to the defendant's husband Arulanadasamy. Now, both the plaintiffs joined and colluded together to grab a portion of the defendant's lands by taking advantage of the small size of the dividing ridge. The disputed portion of 2A.10 cents is



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shown as ABCD, which is part of her 2A.10 cents by their open exclusive continuous adverse possession by asserting the title hostile to the plaintiff's and their predecessors for more than 12 years prior to the present suit. The plaintiffs are therefore not entitled to the relief of declaration and recovery of possession of the suit lands marked as ABCD as claimed in the plaint. The disputed portion of land ABCD is part and parcel of the defendant's 2A.10 cents, which is North of the plaintiff's cultivable Nanja of 372 Kuzhis which are on the South of the defendant's 2A.10 cents as evidenced by the settlement and survey proceedings of 1935 and 1957 and UDR scheme survey. The total cultivable Nanja of 372 Kuzhis are in possession of the plaintiff's together with the un-cultivable Punja with Channel portion on the West in R.S.575 and the "Medu" on the East in R.S.No.538/8 are taken into account along with the Nanja of 372 Kuzhis in R.S.No.538/6 (54 cents) and R.S.538/7 (70 cents), the total of 5 Mahas representing the original share of Rathinasamy and Yagappa would be arrived at. It is more than 5 Mahas, as this defendant's 17 cents 'Medu' was included in the said 27 cents 'Medu' was included in the said 27 cents in R.S.No.538/8.

(I) It is false to state that the big ridge is the dividing one which is part of the defendants 2A.10 cents which extends upto the small ridge which is the actual dividing line as shown in 1957 F.M. book. It is also false to state that the small ridge was formed by the defendant on 30.07.1985, while it was in vogue



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even in 1957 survey, when the old Survey No.538/9 was sub-divided into 538/5, 538/6 and 538/7. The said sub-division was based on the lawful possession and enjoyment of the respective parties in 1935. The same position continued in 1957 settlement. It is only the plaintiffs who are bent upon destroying the smaller ridge which is the dividing line of 2A.10 cents from the plaintiff's Nanja of 372 Kuzhis. In fact, Lourdummy, wife of Yesumuthu, obtained actual possession of the said 2A.10 cents from the then cultivating tenant. Pichiah Nadar, son of Santhana Nadar by a compromise entered in MR.II/82.p/58/61, dated 29.01.1989 on the file of the Authorised Officer, Thanjavur. Further, she left her last a registered Will in 1970 touching her properties including 2A.10 cents long before the filing of this suit of the plaintiffs, who have neither right nor possession whatsoever at any point of time to any portion of the Nanja lands in 2 acres 10 cents including ABCD in possession and enjoyment of the defendant and her predecessors for the last several decades in their own right as absolute owners. In any event, the defendant and her predecessors-in-interest had perfected their right and title to the disputed ABCD and out of 2 acres 10 cents of cultivable of Nanja by their own exclusive continuous adverse possession for the last more than 12 years prior to the filing of this suit, as evidenced by the registered partition deed, dated 15.05.1952 Will and patta proceedings in 1935 and 1957 settlement and the recent UDR scheme. Thus, the plaintiffs are not

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entitled to any relief whatsoever in the present suit, which has no basis whatsoever, as the plaintiffs have suppressed the truth and facts as stated in the written statement.

(m) The present suit has no cause of action and this suit is not properly valued and is devoid of merits, besides being motivated, misconceived and ill-advised. Hence, for all the above reasons, the defendant prayed to dismiss the present suit.

4. During the course of trial before the trial Court, P.Ws.1 to 5 were examined and Exs.P-1 to P-19 have been filed. On the side of defendant, D.Ws. 1 and 2 were examined and Exs.D-1 to D-27 were examined. Exs.C-1 to C-7 were also marked as Court documents.

5. The trial Court, after framing necessary issues, and after examining the oral and documentary evidence, dismissed the suit, against which, the plaintiffs have preferred First Appeal in Appeal Suit No.108 of 1992, which was allowed, thereby decreeing the suit with certain directions, against which, the defendant has preferred the present Second Appeal.

6. This Second Appeal was admitted on 22.12.1998 on the following substantial questions of law:

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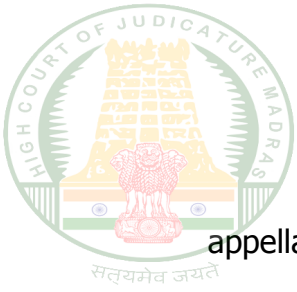
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(i) Whether the declaration of title granted to the plaintiffs is sustainable, when the plaintiffs had not proved their case and when the appellant proved by documents Exs.D-1 to D-3 to show that 13 Mahas of land were owned by her predecessor-in-title ?

(ii) Whether the decree and judgment of the lower appellate Court are liable to be set aside for not considering the relevant evidence on record ? and

(iii) Whether the finding of the lower appellate Court that the appellant did not prove adverse possession, is tenable, in view of her continuous enjoyment of the suit property, when all village records are standing in the name of the appellant for over 12 years?

7. Learned counsel for the appellant/defendant contended that the first appellate Court did not appreciate the fact that the UDR Patta was granted to the appellant on the basis of the possession of 2.10 acres and the issue of Patta Nos. 1140 and 1496, and later, Patta No.278, proves the appellant's right and her predecessor's title to the suit property. Further, the lower appellate Court failed to consider the fact that the property comprised between the two ridges inclusive of the ridges belong only to the appellant/defendant and the land has been used as nursery by the appellant. The first appellate Court did not appreciate the oral and documentary evidence available on record, which confirms that the family of



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appellant's predecessor-in-title owned 13 Mahas of land and the relevant sale deeds, i.e. Exs.D-1 to D-3 filed and the SLR extract had not been appreciated.

The lower appellate Court did not consider the various admissions made by the plaintiff and the factual findings rendered by the trial Court. Further, the lower appellate Court had erred in accepting that the plaintiff's ancestor owned only 10 Mahas of land and the various village records, Kist receipts exhibited in addition to Adangal filed by the appellant/defendant, had been lost sight of by the first appellate Court.

8. The learned counsel for the appellant further contended that the first appellate Court did not appreciate the basic principle that the plaintiffs have to prove their case and erroneously minor matter are taken to prove their case and erroneously minor matters are taken into consideration and the appellant's case to dismiss the suit of the plaintiffs, when the plaintiffs did not prove their case. Moreover, the lower appellate Court failed to perceive that the appellant/defendant has paid Kist continuously for 2.10 acres including the suit property, measuring 128 Kuzhis of land and the respondents/plaintiff did not pay the Kist for the suit property. The first appellate Court had not appreciated the fact that the land has been acquired for 'Voikal' and other purposes out of the total extent that belonged to the family. The lower appellate Court had not dealt with the fact that the appellant's father Masilamani and Thambiraj were jointly



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given 'F' schedule and Thambiraj did not dispute the original extent. Each of them are entitled to half share in the properties and even assuming that the plaintiff's contentions are acceptable, the plaintiffs are having already sufficient extent with them and hence, the prayer in the suit for recovery of possession from the appellant, cannot be decreed.

9. The learned counsel further contended that the observations made by the lower appellate Court against the appellant in paragraph Nos.15 to 18, are false, as the survey sketches filed are Government records and the plaintiffs did not produce contra evidence to create doubt about the genuineness of the documents, and therefore, they are acceptable and cannot be ignored. The lower appellate Court did not appreciate any of the observations made in paragraph No.6 of the judgment of the trial Court and the reasons given by the lower appellate Court for reversing the decree of the trial Court, are untenable.

10. The learned counsel further argued that the lower appellate Court had not framed proper points for determination and on this short ground alone, the judgment and decree of the lower appellate Court are liable to be set aside. The lower appellate Court had erred in not properly appreciating the extent allotted to four brothers in the partition and the holding of Yesumuthu was not properly considered. The lower appellate Court ought to have upheld the acquisition of land pleaded by the appellant/defendant and the same had also been proved.



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The lower appellate Court ought to have accepted Exs.D-28 to 30 and erred in not holding that the appellant failed to prove their case. The observations of the lower appellate Court with reference to adverse possession, Commissioner's reports, plan, etc., are not correct. The first appellate Court did not appreciate the order of remand passed in C.M.A.No.1189 of 1993 and the observation Pitchai Nadar was not examined, is not correct, in view of the exchange of registered notice between the parties.

11. The further contention of the learned counsel for the appellant/defendant is that the lower appellate Court had not properly dealt with the possession of property, which continues to be with the appellant/defendant, pursuant to sale deeds in her favour and hence, the case of the appellant/defendant alone is probable in the facts and circumstances of the case and the decree for declaration cannot be granted to the plaintiffs.

12. This Court heard the learned counsel for the appellant/defendant and perused the materials available on record. Even though the names of the plaintiffs and the necessary legal heirs of the other plaintiffs, are printed in the cause list, there is no representation on the side of plaintiffs, either in person or through Counsel.

13. The case of the plaintiffs is that the property originally belonged to one Arokiasamy Nadar, who has settled the properties by registered Settlement



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Deed, dated 19.01.1924 in favour of three sons and grand-sons Masilamani

Nadar and another grand-son through his son Rayappa Nadar alias Rethinasamy

Nadar. The properties allotted to Masilamani Nadar has been given to the

plaintiffs under a list of partition arrangement dated 14.05.1958. The said

partition list has been given effect to and the respective properties are enjoyed

by the respective persons. The plaintiffs are in enjoyment of 2 Mahas and 50

Kuzhis and it is continuously enjoyed by the plaintiffs by cultivating paddy. The

second plaintiff is in enjoyment of 2 Mahas 50 Kuzhis, allotted to Yagappa Nadar.

The defendant appeared to have claimed 2 acres 10 cents in Old Survey No.

538/9. The old Survey No.538/9 is sub-divided into 538/5, 538/6 and 538/7. The

sub-division has no reference according to enjoyment. Even though 538/6 is

entered in the name of Masilamani Nadar with a lesser extent of 54 cents, the

extent mentioned is not correct as per the enjoyment. The plaintiffs are in actual

enjoyment of 2 Mahas 50 Kuzhis East of the property. This extent is well within

the boundary, which demarcates the plaintiff's enjoyment by a big ridge

extending to the width of 1/2 feet to 2 feet, and to a height of 1/2 feet to 2 feet.

The defendant who is a recent purchaser is trying to shift the bund (ridge) by

exercising the influence of her husband who is employed as Grama Sevak.

Recently, the defendant's husband secured some persons in the plaintiff's land

and also put up a small ridge without the knowledge of the plaintiffs. Neither the

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defendant, nor her predecessor-in-title, are entitled to more than 2 Mahas and 40 Kuzhis and the defendant cannot claim more extent than this. The extent of the property is now covered in between the newly formed ridge at the instance of the defendant and the old ridge which is the boundary line of the plaintiff's extent. She has taken the advantage of the wrong sub-divisions without reference to the enjoyment.

14. The case of the defendants is that the plaintiffs have falsely stated that Panjanatha Pillai was also called Govinda Pillai, who was a different individual. Arokia Nadar purchased 9 Mahas 30 Kuzhis and not 10 Mahas from Panchanatha Pillai under two registered sale deeds, dated 27.06.1985 and 03.07.1986. Under the sale deed, dated 27.06.1985, he purchased 4 Mahas and 10 Kuzhis, while, under the sale deed, dated 03.07.1986, he purchased 5 Mahas and 20 Kuzhis. Arokia Nadar owned a total extent of 13 Mahas in the said area. All the said lands are adjacent to each other and in possession and enjoyment of a total extent of 15 Mahas as lawful owner. Further, the Punja was originally rain-fed lands and only after the advent of C.M.P. (construction management plan) in 1939, the cultivable Punja had irrigation facilities and Nanjai crops were rained. Out of 13 Mahas, a total of 10 Mahas were cultivable lands, which were Punja on the ground, while 3 Mahas are un-cultivable higher level lands (in Tami, it is 'Medu') and Challenai. As per the document of 1924, 13



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Mahas of cultivable and un-cultivable lands, Arokia Nadar allotted 260 Kuzhis to Ponnusamy and 250 Kuzhis to Rathinasamy (plaintiff's grand-father) and another 250 Kuzhis to Yagappa. The remaining extent of 540 Kuzhis was allotted to Yesamuthu and not 240 Kuzhis, as incorrectly alleged in the plaint, which proceeds on the wrong basis that Arokia Nadar owned only 10 Mahas in the said area in which he owned 13 Mahas. In fact, he was allotted the entire remaining extent in 5 Mahas 40 Kuzhis out of 13 Mahas. In other words, the balance available was not 40 Kuzhis, but 540 Kuzhis in 1924 and the documents came into being only subsequently in his family, which would prove that he was in possession of 540 Kuzhis in his own right. Further, after the death of Yesumuthu in 1946, his sons, daughters and widow partitioned the properties left by Yesumuthu by means of a registered partition deed, dated 15.05.1952, in which, the said 2.A 27C (881 Kuzhis) fell to the share of his wife Lourdummy in Schedule-H to the said deed. In the subsequent 1957 settlement proceedings, an extent of 51 Kuzhis (17c) which are un-cultivable higher level land on the East, was separated and included in the holdings of Yagappa in R.S.No.538/8, which measures a total extent of 27 cents including the said 17 cents. Thereafter, the extent of Yagappa was increased to 291 Kuzhis from his original of 250 Kuzhis. The defendant is the bona-fide purchaser for valuable consideration of the entire 2A.10 cents from the widow of Yesumuthu. The defendant had become the

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absolute owner in possession and enjoyment of the entire total cultivable extent of 2A.10c in old R.S.No.538/9, which was subsequently re-surveyed as R.S.No. 538/5 in the said settlement proceedings. There is clinching documentary evidence to prove that Yesumuthu was originally in possession and enjoyment of 8 Mahas, which were ultimately reduced to 2A.10c (630 Kuzhis) as a result of the said two settlement proceedings in 1935 and 1957 with new R.S.No.538/5 equivalent to old R.S.No.538/9. The plaintiffs have completely suppressed the facts about the changes made in the 1935 and 1957 settlement proceedings, which had reduced the individual holdings of the original sharers by taking over portion of lands for 'Voikal' and 'Medu' on the West with separate Survey Number as 575 and another 27 cents including the defendant's 17 cents of Punja high level lands on the East in the name of Minor A.V.Yagappa by Guarding and Mother Elizabeth in 1957 settlement proceedings, with a separate S.No.538/8. Therefore, the first plaintiff is in actual possession of 162 Kuzhis of lands with a separate R.S.No.538/6, after a considerable portion on the West was taken for Voikal and Medu in the Survey of 1935. Similarly, the second plaintiff is in possession of 219 Kuzhis of Nanja of Yagappa's share in R.S.538/7, while the remaining extent is un-cultivable 'Medu', now standing in the name of Junior Yagappa with R.S.No.538/8. Thus, both the plaintiffs are in actual possession of a total cultivable extent of 372 Kuzhis in R.S.No.538/8 and 538/7, while the un-



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cultivable 27 cents on the East, stands in the name of Junior Yagappa in T.S.No.

538/8. Both the plaintiffs are in actual possession of total cultivable extent of 372 Kuzhis of Nanja, out of total extent of 500 Kuzhis and the remaining 128 Kuzhis represent Voikal and Medu on the West and other Medu on the East. The said cultivable extent is divided by a smaller ridge from the defendant's Nanja land of 2A.10 cents on the North. An extent of about 30 cents out of 2A.10 cents belonging to the defendant, had been used as seed bed land, which is slightly on a higher level from the rest of 180 cents, which is further North of the said 30 cents of seed bed lands, which are in dispute, shown as ABCD in the suit schedule properties as shown in the plaint. Both the plaintiffs deliberately omitted to include the lands taken for 'Voikal' and 'Medu' in their respective shares of Yagappa and Rathinasamy. Both of them encroached the 'Voikal' and 'Medu' portions taken over out of their original total extent of 500 Kuzhis, which was sub-divided in the two settlements in 1935 and 1957 and reduced to 372 Kuzhis in enjoyment of the plaintiffs¹ and 2. The defendant did not attempt to shift the smaller bund or ridge with the help of her husband. No question of shifting the smaller ridge which is the dividing land Southern boundary of her 2A.10 cents arises. The plaintiffs' lands of 372 Kuzhis are on the said smaller ridge. They have nothing to do with the defendant's lands 2.A.10 cents on the North of the said smaller ridge, which belongs to the defendant. It is only the plaintiffs

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who initially made an unlawful attempt to remove the small ridge with ulterior objects of annexing a portion of the defendant's 2A.10 cents. A Police complaint was also filed by the defendant's husband on 02.08.1985. The first plaintiff caused bodily injuries to the defendant's husband Arulanandasamy. Now, both the plaintiffs joined and colluded together to garb a portion of the defendant's lands by taking advantage of the small size of the dividing ridge. The disputed portion of 2A.10 cents is shown as ABCD, which is part of her 2A.10 cents by their open exclusive continuous adverse possession by asserting the hostile title to the plaintiffs and their predecessors for more than 12 years prior to the present suit. The plaintiffs are therefore not entitled to the relief of declaration and recovery of possession of the suit lands marked as ABCD as claimed in the plaint. The disputed portion of land ABCD is part and parcel of the defendant's 2A.10 cents, which is North of the plaintiff's cultivable Nanja of 372 Kuzhis which are on the South of the defendant's 2A.10 cents as evidenced by the settlement and survey proceedings of 1935 and 1937 and UDR scheme survey. The total cultivable Nanja of 372 Kuzhis are in possession of the plaintiffs together with the un-cultivable Punja with Channel portion on the West in R.S.No.575 and the "Medu" on the East in R.S.No.538/8, and the same are taken into account along with the Nanja of 372 Kuzhis in R.S.No.538/6 (54 cents) and R.S.No.538/7 (70 cents), and only thereafter, the total of 5 Mahas representing



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the original share of Rathinasamy and Yagappa, would be arrived at. It is more than 5 Mahas, as this defendant's 17 cents 'Medu' was included in the said 27 cents 'Medu' was included in the said 27 cents in R.S.No.538/8. It is false to state that the big ridge is the dividing one which is part of the defendant's 2A.10 cents, which extends upto the small ridge which is the actual dividing line as shown in 1957 F.M. book. It is also false to state that the small ridge was formed by the defendant on 30.07.1985, while it was in vogue even in 1957 survey, when the old survey No.538/9 was sub-divided into 538/5, 538/6 and 538/7. The said sub-division was based on the lawful possession and enjoyment of the respective parties in 1935. The same position continued in 1957 settlement. It is only the plaintiffs who are bent upon destroying the smaller ridge which is the dividing line of 2A.10 cents from the plaintiff's Nanja of 372 Kuzhis. In fact, Lourdumary, wife of Yesumuthu, obtained actual possession of the said 2A.10 cents from the then cultivating tenant. Pichiah Nadar, son of Santhana Nadar by a compromise entered in MR.II/82.p/58/61, dated 29.01.1989 on the file of the Authorised Officer, Thanjavur. Further, she had lastly executed a registered Will in 1970 touching her properties including 2A.10 cents long before the filing of this suit of the plaintiffs, who have neither right nor possession whatsoever at any point of time to any portion of the Nanja lands in 2 acres 10 cents including ABCD in possession and enjoyment of the



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defendant and her predecessors for the last several decades in their own right as absolute owners. In any event, the defendant and her predecessor-in-interest had perfected their right and title to the disputed ABCD and out of 2 acres 10 cents of Nanja cultivable land by their own exclusive continuous adverse possession for the last more than 12 years prior to the filing of the suit, as evidenced by the registered partition deed dated 15.05.1952, Will and patta proceedings in 1935 and 1957 settlement and the recent UDR scheme. Thus, the plaintiffs are not entitled to any relief whatsoever in the present suit, which has no basis whatsoever and which has suppressed the truth and facts.

15. Admittedly, the ancestors of the respondent purchased the property and subsequently, they have divided the property and the appellant obtained a property with the extent stated therein. According to the appellant, the predecessor-in-title of the respondent and the appellant purchased 13 Mahas and after giving the property to three persons, the balance was allotted to the vendors of the appellant and the vendor of the appellant enjoyed and sold the property in the year 1980, while they were in possession and even the Revenue UDR Patta shows that the appellant is enjoying the larger extent of property.

16. On a perusal of the pleadings and the oral and documentary evidence, and also the Commissioner's report, it is seen that the appellant had not filed any objection to the Commissioner's report and admitted the small and big ridge and



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also the water channel and the physical features of the property. The suit was filed in the year 1990, whereas, the appellant purchased the property in the year 1981 and they are enjoying the property for over a statutory period of 12 years. The appellant had also not examined either the vendor or any other person or even examined any independent witness to show that the larger extent was allotted to the appellant, as claimed by the appellant or the appellant was enjoying larger extent. In a case of civil nature, the plaintiff has to prove his case on his own strength and he cannot take advantage of the loop-holes left by the defendant. However, the plaintiff need not prove the case as in criminal cases 'beyond reasonable doubt' and if the plaintiff is able to substantiate his case based on the preponderance of probabilities, he is entitled for the decree as sought for in the plaint.

17. Admittedly, originally, the property was divided and that the appellant has stated that the vendor(s) of the appellant was allotted larger extent of about 5 Mahas and therefore, the appellant has taken a stand that it is the duty of the respondent to prove the same.

18. On a reading of the entire materials available on record, and also the Commissioner's report and since the appellant has not disputed the physical features and also the appellant has not examined any independent witness and the vendors of the appellant should have established the same, and therefore,

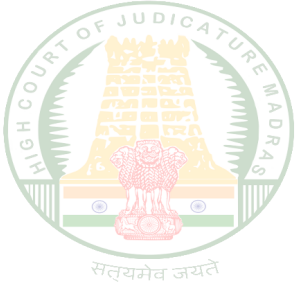


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the first appellate Court as final Court of fact finding, had re-appreciated the entire evidence and reversed the findings of the trial Court, and this Court, in this Second Appeal, by invoking Section 100 CPC, has to find out as to whether there are substantial questions of law involved in this Second Appeal and give the answer only based on those substantial questions of law and not by giving any factual findings.

19. Though at the time of admission of the present Second Appeal, this Court admitted this appeal on the substantial questions of law as framed thereon and stated in the preceding part of this judgment and on a perusal of the entire materials available on record and after hearing both sides, it is clear from the judgment of both the Courts below that the original ownership is admitted and the respondents are from the branches of the original owner, whereas the appellant is only the subsequent purchaser and further, on a reading of the entire materials available on record, it is clear that the appellant had not established even the existence of substantial question of law in the manner known to law and the findings of the first appellate Court are only based on the factual aspects of the matter and no substantial question of law is involved in this Second Appeal. In the above facts and circumstances, this Court does not interfere with the factual findings rendered by the first appellate Court. As there is no meerit in the Second Appeal, it is liable to be dismissed.

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20. As the first appellate Court had rendered findings only based on the records, even though, at the time of admission of this Second Appeal, this Court framed the substantial questions of law based on the grounds raised by the appellant, whereas, after hearing both sides, on merits, it is clear that there is no substantial question of law involved in this Second Appeal and only on factual findings, both the Courts below have rendered their views. Therefore, for all the above reasons, the Second Appeal is dismissed. There shall be no order as to costs.

11.03.2025

cs/skn

To

1. The Subordinate Judge, Thanjavur.
2. The District Munsif Court, Thiruvaiyaru.
3. The Section Officer, V.R.Section,
Madurai Bench of Madras High Court, Madurai



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P.VELMURUGAN, J

CS

Pre-delivery Judgment
in S.A.No.1835 of 1998

Judgment delivered
on 11.03.2025

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