



S.A.No.794 of 1999

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

**Second Appeal No.794 of 1999
and
C.M.P.No.8153 of 1999**

Antony Heartline

.. Appellant/ 1st Appellant/ 1st defendant

Vs.

1.Abayam Theertha Pillai (died)

2.Subbiah

3.Senthur Pandian

4.Subbiah (died)

5.Annalakshmi

6.Sorimuthu

7.Veerabhathran

8.Paramasivan

9.Arumugha Nainar

10.Seethalakshmi



S.A.No.794 of 1999

11.Veera Lakshmi

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(R4 to R9 are brought on record as legal heirs of the deceased first respondent vide order dated 07.07.2022 and R10 and R11 are brought on record as legal heirs of the deceased fourth respondent vide order dated 27.04.2023.)

.... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the Judgment and decree in A.S.No.123 of 1995 on the file of the Sub Court, Tuticorin, dated 22.09.1998, confirming the Judgment and Decree in O.S.No.37 of 1993 on the file of the Principal District Munsif Court, Tuticorin, dated 22.08.1995.

For Appellant : Mr.R.T.Arivukumar for
Mr.R.Manimaran

For R2 & R4 to 11 : Mr.P.Thiagarajan

J U D G M E N T

The first defendant in the suit in O.S.No.37 of 1998 on the file of the Principal District Munsif Court, Tuticorin, has filed the present Second Appeal, challenging the judgment and decree in A.S.No.123 of 1995 on the file of the Sub Court, Tuticorin, dated 22.09.1998,



S.A.No.794 of 1999

WEB COPY

confirming the judgment and decree in O.S.No.37 of 1993 on the file of the Principal District Munsif Court, Tuticorin, dated 22.08.1995.

2. Pending the second appeal, the first respondent died and his legal heirs were brought on record as respondents 4 to 9, vide order of this Court, dated 07.07.2022. Subsequently, the respondents 4 and 5 died and the legal heirs of the fourth respondent were brought on record as respondents 10 and 11, vide order of this Court dated 27.04.2023. The legal heirs of the fifth respondent were not brought on record. Hence, this Second Appeal stood abated against the fifth respondent.

3. For the sake of convenience, the parties are referred to in the same ranking as before the Trial Court.

4.(i) The gist of the plaint is that the suit properties originally belonged to one Sella Veera Perumal Naicker, S/o.Naranappa Naicker. He executed a sale deed, dated 01.08.1943 in favour of one Perumal Naicker. Subsequently, the first plaintiff and his brother, namely, Sankara Narayanapillai/the father of the second plaintiff, obtained Othi



S.A.No.794 of 1999

WEB COPY

under Othi deed dated 06.09.1947 from the aforesaid Perumal Naicker and from then onwards, they were in possession and enjoyment of the suit properties as Othidhars.

4(ii) Later, the first plaintiff and Sankara Narayanapillai had purchased the suit properties under a registered sale deed dated 04.08.1961 from the legal heirs of one Chinnaasamy Gounder, who had purchased the suit properties from one Nallammal, W/o. Perumal Naicker, under a registered sale deed dated 12.09.1955. Hence, the plaintiffs become the absolute owners of the suit scheduled properties. Neither Sella Veera Perumal Naicker nor his legal heirs have any right or title over the suit property, as Sella Veera Perumal Naicker had executed a sale deed dated 01.08.1943 in favour of the said Perumal Naicker.

4(iii) The plaintiffs are totally entitled to 10 acres and 4 cents in S.Nos.407/1 and 407/5. Out of the said land, the plaintiffs' predecessors in interest had right over 44 sillarais in Jamin Adangal No.2, 44 sillarais in Adangal No.22 and 7 sillarais in Adangal No.224, totaalling 95 sillarais.



S.A.No.794 of 1999

WEB COPY

4(iv) Further, the plaintiffs were in peaceful possession and enjoyment of the property in S.Nos.407/1A and 407/5, measuring an extent of 5.79 acres, as per the Land Survey Settlement Register, right from the year 1947 as Othithars and from 1961 onwards as the absolute owners of the properties.

4(v) It is further averred in the plaint that one Sangli is equivalent to 3 acres and 64 cents. In one Sangli, there are 64 sillarais, and one Sillarai is equivalent to approximately 5.69 cents. The plaintiffs were in absolute possession and enjoyment of the properties, under sale deed dated 04.08.1961. Since the defendants tried to interfere with the same, the plaintiffs left with no other alternative have filed the said suit for declaration and permanent injunction.

5 (i) It the written statement of the defendants, it had been stated that the suit property originally belonged to the second defendant. The second defendant purchased the suit property under registered sale deeds dated, 16.08.1980, 20.08.1980 and 07.08.1982 and from the date



S.A.No.794 of 1999

WEB COPY

of purchase, he was in possession and enjoyment of the same. The first defendant under a sale deed, dated 06.11.1991, purchased the suit property from the second defendant. From the date of purchase, the first defendant was in possession and enjoyment of the suit property and the same was never in possession of the plaintiffs at any point of time.

5 (ii) It is further averred that the identification of the suit property itself is wrong and since the defendants were in possession and enjoyment of the suit property and have title over the same, the plaintiffs are not entitled to any decree for declaration and permanent injunction. Hence, the suit is liable to be dismissed. As the plaintiffs have not impleaded the necessary parties, the suit is also liable to be dismissed for non-joinder of necessary parties.

6. Based on the pleadings on either side, the trial Court framed the following issues:-

- "1. Whether the plaintiffs are entitled to the suit property?
2. Whether the plaintiffs are in possession of the suit property?



S.A.No.794 of 1999

WEB COPY

3. Whether the plaintiffs are entitled to the relief of declaration as sought for?

4. Whether the plaintiffs are entitled for permanent injunction?

5.To what relief the plaintiffs are entitled to?"

7.In addition to that, on 01.02.1994, the trial Court framed the following additional issue:-

" Whether the first defendant is entitled to the suit property by way of adverse possession?

8.In addition to that, on 24.03.1994, the trial Court framed the following additional issue:-

" Is the suit not maintainable due to non joinder of necessary parties ?"

9. Before the trial Court, on the side of the plaintiffs, the first plaintiff was examined as P.W1 and one Sernthathiah Pillai was examined as P.W2 and 13 documents were marked as Ex.A1 to Ex.A13. On the side of the defendants, 4 witnesses were examined as D.W1 to D.W4 and the second defendant examined himself as D.W1 and 20 documents were marked as Ex.B1 to Ex.B20.



S.A.No.794 of 1999

WEB COPY

10. After completion of trial and after hearing the arguments advanced by the learned counsel on either side, the trial Court decreed the suit as prayed for by the plaintiffs. Aggrieved by the same, the defendants filed an appeal in A.S.No.123 of 1995 on the file of Sub Court, Tuticorin, which was also dismissed on 22.09.1998, confirming the judgment and decree of the trial Court, dated 22.08.1995. Challenging the same, the first defendant has filed the present Second Appeal.

11. This Court, while admitting the Second Appeal, has formulated the following substantial question of law:-

“When the title to the plaintiff is contested in the suit, is it a necessary requirement in law that the vendors of the plaintiff under Ex.A.1 or any of the other predecessor in interest in title, should be necessarily examined to sustain the title of the plaintiffs based on Ex.A.1?”



S.A.No.794 of 1999

WEB COPY

12. The learned counsel appearing for the appellant/first defendant would submit that the plaintiffs claim 5 acres and 80 cents, but the documents produced by them in respect of the sale are only to an extent of 11.03/4 cents. The plaintiffs have not produced any other documents to prove that they are entitled to the aforesaid extent. The revenue records produced by them also do not relate to the extent of the land claimed by them. When the plaintiffs claim the property, measuring an extent of 5 acres and 80 cents, they are bound to produce documents to prove that they are entitled to the same. In this case, they have miserably failed to substantiate that they are entitled to the aforesaid property.

13. Further, there is a contradiction between the evidence of P.W1 and P.W2. P.W1 in his evidence states that he has got the lands on the northern side of 1st scheduled property, but P.W2 in his evidence states that on the northern side of the suit property lies to the property of Arunachala Mudaliar. P.W1 also does not know the name of the owner of the southern side of the suit property. Therefore, it is the submission



S.A.No.794 of 1999

WEB COPY

of the learned counsel for the first defendant that the plaintiffs have not proved their case that they are the owners of the suit property and are in possession and enjoyment of the same.

14. He would further submit that there is no evidence to connect the document, Ex.A1, which relates to the suit property, with the suit properties. The plaintiffs have not produced any ancient kist receipt to prove that they or their predecessors in title were enjoying the suit property. Further, they have not produced any documents to prove their possession and enjoyment over the suit property and the appellant/first defendant also denied title and also the ownership, possession and enjoyment of the plaintiffs over the suit property. It is the bounden duty of the plaintiffs to prove their case on their own strength. They cannot take advantage of the loopholes left by the defendants, whereas, in this case, the first defendant has produced the title deed/sale deed executed in his favour, which was marked as Ex.B1, dated 06.11.1991.



S.A.No.794 of 1999

WEB COPY

15. He would further submit that the first defendant has produced the documents of predecessors in title to prove his possession. However, the plaintiffs failed to produce any document to prove that Perumal Naicker and Rajammal, W/o.Chinnasamy Gounder were the owners of the property and their names also do not find place in the settlement register. Perumal Naicker is claimed to be the predecessors in title of the plaintiffs and Rajammal, W/o.Chinnasamy Gounder, is also claimed to be the vendor of the plaintiffs. The settlement took place between 1958 and 1959. The names of these persons do not find place in the settlement proceedings. This re-settlement document is marked as Ex.A4, however, the names of predecessors of the defendants also do not find place in the settlement register.

16. He would further submit that both the Courts below have failed to consider the facts that the plaintiffs did not produce any oral and documentary evidence, failed to establish their claim of ownership and possession of the property and also did not implead the necessary parties. The trial Court, without properly appreciating the oral and



S.A.No.794 of 1999

WEB COPY

documentary evidence, decreed the suit and the appellate Court has also failed to re-appreciate the evidence and simply endorsed the view of the trial Court and confirmed the judgment and decree of the trial Court, in a mechanical manner. Therefore, it is the contention of the learned counsel for the appellant/first defendant that the suit ought to have been dismissed on the ground that the plaintiffs have not proved their case by establishing their title and possession over the suit property.

17. The learned counsel appearing for the respondents 2 and 4 to 11 would submit that the suit property originally belonged to one Sella Veera Perumal Naicker, who had executed a sale deed on 01.08.1943 in favour of one Perumal Naicker. Subsequently, the first plaintiff and his brother, namely Sankara Narayanapillai/the father of the second plaintiff, obtained Othi under an Othi deed dated 06.09.1947 from the aforesaid Perumal Naicker and they were in peaceful possession and enjoyment of the property as Othidharas.

18. Later, the first plaintiff and his brother purchased the suit properties, in which they were already in possession and enjoyment as



S.A.No.794 of 1999

WEB COPY

Othidharas, under a sale deed dated 04.08.1961, Ex.A1, from the legal heirs of Chinnasamy Gounder, who had purchased the suit properties from one Nallammal,W/o.Perumal Naicker, under sale deed dated 12.09.1955. Hence, the plaintiffs are the absolute owners of the suit scheduled properties.

19. In order to substantiate their case, the first plaintiff examined himself as P.W1, who has deposed that the property was originally belonged to one Sella Veera Perumal Naicker, from whom Perumal Naicker purchased the same under Ex.A1 and from the legal heirs of Chinnasamy Gounder, who had purchased the suit properties from one Nallammal,W/o.Perumal Naicker, under sale deed dated 12.09.1955, the first plaintiff and his brother purchased the suit properties.

20. He would further submit that in the documents marked as Exs.A1, A2 and A3, the properties were described by the Old Jamin survey numbers and the measurements prevailed at Tirunelveli District 'Sangili' (equivalent to 3 acres and 64 cents) and 'Sillarai' (equivalent to



S.A.No.794 of 1999

WEB COPY

5.69 cents). In order to correlate the new survey number and the measurements, Ex.A4, the land survey settlement register, was marked and as per the said register, the old Jamin Adangal Nos.2, 224A, 224B, 224C, 221, 222 and 225 correlate to the settlement survey numbers in 407/1 and 407/5, measuring total extent of 10 acres and 4 cents.

21. Out of the said 10 acres and 4 cents, the predecessors in interest of the plaintiffs had right over 44 sillarais in Jamin Adangal No. 2, another 44 sillarais in Adangal No.22 and 7 sillarais in Adangal No. 224, totally 95 sillarais, totally 95 sillarais. The plaintiffs were in peaceful possession and enjoyment of the property in S.Nos.407/1A and 407/5, measuring an total extent of 5.79 acres, as per the Land Survey Settlement Register, right from the year 1947 as Othithars and from 1961 onwards as the absolute owners of the properties. He would clarify that one Sangli is equivalent to 3 acres and 64 cents and in one Sangli, there are 64 sillarai and one Sillarai is equivalent to approximately 5.69 cents.



S.A.No.794 of 1999

WEB COPY

22. Further, to prove the peaceful possession and enjoyment of the suit property, the plaintiffs produced 10(1) Adangal and Chitta, which was marked as Ex.A5 to Ex.A8, whereby it was proved that the total extent of 6 acres and 5 cents in S.No.407/1 was sub-divided into S.No.407/1A, measuring an extent of 1 acre and 80 cents, in favour of the plaintiffs and as such, the remaining 4 acres and 24 cents alone were available to the other owners, which was also sub-divided as S.No. 407/1B.

23. It is the specific case of the plaintiffs that if at all the defendants and their predecessors in interest having any right and title in the land in S.No.407/1, it is only with respect to the remaining land of 4 acres and 24 cents in S.No.407/1, which was sub-divided as S.No. 407/1B. The defendants and their predecessors in interest do not have any right and title over the suit schedule properties, whereas the defendants claimed that they had purchased the entire 6.05 acres in S.No.407/1 and 3.99 acres in S.No.407/5, totally an extent of 10 acres and 4 cents, under Exs.B3, B6 and B18, sale deeds.



S.A.No.794 of 1999

WEB COPY

24. Even as per Ex.B5, sale deed, dated 28.10.1950, the properties in Jamin Adagal Nos.2, 221 and 224 are not dealt with, but only the property in Adangal No.222, measuring 22 sillarai, ie., 22 x 5.69 = 1 acre and 25 cents alone conveyed. Likewise, under Ex.B4, the sale deed, dated 12.02.1939 dealt with only the property at Adangal No. 225, measuring Araiye Mukalo Makani Sangali, which is approximately less than 2 acres, and as such, even as per these parent deeds, Ex. B-6, sale deed, only lessor extent of land, is conveyed and therefore, the defendants' claim for the entire 10 acres and 4 cents of land, including the suit scheduled properties cannot be accepted.

25. As a matter of fact, the property, measuring an extent of 2.84 acres under Ex.B3 is not tallied with the description of property of its parent deed marked as Ex.B2 and that is the reason why both the Courts below refused to accept the case of the defendants and granted the decree in favour of the plaintiffs, on considering Ex.A1 to Ex.A4, which are all produced to establish the plaintiffs' title, possession and enjoyment of the suit schedule properties. Therefore, the plaintiffs have



S.A.No.794 of 1999

WEB COPY

established their title, possession and enjoyment over the suit scheduled properties and the trial Court has rightly appreciated the oral and documentary evidence and decreed the suit in favour of the plaintiffs.

26. When the defendants have approached the first appellate Court by way of filing an appeal, the first appellate Court rightly re-appreciated the evidence, found that the plaintiffs have proved their case and dismissed the appeal, confirming the judgment and decree of the trial Court. Thus, it is the submission of the learned counsel for the plaintiffs that there is no merit in this Second Appeal and prays this Court to dismiss the same.

27. Heard the learned counsel on either side and perused the documents carefully.

28. A perusal of the pleadings, oral and documentary evidence and the suit filed by the plaintiffs for declaration and injunction, a reading of the written statement, which stoutly denies the right, title and possession of the plaintiffs over the suit properties, filed by the



S.A.No.794 of 1999

WEB COPY

defendants and the documents produced on either side, it is seen that the suit properties originally belonged to one Sella Veera Perumal Naicker, S/o.Naranappa Naicker, who executed a sale deed, dated 01.08.1943, Ex.A2, in favour of one Perumal Naicker.

29. Further, it is seen that prior to the purchase of the property, the first plaintiff and his brother, namely, Sankara Narayanapillai/the father of the second plaintiff, obtained Othi under Othi deed dated 06.09.1947, Ex.A3, from the aforesaid Perumal Naicker and were in possession and enjoyment of the suit properties as Othidhars. Therefore, from the perusal of documents, Ex.A1 to Ex.A3, it is seen that the plaintiffs derived title and marked the land survey settlement register, Ex.A4, to correlate the new survey number and the measurements. The defendants denied the extent, for which the plaintiffs have filed a correlation certificate explaining the extent. On reading of the entire material, it is found that the plaintiffs have proved their title and possession over the suit property. Even otherwise, the sale deed executed in favour of the defendants is only subsequent to the sale deed executed in favour of the plaintiffs. The plaintiffs said to have purchased the



S.A.No.794 of 1999

property by way of sale deed dated 04.08.1961, Ex.A1, whereas, the defendants claim title under Ex.B1, dated 06.11.1991, only in the year 1991.

30. Since one of the main contentions taken by the defendants is that the vendor of the plaintiffs have not been examined, the defendants have raised such a substantial question of law. This Court while admitting the second appeal formulated the substantial question of law, *referred supra*.

31. As far as the substantial question of law is concerned, it is seen from the records that the plaintiffs have pleaded that they have purchased the property under a registered sale deed dated 04.08.1961 from the legal heirs of one Chinnasamy Gounder, who had purchased the suit properties from one Nallammal, W/o. Perumal Naicker, under a registered sale deed dated 12.09.1955. Prior to that, they obtained Othi under Othi deed dated 06.09.1947, Ex.A3, from the aforesaid Perumal Naicker and from then, they were in possession and enjoyment of the suit properties as Othidhars and the said Perumal Naicker had



S.A.No.794 of 1999

WEB COPY

purchased the property from one Sella Veera Perumal Naicker, S/o.Naranappa Naicker, under a registered sale deed dated 01.08.1943, Ex.A2. Though the first plaintiff possessed title from 1943 onwards, the suit was filed in the year 1995. At the time of filing of the suit, Ex.A1, which is a registered document, is a 30 years old document. Therefore, the genuineness of Ex.A1 cannot be questioned, since as per Section 91 of the Indian Evidence Act, it is a document whose terms have been reduced into writing.

32. As far as possession and enjoyment is concerned, the plaintiffs have marked Ex.A3, sale deed executed by Perumal Naicker, dated 06.09.1947, Adangal, Ex.A4, re-settlement document, Ex.A5, Chitta, dated 23.05.1985. Therefore, the plaintiffs have proved their case. When the defendants have stated that the sale deed, Ex.A1, is not covering the suit property, then it is for the defendants to prove it. Though it is a settled proposition of law that the plaintiffs have to prove their case on their own strength and that they cannot take advantage of the loopholes left by the defendants, in this case, the plaintiffs have stated that they have purchased the property under Ex.A1 and the first



S.A.No.794 of 1999

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plaintiff has entered into the witness box as P.W1 and has marked title deed and also the revenue records for proving their possession and therefore, the non-examination of the vendor of the plaintiffs is not fatal to the case of the plaintiffs.

33. A reading of the material, this Court finds that the mere non examination of the vendor of the plaintiffs is not fatal to the case of the plaintiffs. Ex.A1, sale deed, is only a certified copy and the original was lost. At the time of marking the sale deed as Ex.A1, there was no objection on the side of the defendants. Therefore, the document was marked and therefore, at a later point of time, the defendants cannot dispute the admissibility and validity of the document, Ex.A1.

34. The learned counsel for the plaintiffs in this regard has placed reliance on a judgment of the Hon'ble Supreme Court in ***Dayamathi Bai Vs. K.M.Shaffi*** reported in **2004 7 SCC 107**, wherein it has been held that the plaintiff submitted a certified copy of the sale deed in evidence and when the sale deed was taken on record and marked as an exhibit, the appellant did not raise any objection at the



S.A.No.794 of 1999

WEB COPY

first instance and therefore, it was not open to the appellant to object at a later point of time.

35. In this case also, Ex.A1, sale deed, dated 04.08.1961 is a certified copy and was marked without any objection. Ex.A1 shows that the first plaintiff and Sankara Narayanapillai had purchased the suit properties under a registered sale deed dated 04.08.1961 from the legal heirs of one Chinnasamy Gounder and have also produced Ex.A2, a sale deed, dated 01.08.1943, Ex.A3, Othi deed dated 06.09.1947, whereas the defendants on their side marked Ex.B2 to Ex.B6 and Ex.B18, they do not confer any absolute right over the entire extent of 10 acres and 4 cents in S.Nos.407/1 and 407/5. Therefore, the substantial question of law is answered in favour of the plaintiffs, accordingly.

36. Though this Court need not go into the above factual aspects and findings, this Court has discussed the same, since while admitting the Second Appeal this Court has framed the above substantial question of law.



S.A.No.794 of 1999

WEB COPY

37. The trial Court rightly appreciated the evidence and decreed the suit as prayed for and the first appellate Court has also rightly re-appreciated the evidence and dismissed the appeal, confirming the judgment and decree of the trial Court.

38. In fine, from a reading of the entire materials and arguments on either side, this Court finds that there is no merit in this Second Appeal and both the Courts below have rightly appreciated and re-appreciated the oral and documentary evidence, pleadings and decreed the suit. Therefore, this Second Appeal is liable to be dismissed and is accordingly, dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

16.06.2025

Index : Yes / No

Speaking Order : Yes / No

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S.A.No.794 of 1999

WEB COPY

To

- 1.The Subordinate Judge,
Tuticorin.
- 2.The Principal District Munsif,
Tuticorin.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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S.A.No.794 of 1999

P.VELMURUGAN, J.

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Pre-Delivery Judgment made in
Second Appeal No.794 of 1999

16.06.2025