

S.A.No.1538 of 2002

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.06.2025

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

S.A.No.1538 of 2002
and
C.M.P.No.13233 of 2002

Essakki

... 11th Defendant/Appellant
Appellant

Vs.

1.Sri Vanamamalai Mutt,
Nanguneri through its
Jeeva Swamigal,
Vanamamalai Ramanuja Jayam,
Nanguneri.

... Plaintiff/1stRespondent

2.Krishnasamy Thevar

3.Arunachala Thevar

4.Petchimuthu

5.Raja Siva Subramanian

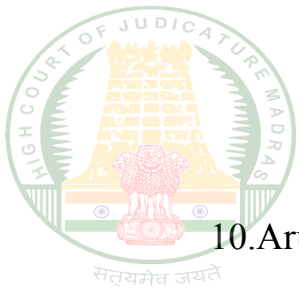
... Defendants 5, 6, 7 & 10/
Respondents 4 to 6 & 8

6.Mayandi Thevar

7.Thangapandia Thevar

8.Subbulakshmi

9.Balasubramanian



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10.Arumugathammal

11.Mookammal

12.Subbulakshmi

13.Essakki Thevar

14.Arjunan

... Defendants 1, 3, 12, 13,
15 to 19/
Appellants 1, 2, 4 to 10

*(Respondents 2 and 3 set ex parte in the
Lower Court, hence, respondents 2 and 3
are given up)*

PRAYER : Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree passed in A.S.No.73 of 2001, dated 28.03.2002 on the file of the II Additional Sub Court, Tirunelveli confirming the judgment and decree passed in O.S.No.568 of 1994 on the file of the I Additional District Munsif Court, Tirunelveli, dated 15.03.2001.

For Appellant : Mr.M.P.Senthil
for M/s.J.Antony Jesus

For R-1 : Mr.V.Ramakrishnan

For R-2, R-4, R-6
R-7 & R-9 : Mr.V.Meenakshisundaram

For R-5, R-8,
R-11 to R-14 : No appearance



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JUDGMENT

The 11th defendant in O.S.No.568 of 1994 on the file of the I Additional District Munsif Court, Tirunelveli has filed the present Second Appeal challenging the concurrent findings of the Trial Court as well as the Appellate Court.

2. The first respondent herein as plaintiff has filed the above said suit for the relief of permanent injunction for an extent of 158.33 acres in Parpakulam Village, Palayamkottai Taluk, Tirunelveli District contending that these lands belongs to Vanamamalai Madam, Nanguneri and they are in possession. The plaintiff has filed Exhibit A.1 patta, Exhibit A.2 tax receipts to establish that they are the owners of the property and they are in possession of the same. Except defendants 18 and 19, all other defendants remained *ex parte*.

3. The defendants 18 and 19 have filed a written statement contending that they are the cultivating tenants, who are in possession of the suit schedule property and they opposed the prayer in the suit on the



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ground that the suit is not maintainable.

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4. The defendants have filed Exhibits B.1 and B.2 lease deeds said to have been executed by the plaintiff Mutt. They have also filed Exhibits B.3 to B.5, which are the rental receipts said to have been executed by the Mutt. The defendants have also relied upon Exhibit B.6 which is a judgment in O.S.No.35 of 1976 on the file of the Sub Court, Tirunelveli, dated 27.08.1977. This judgment was relied upon to prove that they have been declared to be a cultivating tenant in the said suit.

5. The Trial Court as well as the Appellate Court after going through the oral and documentary evidence filed on the side of the plaintiff and defendants, have concurrently arrived at a finding that the plaintiff has established his title and possession over the suit schedule property. On the other hand, the defendants have neither established their possession nor their status as a cultivating tenant in the suit schedule property. Challenging these concurrent findings, the present Second Appeal has been filed.



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6. At the time of admission, the following substantial questions of law were framed:

"1. Whether the findings of the Courts below are vitiated by its failure to consider Exhibits B.1 to B.5 and B.7 regarding possession and rights of the appellant under Exhibit B.6, the prior proceedings and the admissions of P.W.1.

2. Whether the Courts below is right in granting a decree for permanent injunction merely on the basis of allegations in the plaint, by stating that the appellant failed to prove his defence.

3. Whether the Courts below is right in casting the burden of proof on the appellant who is the defendant especially when the respondent failed to discharge the burden of proof regarding possession."

7. According to the learned Counsel appearing for the appellant, the Trial Court as well as the Appellate Court have not properly appreciated Exhibits A.3 and A.4 and failure to consider these documents vitiate the concurrent findings of the Courts below. He further contended that without considering the documents filed on the side of the plaintiff, merely on the basis of the plaint averments, the suit should not have been decreed. It is further contended that merely because the defendant has not established his case, the failure to prove the defence cannot be a ground



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for decreeing the suit as prayed for.

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8. Per contra, the learned Counsel appearing for the respondent / defendants had contended that all the documents filed on the side of the defendants were scanned by the Courts below and they have arrived at a finding that they are not connected with the suit schedule properties. He further pointed out that Exhibits A.1 and A.2 will clearly establish the title of the plaintiff Madam. On the other hand, Exhibits B.1 and B.2 do not relate to the suit schedule properties. When the defendants have failed to establish the factum of possession or their character as cultivating tenant, the Trial Court has rightly decreed the suit as prayed for. He further pointed out that Exhibit B.6 judgment does not relate to the suit schedule property and therefore, the Courts below have rightly rejected the said document filed on the side of the defendants.

9. Heard both sides and perused the materials available on record.

10. The defendants in their written statement have not disputed the title of the plaintiff Madam. The plaintiff Madam has filed Exhibit A.1 patta in their favour. Therefore, there cannot be any dispute with regard



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to the title of the plaintiff Madam for the suit schedule property.

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11. As far as possession is concerned, the plaintiff Madam has filed Exhibit A.2 tax receipt. The defendants 18 and 19 have filed Exhibits B.1 and B.2 which are the lease deeds said to have been executed by the Madam in their favour. A perusal of those lease deeds reveal that the suit survey numbers have not been mentioned in those lease deeds. Therefore, they have not establish the possession of the defendants.

12. The defendants have also relied upon Exhibits B.3 to B.5 tax receipts. In these tax receipts also there is no reference about the suit survey numbers. Hence, these documents may not be of any help to the defendants.

13. As far as Exhibit B.6 judgment is concerned, the Trial Court as well as the Appellate Court have arrived at a concurrent finding that due to the non filing of the plaint or the decree in the said suit, they are not able to arrive at a finding whether the suit schedule properties were part of O.S.No.35 of 1976. Therefore, it is clear that the defendants have not



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been able to establish the fact that they are the cultivating tenants of the suit schedule property.

14. In such circumstances, it is clear that the Trial Court as well as the Appellate Court have appreciated all the documents filed on the side of the defendants and therefore, the first substantial question of law is answered against the appellant. The Trial Court as well as the Appellate Court have relied upon Exhibits A.1 and A.2 filed on the side of the plaintiff Madam and have confirmed the title and possession of the plaintiff Madam. In such circumstances, the second substantial question of law is also answered as against the appellant. When the plaintiff has already established his title and possession over the suit schedule properties, the burden now shifts to the defendant to establish that he is a cultivating tenant. Since the documents filed on the side of the defendant, namely, Exhibits B.1 to B.5 do not connect the suit schedule properties with the defendant, the Trial Court as well as the Appellate Court were right in holding that the defendants have not established their case.



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15. In view of the above said deliberations, there are no merits in the Second Appeal. Hence, this Second Appeal stands dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

18.06.2025

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

To

- 1.The II Additional Sub Court,
Tirunelveli.
- 2.The I Additional District Munsif Court,
Tirunelveli.
- 3.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR, J.

BTR

Judgment made in
S.A.No.1538 of 2002

Dated:
18.06.2025