

S.A.No.252 of 2002

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON : 28.07.2025

JUDGMENT PRONOUNDED ON : 01.08.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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S.Paramasivam(died)

..../Appellant/Appellant

2.Ponram

3.Nithya Devi

...Legal heirs of the sole appellant/--

(Appellants 2 and 3 are brought on record as
legal heirs of the deceased sole appellant
vide Court order dated 12.09.2023)

Vs

1.Paramasiva Naicker (died)

2.S.Perumal Ammal

3.Muthumari

4.Nagendran

5.Kandavel (died)

6.Arjunan

7.P.Balan

8.P.Sakthivel

9.P.Mayil

10.M.Chinnammal

11.M.Mariyappan

....Respondents/Respondents
/Defendants



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12.Pampulammal

13.S.Seeniyammal

14.P.Palanisami (died)

15.M.Kosalai

16.K.Chinna Muthumari

....Legal heirs of the 1st respondent/--

17.Ramakkal

18.Muthulakshmi

19.Bommakkal

...Legal heirs of the 5th respondent/--

20.Sankarammal

21.Ramya

22.Meena

23.Raghasudha

24.Mahalakshmi

...Legal heirs of the 14th respondent/---

(Respondents 12 to 16 are brought on record as legal heirs of the deceased R1 vide Court order dated 24.02.2023)

(Respondents 17 to 19 are brought on record as legal heirs of the deceased 5th respondent)

(Respondents 20 to 24 are brought on record as legal heirs of the deceased 14th respondent vide common order dated 19.03.2025)

PRAYER: Second Appeal is filed under Section 100 of C.P.C, to allow the second appeal setting aside the judgment and decree of the Subordinate Judge, Srivilliputhur dated 08.02.2001 in A.S.No.4 of 2000 confirming the judgement and decree of the Additional District Munsif, Srivilliputhur dated 20.04.2001 in O.S.No.227 of 1983 and to decree the suit as prayed for.



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For Appellants : Mr.G.Sridharan
For Mr.T.M.Hariharan

For Respondents : Mr.S.Meenakshi Sundaram
Senior Counsel for
Mr.M.Senguvijay for R6, R13, R15
& R17 to R24

:No appearance for R2 to R4, R7 to R11,
R12 & R16

JUDGMENT

The plaintiff in a suit for declaration of title and permanent injunction is the appellant herein.

2.The plaintiff had filed the above suit seeking the relief of declaration of title and permanent injunction or in the alternative seeking recovery of possession. The trial Court had dismissed the suit and the same has been confirmed by the First Appellate Court. Challenging the concurrent findings, the present second appeal has been filed by the plaintiff.

(A)Factual Matrix:

3.As per plaint averments, the suit schedule property initially belonged to the Government and it was assigned in favour of the plaintiff on 01.11.1969 under Ex.A1. The plaintiff was issued with a patta under Ex.A2 on 12.10.1982. According to the plaintiff, he has started agricultural operations and he is in possession of the same. For the past two or three



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years, the plaintiff was out of town due to employment in the electricity board. The plaintiff had paid kist for the fasli year 1389 to 1391 on 25.03.1993. The first defendant taking advantage of the similarity of the name, had started claiming that he is the owner of the property. A legal notice was sent by the plaintiff on 17.03.1983 and a reply was sent by the defendants on 16.04.1983. The defendants have created documents as if the second defendant is the owner of the property and he has handed over the same to the first defendant who is in possession of the same as a cultivating tenant. Since the defendants are claiming title by illegal means, the present suit has been filed.

4.The defendants 1 and 2 have filed a written statement contending that the suit schedule properties are enjoyed for more than 30 years by the second defendant and he had handed over possession of the same to the first defendant as a cultivating tenant.

5.Exhibit A1 assignment order and the patta are false documents. The allegation of the plaintiff that he had paid kist for the suit schedule property is incorrect. Only the defendants are in possession of the suit schedule property and the plaintiff had never be in possession of the property. Hence, he prayed for dismissal of the suit.

6.The trial Court after considering the oral evidence and the documents filed on either side, had arrived at the following findings:



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a)From the commissioner's report, it is clear that the lands in dispute are being irrigated by drawing water from the adjacent land which are owned by the second defendant.

b)No document has been filed on the side of the plaintiff to establish that he is in possession of the suit schedule property or he is a cultivating the same.

c)The plaintiff has not established that he had complied with the conditions under Ex.A1 assignment order. Therefore, it is clear that the plaintiff is not in possession of the same.

d)In case, if the plaintiff was given any assignment order in the year 1969, he would have taken steps to evict the defendants but he had not done so.

e)Merely based upon the assignment order, a finding cannot be arrived at to the effect that the plaintiff is having title or possession over the suit schedule property. A perusal of Ex.B1 reveals that only the second defendant is in possession of the suit schedule property. The plaintiff has not established his possession over the suit schedule property.

7.Based upon the above said findings, the trial Court proceeded to dismiss the suit.



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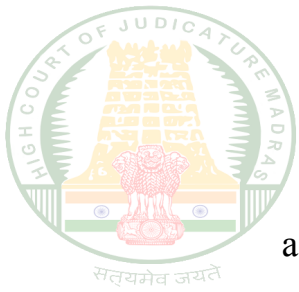
8.The plaintiff had filed A.S.No.4 of 2000 before the Subordinate Court, Srivilliputhur. The First Appellate Court was pleased to dismiss the appeal on the following findings:

a)The second defendant was declared as cultivating tenant under Ex.B2 order passed by the Tribunal and the same was confirmed by the Revenue Divisional Officer, Viruthunagar under Ex.B3. The High Court has confirmed the said order under Ex.A10. In such circumstances, the title and possession of the plaintiff cannot be construed to have been proved.

b)Apart from Exs.A1 and A2, the plaintiff is not in a position to let in any oral evidence to establish his possession. On the other hand, the defendants have filed Exs.B2 to B4 to establish their possession over the suit schedule properties.

c)Though the genuineness of Ex.A1 assignment order has been questioned by the defendants, the plaintiff has not chosen to examine the officials connected with the said document to establish the genuineness and validity of Ex.A1.

d)The plaintiff has not filed any document to establish that he had been cultivating the suit schedule property from the year 1969 onwards. The commissioner's report and plan would clearly indicate that the suit schedule properties are being irrigated from the



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adjacent land belonging to the second defendant.

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9. Based upon the above said findings, the First Appellate Court concurred with the trial Court and dismissed the first appeal. Challenging the same, the present second appeal has been filed.

10. The second appeal has been admitted on the following substantial questions of law:

1) Whether the appellate Court is right in refraining from investigating the right, title and interest of the appellant to the suit property on the ground that in record of tenancy proceedings, the 1st defendant has been recorded as the cultivating tenant of the 2nd defendant?

2) Whether in the light of Ex.A1 assignment in favour of the appellant and the complete absence of any document on the side of the respondents, the Courts below are right in negating the suit claim?

(B). Submissions of the counsels appearing on either side:

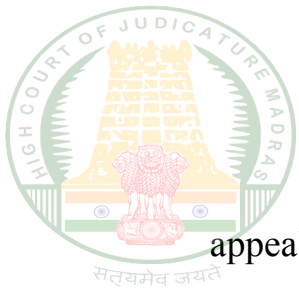
11. The learned counsel appearing for the appellants submitted that under Ex.A10 order, this Court has granted liberty to the plaintiff to workout his remedy in the civil suit. Therefore, the order of the authorities under Tamil Nadu Record and Tenancy Rights Act cannot be relied upon by the trial Court as well as the appellate Court to arrive at a finding that the defendants have established their title or possession over the suit schedule properties.



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12.The learned counsel appearing for the appellants further submitted that both the Courts below have failed to note that the plaintiff has also pleaded an alternative prayer for recovery of possession. The Courts below were under the wrong impression that the plaintiff had merely sought for permanent injunction. Exs.B2 to B4 are the orders passed after suit and they cannot be relied upon. He had further submitted that the first defendant and the second defendant are brothers, they have created a proceedings under the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 only to defeat the rights of the plaintiff. The Courts below have not properly appreciated the said fact.

13.The learned counsel further submitted that the defendants have not pleaded adverse possession and in such circumstances, when the plaintiff has established his title under Ex.A1, the Courts below ought to have decreed the suit as prayed for. Even though patta was granted in favour of the plaintiff in the year 1982, no steps were taken by the defendants to cancel the said patta. As far as Ex.A1 is concerned, the genuineness of the said document was not disputed in the written statement. Though it is a carbon copy, the signature is made in the green ink. Therefore, it should only be construed to be a primary evidence. The defendants having not disputed the patta granted pursuant to Ex.A1 assignment order, cannot challenge the genuineness and validity of Ex.A1 assignment order. Hence, he prayed for allowing the second



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appeal.

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14.Per contra, the learned Senior Counsel appearing for the respondents submitted that Ex.A1 is a forged document. There are discrepancies in the serial number and the year in which Ex.A1 is said to have been issued. The learned counsel had further pointed out that only because of this fact, the plaintiff has not taken possession of the suit schedule property and he has not complied with the conditions as per the said assignment order. The learned counsel had further stated that Ex.A2 patta has been granted in favour of the plaintiff just prior to the suit in order to strengthen the case.

15.The learned Senior Counsel appearing for the respondents had further submitted that the plaintiff was employed as a foreman in the Electricity Board and therefore, he was not entitled to get any order of assignment from the Government. Therefore, the said order is clearly illegal and void order and the same does not confer any title upon the plaintiff. He had further pointed out that even though the genuineness of Ex.A1 assignment order has been questioned, the plaintiff has admitted that he had not examined the officials in order to prove the genuineness of the said document. Relying upon the commissioner's report and plan, submitted that the property adjacent to the suit schedule property belongs to the defendants and the water is drawn only from the said property of the defendants. This will clinchingly prove the possession of the defendants. The learned Senior



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Counsel had further submitted that the plaintiff has not filed any document whatsoever right from the date of assignment till the grant of patta in the year 1982. This will clearly prove that the possession was not with the plaintiff at any point of time.

16.The learned Senior Counsel appearing for the respondents had further submitted that the plaintiff herein was impleaded as one of the party in the record of tenancy rights proceedings. The authority under the said Act has recorded that the first defendant is a cultivating tenant, in the presence of the plaintiff. The High Court in its judgement dated 28.03.1996 has confirmed the order passed by the authority under Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969. In such circumstances, it is clear that only the first defendant is in possession of the suit schedule property as a cultivating tenant.

17.The learned Senior Counsel appearing for the respondents had further submitted that when Ex.A1 is doubtful and Ex.A2 patta is based upon Ex.A1 and the plaintiff has not filed any other document whatsoever to establish his possession over the suit schedule property, the findings of the Courts below may be confirmed and the second appeal may be dismissed.

18.Heard both side and perused the material records.

19.The plaintiff had claimed title to the suit schedule property primarily based upon Ex.A1 assignment order dated 01.11.1969. A perusal of



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the said order reveals that the suit schedule property has been assigned in favour of the plaintiff. Though Ex.A1 is a carbon copy, the signature of the authority is in original. Though submissions have been made relating to the order of issuance of assignment order and the serial number, a perusal of the said document does not raise any doubts relating to the genuineness. In fact based upon Ex.A1 assignment order, Ex.A2 patta has been issued in favour of the plaintiff. If at all the defendants had any doubt about Ex.A1 assignment order, he would have certainly challenged the patta granted in favour of the plaintiff. When both the parties admit that the suit schedule property belong to the Government, Ex.A1 assignment order and Ex.A2 patta granted by the authorities in favour of the plaintiff should only be construed to be conferment of title upon the plaintiff. The trial Court as well as the appellate Court without holding that Ex.A1 is a fake document, have proceeded to reject the prayer for declaration of title. Therefore, this Court is of the considered opinion, Exs.A1 and A2 would clearly establish the case of the plaintiff with regard to his title.

20.On the other hand, the defendants have filed Ex.B1 and B4 kist receipts. These two kist receipts are after suit and they cannot be relied upon. Ex.B2 is the order passed by the original authority under Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969 conferring tenancy rights in favour of the first defendant. The said order has been confirmed by



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the appellate authority under Ex.B3. Both these orders have been passed after suit. The plaintiff had challenged these orders before the High Court in W.P.No.6736 of 1996. This Court has passed an order dated 28.03.1996 under Ex.A10. A perusal of the order passed by this Court reveals that the writ petition has been dismissed citing pendency of the civil suit. Therefore, it is clear that the order passed by the authorities under Records of Tenancy Rights Act, cannot be relied upon to establish title or possession over the suit schedule property.

21.Moreover, the authorities under the said Act cannot decide title or possession over the suit schedule property. They can only decide the relationship between the parties. In the present case, the defendants 1 and 2 are brothers. The first defendant has filed these proceedings under Records of Tenancy Rights Act claiming that he is the cultivating tenant of his brother namely the second defendant. Therefore, it is clear that there was a collusion between the defendants 1 and 2 in order to create records to defeat the rights of the plaintiff.

22.Apart from the orders passed by the authorities under Tamil Nadu Agricultural Lands Record of Tenancy Rights Act, 1969, no document has been filed on the side of the defendants to establish their possession over the suit schedule properties. As already pointed out, Exs.B1 and B4 kist receipts are after suit. When both the parties admit that the Government is the



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owner of the property, the Court has to consider who has got better title to the suit schedule property. The plaintiff has filed Ex.A1 assignment order and Ex.A2 patta. On the other hand, the defendants has not able to place on record any material to establish their title or possession over the suit schedule property.

23.The Courts below have proceeded to dismiss the suit primarily on the ground that the defendants have established their possession over the suit schedule properties. Hence, the plaintiff would not be entitled to a decree for permanent injunction without carefully considering the prayer in the plaint. The plaintiff has specifically pleaded, that in case, if the Court arrives at a finding that the defendants are in possession, a decree for recovery of possession may be granted. In such circumstances, even assuming that the defendants are in possession of the suit schedule property, the Courts below ought to have granted a decree for recovery of possession instead of decree for permanent injunction.

24.In view of the above said deliberations, both the substantial questions of law are answered in favour of the appellant and the judgment and decree of the Courts below are set aside. The suit is decreed in favour of the plaintiff granting declaration of title and recovery of possession. The



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defendants shall hand over the possession of the suit schedule properties within a period of three months. The second appeal is allowed. No costs.

01.08.2025

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

To

1.The Subordinate Judge
Srivilliputhur

2.The Additional District Munsif
Srivilliputhur

3.The Section Officer
V.R.Section
Madurai Bench of Madras High Court
Madurai



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgment made in
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01.08.2025