



S.A.No.1072 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON : 08.08.2025

JUDGMENT PRONOUNDED ON : 31.10.2025
CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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Shanmugam (died)/Appellant/Defendant
2.Palpandi
3.Senthilnayagam (died)
4.Arumuga Nainar
5.Natarajan ...Appellants 2 to 5/ Legal heirs of the
deceased sole appellant
6.Pechi Ammal
7.Mari Ammal
8.Sudalai Mani
9.Kumutha
10.Meena
11.Mayaperumal
12.Shanmugasundari
Madasamy (died)
13.Lakshmi
14.Minor Senthil Kumar
15.Minor Mugesh
16.Minor Guru
Murugeswari (died)



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17.Ashok Kumar

18.Guru

19.Minor Jeeva

.....Appellants 6 to 19/ Legal heirs of the
deceased 3rd appellant

(Appellants 2 to 5 are brought on record as legal heirs of the deceased sole appellant vide Court order dated 21.03.2025)

(Minors 14 to 16 represented by their mother 13th appellant)

(Minor 19th appellant represented by his father 17th appellant)

(Appellants 6 to 19 are brought on record as legal heirs of the deceased 3rd appellant vide Court order dated 21.03.2025)

Vs

Ramar

...Respondent/Respondent/Plaintiff

PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree in A.S.No.52 of 2001 dated 16.09.2002 passed by the Subordinate Judge, Tuticorin confirming the judgment and decree in O.S.No. 139 of 1998 dated 11.10.2001 on the file of the Principal District Munsif, Tuticorin.

For Appellants	: Mr.Nissar Ahammed Senior Counsel For Mr.M.R.Sreenivasan
For Respondent	: Mr.P.Ganapathi Subramanian



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JUDGMENT

The defendant in a suit for declaration of title and permanent injunction has filed the present second appeal challenging the concurrent findings of the trial Court as well as the appellate Court.

(A).Pleadings of the parties before the trial Court are as follows:

2.According to the plaintiff, Survey No.62/6 in Allikulam Village, Thoothukudi Taluk and Thoothukudi District is having a total extent of 76 cents and it was jointly owned by two brothers namely Chokkan @ Chokkalingam and Ulagamuthu. They have orally partitioned the same and in the said partition, northern portion was allotted to Subramanian @ Subbiah (S/o.Chokkan @ Chokkalingam) and the southern portion was allotted to Kumarandi (S/o.Ulagamuthu). After the death of Subramanian @ Subbiah, the property devolved upon his wife Ayyammal who had alienated her share of 38 cents in favour of the plaintiff under Ex.A1 on 09.09.1996. The southern 38 cents belongs to the defendant. When the defendant attempted to trespass into the northern 38 cents, it has given a cause of action to the plaintiff to file the present suit.

3.The defendant had contended that he had purchased northern 30 cents and southern 10 cents in the said survey number from Kumarandi under



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Ex.B2 on 04.12.1981. The middle portion consisting of 30 cents was purchased by him from one Mariappa Nadar under Ex.B1 on 09.04.1984.

Therefore, he is the absolute owner of entire 76 cents in Survey No.62/6. The defendant had further contended that Ayyammal is not the legally wedded wife of Subramanian and therefore, she is not entitled to execute any sale deed in favour of the plaintiff. In fact, the said Subramanian was working in Military and he had never enjoyed the suit schedule property. Therefore, the defendant had perfected title by adverse possession. The present suit has been filed at the instigation of one Subbiah, S/o.M.Irulan who had unsuccessfully filed a suit before the District Munsif Court, Tuticorin.

4.Before the trial Court, on the side of the plaintiff, PW1 to PW3 were examined and Exs.A1 to A12 were marked. On the side of the defendants, DW1 to DW3 were examined and Exs.B1 to B14 were marked. An Advocate Commissioner was appointed and his report was marked as Ex.C1.

(B).Findings of the Trial Court and the First Appellate Court:

5.The trial Court found that survey number having an extent of 76 cents was jointly owned by Chokkan @ Chokkalingam and Ulgamanuthu which later devolved upon their respective sons Subramanian @ Subbiah and Kumarandi. In an oral partition, the northern portion was allotted to Subramanian and southern portion was allotted to Kumarandi.



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6.The trial Court further found that the defendant has not established his possession over the suit schedule property and therefore, his plea of claiming title by adverse possession cannot be countenanced. Based upon the said findings, the trial Court had decreed the suit as prayed for.

7.The First Appellate Court concurred with all the findings of the trial Court and dismissed the appeal preferred by the defendants. Challenging the concurrent findings, the present second appeal has been preferred by the defendants.

8.The second appeal was admitted on the following substantial questions of law:

a)Whether the finding of the Courts below that there was a oral partition between the two brothers namely Chockalingam and Ulagamuthu is opposed to evidence on record?

b)If the established facts do not disclose any oral partition between the persons referred to above, then could Iyyammal, claiming to be the wife of Subramanian, one of the descendants of Chockalingam legally convey the suit property under Ex.A1 to the plaintiff?

c)When admittedly under Exs.B1 and B2 the entirety of the suit property had been dealt with by two individuals namely, one the descendants of Ulagamuthu and the other, a third party, cannot the Courts below legally infer



that the oral partition pleaded between Chockalingam and Ulagamuthu would not have been there and that the branch of Chockalingam had no shrae at all in the said property?

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

9.The learned Senior Counsel appearing on behalf of the appellants submitted that the defendant had purchased the property in the year 1981 and 1984 and he had been on an uninterrupted possession and therefore, he had prescribed title when the suit was filed in the year 1998 whereas the plaintiff has purchased the suit schedule property only in the year 1996 and has filed the suit in the year 1998.

10. The learned Senior Counsel had further submitted that the plaintiff has not established the possession of his vendor namely Ayyammal and in the said circumstances, the plaintiff ought not to have been found to be in possession of the suit schedule property. The learned counsel had further stated that in a suit for declaration of title and permanent injunction, the entire burden is upon the plaintiff to establish his title and possession over the suit schedule property on the date of filing of the suit. In the present case, the plaintiff had not established the fact whether Ayyammal is the legally wedded wife of Subramanian @ Subbiah and she was in possession of the suit schedule property when she executed a sale deed in favour of the plaintiff. The Courts below have erroneously shifted the burden upon the defendant to



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establish the possession over the suit schedule property.

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11.The learned Senior Counsel had further submitted that the plaintiff had pleaded oral partition between the brother Chokkan @ Chokkalingam and Ulagamuthu. Therefore, the burden would be upon the plaintiff to establish the same. However, there is no oral and documentary evidence to establish such a oral partition. When the oral partition has not been established, the alleged wife would not have any title over the suit schedule property to execute a sale deed in favour of the plaintiff. He had further submitted that the entire extent of 76 cents has been dealt with by Mariappa Nadar and the defendants and it would clearly establish the fact that the plaintiff or his vendor were never in possession of the suit schedule property.

12.The learned Senior Counsel appearing for the appellants had further submitted that PW2 and PW3 have categorically admitted that one Karumpulli was the cultivating tenant in the property of Mariappa Nadar and therefore, the boundary recital in Ex.B2 referred to him. Therefore, the Courts below were not right in arriving at a finding that the boundary recital does not reflect the property of Mariappa Nadar. He had further submitted that the patta in favour of the plaintiff has been obtained only in the year 2000 that too pending suit. Therefore, the said document cannot be relied upon by the trial Court for decreeing the suit. Hence, he prayed for setting aside the



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judgment and decree of the Courts below and for dismissing the suit.

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13.Per contra, the learned counsel appearing for the respondent submitted that the plaintiff has established the fact that the total extent of the suit schedule property is 76 cents and one of the co-sharers namely Subramanian @ Subbiah is entitled to northern 38 cents. He had further submitted that the plaintiff had also established the fact that Ayyammal is the wife of deceased Subramanian by filing Exs.A7 and A8. In such circumstances, Ayyammal had every right to execute a sale deed under Ex.A1 in favour of the plaintiff. It is further contended that Ex.A5 patta standing in the name of the vendor of the plaintiff would clearly establish the fact that the said Ayyammal was in possession of the suit schedule property before alienating the same in favour of the plaintiff.

14.The learned counsel for the respondent further submitted that the Patta filed on the side of the defendant is traceable to some other properties and it reflects the name of a third party. The defendant is not able to establish how Mariappa Nadar had got title over middle 36 cents. The Mariappa Nadar, the vendor of the defendant had deposed on the side of the plaintiff as PW2. During his deposition, he has categorically admitted that he is not the owner of the suit schedule property and he has not received any consideration for executing such a sale deed in favour of the defendant. The learned counsel had further submitted that DW3 has categorically admitted



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the fact that the oral partition between Subramanian @ Subbiah and Kumarandi and in such circumstances, the trial Court as well as the appellate Court have rightly decreed the suit as prayed for. No substantial questions of law has arisen for consideration and therefore, the second appeal may be dismissed.

15.I have considered the submissions made on either side and perused the material records.

(D).Discussion:

16.The plaintiff has contended that the suit Survey No.62/6 is having a total extent of 76 cents and it was jointly owned by one Chokkan @ Chokkalingam and his brother Ulagamuthu. Therefore, each one of them were entitled to 38 cents. It is further contended that on the death of brother, it devolved upon Subramanian @ Subbiah (S/o. Chokkan @ Chokkalingam) and Kumarandi (S/o.Ulagamuthu). According to the plaintiff, in oral partition, the norther portion was allotted to Subramanian @ Subbiah and the southern portion was allotted to Kumarandi. One of the residents of the village has been examined as DW2. During his cross examination, he has admitted that the properties of Kumarandi are his ancestral property and Kumarandi is the cousin brother of Subramanian @ Subbiah. He had further admitted that the said Subramanian @ Subbiah was enjoying northern portion and Kumarandi was enjoying southern portion.



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17.The defendant in his written statement has also admitted the fact that the total extent of the property is 76 cents. Kumarandi while executing Ex.B2 sale deed in favour of the defendant has categorically admitted that the suit schedule properties are his ancestral properties. Therefore, it is clear that the plaintiff has established the joint ownership of the Subramanian @ Subbiah and Kumarandi and also the fact that the northern portion was enjoyed by Subramanian and the southern portion was enjoyed by Kumarandi.

18.In the written statement, it has been contended that the vendor of the plaintiff namely Ayyammal is not the wife of Subramanian. On the side of the plaintiff, he had filed Ex.A7 which is a sale deed executed by a third party in favour of Subramanian @ Subbiah and Ayyammal. The said sale deed reflects the fact that Ayyammal is the wife of Subramanian and it is dated 10.05.1962. Ex.A8 is the identity card issued for the widow of ex-service man. It reflects that Ayyammal is the wife of Subramanian. In Paragraph No.12 of the written statement, the defendant had categorically admitted that Subramanian was employed in Military. Ex.A2 is the death certificate of Ayyammal which clearly reflects that Subramanian is the husband of Ayyammal. Therefore, it is clear that by way of Exs.A7 and A8, the plaintiff had established the fact that Ayyammal is the wife of deceased Subramanian.



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19. Exs.A4 and A5 are the tax receipts standing in the name of Ayyammal for Patta No.592. They relate Fasli year 1402 and 1404. Ex.A6 is the copy of Jamabandi Chitta, it reflects that under Patta No.594, Survey No. 62/6 is also included. Therefore, it is clear that the plaintiff has established the fact that his vendor Ayyammal was in possession of the suit schedule property prior to the execution of the sale deed. Under Ex.A9, Patta Pass Book has been issued in favour of the plaintiff in Patta No.592 in the year 2000. The plaintiff had established the ownership and possession over the suit schedule property and right of his vendor to execute Ex.A1 sale deed.

20.The defendant claims title under Ex.B1 executed by Mariappa Nadar and Ex.B2 said to have been executed by Kumarandi. A perusal of Ex.B2 executed on 04.12.1981 reveals that Kumarandi claims that it is his ancestral property. Under the said document, he had alienated 30 cents on the northern side and 10 cents on the southern side. However, Kumarandi has not traced his title in the said 40 cents and how two blocks of property were sold leaving an area of 36 cents in between them. A perusal of Ex.B1 reveals that the same has been executed by one R.Mariappa Nadar in favour of the defendant for an extent of 36 cents claiming to be the middle portion of 76 cents. The recitals in Ex.B1 reveal that the said Mariappa Nadar claims that it is his ancestral property. However he has not traced his title. The said Mariappa Nadar has been examined on the side of the plaintiff as PW2 and in



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his deposition, he has categorically admitted that he do not own the property that he had alienated under Ex.B1.In such circumstances, it is clear that the defendant has not established his title over the entire extent of 76 cents.

21.On the side of the defendant, tax receipts have been filed as Exs.B6 to B13. The tax receipt reflects that the defendant owned the property in Patta No.340. The plaintiff had filed Ex.A12 Jamabandi Chitta. It points out that Patta No.340 stands in the name one Pechiammal for Survey No. 12-2A. Therefore, it is clear that Exs.B6 to B13 do not relate to the suit property. When the defendant has not established his possession over the suit schedule property, but on the other hand, the plaintiff was able to establish the possession of his vendor, the Courts below have rightly rejected the plea of adverse possession raised on the side of the defendants.

22.In view of the above said deliberations, all the substantial questions of law are answered as against the appellants. The judgment and decree of the Courts below are hereby confirmed and the second appeal stands dismissed. No costs.

31.10.2025

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



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- 1.The Subordinate Judge
Tuticorin
- 2.The Principal District Munsif
Tuticorin
- 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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