



S.A.No.1285 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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JUDGMENT RESERVED ON : 22.08.2025

JUDGMENT PRONOUNDED ON : 20.11.2025

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

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Siva Subramania Nadar (died)Appellant/Defendant

2.S.S.Baskar

3.S.S.Janarthanan

4.S.S.Jayakumar

5.S.S.Mohan

6.S.S.Sundar

7.P.Geetha

8.J.SujathaLegal Heirs of the deceased
Sole Appellant

(Appellants 2 to 8 are brought on record as legal heirs of the deceased sole appellant vide Court order dated 16.12.2008)

Vs

Arulmigu Pathira Kaliamman Koil

Rep.by its Haqdar S.Veldurai

S/o.Senthoorpandi

Pathira Kaliamman Koil Street

Kootampuli, Tuticorin Taluk

Tuticorin District 628 103

....Respondent/Respondent
/Plaintiff

(Name and address of the respondent is substituted vide court order dated 28.01.22 made in CMP(MD).No.547/22 in SA.No.285/03 by RVJ dated dated 06.12.2021)



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PRAYER: Second Appeal is filed under Section 100 of C.P.C, against the judgment and decree dated 02.12.2002 made in A.S.No.43 of 1999 on the file of the Sub Court, Tuticorin confirming the judgment and decree dated 05.04.1999 made in O.S.No.116 of 1997 on the file of the Additional District Munsif, Tuticorin.

For Appellants : Mr.M.Vallinayagam
Senior Counsel
For Mr.V.Balaji
For Respondent : Mr.C.Dhanaseelan

JUDGMENT

The defendant in a suit for permanent injunction has preferred the present second appeal challenging the judgment and decree of both the Courts below.

(A).Factual Matrix:

2.As per plaint averments, the plaintiff claimed title to the suit schedule properties of 1 acre and 93 cents in Survey No.44/1 on the basis Exs.A1 to A6 sale deeds. According to the plaintiff, the total extent of land covered under Exs.A1 to A6 is 2 acres. In the said 2 acres, patta was granted in favour of the plaintiff temple. 7 cents was acquired by the Government for formation of road. Excluding 7 cents, 1 acre and 93 cents is in possession of the plaintiff temple for which patta has been issued in Patta No.1646. The plaintiff is in possession for over 70 years. The defendant has neither title nor



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possession over the suit schedule properties. On 19.04.1997, the defendant attempted to disturb the possession of the plaintiff. Hence, the present suit.

3. The defendant had filed a written statement disputing the title of the plaintiff with regard to 33 cents out of 1.93 acres. According to the defendant, 33 cents belongs to the defendant's family and they are in enjoyment over the same for more than 100 years. The defendant had further contended that for the said 33 cents, a joint patta has been issued in Patta No. 990 and the defendant's family have acquired title by adverse possession.

4. According to the defendant, 1.93 acres has been subdivided into Survey No.44/1 for which no notice was issued to the defendant. The defendant had further contended that Patta No.990 stands in the name of their eldest family member namely Kumaraguru. He had further stated that the plaintiff is not in possession of 33 cents. The temple land is used as Kalam. The villagers are using 33 cents of the defendant to reach the Kalam and the defendant had not raised any objection for the same. When the plaintiff requested the defendant to alienate 33 cents in favour of the plaintiff and when the defendant objected for the same, the present dispute has arisen. The plaintiff had erroneously included 33 cents of the defendant in their Patta by way of erroneous subdivision and now claiming possession. Hence, he prayed for dismissal of the suit.



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5.An Additional written statement was filed by the defendant contending that Mr.Sendurpandi cannot be considered to be Haqdar of the temple and hence, he is not competent to file the suit. He further contended that the temple can be represented only by the Board of Trustees and non-impleading of the Board of Trustees would be fatal to the suit. The defendant had further contended that 35 cents of land which lies on the norther portion of the suit schedule properties abutting east-west road fall in Jameen Survey No.730 and it belongs to the joint family of the defendant. Originally the father of the defendant was given Jameen Patta in Patta No.576 for the disputed 35 cents of punja lands and certain other lands. Subsequently, during re-settlement proceedings, the disputed 35 cents in old Jameen Survey No. 730 claimed by the defendant supra and certain adjacent lands measuring 9.06 acres were comprised in Survey No.44 and Patta No.990 was issued in favour 32 persons. As the elder member of the defendant's family, by name Kumara Kuruparan was included in the joint Patta as 9th Patadar.

6.The defendant further contended that 35 cents of land belongs to the joint family of the defendant and his four brothers. Without impleading the other three brothers, the suit is not maintainable. The plaintiff has purposely omitted to correlate of the Jameen Survey Number as per various documents through which the plaintiff claims title. It was further contended that under Ex.A1, when the plaintiff temple purchased an extent of 19 cents



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in old Jameen Survey No.730, the northern boundary of the property was shown as property belonging to the defendant's father namely Shanmugasundara Nadar. It was further contended that under Ex.B18, the mortgage deed dated 04.09.1941, the said Shanmugasundara Nadar had created a simple mortgage in favour of the plaintiff temple with regard to the disputed 35 cents and the said mortgage was discharged on a later date. Therefore, the plaintiff is estopped from disputing the title of the defendant with regard to 35 cents.

7.It was further contended that since kist was received by the revenue officials for the suit schedule properties, they were not aware of the inclusion of the disputed land within the Patta issued to the plaintiff temple. They also questioned the maintainability of the suit for bare injunction without seeking a prayer for declaration of title. The defendant had further contended that the suit for permanent injunction is not maintainable when the plaintiff is not in possession of the suit schedule properties.

8.The plaintiff had filed a reply contending that Mr.Sendurpandi Nadar is the Haqdar of the temple and therefore, he is competent to file the suit. The plaintiff had further contended that the defendant, without filing any registered document in their favour for claiming title over 35 cents, cannot rely upon the revenue records. Since partition has taken place between the defendant and his brother, the non-impleading of the brothers of the



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defendant would not in any way affect the maintainability of the suit. The defendant does not have any other land adjacent to the suit schedule properties. There is no Kalam within the temple property. The plaintiff temple has been issued with Patta in the year 1974 itself and so far, the defendant had not taken any steps to cancel the Patta. The defendant has not chosen to file the kist receipts before the Court. The temple is in possession of the suit schedule property and the defendant do not have any title over the suit schedule properties and hence, the present suit for permanent injunction is maintainable without seeking a prayer for declaration of title.

(B).Findings of the Courts below:

9.The trial Court has found that the defendant has not filed any document to establish that 35 cents owned by him (covered under Jameen Patta No.730) has been erroneously included in Survey No.44/1. However, the plaintiff has filed Ex.A7 Patta dated 05.02.1974 wherein Survey No.44/1 having an extent of 1.93 acres has been specifically mentioned. Though the defendant had relied upon the boundary recitals in Ex.A1 document to contend that the northern boundary refers to the defendant's father, the defendant has not produced any document whatsoever to establish their title over the suit schedule properties. The recital in Ex.B22 partition deed merely refers to the boundary recital as east of common thrashing floor. Therefore, it cannot be construed that the said thrashing floor exclusively belongs to the



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defendant's family. The plaintiff had filed Exs.A1, A3 to A6 sale deeds, Ex.A2 settlement Patta, Exs.A7 and A8 Patta Passbook wherein there is a specific reference about Survey No.44/1 having an extent of 1.93 acres. Under Exs.A10 to A14, kist has been paid by the temple. In such circumstances, it is clear that the plaintiff temple is in possession of the suit schedule properties.

10.The trial Court further found that the defendant claims title by adverse possession on the basis of kist receipts under Exs.B14 to B17. The said documents cannot be accepted in evidence as proof of possession, in view of the fact that the temple has been granted Patta in Patta No.975. When the defendant does not have any connection whatsoever with Patta No.975, mere payment of kist would not confer title upon him. Since the defendant has admitted that he is not aware of the fact about the location of 35 cents of land in a particular Survey Number, the defendant has not established his case.

11.The trial Court further found that the suit having been filed by Haqdar of the Trust, the suit is maintainable. That apart, any one who is interested in the temple can initiate suit. Therefore, such a defence raised by the defendant with regard to the maintainability of the suit is liable to be rejected.



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12. Based upon the above said findings, the trial Court decreed the suit as prayed for.

13. The defendant had preferred A.S.No.43 of 1999 before the Subordinate Court, Tuticorin. The First Appellate Court has confirmed all the findings of the trial Court and dismissed the appeal. Challenging the concurrent findings, the present second appeal has been preferred by the defendant.

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

(a) In the face of the recital in Ex.B1, the mortgage deed, in and by which the defendant had asserted title in himself over 35 cents of land in Survey No.44/1 corresponding to old survey No. 730, is not the plaintiff estopped from contending that the defendant has no title or possession over the same?

(b) Have not the Courts below committed an error of law in not taking into consideration the admission of P.W.1 that the property purchased by them under Ex.A3 and Ex.A4 is only situated in Survey Nos.44/6 and 44/8 which had vitiated the judgment?

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

15. The learned Senior Counsel appearing for the appellants submitted that under Ex.A1 sale deed, the plaintiff temple has purchased 19 cents of land. The northern boundary of the said sale deed specifically refers to the name of the defendant's father. Therefore, it is clear that just abutting the



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plaintiff's property covered under Ex.A1, the defendant's property is located.

The learned Senior Counsel had further submitted that in the property covered under Ex.A2, the temple is located. The defendant's family members have mortgaged certain properties to the plaintiff temple under Ex.B18 on 04.09.1941. The suit schedule property is shown as 4th item.

16.The learned Senior Counsel appearing for the appellants had further stated that the temple having accepted the said mortgage, cannot now dispute the title and they are estopped from doing so. PW1 during his cross examination has categorically admitted that he was not aware of the exact location of the suit schedule property. He had further submitted that the plaintiff has miserably failed to correlate old Survey Number with the suit Survey Number. The learned Senior Counsel has extensively referred to the cross examination of PW1 to the said effect. He referred to Ex.A15 settlement register wherein Survey No.730/9 stands in the name of Shanmugasundara Nadar which is covered under New Survey No.44/1.

17.The learned Senior Counsel had further pointed out that the old Survey No.975 is relatable only to Jameen Survey Nos.731 and 732 /5. He had further pointed out that Survey No.902 alone stands in the name of Pathirakaliamman Temple which is relatable to old Survey No.731. He had further stated that the defendant had filed a written statement specifically disputing the title of the plaintiff. In the additional written statement also the



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title of the plaintiff has been specifically denied. However, the prayer in the suit was not amended. The trial Court as well as the Appellate Court are not right in decreeing the suit for permanent injunction when the title has been seriously disputed even on the basis of the documents filed by the plaintiff.

18.The learned Senior Counsel appearing for the appellants had further submitted that Exs.A3 and A4 do not relate to the suit schedule properties. The documents filed on the side of the defendant would clearly create a cloud over the title of the plaintiff. Therefore, the present suit is not maintainable and the Courts below have not properly appreciated the said fact. He had relied upon the recital in Ex.B1 and the mortgage deed submitted that the defendant's father asserted title over 35 cents of land in Survey No.44/1 corresponding to old Survey No.730 and mortgaged the property to the plaintiff temple. In such circumstances, the plaintiff is clearly estopped from denying the title of the defendant. He had further submitted that PW1 has categorically admitted in his cross examination that the properties covered under Exs.A3 and A4 are now situated in Survey No.44/6 and 44/8. The Courts below have not properly appreciated this fact and have proceeded to decree the suit as prayed for as if purchase under Exs.A3 and A4 are covered in the suit schedule properties.

19.The learned Senior Counsel had relied upon the judgments of the Hon'ble Supreme Court reported in **(2008) 4 SCC 594 (Vanagiri Sri**



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Selliamman Ayyanar Uthirasomasundareswarar Temple Vs. Rajanga Asari);

(2021) 0 Supreme (SC) 480 (*Kayalulla Parambath Moidu Haji Vs. Namboodiyil Vinodan*); **(2020) 1 CTC 321** (*Bharathidasan Vs. Shanmugavel*); **(2019) 1 LW 775** (*Jharkhand State Housing Board Vs. Didar Singh and another*); **(2014) 2 SCC 269** (*Union of India & others Vs. Vasavi Co-operative Housing Society Ltd. & others*) ; **(2019) 13 SCC 70** (*Ajit Kaur @ Surjit Kaur Vs. Darshan Singh(dea) through LRs. and others*); **(2014) 4 CTC 653** (*Kuruvamani & others Vs. A. Muthu & others*) and **(2007) 13 SCC 565** (*Gurunath Manohar Pavaskar & others Vs. Nagesh Siddappa Navalgund & others*) in support of his contention.

20. Per contra, the learned counsel appearing for the respondent submitted that the trial Court as well as the First Appellate Court had concurrently found that the plaintiff has established his title and possession over the suit schedule properties. There are no substantial questions of law in the second appeal and therefore, the same is liable to be dismissed. He had further submitted that the plaintiff has filed Exs.A1 to A6 sale deeds, Patta and kist receipt to establish his title over the suit schedule properties namely Survey No.44/1. When there is no dispute with regard to the title of the plaintiff, the contention of the defendant that the suit is not maintainable for not seeking declaration of title is not legally sustainable.



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21.The learned counsel for the respondent had further contended that in case, if the suit schedule properties belong to the defendant, the same would have been included in the partition deed under Ex.B22. The very fact that the said property was not included, would clearly show that the suit schedule property does not belong to the defendant. He had further stated that the burden of proof is upon the plaintiff, the same having been discharged successfully by the plaintiff. The trial Court as well as the appellate Court have rightly decreed the suit as prayed for. The learned counsel had relied upon Sections 34 and 38 of the Specific Relief Act in support of his contention. He further submitted that merely because some averments are made in the written statement, questioning the title of the plaintiff which does not mandate the plaintiff to seek declaration of title, unless the defendant produces some documents on his side in order to create a cloud over the title of the plaintiff. In the present case, when no cloud has been created over the title of the plaintiff and the plaintiff has established his possession over the suit schedule properties, the suit framed as such is maintainable. The trial Court as well as the Appellate Court have categorically found that the defendant has not created any prima facie doubt over the title of the plaintiff. In such circumstances, he prayed for dismissal of the second appeal.

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

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(D).Analysis:

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23. The present suit for permanent injunction has been filed for an extent of 1.93 acres in Survey No.44/1 in Patta No.975 in Kootampulli, Kulayankaraisal Village, Tuticorin Taluk. The plaintiff has relied upon Exs.A1 to A6 sale deeds and contended that the plaintiff temple become owner of 2 acres under these documents. Out of the said 2 acres, 7 cents were acquired by the Government and therefore, the suit has been laid for the balance extent of 1.93 acres.

24.In paragraph No.3 of the written statement, it is specifically contended on the side of the defendant that out of these 1.93 acres, 33 cents belong to the defendant. In paragraph No.6 of the written statement, the title of the plaintiff has been disputed. In the additional written statement, details have been furnished by the defendant questioning the title of the plaintiff by relying upon various documents. In paragraph No.16 of the additional written statement, it is specifically contended that the suit for bare injunction is not maintainable without a prayer for declaration of title.

25.The Hon'ble Supreme Court in a judgment reported in **(2008) 4 SCC 594** (*Vanagiri Sri Selliamman Ayyanar Uthirasomasundareswarar Temple Vs. Rajanga Asari*) in Paragraph No.21 has held that where a cloud is raised over plaintiff's title and he does not have possession, a suit for



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declaration and possession, with or without a consequential injunction, is the remedy. The Hon'ble Supreme Court had further held that in case of vacant sites where *de jure* possession has been established on the basis of title to the property, the issue of title may directly and substantially arise for consideration, without a finding without regard to the title, it will not be possible to decide the issue of possession.

26.A perusal of the schedule of properties in the present suit clearly indicate that it is a vacant site. Therefore, if the defendant had raised a cloud over the title of the property, the plaintiff has to necessarily seek a prayer for declaration of title.

27.Let us now consider whether the documents filed on the side of the defendant have raised a cloud over the title of the plaintiff.

28. Ex.A1 is one of the title deeds relied upon by the plaintiff under which they have purchased 19 cents in Jameen Survey No.730 from one Pandia Nadar. In the boundary recital, it has been specifically mentioned that these 19 cents is located south of the property belonging to the Shanmugasundara Nadar who is the father of the defendant. Ex.B18 is a mortgage deed executed by the defendant's father on 04.09.1941 in favour of the plaintiff temple. The 4th item of the suit schedule property reveals that 35 cents out of 40 cents in Jameen Survey No.730 has been mortgaged. As per boundary recital, the said property is located east of the plaintiff temple and



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south of the road and west of Alavandar property and north of Veerapathiran's land. It is not in dispute that the properties purchased by the plaintiff under Ex.A1 refers to Jameen Survey No.730. According to the plaintiff, it is correlatable to the present suit Survey No.44/1. Therefore, it is clear that 35 cents of land has been mortgaged by the defendant's father in Jameen Survey No.730 in favour of the plaintiff temple in the year 1941.

29.The plaintiff had filed Ex.A15 settlement register which was issued under Tamil Nadu Act 26 of 1948. The said settlement register reveals that old Survey No.730/9 stands in the name of the defendant's father which is correlatable to the present Survey No.44/1. As far as the plaintiff temple is concerned, the old Survey No.731 which is correlatable to the present Survey No.44/1 stands in the name of the temple. Therefore, it is clear that three registered documents namely Ex.A1, Ex.B18 and Ex.A15 settlement land register issued under Tamil Nadu Act 26 of 1948 point out that the defendant have got 35 cents of land in Jameen Survey No.730 which is correlatable to suit Survey No.44/1.

30.During cross examination, PW1 has categorically admitted that his father alone has singed in Ex.B1 mortgage deed wherein an extent of 35 cents in Jameen Survey No.730 has been mortgaged by the defendant's father.

31.The plaintiff had further admitted that he is not aware which of the Jameen Survey Numbers are included in the suit Survey No.44/1. He further



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deposed that he is not aware when Survey No.44/1 was subdivided. He is not aware of the fact as to the location of the property covered under Exs.A1 to A6. He had further admitted that he is not aware where 35 cents out of 51 cents covered under Ex.A1 is located. He has also admitted that the plaintiff temple does not have any document wherein the northern boundary recital indicates the location of Kulayankarisal road.

32.Exs.A1, A2 and A15 documents and the cross examination of PW1 will clearly establish that the serious cloud has been raised by the defendant over the title of the plaintiff. In fact, the defendant had specifically raised the issue of maintainability of the suit for bare injunction without a prayer for declaration of title in their written statement as well as in the additional written statement. In such circumstances, it is clear that the suit for bare injunction is not maintainable without seeking declaration of title, especially in the light of Ex.B1 which is a document between the ancestors in title of the defendant and the plaintiff temple.

33.Ex.A2 refers to Survey No.731 in Patta No.902. Ex.A7 refers to Patta No.1646 for Survey No.44/1 for an extent of 1.93 acres. Ex.A8 again refers to Patta No.975 in Survey No.44/1 for an extent of 0.78 ares. I could find that both the plaintiff as well as the defendant have paid kist for this Patta Number. Except Ex.A1 sale deed, none of the other sale deeds of the plaintiff refers to Jameen Patta No.730. In fact, Ex.A1 sale deed where 19



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cents were purchased by the plaintiff temple, the northern boundary is shown as belonging to the defendant's father. According to the plaintiff, only Jameen Patta No.730 is relatable to the suit Survey No.44/1. In such circumstances, it is clear that the plaintiff has not established his possession over the suit schedule property.

34.The learned counsel appearing for the respondent has contended that Ex.B22 partition deed entered into within the defendant family does not refer to the suit schedule property. A perusal of Ex.B22 reveals that some of the properties have been retained as common properties for being partitioned in future. Therefore, the non-reference to the suit schedule properties would not in any way improve the case of the plaintiff. Even assuming that the defendant had not been able to establish his title over 33 cents of land, that would not in any way absolve the plaintiff from establishing his title and possession over the suit schedule properties.

35.The Hon'ble Supreme Court in ***(2014) 2 SCC 269 (Union of India and others Vs. Vasavi Co-operative Housing Society Limited and others)*** in Paragraph No. 15 has held as follows:

“15.It is trite law that, in a suit for declaration of title, burden always lies on the plaintiff to make out and establish a clear case for granting such a declaration and the weakness, if any, of the case set up by the defendants would not be a ground to grant relief to the plaintiff.”



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36.The trial Court as well as the Appellate Court had not properly appreciated the fact that despite a cloud having been created over the title of the plaintiff by way of pleadings as well as by way of Ex.A1 and Ex.B18 registered documents, the plaintiff has proceeded with the suit for bare injunction without seeking declaration of title. Therefore, the present suit for bare injunction is not maintainable.

(E).Conclusion:

37.In view of the above said deliberations, both the substantial questions of law are answered in favour of the appellants. The judgment and decree of the trial Court and the First Appellate Court are hereby set aside. The suit in O.S.No.116 of 1997 on the file of the District Munsif Court, Tuticorin stands dismissed. The second appeal stands allowed. No costs.

20.11.2025

Index : Yes / No
Internet : Yes / No
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- 1.The Subordinate Judge
Tuticorin
- 2.The 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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