



SA No.1534 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 28/03/2025

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

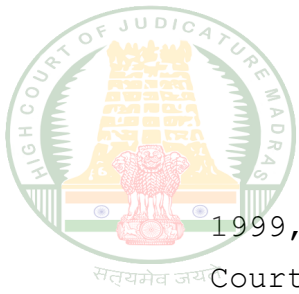
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1.Subramania Pandian (Died) : 1st Appellant/
Respondent/Appellant
2.S.Rasathi
3.S.Subramaniapandian : Appellants 2 and 3/
L.Rs of the deceased
sole Appellant

Vs.

1.The State of Tamil Nadu
rep by the District Collector,
Tirunelveli.
2.Tashildar,
Veerakeralampudur,
Tirunelveli District. : Respondents 1 and/
Appellants/Respondents
3.D.Thangadurachi
4.P.Leela
5.M.Velduraichi
6.R.Shanmuga Thurachi : Respondents 3 to 6/
(Appellants 2 and 3 L.Rs of the deceased
sole appellant
& respondents 3 to 6
are brought on record
as L.Rs of the deceased
sole appellant, vide court,
order, dated 07/01/2022 made
in CMP(MD)No.4 of 2022 in
SA No.1534 of 2003)

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed in As No.216 of 2002, dated 28/02/2003 passed by the II Additional District Judge, Tirunelveli, reversing the judgment and decree passed in OS No.41 of



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1999, dated 10/10/2001 on the file of the Additional Sub Court, Tenkasi.

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For Appellants : Mr.T.S.Mohamed Mohideen

For R1 and R2 : Mr.D.S.Nedunchezian
Government Advocate

For R3 to R6 : No appearance

J U D G M E N T

This second appeal is preferred against the judgment and decree passed in As No.216 of 2002, dated 28/02/2003 passed by the II Additional District Judge, Tirunelveli, reversing the judgment and decree passed in OS No.41 of 1999, dated 10/10/2001 by the Additional Sub Court, Tenkasi.

2.The plaint:-The suit property originally belonged to Uthumalai Jamin. During the Jamin period, the property was registered in the name of the plaintiff's father Navaneethakumar Thevar in patta No.391 measuring about 1.39 Acres. He planted coconut trees and enjoying the property. Later, the property was given to the plaintiff by his father orally. Ever-since, the plaintiff is in possession and enjoyment. Later, it came to know that 'B' memo was issued in the name of one Sankarapandia Thevar. Due to long, open and continuous possession, the plaintiff prescribed title by adverse possession. More-



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over, it also came to know that now the suit property is classified as 'assessed vacant land'. So, the suit is laid for declaration that the suit property belongs to the plaintiff and for permanent injunction directing the defendants to grand patta in favour of the plaintiff and for costs.

3. The statement: - It is denied that the property originally belongs to the plaintiff's father during Jamin. The property later given to the plaintiff orally. The suit property was never in the independent possession of the plaintiff's father and the plaintiff. As per the revenue records, it is classified as 'assessed vacant site'. Now the Government is taking steps to issue patta to the landless poor. At that time, the plaintiff did not make any objection. Now challenging the same, he filed the suit. The plaintiff cannot claim contradictory right one by way of possession and another by way of adverse possession.

4. On the pleadings of both parties, the trial court issued the following issues:-

(1) Whether the plaintiff is entitled to the relief of declaration that the suit property absolutely belonged to him?



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(2)Whether the plaintiff is entitled for mandatory injunction as prayed for?

(3)To what other relief, the plaintiff is entitled to?

5.Before the trial court, on the side of the plaintiff, 2 witnesses were examined and 4 documents marked. On the side of the defendants, one witness was examined and 3 documents marked. The Commissioner's report and plan were marked as Exs.C1 and C2.

6.The trial court decreed the suit as prayed without costs. Against which, appeal was preferred before the II Additional District Judge, Tirunelveli. The appellate court set aside the judgment and decree of the trial court and dismissed the suit without costs.

7.Against which, this second appeal is preferred.

8.At the time of admission, the following substantial question of law was framed:-

"Whether the plaintiff has perfected his title in the suit property by adverse possession on the facts and circumstances of the case?"

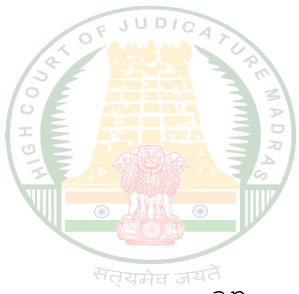


9.Heard both sides.

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10.The plaint states that the suit property belongs to the plaintiff's ancestor standing in the name of his father during the estate period. Later, by oral arrangement, it was allotted to him. So, the first para reads that the property belongs to him by way of oral family arrangement. Quite contra to this, in para 5, it has been stated by him that by long, open, peaceful possession, they prescribed title by adverse possession. It must be noted that plea of adverse possession is not taken in the alternative. The plaintiff ought to have exercised the option of election at the time of trial. But however, he has not chosen, either one of those pleas namely the plea on the basis of the title or on the plea of adverse possession by clear submission.

11.Reading of the evidence of PW1 shows that the plea of adverse possession was not taken. But the plea of ancestral title is stated and subsequent oral or family arrangement. Even though, the doctrine of election was not directly brought on record at the time of trial, but from the evidence of PW1 in the chief does indicate that he wanted to trace the title based upon the ancestral character.



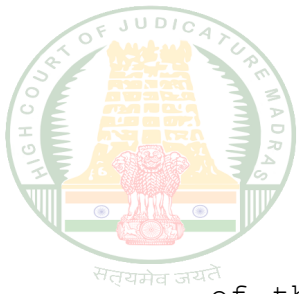
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12. Equally, it is admitted that the suit property is an Estate belongs to Uthumalai Jamin. Settlement proceedings were initiated. As per the settlement proceedings, the property was taken over by the Government and later, it was classified as 'assessed vacant site'. None was granted with patta during settlement proceedings.

13. It is also admitted by the plaintiff that neither his father, nor himself participated in the settlement proceedings. Even the patta granted during the estate period was not produced by him. He would admit that on the west, north and south, their family are having ancestral properties. Those properties were also in the Jamin area. He would further submit that in respect of those adjacent properties, their ancestors were granted Jamin patta. He was issued with patta during patta settlement proceedings for some other properties. Only for the subject property, patta was not issued in their name. Subsequent to the issue, it appears that no steps were taken by the plaintiff to get patta under settlement proceedings. He would further admit that he is a landlord.



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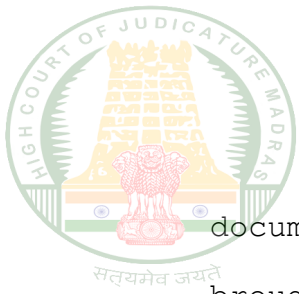
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14.Now in this context, we will go to the provisions of the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948. On the date of the notification, the entire estate lands vested with the Government and subject to the proviso C and D. The proviso is added protecting the right of the persons in possession. The revenue authorities were appointed for making enquiry in this regard to grant patta. Here, as mentioned above, no patta was granted during settlement proceedings, either to the plaintiff or to his father.

15.Now he says that he is in possession for more than the statutory period and prescribed title by adverse possession. But actually, as mentioned above, that plea was not taken by him during his evidence. But in the course of cross examination, the defendants put a suggestion that since because he was issued with 'B' memo, he cannot claim any right by adverse possession.

16.Now we will go to the documents produced by the plaintiff to show the alleged possession.

17.Ex.A4 series is the kist paid by the plaintiff's father namely Navaneethakrishna Thevar for various Fasili years for patta No.9, 391, 189 and 307. Whether these



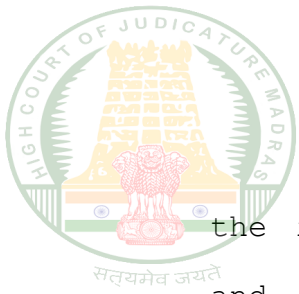
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documents related to the suit property is not properly brought on record by the plaintiff. As mentioned above, he would admit that no patta was issued, either in the name of his father or in his name. Unless the Patta Nos. 9, 391, 307 and 189 are produced, the plaintiff cannot take advantage on the basis of those documents for claiming possession. Except those documents, no other document worth considering to show the long possession is produced.

18.Ex.B3 is the 'B' memo issued to the plaintiff, wherein it has been stated that in Survey No.165/1, the plaintiff encroached the property by planting coconut trees.

19.Commissioner was appointed, he visited the property and filed report stating that several coconut trees are planted in the suit property. So, from these documents, we can only say that the plaintiff encroached the property and occupying the same as trespasser. The trespasser is not entitled for any permanent injunction against the true owner. Even for declaration, since he failed to establish his title i.e. pre-existing before the Tamil Nadu Estates (Abolition and Conversion into Ryotwari) Act, 1948 was introduced, even subsequent to



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the introduction of the Act, by showing the long, open and continuous possession, he is not entitled for any relief.

20.So, on that account, I find that the reversal judgment passed by the appellate court does not suffer from any illegality. The mistake committed by the trial court was corrected by the appellate court.

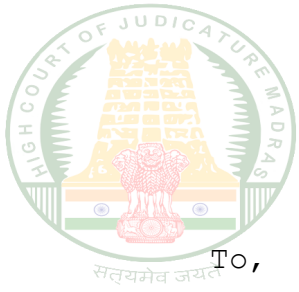
21.Accordingly, the substantial question of law is answered that the plaintiff failed to prove the title. The adverse possession plea was not raised at the time of trial, this substantial question of law does not arise.

22.In the result, this second appeal fails and the same is **dismissed**, confirming the judgment and decree of the appellate court, with costs.

28/03/2025

Index:Yes/No
Internet:Yes/No

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To,

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- 1.The Additional Sub Judge,
Tenkasi.
- 2.The II Additional District Judge,
Tirunevelli.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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