



SA No.545 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 19/03/2025

CORAM

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

SA No.545 of 2003

1.Pasubathi (Died) : 1st Appellant/Appellant/
Plaintiff

2.Soundraw Ambikai

3.Kannan

4.Uma

5.Sree Priya

6.Rajalakshmi : Appellants 2 to 6/
(Appellants 2 to 6 & L.Rs of the deceased
14th respondent brought on Sole Appellant
record as L.Rs of the deceased
Sole Appellant, vide Court
order, dated 18/12/2024 made
in CMP(MD)No.11707 of 2023
in SA No.545 of 2003)

Vs.

1.Ponnain (Died)

2.Rathinam

3.Perumal : Respondents 1 to 4/
Respondents 1,2 & 4/
Defendants 1, 2 & 4

4.Annapottu

5.Chellam : Respondents 4 and 5/
Respondents 5 and 6/
LR.s of the deceased
3rd Defendant

6.Jayalakshmi

7.Selvaganapathy

8.Rajarajan

9.Amutha

10.Vanitha

11.Manikandan

12.Sudha

13.Nithya : Respondents 6 to 13/
(Respondents 6 to 13 are
brought on record as L.Rs
of the deceased 1st respondent
vide court order, dated 30/06/2003)



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made in CMP(MD)Nos.4736 to 4738 of
2016 in SA No.545 of 2003)

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: 14th Respondent/L.R
of the deceased
sole appellant

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the decree and judgment passed in AS No.63 of 1998, dated 27/03/2002 on the file of the Sub Judge, Thiruchirappalli, confirming the decree and judgment passed in OS No.66 of 1987, dated 08/03/1993 on the file of the District Munsif, Ariyalur.

For Appellants : Mr.K.Vamanan

For 1st Respondent : Died (Steps Taken)

For R2 to R13 : Mr.K.Kumaravel

For 14th Respondent : Mrs.S.Bharathi

J U D G M E N T

This second appeal is filed against the decree and judgment passed in AS No.63 of 1998, dated 27/03/2002 by the Sub Judge, Thiruchirappalli, confirming the decree and judgment passed in OS No.66 of 1987, dated 08/03/1993 by the District Munsif, Ariyalur.

2.The plaint averments:-

The plaintiff's father Rajagopal Pillai constructed a thatched house in the suit property and living along with his family. After the death of his father, the plaintiff is in possession and enjoyment. The first



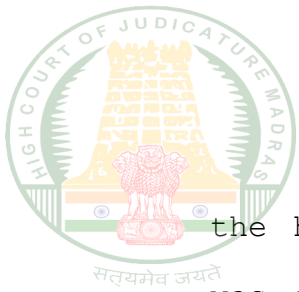
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defendant was an Ex-Village Munsif. He claimed some right over the property. After the abolition of Village Munsif post, the Government issued patta for the property in favour of the plaintiff and his father. There was some mis-description of property in the patta. So, it was submitted to the Revenue Divisional Officer for correction. When the patta was sent to the Village Administrative Officer, it was snatched by the first defendant. Neither the first defendant, nor his community people got any right over the property. The plaintiff and his ancestors continued in possession of the suit property and prescribed title by adverse possession. On 05/03/1987, the defendants tried to pull down the house. But it was prevented. So, the suit is laid for declaration that the suit property belongs to the plaintiff and for consequential injunction, costs.

3.**The statement:-** It is denied that the plaintiff's father constructed a house in the property and living with his family members for several years. But in fact, the house was constructed by the defendants predecessor or ancestor around 1925. The house in the suit property and poojanaimadam adjacent to it were originally constructed by Pattayadharar and maintained by Nattamai. Around 1925, one Maruthai Asari was permitted to live in



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the house. Later it became dilapidated. Around 1957, it was reconstructed by making repairs, etc. One Rajagopal Pillai was permitted to run a school in the building. Later, the school was shifted to some other place. Around 1964 onwards, the defendants are in possession and enjoyment. Around that year, the plaintiff's brother by name Senthamarai Kannan was appointed as Village Karnam. At that time, he had no house to reside. So, Senthamarai Kannan and his family members were permitted to occupy the house. The plaintiff was also living with Senthamarai Kannan in that house. The defendants revoked the permission and asked the plaintiff to vacate the same.

4.Later, additional statement was filed stating that the plaintiff was never in possession of the property as title holder. The plaintiff had no right or title over the suit property.

5.On the basis of the pleadings of both sides, the trial court formulated the following issues:-

(1)Whether the suit property belonged to the plaintiff and he has absolute right in the property?

(2)Whether the suit property owned by the defendants and whether the house



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situated in the suit property was constructed by them?

(3)Whether the plaintiff is residing in the suit house with the permission of the defendants?

(4)Whether the plaintiff is entitled to the relief of injunction against the defendants?

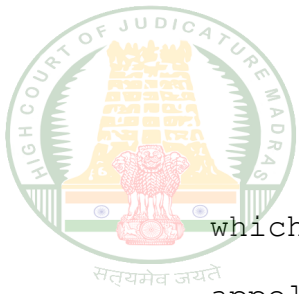
(5)To what other relief, the plaintiff is entitled to?

6.The following additional issue was framed on 22/01/1993:-

"Whether the plaintiff is entitled to the declaratory relief in respect of the right over the suit property?"

7.Before the trial court, on the side of the plaintiff, 3 witnesses were examined and 13 documents marked. On the side of the defendants, 4 witnesses were examined and 21 documents marked. The Commissioner's report and plan were marked as Exs.C1 and C2.

8.At the conclusion of the trial process, the trial court dismissed the suit without any costs. Against



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which, the plaintiff preferred appeal before the appellate court namely the I Additional Sub Court, Trichy, in AS No.63 of 1998. It came to the dismissed, confirming the judgment and decree passed by the trial court, dated 27/03/2002.

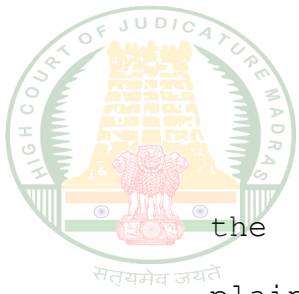
9.Against which, this second appeal is preferred by the appellants.

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

"Whether the dismissal of the suit filed by the plaintiff is sustainable in law, when both the courts below found that the plaintiff is in possession of the suit property with the permission of the defendants?"

11.Heard both sides.

12.Originally, the suit was filed for bare injunction. After full trial, the trial court dismissed the suit. Against which, appeal was preferred by the plaintiff/1st appellant herein to amend the plaint for the relief of declaration. It was allowed. Based upon which,



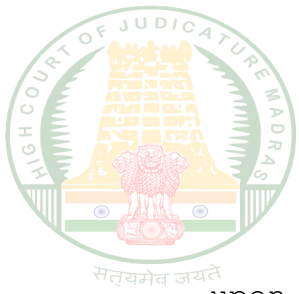
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the matter was remitted back to the trial court. The plaintiff was amended and the parties were permitted to lead further pleadings and evidence. Again after full trial, the trial court dismissed the suit. Against which, appeal was preferred and the appeal was dismissed concurrently finding that the plaintiff failed to establish his title over the suit property and consequently the suit was dismissed. Against the concurrent findings, this second appeal is preferred.

13. Being the suit for declaration and permanent injunction, the primary duty is cast upon the plaintiff to establish his title. Now it is the case of the defendants that the plaintiff is in permissive occupation of the house and never as the owner of the property. This is the simple ground made by the respondents before the trial court and the appellate court.

14. When the possession is admitted, now the learned counsel appearing for the appellants at the time of argument would submit that natham patta was granted in favour of the plaintiff. On that basis, they are still in possession. Apart from that, he would also submit that by long, open and continuous possession, he has prescribed title by adverse possession. On both counts, he failed before the trial court as well as the appellate court.



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15.A plea of adverse possession simultaneously based upon the tittle will not lie. Even though the plaintiff is entitled to plead alternatively, but he must stick either one of these two grounds at the time of starting of the trial process. It appears that no election was made by the plaintiff. He simply proceeded on the basis of these two pleas, which are mutually exclusive and not inclusive. This is the major defect available in the case of the appellants.

16.With this in mind, now we will go to the evidence available on record. Except the tax receipt and patta, no other title document is produced by the plaintiff. He has simply stated that his father constructed a house in the property, when his elder brother was working as Village Karnam. On that basis, patta was issued in his name. The plaintiff is bereft of particulars regarding the date of the entry into the possession, the date of the construction of the house by his father. After constructing the house, the father is living along with his brother and sister. He would further state that he was born and brought up in the house. So, he may not aware the date of construction of the house by his father. On his side, his brother was examined as PW2 after remand. He would say that the property is their



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ancestral property. In a partition, it was allotted to the plaintiff.

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17. But it is not the case of the plaintiff in the plaint or during evidence. The evidence of PW2 runs quite contra to the plaint pleadings and the evidence of PW1.

18. PW2 would further say that he was working as Village Karnam from 1954 to 1980. During his tenure, he recorded the demand notice in favour of his father. After the death of his father, he recorded the demand notice in the name of the plaintiff. From 1974 onwards, tax was standing in the name of the plaintiff. During his tenure, no patta was granted to any occupant in the village natham. The Door number is 4/49D. Previously, it was 4/49C. To his knowledge, none was issued with any patta. He would further admit that even before his birth, the house was constructed.

19. Reading of the evidence of PW2 does indicate that during his tenure only, he recorded the demand notice in favour of the plaintiff.

20. The adjacent house owner was examined as PW3 on the side of the plaintiff. He would say that till 1992,



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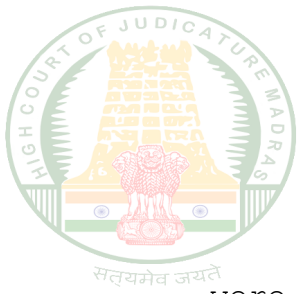
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he was living in the village, later went somewhere else.

His oral evidence need not be given any importance, since possession was admitted by the plaintiff.

21.Now we will go to the documents available. Ex.A1 is the house tax standing in the name of the plaintiff. The person, who examined as DW4 was Velayudham. He produced the demand registers for the house. From the records produced by him, as recorded by the trial court, right from the beginning, the demand registers for the house tax were standing in the name of other persons, except the plaintiff. He would admit that Exs.A1 and A4 were issued by him. As mentioned above, against Exs.A1 and A4, the documents produced by the defendants shows the above said fact. So, from Exs.A1 and A4, no finding can be recorded that he paid the tax as the owner of the house.

22.As admitted by PW2 during the course of his evidence, he recorded the demand notice in the name of the plaintiff. So, this document need not be given any importance showing the title of the plaintiff. When the record shows the contra fact, how suddenly the plaintiff was assessed with house tax was not properly explained by him. Probably, as stated above, on the basis of the possession started paying tax in his own name.



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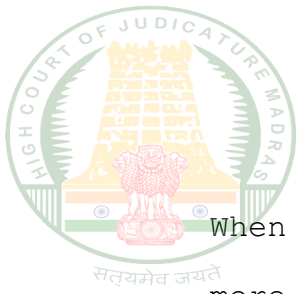
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23.After Exs.A1 and A4, it is seen that again taxes were paid by various persons representing Udayar community. Neither Exs.A1 and A4, nor tax receipt issued in favour of the defendants need be given any importance. Except Ex.A2, no other document of title is produced by the plaintiff.

24.Ex.A2 is the certificate of ownership of the house site. Wherein it has been stated that the plaintiff is in possession of the house site measuring 3 cents in survey No.216/1. So, this will not also confer tittle upon the plaintiff. Simply, it is certified showing his possession.

25.As mentioned above, the contention on the part of the plaintiff is that since the property is a village natham, recognizing his occupational right, patta was issued. But, as mentioned above, for the house situated in the suit property right from 1968 onwards, the defendants were shown as owners. So, Ex.A2 will not confer any title upon the plaintiff.

26.As observed by the trial court and confirmed by the appellate court, there is every possibility of permissive occupation right from the days of the plaintiff's father. Now the permissive occupation can be taken advantage by the plaintiff claiming title himself.



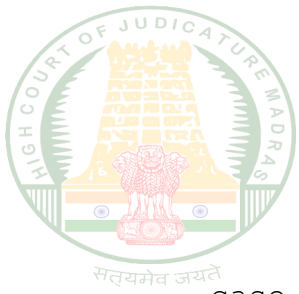
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When he failed to prove the tittle over the possession, mere long possession will not create any adverse tittle in his favour, more particularly, when the tax receipts are being issued in the name of both parties.

27. When the plaintiff is not able to substantiate his case over the tittle of the property, even the definite title in the case of the defendants will not enure to the benefit of the plaintiff. The trial court as well as the appellate court recorded a finding in favour of the defendants by drawing inference or probability.

28. DW1 would say that the house was constructed before 1925, but for the benefit of the villagers. One Maruthai Asari was granted permission and he was in occupation for about 30 years. In 1957, PW2 came to the village, was permitted to occupy the house. PW2 constructed another house. When he was asked to vacate the house, the suit was filed by him. He would further admit that no title document was available to him, except the house tax receipt. He also does not know the possession and title of the property, since he was aged about 48 at the time of examination. By Ex.A6, the plaintiff purchased a house on 16/07/1984. This shows that the plaintiff is having some other house site.



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29.DW2 is the son of Rajagopal. He supported the case of the defendants. He would say that his father was running a school in that property and later vacated it. During that time, he was working in the school under his father.

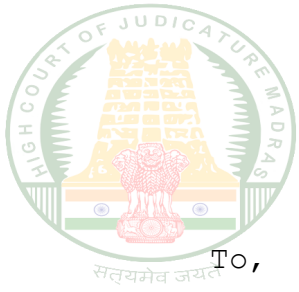
30.Nothing is brought on record to discard his evidence. The evidence of DW2 squarely supports the case of the defendants and against the case of the plaintiff.

31.DW3's oral evidence need not be given any importance, since he simply supports the case of the defendants. But the evidence of DW2 probabalises the defendants story. Against which, the plaintiff has not established the title and legal possession over the property. So, the substantial question of law framed does not arise at all.

32.In the result, this second appeal fails and the same is **dismissed** with costs, confirming the judgment and decree of the courts below.

19/03/2025

Index:Yes/No
Internet:Yes/No
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To,

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- 1.The Additional District Munsif,
Ariyalur.
- 2.The I Additional Sub Judge,
Trichy.
- 3.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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