



SA No.536 of 2003

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18/03/2025

CORAM

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

SA No.536 of 2003

and

CMP No.4693 of 2003

Kodiyarasu @ Kodiyan : Appellant/Appellant/
Defendant

Vs.

1.Ponnusami (Died) : 1st Respondent/
Respondent/Plaintiff
2.Rajivgandhi : 2nd Respondent/
(R2 is brought on record as LR of the deceased sole
respondent, vide Court Order, sold respondent
dated 09/12/2021 made in
CMP(MD)Nos.10238, 10239 and
10241 of 2021 in SA No.536
of 2003)

PRAYER: Second Appeal is filed under Section 100 of the Civil Procedure Code, setting aside the judgment and decree of the Subordinate Judge, Kulithalai, dated 19/04/2002 in AS No.86 of 1995 confirming the judgment and decree of the Additional District Munsif, Kulithalai, dated 18/03/1992 in OS No.281 of 1985.

For Appellant : Mr.S.Sridharan
for Mr.T.M.Hariharan

For 1st Respondent : Died

For 2nd Respondent : Mr.K.Govindarajan



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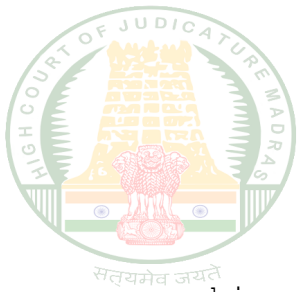
J U D G M E N T

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This second appeal is filed against the judgment and decree of the Sub Judge, Kulithalai, dated 19/04/2002 passed in AS No.86 of 1995 confirming the judgment and decree of the Additional District Munsif, Kulithalai, dated 18/03/1992 passed in OS No.281 of 1985.

2.The **plaint averments**:-

The suit property is a house with vacate site bearing Door No.3-10. It originally belongs to one Haritheertham Iyar and his brother Mani. The plaintiff purchased the property from them on 26/11/1984 for valid sale consideration. At that time, one Raju Pillai was a tenant at the monthly rate of Rs.15/-. He died and later, his wife Lakshmi Ammal vacated the premises. The plaintiff was put in possession. At that time, he was in Pattukottai. He came down to the village in December 1984 for occupation. At that time, the defendant interfered into the possession, for which he has no right. Even a criminal case was registered against the defendant for assaulting the plaintiff. Since, the defendant denies the title of the plaintiff, the plaint was amended seeking the relief of declaration and consequential permanent injunction and in the alternative for recovery of possession, *mesne* profit, costs, etc.



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3.The statement:-The title of the plaintiff through his vendors namely Haritheertham Iyar and Mani are denied. The suit property never belonged to them. The sale deed is also denied as false. So also the tenancy in favour of one Raju Pillai is also denied. So also handing over possession to the plaintiff by Lakshmi Ammal. The defendant is in possession of the property for several years. He purchased an extent measuring about 20' x 15' on the east of the Door No.3/10 from one Rasu Pilllai, on 09/03/1984. Till now, the defendant is paying the tax. The four boundaries on ground differs from the four boundaries mentioned in the sale deed of the plaintiff.

4.On the pleadings of both parties, the following issues were framed by the trial court, on 06/02/1992:-

(1)Whether the plaintiff is entitled to the relief of declaration and consequential permanent injunction in respect of the suit property?

(2)In the alternative, whether the plaintiff is entitled to the relief of declaration and possession in respect of the suit property?



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(3)Whether the plaintiff is entitled to claim damages from the date of claim?

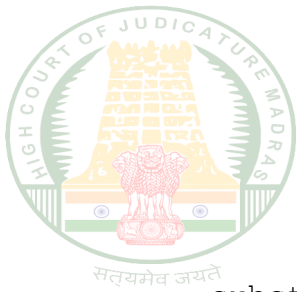
(4)Whether the defendant has any right in the suit property?

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

4.On the side of the plaintiff, 4 witnesses were examined and 8 documents marked. On the side of the defendant, 2 witnesses examined and 10 documents were marked. The Commissioner's report and plan were marked as Exs.C1 and C2.

5.At the conclusion of the trial process, the trial court decreed the suit for declaration and for recovery of possession. In respect of mesne profit, it was dismissed. Against which, the defendant preferred appeal before the appellate court namely the Sub Judge, Kulithalai in AS No.86 of 1995. It also came to be dismissed, confirming the decree and judgment passed by the trial court.

6.Against the concurrent findings of the courts below, this second appeal is preferred by the defendant as appellant.



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7. At the time of admission, the following substantial questions of law were framed:-

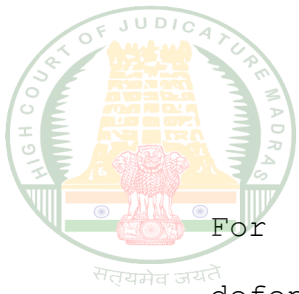
(1) Whether the Courts below are right in decreeing the suit finding fault with the defence of the appellant overlooking that it is for the plaintiff/respondent to establish every link in his title in the suit for title and possession?

(2) Whether the Appellate Court has not misdirected himself in not framing the points for consideration in the Appeal?

8. Heard both sides.

Substantial question of Law No.1

9. At the time of hearing, the learned counsel appearing for the appellant would draw the attention of this court to the discussion made by the trial court in para No.8. The discussion started from the angle of the defendant's case. Issue No.4 was framed as to whether the defendant has got any title over the property. Actually, that issue ought to have been recasted to the effect that whether the plaintiff had title over the suit property.



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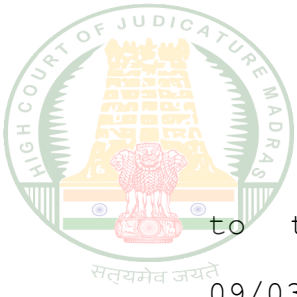
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For answering the title, it took up the case of the defendant first. It may be a wrong in fact and law. Whether answering the 4th issue, even before taking of the title of the plaintiff is correct, the question to be considered.

10.Before the appellate court, the title of the plaintiff was taken up first for discussion. So, the wrong committed by the trial court was corrected by the appellate court in taking the issue of title of the plaintiff first. Now the very same issue cannot be framed in the form of substantial question of law in the second appeal.

11.Now leaving the findings of the trial court for a while, we will go to the findings of the appellate court.

12.The plaintiff traces title to the suit property through the sale deed, dated 26/11/1984 (Ex.A1). Subsequently, the house tax for Door No.10 was changed in the name of the plaintiff under Ex.A2. He was paying the tax under Exs.A3 and A4. To prove that the property was allotted to Haritheertham Iyar in a partition, on 08/03/1928, Ex.A7 was produced. Contra to this or against to the tracing of title, the defendant traces his title



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to the property through the sale agreement, dated 09/03/2004 under Ex.B9. Now, according to the defendant, neither the plaintiff, nor his predecessors-in-title have any right or title over the property. Since both of them claim rival title over the property, the burden of proof pales into insignificance. This is the settled proposition of law. But *prima facie*, it is the duty of the plaintiff to prove his title. So, the appellate court has rightly taken up the case of the plaintiff at the first instance.

13.Now the question, which arises for consideration is which one of these two documents whether Ex.A1 or Ex.B9 will prevail.

14.As mentioned above, Ex.A7 is the title document of Haritheertham Iyar. The vendor of the plaintiff is examined as PW3. In Ex.A7, the suit property is shown as 6th item in C schedule. Item No.6 in C schedule in Ex.A7 reads as under:-

"6.சர்வே 227/2 தீர் நத்தம்
புறம்போக்கில் வடக்கு அக்கிரஹாரம்
கிழமேல் வீதிக்கும் வடக்கு 4 லக்கமிட்ட
வெங்கட்ராமய்யர் வீட்டிற்கு கிழக்கு கிழமேல்
நாராசத்துக்கு தெற்கு பாட்னம் சேஷய்யர்
குமாரன் பாலசுப்பிரமணிய்யர் காலி மனைக்கு



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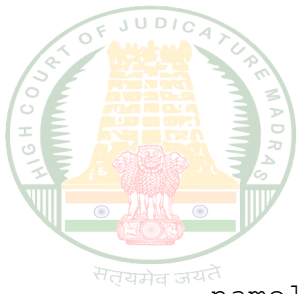
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மேற்கு இதற்குட்பட்ட கிழமேல் ஜாதியடி 32
தென்வடல் ஜாதியடி 160 ல் கிழபுறம் பாதிக்கு
கிழமேல் ஜாதி அடி 16 தென்வடல் ஜாதி அடி
160ல் உள்ள கெட்டி மெத்தை கூறைதகட்டு
கதவுகள் நிலைகள் கீழ்நிலம் காலி நிலம்
உட்பட வீடு 1 மதிப்பு”

15.Reading of the description of the property indicates that a concrete house was available even at the time of Ex.A7.

16.Now, we will go to the sale deed Ex.A1, which is dated 26/11/1984. So, tracing of title by the plaintiff through PW3 stands established. Nothing was brought on record by the defendant during the course of cross examination of PW3 regarding the title of the plaintiff.

17.Further, PW3 would say that the property was leased out to one Raju Pillai at the monthly rent of Rs.15/-. He died leaving behind his wife Lakshmi Ammal. Later, the property was sold by them to the plaintiff through Ex.B1. Lakshmi Ammal vacated the premises. After the sale, the property was handed over to the plaintiff by handing over the key.



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18.Now we will go to the evidence of Lakshmi Ammal namely PW2. PW2 is the wife of Raju Pillai to whom PW3 and his brother leased out the property. She would say that the property belongs to PW3 and his brother. She was in occupation as tenant. After his death, she handed over the possession to the plaintiff. Her husband has no right over the property, he is only a tenant.

19.Nothing is available on record to disbelieve the evidence of PW2. If really her husband got any right over the property, she would not have supported the case of the plaintiff. So, it is *prima facie* established on the side of the plaintiff that the plaintiff got title over the property.

20.Now, as mentioned above, we will go to the title claimed by the defendant through Ex.B9.

21.Ex.B9 reads that even though, it is typed as agreement, in effect, the possessory was sold for occupation. It appears that only occupational right was given to the defendant. So, it cannot be termed as outright sale. In fact, Raju Pillai has no right or title over the property to sell it. He was only a tenant. The tenant cannot convey occupational right in favour of a



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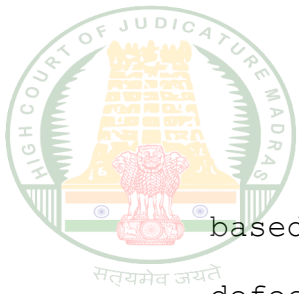
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third party. More-over, as pointed out by the trial court as well as the appellate court, occupational right was given only in respect of a portion lies on the east of Door No.3/10. Without any document of title, Raju Pillai has entered into such an agreement with the defendant. This will not prevail over the document of title of the plaintiff.

22.Since the possession of Raju Pillai was admitted by the plaintiff as tenant, how he was able to pay the tax for the house is not clear on record. Even if it is seen that Raju Pillai was paying tax, as mentioned above, those documents are not based upon the title. Payment of tax will not create any title in favour of any one. So, the appellate court has rightly decided the issue and did not cast the duty upon the defendant. So, the first substantial question of law does not arise at all. The trial court and the appellate court rightly decreed the suit as prayed for with costs.

Substantial question of law No.2:-

23.The appellate court has framed only one point whether the appeal got to be allowed. It is a mistake on the part of the appellate court in not framing the correct point for consideration. But it does not affect the ultimate conclusion. The conclusion was reached,



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based upon the proper appreciation of facts. On that defect, the ultimate conclusion is not affected. Accordingly, the second substantial question of law is answered.

24.In the result, this second appeal fails and the same is **dismissed** with costs, confirming the judgment and decree of the appellate court. Consequently, connected CMP is closed.

18/03/2025

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

- 1.The Additional District Munsif,
Kulithalai, Karur District.
- 2.The Sub Judge,
Kulithalai, Karur District.
- 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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