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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19-11-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 26 of 2007 & **M.P.No.1 of 2007**
CNR: {HCMA010102142007}

Case QR

1. Perumal
   S/o. Pavadai
2. Janakiraman
   S/o. Perumal
3. Ramamurthy
   S/o. Perumal

..Appellant(s)

Vs

1. JAGARUNNISSA(Died)
   W/o. Abdul Razak
2. Nagarajan
   S/o. Perumal
3. ABDUL HAMEED -died
   S/o. Balaji Sahab
4. KATHEEJA BEGAM - LR of R3
   W/o. Abdul Hameed
5. Abdul Rahman
6. Riana Begum
7. Bajeel Mohamad
8. A.Rahamanthunnaha
   D/o Adbul Razak
9. Muhamed Tajuddim
10. M R Hithayaithunnisa
11. Mohamed Nasunidaen

..Respondent(s)

R3 died, R4 to R7 brought on record as LRs of the deceased R3 viz., Abdul Hameed vide court order dated 22/07/2021 made in CMP 27791/2019 in SA 26/2007 (AQJ)

R1 Died, RR8 to 11 are brought on record as lrs of the deceased R1 vide court order dated 02/09/2026 made in CMP.No.18863 of 2026 in SA.No.26/2007(PDBJ)

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Prayer: Second Appeal has been filed under Section 100 of C.P.C., to set aside the Judgment and Decree passed in A.S.No.55 of 2004 dated 07.01.2005 on the file of the Sub Court, Chidambaram reversing the Judgment and Decree dated 27.02.2004 made in O.S.No.15 of 2000 on the file of the District Munsif Court, Porto Nova.

For Appellant(s): Mr.A.B.Gowtham Raj for
Mr.T.K.Bhaskar

For Respondent(s): Mr.J.Chandran Sundar Sashikumar for
M/s Mythili Srinivas for R8 to R11
R1 And R3 - Died (steps Taken)
R5 to R7 – served – No appearance

J U D G M E N T

This Second Appeal has been preferred as against the Judgment and Decree passed by the Subordinate Judge, Chidambaram, in A.S. No. 55 of 2004 dated 07.01.2005. The appellants are the defendants 1, 2 and 4. The 1st respondent herein has filed the suit for permanent injunction as against the defendants therein and the said suit was partly decreed, except the ten cents, for the remaining cents, the plaintiff was granted permanent injunction. Aggrieved by the said decree and judgment, the plaintiff has preferred an appeal in A.S. No. 55 of 2004 on the file of the Subordinate Judge, Chidambaram. The First Appellate Court allowed the appeal and decreed the suit in its entirety. As against the said decree and judgment, the defendants 1, 2 and 4 have preferred this Second Appeal.

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2. For the sake of convenience and brevity, the parties herein are referred to as plaintiff and defendants, as referred before the trial court.

3. The case of the plaintiff before the trial court is that the plaintiff is the owner of the suit property and the same was purchased through sale deed dated 7.11.1975 and she has been in possession and enjoyment of the property. The plaintiff also obtained separate patta and except the plaintiff, no one is entitled to suit property. While so, the defendants 5 and 6, due to misunderstanding with the plaintiff, instigated 1 to 3 defendants and attempted to interfere with the possession and enjoyment of the suit property. Further, the defendants attempted to lay a fence over the suit property and the same was averted by the plaintiff and therefore, the plaintiff filed the suit.

4. The case of the 1, 2 and 4 defendants is that the total extent of the suit property is 5.84 acres. These defendants and their father are the owners of the property. In the year 1951, the 1st defendant and his father leased out the property to an extent of Ac.2.12 cents to one Boorasamy Padayachi and the said Boorasamy Padayachi and his family are in possession of the property as lessee. He was also paying lease amount to the defendants. The said Boorasamy Padayachi died eight years

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back and now his son Raguraman is entitled to the property as a lessee. Out of 5.84 acres, 0.12 cents was given to Raguraman for lease and he was also permitted to run a mechanic workshop and therefore, he was running a workshop. Thereafter, in the year 2001, the defendants 1, 2 and 4 sold the property to Raguraman. The plaintiff is not in possession and enjoyment of the property at any point of time. Therefore, the suit is liable to be dismissed.

5. The defendants 5 and 6 filed written statement denying the averments made in the plaint and they admitted that the entire properties belonged to the plaintiff. The defendants 5 and 6 are in no way connected to the suit property and the defendants 1 to 4 are also third parties and the defendants have no any right over the property. Already the suits in O.S. Nos. 476, 477 and 478 of 1996 were filed and the same ended in favour of these defendants and the appeal was also preferred by the plaintiff and the same was also dismissed. Now the Second Appeal is pending. There was an enmity between the plaintiff and the defendants, thereby the plaintiff included these defendants with ill motive. The 6th defendant filed E.P. No. 40 of 1999 to attach the properties of the plaintiff and thereby included the defendants, thereby the suit is liable to be dismissed.

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6. Based on the above said pleadings and after hearing both sides, the trial court has framed the following issues for trial.

"1. Whether the plaintiff is in possession and enjoyment of the property?

2. Whether the plaintiff is entitled to permanent injunction?

3. To what other reliefs the plaintiff is entitled to?"

Before the trial court, on the side of the plaintiff, witnesses, Pws.1 and 2 were examined and marked Exhibits A1 to A15. On the side of the defendants, witnesses, Dws.1 and 2 were examined and marked Exhibits B1 and B2. After analysing the evidences adduced on both sides, the trial court partly decreed the suit except 10 cents, for the remaining extent, granted permanent injunction.

7. Aggrieved by the Judgment and Decree passed by the trial Court, the plaintiff has preferred an appeal against the dismissal of the suit for the remaining extent of 10 cents before the Subordinate Judge, Chidambaram, in A.S. No. 55 of 2004 on various grounds. The First Appellate Court framed the following points for determination:

"1.Whether the entire suit property is in possession and enjoyment of the plaintiff?

2. Whether the appeal has to be allowed?

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3.To what other reliefs the appellant is entitled to?"

The First Appellate Court after considering the evidences and after evaluating the documents produced on both sides, allowed the appeal by setting aside the decree and judgment of the trial court and decreed the suit in its entirety.

8. As against the decree and judgment passed by the First Appellate Court, the defendants 1, 2 and 4 have preferred this Second Appeal. This Court, on 20.01.2007, has admitted the Second Appeal on the following Substantial Question of Law:

"Whether non-consideration of Ex.A15 which was relied upon in the trial court, will not vitiate the Judgment of the appellate court?"

9. The learned counsel appearing for the appellants would submit that the appellants are the defendants 1, 2 and 4 and the 1st respondent has filed the suit for the relief of permanent injunction claiming that she purchased the property through sale deed dated 07.11.1975. Thereafter, she cultivated casuarina in the suit property and she also obtained patta and defendants have attempted to interfere with the plaintiff's possession and enjoyment of the property, thereby she filed the suit. In fact, the suit survey number has an extent of 5.84 acres. These defendants and their father owned the entire extent of the above said

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property. The 1st defendant and his father leased out the said property to an extent of 2.12 acres on the southern side of the suit property in favour of Boorasamy Padayachi in the year 1951 and he has been cultivating the land as cultivating tenant. After his demise, his son, has been in possession and enjoyment of the property. Thereafter, on the south eastern portion, 12 cents was sold to Raguraman and he is in possession and enjoyment of the property.

9.1. The defendants are not in possession and enjoyment of the property and the said Raguraman and his family members are cultivating the land. Therefore, the trial court granted decree by excluding 10 cents belonging to Raguraman, as against the said Judgment and Decree, the plaintiff has preferred the appeal. The First Appellate court, erroneously decreed the suit in its entirety and the First Appellate Court failed to consider that the trial court excluded 10 cents from the suit property, since it was in constructive possession of the appellants through the tenant Raguraman. The First Appellate Court failed to consider that under Exhibit A15, Tamil Nadu Electricity Board, has issued notice to the said Raguraman in respect of the portion of the property, which was within his possession and the First Appellate Court erred in holding that the said Raguraman did not enter into the witness box, who is only a

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tenant and the appellants are in constructive possession through him. Therefore, the judgment and decree passed by the First Appellate Court are liable to be set aside.

10. The learned counsel appearing for the respondents 8 to 11 would submit that the respondents 8 to 11 are the legal heirs of the 1st respondent/plaintiff and the 1st respondent has filed the suit for permanent injunction. In fact, the 1st respondent has purchased the property through sale deed dated 7-11-1975. Thereafter, patta was also granted in her favour and she is in possession and enjoyment of the property. Since the defendants interfered with the possession and enjoyment of the property, the plaintiff filed the suit. The defendants are claiming the entire property of 5.84 acres in the suit survey number and they leased out the land to one Boorasamy Padayachi and after his demise, they sold the property to an extent of 0.12 cents to the son of Boorasamy Padayachi and thereby the entire extent of 2.12 acres are in possession and enjoyment of Raguraman and his family, thereby the defendants are in constructive possession. The plaintiff proved the case by examining witnesses P.W.1 and P.W.2 and by marking Exhibits A1 to A15, whereas the defendants have failed to prove their case. However, the trial court, granted decree excluding 10 cents belonged to Raguraman. As against the said decree and judgment, the defendants

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have not preferred the appeal and without preferring the appeal, they cannot agitate rights in respect of the said property and thereby accepted the trial court judgment. However, the plaintiff preferred an appeal and the First Appellate Court after considering the evidences correctly decreed the suit in its entirety by setting aside the judgment and decree passed by the trial court. Therefore, the judgment and decree of the First Appellate Court are based on evidences and the Second Appeal is liable to be dismissed.

11. This Court heard both sides and perused the records.

12. In this case, the plaintiff has filed a suit for permanent injunction as against the defendants claiming that suit property belongs to plaintiff through sale deed dated 7-11-1975 and patta was also granted in her favour and thereby she is in possession and enjoyment of the property. The defendants attempted to interfere with the possession and enjoyment of the property, thereby, the plaintiff filed the suit. The defendants resisted the suit that the total extent of the property is Ac.5.84 cents and the entire property belongs to the defendants. The defendants 1, 2 and 4 and 1st defendant's father owned entire extent of the property. The 1st defendant and his father leased out the property to an extent of 2.12 cents on the southern side in favour of Boorasamy Padayachi in the year 1951. Thereafter, they sold 0.12 cents in favour of

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son of Boorasamy Padayachi, namely Raguraman through sale deed dated 18-1-2001. Thereafter the said Boorasamy Padayachi died, after demise of Boorasamy Padayachi, Raguraman and his family are in possession and enjoyment of the property and these defendants are in constructive possession.

12.1. To prove the case of the plaintiff, witnesses P.W.1 and P.W.2 were examined and marked Exhibits A1 to A15. Further, through Exhibit A.1, sale deed dated 7-11-1975, the plaintiff purchased the property from one Chinnathambi Padayachi. As per Exhibit A.5, UDR patta was granted in favour of the plaintiff and the plaintiff also produced Exhibit A.2 kists receipts series and the plaintiff also produced Exhibits A.10 dated 2-5-1955, parental deed for the Exhibit A1. Further, PW2 who is adjacent land owner also deposed that plaintiff is in possession and enjoyment of the property, whereas the said Raguraman illegally encroached the property and running workshop. Therefore, from the evidence of the plaintiff's side, they revealed that the plaintiff purchased the property through Exhibit A1 and she has been in possession and enjoyment of the property. Whereas the defendants' side evidence shows that total extent of property in survey number 70/7 is 5.84 acres and as per Exhibit B2, the property belonged to Perumal Padayachi. The

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said Perumal Padayachi and his father Pavadai Padayachi sold the property to Janakiammal in the year 1953. Exhibit B.2 is the certified copy of the sale deed purchase by Chinnathambi Padayachi from Janakiammal. Therefore, the defendants have to prove that the property originally belonged to them and they leased out the property to Boorasamy Padayachi to an extent of Ac.2.12 cents on the southern side of the property, but there are no evidences produced by the defendants to prove their contention. Further, contention of the defendants is that the 0.12 cents was sold to Raguraman through sale deed dated 18.01.2001. In order to prove that the property originally belonged to defendants and they leased out to Boorasamy Padayachi and others, there is no proper evidence adduced by the defendants. The said Raguraman is also not party to the suit and he was also not examined as one of the witnesses on the side of the defendants.

13. Further, as per Exhibit B2, the southern side property was sold in the year 1953 by mentioning northern boundary as their land and within the same boundary, they did not retain any property. While so, the defendants cannot claim the property already sold. Therefore, the defendants failed to prove their contention. As per Exhibit A5, the survey number 70/7B3 belongs to the plaintiff, but according to Exhibit

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B1, patta, SF numbers 70/7B1, 70/7B2 has been mentioned. Therefore, defendants 1 to 4 have no any right over the property which was already sold. After sale of the property in the year 1953, the defendants without disclosing the same, projected the theory of lease to one Boorasamy Padayachi. Therefore, the theory of the defendants is not acceptable and the plaintiff established her case through proper documents and thereby the plaintiff is entitled to decree for the entire extent of the property, but the trial court without considering the evidences in a proper perspective, without any document, by excluding the ten cents, decreed the suit for the remaining extent. However, the First Appellate Court, after considering the evidences in a proper perspective, decreed the suit in its entirety.

14. As far as the Substantial Question of Law, viz., *whether the non-consideration of Exhibit A15 which was relied upon by the trial court, will not vitiate the judgment of the First Appellate Court* is concerned, the plaintiff has produced Exhibit A15 notice dated 28.08.2001 issued to the Junior Engineer. The suit is filed based on the title deed/sale deed Exhibit A.1 in favour of the plaintiff and the plaintiff also produced other revenue records to show the possession of the property. Since the plaintiff has filed the suit for permanent injunction, the Court has to see

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as to who is in possession of the property and the plaintiff has proved her possession through sufficient documents, thereby Exhibit A15, which is notice issued to the Junior Engineer, is not a vital document to decide the case of the plaintiff. Therefore, the non-consideration of Exhibit A15 which was relied upon by the trial court, will not vitiate the judgment of the First Appellate Court.

In view of the above said discussions, the Substantial Question of Law is answered as against the appellants and the Second Appeal has no merits and deserves to be dismissed. Accordingly, the Second Appeal is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

19-11-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

ssd

To
1. The Sub Court,
Chidambaram
2. The District Munsif Court,
Porto Nova.
3. The Section Officer,
VR Section, High Court, Madras

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P.DHANABAL, J.

ssd

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