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SA No. 823 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2026

CORAM

THE HON'BLE DR.JUSTICE R.N.MANJULA

S.A. No. 823 of 2009
and M.P. No.1 of 2009

1. Nagarajan,
S/o Thiruppathi.
2. Raghu,
S/o Narasimha Reddy.
3. Chinnasamy Reddy
S/o Govinda Reddy.

All are residing at:

Mettu Street,
Sogathur Post,
Dharmapuri Taluk & District.

..Appellant(s)

Vs

1. Chinnasamy
S/o Periamakkan.
2. K.Doraisamy
S/o Gundu @ Kuppusmy.
3. Chinnaraj
S/o Chinnan Mettu
4. Chinnakannu
S/o Gengankottai @ Perumal
5. Jagadeesan
S/o Govindasamy



6. Madhappan (died)

S/o Chennaiyan

All residing at:

Mettu Street,

Sogathur Post,

Dharmapuri Taluk & District.

*(Amended as per the order of this Court dated
02.12.2025)*

..Respondent(s)

PRAYER – This Second Appeal is filed under Section 100 of the Code of Civil Procedure against the judgment and decree of the Subordinate Court at Dharmapuri dated 26.02.2009 in A.S.No.62 of 2005, reversing the judgment and decree of the District Munsif Court at Dharmapuri dated 20.10.2004 in O.S.No.183 of 2000 interalia.

For Appellant(s):

Mr.G.Rm.Palaniappan

For Respondent(s):

No representation

J U D G M E N T

The Second Appeal has been preferred challenging the judgment and decree of the learned Subordinate Judge, Dharmapuri dated 26.02.2009 made in A.S.No.62 of 2005. The plaintiffs are the appellants. The suit has been filed by the plaintiffs in O.S.No.183 of 2000 before the District Munsif Court, Dharmapuri for seeking the relief of permanent injunction. The suit has been decreed. The First Appeal has been filed by the defendants challenging the said judgment and decree in A.S.No.62 of 2005 and that has been allowed. Aggrieved over that, this Second Appeal has been preferred by the Plaintiffs.



The short facts pleaded in the plaint are as follows:-

2.The suit property belongs to Arulmighu Pillayar Thiru Kovil, Sri Kangadhevan Swamy Kovil and Selliamman Thiru Kovil and are being managed by Hindu Religious and Charitable Endowments (hereinafter referred to as H.R. & C.E., in short) department. The plaintiffs have been in possession of the suit property as cultivating tenants for more than 40 years by paying the lease amounts regularly. As the plaintiffs are in the possession of the suit property, the defendants have got no right of possession or enjoyment over the same. As the defendants tried to interfere with the peaceful possession of the plaintiffs in the suit property, he has filed the suit seeking the relief of bare injunction.

The Written statement in brief:-

3.The plaintiffs are not entitled to the relief as prayed. It is false to state that the 1st plaintiff has been in enjoyment as cultivating tenant for more than 40 years. The plaintiffs are not in possession and enjoyment of the suit property as claimed by them. Hence, it is not possible for the plaintiffs to prove their possession. Public auction has been entered in respect of the suit property and in which the plaintiffs, defendants and some important persons in the village have affixed their signature. The appropriate party to the suit is H.R & C.E



department. But the plaintiffs have filed the suit without impleading them as necessary party.

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4. The defendants 3 to 5 were already set exparte.

5. On the basis of the above pleadings, the Trial Court has framed the following issues:-

"1. வாதிகள் பிரதிவாதிகளுக்கு எதிராக நிரந்தர உறுத்துக்கட்டளை பரிகாரம் பெற அருகதை உடையவர்களா?

2. எத்தகு பரிகாரங்களுக்கு வாதிகள் உரியவராவார்கள்?"

6. During the course of the trial on the side of the plaintiffs, two witnesses were examined as P.W.1 & P.W.2 and Exs.A1 – A36 were marked. On the side of the defendants, the 3rd defendant has been examined as D.W.1, the 2nd defendant has been examined as D.W.2 and one Mr.Ramalingam, who is the Village Administrative Officer has been examined as D.W.3 and Exs.B1 to B8 were marked.

7. At the conclusion of the trial and considering the evidences available on record, the Trial Court has decreed the suit and the First Appeal preferred by the defendant has been allowed by reversing the judgment of the Trial Court.



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8. Now, the Second Appeal has been preferred by the plaintiffs and the same has been admitted by raising the following substantial questions of law:-

“(1) Whether the possession of the appellants has been proved by Exs.A1 to A36, notice issued by the H.R. & C.E., Department and tax receipts, if so, is the lower appellate court is correct in law in non-suiting the appellant’s claim for injunction?”

(2) As it is a settled proposition of law that even a trespasser is entitled to protect his possession, by approaching the Court for injunction, whether the appellants, who are lessees of the suit properties, not entitled to protect their possession from wrongful interference caused by respondents 1 to 5/strangers as stated by the appellants?

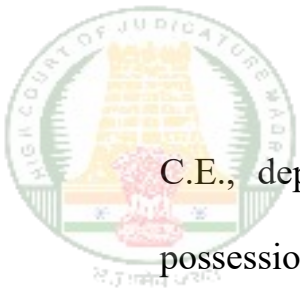
(3) Whether the lower appellate Court is correct in law in reversing the judgment of the trial Court on a total misappreciation of the pleadings and evidence as claimed by the appellants?”

9. Heard the learned counsel for the plaintiffs. There is no representation for the respondents. The 6th respondent who is the co-plaintiff has died. The appellants have not chosen to implead any legal heirs of the 6th respondent who is the 4th plaintiff in the suit. Endorsement has been made to give up against the 6th respondent. The amendment as to the death of the 6th respondent shall be carried out in the cause title as well.



10.The fact that the suit property is the temple property and has been managed by the H.R & C.E., department is not in dispute. The contention of the plaintiffs is that the defendants who are third parties interfered in their peaceful possession and enjoyment of the suit property. Despite the Trial Court has decreed the suit, on being satisfied with the plaintiffs possession of the suit property, the First Appellate Court had chosen to dismiss the suit for the sole reason that the appellants/plaintiffs have not impleaded the true owner namely the H.R & C.E., department as party to the suit. The appellants/plaintiffs have only claimed the relief of permanent injunction and have not claimed any relief of declaration.

11.The contentions of the defendants/respondents in the suit by way of filing the written statement is that the public auction has been conducted in respect of the temple property and they are in possession of the suit property or they have been recognized as tenants in the suit property and that the appellants /plaintiffs are not in possession. It is their further contention that the plaintiffs /appellants have not paid any lease amount to the temple and without paying the same, they are not entitled to claim any possession over the suit property. The plaintiffs' documents Exs.A1 to A36 would only show that the plaintiffs have been paying the land tax and the lease amount to the authorities concerned. Ex.A1 is an important document which would show that the H.R &



C.E., department has also given notice to the plaintiffs recognizing their possession over the suit property. The suit property is temple property. It is also claimed by the defendants that decision has been taken in the village that the lease of the suit property has been conducted through public auction.

12. The defendants are not the owners to conduct such auction in respect of the suit property. Only because the defendants are aware of the interest of the H.R & C.E., department over the suit property, it has been stated that they should be impleaded as parties to the suit. Having said that, the defendants ought to have complained to the H.R & C.E., themselves, in case the appellants/ plaintiffs are in possession of the suit property without paying any legal dues. They could have verified from the H.R & C.E. whether H.R & C.E., has been collecting the dues from the plaintiffs in its capacity as the lawful manager of the suit properties.

13. The 3rd defendant who has been examined as D.W.1 has stated in his cross-examination that he did not know whether the plaintiffs are paying the dues to the H.R & C.E., department. So far as the defendants are concerned, they did not pay any dues to the H.R & C.E., and they were not recognized as the persons who can be in the lawful possession and enjoyment of the suit



property. When the suit properties are under the control of the H.R & C.E., the defendants cannot claim that the suit properties are under the control of the village head persons and they have taken possession and leased out the suit property in public auction. Even though the 3rd defendant has produced 3 receipts to show that he was paying the land tax in respect of the suit property, he has admitted in his evidence that he did not pay any dues to H.R & C.E., department. So it is for the H.R & C.E., to take action against the plaintiffs in case they commit any default in paying their dues to H.R & C.E., intends to evict the plaintiffs for any other reasons. In fact, it is the H.R & C.E., department, who has to state before the Court whether the plaintiffs are in lawful possession of the suit property by getting their permission.

14. So far as the plaintiffs are concerned, they have been cultivating the suit properties for many years to the knowledge of the H.R & C.E., or with their permission. To substantiate the same, they have also filed documents which were marked as Exs.A1 – A36. As stated already, the H.R & C.E., department has issued notice to the plaintiffs vide Ex.A1 dated 27.07.1990, demanding the plaintiffs to pay the arrears. On perusal of the said notice, it is seen that it is in respect of the temple property belonging to the Arulmighu Thiru Pillayar Kovil. The said notice would also show that the plaintiffs are not regular in paying the dues to H.R & C.E. But for the reasons best known to H.R & C.E., no action has



been taken so far to evict the plaintiffs and recover possession. One thing which is clear from the evidence produced on the side of the plaintiffs is that the plaintiffs have been in settled possession and enjoyment of the suit properties and that the defendants have no better right to be in possession of the suit property.

15.If a person is in settled possession of the property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed even by the owner of the property, except by seeking proper recourse through law. In this regard, it is relevant to cite the judgment of the Hon'ble Supreme Court of India in ***Krishna Ram Mahale (dead), by his Lrs. vs. Shobha Venkat Rao*** reported in ***(1989) 4 SCC 131***. The relevant paragraphs of the said judgment reads as follows:-

“8. Mr. Tarkunde, learned Counsel for defendant No. 3, the appellant herein, rightly did not go into the appreciation of the evidence either by the Trial Court or the High Court or the factual conclusions drawn by them. It was, however, strongly urged by him that the period of licence had expired long back and the plaintiff was not entitled to the renewal of licence. It was submitted by him that in view of the licence having come to an end, the plaintiff had no right to remain in charge of the business or the premises where it was conducted and all that the plaintiff could ask for was damages for unlawful dispossession even on the footing of facts as found by the High Court. We find ourselves totally unable to accept the submission of Mr. Tarkunde. It is a well-settled law in this country that where a person is in settled possession of



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property, even on the assumption that he had no right to remain on the property, he cannot be dispossessed by the owner of the property except by recourse to law. If any authority were needed for that proposition, we could refer to the decision of a Division Bench of this Court in *Lallu Yeshwant Singh v. Rao Jagdish Singh and Ors.* . this Court in that judgment cited with approval the well-known passage from the leading privy Council case of *Midnapur Zamindary Company Limited v. Naresh Narayan Roy* 51 I.A. 293 at p. 299. where it has been observed (p-208):

In India persons are not permitted to take forcible possession; they must obtain such possession as they are entitled to through a Court.

9. This proposition was also accepted by a Division Bench of this Court in *Rant Rattan and Ors. v. State of Uttar Pradesh* . The Division Bench comprising of three learned Judges held that a true owner has every right to dispossess or throw out a trespasser while he is in the act or process of trespassing but this right is not available to the true owner if the trespasser has been successful in accomplishing his possession to the knowledge of the true owner. In such circumstances, the law requires that the true owner should dispossess the trespasser by taking recourse to the remedies under the law. In the present case, we may point out that there was no question of the plaintiff entering upon the premises as a trespasser at all, as she had entered into the possession of the restaurant business and the premises where it was conducted as a licensee and in due course of law. Thus, defendant No. 3 was not entitled to dispossess the plaintiff unlawfully and behind her back as has been done by him in the present case. It was pointed out by Mr. Tarkunde that some of the observations referred to above were in connection with a suit filed under Section 6 of the Specific Relief Act, 1963 or analogous provisions in the earlier Specific Relief Act, 1877. To our mind, this makes no difference in this case as the suit has been filed only a few weeks of the plaintiff being unlawfully deprived of possession of the said business and the premises and much before the period of six months expired. In view of the aforesaid conclusions arrived at by us, we do not propose to consider the question whether the

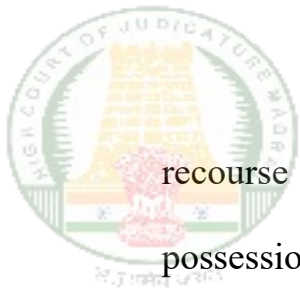


*agreement between the plaintiff and defendant No. 3
amounted to a licence or a sub-lease”*

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16. So far as the owner of the property who does not find any difficulty in allowing the plaintiffs to continue to be in possession is concerned, the non-inclusion of H.R & C.E., as parties to the suit is immaterial for the relief claimed by the plaintiffs against the defendants. The plaintiffs are expected to implead the H.R & C.E., as parties, only if they get the cause of action against the H.R & C.E., for the purpose of protecting their possession against H.R & C.E. As the plaintiffs have thought it sufficient to protect their possession only from the defendants in view of the alleged disturbance, they have filed the suit by impleading the defendants alone as parties to the suit. But the First Appellate Court had not properly appreciated the position of law and had chosen to allow the appeal on the ground that the H.R & C.E., is a necessary party to the suit. Since the defendants have not produced any documents to show that they are entitled to manage the affairs of the suit property, they cannot exercise any right against the plaintiffs to dispossess them from the suit property.

17. Even from the written statement of the defendants, it is seen that they have taken some steps to lease out the suit property at public auction by disregarding the plaintiffs' entitlement to be in possession of the suit property with the permission of the H.R. & C.E. The defendants did not seek any



recourse through H.R. & C.E., even if they felt that the plaintiffs have been in possession without paying any dues. As the appellants / plaintiffs have proved their well settled possession and the cause of action against the defendants, they are entitled to the relief as prayed for. Despite the Trial Court has rightly appreciated and decreed the suit, the First Appellate Court has misled itself and has chosen to allow the First Appeal for failure to implead H.R & C.E., as parties to the suit. In view of the above said reasons, the substantial questions of law are answered in favour of the plaintiffs /appellants.

18. In the result, the Second Appeal is **allowed** and the judgment of the First Appellate Court made in A.S.No.62 of 2005 on the file of the Sub Court at Dharmapuri is set aside, by restoring suit in O.S.No.183 of 2000 on the file of the District Munsif Court at Dharmapuri. No costs. Consequently, connected Miscellaneous Petition is closed.

06-01-2026

Index: Yes/No

Speaking/ Non-speaking order

Neutral Citation: Yes/No

GSA



To

1. The Subordinate Judge,
Dharmapuri.

2. The District Munsif,
Dharmapuri.



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DR.R.N.MANJULA, J.

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