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**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**RESERVED ON : 12.11.2026**

**PRONOUNCED ON : 25.11.2026**

**CORAM**

**THE HONOURABLE MR.JUSTICE P.DHANABAL**

**SA No.75 of 2010**

Chellammal

..Appellant(s)

Vs

1. Sivaperumal Udayar

2. Ramasamy Udayar

3. Kalian

4. Government of Tamilnadu
   Rep. By the
   Collector of Cuddalore District,
   Cuddalore.

5. Tahsildar of Vridhachalam,
   O/o. The Tahsildar,
   Vridhachalam Taluk, Cuddalore District.

..Respondent(s)



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**Prayer:** Second Appeal filed under Section 100 CPC, 1908 against the decree and judgment dated 28.01.2009 passed in A.S. No.136 of 2006, on the file of the Principal Subordinate Court, Vridhachalam, upholding the decree and judgment dated 30.11.2005 passed in O.S.No.363 of 1998, on the file of the Principal District Munsif Court, Vridhachalam.

For Appellant(s): Mr.R.Agilesh

For Respondent(s): M/s.Sarvabhauman Associates
Mr.J.Frangkelin for R1 & R2

Ms.M.Poornima for R3

Mr.B.Pachiyappan
Additional Government Pleader
for R4 & R5

## JUDGMENT

This second appeal has been preferred as against the judgment and decree dated 28.01.2009 passed by the Principal Subordinate Court, Vridhachalam in A.S.No.136/2006. The plaintiff is the appellant, who filed the suit in OS No.363/1998 before the District Munsif Court, Vridhachalam, for the relief of declaration and permanent injunction and alternative relief of declaration and recovery of possession. The said suit was dismissed by the trial court. Aggrieved by the said decree and judgment, the plaintiff has



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preferred an appeal in AS No.136 of 2006 on the file of the Principal Subordinate Court, Vridhachalam. The first appellate court also dismissed the appeal by confirming the decree and judgment passed by the trial court. Aggrieved by the said decree and judgment, the present second appeal has been preferred by the plaintiff.

2. For the sake of convenience, the parties are referred to as per their rank in the Trial Court and at appropriate places, their rank in the present second appeal would also be indicated.

3. The case of the plaintiff before the trial court is that originally the suit properties belonged to her father Ponnusamy Udayar and the said Ponnusamy Udayar and his brother Nataraja Udayar orally partitioned their family properties in the year 1955 and the suit properties were allotted to the share of Ponnusamy Udayar through that oral partition. The said Ponnusamy Udayar had been in possession and enjoyment of the suit properties and the said Ponnusamy Udayar died 15 years ago. The plaintiff is the only legal heir of the said Ponnusamy Udayar as Class – I legal heir and



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the plaintiff is in possession and enjoyment of the properties. The items 1 & 2 of the suit properties are under cultivation by the plaintiff and third item of the suit property is used as cattle shed. The defendants 1 and 2 demanded the plaintiff to sell the third item of the property to them and the same was refused. Therefore, the defendants attempted to interfere with the plaintiff possession and enjoyment of the property. One Palaniyappa Chettiyar had filed the suit in OS No.630/1980 in respect of item nos.1 & 2 and properties were attached. The plaintiff filed a claim petition and the same was allowed on 06.01.1987. The patta was stood in the name of the plaintiff. However, the defendants 1 and 2 by playing fraud included their name and the same is not binding on the plaintiff. Therefore, the plaintiff filed the suit.

4. The case of the defendants before the Trial court is that they denied the averments made in the plaint. In fact, the suit properties and other properties belonged to the father of the plaintiff, Ponnusamy Udayar and his brother, father of the defendants 1 and 2, namely, Nataraja Udayar. In the year 1955, they orally partitioned their family properties and the suit properties were allotted to the share of Nataraja Udayar. Ponnusamy Udayar



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had never been in possession and enjoyment of the suit properties and the said Ponnusamy Udayar died on 10.04.1982. Ponnusamy Udayar had another daughter, namely, Muthulakshmi. Apart from the properties obtained through partition, Ponnusamy Udayar had other properties and he also acted as trustee to the temple. Since Ponnusamy Udayar had no male issues after marriage to his daughter, he executed the Will in favour of the second defendant on 02.04.1982. Pursuant to the Will, after demise of Ponnusamy Udayar, the second defendant has been in possession and enjoyment of the properties of Ponnusamy Udayar. Nataraja Udayar died in the year 1987. Prior to that the patta was granted in his favour in respect of item nos.1 & 2 of the properties. The third item of the property also is under the possession and enjoyment of the first defendant. While so, the plaintiff had filed the suit with false averments. Nataraja Udayar during his lifetime at the time of oral partition granted the properties to his sons and he has not been allotted any properties. Thereby the defendants 1 & 2 enjoying the properties separately. On eastern side 82 cents of the first item of the property is under the possession of the first defendant and on western side, 82 cents of the first item of the property is under the possession of the second defendant. The second item of the properties along with other



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properties were sold by the defendants 1 and 2 in favour of the third defendant, through sale deed dated 04.04.1988 the description of property in respect of the third item property is not correct. Therefore, the suit is liable to be dismissed.

5. The case of the fifth defendant is that the suit is not maintainable. All the averments made in the plaint are to be proved by the plaintiff. The allegations in respect of grant of patta are denied. In fact, the properties in Resurvey No.129/03 to an extent of 0.66.5 ares and 154/8, to an extent of 0.32.5 ares, belonged to Nataraja Udayar and his name is reflected in the patta from the year 1965 to 1980 in patta No.68. After the demise of Nataraja Udayar, patta has been transferred in the name of his sons Sivaperumal and Ramasamy. Therefore, the patta has been transferred in accordance with law as per the enjoyment of the parties. After transfer of the patta in the name of the defendants 1 and 2, sons of Nataraja Udayar in the Resurvey No.154/8 0.32.5 ares was sold to one Kaliyan, son of Pazhamazhai and thereafter, patta was transferred in the name of said Kaliyan in patta No.727. The third item of the suit property is natham poromboke Resurvey



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No.69/4A to an extent of 1.50 cents, in that property the son of Nataraja Udayar, namely, Sivaperumal constructed a thatched shed and residing thereon. Therefore, the defendants 4 & 5 are not unnecessarily have been impleaded. Therefore, the suit is liable to be dismissed.

6. Based on the above said pleadings and after hearing both sides and perusing the records, the Trial Court has framed the following issues

*"(i) Whether the Suit is sustainable in law and facts ?*

*(ii) Whether the Suit Schedule Properties belonged to Ponnusamy Udayar?*

*(iii) Whether the Plaintiff is entitled to the relief of Declaration and Permanent Injunction as sought for in the Suit ?*

*(iv) Whether the genesis of the suit is correct?*

*(v) What relief the plaintiff is entitled?*

7. In order to prove the case, before the Trial Court, on the side of plaintiff, PW1 to PW6 were examined and marked Ex.A1 to Ex.A19. On the



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side of the defendants, DW1 to DW4 were examined and marked Ex.B1 to Ex.B19. Ex.X1 to Ex.X3 were marked as Witness Documents and Ex.C1 was also marked as Court Exhibit.

8. After analysing the evidence on both sides, the Trial Court dismissed the suit, vide its judgment and decree dated 30.11.2005. Aggrieved by the said decree and judgment, the plaintiff has preferred an appeal in A.S.No.136 of 2006 on the file of the Principal Subordinate Court, Vridhachalam, on various grounds.

9. The First Appellate Court, after hearing both sides and perusing the records, framed the following point for determination :

*(i)* Whether the suit filed by the plaintiff is sustainable in law and facts?

*(ii) Whether the Suit Properties belonged to Ponnusamy Udayar?*

*(iii) Whether the Plaintiff is entitled to the relief of Declaration and Permanent Injunction as sought for in the Suit ?*

*(iv) Whether the genesis of the suit is correct?*



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*(v) What relief the plaintiff is entitled?*

10. After hearing both sides and perusing the records, the First Appellate Court dismissed the appeal by confirming the decree and judgment of the Trial Court, vide its judgment and decree dated 28.01.2009. Aggrieved by the said decree and judgment of the First Appellate Court, the present second appeal has been preferred by the plaintiff.

11. This Court, at the time of admitting the appeal, formulated the following substantial questions of law:

*i. "Whether the Lower Appellate Court was correct and justified in dismissing the suit without going into the merits of the case ?*

*ii. Whether the Lower Appellate Court correct and justified in holding that the sale agreement dated 04.04.1988 marked as Ex.B11 was construed as sale deed and obtained on 02.02.2000 after filing of the suit ?*

*iii. Whether the Lower Courts correct in rejecting the documents marked by the plaintiff as Ex.A1 dated 04.01.1983 regarding item Nos.1 and 2?"*



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12. Heard Mr.R.Agilesh, learned counsel appearing for the appellant, M/s.Sarvabhauman Associates, learned counsel appearing for the respondents 1 & 2 and Ms.M.Poornima, learned counsel appearing for the third respondent and Mr.B.Pachiyappan, learned Additional Government Pleader appearing for the respondents 4 & 5.

13. The learned counsel appearing for the appellant would submit that the appellant is the plaintiff, who filed the suit for the relief of declaration and permanent injunction and alternative relief of declaration and recovery of possession. In fact, the suit properties originally belonged to the father of the plaintiff, namely, Ponnusamy Udayar. Through oral partition Ponnusamy Udayar and his brother Nataraja Udayar partitioned their family properties in the year 1955. The item nos.1 & 2 properties are cultivable lands and third item of the property used as cattle shed. While so, the defendants 1 and 2 demanded the plaintiff to sell the third item of the property to them and the same was refused by the plaintiff. Thereby they caused disturbance to the possession and enjoyment of the plaintiff over the suit properties. Therefore, filed the suit. The plaintiff has produced the documents and examined the witnesses and through those evidence the plaintiff has established the case.



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However, the Courts below failed to consider the evidence in a proper perspective and erroneously dismissed the suit. The first appellate court without going into the merits of the case dismissed the appeal and also held that the document dated 04.04.1988 (Ex.B11) was construed as sale deed which was obtained on 02.02.2000 after filing of the suit. The courts below failed to appreciate Ex.A1 dated 04.01.1983 regarding the item Nos.1 & 2 of the suit properties. Therefore, the judgment and decree passed by the courts below are liable to be set aside.

14. The learned counsel for the respondents would submit that the suit properties originally belonged to the father of the defendants. The defendants' father, Nataraja Udayar and the plaintiff's father, Ponnusamy Udayar entered into oral partition in respect of their family properties in the year 1955 and through that partition, these suit properties were allotted to the share of Nataraja Udayar. The said Nataraja Udayar died in the year 1987. After the demise of Nataraja Udayar, the defendants are in possession and enjoyment of the properties. Already the second item of the property was sold to the third party and he is in possession and enjoyment of the property. While so, suppressing the real facts, the plaintiff filed the suit. The patta and



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other revenue documents also stand in the name of the defendants' father and after his demise, the defendants transferred patta in their name and now the properties are under the possession and enjoyment of the defendants. Before the trial court, the defendants established their defence through proper evidence and thereby the trial court after considering the evidence in a proper perspective dismissed the suit. The first appellate court also, after considering the evidence in a proper perspective, dismissed the appeal by confirming the decree and judgment passed by the trial court. Therefore, the decree and judgment passed by the courts below are well reasoned judgments and this second appeal is liable to be dismissed.

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

16. In this case, there is no dispute in respect of the relationship between the parties. There is no dispute that originally properties were partitioned between the father of the plaintiff and the defendants' father, namely, Ponnusamy Udayar and Nataraja Udayar, respectively. According to the plaintiff, the suit properties were allotted to the share of Ponnusamy Udayar. According to the defendants, the suit properties were allotted to the



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share of Nataraja Udayar. In order to prove the case of the plaintiff, PW1 to PW6 were examined and marked Ex.A1 to Ex.A19. On the side of the defendants, DW1 to DW4 were examined and marked Ex.B1 to Ex.B19. Ex.X1 to Ex.X3 was marked as Witness Documents. Ex.C1 was also marked as Court Exhibits. Since the plaintiff filed the suit for declaration and permanent injunction. She has to prove the case with sufficient evidence irrespective of the defence taken by the defendants. The plaintiff has filed revenue documents and parental deeds. On careful perusal of those documents, none of the documents revealed the possession of the father of the plaintiff, namely, Ponnusamy Udayar. Ex.A14 is dated 23.06.1950 but thereafter the properties were partitioned in the year 1955 and the same has been admitted by both the parties. After partition in the year 1955, there are no records produced by the plaintiff to prove the case. The plaintiff filed the suit alleging that the properties were allotted to the share of her father. While so, in the evidence she stated that she does not know which properties were allotted to her father and which properties were allotted to the father of the defendants and she not even know about the extent and survey number of the properties and she also stated that the patta has been granted in favour of her father but no patta has been produced as one of the documents. The plaintiff



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has produced Ex.A1 evidence of Nataraja Udayar in another suit and Ex.A2 & Ex.A3 kist receipts.

17. According to the plaintiff, one Palaniyappa Chettiyar filed the suit and properties were brought for court auction, at that time she filed claim petition. In the claim petition, Nataraja Udayar has deposed admitting the properties belongs to his brother however, there is no any further documents produced by the plaintiff to show whether the evidence was accepted by the court or not. Further, she admitted that some extent of the suit properties were already sold to the third defendant, Kaliyan by the defendants 1 & 2 and patta was also granted in his name and she also admitted that the suit properties were allotted to Nataraja Udayar even prior to the death of plaintiff's father. Gangaiammal is the wife of Ponnusamy Gounder and he executed a settlement deed in her favour i.e. prior to the partition deed and after partition there are no records to show that the suit properties were allotted in favour of the plaintiff's father, Ponnusamy Udayar. Further PW1 in her evidence deposed that one thatched house was allotted to the father of the plaintiff and the suit property was a vacant site and also admitted that S.F. No.129/03 to an extent of 0.66.5 ares and S.F. no.154/8 to an extent of



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0.32.5 are under the possession and enjoyment of Nataraja Udayar from the year 1965 to 1980 and she also had knowledge about the grant of patta in the name of Nataraja Udayar in patta No.68. Further on the side of the plaintiff they examined PW2 & PW3. PW2 is none other than husband of the plaintiff and PW3 is the official witness. On careful perusal of the above said evidences, there is no evidence to prove that the suit properties are under the possession and enjoyment of the plaintiff. Whereas the defendants side evidence shows that patta No.68 was issued in favour of the defendants' father Nataraja Udayar and chitta was also issued from 1382 to 1393 fasili. They also produced the kist receipts Ex.B2 to Ex.B5 and chitta Ex.B1. After the demise of Nataraja Udayar in the year 1987, the patta was transferred in the name of the defendants 1 and 2. The defendants also paying kist to the suit properties. The defendants 1 and 2 have sold one of the portion of the property to the third defendant through Ex.B11. The plaintiff also having lands adjacent to the defendants' properties. Therefore, from the defendants side evidence they clearly established that the defendants are in possession and enjoyment of the suit properties.



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18. Moreover, as per the written statement of the defendants 4 & 5 revenue authorities, the revenue records stood in the name of Nataraja Udayar and thereafter, transferred in the name of the defendants 1 and 2. The defendants 1 and 2 sold the properties to the third defendant and thereafter the third defendant also obtained separate patta in his name in respect of one item of the suit property. Therefore, from the above side evidences it is clear that the defendants are in possession and enjoyment of the suit properties and the plaintiff failed to prove her case through sufficient evidence. Further, the plaintiff also sought for relief of declaration and permanent injunction and alternative relief of declaration and recovery of possession which is contradictory to each other and thereby the plaintiff has not framed the suit properly. The first appellate court has dismissed the suit only after going into the merits of the case and after discussing the evidence adduced on both sides by framing proper points for determination. Ex.A1 has been correctly relied by the Courts below as i.e. only the evidence given by Nataraja Udayar in respect of the properties and there is no evidence that whether that evidence in accordance with Section 33 of the Indian Evidence Act and further there are no other records produced by the plaintiff as to whether the said evidence of the said Nataraja Udayar was accepted by the court or not.



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Mere production of the evidence is not sufficient to hold that the properties are belonged to the plaintiff. Though commissioner report has been marked, the commissioner report no way helpful to decide the case as the suit has been filed for the relief of declaration and permanent injunction and the plaintiff has to prove the case through title deeds.

19. Moreover, the plaintiff herself admitted that there was a partition between the plaintiff's father and the father of the defendants 1 and 2 and after partition, there are no records to show that the suit properties were allotted to the share of the plaintiff's father and the same was under the possession and enjoyment of the plaintiff. As far as the sale deed dated 04.04.1988 is concerned, that was executed by the defendants 1 and 2 in favour of the third defendant and they sold the properties in S.F. No.154/8 and the said document is the certified copy obtained on 02.02.2000 i.e. after filing of the suit. Even though the copy of the document was obtained after filing of the suit the original sale deed was executed on 04.04.1988 and thereafter the revenue authorities also transferred the patta in the name of the third defendant. Thereby, the first appellate court correctly justified in holding that the sale deed was executed in favour of the third defendant in



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respect of second item of the suit properties through sale deed dated 04.04.1988. Therefore, the courts below have appreciated the facts correctly and dismissed the suit based on the available evidences. In view of the above said discussions, the substantial questions of law are answered against the appellant and the second appeal has no merits and deserves to be dismissed.

20. In the result,

i. the Second Appeal is dismissed. No costs.

ii. the decree and judgment dated 17.01.2006 passed in A.S. No.61 of 2005, on the file of the Principal Subordinate Court, Vridhachalam, and the decree and judgment dated 29.11.2004 passed in O.S.No.211 of 1999, on the file of the II Additional District Munsif Court, Vridhachalam, are upheld.

**25.11.2026**
**(2/2)**

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

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To

1. The Principal Subordinate Court, Vridhachalam.

2. The District Munsif Court, Vridhachalam.

3. The Section Officer, VR Section, High Court, Madras.



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Order QR



**P.DHANABAL, J.**

**MTL**

**Pre-delivery Judgment in**
**SA No. 75 of 2010**

**25.11.2026**



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