



WEB COPY

SA No. 188 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-06-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 188 of 2020 and
CMP No.3830 of 2020**

1. K.Sankar, S/o. Late Kannapan,
No.16/3, Alagappa Nagar, Gundu
Uppalavadi,Cuddalore Taluk And District.
2. S. Sumathi, W/o. Sankar,
No.16/3, Alagappa Nagar, Gundu Uppalavadi,
Cuddalore Taluk And District.

..Appellant(s)

Vs

1. Arumugham Padayachi
S/o. Late Manicka Padayachi, No.16, Main
Road, Thotti Village, Thiruvanthipuram Post,
Pillali Madura, Cuddalore Taluk And District.

M. Kannappa Padayachi (died)

2. T. Kumaran, S.O. Thulasingham,
Mariamman Koil Street, Thotti Village,
Melkumaramangalam Post, Panroti Taluk,
Pillai Madura, Thiruvanthipuram Post,
Cuddalore Taluk And District.
3. The District Collector,
Office Of The Collectorate, Manjukuppam.
4. The Tahsildar,
Office At Beach Road, Cuddalore District.
5. The Sub Registrar,
Nellikuppam, Cuddalore District.



6. K. Andal, W/o.Late Kannappan,
No.13/B6, Mariyamman Koil Street,
Pillai Thotti, Thiruvandhapuram Post,
Cuddalore District.
7. K. Rajasekaran,
No. 7, Main Road Raja Nagar, Aranganur,
Selliamed Post, Pagur Kombuyin,
Puducherry-607 402.
8. G. Hemelatha
W/o. A. Govndasamy, No.62, Gopal Street,
Amuthavalli Garden, Billali Thoti,
Thiruvanthipuram Post, Cuddalore Taluk And
District.
9. A. Shamla, W/o. S. Aruvalagan, Anna Street,
Anniyur Post, Vikiravandi Taluk,
Illupuram District.

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of CPC to set aside the Judgment and Decree in AS.No.78 of 2014 dated 31.07.2019 on the file of the Additional Subordinate Judge, No.1, Coimbatore, reversing the Judgment and Decree in OS.No.172/2011 dated 25.11.2014 on the file of the Principal District Munsif Court, Cuddalore.

For Appellant(s): Mr.S.R.Rajagopal, Senior Advocate
for Mr. R.Muniyapparaj

For Respondent(s): Ms.D.Jeevitha
for M/s R.Nalliyappan for R1

Mr.S.Gunasekar, Govt.Counsel
for R3 to R5



JUDGMENT

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The unsuccessful defendants 2 and 3 in a suit in O.S.No.172 of 2011 are the appellants herein.

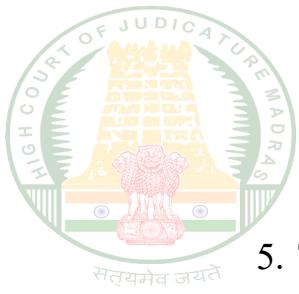
2. The first respondent herein /plaintiff filed a suit for declaration of title and recovery of possession. The said suit was dismissed by the Trial court. The appeal filed by the plaintiff was allowed and the suit was decreed by the First Appellate Court . Challenging the reversal findings of the First Appellate Court, the defendants 2 and 3 have come before this court by way of filing the present second appeal.

3. According to the first respondent /sole plaintiff, the suit property was allotted to him in a family partition deed dated 12.08.1981. The first defendant (deceased) is none other than the brother of the plaintiff. The 2nd defendant is son of first defendant, the 3rd defendant is wife of 2nd defendant and the 4th defendant is brother of 3rd defendant. The defendants 5 to 7 are the officials. It is pleaded by the plaintiff that the land on the western side of the suit property was allotted to the first defendant and there was a lease arrangement between the plaintiff and the first defendant on “ Waram” basis in the year 1988. The first defendant was permitted to occupy the property with an understanding that he should pay lease amount of Rs.1,000/-. It is further pleaded that the first



defendant requested the plaintiff to sell the suit property to him and the same was declined by the plaintiff. All of a sudden, the first defendant executed a registered settlement deed dated 24.12.2008 in favour of the 2nd defendant in respect of the suit property. It is also stated by the plaintiff that in the document executed by the first defendant, it was stated that he purchased the property from the plaintiff. Denying the recital in the document executed by the first defendant that the plaintiff sold the property to him, the plaintiff filed a suit seeking declaration of title and recovery of possession. The plaintiff also referred about the subsequent settlement deed executed by the 2nd defendant in favour of the 3rd defendant on 27.12.2010 and submitted that the same was invalid.

4. The 1st defendant filed a written statement admitting the title of the plaintiff over the suit property. He also pleaded that there was a sale agreement between his wife Andal Ammal and the plaintiff, whereunder, the plaintiff agreed to sell the suit property for a sale consideration of Rs.15,000/-. He also stated that the possession of the suit property was delivered to Andal Ammal and hence, the suit filed by the plaintiff is not maintainable. It is further pleaded by the first defendant that he was an illiterate and hence, the 2nd defendant got a settlement deed from him, in his favour through a document writer. On these pleadings, he sought for dismissal of the suit.



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5. The 2nd defendant filed a written statement and admitted the fact that the suit property was allotted to the share of the plaintiff in the family partition. However, he denied the lease arrangement pleaded by the plaintiff. It was also stated by the 2nd defendant that the plaintiff agreed to sell the suit property to the wife of first defendant, namely Andal Ammal and they entered into a written sale agreement on 04.10.1989. As per the terms of the sale agreement, sale consideration was fixed at Rs.15,000/- and an advance of Rs.11,000/- was paid by Andal Ammal. According to the 2nd defendant, the balance sale consideration of Rs.4,000/- was paid on 25.01.1990 and the possession of the suit property was delivered to Andal Ammal, however, the plaintiff has not executed any sale deed, as demanded by Andal Ammal. It was further stated that, the said Andal Ammal was entitled to the benefit of Section 53 A of the Transfer of Property Act. It was also averred that the first defendant executed a settlement deed in favour of the 2nd defendant on 24.12.2008 and the recital in the settlement deed was drafted by a document writer and the first defendant, who was an illiterate, did not know the truth and the correctness of the recitals. On these pleadings, the 2nd defendant sought for dismissal of the suit.

6. The plaintiff filed a reply statement denying the sale agreement pleaded by the defendants 1 to 3.



7. Before the Trial Court, the plaintiff was examined as PW1 and yet another witness was examined as PW2. On the side of the plaintiff, 11 documents were marked as Ex.A1 to Ex.A11. On the side of the defendants, the 2nd defendant was examined as DW1 and three other witnesses were examined as DW2 to DW4 and 16 documents were marked as Ex.B1 to Ex.B16.

8. The Trial Court, on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiff having failed to take steps to recover the possession of the property for more than 21 years, is not entitled to maintain a suit for declaration and recovery of possession and hence, dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.78 of 2014 on the file of I Additional Subordinate Judge, Cuddalore, The First Appellate Court, on re-appreciation of evidence available on record, reversed the findings of the Trial Court and allowed the appeal by decreeing the suit for declaration of title and permanent injunction as prayed for. Challenging the findings of the First Appellate Court the unsuccessful defendants 2 and 3 have come before this court by filing the second appeal.

9. The learned Senior Counsel appearing for the appellants/defendants 2 and 3 would submit that as per the pleadings of plaintiff, the suit property was leased out to the first defendant in the year 1988 and there was a misunderstanding between them. He further submitted that the plaintiff has not



taken any steps to recover the possession of the suit property for more than 21 years. Therefore, the present suit filed by the plaintiff is barred by Article 65 of the Limitation Act.

10. It is seen from the pleadings that there was no dispute with regard to the title of the plaintiff. As per the averments in the plaint, the suit property was allotted to the plaintiff in a family partition deed dated 12.08.1981. The said plea was admitted by the defendants in their pleadings. Therefore, there is no doubt that the plaintiff has got title over the suit property. When the title of the plaintiff is established, he is entitled to recover possession, based on his title, unless the defendants proved their right of possession by adverse possession or special relationship protecting their possession as tenant or mortgage etc, It is not the case of the defendants 1 to 3 that they are in possession of the suit property under any special relationship with the plaintiffs. Though there is a reference in the written statement regarding protection under Section 53-A of the Transfer of Property Act, even as per the pleadings of the defendants, there was no agreement between the plaintiff and the defendants. The alleged sale agreement was entered into between the plaintiff and the wife of first defendant alone. Therefore, the defendants 1 to 3, who are not party to the alleged sale agreement are not entitled to take shelter under Section 53-A of the Transfer of Property Act and the said claim that their possession is protected by part performance is not acceptable. The First Appellate Court rightly appreciated



the said position and observed that the defendants could not claim the benefit under Section 53-A of the Transfer of Property Act.

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11. When the title of the plaintiff is admitted and there is no special relationship between the plaintiff and the defendants 1 to 3 to protect the alleged possession of the defendants, unless the defendants plead and prove adverse possession, they are not entitled to defend the plaintiff's claim based on title. In the case on hand, in the written statement, the 2nd defendant has not raised any plea regarding hostile possession. It is settled law that the plea of adverse possession and bar under Article 65 of Limitation Act shall be specifically pleaded and meticulously proved by cogent evidence. In the case on hand, the defendants have not pleaded hostile possession and hence, the submission made by the learned Senior Counsel that the present suit is barred by Article 65 of the Limitation is not appealable to this court. I find no substantial question of law arising for consideration in this second appeal.

12. Accordingly, the second appeal stands dismissed, confirming the findings of the First Appellate Court. There shall be no order as to costs. Connected civil miscellaneous petition is closed.

10-06-2026

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

1. I Additional Subordinate Judge No.1, Cuddalore
2. Principal District Munsif, Cuddalore.



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S.SOUNTHAR, J.

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