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S.A.No.297 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.04.2026

PRONOUNCED ON : 25.06.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.297 of 2026
and C.M.P.No.10415 of 2026

1.M.Kaliyamurthy

2.Venkatesan

... Appellants

vs.

Kamalam (Died)
Valarmathi (Died)

1.Selvi

2.Murugan

3.Kumar

4.Mani

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, 1908, to set aside the judgment and decree dated 27.10.2025 passed in A.S.No.50 of 2012 on the file of I Additional Sub-Judge, Cuddalore, confirming the judgment and decree dated 14.03.2012 passed in O.S.No.335 of 2006 on the file of the Principal District Munsif Court, Cuddalore.

For Appellants : Mr.R.Gururaj
for M/s.D.Baskar



J U D G M E N T

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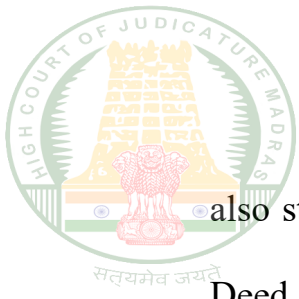
The unsuccessful plaintiffs in the suit are the appellants. They filed a suit seeking declaration of title and permanent injunction. The suit was dismissed by the Trial Court and the findings of the Trial Court were affirmed by the First Appellate Court. Aggrieved by the concurrent findings, the appellants/plaintiffs have come before this Court.

2. According to the appellants/plaintiffs, the suit property was purchased by the plaintiffs' father Mannangatti under a registered Sale Deed dated 22.04.1958. Both the plaintiffs succeeded to the estate of Mannangatti and they enjoyed the property continuously for well over statutory period and hence, prescribed for title by adverse possession. The defendants had no right over the suit property and they joined hands with one Vaithilingam, who managed to obtain patta in his name by fraudulent means. The defendants attempted to purchase the property as if, it belonged to Vaithilingam. Hence, the 1st plaintiff issued a notice on 12.09.2002 to the deceased 1st defendant and said Vaithilingam. In the said notice, some errors had crept in. The said Vaithilingam issued a reply notice through an Advocate on 19.09.2002 and claimed that Vaithilingam's father and



plaintiffs' father were brothers. He also claimed that there was oral partition and in which the suit property was allotted to said Vaithilingam. It was the specific case of the plaintiffs that Vaithilingam was not a sharer and he was not related to them. It was also stated that the defendants later purchased the suit property from Vaithilingam and his brother Veerappan under a registered Sale Deed dated 10.10.2002. In these circumstances, plaintiffs were constrained to file a suit for declaration of title and permanent injunction.

3. The deceased 1st defendant filed a written statement and admitted the plaint averment that the suit property was originally purchased in the name of Mannangatti. However, it was his case that the said Mannangatti was the eldest member of the joint family and he acted as Manager of the joint family. It was also stated that the 1st defendant's vendor Vaithilingam's father Arumugam and plaintiffs' father Mannangatti were sons of one Veerasamy. After the death of Veerasamy, Mannangatti and Arumugam continued as Members of joint family. The said Mannangatti died 30 years back and Arumugam died 25 years back. Even after death of Mannangatti and Arumugam, the plaintiffs, his brother, Vaithilingam and his brother continued to be members of the joint family. It was also stated that plaintiffs and Vaithilingam sold certain joint family properties on 30.06.1993. It was



S.A.No.297 of 2026

also stated that Mannangatti and his brother Arumugam executed Mortgage

Deed in favour of Jagadambal Ammal. The allegation in the plaint, as if, the plaintiffs were absolute owner of the suit property was denied. The allegation regarding adverse possession was also denied. It was further stated that there was oral partition in the family 15 years back and in the said partition, the suit property was allotted to the share of Vaithilingam, the vendor of the 1st defendant. After partition, Vaithilingam had taken possession of the suit property and patta was also mutated in his name in Patta No.1182. It was further stated that Vaithilingam sold the suit property to 1st defendant-V.Shanmugham and hence, the 1st defendant has been in possession and enjoyment of the same. It was also stated that the 1st plaintiff admitted in the notice issued by him on 12.09.2002 the suit property was given to Vaithilingam for his enjoyment. Thus, according to the 1st defendant, the possession of Vaithilingam was admitted by the 1st plaintiff. The allegation in the plaint as if, certain mistake had crept in the pre-suit notice issued by the 1st plaintiff was specifically denied. On these pleadings, the 1st defendant-V.Shanmugham sought for dismissal of the suit.

4. Before the Trial Court, the 1st plaintiff was examined as PW.1 and two other witnesses have examined as PW.2 and PW.3. On behalf of

4/14



plaintiffs, 37 documents were marked as Exs.A1 to A37. The 2nd defendant was examined as DW.1. The vendor of the defendants Vaithilingam was examined as DW.2. One Veerappan was examined as DW.3. On behalf of the defendants, 17 documents were marked as Exs.B1 to B17.

5. The Trial Court on appreciation of oral and documentary evidence available on record, came to the conclusion that the plaintiffs failed to prove their absolute right over the suit property and possession over the same and hence, dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal in A.S.No.50 of 2012 on the file of the I Additional Sub Court, Cuddalore. The First Appellate Court affirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the concurrent findings, the plaintiffs have come before this Court.

6. The learned counsel appearing for the appellants would submit that Mannangatti and Arumugam were born to same mother through different fathers and hence, Arumugam and his descendant cannot succeed to the property purchased by Mannangatti. The learned counsel further submitted that the Courts below have committed serious error in negating the plea of adverse possession raised by the plaintiffs. The learned counsel also



submitted that the Courts below committed error in placing much reliance on the alleged admission made by the 1st appellant/1st plaintiff in the pre-suit notice. It is the argument of the learned counsel that admission can be withdrawn by a person by explaining the same.

7. It is seen from the typed-set of papers the plaintiffs claimed right over the suit property based on the registered Sale Deed dated 22.04.1958, which stands in the name of plaintiffs' father-Mannangatti marked as Ex.A1. It is the case of the defendants that the property was purchased in the name of Mannangatti, as he happened to be eldest male member of the joint family and therefore, his brother-Arumugam was also entitled to share in the suit property. It is the specific case of the defendants that their vendor-Vaithilingam was son of Arumugam and hence, the suit filed by the plaintiffs seeking declaration of exclusive title was not maintainable.

8. The 1st plaintiff issued a pre-suit notice on 12.09.2002, which has been marked as Ex.A2. In the said notice, the 1st plaintiff had stated that the suit property in S.No.190/3 belonged to his father and after death of his father, there was a Panchayat in the Village regarding family property. It was also stated that in the said Panchayat the suit property was given to the



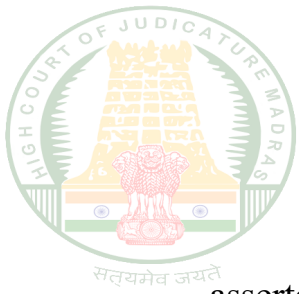
S.A.No.297 of 2026

defendants' vendor-Vaithilingam to enjoy the same and to maintain himself out of the income from the suit property, pending final partition of the family property. It was also stated that there was no proper partition of the suit property and hence, the said Vaithilingam cannot claim any exclusive right over the same and sell the property to the defendants. Therefore, it is clear that in a Panchayat, the suit property was given to Vaithilingam for the purpose of enjoyment till the partition of the family property. If Vaithilingam is not a sharer of the plaintiffs, absolutely there was no necessity for the 1st plaintiff to issue this kind of notice stating that the suit property was given to Vaithilingam for the purpose of enjoyment till the partition of the family property.

9. It was vehemently contended by the learned counsel appearing for the appellants that admission can be withdrawn by proper explanation. However, in the case on hand, the plaintiffs have not given any proper explanation for withdrawing the above said admission. For the notice issued by the 1st plaintiff on 12.09.2002, the 1st defendant's vendor-Vaithilingam issued a reply on 19.09.2002 through his Advocate asserting that the suit property is joint family property and it was enjoyed as joint family property by plaintiffs' father-Mannangatti and Vaithilingam's father Arumugam. He



also asserted that there was oral partition 15 years back, the suit property was allotted to the share of Vaithilingam. It was also stated that the plaintiffs and defendants' vendor sold certain joint family property to third parties, which was allotted to their respective shares. Thereafter, the 1st plaintiff issued a notice through his Counsel on 07.10.2002. In the said notice, he only claimed that the suit property was separate property of Mannangatti and Arumugam had no right over the same. Therefore, in the rejoinder notice, the 1st plaintiff has not withdrawn the earlier admission made by him that the suit property was given to the defendants' vendor for the purpose of enjoyment till the partition of family property. Therefore, in the rejoinder notice also, the 1st plaintiff has not denied the assertion made by the above said Vaithilingam in his reply notice regarding the relationship between Arumugam and Mannangatti. For the first time, only in the plaint pleading, the plaintiffs said that Vaithilingam was a stranger and he was not a sharer. However, in the first pre-suit notice dated 12.09.2002, the 1st plaintiff admitted that the suit property was given to Vaithilingam for the purpose of enjoyment till the partition of the family property. If Vaithilingam is not the sharer of the plaintiffs, absolutely there was no necessity to handover the suit property to him for the purpose of enjoyment.



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10. In the reply notice issued by Vaithilingam on 19.09.2002, he asserted about the relationship and joint enjoyment of the suit property, oral partition of the property etc. In the rejoinder notice, the 1st plaintiff has not denied the relationship between Mannangatti and Arumugam. Therefore, the submission made by the learned counsel appearing for the appellants that admission made by the 1st plaintiff in pre-suit notice was successfully withdrawn by proper explanation is not at all acceptable, as 1st plaintiff failed to give any proper explanation, at the earliest opportunity, for the admission made by him in the pre-suit notice.

11. During the course of argument, a stand was taken by the appellants/plaintiffs as if, the above mentioned Mannangatti and Arumugam were born to same mother and different fathers. However, there is no such plea by the plaintiffs in the plaint averments. In the plaint, the plaintiffs only stated that Vaithilingam had no right over the suit property and he obtained patta in his name by fraudulent means. However, the correct relationship between the plaintiffs' father Mannangatti and Vaithilingam's father Arumugam has not been stated. The plaintiffs are not entitled to take a stand that Vaithilingam's father is only a uterine brother of his father-Mannangatti, without any specific pleadings or evidence.



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12. PW.1 during the course of his evidence, categorically admitted that Vaithiyalingam sold the property to 1st defendant-V.Shanmugam in the year 2002 and after sale in his favour, he has been enjoying the property. It is also seen he admitted that from 2002 to filing of the suit in the year 2006, he has not taken any steps to challenge the enjoyment of the property by the 1st defendant-V.Shanmugam. He further deposed that the 1st defendant attempted to put up construction in the suit property in the year 2006 and hence, the plaintiffs have filed the present suit. He also admitted that the temporary injunction obtained by him was vacated and thereafter, the 1st defendant put up construction in the suit property. Later, he admitted possession of Vaithilingam also in the suit property. The admission of the 1st plaintiff makes it very clear even before filing of the suit, he was out of possession of the suit property and the 1st defendant was in possession of the suit property.

13. Ex.B2-patta for the suit property stands in the name of Vaithilingam. The plaintiffs admitted the issuance of patta in the name of Vaithilingam. Exs.B7 to B9 are the kist receipts stand in the name of Vaithilingam. The revenue documents produced by the defendants would show that Vaithilingam's long possession over the suit property. The



S.A.No.297 of 2026

plaintiffs categorically admitted in pre-suit notice that the suit property was given to Vaithilingam pending proper partition of the family property.

Therefore, it is clear the vendor of the 1st defendant's Vaithilingam was only a sharer and there was no proper partition of the family property between the plaintiffs and Vaithilingam.

14. Once the status of Vaithilingam as sharer of the plaintiffs is established based on the admission of the 1st plaintiff in pre-suit notice issued by him, in the absence of partition, the plaintiffs are not entitled to claim exclusive right over the suit property. Further, the brother of Vaithilingam namely Veerappan entered box as DW.3 and he deposed in support of the case of the defendants that the suit property was joint family property of Mannangatti and his brother-Arumugam. The patta and 'A' Register for the suit property in the name of Vaithilingam were marked as Exs.B2 and B3. If the suit property was given to Vaithilingam pending proper partition of the family property as claimed by the plaintiffs, absolutely there is no explanation why the mutation had taken place in the name of Vaithilingam.



S.A.No.297 of 2026

15. In any event, when the status of Vaithilingam as sharer of plaintiffs is accepted based on the admission of the 1st plaintiff, they are not entitled to claim any exclusive right over the suit property. At the most, they can only be treated as a co-owner along with Vaithilingam. In such circumstances, the suit for declaration of exclusive right over the suit property is not at all maintainable. Both the Courts below on proper appreciation of evidence available on record came to the conclusion that plaintiffs were not entitled to any relief. I do not find any substantial question of law arising for consideration in this second appeal. Accordingly, the second appeal stands dismissed.

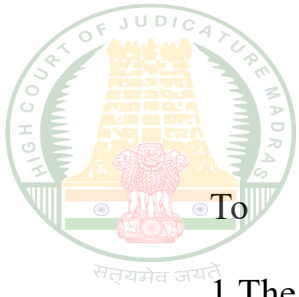
16. **In Nutshell:-**

- (i) The Second Appeal stands dismissed.
- (ii) Consequently, the connected civil miscellaneous petition is closed.
- (iii) In the facts and circumstances of the case, there will be no order as to costs.

25.06.2026

Index :Yes / No
Speaking order :Yes / No
Neutral Citation :Yes / No
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12/14



S.A.No.297 of 2026

To

1.The I Additional Sub-Judge,
Cuddalore.

2.The Principal District Munsif Court,
Cuddalore.



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S.A.No.297 of 2026

S.SOUNTHAR, J.

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Pre-delivery judgment made in
S.A.No.297 of 2026

25.06.2026