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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-10-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 872 of 2012

CNR:{HCMA010406262012}

and MP.No.1 of 2012

1. Mr.Ranganathan (Died)
   S/o. Samikkannau,
   No.3, 11th Cross Street,
   New Colony, Chrompet, Chennai-44

2. Parimala Devi
   W/o. Late Ranganathan, No.3,11th Cross St,
   New Colony, Chrompet, Chennai-44

3. Kalavathi
   W/o. Sakthivel, No.8, Subramani Koil First St,
   Rajaji Nagar, Pallavaram, Chennai-43

4. Shanthi
   W/o. Srinivaskumar, No.100/230, G-5, Rao
   Chandrika Apartments, GST Road, Chrompet,
   Chennai-44

5. R.Kameshwaran
   S/o. Late Ranganathan,
   No.3, 11th Cross Street, New Colony,
   Chrompet, Chennai-44
   sole appellant Died, A2 to 5 are brought on
   record as legal heirs of the deceased sole
   appellant vide court order dated 07/10/2026
   made in cmp.no.12765 of 2017 in SA.No.872 of
   2012

..Appellant(s)

Vs

1. Mr.Vasudevan
   S/o Vadivel, No.39, 12th Cross Street, New
   Colony, Chrompet, Chennai-44.

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2. Mr.Manikandan
S/o Narayanan, No, 3, 11th Cross Street,
New Colony, Chrompet,
Chennai-44.

..Respondent(s)

Second Appeal is filed under Section 100 of the Civil Procedure Code, against the Judgement and Decree granted in O.S.No.483 of 2001 on the file of the Principal District Munsif Court, Alandur and confirmed in A.S.No.60 of 2010 on the file of the Sub-Judge, Tambaram are need to be set aside to dismiss the suit filed by the respondents.

For Appellant(s): Mr.A.Ilaya Perumal

For Respondent(s): Mr.S.Ravi
A.Meena For R1
R2 - Unclaimed

JUDGMENT

(1) This Second Appeal has been preferred as against the judgment and decree passed by Sub-ordinate Judge, Tambaram in A.S.No.60 of 2010 dated 23.12.2021. The appellant is the 1st defendant. The 1st respondent herein is the plaintiff in the suit has filed the original suit in O.S.No.483 of 2001 on the file of the Principal District Munsif Court, Alandur, dated 17.06.2010 for the relief of permanent injunction and the said suit was decreed by the Trial Court. Aggrieved by the said judgment and decree the 1st defendant has preferred the appeal in A.S.No.60 of 2010 on the file of the Sub Ordinate Court, Tambaram

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and said appeal was also dismissed by confirming the judgment and decree passed by the Trial Court. Aggrieved by the judgment and decree, the 1st defendant has preferred this Second Appeal.

(2) The case of the plaintiff before the Trial Court is that, originally the suit property belongs to the grand-father of the plaintiff namely, Kuppusamy measuring an extent of 4 cents, he occupied the property and was in peaceful possession and enjoyment of the property and died on 24.09.1982. After his demise, his wife, Thulasiammal and daughter, Kiliammal were in possession and enjoyment of the same. The said Kuppuswamy has obtained Assignment Patta in his name dated 17.05.1974 to the extent of 3 cents and the said Kuppuswamy had paid 'B' memo charges to the extent of one cent. Thereby he had been in possession and enjoyment of the entire 4 cents. The Thulasiammal, wife of Kuppuswamy who is the grand-mother of the plaintiff had executed a Will dated 21.02.1995 in favour of the plaintiff and thereafter she died on 14.09.1998. After her demise, the Will came into effect and the plaintiff is in peaceful possession and enjoyment of the property. The plaintiff had put up a hut in the suit property and residing there along with his family. The defendants have no any right, title or interest over the property and they attempted to interfere with the plaintiff's peaceful possession and enjoyment of the property. Therefore the plaintiff filed the suit for permanent injunction.

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(3) The case of the defendants is that the suit is not maintainable and the suit property never belonged either to Kuppuswamy or to plaintiff. The said Thulasiammal is not wife of Kuppuswamy and Kiliammal is not the daughter of Kuppuswamy. The Will executed by Thulasiammal is not true. The Thulasiammal died on 14.09.1998. The 1st defendant's mother is Nagammal, the said Thulasiammal is the elder sister of Nagammal. The Nagammal was recognised as legal heir of Thulasiammal. The Thulasiammal had no right over the 4 cents, thereby she cannot execute any Will to an extent of 4 cents. The mother of the 1st defendant, Nagammal is the absolute owner of the property and property is classified as 'Vaikal Poromboke'. The said Nagammal had been in continuous possession and enjoyment of the property and the revenue Adangal are standing in the name of Nagammal. Since the property has been classified as 'Vaikal Poromboke', Assignment Patta in favour of the Kuppusamy cannot be true. Therefore, the suit is liable to be dismissed.

(4) Based on the above said pleadings, after hearing the learned counsels on either side, the Trial Court has framed the following issues for Trial:

1. Whether the plaintiff is entitled for a relief of permanent injunction as prayed for?

2.Whether the Will dated 21.02.95 in favour of the plaintiff as alleged by the defendants in their written statement is true or not?

3. To what relief?

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(5) Before the Trial Court, on the side of the plaintiff, three witnesses were examined as P.W.1 to P.W.3 and marked 11 documents, Ex.A1 to Ex.A11. On the side of the defendant, one witness D.W.1 was examined and marked 4 documents, Ex.B1 to B4. After analysing the evidences adduced on both sides, the Trial Court decreed the suit on 17.06.2010. Aggrieved by the said judgment and decree, the 1st defendant has preferred an appeal in A.S.No.60 of 2010 on various grounds. The First Appellate Court has framed the following points for determination.

1. Whether the 1st respondent/plaintiff is entitled for the relief of permanent injunction as prayed for?

2. Whether the decree and judgment passed by the trial Court in O.S.No.483/2001 is liable to be set aside?

(6) The First Appellate Court after analysing the evidences adduced on either side, dismissed the appeal by confirming the judgment and decree passed by the Trial Court. Aggrieved by the said judgment and decree, the 1st defendant has preferred the Second Appeal.

(7) This Court at the time of admitting the Second Appeal framed the following Substantial Questions of Law:

1. Whether the Courts below are right in granting the decree for bare injunction without claiming the relief of declaration when there is a dispute of title and rival claim over the suit property?

2. Whether the Courts below are correct in

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imposing the burden of proof on the part of the defendant and presuming plaintiff's entitled to the relief prayed for since the defendant have not proved the contra case?

(8) The learned counsel appearing for the appellant would submit that the 1st respondent herein has filed the suit for permanent injunction as against the appellant and the 2nd respondent alleging that the suit property belong to his grand-father, Kuppuswamy, the Government also granted Assignment Patta dated 17.05.1974 for 3 cents and one cent was acquired by grand-father and paid 'B' memo charges and thereby claims the suit property. In fact the suit property originally belonged to Nagammal, mother of the appellant/ 1st defendant. The Thulasiammal is the elder sister of Nagammal and Nagammal is the legal heir of Thulasiammal, thereby, the Nagammal is entitled to the suit property and after the demise of Nagammal, the 1st defendant is in possession and enjoyment of the suit property. The plaintiff failed to prove his possession over the property. The Assignment Patta was also only granted to an extent of 3 cents and the remaining one cent is a water body/ Vaikal Poromboke. Therefore the plaintiff is not entitled for decree for permanent injunction. However, the Courts below without considering the evidences in a proper perspective, erroneously decreed the suit by granting permanent injunction as against the appellant/1st defendant. The Courts below failed to consider that patta was granted only for 3 cents and the one cent was classified as Vaikal Poromboke, however granted permanent injunction for the entire property. The Courts

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below wrongly shifted the burden on the part of the 1st defendant to prove the case and the plaintiff has not proved the Will in accordance with law and the Will was surrounded by suspicious circumstances and the plaintiff, propounder of the Will failed to dispel the suspicious circumstances. The Courts below failed to consider that the suit for bare injunction without claiming relief of declaration is not maintainable. However, the Courts below decreed the suit, therefore the judgment and decree passed by the Courts below are liable to be set aside.

(9) The learned counsel for the respondent would submit that originally the suit property belonged to the grand-father of the plaintiff namely, Kuppuswamy, who acquired the property and he was in possession and enjoyment of the property. After his demise, the wife of Kuppusamy, Thulasiammal and his only daughter Kiliammal were in possession and enjoyment of the property. The Government granted Assignment Patta in favour of the said Kuppuswamy on 17.05.1974 to an extent of 3 cents and one cent was occupied by him and he had also paid penal charges to the Government and thereby he had been in possession and enjoyment of the 4 cents of the suit property. The said Thulasiammal after the demise of her husband Kuppusamy executed a Will in favour of the plaintiff on 21.02.1995. The said Thulasiammal died on 14.09.1998 and thereafter the plaintiff has been in possession and enjoyment of the property. The plaintiff examined the attesting witness of the Will and also

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produced the documents Ex.A1 to Ex.A11. Through those evidences, the plaintiff has proved his case and the appellant being the defendant claiming the property through his mother and no any documents is filed to prove his contention. There is no illegality or perversity in the judgment and decree passed by the Courts below. Therefore the Courts below have correctly decreed the suit, thereby the Second Appeal is liable to be dismissed.

(10) This Court heard both the learned counsels and perused the records.

(11) For the sake of convenience and brevity, the parties in this Second Appeal will be referred to as plaintiff and defendant as per their rank in the Trial Court.

(12) The plaintiff has filed the suit for permanent injunction as against the defendant. According to the plaintiff, originally the suit property belonged to his grand-father Kuppusamy and Government also granted Assigned Patta and thereafter the said Kuppuswamy died interstate leaving behind his wife, Thulasiammal and daughter, Kiliammal. The plaintiff is the son of Kiliammal. After the demise of Kuppusamy the grant-mother of the plaintiff namely Thulasiammal, executed a Will dated 21.02.1995 bequeathing the suit property in favour of the plaintiff. The said Thulasiammal died on 14.09.1998, thereafter the plaintiff has been in possession and enjoyment of the property. The defendant denied the relationship between the Kuppuswamy and the plaintiff

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and according to the defendant, the Thulasiammal is not wife of Kuppusamy and Kiliammal was not born to Kuppusamy. The Thulasiammal is none other than the sister of 1st defendants mother. Originally the suit property belonged to mother of the 1st defendant and she was in possession and enjoyment of the property. After her demise, the 1st defendant is in possession and enjoyment of the property, thereby he claiming the property through his mother. To prove the case of the plaintiff, three witnesses were examined as P.W.1 to P.W.3 and marked 11 documents, Ex.A1 to Ex.A11. On the side of the defendant, one witness D.W.1 was examined and marked 4 documents, Ex.B1 to Ex.B4.

(13) The plaintiff mainly claiming the property through Will executed by Thulasiammal who is said to be the grand-mother of the plaintiff. In order to prove the said Will, he also examined attesting witness. Though the defendant denied the execution of the Will and entitlement of the property by Thulasiammal, the plaintiff side witness had categorically deposed about execution of the Will, thereby proved the execution and attestation of the Will in accordance with law. Per contra, the defendant failed to prove his contention that the property belonging to his mother. The plaintiff side evidence shows that the patta was assigned to the plaintiff grand-father through Ex.A2 to an extent of 3 cents. However the plaintiff filed suit for 4 cents. According to the plaintiff, for another one cent he paid 'B' memo charges to the Government and he has been in possession and enjoyment of the property. To prove his

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possession, he also filed Ex.A3 to Ex.A5, A8 to A10. Ex.A3 to Ex.A5, are notices issued under Section 7 of the Act 3 of Chennai Patinam. Ex.A8 is the tax receipt, Ex.A9 and Ex.A10 are the copy of the ration card. The above documents shows that the plaintiff has been in possession and enjoyment of the property. Whereas the defendant failed to prove that he has been in possession and enjoyment of the property.

(14) The main contention raised by the appellant/1st defendant is that as far as one cent of land is concerned, it is a Vaikal Poromboke and the plaintiff illegally occupied the property and he cannot claim any right over the property and for the water body, he is not entitled to any relief. The plaintiff also not denied that it is a Vaikal Poromboke, however the Government also already issued notices from the year 1965. However, no steps have been taken by the Government and it is for the Government to take appropriate steps in accordance with law in respect of one cent of the property. The defendant who is third party to the property cannot have any rights to question the possession of the plaintiff over the one cent which is said to be Vaikal Poromboke. However he is at liberty to take appropriate steps in accordance with law to remove the encroachments in the water body, till such time, the plaintiff is entitled to permanent injunction to protect his possession. It is well settled law that even the trespassers can protect his possession from the third parties and he has to be evicted in the manner known to law. Therefore the plaintiff has

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proved his case through sufficient documents and the Courts below have correctly appreciated the facts and law and rendered concurrent findings. The said findings by the Courts below are based on the available evidence.

(15) As far as the relief of permanent injunction without seeking declaration is concerned, the plaintiff claiming the title over the property in respect of 3 cents through Assignment Patta and not claiming right over the one cent of the property by way of declaration. The defendant has no right over the property and he has not filed any documents and thereby there is no cloud over the title of the property and thereby without seeking declaration relief, mere suit for bare injunction is maintainable. The plaintiff proved his title and possession of the property in respect of 3 cents and possession in respect of one cent. Once the plaintiff proved the case through sufficient evidence, it is for the defendant to rebut the evidence by adducing contra evidence, but no contra evidence has been adduced to rebut the plaintiff side evidence and thereby the Courts below have rendered the concurrent findings that the plaintiff proved his case and whereas the defendant failed to prove his case. The Courts below have not shifted the burden on the side of the defendant and only after satisfying the case of the plaintiff to rebut the evidence of the plaintiff, finds that the defendant failed to prove his case and thereby the Courts below have not shifted the burden on the side of the defendant and only in the sense of rebuttal evidence, shifted the burden on the side of the defendant. Therefore the Substantial

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Questions of Laws are answered as against the appellant and the Courts below rendered concurrent findings and this Second Appeal has no merits and deserved to be dismissed.

(16) However, as far as one cent of the land belonging to the Government Vaikal Poromboke is concerned, it is for the Government to take appropriate steps in accordance with law. If the defendant aggrieved by the encroachment, he can also take appropriate steps in accordance with law.

(17) With the above said observations, this Second Appeal is dismissed and the Judgment and Decree granted in O.S.No.483 of 2001, on the file of the Principal District Munsif Court, Alandur is hereby confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

28-10-2026

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

To
1. The Judge,
Principal District Munsif Court,
Alandur.

2.The Sub-Judge,
Tambaram.

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P.DHANABAL J.

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