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Order QR

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 23-11-2026**

CORAM

Case QR

**THE HON'BLE MR.JUSTICE P. DHANABAL**

**SA No. 1187 of 2013** and C.M.P. No.267 of 2017

*CNR: {HCMA010462912013}*

1. Mannangatti S/o Ranganathan
2. Kolanjiammal W/o Mannangatti
3. Kesavan S/o Ramasamy

..Appellant(s)

Vs

Murugan S/o Ramasamy

..Respondent(s)

**PRAYER**: The Second Appeal has been preferred under Section 100 of Civil Procedure Code as against the decree and judgment passed in A.S No.39 of 2008 dated 12.02.2013 on the file of the II Additional Subordinate Judge, Villupuram reversing the decree and judgment of the trial Court passed in O.S. No.281 of 2003 dated 27.06.2005 on the file of the II Additional District Munsif, Ulundurpet.

For Appellant(s): M/s. S. Krishnaswamy

For Respondent(s): M/s. C. Venkatesan (LEGAL AID COUNSEL)

**JUDGMENT**

The Second appeal has been preferred as against the decree and judgment passed by the II Additional Subordinate Judge, Villupuram in A.S No.39 of 2008 dated 12.02.2013. The appellants herein are the defendants and the respondent herein has filed a Suit in O.S. No.281 of 2003 on the file of the II



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Additional District Munsif, Ulundurpet for the relief of declaration and consequential relief of permanent injunction. The said Suit was dismissed by the trial Court. Aggrieved by the said decree and judgment, the Plaintiff has preferred an appeal in A.S. No.39 of 2008 on the file of the II Additional Subordinate Court, Villupuram. The First Appellate Court allowed the appeal by reversing the judgment passed by the trial Court and declared the title in favour of the Plaintiff and granted recovery of possession. Aggrieved by the said decree and judgment, the appellants / defendants have preferred this second appeal.

2. The ***case of the Plaintiff*** before the trial Court is that the Suit property is a Natham poromboke land, which was occupied by the Plaintiff in the year 1985. The Plaintiff constructed a thatched shed and the vacant site was enjoyed by him as garden. He also paid house tax to the property at Door No.37. Thereafter, in the year 1997, the Government constructed a house and now the Door number is 59. The 3rd defendant is the adjacent land owner and he asked the Plaintiff to sell the property in his favour and the same was refused by the Plaintiff. Thereby, the defendants are claiming some rights over the property by denying the title of the Plaintiff and attempting to interfere with the possession and enjoyment of the property by the Plaintiff. Therefore, he filed the Suit.



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3. The ***case of the 2nd defendant before the trial Court*** is that the averments made in the Plaint in respect of the enjoyment of the property by the Plaintiff are denied. The Plaintiff never enjoyed the property as stated in the Plaint. The Survey number of the Suit property and the four boundaries mentioned in the Suit property are not correct. There is no existence of house and pattas granted in the name of the Plaintiff as stated in the Plaint. Those documents are not relevant to the Suit property. In fact, the Suit property is a waterbody poromboke land. Originally the survey number of the property is 14/16. That property was occupied and enjoyed by the father of the defendant namely Kathirvelu for more than 45 years. While so, the Government after classifying the same as 'Grama Natham', entrusted the same in favour of the said Kathirvelu on 31.12.1982 and thereafter, the said Kathirvelu constructed a thatched house and thereafter, the Government constructed a good house and handed over the same to the said Kathirvelu. The said Kathirvelu migrated to Mumbai due to his work nature and the 2nd defendant, who is the daughter of the said Kathirvelu, is enjoying the property. The property occupied by the Plaintiff is under S.F. No.14/13. There is no any house in the said property. While so, the property assigned in favour of Kathirvelu is in S. F. No.14/13 to an extent of 3 cents by altering four boundaries and survey number, the Plaintiff has filed the Suit for declaration and permanent injunction. The northern side of the property belongs to Arivazhangan and the eastern side of the property belongs to Marimuthu Padayachi and the Plaintiff has not properly identified the property.



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The pattas issued by the Special Tahsildar, Ulundurpet dated 03.03.1997 and 11.02.2002 are not valid in the eye of law. The father of the 2nd defendant and the Government are also proper and necessary parties and therefore, the Suit is liable to be dismissed.

4. Based on the above said pleadings and after hearing both sides, the trial court has framed the following ***issues*** for trial:-

***Issues:***

***1. Whether the Plaintiff is entitled to the relief of declaration and permanent injunction as prayed for?***

***2. To what other reliefs, the Plaintiff is entitled?***

5. Before the trial court, on the side of the plaintiff, witnesses PW1 to PW5 were examined and Ex.A.1 to Ex.A.13 were marked. On the side of the defendant, DW1 to DW5 were examined and Ex.B.1 to Ex.B.10 were marked. Ex.X.1 to Ex.X.6 were also marked. The trial court, after evaluating the oral and documentary evidences adduced on both sides and perusing the records, dismissed the Suit through its judgment and decree dated 27.06.2005. Aggrieved by the said decree and judgment, the Plaintiff has preferred an appeal in A.S. No.39 of 2008 on the file of the II Additional Subordinate Judge, Villupuram on various grounds.



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5.1. The First Appellate Court has framed the ***point for determination as to whether the Lower Court is right in dismissing the Suit or not.***

6. After hearing both sides and perusing the records, the First Appellate Court reversed the judgment and decree passed by the trial Court and decreed the Suit in O.S. No.281 of 2003 by granting declaration and recovery of possession vide its judgment and decree dated 12.02.2013. Aggrieved by the said decree and judgment, the present second appeal has been preferred by the appellants / defendants .

7. ***This Court, at the time of admitting the second appeal, formulated the following Substantial Question of Law.:-***

***(i) Whether the First Appellate Judge is correct in holding that pending the Suit, the defendants dispossessed Plaintiff, while it is not even the case of the Plaintiff and when the Plaintiff sought for permanent injunction on the basis of his claim of possession for several years before the Suit?***

***(ii) Whether the First Appellate Judge is correct in reversing the well considered judgment and decree of the trial Court by holding that possession follows title by relying upon Ex.A.3, Ex.A.4 and Ex.A.11 to A14 the said documents being the documents of possession in the absence of any piece of evidence of document of title?***



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***8.*** For the sake of convenience and brevity, the parties herein are referred as plaintiff and defendants, as referred before the trial Court.

9. The learned counsel appearing for the appellants would submit that the appellants are the defendants. The respondent herein has filed the Suit for declaration and permanent injunction claiming that the property belongs to the Plaintiff and he has been in possession and enjoyment of the property and the Government also constructed a group house and allotted in favour of the Plaintiff. In fact, the said property in S.F. No.14/13 was occupied by the father of the 2nd defendant namely Kathirvelu and a thatched house was constructed in that property. Taking advantage of the pattas granted in favour of the Plaintiff dated 03.03.1997 and 11.02.2002, he is claiming the Suit property, which originally belongs to the father of the 2nd defendant. Therefore, the Plaintiff failed to prove his title over the Suit property. The trial Court, after analysing the evidences, correctly dismissed the Suit. However, the First Appellate Court without considering the evidences in a proper and perspective manner, set side the judgment and decree passed by the trial Court and decreed the Suit. The First Appellate Court has not even perused the records and granted relief of recovery of possession, as if during the pendency of the Suit, the defendants dispossessed the Plaintiff. Further the First Appellate Court relied upon Ex.A3, Ex.A.4 and Ex.A11 to Ex.A.14 and rendered findings that the Plaintiff is in



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possession and enjoyment of the property through those documents and reversed the judgment and decree passed by the trial Court. Therefore, the judgment and decree passed by the First Appellate Court are liable to be set aside.

10. The learned counsel appearing for the respondent would submit that the respondent is the Plaintiff, who filed the Suit for declaration and permanent injunction and the Suit property is situated in S.F. No.14/13 and now in S. F. No.125/9. In that property, the Plaintiff was in possession and enjoyment. Thereafter, the Government also constructed a group house and allotted the same to the Plaintiff and patta was also granted in the name of the Plaintiff. The defendants attempted to interfere with the Plaintiff's peaceful possession and enjoyment of the property, thereby, the Plaintiff filed the Suit. The trial Court, without considering the evidences in a proper perspective manner, erroneously dismissed the Suit. However, the First Appellate Court, after analysing the evidences, has correctly decreed the Suit by setting aside the judgment and decree passed by the trial Court. The First Appellate Court has analysed the Commissioner's report and held that the property has been properly identified by the Plaintiff. Therefore, the judgment and decree passed by the First Appellate Court are in order and the second appeal is liable to be dismissed.


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11. This Court heard both sides and perused the entire materials available on record.

12. In this case, the Plaintiff has filed a Suit in O.S. No.281 of 2003 for the reliefs of declaration and permanent injunction in respect of the Suit property claiming that the Suit property belongs to him. Patta was also granted in his favour and he is paying house tax to that property. The defendants are also claiming the Suit property. According to them, the Suit property belongs to the father of the 2nd defendant namely Kathirvelu and the said Kathirvelu is entitled to the property through assignment by the Government in the year 1982 and a group house was constructed by the Government and was allotted in the name of the said Kathirvelu. The said Kathirvelu migrated to Mumbai and thereafter, the 2nd defendant, who is the daughter of the said Kathirvelu, is under the possession and enjoyment of the property. In order to prove the case of the defendants, they examined DW1 to DW5 and Ex.B.1 to Ex.B.10 were marked. On the side of the plaintiff, witnesses PW1 to PW5 were examined and Ex.A.1 to Ex.A.13 were marked. Ex.X.1 to Ex.X.6 were also marked. The Suit was dismissed by the trial Court by holding that the Plaintiff failed to prove his title and possession. However, the First Appellate court reversed the judgment of the trial Court and granted decree for declaration and recovery of possession.



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13. This Court perused the entire records. As per the Plaint prayers, the Plaintiff has sought for declaration and permanent injunction. However the First Appellate Court recorded that during the pendency of the appeal, the defendants dispossessed the Plaintiff and granted recovery of possession and declaration. There are no records to render such findings by the First Appellate Court, which shows that the First Appellate Court has not applied its mind while passing the judgment. Moreover, the First Appellate Court has not framed proper points for determination in consonance with Order XLI Rule 31 of the Code of Civil Procedure and the First Appellate Court has framed point for determination as to "***whether the Lower Court is right in dismissing the Suit or not***". Apart from the above point, there are no other points framed by the First Appellate Court. As per Order XLI Rule 31 of Code of Civil Procedure, the judgment of the Appellate Court shall be in writing and shall state— (a) the points for determination; (b) the decision thereon; (c) the reasons for the decision. But the First Appellate Court has not framed proper points for determination and also granted recovery of possession in the absence of any specific relief sought by the Plaintiff. Therefore, without going into the merits of the case, it is appropriate to remand back the case to the First Appellate Court by setting aside the judgment and decree passed by the First Appellate Court for fresh consideration by framing proper points for determination.



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14. Accordingly, this ***Second Appeal is allowed. The judgment and decree passed by the First Appellate Court in A.S No.39 of 2008 dated 12.02.2013 on the file of the II Additional Subordinate Judge, Villupuram are set aside and the matter is remanded back to the First Appellate Court i.e., II Additional Subordinate Court, Villupuram for fresh consideration by framing proper points for determination and to dispose of the same in accordance with law as per Order XLI Rule 31 of the Code of Civil Procedure. The First Appellate Court is directed to dispose the case within four (4) months from the date of receipt of a copy of this judgment***. There shall be no order as to costs.

Consequently, the connected miscellaneous petition is closed.

**23-11-2026**

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

MJS

To

1. The II Additional Subordinate Judge, Villupuram .
2. The II Additional District Munsif, Ulundurpet.



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**P.DHANABAL, J.**

**MJS**

**SA No. 1187 of 2013**

**23-11-2026**



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