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S.A.No.255 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.255 of 2026

Kanniyappan

... Appellant

vs.

1.Lakshmi

2.Vinayagam

3.Selvam

4.Alamelu

5.A.G.Malligarjuna Iyyer

6.Gomathi

7.Saraswathi

8.Babu

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree in A.S.No.14 of 2023 dated 18.12.2025, on the file of the Special Sub Court For LAOP Cases, Tiruvallur in confirming the Judgment and Decree in O.S.No.123 of 2007 dated 04.07.2023 on the file of the District Munsif Cum Judicial Magistrate Court, Uthukottai.

For Appellant : Mr.Srimathi V.



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J U D G M E N T

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The unsuccessful 3rd defendant in the suit is the appellant. The respondents 1 to 4 filed a suit for declaration of title and recovery of possession against the appellant/3rd defendant and other respondents. The suit was decreed by the Trial Court and the first appeals filed by the appellant as well as respondents 5 to 8 are dismissed by the First Appellate Court. Aggrieved by the same, the unsuccessful 3rd defendant has come before this Court.

2. It is the case of the respondents 1 to 4/plaintiffs that the suit property originally belonged to one Govinda Reddy having purchased the same under two different registered Sale Deeds dated 03.08.1978 and 02.02.1979. He died on 06.12.1982. The 1st plaintiff is his wife, the plaintiffs 2 and 5 are daughters of Govinda Reddy and the plaintiffs 3 and 4 are sons of Govinda Reddy. It is the further case of the plaintiffs that they have been in possession and enjoyment of the suit property after the death of Govinda Reddy with revenue documents standing in the name of late Govinda Reddy. In the year 2001, the defendants without having any manner of right trespassed into the suit property, taking advantage of



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absence of the plaintiffs. Hence, the present suit was laid by the plaintiffs seeking declaration of title and recovery of possession.

3. The defendants 2 and 3 filed written statement and the same was adopted by the 1st defendant. In the written statement, the defendants 1 to 3 admitted the title of Govinda Reddy. However, it was their case that in the year 1985, the suit property was mortgaged in favour of the 1st defendant by the plaintiffs 3 and 4 and based on the said Mortgage, the 1st defendant had been cultivating the same. It was further pleaded that in the year 1987, the plaintiffs 3 and 4 sold the suit property to the 1st defendant under the Sale Letter dated 26.05.1987. Therefore, according to the defendants 1 to 3, they have been in possession and enjoyment of the suit property for more than statutory period by cultivating the same and paying tax to the Government Authorities. Subsequently, the defendants 1 to 3 partitioned their family properties on 07.04.2003 and in the said partition, the suit property was also included. Thus, raising the plea of adverse possession, the defendants 1 to 3 sought for dismissal of the suit.

4. The 4th defendant, who said to have purchased an extent of 0.44 cents in suit Item No.5 from the 2nd defendant on 05.07.2004, filed separate



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written statement and resisted the suit on the ground that he purchased the portion of the suit property from the 2nd defendant believing his words and he has been in possession and enjoyment of the said portion.

5. Before the Trial Court, the 4th plaintiff-Selvam was examined as PW.1 and 18 documents were marked as Exs.A1 to A18. The 3rd defendant-Kanniyappan was examined as DW.1 and three other witnesses were examined on the side of the defendants as DW.2 to DW.4. On behalf of the defendants, 13 documents were marked as Exs.B1 to B13.

6. The Trial Court on appreciation of evidence available on record, came to the conclusion that the defendants, who were claiming themselves as Mortgagee of the suit property could not turnaround and raise a plea of adverse possession and consequently, decreed the suit as prayed for. Aggrieved by the same, the appellant/3rd defendant and respondents 6 to 8 filed first appeal in A.S.No.14 of 2023 on the file of Special Sub Court For LAOP Cases, Tiruvallur. The 4th defendant filed separate appeal in A.S.No.11 of 2023. Both the appeals were heard together and the First Appellate Court came to the conclusion that the defendants failed to prove the Sale Letter-Ex.B10 relied on by them and dismissed the appeals.



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Aggrieved by the same, the 3rd defendant alone has come before this Court by way of filing the present second appeal.

7. The learned counsel appearing for the appellant would submit that the appellant/3rd defendant relied on the unregistered Sale Letter marked as Ex.B10 to prove his possession over the suit property. Though the stamp duty together with penalty has been paid by the defendants, the Courts below committed an error in not considering the said document on the ground that it was unregistered one. The learned counsel further submitted that even if the document is unregistered, the same can be looked into to prove the possession of the defendants over the suit property. Therefore, the Courts below have committed a serious error.

8. It is seen from the pleadings of the parties, the suit property was originally belonged to one Govinda Reddy, predecessor-in-interest of the plaintiffs. The defendants in their written statement clearly admitted the Govinda Reddy was the original owner of the suit property. It was their specific case that the suit property was mortgaged to the 1st defendant in the year 1985 and he had cultivated the same as a Mortgagee. However, in order to establish the mortgage, the defendants have not produced any document.



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It is the further case of the defendants that in the year 1987, the plaintiffs 3 and 4 sold the property to the 1st defendant under a unregistered Sale Letter dated 26.05.1987 and thus, the defendants have been in possession and enjoyment of the suit property from the year 1985 for more than the statutory period.

9. It is settled law that a person, who claims himself as a Mortgagee cannot claim adverse possession. The Mortgagee is always deemed to be a Mortgagee and his possession will never turn into a hostile one.

10. The defendant also claimed that the suit property was sold by plaintiffs 3 and 4 to the 1st defendant under 1987 unregistered document marked as Ex.B10. The plaintiffs 3 and 4 are not absolute owners of the suit property. The suit property originally belonged to Govinda Reddy and all the plaintiffs are entitled to suit property and therefore, the plaintiffs 3 and 4 first of all cannot convey absolute title to the defendants. Further, Ex.B10 is an unregistered document. Therefore, the same cannot be relied on to prove the proper conveyance in favour of the 1st defendant. It was also pointed out by the First Appellate Court that the execution of Ex.B10 has been seriously disputed and the same has not been proved by the defendants. The



defendants examined three witnesses to prove the execution of Ex.B10.

DW.1 is one of the defendant and his testimony is interested one and DW.2 and DW.3 deposed about the execution of Ex.B10. However, they are not attester to the said document and DW.1 has not mentioned anything about the presence of DW.2 and DW.3 at the time of execution of Ex.B10. Therefore, the First Appellate Court came to a factual conclusion that the proper execution of Ex.B10 has not been proved.

11. Further, in the written statement, the defendants 1 to 3 had taken a categorical plea that they entered the suit property as a Mortgagee. The possession of the Mortgagee is permissive one and admitting the title of the plaintiffs, the defendants 1 to 3 entered the suit property. In the absence of anything to show that the character of the defendants' possession has been turned hostile against the plaintiffs, the suit is deserved to be decreed in favour of the plaintiffs as they established their title over the suit property.

12. The learned counsel appearing for the appellant also submitted that in the plaint there was a plea, as if the defendants trespassed into the suit property in the year 2001 and the same has not been proved by the plaintiffs. It is to be pointed out that the suit for recovery of possession is based on title. Once, the plaintiffs established their title, as a necessary consequence,



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they are entitled to recover the possession, unless defendant successfully proved adverse title.

13. In the case on hand, the title of the plaintiffs' predecessor-in-interest, Govinda Reddy has been specifically admitted by the defendants in the written statement. In such circumstances, unless defendants establish their hostile possession for more than statutory period, they are not entitled to resist the suit successfully. The First Appellate Court rightly came to a factual conclusion that the defendants failed to establish hostile possession and affirmed the findings of the Trial Court. I do not find any perversity in the said factual conclusion reached by the Courts below. The appeal does not involve any substantial question of law arising for consideration. Accordingly, the same is dismissed.

14. In Nutshell:-

- (i) The Second Appeal is dismissed.
- (ii) In the facts and circumstances of the case, there will be no order as to costs.

07.04.2026

Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
dm



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To

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- 1.The Special Sub Court For LAOP Cases,
Tiruvallur.
- 2.The District Munsif Cum Judicial Magistrate Court,
Uthukottai.



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S.SOUNTHAR, J.

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