



S.A.No.251 of 2026

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.04.2026

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

S.A.No.251 of 2026

Madhammal

... Appellant

VS.

1.Thavamani

2.Kamala

3.Lakshmi

4.Chinnasamy

... Respondents

PRAYER: Second Appeal is filed under Section 100 of the Code of Civil Procedure, to set aside the Judgment and Decree dated 28.10.2021 in A.S.No.52 of 2017 on the file of the learned Subordinate Judge, Palacode confirming the Judgment and Decree dated 23.04.2015 in O.S.No.8 of 2013 on the file of the learned District Munsif, Palacode.

For Appellant : Mr.R.Selvakumar

J U D G M E N T

The unsuccessful plaintiff in the suit is the appellant. The plaintiff filed a suit for declaration of title in respect of suit 1st item and for consequential injunction restraining the defendants from interfering with her



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peaceful possession and enjoyment. She also sought for injunction restraining the defendants from evicting her from the house situated in suit Item-2. The suit was dismissed by the Trial Court. Aggrieved by the same, the plaintiff preferred a first appeal. The First Appellate Court affirmed the findings of the Trial Court. Aggrieved by the concurrent findings, the plaintiff has come before this Court.

2. According to the plaintiff, the suit property along with other properties were purchased by plaintiff's father-Perumal under the Sale Deed dated 29.11.1973. Thereafter, he executed a Settlement Deed on 13.04.1998 settling the suit Item-I in favour of the plaintiff. The suit Item-2 is a Government Odai Poramboke (Water Body) situated on the Western Side of the suit Item-1. The plaintiff occupied the same and has been residing thereon by putting a tiled house. The defendants without having any right over the suit Items 1 and 2, attempted to interfere with the possession of the plaintiff over the suit Item-1 and they also attempted to evict the plaintiff from the suit Item-2 house, therefore, the plaintiff was constrained to file the above suit.



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3. The contesting defendants filed written statement stating that the suit properties were originally belonged to joint family of 3rd defendant's husband-Periyasamy, his brother-Mariyappan and their father Perumal @ Pethampattiyan. The above said persons purchased the suit properties with joint family nucleus and the above said Perumal acted as Kartha of the joint family at the time of purchase of the properties. Since the date of purchase, the suit properties have been treated as a joint family property by Perumal and his sons. Though the Sale Deed stands in the name of Perumal, he did not have any independent right or title over the suit properties.

4. It is further stated in the written statement that in the year 1984, there was a oral partition between the Perumal and his sons namely Mariyappan and Periyasamy. In such partition, the above said Periyasamy had taken possession of the suit property and had been in exclusive possession and enjoyment the suit properties. He died intestate in the year 1992 leaving behind his wife-3rd defendant and his son namely the 4th defendant as his legal heirs. From the Month of January-1998, the above said Perumal misbehaved with 3rd defendant and threatened her that he would create encumbrance on the suit property. In order to secure the right over the suit property, the defendants 3 and 4 filed a suit in O.S.No.335 of



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1998 on the file of the District Munsif-cum-Judicial Magistrate, Palacode for the relief of declaration and injunction against Perumal and the present plaintiff. The said suit was decreed on 12.01.2000. Since the date of decree, the defendants 3 and 4 have been in continuous possession and enjoyment of the suit property with all rights.

5. It was further stated in written statement that after filing of the suit, the defendants acquired knowledge about the Gift Deed executed by Perumal on 13.04.1998 in a fraudulent manner. The allegation in the plaint, as if the plaintiff in possession and enjoyment of suit Item-I was specifically denied in the written statement. The Gift Deed executed by Perumal was denied as a fraudulent one. The allegation in the plaint, as if the plaintiff constructed a house in the suit property was denied by the defendants. On the other hand, the defendants 3 and 4 claimed that they had constructed a house in the suit property and had been residing thereon. The allegation in the plaint, as if the defendants 3 and 4 made an attempt to commit trespass into the suit Item-I and evict the plaintiff from suit Item-2 were all denied. On these pleadings, the defendants sought for dismissal of the suit.



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6. Before the Trial Court, the plaintiff was examined as PW.1 and 9 documents were marked on her side as Exs.A1 to A9. The 3rd defendant was examined as DW.1 and on the side of the defendants, 2 documents were marked as Exs.B1 and B2.

7. The Trial Court on appreciation of evidence available on record, came to the conclusion that the plaintiff was not entitled to the relief sought for and dismissed the suit. Aggrieved by the same, the plaintiff preferred an appeal in A.S.No.52 of 2017 on the file of the Sub Court, Palacode. The First Appellate Court also affirmed the findings of the Trial Court and dismissed the appeal. Aggrieved by the concurrent findings, the plaintiff has come before this Court.

8. The learned counsel appearing for the appellant would vehemently contend that the suit filed by the defendants 3 and 4 in O.S.No;.335 of 1998 in respect of Item-1 of the suit property was decreed *exparte* without any discussion. Therefore, the same cannot be taken into consideration. He further submitted that as far as Item-2 of the suit property is concerned, the First Appellate Court committed an error in dismissing the suit by relying on bar contained under Tamil Nadu Protection of Tanks and Eviction of



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Encroachment Act, 2007, when no steps have been taken by the Government for removal of plaintiff from the suit Item-2 of the property.

9. It is seen from the typed-set of papers, the present defendants 3 and 4 already filed a suit for declaration of title and permanent injunction against the present plaintiff and her father-Perumal in O.S.No.335 of 1998 on the file of the District Munsif-cum-Judicial Magistrate, Palacode. The said suit was decree *exparte* by declaring the title of defendants 3 and 4 herein and decree for permanent injunction was also granted in their favour.

10. It was contended by the learned counsel for the appellant that *exparte* decree passed by the Trial Court without detailed discussion cannot be pressed into service by the defendants and the said judgment is not binding on the plaintiff. The submission made by the learned counsel for the appellant is not acceptable to this Court. The *exparte* decree passed by the Court is also a decree on merits and the same is binding on the parties to the suit. It is admitted fact that till date the plaintiff has not taken any steps to set aside the *exparte* decree passed against her in O.S.No.335 of 1998.

11. Even assuming the *exparte* decree has been passed without detailed discussion and reasoning, we cannot simply ignore the same unless



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the party aggrieved thereby initiated appropriate proceedings to set aside the decree. So long as the decree passed by Court of competent jurisdiction stands, the same is binding on the parties to the decree. The judgment and decree in O.S.No.335 of 1998 was passed as early as 12.01.2000 and the said judgment and decree have been marked as Exs.B1 and B2. Therefore, it is clear the *exparte* decree has been operating from the year 2000 and the present suit has been filed only in the year 2013. The settled things cannot be unsettled after expiry of long time.

12. In the case on hand, the defendants 3 and 4 obtained a decree for declaration of title and permanent injunction against the plaintiff in O.S.No.335 of 1998 in the year 2000. After 13 years, the plaintiff filed the present suit seeking declaration and injunction in respect of very same property without seeking to set aside the earlier *exparte* decree passed in O.S.No.335 of 1998. The Courts below rightly came to the conclusion that the *exparte* decree passed by the Court of competent jurisdiction is binding on the plaintiff unless it is set aside in the manner known to law. I do not find any error of law in the said conclusion reached by the Courts below.

13. It is seen from the plaint averment that the suit Item-2 is a Water Body classified as 'Odai Promboke', the plaintiff said to have encroached



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the same and residing thereon by putting up a construction. It is the case of the defendants that the construction in the suit Item-2 was put up by them and they are residing in the said property. The present suit has been filed on 02.01.2013. The plaintiff filed only two documents as Exs.A7 and A8 to prove the alleged possession over house in suit Item-2.

14. Ex.A7 is a House Tax Receipt, which was issued subsequent to filing of the suit on 28.02.2013. Therefore, no weightage can be given to it. Ex.A8 is a receipt for payment of electricity charges. The same is not useful to connect the plaintiff with the house allegedly in existence in suit Item-2. Even assuming the plaintiff is able to prove her alleged occupation of suit Item-2, the encroachment on a Water Body is objectionable one. In such circumstances, the plaintiff is not entitled to seek the equitable relief of injunction to protect her objectionable encroachment on Water Body. Therefore, this Court is not inclined to exercise its equitable jurisdiction. The Trial Court rightly found that the encroachment on water poramboke is objectionable one and therefore, such encroachment could not be protected by order of the Court. The First Appellate Court also affirmed the said conclusion of course on different reasons.



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15. In view of the conclusion reached by this Court, the plaintiff's alleged occupation in the Water Body cannot be protected by exercise of equitable jurisdiction, this Court is not inclined to interfere with the said finding of the Courts below negating the relief of injunction sought for by the plaintiff in respect of the suit Item-2 also.

16. In view of the discussion made earlier, the contentions raised by the learned counsel appearing for the appellant are negated. I do not find any substantial question of law arising for consideration in this second appeal. Accordingly, the Second Appeals is dismissed. In the facts and circumstances of the case, there will be no order as to costs.

02.04.2026

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

To

1.The Subordinate Judge,
Palacode.

2.The District Munsif,
Palacode.



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S.SOUNTHAR, J.

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