



S.A. No. 389 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14.11.2025
Pronounced on	13.02.2026

CORAM

**THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN
THILAKAVADI**

**S.A.No.389 of 2023 and
C.M.P.No.12157 of 2023**

1. P. Aarumugham
2. P. Jayachandran
3. Karpagam
4. P. Deivasigamani
5. P. Vijayan

...Appellants

Vs.

1. S. Selvi

Pattammal (deceased)

...Respondents

Prayer: Second Appeal filed under Section 100 CPC, 1908 to set aside the decree and judgment dated 06.09.2021 passed in A.S. No.21 of 2018, on the file of the Sub Court, Tiruvallur, confirming the Judgment and decree dated 14.06.2018 passed in O.S. No.47 of 2010, on the file of the District Munsif-cum-Judicial Magistrate Court, Uthukottai.



S.A. No. 389 of 2023

For Appellants : Mr.V. Ramamurthy
For Respondent : Mr. R. Thirumoorthy

JUDGMENT

This Second Appeal is preferred as against decree and judgment dated 06.09.2021 passed in A.S. No.21 of 2018, on the file of the Sub Court, Tiruvallur, confirming the Judgment and decree dated 14.06.2018 passed in O.S. No.47 of 2010, on the file of the District Munsif-cum-Judicial Magistrate Court, Uthukottai.

2. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

3. The appellants are the defendants 1, 3 to 6 in the above suit. The 1st respondent as plaintiff filed the above suit for the relief to declare the relinquishment deed dated 30.03.2010 executed by the defendants 2 to 6 in favour of the 1st defendant as null and void and for permanent injunction restraining the 1st defendant from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and also for permanent



S.A. No. 389 of 2023

WEB COPY

injunction restraining the 1st defendant from alienating or encumbering the suit property. According to the plaintiff, the suit property is the ancestral property of plaintiff's father Elumalai, who had three daughters, namely, the plaintiff, Shanthi and Sangothi. After the demise of Elumalai, the plaintiff and her sisters were in continuous possession of the suit property. The plaintiff is residing in the suit property by constructing a house. On 15.09.2009, the plaintiff's sister Shanthi and Sangothi executed a registered relinquishment deed, by giving their 2/3rd share to the plaintiff. Thus, the plaintiff has become the absolute owner of the suit property. While so, the defendants being adjacent owners are claiming right over the suit property, which is vexatious. The 1st defendant, in order to defraud the plaintiff, had obtained a relinquishment deed on 30.03.2010 from his mother, sister and brothers in respect of the suit property. The said deed is not valid and not binding on the plaintiff. The 1st defendant is attempting to alienate the suit property to third party to create encumbrance. Hence the suit.

4. On the other hand, the defendants would contend that, the suit property originally belonged to one Vellaiammal @ Chellammal and the



S.A. No. 389 of 2023

defendants' grandmother Manickammal purchased the same from her on 17.12.1941. The said Manickammal and her husband died leaving behind their only son Panchalai, father of the defendants. After the demise of Manickammal and her husband, the defendants' father Panchalai was in possession and enjoyment of the suit property and he died on 28.01.2005, leaving behind the defendants as his legal heirs. The defendants became the absolute owners of the suit property. Thereafter, the defendants 2 to 6 have executed a relinquishment deed on 30.03.2010 in favour of the 1st defendant. Thus, the 1st defendant is the absolute owner of the suit property. The plaintiff's father Elumalai Reddy, is the brother of Manickammal. The said Manickammal gave permission to him to reside in the suit property and after her demise, the defendants' father also granted him permission to reside in the suit property. At the time of UDR, patta was transferred in the name of the plaintiff's father Elumalai. After the demise of their father, the defendants came into the possession of the suit property. The plaintiff is not in possession of the suit property. Hence, prayed for dismissal of the suit.



S.A. No. 389 of 2023

WEB COPY

5. The trial court, upon considering the materials on record, decreed the suit in favour of the plaintiff, against which, the defendants preferred the appeal suit in A.S. No.21/2018. The first appellate court dismissed the appeal suit. Aggrieved by this, the present Second Appeal is preferred.

6. The Second Appeal has been admitted on the following substantial questions of law:

“(1) Whether the suit filed by the plaintiff in this case, seeking to declare the Release Deed executed by the defendants 2 to 6 in favour of the 1 st defendant as null and void, is maintainable in the absence of prayer seeking the relief of declaration in respect of the suit property by the plaintiff when the defendant specifically denied title to the plaintiff?

(2) When the Trial Court decided that the plaintiff is not entitled to the relief of declaration of title in respect of the suit property as plaintiff having failed to pay the necessary Court fee and the Trial Court having rejected the issue, then how the suit filed by the plaintiff is maintainable, seeking the relief of



S.A. No. 389 of 2023

WEB COPY

declaration of the documents executed by the defendants 2 to 6 in favour of the 1st defendant in respect of the suit property is maintainable?

(3)When the plaintiff who is examined as PW1 specifically stated in her proof affidavit that the suit has become infructuous and nothing survives in the suit, whileso, how the rendering of Judgments by the Trial Court and the First Appellate Court is sustainable?”

7. Mr.R. V. Ramamurthy, learned counsel appearing for the appellants/defendants would submit that without the prayer for declaratory relief in respect of the suit property by the plaintiff, when the defendants specifically denied the title of the plaintiff, the plaintiff cannot seek the relief to declare the release deed executed by the defendants 2 to 6 in favour of the 1st defendant as null and void and therefore, the suit is not maintainable in the absence of prayer seeking the declaratory relief. To support his contention, he has relied upon the following judgments:



S.A. No. 389 of 2023

WEB COPY

i. ***Rajeev Gupta and others vs. Prashant Garg and others reported in 2025 SCC Online SC 889.***

ii. ***Jharkhand State Housing Board vs. Didar Singh and another reported in (2019) 17 SCC 692.***

iii. ***Anathula Sudhakar vs. P. Buchi Reddy (dead) by Lrs and others reported in (2008) 4 SCC 594.***

His further contention is that, the plaintiff failed to pay necessary court fee and therefore, the suit is not maintainable. The learned counsel would further contend that, in spite of a specific statement made by the plaintiff in her proof affidavit that, the release deed executed by the 1st defendant was cancelled, the suit has become infructuous and nothing survives in the suit, the courts below ought not to have granted a decree in favour of the plaintiff. He would also submit that the oral and documentary evidence let in on the side of the defendants were not properly appreciated by the courts below and prays for setting aside the judgment and decree passed by the courts below.



S.A. No. 389 of 2023

WEB COPY

8. On the other hand, Mr. R. Thirumoorthy, the learned counsel for the respondent/plaintiff would submit that, the plaintiff has established his title and possession in the suit property through oral and documentary evidence, which was well considered by the courts below, warrants any interference by this Court.

9. Heard on both sides. Records perused.

10. The plaintiff has claimed right and possession over the suit property on the strength of Ex.A1 to A15 documents. The plaintiff mainly rests her claim over the suit property under Ex.A1 patta dated 23.10.1992 issued in favour of her father Elumalai Reddy. On the other hand, the defendants have relied upon Ex.B1 to Ex.B15 to establish their right over the suit property. The materials on record would reveal that the suit property is comprised in old S.No.323, New S.No.440/19 measuring 9171 sq.ft. Admittedly, the suit property was classified in revenue records as grama natham land and Ex.A1 patta was granted to the plaintiff's father Elumalai in the year 1992. The defendants rest their claim over the suit



S.A. No. 389 of 2023

WEB COPY

property mainly under Ex.B1 sale deed, executed by one Vellaiammal in favour Manickammal, the grandmother of the defendants. Upon perusal of Ex.B1 sale deed, the boundaries mentioned in the sale deed do not tally with that of the suit property. Even in Ex.B15 Settlement Register extract, it is mentioned that the corresponding Paimash number for S.No.323 is 1159, shown as grama natham. The names of Vellaiammal and Manickammal are not found in Ex.B15 Settlement Register. Further, the defendants alleged that, their grandmother Manickammal and their father Panchalai permitted father of the plaintiff Elumalai to reside in the suit property and after the death of Panchalai in the year 2005, the defendants came into the possession of the suit property and they were chased out by the plaintiff. They are now residing in S.No.440/18. Absolutely, there is nothing on record to prove the above allegations. Except Ex.B1 sale deed, no other documentary evidence is placed on the side of the defendants to show their right over the suit property. On the other hand, the plaintiff has produced necessary documents to establish her title and possession in the suit property. The defendants have not raised any genuine dispute with regard to the title in the suit property. Since there is no cloud over the title of the plaintiff, suit for injunction simpliciter would be sufficient. Since the



S.A. No. 389 of 2023

plaintiff is not a party to the release deed executed by the defendants 2 to 6 in favour of the 1st defendant, the court fee paid by the plaintiff found to be correct. The defendants have not filed any cancellation deed, cancelling the relinquishing deed in favour of the 1st defendant. Hence the suit does not become infructuous. Moreover, no issue was raised in this regard before the trial court as well as the first appellate court. All the substantial questions of law are answered against the appellants.

11. In the result,

- i. the Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The decree and judgment dated 06.09.2021 passed in A.S. No.21 of 2018, on the file of the Sub Court, Tiruvallur, confirming the Judgment and decree dated 14.06.2018 passed in O.S. No.47 of 2010, on the file of the District Munsif-cum-Judicial Magistrate Court, Uthukottai, is upheld.

13.02.2026

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga



S.A. No. 389 of 2023

WEB COPY

- To
1. The Sub Judge, Tiruvallur
 2. The District Munsif-cum-Judicial Magistrate Court, Uthukottai
 3. The Section Officer, VR Section, High Court, Madras.



WEB COPY



S.A. No. 389 of 2023

K.GOVINDARAJAN THILAKAVADI,J.
bga

Pre delivery judgment in
S.A.No.389 of 2023 and
C.M.P.No.12157 of 2023

13.02.2026