



WEB COPY

SA No. 70 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26-03-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 70 of 2021

and

CMP No.1601 of 2021

Sundaramoorthy

..Appellant/Defendant

Vs

1. Ponnudurai (Died)

2. Ethiraj (Died)

3. Lakshmi

[R1 & R2 died. R3 recorded as the sole
surviving legal heir of the deceased R1 & R2.

Memo recorded (dt.03.03.2026) vide Court
order dated 25.03.2026 made in SA.No.70 of
2021 by SSJ]

..Respondents/plaintiffs

Prayer: This Second Appeal is filed under Section 100 of Code of Civil Procedure praying to set aside the judgment and decree made in AS No.81 of 2017 dated 21.08.2019 by the 1st Additional Subordinate Judge, Cuddalore, reversing the judgment and decree made in OS No.146 of 2001 dated 10.08.2017 by the learned Principal District Munsif, Cuddalore.

For Appellant(s): Mr.A.Veerappa

For Respondent(s): R1 & R2 – Died
R3 – No appearance



JUDGMENT

WEB COPY This second appeal is filed to set aside the Judgment and Decree made in A.S.No.81 of 2017 dated 21.08.2019 on the file of the learned 1st Additional Subordinate Judge, Cuddalore, reversing the Judgment and Decree made in O.S.No.146 of 2001, dated 10.08.2017, on the file of the learned Principal District Munsif, Cuddalore.

2. The unsuccessful defendant in the suit is the appellant before this Court. The predecessor-in-title of respondents namely deceased Neelambal, initially filed a suit for injunction. Subsequently, the plaint was amended seeking declaration of title and recovery of possession. The suit was dismissed by the trial Court. Aggrieved by the same, the respondents/plaintiffs who were brought on record as the legal representatives of the deceased sole plaintiff Neelambal, filed an appeal. The Appellate Court reversed the findings of the trial Court and decreed the suit. Aggrieved by the same, the defendant has come before this Court.

3. According to the respondents/plaintiffs, the entire extent of 3 acres 67 cents in the suit survey number originally belonged to one Sankar Chettiar. He purchased the same in a Court auction sale on 26.08.1971 and is said to have taken actual possession of the property through Court process on 06.10.1972.



The plaintiff purchased the property adjacent to the suit property from Sankar Chettiar on 19.01.1983. Thereafter, the present suit property was purchased by the plaintiff from Sankar Chettiar on 15.06.1991. The appellant/defendant, a stranger to the suit property, attempted to trespass into the property. Hence, the suit was initially filed seeking injunction. Subsequently, the prayer was amended seeking declaration of title and recovery of possession, as the defendant disputed both the title as well as the possession of the respondents / plaintiffs.

4. The suit was mainly resisted by the defendant on the ground that he had been in possession and enjoyment of the suit property for more than 40 years, even prior to the alleged purchase by Sankar Chettiar. The defendant denied the allegation in the plaint that the suit property was purchased by Sankar Chettiar in a Court auction sale and he had taken delivery of the same. It was further stated that Sankar Chettiar filed a suit in O.S.No.102 of 1984 seeking recovery of possession against the present defendant and many other occupants of the larger extent of land in the suit survey number and the said suit was compromised with other occupants. As far as the present defendant is concerned, the said suit was dismissed for non-prosecution. It was also stated that there was an agreement between the defendant and Sankar Chettiar for purchase of the suit property, and that a Sale Deed was executed in favour of the defendant on 27.09.1991 and presented for registration before the Sub-Registrar



Office. However, at the request of Sankar Chettiar, the said document was returned without registration. In such circumstances, the defendant filed a suit for specific performance against Sankar Chettiar and the present plaintiff in O.S.No.387 of 1991 on the file of the Sub-Court, Cuddalore. In the said suit, the defendant sought declaration of title, permanent injunction and specific performance. It was also stated that the prayer for specific performance was made by way of abundant caution without prejudice to the rights of the defendant. The said suit was dismissed by the trial Court. Aggrieved by the same, the defendant preferred an appeal in AS.No.38 of 2001, which was pending. Hence, denying both the title as well as the possession of the plaintiff over the suit property, the defendant has contested the present proceedings.

5. Before the trial Court, the 2nd plaintiff was examined as P.W.1 and the 3rd plaintiff was examined as P.W.2. On behalf of the defendant, five documents were marked as Ex.B1 to B5. The defendant examined D.W.1 and another witness D.W.2.

6. The trial Court, upon appreciation of the evidence on records, came to the conclusion that the plea of adverse possession raised by the defendant could not be countenanced in the light of the attempt made by the defendant to purchase the suit property from Sankar Chettiar. However, the suit filed by the plaintiff was dismissed by the trial Court by observing that the relief of



declaration is discretionary and that the plaintiff failed to plead clear facts initially when he filed a suit for injunction. Against the dismissal of the suit, the plaintiffs preferred an appeal in AS.No.81 of 2017 before the Sub-Court, Cuddalore. The first appellate Court has also come to the conclusion that the defendant could not raise the plea of adverse possession and further held that the plaintiff had established title to the suit property and as a necessary consequence, was entitled to have possession. Therefore, the appellate Court passed a decree declaring title of the plaintiff and granting relief of recovery of possession. Aggrieved by the said Judgment and Decree, the defendant has before this Court.

7. The learned Counsel for the appellant vehemently contended that predecessor of the plaintiff, namely Sankar Chettiar filed a suit for declaration of title and recovery of possession against the present defendant and others in O.S.No.102 of 1984 and the said suit was dismissed for default as against the present defendant. The plaintiff being a person claiming title under Sankar Chettiar, is not entitled to maintain second suit for declaration of title and recovery of possession, as it is barred under Order IX Rule 9 of Code of Civil Procedure. The learned Counsel also submitted that the both the Courts below failed to take into consideration the long and uninterrupted possession of the defendant while considering the plaint. Therefore, the judgment and decree of the Courts below are liable to be set aside.



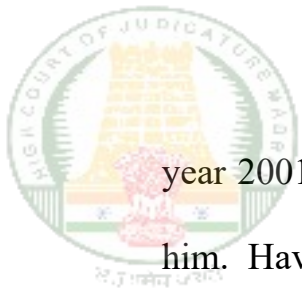
8. As far as the point raised by the learned Counsel for the appellant regarding bar under Order IX Rule 9 of Code of Civil Procedure is concerned, in the written statement filed by the defendant, the bar under Order IX Rule 9 has not been specifically raised. The defendant simply stated that O.S.No.102 of 1984 was dismissed by the concerned Court as against the present defendant. It was not the case of the defendant that when suit was dismissed for default, the defendant was present before the Court. Therefore, the bar under Order IX Rule 9 of Code of Civil Procedure has not been specifically raised in the pleadings of the defendant. Now at the time of arguments, the learned Counsel for the appellant by taking this Court to Ex.B5 (the certified copy of suit register in O.S.No.102 of 1984) submitted that the suit filed by Sankar Chettiar was dismissed by the trial Court as against the present defendant. Therefore, the present suit filed by the plaintiff is barred under Order IX Rule 9 of Code of Civil Procedure.

9. In order to attract the bar under Order IX Rule 9 of CPC, the suit must have been dismissed owing to non-appearance of plaintiff and on the date of dismissal, the defendant should have appeared before the Court. A perusal of Ex.B5 would indicate there is no reference about the presence of defendant or his Counsel on the date of dismissal. In Ex.B5, it is stated that suit was dismissed against the first defendant and various other defendants. However,



there was no reference about the presence of the present defendant or his Counsel on the date of dismissal. In such circumstances, Ex.B5 is not at all useful to support the case of defendant that the present suit is barred under Order IX Rule 9 of Code of Civil Procedure. As pointed earlier, the bar under Order IX Rule 9 has not been specifically raised in the written statement filed by the appellant who is the defendant in this case. Hence, this Court is not attracted by the submission made by the learned Counsel for the appellant.

10. Though the defendant raised a plea of adverse possession, in the written statement by stating that he had been in possession and enjoyment of property for more than 40 years, he clearly admitted that he made an attempt to purchase the suit property from original owner namely Sankar Chettiar. In his written statement, it was stated that he agreed to purchase the suit property from Sankar Chettiar for a sale consideration of Rs.3,600/- and the entire sale consideration was paid on 21.03.1990. Therefore, a Sale Deed was executed by Sankar Chettiar on 27.09.1991. However, the Sale Deed was not registered. It was also stated that he filed a suit for declaration of title, permanent injunction and for specific performance in O.S.No.387 of 1991, on the file of the Sub-Court, Cuddalore and the same was dismissed. It was also stated that the second appeal arising out of the said suit is still pending. Therefore, it is clear that the defendant admitting the title of Sankar Chettiar, made an attempt to purchase the property from him in the year 1991. The present suit has been filed in the



year 2001, well within a period of 12 years from date of such attempt made by him. Having admitted the title of Sankar Chettiar and made an attempt to purchase the property from him, it is not open to the appellant to say that he has been in possession and enjoyment of suit property with hostile intention. Both the Courts below have rightly appreciated the said possession and have given a factual finding that the defendant failed to establish the plea of adverse possession.

11. I do not find any perversity in the said conclusion reached by the Courts below. Therefore, the submissions made by the learned Counsel for the appellant is not appealable to this Court. Finding no substantial question of law arising for consideration, the second appeal stands dismissed. Consequently, connected CMP is closed. No costs.

26-03-2026

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

VEDA



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S.SOUNTHAR, J.

VEDA

To

1. Additional Subordinate Judge, Cuddalore.
2. The Principal District Munsif, Cuddalore.

**SA No. 70 of 2021 and
CMP No.1601 of 2021**

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