



S.A.No.221 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.11.2025
PRONOUNCED ON : 30.04.2026

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CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No. 221 of 2014

1.Srinivasan

2.Samboornam ...Appellants/Appellants/Defendants 2 & 3

Vs.

Periyasamy Gounder (Died)

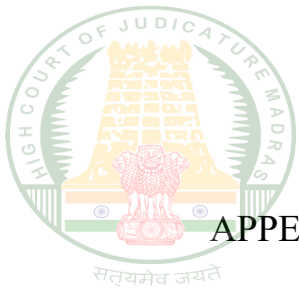
2.Saraswathi

3.Palanivel

4.Vijayan

(sole respondent died. R2 to R4 are brought on
record as L.R.s of the deceased sole respondent
vide court order dated 12.03.2025 made in
C.M.P.Nos.6147, 6149 & 6151 of 2020 in
S.A.No.221 of 2014) ...Respondents/Respondents/plaintiffs

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code against the decree and Judgment dated 29.10.2013 passed in A.S.No.7 of 2005 on the file of the Sub Judge, Kallakurichi confirming the decree and Judgment dated 16.09.2004 passed in O.S.No.338 of 1996 on the file of the Principal District Munsif, Kallakurichi.



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APPEARANCE OF PARTIES:

For Appellants : Mr.R.Nalliyappan.
For Respondent : Mr.A.Arun Babu for R2 to R4.
R1 – died.

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J U D G M E N T

This Second Appeal is filed by the defendants 2 and 3 against the judgment and decree dated 29.10.2013 in A.S.No.7 of 2005 on the file of the Subordinate Judge, Kallakurichi confirming the Judgment and decree dated 16.09.2004 in O.S.No.338 of 1996 on the file of the Principal District Munsif, Kallakurichi, whereby the trial Court decreed the suit for permanent injunction .

2. For the convenience , the parties are referred to as per their rank before the trial Court.

3. Plaintiff's Case in Brief: The Plaintiff's case is that the suit property is land in S.No.111/8 measuring 45 cents in Vinaitheerthapuram village, Kallakurichi Taluk. The plaintiff claimed that he purchased the suit property under Ex.A1 registered sale deed dated 20.03.1995 from



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Perumayee Ammal and others. According to him, the suit property is the second item in the sale deed. He pleaded that from the date of purchase he was in possession and enjoyment; that he was paying kist; and that chitta and adangal also supported his possession. His further case was that the defendants owned property only on the southern side and, taking advantage of that location, and due to recent enmity and his old age, they attempted from 08.02.1996 to interfere with his peaceful possession.

4. Defendants' Case in Brief: The defendants specifically denied the truth, validity and consideration of the alleged sale deed dated 20.03.1995 said to have been executed by Perumayi Ammal and others in favour of the plaintiff. It is averred that the said vendors had no right, title or competence to convey the suit property to the plaintiff, and therefore the plaintiff did not acquire any right over the suit property. The description of properties and the boundaries and the extent given for the suit properties in the plaint are all false and incorrect. The defendants also denied the plaintiff's alleged possession and enjoyment of the suit property and stated that the kist receipts, chitta and adangal copies filed along with the plaint are false and fabricated. They further contended that the description, boundaries and extent of the suit property are incorrect. It



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is also stated that the first defendant had already filed O.S. No.79 of 1996

against the present plaintiff and his son in respect of properties in S.

Nos.111/1B and 111/1A, and that by suppressing the pendency of the said suit, the plaintiff has filed the present suit and is attempting to trespass into the defendants' properties on the strength of an ex parte interim injunction. Hence, the defendants prayed for dismissal of the suit with costs.

5. Issues and Evidence before Courts below: The trial Court originally framed issues on declaration, injunction and relief. Later, the issues were recast as follows: whether the plaintiff is in exclusive possession of 45 cents in the suit survey number; whether such possession is interfered with by the defendants; and to what relief the plaintiff is entitled. Before the Trial Court the plaintiff examined himself as P.W.1 and marked Exs.A1 to A10. The defendants examined D.Ws.1 to 3 and marked Exs.B1 to B5. Before the first appellate Court, Ex.B6, was produced and marked as additional document at the appellate stage.

6. Findings of the Courts below: The Courts below concurrently found that the plaintiff had established possession over the suit property in



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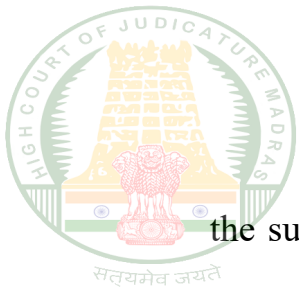
Survey No.111/8 , while rejecting the defendants' attempt to connect the property with Survey No.111/1B and the earlier suit in O.S.No.79 of 1996. Thus, the Trial Court, on finding that the plaintiff had established possession over the suit property, granted the decree for permanent injunction, and the First Appellate Court, on reappreciation of the evidence, found no ground to interfere with the said decree and confirmed the same.

7. At the time of admission, this Court framed the following substantial question of law:

“Whether the decree of permanent injunction can be granted even though one of the defendants has obtained a decree of declaration against the plaintiff for the same suit property?”

8. The learned counsel for the appellant/defendants submitted that the plaintiff has filed only a suit for bare injunction without seeking the relief of declaration of title, though the defendants have specifically disputed the plaintiff's title, possession and identity of the suit property by relying upon Ex.B1 assignment, Ex.B2 partition deed and the decree in O.S.No.79 of 1996. Once serious cloud is raised over the plaintiff's title,

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the suit for bare injunction is not maintainable and the plaintiff ought to have sought declaration and consequential injunction. The Courts below have also virtually decided the issue of title in a simple injunction suit, wrongly shifted the burden upon the defendants, and failed to consider the evidence of the Village Administrative Officer and the plaintiff's inability to identify the suit property. Further, revenue records such as patta, chitta, adangal and kist receipts cannot by themselves prove title or lawful possession.

9. It was submitted that the 1st defendant had filed O.S.No.79 of 1996 before the District Munsif Court, Kallakurichi, for declaration in respect of the same property, and the said suit was decreed on 27.07.1998. The plaintiff, in his evidence, disputed the identity and sameness of the property involved in O.S.No.79 of 1996 and the present O.S.No.338 of 1996. Therefore, the plaintiff, having omitted to seek the necessary relief of declaration in the present suit, cannot maintain a suit for bare injunction, and the suit is hit by Order II Rule 2 CPC and is not maintainable in law.

10. In support of the above submissions, the appellants relied upon; Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs. and others, 2008 6/14

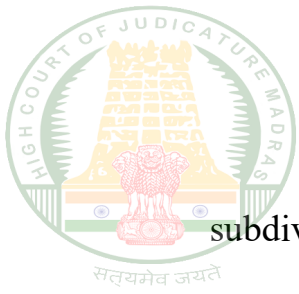


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(4) SCC 594; Thirugnanasambandam vs P.Kaliyaperumal and Others, Saradammal alias Saradambal v. G.S. Srinath, 2012 (6) MLJ 1; and Sathiyamurthy v. R. Pavunambal and another 2011 (4) L.W.264, , R.Thirugnanasambandamoorthy vs N.Durai , 2025 (5) CTC 815, Sanjay Agarwal and others vs P.Asiam and others in A.S.No.890 of 2012 dated 31.01.2024.

11. The learned counsel appearing for the respondent/plaintiff submitted that the suit is one for bare permanent injunction and that the plaintiff has established his lawful possession and enjoyment over the suit property. It was argued that the plaintiff purchased the property under Ex.A1 sale deed dated 20.03.1995 and his possession is supported by revenue records, namely Theervai receipts, assignment order, patta, chitta and adangal marked as Exs.A2 to A10. The suit property, measuring 45 cents in S.No.111/8, was originally assigned to Krishnan, the vendor's predecessor, and thereafter conveyed to the respondent. Hence, both the Courts below rightly accepted the plaintiff's possession and granted injunction.

12. It was further contended that the appellants/defendants failed to prove any right or possession over the suit property. Their plea regarding



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subdivision of S.No.111/1B into S.Nos.111/8 and 111/9 was not properly

pleaded either in the written statement or in the earlier suit in O.S.No.79

of 1996. No reliable documentary evidence was produced to prove such

subdivision, and the oral evidence of the Village Administrative Officer

cannot be accepted in the absence of supporting revenue records. The

learned counsel submitted that a party cannot be granted relief on a case

not pleaded, and relied upon the principle that Courts cannot base their

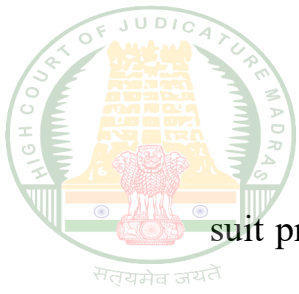
findings on facts not forming part of the pleadings. In support of the

above submissions, the respondent /plaintiff relied upon Bachhaj Nahar

vs Nilima mandal and another (2008) 17 SCC 491 , Ca Kriti Tandon vs

Ms Mehta Sai Das Jewelers [2024 Supreme (All) 1053].

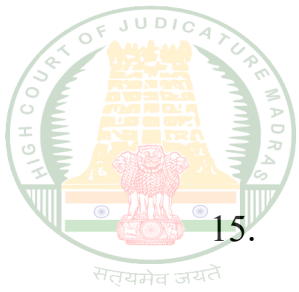
13. Discussion: The substantial question proceeds on the footing that the decree obtained by the first defendant in O.S.No.79 of 1996 related to the very same suit property. On a careful reading of the judgments of the Courts below, that premise is not borne out by the record. The defendants relied on the earlier decree in O.S.No.79 of 1996 and contended that, in that suit, the first defendant had obtained declaration and permanent injunction in respect of 0.54 cents in S.No.111/1B. The First Appellate Court specifically considered this contention and found that the present



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suit property was claimed by the plaintiff in S.No.111/8, for an extent of 0.45 cents, on the strength of Ex.A1 sale deed and the assignment in favour of his vendor's predecessor under Ex.A3. It further held that O.S.No.79 of 1996 had been filed only for S.No.111/1B, and not to the suit property herein.

14. The First Appellate Court also found that there was no specific pleading in the present written statement that S.No.111/1B had been subdivided into S.Nos.111/8 and 111/9, or that the property covered by the earlier decree and the present suit property were one and the same. It rightly applied the principle that evidence cannot be looked into in the absence of pleading. Though Ex. B6 was produced as an additional document to show subdivision, the Appellate Court held that it did not establish the defendants' possession over 0.09 cents in S.No.111/8. It further found that the plaintiff had produced the assignment order, patta, kist receipts and adangal to prove his possession, while the defendants had not produced revenue records to show possession over any part of S.No.111/8.



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15. Therefore, the earlier decree in O.S.No.79 of 1996 could not automatically defeat the plaintiff's present suit for permanent injunction.

A prior decree can operate as a bar only when the identity of the property, parties and issue is clearly established. In the present case, the Courts below found that such identity was not proved. The Trial Court granted permanent injunction on the finding that the plaintiff was in possession of the suit property, and the First Appellate Court, on reappreciation of the evidence, confirmed the same.

16. Thus, the decree for permanent injunction cannot be said to be legally unsustainable merely because the first defendant had obtained a decree in O.S.No.79 of 1996. The defendants failed to establish that the earlier decree related to the same suit property. The concurrent findings of the Courts below are based on the pleadings and evidence and do not suffer from perversity. Accordingly, this substantial question of law is answered against the appellants.

17. Learned counsel for the appellants relied on **Anathula Sudhakar v. P. Buchi Reddy, (2008) 4 SCC 594**. The Supreme Court held that



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where the plaintiff is in lawful possession and there is interference, a suit for injunction is sufficient; where title is under a cloud and possession is not proved, the remedy is declaration and possession; and in a suit for injunction, title is normally considered only incidentally unless it is necessary and simple. This principle does not help the appellants. Here, both Courts below have found possession with the plaintiff. The defendants have not proved that the earlier decree covered Survey No.111/8 or that they had a better right over the suit property.

18. The appellants also relied on later decisions of this Court relating to permanent injunction, burden of proving possession and identification of suit property. There can be no quarrel with those principles. The plaintiff must prove possession and the suit property must be identifiable. But in the present case the suit property is described as Survey No.111/8 measuring 45 cents, and both Courts below have accepted the plaintiff's possession on the basis of documents and oral evidence. The defendants' plea is not that Survey No.111/8 does not exist, but that 9 cents in it belongs to them. That plea has not been proved.



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19. In a second appeal, this Court cannot reappreciate evidence merely because another view may be possible. Interference is justified only when the findings are perverse, based on no evidence, or contrary to law. The concurrent findings that the plaintiff is in possession of Survey No.111/8 and that the defendants have not proved identity between O.S.No.79 of 1996 property and the present suit property are findings of fact based on evidence. They are not perverse. The courts below were right in granting relief of permanent injunction in favour of the plaintiff. Thus the substantive question of law is answered against the appellants and in favour of the plaintiffs.

20. In the result, the Second Appeal is dismissed. The judgment and decree dated 29.10.2013 in A.S.No.7 of 2005 on the file of the Subordinate Judge, Kallakurichi, confirming the judgment and decree dated 16.09.2004 in O.S.No.338 of 1996 on the file of the Principal District Munsif, Kallakurichi, are confirmed.



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21. In the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition, if any, is closed.

30.04.2026

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Index: Yes / No

Speaking Order / Non-speaking Order

Neutral Citation : Yes / No

To

1. The Subordinate Judge, Kallakurichi
2. The Principal District Munsif, Kallakurichi
3. The Section Officer, V.R.Records, Madras High Court.



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DR. A.D. MARIA CLETE, J

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**PRE DELIVERY JUDGMENT
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