



S.A. No. 513 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 28.11.2025
PRONOUNCED ON : 15.06.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No. 513 of 2014

and

C.M.P. No. 19005 of 2018

K.Ramamoorthy

S/o Kannappa Naidu No. 2/2205 Railway Station
Rd, Melpatti Village And Po, Gudiyattam, Vellore
Dist

..Appellant(s)

Vs.

Chellammal[died]

Elumalai S/o Gopal Naidu, Melpatti Village And Po,
Gudiyattam, Vellore Dist

...Respondent

PRAYER IN S.A.: Second appeal filed against the Judgment and Decree dated 31.10.2013 in A.S. No. 38 of 2008 on the file of the Sub Ordinate Judge, Gudiyattam, Vellore District confirming the Judgment and Decree dated 08.04.2008 in O.S. No. 647 of 2004 on the file of the District Munsif Court, Gudiyattam.

PRAYER IN C.M.P.: Civil Miscellaneous Petition filed praying to appoint advocate commissioner pending disposal of the second appeal No. 513 of 2014 to inspect measure draw a plan of the suit schedule property and to file report before this Court about identification of the suit schedule property and render justice.

For appellant: Dr.G.Krishnamuthy

For respondent: Mr.T.Dhanyakumar.



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J U D G M E N T

The present Second Appeal has been filed by the plaintiff, challenging the judgment and decree dated 31.10.2013 passed in A.S.No.38 of 2008 by the Subordinate Judge, Gudiyattam, confirming the judgment and decree dated 08.04.2008 passed in O.S.No.647 of 2004 by the District Munsif Court, Gudiyattam, whereby the suit for permanent injunction was dismissed.

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

3. The plaintiff's case is that his mother, Kanagammal, purchased the northern half of the suit property, shown as ABCD in the rough plan, from Rajammal and others under a registered sale deed dated 20.06.1973, and later purchased the southern half, shown as CDEF, from the defendants under a registered sale deed dated 02.09.1974. Thus, she became the absolute owner of the entire suit property shown as ABCDEF. After purchase, she put up a house, resided there, paid house tax to the Melpatti Panchayat Board, and was in actual, physical, continuous, open and uninterrupted possession and enjoyment of the property. The plaintiff also claims that she perfected title by adverse possession. After Kanagammal died intestate in 1992, the plaintiff continued in



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possession and enjoyment of the property. The house later became dilapidated, and the property is now a vacant site surrounded by bushes and mulveli trees, due to which house tax is no longer collected. The plaintiff alleges that the defendants, having already sold the southern half under the sale deed dated 02.09.1974, have no right, title, interest, possession or enjoyment over the suit property and are estopped from making any claim; any such claim is also barred by limitation. In the first week of October 2004, when the plaintiff attempted to cut the *mulveli* trees in the suit property, the defendants unlawfully obstructed him and allegedly attempted to assault him, for which he gave a police complaint on 03.10.2004 before the Melpatti Out Police Station. Apprehending further trespass and interference by the defendants, the plaintiff filed the suit for permanent injunction restraining them, their men, servants and agents from interfering with his peaceful possession and enjoyment of the suit property, and also sought costs.

4. The defendants state that the schedule of property, survey number and boundaries given in the plaint are wrong, and that no such property as described in the plaint exists on ground. Their specific case is that the plaintiff has filed the suit with false and fraudulent documents to grab the 2nd defendant's property in Melpatti Village, S.No.214/1. They contend that the documents and tax receipts relied upon by the plaintiff are neither genuine nor related to the suit

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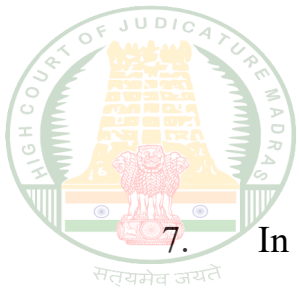
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property, and that neither the plaintiff nor Kanagammal ever possessed or

enjoyed S.No.214/1.

5. The defendants further deny the alleged incident in the first week of October 2004 regarding cutting of mulveli trees, obstruction, assault, and police complaint. They state that the police found no truth in the plaintiff's complaint and warned the plaintiff. According to them, the plaintiff has filed the suit with false allegations and is attempting to use an order of injunction to interfere with and grab the defendants' property.

6. The defendants claim that the 2nd defendant has been in continuous, open and uninterrupted possession and enjoyment of S.No.214/1 and has also acquired right by adverse possession. They also plead that the suit is bad for non-joinder of necessary parties, barred by limitation, and hit by estoppel, since the plaintiff and his predecessors are prevented from claiming any right over the property. They further contend that a bare suit for injunction without seeking declaration of title is not maintainable. Hence, the defendants pray that the suit be dismissed with costs.



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7. In trial court, the plaintiff himself examined as PW1 and Ex.A1 to A9 were marked. The 2nd defendant was examined as DW1 and one other as DW2 and marked Ex.B1 to Ex.B3 were marked.

8. On appreciation of oral and documentary evidences the Trial Court held that the plaintiff was not entitled to the relief of permanent injunction or any other additional or alternative relief, and consequently dismissed the suit without costs.

9. The First Appellate Court, on re-appreciation of the oral and documentary evidence, also considered the additional documents marked at the appellate stage as Ex.A.10 will dated 01.04.1961 and Ex.A.11 sale deed 30.12.1967 held that the plaintiff had failed to prove his possession over the suit property, dismissed the appeal and confirmed the judgment and decree of the Trial Court.

10. Aggrieved by the Judgment and decree of the First Appellate Court, Plaintiff preferred the present the Second Appeal. The Second Appeal is admitted on the following questions of law:

- 1) Have the Courts below exercised the power legally vested with them?
- 2) Has not the Lower Appellate Court failed, after reversing the finding



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of the Trial Court with respect to issue No.1 on the basis of additional evidence accepted by it to remand the matter for adducing further evidence?

- 3) Has not the Lower Appellate Court failed to advert to the course adopted by the Trial Court in respect of non filing of Commissioner's report after the conduct of site inspection?

11. During the pendency of the present Second Appeal, the plaintiff/appellant has also filed C.M.P.No.19005 of 2018 under Order XXVI Rule 9 CPC seeking appointment of an Advocate Commissioner to inspect, measure, draw a plan and file a report regarding identification of the suit property. In the supporting affidavit, the appellant has reiterated that he had earlier filed I.A.No.60 of 2010, paid Rs.10,000/- towards Commissioner's fee, and that the Commissioner did not file his report.

12. The learned counsel for the appellant/plaintiff submitted that the suit in O.S.No.647 of 2004 was filed for permanent injunction in respect of the suit property in S.No.219/1 and S.No.208, but the Trial Court dismissed the suit mainly on the ground that the suit property was not properly identified and was not in existence. It is submitted that the First Appellate Court, while considering additional documents Ex.A.10 and Ex.A.11 and admissible facts by D1 and D2,

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accepted that the plaintiff had inherited the suit property and also held that the finding of the Trial Court regarding non-existence of the suit property was not acceptable. However, the appeal was dismissed only on the ground that the plaintiff had not proved possession. The appellant further submitted that I.A.No.60 of 2010 filed for appointment of an Advocate Commissioner to inspect the suit property and file a report with sketch was allowed, but the application was later closed as the Commissioner did not inspect the property or file the report. According to the appellant, when the Court had control over the Advocate Commissioner under Order XXVI Rule 12 (1) and (2) of CPC, proper steps ought to have been taken to secure the Commissioner's report, and the Courts below failed to consider this material aspect. Relying on the judgments in Union of India v. K.N. Laxmi, 2016 (4) CTC 533 and Pakkiyam v. Chettiyar, 2023 MWN 366, the appellant prayed that the Second Appeal be allowed and the matter be remanded for fresh appointment of an Advocate Commissioner and disposal of the suit on the basis of the Commissioner's report.

13. The learned counsel for the respondent/defendant submitted that the appellant/plaintiff filed only a bare suit for permanent injunction, though the title and identity of the property were seriously disputed, and therefore the suit without a prayer for declaration was not maintainable. It was contended that the respondent's property is in S.No.214/1, whereas the plaintiff claims property in

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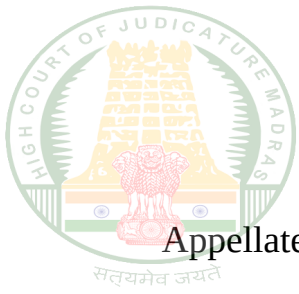
S.No.219/1 and S.No.208; however, on verification of the FMB, S.No.208 is not

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situated near S.No.219, and hence the plaint schedule property, as described, does not exist on ground. The respondent further submitted that the rough plan Ex.A8 is misleading and contains no proper details of survey numbers or adjacent properties, and that though the plaintiff relies on Ex.A1 and Ex.A2, at best Ex.A1 relates only to 540 sq.ft. in S.No.219/1. It was also submitted that the tax receipts relied upon by the plaintiff do not contain the survey number or patta number and do not prove either title or possession. Since the plaintiff failed to prove where exactly the suit property is situated, failed to prove possession, and also failed to prove any interference by the respondent, the Courts below rightly dismissed the suit and appeal. Hence, the respondent prayed for dismissal of the Second Appeal and confirmation of the judgments and decrees of the Courts below.

14. As stated supra, during the pendency of the present Second Appeal, the plaintiff/appellant has also filed C.M.P.No.19005 of 2018 under Order XXVI Rule 9 CPC seeking appointment of an Advocate Commissioner to inspect, measure, draw a plan and file a report regarding identification of the suit property. In the affidavit filed in support of the petition, the appellant/plaintiff has stated that the Advocate Commissioner appointed by the Appellate Court had inspected the property. However, on perusal of the judgment of the First

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Appellate Court, it is seen that the Advocate Commissioner did not inspect the property, as the appellant/plaintiff had not taken necessary steps, and consequently the said application came to be closed. Further, the suit is one for bare injunction based on possession and identification of the suit property. An Advocate Commissioner cannot be appointed for the purpose of collecting evidence to prove the plaintiff's possession. It is the bounden duty of the plaintiff to prove his own case by acceptable evidence. A Commissioner may be appointed to note down the physical features of the property, and where there is a dispute regarding identification, a Commissioner may be appointed along with a qualified official surveyor. However, in the present case, Ex.B3 FMB sketch relating to S.No.219 clearly shows that S.No.208 is not situated in the vicinity of S.No.219. The specific case of the plaintiff is that the property in S.No.208 is the disputed property and that it lies adjacent to S.No.219. In view of Ex.B3, such claim is not supported by the materials on record. In the facts and circumstances of the case, the appointment of an Advocate Commissioner would serve no useful purpose and would be an exercise in vain. Accordingly, C.M.P.No.19005 of 2018 filed for appointment of Advocate Commissioner is dismissed.



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Substantial questions 1 to 3:

15. The present Second Appeal arises out of the concurrent dismissal of the plaintiff's suit for bare permanent injunction. The Trial Court dismissed the suit on the ground that the suit property was not properly described and, therefore, the plaintiff could not be held to be in possession of such property. It further found that there was no iota of evidence to show that the defendants had in any manner interfered with the plaintiff's alleged peaceful possession and enjoyment, even in respect of the 540 sq.ft. of land said to have been purchased.

16. The First Appellate Court, on re-appreciation of the oral and documentary evidence and on considering the additional documents, particularly Ex.A.10 Will dated 01.04.1961 and Ex.A.11 found that the plaintiff's mother Kanagammal had obtained the properties covered under Ex.A1 and Ex.A2 sale deeds, and on perusal of Ex.A11 sale deed dated 30.12.1967 executed by Loganathan in favour of Govindasamy, the existence of the suit property was also proved. The Appellate Court further held that after the death of Kanagammal, the plaintiff became entitled to the said property. However, since the suit was one for bare injunction, the plaintiff was required to prove his actual possession over the suit property. Though the plaintiff had filed I.A.No.60 of 2010 for appointment of an Advocate Commissioner and the same



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was allowed, the application was subsequently closed as the Advocate

Commissioner did not inspect the property and file a report.

17. The First Appellate Court further found that the plaintiff had not proved his possession over the suit property by any acceptable documentary evidence, except relying upon Exs.A3 to A6 house tax receipts. However, those receipts did not contain the relevant survey number or door number so as to connect them with the suit schedule property. Hence, the said documents were held to be insufficient to establish the plaintiff's actual possession and enjoyment of the suit property. Therefore held that the finding of the Trial Court regarding non-existence of the suit property could not be accepted in its entirety. However, it rightly held that mere title or existence of the property would not suffice in a suit for injunction, unless the plaintiff proves actual possession and enjoyment as on the date of suit.

18. In a suit for bare injunction, the burden was entirely on the plaintiff to prove the identity of the suit property, his actual possession over the same, and the alleged interference by the defendants. The plaintiff cannot shift this burden either upon the defendants or upon the Court.



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19. The Trial Court specifically observed, on the basis of the FMB sketch marked as Ex.B3, that the property in S.No.208 was not situated in the vicinity of S.No.219, and therefore concluded that no such property, as described by the plaintiff in the plaint schedule, could exist on ground. The First Appellate Court, though it found from Ex.A10Will dated 01.04.1961 and Ex.A11sale deed dated 30.12.1967 that the plaintiff had shown the existence of the property, ultimately held that the plaintiff failed to prove the identity of the plaint schedule property as described, and also failed to prove his actual possession over the same. In such circumstances, there was no necessity for remanding the matter to the Trial Court.

20. Therefore, merely because the First Appellate Court differed from the Trial Court on the question of existence of the property, it was not bound to remand the matter, particularly when it confirmed the dismissal on the independent ground that possession was not proved.

21. The contention that the First Appellate Court ought to have remanded the matter after differing from the Trial Court on Issue No.1 cannot be accepted. Under Section 107 CPC, the Appellate Court has power to finally determine the case, remand the case, frame issues, or take additional evidence. However,



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remand is not automatic. Order XLI Rule 23-A CPC applies only where the decree is reversed and a retrial is considered necessary. On the other hand, Order XLI Rule 24 CPC empowers the Appellate Court to finally determine the suit where the evidence on record is sufficient, even if the Appellate Court proceeds on a ground different from that adopted by the Trial Court.

22. It is settled law that remand cannot be ordered as a matter of course, it is an exception, it can be used sparingly. The Supreme Court in **Sirajudheen vs Zeenath reported in (2024) 17 SCC 250** held that Order XLI Rule 23-A CPC requires reversal of the decree and necessity of retrial, and where the Appellate Court can decide the matter on the evidence available, it should not adopt the soft course of remand. In the present case, the First Appellate Court considered the additional evidence and still found that the plaintiff had failed to establish actual possession. Therefore, no legal error can be attributed to the First Appellate Court for not remanding the matter.

23. The plaintiff's further contention regarding non-filing of the Advocate Commissioner's report also cannot advance his case. Order XXVI Rule 9 CPC enables the Court to issue a commission for local investigation where it is requisite or proper to elucidate the matter in dispute, and Order XXVI Rule 10 CPC contemplates submission of the Commissioner's report. However,

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appointment of an Advocate Commissioner is only an aid to the Court and cannot be used as a substitute for the plaintiff's burden to prove possession.

24. The First Appellate Court has specifically noticed that though sufficient opportunity was available to the plaintiff to prove the identity of the suit property through an Advocate Commissioner, the plaintiff did not effectively pursue the same. Though the application for appointment of Advocate Commissioner was allowed. Subsequently plaintiff failed to take further steps enabling the commissioner to inspect the property. Ultimately the petition was closed.

25. The scope of interference under Section 100 CPC is confined only to substantial questions of law. The findings of the First Appellate Court that the plaintiff failed to prove possession and that the available documents were insufficient to establish possession are findings of fact based on appreciation of evidence. No perversity or legal infirmity is shown. Hence, the substantial questions of law are answered against the appellant.

26. In the result, this Second Appeal is dismissed. The Judgment and decree dated 31.10.2013 passed in A.S.No.38 of 2008 by the Subordinate Judge, Gudiyattam, confirming the judgment and decree dated 08.04.2008 passed in

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O.S.No.647 of 2004 by the District Munsif Court, Gudiyattam are confirmed.

There shall be no order as to cost. C.M.P.No.19005 of 2018 is dismissed.

Consequently, connected miscellaneous petitions, if any, are closed.

15.06.2026

ay

Index:Yes/No

Speaking Order /Non-speaking order

Neutral citation:Yes/No

To

1. The Subordinate Court, Gudiyattam.

2.The District Munsif, Gudiyattam.

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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