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S.A. No.77 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.11.2025

PRONOUNCED ON : 05.02.2026

CORAM

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI

S.A. No.77 of 2023

and

C.M.P.No.2607 of 2023

1. V.Janakiyammal
2. V.Rajadurai

... Appellants

Vs.

1. V.Elavarasi
2. K.Venkatraman
3. R.Babu
4. The Tahsildar, Vaniyambadi,
Taluk Office, Vaniyambadi
5. The Sub Collector, Tirupattur,
Sub Collector Office, Tirupattur.
6. The District Collector, Vellore,
Collector Office, Vellore.

... Respondents

Prayer: This Second Appeal is filed under Section 100 of the code of Civil Procedure, against the Judgment and Decree dated 15.11.2021 in A.S.No.10 of 2018 of the learned Subordinate Judge, Vaniyambadi, modifying the Judgment and Decree dated 26.07.2017 in O.S.No.99 of 2012 of the learned Additional District Munsif, Vaniyambadi.



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For Appellant : Mr.R.Subramanian
For Respondents : Mr.P.A.Sudesh Kumar for R1 to R3
Mr.V.Ramesh, Government Advocate for
for R4 to R6

JUDGMENT

This Second Appeal is filed against the judgment and decree dated 15.11.2021 made in A.S.No.10 of 2018 passed by the Sub Court, Vamiyambadi, modifying the judgment and decree dated 26.07.2017 made in O.S. No.99 of 2012 passed by the District Munsif Court, Vaniyambadi.

2. The unsuccessful defendants have filed the present second appeal.

3. The respondents as plaintiffs filed the above suit in O.S.No.99 of 2012 seeking the relief of permanent injunction against the defendants. According to the plaintiffs, the suit property and other properties originally belong to one Subramani Udayar, who executed a Will in favour of his sons namely Ganesa Udaiyar and Vaiyapuri Udaiyar. Thereafter, in the partition



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took place in the year 1988 among the brothers, Ganesa Udaiyar was allotted the suit property. After his demise, his legal heirs jointly executed a gift deed in favour of one Prakash @ Balan by virtue of a registered gift deed dated 26.08.2010. The said Prakash @ Balan sold the suit property in favour of the plaintiffs through a registered sale deed dated 12.11.2010 to an extent of 98 cents. Since then the plaintiffs are in possession and enjoyment of the suit property. While so, the defendants 1 & 2 are attempting to encroach upon the suit property with the help of the defendants 3 to 5 respectively. Hence, the plaintiffs were constrained to file the above suit for permanent injunction.

4.The claim of the plaintiffs were resisted by the defendants 1 & 2 stating that after the said Will dated 30.01.1980 executed by Subramanian Udaiyar in favour of his sons, there was an unregistered partition deed dated 05.05.1988 between the brothers Ganesa Udaiyar and Vaiyapuri Udaiyar. A Koor Chit was also executed between them on 10.03.1980, in which Vaiyapuri Udaiyar was given 60 cents and Ganesa Udaiya was given 98 cents and from then onwards they were in separate possession and enjoyment of their respective properties. The said Vaiyapuri Udaiyar died in and about 1997 leaving behind his wife and children as his legal heirs. They were in



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enjoyment of the said property. The alleged gift deed dated 26.08.2010 is not valid, since 6 cents of land was excessively mentioned in the same. Though the patta was issued in favour of the plaintiffs, the same is not a document of title. The said Vaiyapuri udaiyar was given patta for 54 cents instead of 60 cents as per the partition deed. The main dispute is only with regard to 6 cents of land and the plaintiffs without establishing their title, the relief of permanent injunction cannot be granted. Hence, prayed for dismissal of the suit.

5.The defendants 3 to 5 would contend that they are unnecessary parties to the suit and therefore, prayed for dismissing the suit as against them.

6.The trial Court after framing the necessary issues and based on the materials on record decreed the suit in favour of the plaintiffs against the defendants 1 & 2.

7. Aggrieved by this, the defendants have preferred the appeal suit in A.S.No.10 of 2018. The First Appellate Court modified the decree and judgment passed by the trial Court by holding that the plaintiffs are entitled to



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get the relief of permanent injunction as against the defendants 1 & 2 only to an extent of 98 cents in S.No.83/2 Devasthanam Village, Vaniyambadi Taluk.

Challenging the same, the present second appeals is preferred by the defendants under Section 100 of the Civil Procedure Code, 1908.

8.This second appeal is admitted on the following substantial questions of law:

“1.After finding that the Ganesa Udaiyar and Vaiyapuri Udaiyar got 98 cents and 60 cents under the Koorchit dated 10.03.1989, are the Courts below right in decreeing the suit in respect of the entire extent?

2.When the title of the plaintiff is disputed based on the Koorchit dated 10.03.1989 is the suit for bare injunction and declaration is maintainable?”

9.The learned counsel for the appellant would submit that there is a bonafide dispute regarding 6 cents of land in the suit survey number. It is submitted that the father of the defendants namely Vaiyapuri udaiyar was given 60 cents and his brother Ganesa udiayar got 98 cents in the suit survey number. Therefore, the plaintiff's vendor cannot claim title over 6 cents of land belonging to the defendants' father Vaiyapuri udaiyar and a suit for injunction



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simplicitor is not maintainable, when there is serious title dispute. To support his contention, he has relied upon the judgment of this Court reported in **2022 (5) CTC 106** in which it is held that possession can be ascertained only by examining title over property and therefore, suit for bare injunction not sustainable. He would further submit that the Courts below erred in overlooking the fact that the plaintiffs have encroached upon 6 cents of land belonging to the defendants taking advantage that patta was issued only for 54 cents. He would submit that when there is specific admission by the parties about the allotment of 98 cents to Ganesa udaiyar and 60cents to Vaiyapuri udaiyar, the patta cannot override the said admission. He would submit that the Courts below erred in decreeing the suit in favour of the plaintiff for the entire extent, when the title of the plaintiff is in dispute and patta is not a document of title.

10. On the other hand, learned counsel for the respondents would submit that the plaintiffs are entitled to 98 cents in the suit survey number by virtue of a registered sale deed dated 12.11.2010 and the plaintiffs are in possession and enjoyment of the suit property. The Courts below after appreciating the evidence on record in a proper prospective, rightly granted the relief of



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permanent injunction in respect of 98 cents against the defendants which warrants any interference by this Court.

11.Heard on both sides and records perused.

12.It is an admitted fact that one Subramani udaiyar got the entire extent of 1.65 acres originally and executed a Will on 31.08.1980 in favour of his sons Ganesa udaiyar and Vaiyapuri udaiyar. Admittedly, there was an oral partition under a Koor Chit in which Vaiyapuri udaiyar was given 60 cents and Ganesa ydaiyar was given 90 cents of land. The said Ganesa udaiyar has settled his 98 cents in favour of his son Prakash on 26.08.2010, who in turn sold 98 $\frac{3}{4}$ cents to the plaintiffs under registered sale deeds dated 12.11.2010 marked as Exs.A1 to A3, though he is entitled to convey only 98 cents in the suit survey number. Since the defendants themselves admitted that, the plaintiffs are entitled to only 98 cents, the sale deeds are valid in respect of 98 cents only. However, the trial Court granted the relief of permanent injunction in respect of 98 $\frac{3}{4}$ cents which was rightly modified by the First Appellate Court granting the relief of permanent injunction in respect of 98 cents alone. Further, the defendants themselves admits the title of the plaintiffs to the



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extent of 98 cents in the suit survey number, it is not necessary for the plaintiffs to seek the declaratory relief in the suit. The plaintiffs have also proved their lawful possession in the suit property. Unless there is a cloud raised over the plaintiffs' title and they do not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where there is a merely interference with the plaintiffs' lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter. *[Ref: Anathula Sudhakar Vs Buchi Reddy reported in (2009) 2 MAD LW 546]* therefore, when the plaintiffs are having clear title and possession over the suit properties, the bare injunction suit is legally maintainable.

13.It is also not in dispute that the defendants 1 and 2 were given patta only to the extent of 54 cents. As rightly held by the first appellate Court, the defendants are relegated to file a comprehensive suit for claiming their right over their property. There is no infirmity or perversity found in the judgment and decree passed by the First Appellate Court which warrants interference by this Court. All the substantial questions of law are answered against the appellants/defendants.



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14. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. The Judgment and Decree dated 15.11.2021 made in A.S.No.10 of 2018 passed by the learned Sub Judge, Vamiyambadi, modifying the judgment and decree dated 26.07.2017 made in O.S.No.99 of 2012 passed by the learned District Munsif, Vaniyambadi. is upheld.

05.02.2026

vsn

Internet: Yes/No

Index: Yes/No

Speaking/Non-speaking order

To

1. The Sub Judge, Vamiyambadi,
2. The District Munsif, Vaniyambadi.
3. The Section Officer,
VR Section, High Court, Madras.

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K.GOVINDARAJAN THILAKAVADI, J.

vsn

**Pre-delivery Judgment in
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and

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