



S.A.No.360 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 27.02.2026

Pronounced on: 30.03.2026

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

S.A.No.360 of 2016
and
C.M.P. No.6478 of 2016

Gopi

... Appellant

vs

Syed Yahooob

.... Respondent

Prayer: Second Appeal filed under Section 100 CPC, 1908 to set aside the judgment and decree dated 23.12.2014 passed in AS No.44 of 2013 on the file of the learned I Additional District and Sessions Judge, Vellore, Vellore District modifying the judgment and decree dated 27.07.2012 in O.S.No.467 of 2009 on the file of the learned District Munsif, Katpati, Vellore

For Appellants	: Mr.P.Dinesh Kumar
	for Mr.J.Ramakrishnan
For Respondent	: M/s.V.Srimathi



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JUDGMENT

This second appeal has been preferred as against the judgment and decree dated 23.12.2014 passed by the learned Principal District Judge, Vellore, in A.S.No.23 of 2013.

2. The defendant is the appellant herein and the respondent herein has filed a suit in O.S.No.467 of 2009 for the relief of permanent injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property and for costs.

3. The trial Court partly decreed the suit and granted permanent injunction on the eastern side of the cement road as mentioned in the Commissioner's report. Aggrieved by the said decree and judgment the plaintiff has preferred an appeal in A.S.No.23/2013 and the first appellate Court allowed the appeal and decreed the entire suit with costs by modifying the decree and judgment passed by the trial Court.



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4. Aggrieved by the said decree and judgment the defendant has preferred this second appeal.

5. The case of the plaintiff before the trial Court is that the suit property originally belonged to his father Syed Mahabooth through sale deed dated 16.12.1934 and the extent of suit property is 1.04 acres. From the date of purchase itself the father of the plaintiff had been in possession and enjoyment of the property and he also mortgaged the property with the bank. Adjacent to the said property a government poramboke land of 0.74 acres was also enjoyed by the father of the plaintiff from the date of purchase of the above said property. The said father of plaintiff Syed Mahabooth died in the year of 1942 leaving behind his son namely the Plaintiff to succeed his estate. After the demise of father of the plaintiff he has been in exclusive possession and enjoyment of the property as its absolute owner. The plaintiffs predecessor left some portion of property for performing religious functions of the minority people who are residing at Muslim Colony, Kizhavadugankuttai Village, The Government also issued patta, Chitta adangal by recognizing the possession of the plaintiff and the plaintiff

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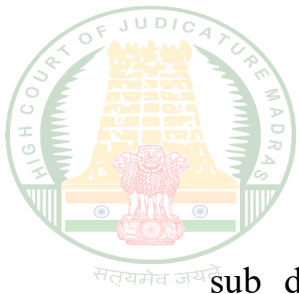


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also paid tax to the Government and thereby the plaintiff is having absolute right and interest over the suit property. The defendant is stranger to the suit property and he does not have any manner of right or interest over the schedule mentioned property. Whileso the defendant attempted to trespass into the property trying to level the land by removing the religious marks in the property and the same was averted by the plaintiff, therefore the plaintiff filed the suit for permanent injunction.

6. The case of the defendant is that the defendant denied the averments levelled in the plaint and the description of the property mentioned in the suit is not correct and the suit property is vague without mentioning the four boundaries . The plaintiff's father Syed Mahabooth purchased the property with definite four boundaries in S.No.42 with an extent of 1.04 acres from one Chinnasamy Mandiri through sale deed dated 16.12.1934 and he was in possession and enjoyment of the said property. In respect of Government Ryatwari land for an extent of 0.74 acres the defendant's denied the possession and enjoyment of the plaintiff and the documents filed by him are not relating to the property. The property of the plaintiff in SF No.42 to an extent of 1.04 Acre was already



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sub divided ad SF No. 42/2. Infact the Originally the property in SF.No.42/ total extent of 4.20 acres belonged to one Chinnsamy and one Periyappa Mandiri purchased the property in SF.No.42 to extent of 2.83 cent by way of sale deed dated 14.03.1930. Syed Mohoob purchased the property in S.No.42 to an extent of 1.04 cents by way of sale deed dated 16.12.1934. Chinnasamy Mandiri donated the property in S.No.42 to an extent of 0.33 Acres by oral gift to the muslim community to perform religious rituals., therefore out of the total extent of 4.20 acres the plaintiff is entitled to 1.04 acres The said Periyappa Mandiri had two sons namely Sama Mandiri, Balakrishnan Mandiri and they were in joint possession and enjoyment of the property and there was a partition took place between the Periyappa Mandiri and five others through partition deed dated 09.08.1956 in which the defendant share has been allotted and devolved on there.

6.1. The said Samamandiri, Balakrishna Mandiri and Teekaraman Mandiri who were died issueless and this defendant is the only legal heir to succeed the entire extent of 2.83 acres. Subsequently out of 2.83 acres they sold 2.39 acres by way of sale deed dated 10.01.197 and 26.06.1985



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in favour of Kuppen. The remaining extent of 0.49 cents stands in the name of this defendant and the plaintiff obtained chitta pertaining to SF No. 42/2 to an extent of 1.78 acre including the defendant's land of 49 cents. But there is no patta to the plaintiff in SF No.42/2 to an extent of 1.78 acres. The plaintiff is only entitled to 1.04 acres in SF No.42/2, therefore the plaintiff is not entitled to order of injunction in respect of S.F No.42/2 to an extent of 1.78 acres, The plaintiff is falsely claiming right over the property and thereby the suit is liable to be dismissed.

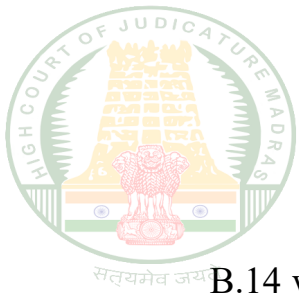
7. Based on the above said pleading and after hearing both sides, the trial Court framed the following issues:

- a) Whether the plaintiff is entitled for permanent injunction as against the defendant?
- b) To what relief is entitled?

Additional Issues:

- a) Whether the plaintiff is in possession of the suit property?

8. Before the trial Court on the side of the plaintiff P.W.1 to 3 were examined and Ex.A.1 and A12 were marked. On the side of the defendants D.W.1 and D.W.2 were examined and documents Ex.B.1 to



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B.14 were marked. Through the witness Ex..X.1 to X.8 were marked and the Court documents, Commissioner report and plan Ex.C.1 and C.2 were also marked.

9. After analyzing the evidence, on hearing both sides and after perusing the records the trial Court came to the conclusion that the plaintiff is entitled to decree for the property situated on the eastern side of the cement road and thereby granted permanent injunction and Ex.C.1 and C.2 shall form part of the decree.

10. Aggrieved by the said decree and judgment the plaintiff has preferred an appeal on various grounds.

11. The first appellate Court framed the following points for determination.

a) Whether the judgment and decree passed by the learned Distirct Munsif, Katpadi in O.S.No.467 of 2009 on 27.07.2012 is sustainable or not?

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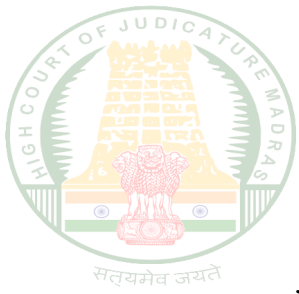
12. Thereafter the first appellate Court after analyzing the evidence allowed the appeal and modified the decree and judgment passed by this Court and decreed the entire suit in O.S.No.467 of 2009 on 27.07.2012. Aggrieved by the said decree and judgment passed by the 1st appellate court the present second appeal has been filed.

13. At the time of admitting the second appeal this Court formulated the following substantial questions of law:

a) Whether the judgment of the lower appellate Court is correct in law for coming to the conclusion that the respondent has proved his title based upon Ex.A.2 to Ex.A4 revenue records though it is the settled proposition of law that revenue records doesn't confer title?

b) When there is a serious dispute of title over the suit property by the appellant/defendant herein without seeking the relief of declaration whether simple suit of injunction simpliciter is maintainable in law?

c) Whether the suit is not barred under Section



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*34 of the Specific Relief Act for not claiming the relief of
declaration by the respondent/plaintiff?*

14.The learned counsel appearing for the appellant would submit that the appellant is the defendant in the main suit and the plaintiff filed suit for permanent injunction in respect of the suit property and the suit is filed for the property in SF No. 42/2 to an extent of 0.72.0 hectares in Jabbarpettai Village, Katpadi Talk, Vellore District. However the plaintiff has only produced the document in SF No.42 for 1.04 acres, whereas he filed the suit for 0.72.0 Hectare i.e.,1.78 Acres. The plaintiff is entitled to only 1.04 acres through sale deed purchased by his father on 16.12.1934. However they have obtained only chitta and adangal for the said extent and not even obtained patta. Infact SF No.42 to an extent of 4.20 acres originally belonged to one Chinnsamy. The said Chinnsamy sold the property to Periyappa Mandiri to an extent of 2.83 acres through sale deed dated 14.03.1930 and the plaintiffs father purchased the property from Chinnsamy to an extent of 1.04 acres through sale deed dated 16.12.1934. Chinnsamy himself gave the property to the muslim community for performing rituals to an extent of 0.33 cents and thereby

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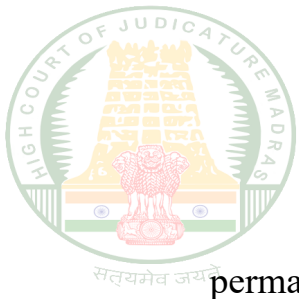
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the plaintiff is entitled to 1.04 acres. The defendant is one of the legal heir of Periyappa Mandiri. The said Periyappa Mandiri and five others have partitioned their properties through partition deed dated 09.08.1956 in which the defendant was allotted share. Since other four persons have no any issue the defendant's is the sole legal heir entitled to the property of Periyappa Mandiri to an extent of 2.83 acres, thereafter the defendant sold the property to an extent of 2.34 acres in SF No.42 through sale deed dated 10.01.1974 and 26.06.1985 in favour of one Kuppan,. The remaining extent stands in the name of the defendant. However the plaintiff obtained chitta and adangal in his name to the extent of 1.78 acres including the defendant land to an extent of 49 cents, thereby the plaintiff taking advantage of the same obtained chitta and adangal claiming excess extent than he purchased the property. Therefore the suit is liable to be dismissed.

14.1. However the trial Court after considering the evidence adduced on both side and commissioner report and plan partly decreed the suit on the basis of admission made by the plaintiff that he is enjoying the property only on the eastern side of the road and thereby granted

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permanent injunction in respect of the property situated in eastern side of the cement road, however on the appeal filed by the plaintiff the first appellate Court decreed the suit in its entire extent of 1.78 acres by modifying the decree. The first appellate court failed to consider that the plaintiff has not given detail schedule with boundaries for the property and the first appellate Court failed to consider that at no point of time the plaintiff was in possession and enjoyment of the property for the extent of 0.72.0 hectares. As per the sale deed purchased by the father of the plaintiff he is entitled to 1.04 acres. The first appellate Court failed to consider that the property is not a Government poramboke and it is private land owned by one Chinnasamy. The first appellate Court relying on patta, chitta adangal which were manipulated for the entire property decreed the suit, the first appellate failed to consider the defendants side documents and defendant's are in possession and enjoyment of the property. The first appellate Court relied Ex.A2 and A4 revenue records. Without seeking relief of declaration the suit for injunction simpliciter is not maintainable. Therefore the suit is barred under Section 34 of Specific Relief Act, therefore the decree and judgment passed by the first appellant court is liable to be set aside.



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15. The learned counsel appearing for the respondent would submit that the plaintiff filed the suit before the trial Court for the relief of permanent injunction and the father of the plaintiff purchased the property through sale deed dated 16.12.1934 to an extent of 1.04 acres and adjacent property which is Government poramboke was also enjoyed by the plaintiff's father along with 1.04 acres. While so the defendant interfered with the plaintiff possession and enjoyment over the property and thereby filed the suit for permanent injunction. The defendant has not filed any suit in respect of the title of the property and the plaintiff field suit only for relief of permanent injunction and the plaintiff has clearly proved the possession and enjoyment of the property and thereby the trial Court has partly decreed the suit and therefore the plaintiff preferred appeal. The first appellate Court after considering the evidence adduced on both sides and based on revenue records recognized the possession of the plaintiff and decreed the suit and thereby the decree and judgment passed by the 1st appellate Court is based on records and there are no substantial questions of law involved in this case and the second appeal is liable to be dismissed.

16. Heard both sides and perused the materials available on record.

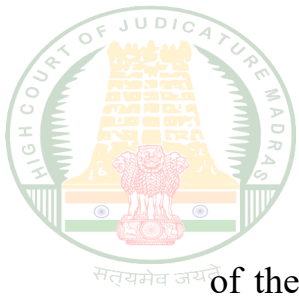


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17. For the sake of convenience and brevity, the parties in this appeal hereinafter will be referred to as per their status/ ranking in the trial court.

18. In this case the plaintiff filed suit for permanent injunction in respect of the suit property. According to the plaintiff his father Syed Mahabooth purchased the suit properties through sale deed dated 16.12.1934 and the extent of suit property is 1.04 acres and after purchase of the property he also encroached the adjacent land. It is an admitted fact that originally the property belonged to one Chinnsamy Mandiri and total extent of property situated in SF No. 42/2 is 4.20 Acres. While so, one Periyappa Mandiri purchased the property through sale deed dated 14.03.1930 to an extent of 2.83. The plaintiff's father purchased the property to an extent of 1.04 and 33 cents was gifted to the muslim community for performing religious rituals and thereby the respective shares has been enjoyed by the respective parties and there is no any Government poramboke land as alleged by the plaintiff. While so the plaintiff who filed the suit for permanent injunction has to prove his possession and enjoyment of the suit properties. In order to prove the case



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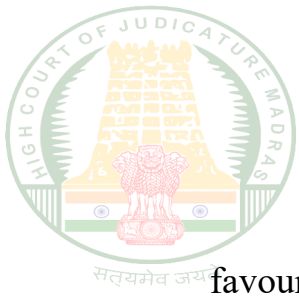
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of the plaintiff he had examined P.W.1 to 3 and Ex.A.1 and A12 were marked.

19.. On perusal of the evidence of plaintiff side they reveal that the father of the plaintiff purchased the property to an extent of 1.04 acres but however the suit was filed to an extent 0.72.0 hectares i.e.1.78 Acres, the plaintiff has not filed any document to prove the remaining extent of properties were enjoyed by his father and the suit property is the Government poramboke, The plaintiff has produced Ex.P.2 to Ex.P6 revenue records. Therefore according to the plaintiff he proved his possession of the property.

20. On the side of the defendants they have examined D.W.1 and D.W.2 marked documents Ex.B.1 and B.14. Through the witness Ex..X.1 to X.8 were marked and the Court documents commissioner report and plan Ex.C.1 and C.2 were marked. Ex.B.1 reveals that on 14.03.1930 the Chinnsamy sold the property to Mannar Mandiri. The family of Mannar Mandiri partitioned the property through partition deed dated 04.06.1956 through Ex.B.3 and one Kannan and others have executed sale deed in

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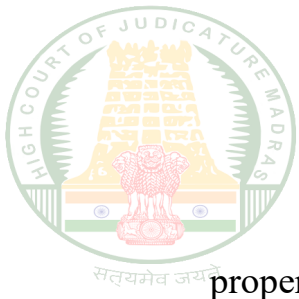
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favour of Kuppu Mandiri on 10.01.1974 and through Ex.B.5 one Rajakanni Mandiri and other have executed sale deed dated 26.06.1985 in favour of Kuppamandiri Therefore both sides have filed documents, in respect of their properties.

21. In this case an advocate commissioner was appointed and he filed report and plan and the same were marked as Ex.C.1 and C.2. The Commissioner was examined as P.W.2 and he stated that there was a cement road proceeding between the lands and on the eastern side of the road there was a fence and there is no iron fence on the western side of the road and the iron fence ended with eastern side of the road. P.W.3 also in his cross examination stated that the plaintiff fenced the entire property and he has no any right beyond the fencing land and the defendant has his property on the western side of the fencing. Therefore from the evidence the Court can infer that the property situated on the western side of the road enjoyed by the defendant and the property situated on the eastern side of the road was enjoyed by the plaintiff. The plaintiff has not filed the suit for declaration and only filed the suit for permanent injunction and he has not produced any documents to prove the title over the

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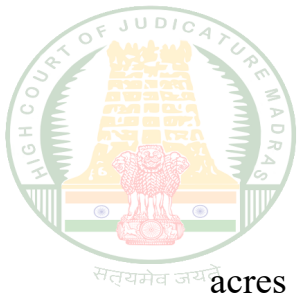
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properties for the entire extent mentioned in the suit, therefore the property fenced by the plaintiff which is situated on the eastern side of the road could be enjoyed by the plaintiff and thereby the plaintiff is entitled to the relief of permanent injunction in respect of that property.

22. The trial Court also in this context after elaborate discussion after relying upon the evidence of P.W.3, D.W.1 and D.W.2 and the documents adduced on both sides came to conclusion that the properties situated on the eastern side of the road with fencing the plaintiff is entitled to permanent injunction. But however the first appellate Court in the judgment after relying upon Ex.A.2 to A4 /revenue documents, from the year 1978 held that S.No42/2 to extent of 1.78 acres the plaintiff has been in possession and enjoyment of the property and he was enjoying the property for more than 30 years. Per contra, the defendant admitted that 2.83 cents belonging to his family and out of that extent 2.43 Acre have already been sold to Kuppan and remaining 49 cents retained by him but the Commissioner report stated that in S.No.42/1 the available extent 2.42 Acre, therefore either the defendant or kuppan family have not questioned for nearly 30 years as to the possession of plaintiff for 1.78

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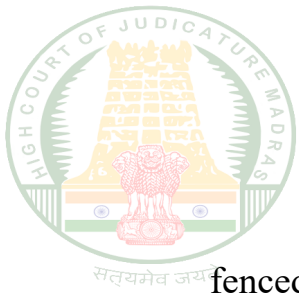
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acres of land, therefore the plaintiff has been in undisturbed possession and enjoyment of land and thereby granted decree for the entire property.

23. In fact the first appellate Court failed to consider that the admission made by the plaintiff's side witness in respect of fencing and enjoyment of the property by the plaintiff. The Commissioner report also established that there is a road proceeding between the lands of the plaintiff and the defendant and the plaintiff land was fenced and the plaintiff's side witness themselves admitted that the plaintiff is enjoying the property within the fenced land and the property situated on the western side of the road is enjoyed by the defendant's and the eastern side of the road is enjoyed by the plaintiff. Further thereby the plaintiff failed to prove that what is the extent available under his possession. Mere extent mentioned in the revenue records is not sufficient to prove the actual possession of the property when there is a specific fence put up by the plaintiff in respect of his property, therefore the judgment of the first appellate Court on the basis of revenue records is not sustainable for the entire property, When there is a specific admission on the side of the plaintiff side witnesses that the plaintiff fenced his land and enjoying the

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fenced property. Further it is also an admitted fact that there is no fence on the western side of the road and the fencing property ended with the eastern side of the road, therefore the decree and judgment passed by the 1st appellate Court is liable to be set aside and the judgment of the trial Court has to be restored.

24. As far as substantial questions of law (a) Whether the judgment of the lower appellate Court is correct in law for coming to the conclusion that the respondent has proved his title based upon Ex.A.2 to Ex.A4 revenue records though it is the settled proposition of law that revenue records doesn't confer title? is concerned the plaintiff has not filed the suit for declaration and only filed the suit for permanent injunction based on his possession, therefore the title has not been decided by the Courts below and the plaintiff has produced Ex.A2 to A4 which are revenue records, patta. A register, Chitta adangal extracts and A register. As per the above said documents the plaintiff has been in possession and enjoyment of the property, however the plaintiff's side witnesses categorically admitted that there is a road between the land of plaintiff and the defendant and on the eastern side of the road there is a fencing

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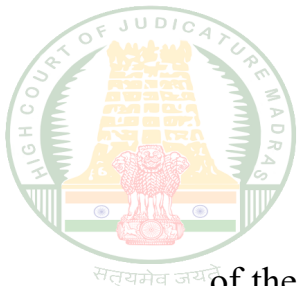
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and in the western side of the road there is no fencing and the fenced land belongs to the plaintiff and the non fencing land available on the western side of the property is enjoyed by the defendants and thereby the plaintiff side witnesses have themselves admitted that the plaintiff is enjoying the properties situated on the western side of the road within the fencing, therefore the first appellate Court is not correct in law coming to the conclusion that the respondent has not proved title and possession based on Ex.A.2 and A4 based on revenue records. It is well settled law that revenue records does not confer any title and mere entries in the revenue records cannot prove the actual possession, when there is a categorical admission made by the plaintiff in respect of actual possession. Thus the substantial questions of law is answered.

24.1. As far as the substantial question of law b) When there is a serious dispute of title over the suit property by the appellant/defendant herein without seeking the relief of declaration whether simple suit of injunction simpliciter is maintainable in law? is concerned the plaintiff is not claiming title of the property and only based on his possession he filed suit for permanent injunction but the defendant has not claimed title

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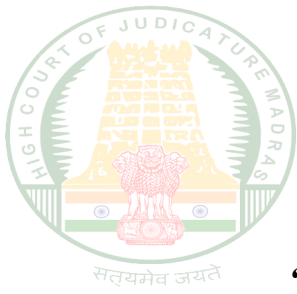


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of the property and also not filed any suit for declaration and the plaintiff based on his possession he filed the suit and both the parties are claiming possession of the properties and thereby without seeking relief of declaration based on the possession the suit for permanent injunction simpliciter is maintainable. Thus substantial questions of law is answered.

24.2. As far as the substantial question of law (c) Whether the suit is not barred under Section 34 of the Specific Relief Act for not claiming the relief of declaration by the respondent/plaintiff? is concerned the suit is filed for permanent injunction thereby the applicability of Section 34 of Specific Relief Act would not arise. Section 34 deals with the declaration and provision deals with further relief. As per section 34 of Specific Relief act the court may in its discretion make declaration and the plaintiffs need not in such suit as to for any further relief, but where the plaintiff being able to seek further relief than a mere declaration of title omits to do so the court can not grant such declaration. Section 34 of Specific Relief Act reads as follows:



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“34. Discretion of court as to declaration of status or right.—

Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief: Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so

.Explanation.—A trustee of property is a “person interested to deny” a title adverse to the title of some one who is not in existence, and whom, if in existence, he would be a trustee”

Therefore on plain reading of above section it will not be applicable to the present facts of the case and there is no bar under Section 34 of the Specific Relief Act to claim the relief of permanent injunction without any declaration. Thus substantial questions of law is answered.

24.3. In view of the above said discussions and answers to the substantial questions of law, this Court is of the opinion that decree and judgment passed by the first appellate Court is liable to be set aside and the judgment and decree passed by the trial Court is to be restored.



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25. In the result, the Second appeal stands allowed and the decree and judgment passed by the learned I Additional District and Sessions Judge, Vellore, Vellore District in AS No.44 of 2013 dated 23.12.2014 are set aside and the judgment and decree passed by the learned District Munsif, Katpati, Vellore in O.S.No.467 of 2009 dated 27.07.2012 are restored. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

30.03.2026

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

1. The I Additional District and Sessions Judge, Vellore, Vellore District
2. The District Munsif, Katpati, Vellore
3. The Section Officer, VR Section, High Court, Madras.



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P.DHANABAL, J.

MJS

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