



S.A. No. 828 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	11.11.2025
Pronounced on	09.02.2026

CORAM

**THE HONOURABLE MRS. JUSTICE K. GOVINDARAJAN
THILAKAVADI**

S.A.No.828 of 2019 and C.M.P. No.16945 of 2019

Pallikudathan @ Chenrayan

...Appellant

Vs.

1. Nachiammal (died)
2. Naduran Kali
3. Mari
4. Chenrayan
5. Manonmani
6. Sarathkumar
7. Kali

....Respondents

R1 died, RR2 to 4 already on record are recorded as legal heirs of the deceased R1. Memo dated 23.06.2025 (USR No.22316) recorded vide court order dated 11.11.2025 made in S.A.No.828/19

Prayer: Second Appeal filed under Section 100 CPC, 1908 to set aside the decree and judgment dated 11.01.2019 passed in A.S. No.1 of 2010, on the file of the Subordinate Court, Tirupattur, Vellore District, confirming the Judgment and decree dated 29.09.2009 passed in O.S. No.443 of 1994, on the file of the District Munsif Court, Tirupattur, Vellore District.

For Appellant : Ms. V. Srimathi



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For Respondents: Ms. Elizabeth Ravi for R2 to R4
R1- died
R5, R6 and R7 – No appearance

JUDGMENT

This Second Appeal is preferred as against the decree and judgment dated 11.01.2019 passed in A.S. No.1 of 2010, on the file of the Subordinate Court, Tirupattur, Vellore District, confirming the Judgment and decree dated 29.09.2009 passed in O.S. No.443 of 1994, on the file of the District Munsif Court, Tirupattur, Vellore District.

2. The unsuccessful defendant is on appeal.

3. For the sake of convenience, the parties are referred to as per their ranking in the trial court.

4. One Periyandi as plaintiff filed the above suit for declaration of title and for recovery of possession. According to the plaintiff, the suit property absolutely belongs to him. Earlier, the defendant filed a suit in O.S. No.1213 of 1986 before the District Munsif Court, Tirupattur for declaration of title and for permanent injunction. The said suit was



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dismissed by the trial court by decree and judgment dated 13.11.1991, on

merits. As against the same, the defendant filed an appeal in A.S.

No.4/1992, on the file of Sub Court, Tirupattur. The said appeal suit was

also dismissed on 28.08.1992. As against the same, the defendant herein

filed a Second Appeal before this Court in S.A. No.1602/1992 and the

same was dismissed on 05.02.1993. Thus, according to the plaintiff, the

defendant has got no title over the suit property. Further, there was a

finding in the above Second Appeal, that the defendant herein is **not** in

possession of the suit property. Hence, the plaintiff was constrained to file

the present suit for declaration of title and for recovery of possession.

5. The claim of the plaintiff was resisted by the defendant stating that the suit property in O.S. No.1213/1986 and the subject matter of the present suit are different. Therefore, as far as the present suit property is concerned, the plaintiff has no title. It is contended that the defendant has perfected title by way of adverse possession.

6. By decree and judgment dated 29.09.2009, the trial court decreed the suit. As against the same, the defendant filed an appeal in A.S. No.1/2010 before Sub Court, Tirupattur, Vellore District. The sole plaintiff



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died during the pendency of the first appeal. Hence, his legal representatives were added as respondents 2 to 5 in the first appeal. The first appellate court dismissed the appeal on 11.01.2019, confirming the decree and judgment of the trial court. As against the same, the defendant is before this Court with this Second Appeal.

7. In this Second Appeal, the following substantial questions of law have arisen for consideration.

a. Whether the plaintiff's claim for possession is not barred under Article 58 & 65 of the Limitation Act, when the right to sue right is lost by lapse of time?

b. Whether the period of limitation would not run from the date when the right to sue first accrues and whether any other successive violation of right would give a fresh cause?

c. Whether the lower appellate court was right in endorsing the plaintiff's additional documents in the absence of any corroborative evidence to substantiate his case of title in the recovery suit?

d. Whether the lower appellate court is right in holding that the defendant has not established his case, while their possession is not in dispute?



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e. Whether the defendant has not perfected title by adverse possession when admittedly he is holding possession prior from 1959?

f. Whether the suit for declaratory relief and recovery of possession would be granted when in the absence of any proof of reliable or constant evidence to establish the plaintiff's right and his predecessor over the suit property?

g. Whether the lower appellate court is right in shifting the burden upon the defendant for establishing his possession when the initial burden remains to be discharged by the plaintiff?

8. Ms. V. Srimathi, the learned counsel for the appellant would submit that, the claim of the plaintiff for possession is barred under Article 58 and 65 of the Limitation Act, since the right to sue is lost by lapse of time. Any successive violation of right would lead to fresh cause of action. The first appellate court was not right in endorsing the plaintiff's additional document in the absence of any corroborative evidence to substantiate his title in a recovery of possession suit. The first appellate court erred in holding that, the defendant has not established his case,



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when the facts remains that the possession of the defendant is not in dispute. She would further contend that the defendant has perfected title by adverse possession, when admittedly he is in possession prior from 1959. The relief of declaration and recovery of possession could not be granted in the absence of any reliable evidence to establish the plaintiff's and his predecessors right over the suit property. The first appellate court erred in shifting the burden upon the defendant for establishing his possession when the initial burden remains to be discharged by the plaintiff. The further contention of the defendant is that he is in possession and enjoyment of the suit property for a long period and even in the earlier suit, it was not held that the defendant was not in possession of the suit property. The defendant has perfected title to the suit property by adverse possession and that it is false to state that the defendant trespassed into the suit property on 01.07.1993. It is further submitted that a judgment cannot confer title for property in favour of any person. Hence, prayed for allowing this Second Appeal by setting aside the judgment and decree passed by the courts below.

9. On the other hand, Ms. Elizabeth Ravi, learned counsel for the respondents 2 to 4 / legal representatives of the deceased plaintiff would submit that the courts below were right in holding that the deceased



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plaintiff Periyandi is having title over the suit property based on the earlier suit filed in O.S. No.1213/1986 corroborated by the oral and documentary evidence produced on the side of the plaintiff, which warrants any interference by this Court.

10. Heard on both sides. Records perused.

11. It is not in dispute that the appellant/defendant has filed a suit in O.S. No.1213/1986 on the file of District Munsif Court, Tirupattur, North Arcot District, in respect of property in S.No.309 of Elagiri Hills, Thayalur Village, to an extent of 0.50 cents which according to the plaintiff is a portion of the present suit property. It is also not in dispute that the above suit in O.S. No.1213/1986 filed by the appellant/defendant against the plaintiff was dismissed on 13.11.1991 and the appeal suit in A.S. No.4/1992 and the Second Appeal in S.A. No.1602/1992 preferred by the defendant were dismissed. Therefore, the claim of the appellant/defendant over the property to an extent of 0.50 cents in S.No.309 of Elagiri Hills is negatived by all the competent courts as stated above. The appellant/defendant failed to establish that the property mentioned in O.S. No.1213/1986 and the present suit property are different. Therefore, the



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appellant/defendant has no right, title or interest in the property in

S.No.309 of Elagiri Hills. It is the specific case of the plaintiff that the entire property in S.No.309 of Elagiri Hills Village, to an extent of 10 acres belonged to the plaintiff and he is in possession and enjoyment of the same. While so, the appellant/defendant aggrieved by the dismissal of the suit filed by him, and in order to wreck vengeance against the plaintiff, trespassed into the suit property on 01.07.1993 in the absence of the plaintiff in the suit property. Therefore, the judgment and decree passed in O.S. No.1213/1986 would confirm that the appellant/defendant has no right or title in S.No.309 to an extent of 0.50 cents and the title of the plaintiff in the said Survey number to an extent of 10 acres is affirmed in the said judgment. No doubt, the burden of proof would be on the plaintiff who asserts that he is in possession of the suit property.

12. Now, it has to be seen whether the appellant/defendant has perfected title over the suit property by adverse possession. The deceased plaintiff has claimed that on 01.07.1993 the defendant trespassed into the suit property for which the deceased plaintiff lodged a police complaint. In the earlier litigation, it was held that the defendant was not in possession of the suit property. The documents marked on the side of the plaintiff as Ex.A1 to A7 would establish the same. Even in the suit filed by the



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defendant's family in O.S.No.1/1986 for partition, it is not stated that the

property in survey number 309 to an extent of 0.50 cents belongs to the

defendant's family. The said partition suit was filed only for the properties

in S.Nos.302 and 310 situate at Thayalur Village. This fact is not denied by

the appellant/defendant. Moreover, the documents filed on the side of the

appellant/defendant as Ex.B1 to B24 were already filed in the earlier suit

in O.S. No.1213/1986 and were rejected by the competent courts. On the

other hand, Ex.A14 and A15 would reveal that the appellant/defendant is

not in possession of the suit property at the time of earlier litigation. The

first appellate court rightly held that, based on Ex.B3, B4, B5 to B21, the

appellant/defendant cannot claim to be in possession and enjoyment of the

suit property prior to the alleged trespass. Since the appellant/defendant

trespassed into the suit property as alleged by the deceased plaintiff, he

was forced to lodge a police complaint against him which is evident from

Ex.A4 and Ex.A5 documents. Even in the Second Appeal in S.A.

No.1602/1992, it was held that the 1st plaintiff and his legal heirs were

alone in possession of the suit property. This would confirm that, the

defendant has trespassed into the suit property only thereafter. The

plaintiff's claim for possession is not barred under Article 58 and 65 of the

Limitation Act, since the period of limitation runs from the date when the

alleged trespass committed by the appellant/defendant. The long and



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continuous possession of the appellant/defendant is not established and therefore, it cannot be construed that the appellant/defendant has perfected title by adverse possession. Since the plaintiff has established his title over the suit property by tangible evidence, he is entitled to recovery of possession of the suit property. Hence, the courts below rightly decreed the suit in favour of the plaintiff which warrants any interference by this Court. All the substantial questions of law are answered against the appellant / defendant.

13. In the result,

- i. The Second Appeal is dismissed. No costs. Consequently connected miscellaneous petition is closed.
- ii. the decree and judgment dated 11.01.2019 passed in A.S. No.1 of 2010, on the file of the Subordinate Court, Tirupattur, Vellore District, confirming the Judgment and decree dated 29.09.2009 passed in O.S. No.443 of 1994, on the file of the District Munsif Court, Tirupattur, Vellore District, is upheld.

09.02.2026

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



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



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K.GOVINDARAJAN THILAKAVADI,J.
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Pre delivery judgment in
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