



WEB COPY

SA No. 381 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11-06-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

**SA No. 381 of 2026 and
CMP No.12798 of 2026**

**Rajendiran(died)
Rep. By His Legal Heirs,**

1. R.Uthira,, D/o. Rajendiran,
W/o. Ramamurthi,
No. 61, Meenakshi Nagar,
Vaiyavur Road, Konerikuppam,
Kancheepuram District-631 502.
2. R.Saranya, D/o. Rajendiran,
W/o. Venkatesh, No. 37, Baskar Nagar,
Ramani Illam, V.A.K.Nagar, Arni,
THiruvannamalai District 632 301.
3. R.Santhoshkumar, S/o. Rajendran,
Pillaiyar Koil Street,
Thellur Village and Post,
Arni Taluk, Thiruvannamalai District.

**(cause title accepted vide court order
dated 30.04.2025 in CMP No.9024 of 2025
in SA Sr No.91917 of 2023)**

..Appellant(s)

Vs

Raman, S/o. Kolaraan alias Muniyan,
Thellur Village and Post,
Arni Taluk, Thiruvannamalai District.

..Respondent(s)



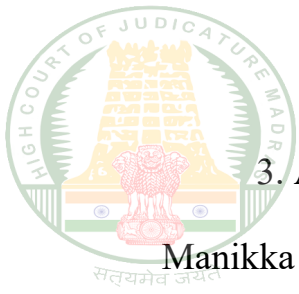
Prayer: Second Appeal is filed under Section 100 of Code of Civil Procedure to set aside the Judgment and Decree dated 18.11.2022 passed in A.S.No. 44 / 2015 on the file of the Subordinate Court, Arni, reversing the Judgment and Decree dated 27.02.2015 passed in O.S. No. 119 of 2010 on the file of the District Munsif of Arni.

For Appellant(s): Ms. V.Divia Bharathi
for Mr.J.Dev Eshwaar

JUDGMENT

The legal heirs of the deceased sole plaintiff, namely Rajendran are the appellants herein.

2. The father of the appellants, namely Rajendran filed a suit in O.S.No.119 of 2010 seeking declaration of title and permanent injunction and also for recovery of damages, against the respondent herein/defendant. The said suit was decreed by the trial court. Aggrieved by the same, the defendant filed an appeal and the first appellate court, reversed the findings of the trial court and dismissed the suit. Challenging the findings of the first appellate court, the appellants have come before this court.



3. According to the plaintiff, the suit property was purchased by his father Manikka Gounder, under a sale deed dated 27.06.1983 and he purchased the same from one Munusamy Gounder. After purchase of the suit property, the plaintiff's father enjoyed the property without any interference and thereafter, the plaintiff enjoyed the same by changing the patta in his name. In such circumstances, the defendant, without having any manner of right, illegally trespassed into the suit property, cut and removed the trees standing in the suit property. The value of the trees cut and removed by the defendant was worth about Rs.17,000/-. Since the defendant attempted to disturb the possession of the plaintiff by his illegal activities, the present suit was filed by the deceased plaintiff seeking the above reliefs. Further, though the value of the trees cut and removed by the defendant was worth about Rs.17,000/- the relief of damages in the suit was restricted to Rs.10,000/-.

4. The defendant filed a written statement, denying the title and possession of the plaintiff over the suit property. According to the defendant, the plaintiff filed suit property, treating the suit property as agricultural land, however, on the ground, the suit property is a rectangle well, measuring 7 cents. It was pleaded by the defendant, the suit property originally belonged to the family of one Sribala Nainar, the mother and sister of the defendant, namely Ammani Ammal and Panchalai Ammal respectively and they jointly purchased 1/3 share in the said well and also other landed properties, under a registered



sale deed dated 02.05.1940. Since the above said Ammani Ammal and Panchalai Ammal were living with the defendant, he has been in possession and enjoyment of the same. The defendant further stated that about 3 years back, on the date of filing written statement, the suit property was orally divided and the defendant was allotted 2 ¼ cents out of 7 cents and the A-Register extract for the suit property stands in the name of three persons, namely, Ammani Ammal, Panchalai Ammal and one Munusamy, who is vendor of the plaintiff's father. Therefore, the said Munusamy has no absolute right over the well to convey the same in favour of the plaintiff's father Manickkam Gounder. On these pleadings, the defendant sought for dismissal of the suit.

5. Before the trial court, on the side of the plaintiff, the deceased plaintiff was examined as PW1 and two other witnesses were examined as PW2 and PW3, 9 documents were marked as Ex.A1 to Ex.A9. On the side of the defendant, he examined himself as DW1 and 2 documents were marked as Ex.B1 and Ex.B2.

6. On appreciation of oral and documentary evidence available on record, the trial court came to the conclusion that the plaintiff established title over the suit property and decreed the suit. Aggrieved by the same, the defendant filed an appeal in A.S.No.44 of 2015 on the file of Subordinate Judge, Arni. The first appellate court, on re-appreciation of evidence available on record, reversed the

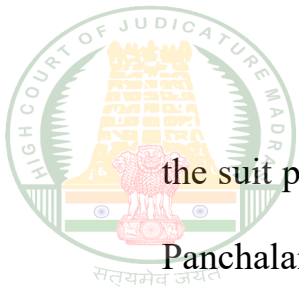


findings of the trial court and dismissed the suit. Challenging the findings of the first appellate court, the legal heirs of the deceased plaintiff have come before this court by way filing the second appeal.

7. The learned counsel for the appellants would submit that the documents filed on behalf of the plaintiff, namely Ex.A1, A2 and A8 proved the title of the plaintiff and the first appellate court committed a serious error by not considering these documents in proper perspective.

8. In order to establish that the plaintiff's father purchased the suit property, the plaintiff produced Ex.A1 sale deed in the name of his father Manickka Gounder. A perusal of Ex.A1 would indicate that one Munusamy sold the suit property to the plaintiff's father on 27.06.1983 and Ex.A2 is the patta issued in the name of plaintiff, dated 18.12.2009.

9. It is the case of the defendant that 1/3 share of the suit property was purchased by his mother Ammani Ammal and by his sister Panchalai Ammal under a sale deed dated 02.05.1940 and the said document has been marked as Ex.B2. However, the suit survey number has not been mentioned in Ex.B2 and only Pymash number has been mentioned. In the absence of correlation Register, this court is not in a position to come to the conclusion that Ex.B2 is relating the suit property. However, the Ex.B1 – A Register would indicate that



the suit property stands in the name of three persons, namely Ammani Ammal, Panchalai Ammal and one Munusay, the vendor of plaintiff's father. Therefore, absolutely, there is no evidence available on record to suggest that the said Munusamy, the vendor of plaintiff's father had got absolute right over the suit property. In Ex.B1 – A Register, Munusamy name found place along with the defendant's mother and sister, namely Ammani Ammal and Panchalai Ammal. In such circumstances, it is incumbent on the plaintiff to establish that Munusamy, the vendor of plaintiff's father had exclusive right over the suit property. However, the plaintiff miserably failed to establish the same.

10. It is also pertinent to note that when the plaintiff was examined as PW1, he categorically admitted that at the time of filing the suit, his father was alive. When it is the case of the plaintiff that the suit property was purchased by his father and at the time of filing the suit, his father was alive, the suit filed by the plaintiff seeking declaration of title of the suit property is not maintainable and the same has been pointed out by the first appellate court.

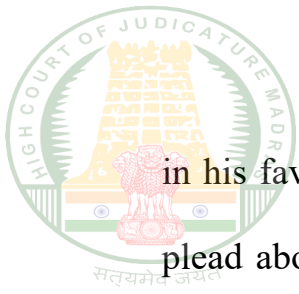
11. The learned counsel for the appellants would submit that the plaintiff's father executed a settlement deed in favour of the plaintiff on 16.10.1995 and the same has been marked as Ex.A8 and therefore, the first appellate court is not justified in non suiting the plaintiff. In the plaintiff's averments, the plaintiff has not mentioned about the alleged settlement deed



executed by his father and only at the time of leading evidence, Ex.A8 has been marked by the plaintiff. When there is no plea in the plaint averments that too in a title suit that the plaintiff's father executed a settlement deed in favour of the plaintiff, he is not entitled to lead evidence, without raising such plea. The first appellate court rightly appreciated the above said position and refused to take into consideration Ex.A8, which is not supported by plaint averments.

12. It is also pertinent to mention that the plaintiff has not examined the attestors to the settlement deed to establish its execution. Unless the plaintiff raised a plea in the plaint with regard to the execution of the settlement deed, the defendant will not get any opportunity to challenge the same in his pleadings. Since the Ex.A8 was surprisingly introduced at the time of leading evidence, the defendant had no opportunity to challenge the same in his pleadings. Hence, it is not open to the plaintiff to say that Ex.A8 has not been challenged by the defendant in his pleadings and therefore, it is not necessary for the plaintiff to prove the same by examining the attestors to the settlement deed as witnesses.

13. The PW1 in his evidence also admitted that the plaintiff's father got other legal heirs like his wife and other children. When the plaintiff's father has got other Class-I heirs, the plaintiff is not entitled to seek exclusive right over the suit property, unless he pleads and proves the execution of settlement deed



in his favour. As mentioned above, in the case on hand, the plaintiff failed to plead about the execution of settlement deed. In such circumstances, the first appellate court rightly came to the conclusion that the plaintiff failed to prove his exclusive title over the suit property and hence, non suited him. I do not find any illegality or error in the said finding reached by the first appellate court and hence, the second appeal fails as no substantial question of law arising for consideration in this second appeal.

14. Accordingly, this second appeal is dismissed, confirming the findings of the first appellate court. However, the dismissal the second appeal will not come in the way of the appellants working out their remedy in the manner known to law by impleading all the legal heirs of Manickka Gounder, the father of deceased plaintiff. There shall be no order as to costs. Connected miscellaneous petition is closed.

11-06-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

MST



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To

1. The Subordinate Judge, Arni,
Tiruvannamalai District.
2. The District Munsif, Arni.



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S.SOUNTHAR, J.

MST

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