



S.A.No.326 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	14.11.2025
Pronounced on	13.02.2026

CORAM

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

S.A.No.326 of 2023
and C.M.P.Nos.9817 & 9821 of 2023

1.A.Vinayagam
2.A.Viswanathan
3. K.A.Natarjan
4.V.Thiyagarajan

...Appellants

Vs.

Jagadeesan (died)

1.K.S.Rajammal
2.A.Chockalingam
3.Jagadeeswari
4.Theertakalyani

...Respondent

Prayer : Second Appeal is filed under Section 100 CPC, 1908 against the decree and judgment dated 27.07.2022 passed in A.S. No.1 of 2019,



S.A.No.326 of 2023

on the file of the Principal Sub Judge, Chengalpattu, reversing the Judgment and decree dated 21.12.2018 passed in O.S. No.1 of 2010, on the file of the District Munsiff cum Judicial Magistrate, Thirukazhukundram.

For Appellants : Mr.J.Srinivasa Mohan
for M/s.TVJ Associates
For Respondents : Mr. T.R.Rajaraman for R1 to R4

JUDGMENT

The present Second Appeal is preferred against the decree and judgment dated 27.07.2022 passed in A.S. No.1 of 2019, on the file of the Principal Sub Judge, Chengalpattu, reversing the Judgment and decree dated 21.12.2018 passed in O.S. No.1 of 2010, on the file of the District Munsiff cum Judicial Magistrate, Thirukazhukundram.

2. The appellant herein is the plaintiff in the above suit. The respondent herein is the defendant in the suit. The parties will be referred to as per the rank assigned to them in the suit for the purpose of convenience and clarity.



S.A.No.326 of 2023

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3. The case of the plaintiffs is that the 1 and 2nd plaintiffs are the sons of Angamuthu Mudaliar and the 3rd Plaintiff is the son of Vasudeva Mudaliar. The Angamuthu Mudaliar and Vasudeva Mudaliar are the sons of the Thandavaraya Mudaliar. The sons of Thandavaraya Mudaliar and Somasundara Mudaliar effected a family partition by way of Partition deed dated 18.12.1959 vide Document No.3865/1959. As per the Partition deed some properties were allotted to Somasundara Mudaliar under schedule 1, some properties were allotted to Angamuthu Mudaliar under schedule 2, some properties, were allotted to Vasudeva Mudaliar under schedule 3, and some properties were kept in common between the above three sharers under schedule 4 and some properties were kept in common between Angamuthu and Vasudeva Mudaliar under schedule 5. The family members of Somasundara Mudaliar effected a family arrangement by virtue of a Koorchit dated 2.7.1986. As per the Koorchit Subbulakshmiammal was allotted 0.66 cents at Karumarapakkam Village. The Defendants have no right or title over the property in S.No.311/2C3C at Karumarapakkam Village, since the land was exclusively allotted to Angamuthu Mudaliar and Vasudeva Mudaliar as per the Partition deed dated 18.12.1959. The joint patta was issued to the Plaintiffs 1 & 2 along with Subbulakshmiammal in respect of S.No.311/2CA and



S.A.No.326 of 2023

S.No.311/2C3C. While so, the defendants 1 & 2 sold the suit property in S.No.311/2C3C to 3rd defendant under a registered Sale deed dated 28.2.2008 vide Document No. 1021/2008. The above document is void abinitio. Hence the suit.

4. The case of the plaintiffs is resisted by the defendants 1 & 2 stating that the suit property originally belongs to the defendants 1 & 2 as per Patta No.273. The Defendants were in possession and enjoyment over the same for more than statutory period and have acquired title by adverse possession also. The suit property to an extent of 0.41 cents was sold to the 3rd defendant about 21 years ago for a valid sale consideration. On the basis of which, the 3rd defendant is in possession and enjoyment over the suit property. The Plaintiff is not the owner of the suit property and moreover the extent and boundaries stated in the plaint is incorrect.

5.The 3rd defendant would contend that the plaintiff was never in possession over the suit property. The 3rd defendant purchased the suit property even before 21 years prior to the suit and from the date of purchase, the 3rd Defendant alone is in possession and enjoyment over the suit property. It is further submitted that, even though the suit property



S.A.No.326 of 2023

was purchased 21 years ago, the sale deed was registered only on 28.2.2008. The 3rd Defendant is a bonafide purchaser. Hence, prayed for dismissal of the suit.

6. The trial court, decreed the suit in favour of the plaintiff and the same was reversed by the first appellate court.

7. Challenging the same, the present Second Appeal is filed by the plaintiffs.

8. This Second Appeal is admitted on the following substantial question of law:

“A. Whether the judgment of the appellate Court in dismissing the appeal can be sustained in law overlooking the rules of burden of proof and doctrine of preponderance of probability in view of the assertion of rival title by the defendants 1 and 2 to the suit property from a different source?

B. Is not the judgment of First Appellate Court contrary to evidence on record as regards the description



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S.A.No.326 of 2023

*and boundaries of the suit property and therefore perverse,
when the same is admitted by the defendants 1 and 2 ? ”*

9.It is a suit for declaration of title and for permanent injunction and to declare the sale deed dated 28.02.2008 by the defendants 1 & 2 in favour of the 3rd defendant as null and void.

10.Mr.J.Srinivasa Mohan, the learned counsel for the appellants/plaintiffs would submit that the defendants have admitted the boundaries of the suit properties and there is no dispute as to the identification of the suit property. While so, the first Appellate Court erroneously reversed the findings rendered by the trial Court, by holding that the property is situated in a different village and that the plaintiffs are seeking right in another village. The trial Court has rightly held that the plaintiffs have created a high degree of probability and the defendant failed to discharge their onus, on the proposition that boundaries will prevail over the extent and survey number, if there is any discrepancy there on. He would further submit that the plaintiffs have clearly pleaded and established their title vide partition deed of the year 1959 marked as Ex.A1, which was also admitted by the first respondent. The property



S.A.No.326 of 2023

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mentioned in Ex.A5 relates to different sub-division and not the suit property. The original patta marked as Ex.A6 stands in the name of the plaintiffs. The 2nd defendant is not a bonafide purchaser. While so, the appellate Court has completely erred in allowing the appeal by holding that the plaintiffs failed to prove that the suit property belongs to them, overlooking the rules of burden of proof and doctrine of preponderance of probability in view of the assertion of rival title by the defendants 1 and 2 to the suit property from a different source. The learned counsel would further submit that, in civil proceedings, the issues that may arise are required to be decided by balancing the claims and counter claims of the parties before the Court and on the basis of a preponderance of probabilities. Where both sides claim title to the same right, either from the same source or from different sources and when both sides assert the existence of a certain fact in the manner the claim, it would mean that both sides are under a burden to prove the right in the manner they assert. Then, the Court would apply the rule of preponderance of probability to select the best of the options made available before it. In the present case, the plaintiffs and the defendants claim title from different sources, and hence, both sides are under a burden to prove the case which they assert. Hence, it may not be appropriate for the first Appellate Court to hold that,



S.A.No.326 of 2023

the burden lies upon the plaintiffs to establish their case. His further contention is that it is always open to the defendants not to lead any evidence where the onus is upon the plaintiff but after having gone into evidence, the defendants cannot ask the Court not to look at and act on it. The question of burden of proof at the end of case when both parties have tendered evidence is not of any great importance and the Court has to come to a decision on a consideration of all materials. To support his contentions he has relied upon the following judgments in:

- 1.Lakhan Sao Vs. Dharamu Chaudhary* reported in (1991) 3 Supreme Court Cases 331**
- 2.K.S.Thankam Vs. Sakthidharan* reported in (2022) 6 MLJ 379**
- 3. ITC Limited Vs. Adarsh Co-operative Housing Society Limited* reported in 2013 (10) SCC 169**

Hence, prayed for setting aside the judgment and decree passed by the courts below.



S.A.No.326 of 2023

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11. Mr.T.Rajaraman, learned counsel appearing for the respondents/defendants would submit that, the plaintiffs have not proved their title and possession over the suit property. In the partition deed dated 18.12.1959, the suit property is not mentioned and the property mentioned in the above deed do not relate to the suit property and that it relates to the property situate in Echankaranai Village. It is further submitted that the suit property is comprised in S.No.,311/2C3C belongs to the defendants 1 and 2 and Ex.B1 patta stands in the name of the above defendants. Therefore, the sale deed in the name of the 3rd defendant executed by the defendants 1 & 2 is valid and the 3rd defendant is a bonafide purchaser for value. The plaintiff must prove their title independently and not on the weakness of the defendants. He would submit that, the plaintiffs should establish their case before defendants are called upon to offer defence by disproving plaintiffs' case and rebutting any presumption drawn from circumstances. It is further contended that the initial burden is always upon plaintiff to substantiate their case with adequate pleadings and evidence. The weakness in defence cannot be basis for grant of relief to the plaintiffs and to shift burden of proof on defendants. Therefore, it is an establish position of law that, the burden to prove ownership over the suit property is upon the



S.A.No.326 of 2023

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plaintiffs. To support his contention, he has relied upon the judgments in:

1. Syed Bahseer Ahmed vs. M/s.Tinni Laboratories Private Limited reported in **2025 SAR (Civ) 1140**

2.Rathagiri Nagar Parishad Vs. Gangaram Narayan Ambekar and others reported in **(2020) 7 SCC 275**

3.Chairman, Board of Trustees, Sri Ram Mandir Jagtial Karimnagar District, Andra pradesh Vs. S.Rajyalaxmi (Dead) reported in **(2019) 2 SCC 338**

The First Appellate Court rightly dismissed the suit filed by the plaintiffs, warrants any interference by this Court.

12.Heard on both sides, records perused.

13.The relationship between plaintiffs and defendants are not in dispute. Admittedly, the sons of Thandavaraya Mudaliyar namely, Somasundara Mudaliyar, Angamuthu Mudaliyar and Vasudeva Mudaliyar effected a partition deed on 18.12.1959 under Ex.A1. It is also not in dispute that the legal heirs of Somasundara Mudaliyar entered into a family arrangement in the year 1986, in respect of properties allotted to



S.A.No.326 of 2023

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their father in the year 1959 by way of a Koorchit dated 02.07.1986 marked as Ex.A5. According to the plaintiffs, the suit property is comprised in Survey No.311/2C3C measuring 58 cents at Karumarapakkam Village. While so, the defendants 1 & 2 sold the suit property to D3 on 28.02.2008 under Ex.A4 sale deed. The specific contention of the plaintiffs is that the suit property was allotted to Angamuthu Mudaliyar and Vasudeva Mudaliyar under Ex.A1 partition deed in Schedule V. Where as, Joint patta was issued on 18.02.1987 in favour of Angamuthu Mudaliyar and Subbulakshmi in patta No.273 and the same is marked as Ex.A6. The plaintiffs would contend that the properties in survey No.311/2C/3C was allotted to Angamuthu Mudaliyar and his brothers and the property in Survey No.311/2C A was allotted to Subbulakshmi in the year 1986 under Ex.A4 Koorchit. The learned counsel for the appellants/plaintiffs would submit that the plan in patta reveals that one Dilli son of Murugan is the owner of the property on the northern side of suit property. The said Dili was examined as P.W.2, who deposed that the suit land belongs to the plaintiffs and he has been cultivating the same as a Kuthagaidharar. D.W.3 an independent witness also admits that land on the north of suit property belongs to P.W.2 Dili. Admittedly, the plaintiffs have given representation to the Tahsildar for



S.A.No.326 of 2023

issuance of separate patta after correcting the wrong extent mentioned in the joint patta.

14. The defendants 1 & 2 are also claiming rights over the suit property under Ex.B.1 (Patta No.273) and under Ex.A5 Koorchit. But during cross examination D.W.1 admits that the suit property is not included in the Koorchit. Moreover, the plaintiffs would contend that the land allotted to Subbulakshmi under Ex.A5 in Karumarapakkam village, is the subject matter of another suit in O.S.No.42/2011 and in the above suit, the survey number is mentioned as 311/2C/1A. This fact is not rebutted by the defendants. Further, the son of the said Subbulakshmi examined as P.W.2 has clearly deposed that no land was allotted to the defendants 1 & 2 in S.No.311/2C. Thus, it goes to show that the property which the defendants' branch got under the Koorchit is a different land and not the suit land. It is not the case of the defendants that the share of Subbulakshmi in the Koorchit was taken by the defendants. Moreover, the said Subbulakshmi has not executed any sale deed in favour of the defendants. The defendants also failed to establish that the suit property is not in Karumarapakkam village. The patta relied by the plaintiffs reveals that the suit property is in Karumarapakkam village. D.W.1 Also



S.A.No.326 of 2023

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admits that she has no knowledge about the boundaries or the person in whose name patta was originally granted or how the earlier patta was changed in the name of her husband. The main stand of the defendants is that the Village name differs in the partition deed. D.W.1 admits that the property situate in Karumarapakkam village is comprised in S.No.311/2C/3C. The 3rd defendant examined as D.W.2 admitted that he had not verified any documents before his purchase and no parent document was handed over to him and that he had not taken any step to change the patta in his name. Though he claims to have paid the sale consideration to one Subbammal, 21 years back, the same is not established by him. He had categorically admitted that the suit property is in Karumarapakkam limits. Therefore, the plaintiffs' have established the case through oral and documentary evidence. It is settled law that, when title is claimed by both parties, the rule of preponderance of probability has to be applied to decide who among the rival sides has a better title. In the present case, though the defendants have claimed their title based on the Koorchit, the same is not established and therefore, the defendants cannot asked the Court not to look into it and that the onus is upon the plaintiffs to prove his case is unsustainable. The first appellate Court erred in allowing the appeal suit in favour of the defendants



S.A.No.326 of 2023

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without appreciating the materials on record in proper perspective,
warrants interference.

15.In the result, this second appeal is allowed, the Judgment and Decree dated 27.07.2022 passed in A.S. No.1 of 2019, on the file of the Principal Sub Judge, Chengalpattu, is set aside. No costs. Consequently, connected miscellaneous petitions are closed.

13.02.2026

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

To

1. The Principal Sub Judge, Chengalpattu
2. The District Munsiff cum Judicial Magistrate, Thirukazhukundram.
3. The Section Officer, VR Section, High Court, Madras.



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S.A.No.326 of 2023

K.GOVINDARAJAN THILAKAVADI,J.

vsn

Pre delivery judgment in
S.A.No.326 of 2023 and
and C.M.P.Nos.9817 & 9821 of 2023

13.02.2026