



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-04-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 269 of 2026

and

CMP No. 8895 of 2026

Krishnan

..Appellant

Vs

1. Parvathi
2. Divakar
3. Gowri
4. Parimala

..Respondents

Prayer: Second Appeal filed under section 100 of CPC to set aside the Decree and Judgement and passed in As_ No.23 of 2018 dated 20.01.2023 on the file of Learned Subordinate Judge of Cheyyar, confirming the decree and judgement passed in OS No.23 of 2012 dated 28.11.2017 on the file of the Principal District Munsif, Cheyyar.

For Appellant:

Mr.V.Baskaran

JUDGMENT

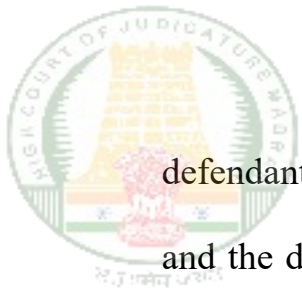
The unsuccessful defendant is the appellant. The respondents herein filed a suit for declaration of title and recovery of possession. The suit was decreed by the trial court. The appeal filed by the defendant was dismissed. Challenging the concurrent findings of the first appellate court, the defendant has come



before this court by way of second appeal.

2. According to the respondents/plaintiffs, the suit property originally belonged to one Thayarammal, first wife of late Varadharaji Mudaliyar. The first plaintiff is the second wife of late Varadharaji Mudaliyar and the plaintiffs 2 to 4 are children of late Varadharaji Mudaliyar through second wife. The suit property was purchased by said Thayarammal on 11.01.1939 and she had been in possession and enjoyment of the same by changing the revenue records in her name. After death of Thayarammal, the above said Varadharaji Mudaliyar also died and after his death, the plaintiffs have been in possession and enjoyment of the suit property. It was further pleaded by the plaintiffs that appellant/defendant filed a suit for specific performance against the plaintiffs in O.S.No.114 of 2008 based on alleged sale agreement between the defendant and the plaintiffs. The said suit was partly dismissed regarding prayer for specific performance sought by defendant. While disposing the suit, an injunction was granted in favour of defendant/plaintiff therein restraining the defendants 1 and 2 therein from disturbing the possession of the defendant till plaintiffs herein get recovery of possession of suit property by due process of law. The first appeal challenging the said judgment was also dismissed by the first appellate court. Based on the findings rendered in earlier suit, the present suit was filed by the plaintiffs seeking declaration of title and recovery of possession.

3. The defendant filed a written statement and denied the title and right of the plaintiffs to recover the possession from the defendant. It was the case of the



defendant that 15 years ago, there was a sale agreement between the plaintiffs and the defendant and the defendant was put in possession of the suit property after receipt of sale consideration. From that day onwards, the defendant has been in possession and enjoyment of the suit property as its owner. The plaintiffs never objected to the enjoyment of the defendant till 2008. Now, taking advantage of the fact that there was no proper sale deed in favour of defendant, the plaintiffs filed the present suit seeking declaration of title and recovery of possession.

4. The defendant, in the written statement, also asserted that the allegation in the plaint that the defendant was a lessee was not correct and the defendant never enjoyed the property as a lessee. On these pleadings, he sought for dismissal of the suit.

5. Before the trial court, the second plaintiff was examined as PW1 and six documents were marked as Ex.A1 to Ex.A6. The defendant was examined as DW1 and 17 documents were marked as Ex.B1 to Ex.B17.

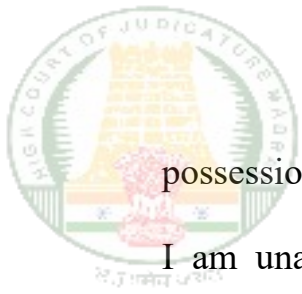
6. The trial court, on appreciation of evidence available on record, came to the conclusion that the plaintiffs were entitled to declaration of title and recovery of possession and hence, decreed the suit as prayed for. Aggrieved by the same, the defendant preferred first appeal in A.S.No. 23 of 2018 on the file of the Sub-Ordinate Judge, Cheyyar. The First Appellate Court affirmed the findings of the trial court. Aggrieved by the concurrent findings, the defendant has come before this court.



7. The learned counsel for the appellant/defendant submitted that in the plaint, the plaintiffs pleaded that the defendant was inducted into the suit property as lessee and in such circumstances, the defendant is entitled to protection under Tamil Nadu Cultivating Tenants Protection Act as the suit properties are agricultural lands. The learned counsel further submitted that the courts below, without taking into consideration the protection available to the lessee of the agricultural land, committed an error in decreeing the suit for recovery of possession.

8. The contention raised by the learned counsel for the appellant that the appellant is entitled to protection under Tamil Nadu Cultivating Tenants Protection Act cannot be sustained for the mere reason that the defendant never raised such a plea in the written statement claiming protection under Tamil Nadu Cultivating Tenants Protection Act. In the written statement, the defendant clearly pleaded that he has been in possession and enjoyment of the suit property pursuant to the sale agreement with the plaintiffs. He also raised a specific plea in paragraph 14 of the written statement that he was not a lessee of the suit property and his possession is not that of a tenant. It is also seen from the memorandum of grounds that the appellant raised a question of law (2) as if the contention of the plaintiffs that the appellant was a lessee was negated in the earlier suit.

9. In the absence of specific plea claiming protection under Tamil Nadu Cultivating Tenants Protection Act, the appellant is not entitled to argue that his



possession is protected by said enactment without any foundational plea. Hence, I am unable to accept the contention raised by the learned counsel for the appellant.

10. A perusal of the written statement would indicate that defendant raised a plea that he had been in possession and enjoyment of the suit property pursuant to the sale agreement entered into with the plaintiff 15 years ago. It is settled law that the possession of a person claiming possession under sale agreement is permissive one and his possession will never turn into a hostile possession. In this regard, a reference may be made to the judgment of Apex Court in ***Roop Singh (Dead) through Lrs Vs Ram Singh (Dead) through Lrs*** reported in ***2000(3) SCC 708***.

11. In the light of the specific defence taken by the defendant that he had been in enjoyment of the suit property pursuant to the sale agreement, he cannot raise a plea of adverse possession.

12. As far as the title of the respondents/plaintiffs is concerned, admitting his title, the defendant allegedly entered into agreement with the respondents. Therefore, the title of the respondents/plaintiffs is admitted one. As a real owner of the property, they are entitled to recovery of possession unless the defendant succeed in setting up adverse title. In the case on hand, as mentioned earlier, the defendant having claimed possession under sale agreement is not entitled to raise a plea of adverse possession. Both the courts below rightly appreciated the legal position and held that plaintiffs were entitled to declaration of title and



recovery of possession. I do not find any perversity in the said findings reached by the courts below. Accordingly, the second appeal stands dismissed by confirming the judgment and decree dated 20.01.2023 in A.S.No.23 of 2018 on the file of Sub-Ordinate Judge, Cheyyar confirming the decree and judgment dated 28.11.2017 in O.S.No.23 of 2012 on the file of Principal District Munsif, Cheyyar. Consequently, the connected miscellaneous petition is closed. No costs.

15-04-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To:

1. The Subordinate Judge of Cheyyar
2. The Principal District Munsif, Cheyyar.



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S.SOUNTHAR J.

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