



S. A(MD)No.184 of 2007

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated 27.03.2026

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

SA. (MD)No.184 of 2007

Rengasamy

.. Appellant/1st defendant

Vs.

1.Narayanasamy (died)

2.Indirajothi

3.Jeyabharathi

4.Vanaja

.. Respondents/defendants 1 to 4

5.S.Jayalakshmi

6.V.Santhi

7.N.Sanjivi

.. proposed respondents/Lrs of 1st
respondent

(respondents 5 to 7 were impleaded as LR's of the
deceased 1st respondent vide order dated 27.03.2026
in CMP(MD) No.2676 of 2025)

Appeal filed under Section 100 of the Code of Civil Procedure,
against the judgment and decree dated 31.08.2006 in AS No.33/2005 on

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the file of the Subordinate Judge, Sivakasi, confirming the judgment and decree dated 15.12.2004 in OS No.35/2002 on the file of the District Munsif, Sivakasi.

For Appellant : Mrs.Jessi Jeeva Priya
For Respondents : No appearance

JUDGMENT

This second appeal has been filed challenging the judgment and decree passed in AS No.33/2006 dated 31.08.2006 on the file of the Sub Court, Sivakasi, confirming the judgment and decree passed in OS No. 35/2002 dated 15.12.2004 on the file of the District Munsif Court, Sivakasi.

2. The appellant is the first defendant in the suit.

3. The case of the plaintiff is that the suit property was purchased by one Akkammal in a Court auction sale on 26.09.1933 and sale certificate was also issued to Akkammal on 29.11.1934 and possession was also handed over to her on 30.12.1953. The said Akkammal executed a registered release deed in respect of the suit property in favour of her two



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sons, namely, Srinivasan and Narayanasamy (Plaintiff). From the execution of the release deed, the plaintiff and his brother were in joint possession of the property. According to the plaintiff, the undivided half share in the suit property belongs to the plaintiff and the other half share belonged to defendants 2 to 4, who are the legal heirs of Srinivasan.

4. The further case of the plaintiff is that the first defendant's father was given permissive possession of the suit property and the first defendant, without the knowledge of the plaintiff, transferred the property tax assessment in his name fraudulently. On coming to know of the same, the plaintiff filed the suit seeking for the relief of declaration and for delivery of vacant possession and also for payment of damages.

5. The first defendant, who is the appellant, took a stand that late Appayanayakkar purchased the suit property in the year 1953 for the benefit of the joint family. The property was handed over to the first defendant. From 1953 onwards, the suit property was in possession and enjoyment of the father of the first defendant and after his demise, the first defendant



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continued to be in possession and enjoyment of the property. On 03.06.1968, the first defendant father and his brothers divided the property by means of a partition deed and the suit property was specifically allotted to the first defendant's father. He died on 21.03.1986 leaving behind the first defendant and his mother. The first defendant and his mother filed a suit in OS No.195/1997 questioning the transfer of patta in favour of the plaintiff without issuing notice to them. Later the suit was withdrawn. The first defendant also took a stand that the suit is barred by limitation.

6. The trial Court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, decreed the suit as prayed for by judgment and decree dated 15.12.2004 and the same was confirmed by the appellate Court by judgment and decree dated 31.08.2006. Aggrieved by the same, the present second appeal has been filed before this Court.

7. When the above second appeal was admitted, this Court framed the



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following substantial questions of law:

“1. Whether a sale certificate issued to the Court auction purchaser would be deemed to be a title deed and on that basis the auction purchaser got the title conveyed to him by the Court?

2. When there was no evidence showing the delivery of property by the Executing Court to the Court auction purchaser, whether any presumption could be drawn that the Court auction purchaser got possession of the property in accordance with law.

3. When the Court auction purchaser did not apply for the delivery of the suit property as provided under Order XXI Rule 95 of the Code of Civil Procedure, within the period of one year from the date of sale as provided under Article 134 of Limitation Act and also having not filed any suit for possession within twelve years thereafter, can such a purchaser claim to be in possession of the property.

4. When the Court auction purchaser was not able to produce any document evidencing the possession and also the payment of tax in his or her name any such presumption is



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available regarding the title and possession simply because the sale certificate issued by the Executing Court stood in the name of the alleged Court auction purchaser.

5. When the plaintiff himself had set up the possession of the suit property by the defendant as permissive one can the Court accept a different plea and hold that the defendant was in possession of the suit property as a tenant.

6. The appellate Court having held that the appellant was in possession of the suit property as tenant or as a lessee whether a suit filed for declaration of title without terminating the tenancy as provided under Section 106 and 111 of the Transfer of Property Act is maintainable.

7. When the plaintiff came out with a plea that he granted a permission to the defendant to occupy the suit property, is not the lower Appellate Court wrong in not drawing an adverse inference against the plaintiff for not examining himself as a witness to the suit inasmuch as it is upto the plaintiff to prove such factum of permissive occupation, the sole cause of action made by the plaintiff in his suit.



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8. When the plaintiff has not proved his possession for twelve years prior to the date of the suit is not the suit barred by limitation under Article 65 of the Limitation Act.”

8. The notice was sent to the respondents. The first respondent, who is the plaintiff died and hence, an application was filed for impleading the legal representatives of the deceased first respondent and the same was allowed by this Court. The contesting respondents in this case are only R5 to R7, who are the legal representatives of the deceased first respondent, who was the plaintiff in the suit. They have not appeared either in person or through the counsel. Therefore, this Court proceeds to deal with the second appeal on merits with the available materials.

9. This Court heard the learned counsel for the appellant and carefully went through the judgment passed by both the Courts below.



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10. The main ground that was urged by the appellant is that if the cause of action as was projected in Paragraph No.9 of the plaint is taken into consideration, the suit is clearly barred by limitation. The learned counsel submitted that even though a specific defence was raised by the first defendant in the written statement, both the Courts below did not even take into consideration this issue.

11. The learned counsel for the appellant submitted that under Section 3 of the Limitation Act, 1963, a duty is cast upon the Court to ensure that unless the relief sought for is made within a period of limitation, the same has to be rejected even if the defendant does not raise an issue in this regard. The learned counsel, in order to substantiate her submission, relied upon the judgment of the Apex Court in ***R.Nagaraj (dead) through LRs., and another v. Rajmani and others*** reported in **2025 (4) SLR 734**. The relevant portion is extracted hereunder:

“22.In the present case, the trial Court though had not framed a specific issue on “limitation”, the same could very well fall under the broader issue. The question of limitation



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can be encompassed within the larger question determined by the First Appellate Court for determination. The failure of the trial Court and the first Appellate Court to formulate a separate issue, in the view of this Court, is not fatal to the judgment rendered by them and has not caused any prejudice to the parties. Further, the trial Court, in the performance of its duty, mandated under Section 3 of the Limitation Act, 1963, has taken up the question of limitation and upon perusal of the overall pleadings and evidence has rightly decided the same. Therefore, we do not agree with the decision of the High Court in remanding the matter to the trial Court, that too, after this length of time, when all materials were available before it.”

12. In the case in hand, the cause of action as projected by the plaintiff in the plaint is extracted hereunder:

“9.The Court of action arose on 26.09.1933 on which date the suit property was purchased by Smt. Akkammal under Sattuf Munsif Court auction sale on 29.11.1934 on which date sale certificate was issued on 30.12.1953. Smt.Akkammal executed a registered released deed in favour of the plaintiff and his brother; about 20 years back the plaintiff permitted



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Mr.Appaya Naicker to reside in the suit property, on 15.04.1997 on which date the Government Pleader gave legal opinion, on 17.06.1997 on which date the Commissioner of Keezhanmarai Nadu passed an order to the President of the Panchayat, subsequently the first defendant filed OS No. 195/1997 before the District Munsif Court, Sivakasi and later made an endorsement as settled out of Court fraudulently at Keelanmarai Nadu where the schedule property is situated all within the jurisdiction of this Hon'ble Court.”

13. It is clear from the above that the release deed was executed in favour of the plaintiff in the year 1953 and the first defendant has been living in the property for more than 20 years. Even according to the plaintiff, the plaintiff is seeking for the relief of declaration. Under Article 58, the relief of declaration must be sought for within a period of three years when the right to sue first accrues. Even insofar as seeking for the relief of possession, Article 65 makes it clear that the relief has to be sought for within 12 years when the possession of the defendant becomes adverse to the plaintiff.



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14. The admitted case of the plaintiff is that the cause of action questioning the title of the plaintiff arose in the year 1997. However, the suit was filed only on 19.02.2002, which is well beyond three years. Even if it is taken to be a suit for declaration and possession, it has to be filed within a period of 12 years and the admitted case of the plaintiff is that the first defendant has been in possession of the property for more than 20 years.

15. Both the Courts below without focussing on this main issue, went into the merits of the case and decreed the suit. If the suit itself is barred by limitation, the same has to be dismissed on that ground alone and the Court need not go into the merits of the case. As stated supra, it is the duty of the Court to take a decision even if no defence is set up by the other side.

16. In the case in hand, the suit is clearly barred by limitation and therefore, the judgment and decree passed by both the Courts below by going into the merits of the case is clearly illegal and it has to be interfered with on this ground alone.



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WEB COPY 17. The substantial question of law No.8 is answered accordingly in favour of the appellant.

18. In the result, the second appeal is allowed and the the judgment and decree dated 31.08.2006 in AS No.33/2005 on the file of the Subordinate Judge, Sivakasi, confirming the judgment and decree dated 15.12.2004 in OS No.35/2002 on the file of the District Munsif, Sivakasi. is hereby set aside. No costs.

27.03.2026

NCC : Yes/No

Index : Yes/No

RR

To

1.The Sub Court, Sivakasi

2.The District Munsif Court, Sivakasi.

3.The Record Keeper,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.

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N.ANAND VENKATESH, J

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Judgment made in
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