



S.A(MD)No.297 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.02.2026

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CORAM

THE HON'BLE MRS.JUSTICE N.MALA

S.A(MD)No.297 of 2007

and

M.P(MD) No.1 of 2007

1. Manikandan

2. Devakiammal (Died)

3. Palanichamy

4. Indirani

5. Santhakumari

... Appellants/Respondents/
Plaintiffs

Vs.

Chandran

... Respondent/Appellant/
2nd defendant

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the Judgment and decree dated 11.09.2006 passed in A.S.30 of 2006 on the file of Sub Court, Palani, as reversing the Judgment and decree dated 10.2.2006 passed in O.S.250 of 2002 on the file of the District Munsif Court, Palani.



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For Appellants : Mr.M.Saravanan

For Respondent : Mr.M.P.Senthil

JUDGMENT

The second appeal is filed against the judgment and decree, dated 11.09.2006, passed in A.S.30 of 2006 on the file of Sub Court, Palani, reversing the judgment and decree, dated 10.2.2006 passed in O.S.250 of 2002 on the file of the District Munsif Court, Palani.

2. The plaintiffs in the suit are the appellants in the second appeal.

3. The parties will be referred to as per their rank in the Trial Court.

4. Facts in brief:

The suit properties are comprised in Town Survey No.986 in Palani Town. The suit property comprises of two items. The first item of the suit property is in the possession and enjoyment of plaintiffs 1 and 2, and the second item of the suit property is in the possession and enjoyment of the third plaintiff.



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5. According to the plaintiffs, the suit properties are their ancestral properties. The grandfather of the first plaintiff died about 40 years ago, leaving behind the father of the first plaintiff as his sole legal heir. The father of the first plaintiff thereafter enjoyed the property and died in the year 1988, leaving the first plaintiff (his son) and the second plaintiff (his wife) as his legal heirs to succeed to the first item of the suit property.

6. With regard to the second item of the suit property, it is stated that the same belonged to the paternal grandfather of the third plaintiff, one Karuppana Gounder, who constructed a house in the said property about 50 years back and was residing there. After his demise about 15 years ago, and pursuant to an oral partition effected in the family of the third plaintiff, the second item of the suit property was allotted to the third plaintiff. Since then, the third plaintiff has been in peaceful possession and enjoyment of the same.

7. The plaintiffs state that they obtained electricity service connection for the suit properties, and that even though, the entire extent of T.S.No.986 stood in the name of Ambathurai Madam, in the Municipal



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records and that no subdivision was effected in favour of the plaintiffs, the said Ambathurai Madam did not object to the plaintiffs' possession and enjoyment of the suit properties.

8. While so, the first defendant, in collusion with the second defendant, interfered with the peaceful possession and enjoyment of the plaintiffs. The defendants demanded the plaintiffs to sell the suit properties to them and upon refusal by them, the defendants attempted to encroach upon the vacant portion of the suit properties. Hence, the plaintiffs filed the suit seeking permanent injunction.

9. The defendants stated that the suit property originally belonged to Ambathurai Madam and thereafter, the said property was given by the Ammayanakkanur Jamin to Balaiya Swamigal Madam for conducting religious charity like thaneer panthal for the pilgrims, who visited during the festival season. For meeting the expenses of the charity, the properties in S.Nos.100, 102, 158 and 148 in Keelakottai Village, were given by Ammayanakkanur Jamin.



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10. The defendants stated that their ancestors and after them, these defendants were doing charity in the form of Thaneer panthal and other charities during the festival season, utilising the income derived from the aforesaid properties. The defendants further stated that the plaintiffs had no right over the suit properties and that they are unlawfully enjoying the same without any valid title. Therefore, the defendants prayed for dismissal of the suit.

11. Before the Trial Court, the plaintiff examined three witnesses and marked twelve documents and the defendants examined two witnesses and marked fifteen documents and the Commissioner Report and the Commissioner Plan were marked as Ex.C.1 and Ex.C.2.

12. The trial Court after framing necessary issues decreed the suit in favour of the plaintiffs on the basis of the Ex.A.1 to Ex.A.12 and the admission of the second defendant regarding the plaintiffs' possession of the suit properties.

13. Aggrieved by the judgment and decree of the Trial Court, the second defendant preferred an appeal in A.S.No.30 of 2006 before the



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Sub Court, Palani, which reversed the judgment and decree of the trial Court. The lower appellate Court held that the Trial Court failed to note that the plaintiffs who claimed title to the suit properties, were bound to prove their title to the same and that they could not take advantage of any lacuna or weakness in the defendants' case. The lower appellate Court further noted that the plaintiffs had taken inconsistent stand on the title to the property. The Lower Appellate Court specifically referred to the admission of the plaintiffs concerning the entry of Ambathurai Madam in the Revenue records. On such findings, the lower appellate Court reversed the judgment and decree of the Trial Court. Challenging the reversing judgment and decree of the lower appellate Court, the plaintiffs have preferred the present Second Appeal.

14.Arguments:

The learned counsel for the plaintiffs submitted that the lower appellate Court failed to note that title was not an issue in the suit and therefore, the suit for bare injunction based on the settled possession of the plaintiffs was valid and tenable. The learned counsel submitted that since the suit was filed for bare injunction, the Lower Appellate Court was bound to only consider, if the plaintiffs were in possession of the suit



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properties on the date of the suit. The learned counsel further submitted that the lower appellate Court failed to note that Ambathurai Madam did not claim any right over the property and since it was the defendants who claimed to represent the said Ambathurai Madam, the burden was on the defendants to establish their legal right to represent the Madam. The learned counsel for the plaintiffs submitted that since the defendants failed to establish their right to represent the Ambathurai Madam, the Lower Appellate Court erred in interfering with the Trial Court's judgment.

15. The learned counsel for the second defendant submitted that since the plaintiffs claimed title over the property through their ancestors, they ought to have prayed for declaration of title and as such, the suit for bare injunction was not maintainable.

16. This Court at the time of admitting the second appeal framed the substantial question of law as follows:

“Whether in law has the lower appellate Court over looked that the plaintiffs are in settled possession and cannot be dispossessed except by due process of law.”



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17. The plaintiffs' case is that the suit properties are their ancestral properties and they are in possession and enjoyment of the suit properties for over 60 years; that the defendants attempted to encroach upon the suit properties and that therefore, the plaintiffs were constrained to file the suit for permanent injunction restraining the defendants from interfering with their possession.

18. Per contra, it is the case of the defendants that the suit properties originally belonged to Ambathurai Madam, and that the suit properties were granted by the Ammayanakkanur Jamin in favour of Balaiya Swamigal Madam, for the purpose of performing religious charity, namely conducting “thanneer panthal” for the benefit of pilgrims visiting during the festival season. According to the defendants, the plaintiffs were in unlawful possession of the suit properties and therefore, the suit was liable to be dismissed.

19. It is not in dispute that TS.No.986, originally belonged to Ambathurai Madam. The plaintiffs have asserted that they and their predecessors in interest, have been in continuous possession and



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enjoyment of the suit properties for over six decades and that, such enjoyment was never objected to be Ambathurai Madam. The defendants, while admitting that the suit properties belonged to Ambathurai Madam, contended that the properties were entrusted by Ammayannakanur Jamin to Balaiya Swamigal Madam, for the purpose of conducting religious charity, namely, “Thanneer Pandhal”. The plaintiffs’ possession has not been seriously disputed by the defendants. On the contrary, the 2nd defendant, in his cross examination, admitted the long standing possession of the plaintiff in the suit properties extending beyond 50 years. The defendants however sought to characterize the plaintiffs’ possession as unlawful encroachment. The main contention of the 2nd defendant was that the plaintiffs having traced their title and possession through their ancestors, ought to have sought declaration of title and that a suit for bare injunction is not maintainable. In the considered view of this Court, the said contention does not merit acceptance. Admittedly, the suit properties do not belong to the defendants. The 2nd defendant claims to represent Balaiya Swamigal Madam, in the capacity of Madathipathi. However, the materials on record, disclose that an earlier suit instituted by the 2nd defendant seeking a declaration of his status as Madathipathi of the said Madam, was



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dismissed by the Trial Court, on 02.09.2004. Thus, the locus standi of the 2nd defendant to question the plaintiffs' possession remains unestablished.

20.The learned counsel for the 2nd defendant placed reliance on the decision reported in *2025 [1] Madras Law Weekly [Civil] 462 [R.Vijaya Vs. Viswanathan and another]*. This Court is of the view that the reliance placed on the said judgment is misplaced since the judgment turned on its own facts and is distinguishable, particularly, in the light of the admitted possession of the plaintiffs in the present case. It is settled proposition of law that where possession is admitted and the defendants neither establish title, nor lawful possession, the plaintiffs are not bound to seek declaration of title. A suit for permanent injunction to protect the settled possession, is maintainable as against a party who fails to demonstrate a better right.

21.In the present case, the 2nd defendant has neither proved his representative capacity nor established any semblance of title or possession of the suit properties. In such circumstances, this Court is of the view that the plaintiffs cannot be compelled to seek declaration of



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title against the 2nd defendant.

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22.Hence, the substantial question of law is answered in favour of the plaintiffs/appellants, in view of the plaintiffs' settled possession and failure of the 2nd defendant to establish his right, title and possession of the suit properties.

23. Ergo, the Second Appeal is **allowed** and the judgment passed by the lower Appellate Court in A.S.No.30 of 2006 is set aside and the judgment and decree passed by the trial Court in O.S.No.250 of 2002 is confirmed. Consequently, connected Miscellaneous Petition is closed. No costs.

11.02.2026

NCC : Yes/No
Index : Yes / No
Internet : Yes / No

Indu / AP

To

- 1.The Sub Court, Palani.
 - 2.The District Munsif Court, Palani.
 - 3.The Section Officer,
- 11/13



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V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

N.MALA,J.

Indu / AP

Judgment made in
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