



S. A(MD)No.99 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.99 of 2007

1.Somasundaram Pillai
2.Sivamasundari
3.Sanmugasundari
4.Swaminathan
5.Govindarajan

.. Appellants/Plaintiffs

(Appellants 2 to 5 were brought on record as LR's of the deceased sole appellant vide order dated 25.08.2011 in MP No.1 of 2011)

Vs.

1.Subbiah Thevar
2.Panneerselvam
3.Gunasekharan
4.Elangovan
5.Gowri
6.Thangavelu
7.S.Rajendran
8.S.Nadimuthu

.. Respondents/defendants

Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 29.08.2005 in AS No.8/2005 on the file of the II Additional District Court, Pudukottai, confirming the judgment



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and decree dated 12.04.2003 in OS No.982/1988 on the file of the Principal District Munsif Court, Pudukottai.

For Appellants : Mr.D.Rajagopal
For Respondents : Mr.S.Ravi for R2 to R6

JUDGMENT

The second appeal is filed against the judgment and decree dated 29.08.2005 in AS No.8/2005 on the file of the II Additional District Court, Pudukottai, confirming the judgment and decree dated 12.04.2003 in OS No.982/1988 on the file of the Principal District Munsif Court, Pudukottai.

2. The plaintiff is the appellant in the second appeal.

3. The plaintiff filed a suit seeking for the relief of declaration of title and for permanent injunction.

4. The case of the plaintiff is that the property in question is an ancestral property and the same was allotted in favour of one Appasamy Pillai, who had two sons, namely, Ramasamy and Damodharan. Ramasamy



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died leaving behind Thangavelu and Subramanian and they were in possession and enjoyment of the property. The said Subramanian executed a settlement deed in favour of the plaintiff. The property was a vacant house site. While so, an attempt was made by the defendants, who are the adjacent owners, to interfere with the possession and enjoyment of the property and they were also creating a cloud over the title to the property. It is under these circumstances the suit came to be filed by the plaintiff seeking for the relief of declaration and permanent injunction.

5. The defendants took a stand that the first defendant had purchased the suit property from one Subramanian and Thangavelu through a registered sale deed dated 03.10.1988 and is in possession and enjoyment of the property. They also took a stand that the plaintiff was never in possession and enjoyment of the property. Accordingly, they sought for dismissal of the suit.

6. The trial Court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to the



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conclusion that the plaintiff neither proved the title over the property nor possession over the property. Accordingly, the suit was dismissed vide judgment dated 12.04.2003.

7. Aggrieved by the same, the plaintiff filed appeal in AS No.8 of 2005 before the Additional District Judge cum Sub Court, Pudukottai and the appellate Court confirmed the judgment and decree passed by the trial Court and dismissed the appeal vide judgment and decree dated 29.08.2005. Aggrieved by the same, the present second appeal has been filed before this Court.

8. When the second appeal was entertained, only notice of motion was ordered on 06.02.2007. Subsequently on 20.11.2024, the second appeal was admitted and the substantial questions of law were framed as under:

“1. Whether the judgment of the lower appellate Court is in accordance with the mandatory provisions of Order 41 Rule 31 of CPC?

2. Have not the courts below erred in non suiting the plaintiff relying upon the documents subsequent to the



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date of suit?

3. Is not the partition be proved by circumstantial evidence?

4. Is not the plaintiff who had redeemed the property entitled to the right of subrogation under Section 92 of Transfer of Property Act?”

9. Heard the submissions of the learned counsel for the appellants and the learned counsel for the respondents 2 to 6 and perused the materials available on record.

10. The specific case of the appellant is that Appasamy Pillai had two sons, namely, Ramasamy Pillai and Damodharan Pillai and they were enjoying the property jointly. Thereafter, Ramasamy Pillai died leaving behind two sons, namely, Thangavelu Pillai and Subramania Pillai. The plaintiff along with Thangavelu Pillai and Subramania Pillai was in joint enjoyment of the property, even before the partition that took place between the parties in the year 1984. After the partition, the suit property fell within the share of the plaintiff and the plaintiff was in possession and enjoyment



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11. The trial Court as well as the appellate Court, on considering the evidence available on record, came to a categorical conclusion that there was no document available to substantiate the title of the plaintiff in the suit property. The Court below found that there was no document available to show that the suit property was allotted in favour of the plaintiff. The Court also found that there is no material available to show the possession of the property. The Court took into consideration the report that was filed by the Advocate Commissioner.

12. The above findings were rendered by both the courts below on appreciation of facts. Just because an alternative view is available on the basis of the very same documents, that will not be a ground for this Court to exercise its jurisdiction under Section 100 of C.P.C.

13. Insofar as the first substantial question of law is concerned, this Court finds that the points for determination has been properly considered



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by the appellate Court in line with Order XLI Rule 31 of CPC. Insofar as the substantial questions of law 2 to 4 are concerned, the factual findings rendered by both the Courts below are based on appreciation of evidence and there is no perversity in the findings of the Court below. Hence, these substantial questions of law are answered accordingly against the appellants.

14. In the result, the second appeal stands dismissed and the judgment and decree dated 29.08.2005 in AS No.8/2005 passed by the II Additional District Court, Pudukottai stands confirmed. No costs.

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NCC : Yes/No

Index : Yes/No

RR

To

1.The II Additional District Court, Pudukottai

2.The Principal District Munsif Court, Pudukottai.

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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