



SA(MD). No.171 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 05.06.2026

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THE HONOURABLE MR. JUSTICE P.B.BALAJI

**SA(MD). No.171 of 2025
and
CMP(MD)Nos.6495 & 6498 of 2025**

1. Palanisamy,
2. Velusamy, ... Appellants/Appellants/Plaintiffs
Vs.

1. Kanniammal,
2. Veerammal,
3. Govindammal
4. Veerammal
5. Kaliammal ... Respondents/Respondents/Defendants

PRAYER :- Second Appeal filed under Section 100 of Civil Procedure Code, to set aside the Judgment and Decree dated 12.12.2024 made in A.S.No.6 of 2023 on the file of the Additional Sub Judge, Palani, confirming the Judgment and Decree dated 25.11.2022 made in O.S.No. 39 of 2021 on the file of District Munsif Court, Palani and allow this Second appeal.

For Appellants : Mr.N.Mohan,

For Respondents : No appearance

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JUDGMENT

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I have Mr.N.Mohan, learned counsel for the appellants / plaintiffs.

2. The respondents/ defendants, who are none else than the sisters of the appellants / plaintiffs, have been served with notice in the second appeal and despite the same, have neither chosen to appear in person nor through counsel. The learned counsel for the appellants has also taken out an application in CMP(MD)No. 6498 of 2025 for adducing additional evidence.

3. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

4. The case of the appellants / plaintiffs was that the appellants were allotted 3 Acres each by the Government on 30.06.1982, based on allotment order and patta was also issued in favour of the appellants. Though the sisters appeared before the trial Court and contested the suit, they admitted the fact that the allotment was issued in favour of the plaintiffs, namely, appellants, besides also admitting the possession of

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the appellants. However, the trial court as well as the first appellate Court proceeded to non suit the plaintiff on the ground that they had not produced the allotment order or the assignment patta issued by the Government, evidencing the factum of possession being with the appellants.

5. Now, the appellants / plaintiffs have taken out the application in CMP(MD)No. 6498 of 2025 for filing the said allotment order and patta granted to them, as additional evidence in the second appeal.

6. In the light of the fact that the respondents / sisters of the appellants have categorically admitted to the fact that the allotment was made to the appellants and that the appellants/ plaintiffs have been in possession of the subject properties, I am of the opinion that the matter can be remitted to the first appellate Court for a fresh decision, after permitting the appellants to exhibit the additional documents, which are now filed along with CMP(MD)No.6498 of 2025 to evidence the allotment and also factum of possession, through patta granted.



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7. The Second Appeal is admitted on the following substantial question of law:

“I. Whether the Courts below erred in controverting the admitted fact, by D.W.1, as per Section 58 of the Indian Evidence Act, which contemplates that an admitted fact need not be proved?

II. Whether the Courts below were right in rejecting the evidence of P.W.2, working in the Revenue Department, who deposed about the allotment of land to the appellants?”

8. I find force in the submissions of the learned counsel for the appellants, Mr.Mohan that even though the order of allotment and assignment patta was not exhibited, when the sisters, who were arrayed as defendants, themselves, have admitted the factum of possession being with the appellants and also in the light of evidence of PW. 2, who was an employee of the Revenue Department, who has also spoken about the allotment, the Courts below fell in error in non suiting the appellants on the sole ground that they have not established the factum of possession by producing the allotment order and patta.



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9. However, in view of the fact that the appellants have now come forward to produce the allotment order and assignment patta, subject to proof and relevancy, the appellate Court shall permit the appellants to adduce additional evidence on a formal application taken out under Order 41 Rule 27 CPC and after giving an opportunity to respondents / sisters of the appellants, shall decide the application and also the appeal on merits.

10. In fine, the Second Appeal is allowed. The judgment and decree dated 12.12.2024 made in A.S.No.6 of 2023 on the file of the Additional Sub Judge, Palani, as well as the judgment and decree dated 25.11.2022 made in O.S.No.39 of 2021 on the file of the District Munsif Court, Palani, are set side and the matter is remanded to the first appellate Court, in A.S.No.6 of 2023 for a fresh decision, in the manner indicated herein above. The appeal suit shall be decided by 30th September 2026. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Internet : Yes/No
NCC : Yes/No
LS

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1. The Additional Sub Judge,
Palani
2. The District Munsif Court,
Palani.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B.BALAJI,J.

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