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0BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13-10-2026

PRONOUNCED ON : 03-11-2026

CORAM

THE HON'BLE MRS.JUSTICE THIRUMAGAL CHANDRASEKAR

SA(MD) No. 455 of 2014

CNR:{HCMD010844502014}

Case QR

and MP(MD).No.1 of 2014

1. Abdul Rahman Sait(died)
   S/o.Late.Peersahul Hameed, D.No.42-c, New Street, Athirampattinam, Pattukottai Taluk, Thanjavur District.

2. Pasariya,
   W/o.Rahamathullah, D/o.Late.Peersahul Hameed, D.No.42-c, New Street, Athirampattinam, Pattukottai Taluk, Thanjavur District.

3. Roja Ammal,
   W/o.Abbas, D/o.Late.Peersahul Hameed, D.No.187, New Street, Thirampattinam, Pattukottai Taluk, Thanjavur District.

4. Jamila Begam
   W/o.Late.Abdul Rahman Sait, D.No.42-c, New Street, Athirampattinam, Pattukottai Taluk, Thanjavur District.

5. Peer Masthan Gani
   S/o.Late.Abdul Rahman Sait,d.No.42-c, New Street, Athirampattinam, Pattukottai Taluk, Thanjavur District.

6. Sulaihal Parvin
   D/o.Late.Abdul Rahman Sait, D.No.42-c, New Street, Athirampattinam, Pattukottai Taluk, Thanjavur District.

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7. Fathima Gani
D/o.Late.Abdul Rahman Sait,d.No.42-c, New Street, Athirampattinam, Pattukottai Taluk, Thanjavur District.

8. Wahitha Rahuman

(APPELLANTS R4 TO 8 ARE BROUGHT ON RECORD AS LRS OF THE DECEASED 1st appellant VIDE COURT ORDER DATED 19.07.2023 MADE IN CMP(MD)NOS. 418,419 AND 421 OF 2023 IN SA(MD)NO. 455 OF 2014 BY KRJ.)

..Appellant(s) / Plaintiffs

Vs

1. Kali @ Kaliappan,
S/o.Karuppiah, North Street, Uthamapalayam Town & Taluk, Theni District.

2. Usha,
W/o.Raju, D.No.143-a, Ward No.4, Anna Nagar Extension, Electricity Board Colony, Uthamapalayam Town & Taluk, Theni District.

3. Tahsildar (revenue)
Taluk Office, Uthampalayam Town, Uthamapalayam Taluk, Theni District.

4. Chellammal,
W/o.Sarbudeen, D/o.Late.Peer Sahulhameed, Near Pallivasala, P.T.R.Colony, Uthampalayam Town, Uthamapalayam Taluk, Theni District.

.. Respondents / Defendant(s)

For Appellants: Mr.V. George Raja
For M/s. Ajamal Associates

For 3rd respondent: Mr.P. Sathish Kumar

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Government Advocate

Prayer : Second Appeal filed under Section 100 CPC to set aside the decree and Judgment dated 27.06.2011 passed in A.S.No.26 of 2010 on the file of the Subordinate Judge, Uthamapalayam confirming the decree and Judgment dted 18.02.2010 passed in O.S.No.156 of 2008 on the file of the District Munsif cum Judicial Magistrate, Uthamaplayam.

JUDGMENT

This Second Appeal has been filed under Section 100 CPC to set aside the Decree and Judgment dated 27.06.2011 passed in A.S.No.26 of 2010 on the file of the Subordinate Court, Uthamapalayam confirming the

Decree and Judgment dated 18.02.2010 passed in O.S.No.156 of 2008 on the file of the District Munsif cum Judicial Magistrate, Uthamaplayam.

2. The Brief Facts of the Case are as follows:

(i) The suit was instituted by the plaintiffs seeking a declaration of their title to the suit property and a consequential relief of permanent injunction. According to the plaintiffs, the suit property originally belonged to the Government of Tamil Nadu. Their mother, Ponnuthayee,

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daughter of Kaliba, applied to the Government for assignment of a house site patta. Upon consideration of her application, the Special Tahsildar, Adi Dravidar Welfare Department, Uthamapalayam, issued a house-site patta dated 04.05.1983 in her favour and handed over possession of the property to her. Subsequently, the said Ponnuthayee died on 17.11.2007. The plaintiffs further stated that their father, Peer Sahul Hameed, had predeceased their mother in the year 1957. As the plaintiffs were residing elsewhere, the fourth defendant was maintaining the suit property.

(ii) It was the further case of the plaintiffs that the first defendant, by creating a fraudulent patta, purported to convey the suit property to one Murugesan, son of Rasu, under a nominal sale deed dated 09.10.2000, registered as Document No.1622 of 2000 in the office of the Sub-Registrar, Uthamapalayam. According to the plaintiffs, Murugesan was never put in possession of the suit property. Thereafter, the first defendant allegedly repurchased the property from Murugesan under a sale deed dated 10.10.2003 and subsequently conveyed the same to the second defendant under a sale deed dated 28.12.2007. The plaintiffs contended that the said three sale deeds would not bind their lawful rights over the suit property and that the defendants 1 and 2 were interfering with their rights, thereby necessitating the institution of the suit for the

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aforesaid reliefs.

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(iii) The defendants contested the suit by contending that the suit property was originally Government poramboke land under the supervision and maintenance of the Tahsildar's Office, Uthamapalayam. They denied knowledge of the plaintiffs' claim that Ponnuthayee, daughter of Kaliba, was the mother of the plaintiffs and the fourth defendant. According to the defendants, the first defendant had been allotted a house site in the year 1983 under a Government scheme intended for washermen and persons belonging to the barber community, during the tenure of the then Chief Minister, M.G. Ramachandran, and had been in possession and enjoyment of the property pursuant to such allotment.

(iv) The defendants further contended that the first defendant had sold the suit property to Murugesan, son of Rasu, and subsequently repurchased it from him before conveying the same to the second defendant, to whom possession was also delivered. It was stated that when the second defendant attempted to construct a compound wall around the suit property, the plaintiffs obstructed the work, pursuant to which the second defendant's husband lodged a complaint on 29.04.2008.

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The Uthamapalayam Police allegedly advised the parties to seek appropriate relief before the competent Court. Denying the other allegations in the plaint, the defendants contended that the plaintiffs were not entitled to the reliefs sought for and prayed for dismissal of the suit.

(v) Before the Trial Court, on behalf of the plaintiffs one witness was examined as PW.1 and ten documents were marked as Exs.A1 to A10. On behalf of the defendants, five witnesses were examined as DW.1 to DW.5 and three documents were marked as Exs.B1 to B3.

(vi) Upon consideration of the oral and documentary evidence, the Trial Court dismissed the suit. Aggrieved by the same, the plaintiffs preferred an appeal before the First Appellate Court, which also dismissed the appeal, thereby confirming the judgment and decree of the Trial Court.

3. Challenging the concurrent findings of the Courts below, the appellants / plaintiffs have preferred the present Second Appeal.

4. Heard Mr.V. George Raja for M/s. Ajamal Associates, learned counsel appearing for the Appellants and Mr.P. Sathish Kumar,

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Government Advocate, learned counsel appearing for the 3rd respondent and perused the materials available on record.

5. The Second Appeal was admitted on the following substantial questions of law:

"1. Whether the first Appellate Court and the trial Courts are right in relying Ex.B2 which is inadmissible under Section 65 of the Evidence Act?

2. Whether the Lower Courts judgment are vitiated under law as the findings are based against pleadings and admission of DW1 and DW4?

3. Whether the Courts below ought to have applied the legal principle "Possession follows" title in the case, especially when there is no plea of adverse possession by respondents.?

6. The appellants / plaintiffs 1 to 3 and the fourth respondent/fourth defendant are the sons and daughter of one Ponnuthayee. According to the appellants / plaintiffs, Ponnuthayee was granted a house-site patta by the Special Tahsildar, Adi Dravidar Welfare Department, on 04.05.1983, which was marked as Ex.A2. The said Ponnuthayee died on 17.11.2007. The appellants / plaintiffs were residing in foreign countries, and the fourth respondent/fourth defendant was looking after the suit property.

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Alleging interference with their rights by the respondents / defendants in the year 2008, the appellants / plaintiffs instituted the suit seeking a declaration of title to the suit property and a consequential relief of permanent injunction.

7. The case of the respondents/defendants is that the suit property was allotted to the first respondent/first defendant under a Government scheme implemented in the year 1983 for the benefit of members of the Salavai Thozhilalargal Sangam (Washermen's Association), under which house sites were allotted to 120 persons. The patta issued in favour of the first respondent/first defendant was marked as Ex.B1.

8. It is the further case of the respondents/defendants that the first respondent/first defendant sold the suit property to one Murugesan in the year 2000 and subsequently repurchased the same from him in the year 2003. Thereafter, the property was conveyed to the second respondent/second defendant under a sale deed executed in the year 2007, and possession was stated to have been delivered to the purchaser symbolically. Neither the appellants / plaintiffs nor the respondents / defendants were in actual physical possession of the vacant suit site.

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9. Both the Courts below, upon appreciation of the oral and documentary evidence, concurrently held that Ex.A1, the patta relied upon by the appellants/plaintiffs, contained material alterations. The name of Kali, son of Karuppaiah, the first respondent/first defendant, was found in the said document, but his name had been struck off and the name of Ponnuthayee had been inserted in its place. The appellants/plaintiffs failed to offer any satisfactory explanation for the said material alteration. In the absence of a proper explanation regarding the genuineness of Ex.A1, both the Courts below declined to accept the appellants' claim of title and dismissed the suit.

10. Per contra, the respondents/defendants relied upon Ex.B2, the patta issued in their favour, which was corroborated by Ex.B3, which reads as follows:

> *"தேனி மாவட்டம், உத்தமபாளையம் வட்டம், உத்தமபாளையம் கிராமம், புல எண் 1937/1, 2, 3 ஆகிய புலங்களில் பிற்பட்ட வகுப்பினரான வண்ணார், நாவிதர்களுக்கு இவ்வலுவலக ந.க. எண் 3246/82, நாள் 4.5.83 மூலம் நிலம் ஆர்ஜிதம் செய்யப்பட்டு, மேற்படி புலங்களில் புல எண் 2019, 2020 ஆகியவைகளுக்கு மேற்கிலும், புல எண் 110-ன் கிழக்கிலும், பாதைக்குத் தெற்கிலும், புல எண் 1951-க்கு வடக்கிலும் உள்ள நான்கு புலங்களின் மையத்திற்குட்பட்டுள்ள பிளாட் எண் 111-ல் 00.03 சென்ட் நிலம், மேற்படி*

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உத்தமபாளையம் வட்டம், உத்தமபாளையம் கிராமத்தில் வசித்து வரும் திரு. கப்பையா மகன் காளி என்ற காளியப்பன் என்பவருக்கு இலவச வீட்டுமனைப் பட்டா வழங்கப்பட்டு, அவரது சொந்த அனுபவத்தில் உள்ளது எனச் சான்று வழங்கப்பட்டுள்ளது.

The evidence of DW1 and DW4 also lent support to the case of the respondents/defendants. Upon an overall appreciation of the evidence on record, the Courts below accepted the documentary evidence relied upon by the respondents/defendants and held that their claim was better substantiated by the available records.

11. The question of adverse possession does not arise for consideration in the present case, as neither party has established actual physical possession of the vacant suit property. The appellants/plaintiffs instituted the suit seeking a declaration of title and, therefore, the burden rests upon them to establish their title on the strength of their own case and evidence, rather than on the weakness of the defence. In respect of a vacant site, the principle that possession follows title may be relevant; however, the appellants / plaintiffs must first establish their title to the suit property by acceptable evidence. In ***Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs.,*** reported in ***(2008) 4 SCC 594***, the Hon'ble

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Supreme Court held in paragraph 14 as follows:

> *"14. But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession."*

12. In the present case, the appellants/plaintiffs have failed to establish the genuineness of Ex.A1, particularly in view of the unexplained material alterations noticed therein. On the other hand, the respondents/defendants relied upon Ex.B2 and Ex.B3 in support of their claim. The transactions relating to the suit property, commencing with the sale in the year 2000, followed by the repurchase in the year 2003 and the subsequent conveyance in the year 2007, were also relied upon by the respondents/defendants in support of their claim of right over the property. These circumstances, considered along with the oral evidence of DW1 and DW4, lend support to the findings recorded by the Courts below.

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13. The learned counsel for the appellants / plaintiffs has not demonstrated any perversity in the appreciation of evidence by the Courts below or any error of law warranting interference in this Second Appeal. The contention that the fourth respondent/fourth defendant, having previously worked in the Adi Dravidar Welfare Department, might have influenced the issuance of the patta in favour of Ponnuthayee remains an inference unsupported by sufficient material on record. Nevertheless, the appellants / plaintiffs' failure to explain the material alterations in Ex.A1, coupled with the documentary evidence relied upon by the respondents/defendants, constitutes a sufficient basis for sustaining the concurrent findings of the Courts below.

14. The allotment of the suit site to the first respondent/first defendant under the scheme for members of the Salavai Thozhilalargal Sangam (சலவைத் தொழிலாளர்கள் சங்கம்), including the allotment of Site No.111 measuring 0.3 cents, as reflected in the documentary evidence relied upon by the respondents/defendants, lends support to their case. The substantial question of law answered against the appellants / plaintiffs and does not warrant interference under Section 100 of the Code of Civil Procedure, 1908. Thus, this Court finds no valid

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ground to alter the concurrent judgments and decrees passed by the Courts below.

15. In the result, this Second Appeal is dismissed. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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To

1. The Subordinate Judge, Uthamapalayam.
2. The District Munsif cum Judicial Magistrate, Uthamaplayam.
3. The Section Officer, VR Section, Madurai Bench of Madras High Court, Madurai.

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THIRUMAGAL CHANDRASEKAR, J.

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