

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Judgment reserved on 27.03.2026 | Judgment pronounced on .04.2026

CORAM

THE HON'BLE MR. JUSTICE P.B.BALAJI

SA(MD) Nos.78 to 80 of 2026

SA(MD).No.78 of 2026

1. K. Chitradevi
2. T.S. Jothi
3. S.R. Vivekananthan
through its power agent T.N. Kannan
T.K. Ravendran (died)
4. T.K.Ganesan
5. T.K.Subramanian
6. T.K.Lakshmi
7. N.G.Anusia
8. N.G.Padmapriya
9. N.G.Vaijayanthimala
- 10.N.G.Balaji Manikandan
- 11.T.R.Lakshmi
- 12.T.R.Roshini
- 13.T.R.Saravanakumar

.. Appellants / Plaintiffs

Vs.

- 1.Oyyapaan @ Sonai Samban
Sonammal (died)
- 2.Tamilraj
- 3.Muthulakshmi
- 4.Andisamy
- 5.Minor Sanjeevi
(rep. By 2nd respondent)

.. Respondents / defendants



SA(MD).Nos.78 to 80

Prayer: Second Appeal filed under Section 100 CPC against the Judgment and Decree dated 12.03.2025 made in A.S.No.56 of 2019 on the file of the Sub Court, Melur which was confirmed in Judgment and Decree dated 28.08.2017 made in O.S.No.72 of 2008 on the file of the District Munsif Court, Melur.

SA(MD).No.79 of 2026

1.A.R. Kubbumani
2.C.Panidyammal
3.P.S.Manikandan
4.K.Samayamuthu
5.A. Santha
6.G.N.Nirmala
7.R.M.Sagila
8.G.N. Kumaresh
9.G.N.Seenivasan

.. Appellants / Plaintiffs

Vs.

1.Oyyapaan @ Sonai Samban
Sonammal (died)
2.Tamilraj
3.Muthulakshmi
4.Andisamy
5.Minor Sanjeevi
(rep. By 2nd respondent)

.. Respondents / defendants

Prayer: Second Appeal filed under Section 100 CPC against the Judgment and Decree dated 12.03.2025 made in A.S.No.57 of 2019 on the file of the Sub Court, Melur which was confirmed in O.S.No.81 of 2008 on the file of the District Munsif Court, Melur, dated 28.08.2017.

SA(MD).No.80 of 2026



1.G.L. Venkatraman
2.S.Pameswari
3.S.Hemalatha
4.S.Madasamy
5.R.Savithiri
6.R.Karupayeeammal

.. Appellants / Plaintiffs

Vs.

1.Oyyapaan @ Sonai Samban
Sonammal (died)1
2.Tamilraj
3.Muthulakshmi
4.Andisamy
5.Minor Sanjeevi
(rep. By 2nd respondent)

.. Respondents / defendants

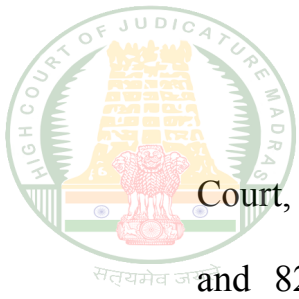
Prayer: Second Appeal filed under Section 100 CPC against the Judgment and Decree dated 12.03.2025 made in A.S.No.58 of 2019 on the file of the Sub Court, Melur which was confirmed in O.S.No.82 of 2008 on the file of the District Munsif Court, Melur, dated 28.08.2017.

For Appellants in all cases : Mr.C.Vakeeswaran

For Respondents in all cases : Mr.R.Suriya Narayanan

COMMON JUDGMENT

These Second Appeals have been filed against the Judgment and Decree dated 12.03.2025 made in A.S. Nos. 56 to 58 of 2019 on the file of the Sub



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Court, Melur, which confirmed the Judgment and Decree in O.S. Nos. 72, 81 and 82 of 2008 on the file of the District Munsif Court, Melur, dated 28.08.2017, respectively.

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2. I have heard Mr. C. Vakeeswaran, learned counsel for the appellants, and Mr. R. Suriyanarayanan, learned counsel appearing for the contesting first respondent. I have also gone through the records placed before me by way of a typed set of papers, as well as the decisions relied upon by the learned counsel for the appellants.

3. The plaintiffs are the appellants in these Second Appeals. Having unsuccessfully sought the relief of permanent injunction to restrain the defendants from interfering with the alleged peaceful possession and enjoyment of the respective properties belonging to the plaintiffs, these appeals have been filed. The case of the plaintiffs in the respective suits is that they are bona fide purchasers for value, of plots in an approved layout and that the original owners, namely the first defendant and two others, had executed a power of attorney in favour of one Mr. N. Subramanian on 31.10.1990, and that the plaintiffs purchased the suit properties from the said power agent who represented the owners, including the first defendant. According to the plaintiffs, they were put in possession, and since the first defendant started



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interfering with their possession, the suits came to be filed. The suits were resisted by the first defendant, contending that the power of attorney was not executed by him and that the lands continued to be in his possession and enjoyment. The sisters of the first defendant, namely defendants 2 and 3, were also arrayed as parties to the suits. The Trial Court as well as the First Appellate Court negated the claims of the plaintiffs and dismissed the suits for permanent injunction.

4. The learned counsel for the appellants, Mr. C. Vakeeswaran, would firstly contend that the first defendant, except for the denial of execution of the power of attorney, has not placed any material to disprove the title of the plaintiffs and, therefore, there was no necessity for the appellants to seek the relief of declaration. In this regard, the learned counsel has relied on the judgment of the Hon'ble Supreme Court reported in **2008 (4) SCC 594** in the case of **Anathula Sudhakar v. P. Buchi Reddy (dead) by LRs and others**. It is also the submission of Mr. C. Vakeeswaran, learned counsel for the appellants, that though the first defendant denied the execution of the power of attorney, contending that his name is only Sonai Samban and not Oyyappan @ Sonai Samban as described in the power of attorney, reference is made to Ex. A14 – sale agreement, and the fact that the second defendant had attested the power of attorney in Ex. A5 as one of the attesting witnesses. The learned counsel would



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state that the plaintiffs had clearly established that the first defendant alone had executed the power of attorney. He would also rely on Exs. A6, A8 and A12 – Revenue records, to contend that subsequent to the purchase, the plaintiffs have also paid kist in their names and have thereby clearly established possession of the suit property, entitling them to the relief of permanent injunction. The learned counsel also relied on the decision of the Hon'ble Supreme Court reported in **2006 (4) Supreme 62** in the case of **Anil Rishi v. Gurbaksh Singh**, wherein the Hon'ble Supreme Court dealt with the distinction between burden of proof and onus of proof, and held that the initial burden would always be on the plaintiffs, and where a fiduciary relationship is alleged, the same must be established before any presumption of undue influence can be drawn. The learned counsel would therefore pray for the Second Appeals to be admitted and heard on merits on the following substantial questions of law, suggested to be framed. The learned counsel for the plaintiffs/appellants has suggested the following substantial questions of law:-

A. Whether the Courts below are right in dismissing the suit for permanent injunction, when the Appellants / Plaintiffs have proved the possession by way of sale deeds and kist receipts, warrants interference?

B. Whether the Court below are right in appreciating the principle of law that the title follow the possession, when the Appellants / Plaintiffs



have produced the sale deeds and proved the possession, warrants interference?

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C. Whether the Courts below are right in appreciating the documents filed by the Respondents viz., Ex.B14 and B15, when the Respondents have filed the suit for declaration in O.S.No.107 of 2008 on the file of the District Munsif, Melur and the same was withdrawn, warrants interference?

D. Whether the Courts below are right in appreciating the defence taken by the Respondents that the Power of Attorney deed dated 31.10.1990 was a forged document, without pleadings in the written statement, warrants interference?

5. Per contra, Mr. R. Suriyanarayanan, learned counsel for the respondents, would firstly contend that the plaintiffs have come to Court seeking permanent injunction based on their respective titles to the plots purchased by them. He would therefore state that the burden was on the plaintiffs to establish not only their title but also the factum of possession. The learned counsel would further state that, admittedly, when the power of attorney, which forms the basis of the sale in favour of the plaintiffs, was itself questioned, there was a clear repudiation of the title of the plaintiffs, which necessarily warranted the plaintiffs to seek the relief of declaration. He would also rely on the *Anathula Sudhakar* case. He would contend that the suit for



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bare injunction is not maintainable on the facts of the present case. The learned counsel, Mr. R. Suriyanarayanan, further stated that the mere fact that the second defendant, the sister of the first defendant, has signed as a witness to the power of attorney - Ex. A5, cannot be conclusive evidence of the fact that the first defendant executed the power of attorney, as it is settled law that a witness cannot be imputed with knowledge of the contents of the document, unless it is specifically established by evidence that the witness had knowledge of the contents of the document as well. Admittedly, according to the learned counsel, Mr. R. Suriyanarayanan, the sister of the first defendant has not been examined in the present case, and therefore, the fact that the second defendant signed as an attesting witness to the power of attorney is of no avail to the plaintiffs. The learned counsel would further state that the plaintiffs have been misled by the vendors, who had allegedly played fraud by producing the power of attorney, and that the appellants have not even taken steps to examine the other two principals to Ex. A5 – power of attorney, to establish that the first defendant had also signed the power of attorney along with them. The learned counsel would further state that the first defendant has filed all revenue records, including patta, to establish that the mutation has always been in the name of the first defendant, and therefore, possession was also only with the first defendant. Hence, the Courts below have rightly dismissed the suits for permanent injunction. He would therefore state that no substantial questions of law arise



for consideration in these Second Appeals.

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6. I have carefully considered the submissions advanced on either side.

7. With regard to the execution of the power of attorney in Ex. A5, the first defendant has categorically denied its execution in the written statement itself. No steps have been taken by the plaintiffs to prove the execution of the power of attorney by the first defendant. As rightly pointed out by the learned counsel, Mr. R. Suriyanarayanan, along with the first defendant, two other landowners have also executed the same power of attorney and joined execution of Ex. A5 in favour of Subramanian. Neither the other two co-owners / principals nor the power agent has been examined to establish the truth and genuineness of Ex. A5. It is settled law that mere attestation of a document does not imply that the attestor has knowledge of the contents of the document in the absence of evidence to the contrary. Admittedly, there is no such evidence and the sister of the first defendant has not been examined to establish that she was aware of the contents of Ex. A5 – the power of attorney as well. Thus, there is absolutely no infirmity in the findings arrived at by the Courts below in non-suiting the plaintiffs, and there was no necessity for the Courts below to take any other view than what has been taken, merely on the basis of the sister of the first defendant having attested the power of attorney. Even with regard to the



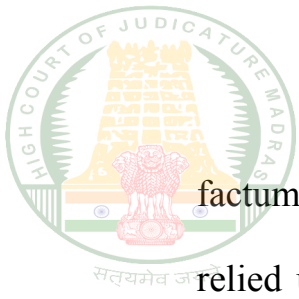
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contention relating to the relief of declaration, I find force in the submissions of the learned counsel for the respondents, Mr. R. Suriyanarayanan.

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8. Admittedly, when the sale deeds in favour of the plaintiffs were executed only by the alleged power agent of the first defendant and two other landowners, and when the very execution of the power of attorney is denied and questioned by the first defendant, it would clearly amount to raising a cloud over the title of the plaintiffs. Merely because the defendant has not challenged the sale deeds in favour of the plaintiffs, it does not indicate that the first defendant has not raised a dispute regarding the title of the plaintiffs. However, in the light of the law laid down in *Anathula Sudhakar's case*, particularly paragraph No. 21(a), the same would squarely apply, and the appropriate remedy for the plaintiffs would have been to file a suit for declaration, with or without possession / injunction. Having not sought the relief of declaration, the suits for bare permanent injunction was therefore not maintainable. The Courts below have rightly applied the settled legal position and found the suits for bare injunction to be unsustainable.

9. I do not find any substantial questions of law arising for consideration under Section 100 of the Code of Civil Procedure. Moreover, the defendants have also marked patta - Ex. B7 for the suit property, which evidences the



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factum of possession being with the first defendant. Though the plaintiffs have relied upon some exhibits as rightly held by the Courts below, when it is the case of the plaintiffs themselves that the lands have been laid out into plots, they cease to retain the character of agricultural lands, and therefore, the question of payment of kist thereafter would not arise and cannot be valid and acceptable evidence of possession. Hence, the Courts below have rightly not given any weightage to the said kist receipts filed on behalf of the plaintiffs.

10. I do not find any grounds arising for consideration in the Judgment passed by the Courts below. Accordingly, these Second Appeals are dismissed. No costs.

10.04.2026

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

1. The Sub Court, Melur.
2. The District Munsif Court, Melur.



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P.B.BALAJI.J.

trp

Pre-delivery Judgment made in
SA(MD) Nos.78 to 80 of 2026

10.04.2026