

S.A(MD)No.178 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.04.2026

Pronounced on : 28.07.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.178 of 2012

1.Samydevar (Died)

2.Rajadevar,

S/o.Subramaniyadevar,

Melanmarikudi, Narikudi Village,

Sankarankoil Taluk,

Tirunelveli District.

...Appellants/Respondents/Plaintiffs

(Memo dated 10.12.2024 in USR.No.46447 is recorded to the effect that 1st appellant died issueless & 2nd appellant, who is already on record, is recorded as LR of the deceased 1st appellant vide Court order dated 16.12.2024 made in S.A(MD)No.178 of 2012by SSYJ)

Vs.

Ramarpandi,

S/o.Samydevar,

Melanmarikudi, Narikudi Village,

Sankarankoil Taluk,

Tirunelveli District.

Now at No.2661,

Kanchamalai North,

Vellamalai (P.O).

...Respondent/Appellant/Defendant



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Prayer: This Second Appeal is filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree, dated 29.01.2009 passed in A.S.No.49 of 2006 on the file of the Sub-Court, Sankarankoil, reversing the judgment and decree dated 25.01.2006 passed in O.S.No.239 of 2004 on the file of the Additional District Munsif Court, Sankarankoil and dismiss the suit.

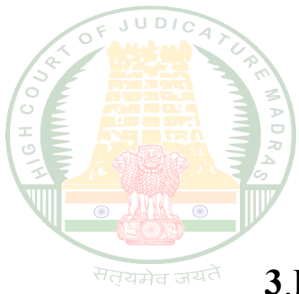
For Appellant : Mr.V.Meenakshi Sundaram

For Respondent : Mr.M.Saravanan

JUDGMENT

This Second Appeal is filed against the judgment and decree dated 29.01.2009 passed in A.S.No.49 of 2006 on the file of the Sub Court, Sankarankoil, reversing the judgment and decree dated 25.01.2006 passed in O.S.No.239 of 2004 on the file of the Additional District Munsif Court, Sankarankoil.

2.The appellants are the plaintiffs and the respondent is the defendant in O.S.No.239 of 2004 on the file of the Additional District Munsif Court, Sankarankoil. The appellants/plaintiffs filed the suit for declaration and consequential permanent injunction.



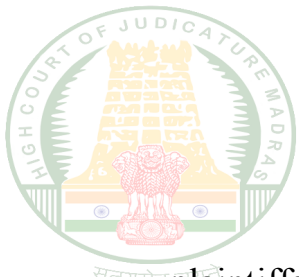
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3. For the sake of convenience, the parties are referred to as plaintiff and defendants in O.S.No.239 of 2004 on the file of the Additional District Munsif Court, Sankarankoil.

4. The case of the plaintiffs:

The suit property originally belonged to the plaintiffs' father, Subramania Thevar. The plaintiffs and one Sakthi are his legal heirs. The plaintiffs' brother Sakthi died during his childhood. The plaintiffs' father died six years after the death of the said Sakthi. The 1st plaintiff is a bachelor. After the death of Subramania Thevar, the plaintiffs are in continuous enjoyment and possession of the suit property. Patta was issued in the name of the plaintiffs. While so, the name of the defendant was wrongly included in the patta, so the plaintiffs gave an application before the revenue authority to remove the name of the defendant from the patta. However, the defendant and his men attempted to interfere with the plaintiffs' enjoyment and possession of the suit property. Hence, the plaintiffs issued a legal notice dated 18.12.2003, but the defendant did not send any reply. But on 28.02.2004, the defendant and his men attempted to encroach upon the property. Therefore, the plaintiffs have filed the suit for a declaration that the suit property absolutely belonged to the



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plaintiffs and consequently permanent injunction restraining the defendant from interfering with the possession and enjoyment of the plaintiffs over the suit property.

5.The case of the defendant:

The suit property belonged to Subramania Thevar. He sold the suit property to one Sankarapandi Thevar on 28.10.1964 by virtue of a sale deed. The defendant purchased the suit property from Sankarapandi Thevar under a registered sale deed dated 15.11.1977. From then onwards, the defendant has been enjoying the suit property by paying proper kist and taxes for more than 25 years. Moreover, the defendant is the son of Sakthi @ Perumal @ Sami, who is the brother of the plaintiffs. Since the defendant and his father were called by different names, and by using the same, the plaintiffs have filed the suit to grab the suit property from the defendant. The defendant sent a reply notice to the legal notice of the plaintiffs stating the real facts. The plaintiffs wantonly suppressed the reply sent by the defendant. Further, without challenging the subsistence of the sale deed of the defendant dated 15.11.1977, the plaintiffs are not entitled to any relief. Moreover, the suit is barred by limitation. Hence, the suit is liable to be dismissed.



6.The trial Court has framed the following issues:

(1)Whether suit property absolutely belonged to the plaintiffs?

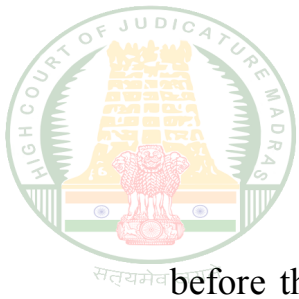
(2)Whether the plaintiffs are entitled to the relief of declaration and injunction as prayed for?

(3)To what other relief, the plaintiffs are entitled to?

7.During trial, on the plaintiffs side, two witnesses were examined as P.W.1 and P.W.2 and marked 3 exhibits as Ex.A.1 to Ex.A.3. On the defendant's side, three witnesses were examined as D.W.1 to D.W.3 and Ex.B.1 to Ex.B.8 were marked.

8.After hearing both sides and after considering the evidence, the learned Additional District Munsif, Sankarankoil, concluded that the plaintiffs are entitled to the suit property and thereby decreed the suit by passing judgment and decree dated 25.01.2006.

9.Aggrieved by the judgment and decree dated 25.01.2006 passed in O.S.No.239 of 2004 on the file of the Additional District Munsif Court, Sankarankoil, the defendant preferred a civil appeal in A.S.No.49 of 2006



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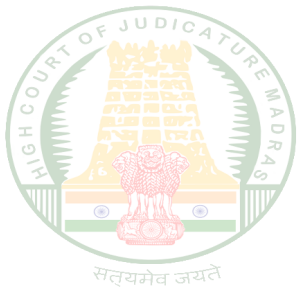
before the Subordinate Court, Sankarankovil. The first Appellate Court, after hearing both sides and after perusing the material records of the case, allowed the appeal in A.S.No.49 of 2006 by passing judgment dated 29.01.2009 and reversed the judgment and decree dated 25.01.2006 passed in O.S.No.239 of 2004 and dismissed the suit in O.S.No.239 of 2004.

10.Challenging the judgment and decree of the First Appellate Court, the plaintiffs have preferred this second appeal and the same has been admitted on 17.04.2012 on the following substantial questions of law:-

"1. Whether the approach of the First Appellate Court in marking Ex.B.9 SRO copy of the sale deed dated 28.10.1964 without any oral evidence and without giving any opportunity to these appellants/plaintiffs to rebut the genuiness of the document is correct in law?

2. Whether the First Appellate Court is correct in law in entertaining the application for additional evidence separately and allowing the same at the appellate stage?

3. Whether the First Appellate Court is right in deciding the title of the defendant to the suit property on production of the SRO copy of the sale deed dated 28.10.1964 by the defendant at the



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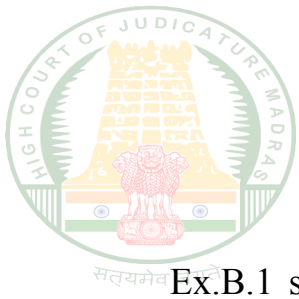


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appellate stage without any explanation for non production of the original sale deed and without explaining the reason for the non production of the same before the trial stage?

11. During pendency of the second appeal, the 1st appellant/1st plaintiff died on 23.03.2016 as unmarried and issueless. Hence, his brother, the 2nd appellant/2nd plaintiff, has been recorded as his legal heir.

12. The learned counsel for the 2nd appellant/2nd plaintiff has submitted that the suit property is the ancestral property of the plaintiffs' father Subramania Thevar, who had three sons, Sami Thevar, Raja Thevar (plaintiffs herein) and one Sakthi. Sakthi died in childhood. The plaintiffs inherited the suit property on the death of Subramania Thevar. Ex.A.1 Patta was issued in the name of the plaintiffs wrongly including the defendant's name. Then, the defendant tried to encroach upon the property, so the plaintiffs issued an Ex.A.2 legal notice and the same was received by him as per Ex.A.3 acknowledgement card. Since the defendant was attempting to disturb the plaintiffs, the plaintiffs filed the suit. The defendant filed a written statement stating that he purchased the suit property from Sankarapandia Thevar under



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Ex.B.1 sale deed dated 15.11.1977. The defendant further contended that he claims adverse possession from 1977, so the suit is barred by limitation and also the suit is bad as the plaintiff did not plead for recovery of possession. The defendant has not produced the deed of the year 1964. Hence, Ex.B.1 sale deed is not acceptable. Further, though the defendant claims he is the son of Sakthi, there is no proof to show the same. The trial Court properly appreciated the evidence and rightly decreed the suit. The defendant preferred the first appeal and filed a petition in I.A.No.183 of 2008 under Order 41 Rule 27 of CPC, for producing the 1964 sale deed. The first Appellate Court allowed that petition and marked a certified copy of the 1964 sale deed issued from the Sub Registrar's Office as Ex.B.9 and reversed the judgment passed by the trial Court. Without any oral evidence, Ex.B.9 cannot be marked. But, the first Appellate Court admitted and relied on the said deed. Further, the plaintiffs were not given any opportunity to lead rebuttal evidence. Because the defendant pleaded that Subramania Thevar sold the property to the said Sankarapandia Thevar in 1964. Moreover, the defendant has not produced the original sale deed of the year 1964 and there is no valid explanation offered by the defendant for such non production of the original deed of Ex.B.9. The plaintiffs have to be given an opportunity to lead evidence in rebuttal



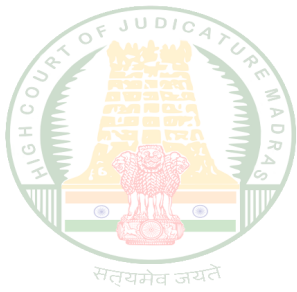
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while admitting documentary evidence at the appellate stage and in such circumstances, the case has to be remanded back. Hence, the second appeal may be allowed and remitted back for leading evidence regarding Ex.B.9.

13.The learned counsel for the appellant further relied on the decision of the Hon'ble Supreme Court in **Akhilesh Singh @ Akhileshwar Singh vs. Lal Babu Singh and Ors.** case reported in **2018-3 Law Weekly 97**, wherein it is held in paragraph Nos.11 and 13 as follows:

“11. Order LXI Rule 27 of the CPC, which deals with the provision of additional evidence in Appellate Court provides for the grounds and circumstances on which the Appellate Court may allow such evidence or documents or witnesses to be examined. Order LXI Rule 27 sub-rule(2) further provides that wherever additional evidence is allowed to be produced by an Appellate Court, the court shall record a reason for its admission. Order LXI Rule 27 is silent as to the procedure to be adopted by the High court after admission of additional evidence. Whether after admission of additional evidence, it is necessary for the Appellate Court to grant opportunity to the other party to lead evidence in rebuttal or to give any opportunity is not expressly provided in Order LXI



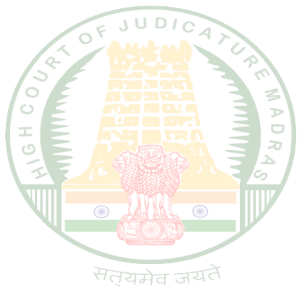
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Rule 27.

13.Order LXI Rule 2 provides that the appellant shall not, except by leave of the court, be allowed to urge any ground in the appeal, which is not set forth in the memorandum of appeal. The proviso to Order LXI Rule 2 engrafts a rule, which obliged the Court to grant a sufficient opportunity to the contesting party, if any new ground is allowed to be urged by another party, which may affect the contesting party. The provision engrafts rule of natural justice and fair play that contesting party should be given opportunity to meet any new ground sought to be urged. When Appellate Court admits the additional evidence under Order LXI Rule 27, we fail to see any reason for not following the same course of granting an opportunity to the contesting party, which may be affected by acceptance of additional evidence. In the present case, additional evidence, which were brought on the record were registered sale deeds, which were executed by present appellant and his other co-sharers and what was relied before the High Court was that the appellant admitted in the sale deeds that the partition has been taken place in the family. The main issue in the First Appeal before



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the High Court was as to whether the finding of the trial court that no partition by metes and bounds taken place in the family is correct or not. The additional evidence which was admitted has been relied by the High Court while allowing the appeal. It was in the interest of justice that High Court ought to have allowed opportunity to the plaintiffs, who were respondents to the First Appeal to either lead an evidence in rebuttal or to explain the alleged admissions as relied by the defendants. The mere fact that no counter affidavit was filed to the I.A.s was not decisive. Since I.A.s having not been admitted, occasion for counter affidavit did not arise at any earlier point of time. The High Court on the same day, i.e. 08.03.2017 has allowed the I.A.s as well as the First Appeal. The fact that contesting respondents to the First Appeal, who are appellant before us were not represented at the time of hearing of the First Appeal, was not a reason for not giving opportunity to them to lead evidence in rebuttal.”

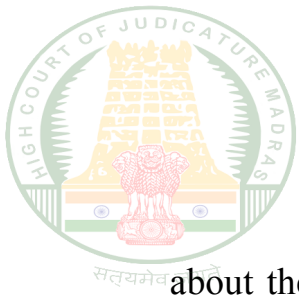
14.Per contra, the learned counsel for the respondent/defendant vehemently argued that the plaintiff, who approached the Court seeking the relief of declaration of title over the suit property and injunction, has to prove



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their title on the suit property. They have only produced 10(1) Chitta, which is a revenue record. The plaintiffs have not produced any document to prove title, it is a settled position that a revenue record will not confer any title. The defendant purchased the suit property under Ex.B.1 dated 15.11.1977 from the lawful owner Sankarapandia Thevar, who purchased the same from Subramania Thevar in 1964. The defendant produced Ex.B.2 patta and tax receipts to prove his title from 1977. The trial Court has shifted the burden of proof on the defendant to prove his case and he proved the same. The plaintiffs have not proved their title. But, the trial Court decreed the suit based on Ex.A.1 revenue record. The defendant preferred the appeal and produced a certified copy of the parent deed of the year 1964 before the Appellate Court and proved his better title. The first Appellate Court has not solely relied on Ex.B.9, the sale deed but also discussed other aspects and reversed the finding of the trial Court. The first Appellate Court has not allowed the first appeal only on the basis of Ex.B.9, but it came to the conclusion that the defendant proved his title over the suit property by producing title documents. The plaintiffs have to prove their title first, and they cannot shift the burden on the defendant and the plaintiffs have failed to prove their case U/s.101 of the Indian Evidence Act. The first Appellate Court has properly made discussion



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about the case and there is no whisper about Ex.B.9 and there is no need for remand. Hence, the questions of law could not be decided in favour of the appellant as the suit was factually decided by the first Appellate Court. Therefore, this second appeal may be dismissed.

15. Heard the arguments of both sides and perused the material records of the case. The suit property is measuring 1 acre 94 cents in S.No.270/2 of Narikudi Village, Mela Neelithanallur of Tenkasi Registration District. On perusal of the records, it is clear that there is no dispute that the suit property originally belonged to Subramania Thevar. The plaintiffs' case is that they are the sons of Subramania Thevar and they inherited the suit property after the demise of their father. The defendant's specific case is that the said Subramania Thevar sold the suit property to one Sankarapandia Thevar on 28.10.1964 and the defendant purchased the same from the said Sankarapandia Thevar by virtue of Ex.B.1 sale deed dated 15.11.1977.

16. The plaintiffs have filed the suit for declaration of title of the suit property in their favour. If so, it is for the plaintiffs to prove their title over the suit property. The plaintiffs have produced Ex.A.1 patta 10(1) which stood in



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their name. There is no earlier document prior to Ex.A.1. The plaintiffs have not produced any other documents. Ex.A.1 is only a revenue document. Patta shall not be a document of title. Patta is a document showing the person from whom the land revenue will be collected. It is a settled position of law that a Revenue Record is not a document of title and does not confer any ownership or title upon the person whose name appears in it and mutation does not create or extinguish title and has absolutely no presumptive value regarding title. The Hon'ble Supreme Court has repeatedly and continuously held in various cases that the law is well settled that, through Revenue entries, the claim to title is not proved and the same is once again insisted in its decision reported in **Vadiyala Prabhakar Rao and Ors. /v/ the Government of Andhra Pradesh and Ors. in Special Leave Petition No.27590 of 2025 in 2026 INSC 450.**

17.A careful perusal of the records of this case, shows that the plaintiffs have not produced any title deed. They trace title only through Ex.A.1 patta. Whereas, the defendant has produced title deed Ex.B.1 dated 15.11.1977 and during first appellate stage they also produced Ex.B.9 sale deed i.e., parent deed to Ex.B.1. So, the defendant has produced title deeds to prove his case.



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In no case will patta alone destroy the title of the other person who derived it by a valid title deed.

18. Now, it is the only contention of the appellant/2nd plaintiff that the defendant has produced a certified copy of sale deed as Ex.B.9 at the appeal stage by filing a petition in I.A.No.183 of 2008 under Order 41 Rule 27 of CPC and that the first Appellate Court has not given any opportunity to lead rebuttal evidence under Order 41 Rule 28 of CPC, so he prayed for remand of the case.

19. On perusal of the judgment of the first Appellate Court, it is clear that the first Appellate Court has not solely considered Ex.B.9. Firstly, the plaintiffs have not proved their case of title for the declaration that they are entitled to the suit property. The plaintiffs have not produced any title deed. The defendant has produced a title deed from the year 1977 and since then he has been in possession and to substantiate the same, the defendant produced the parent deed as Ex.B.9. Therefore, it is clear that the defendant is the rightful owner from 1977. So, the plaintiffs have to seek for recovery of possession, but failed to seek so. Of course, Ex.B.9 is a certified copy, but the

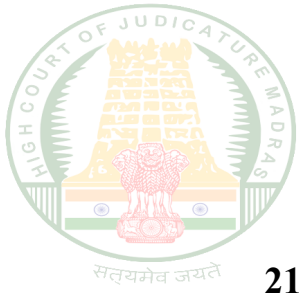


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plaintiffs have not pleaded specifically on what ground it could not be relied on. It is for the plaintiffs to prove their case first, and they cannot shift the burden of proof upon the defendant in the case of declaration of title over the suit property. Further, the plaintiffs cannot take advantage of the weakness of the defendant in title suits, because the initial burden is on the plaintiffs to prove their title over the suit property.

20.However, in this case the defendant has clearly proved his title over the suit property. The first Appellate Court has properly discussed the case and rightly reversed the finding of the trial Court, which decreed the suit only based on Ex.A.1 patta revenue record, which admittedly will not confer any title to the plaintiffs. So, the trial Court erred in law and the same was corrected by the first Appellate Court. Hence, there is no need to remand the case as argued by the appellant and the citation relied on by them is not applicable to the facts of this case. The said finding of the first Appellate Court needs no interference by this Court by way of second appeal. Hence, the questions of law framed in this appeal are answered against the 2nd appellant/2nd plaintiff. Thus, this second appeal fails.



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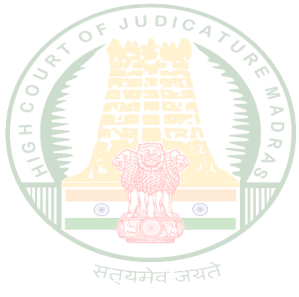
21. In the result, the Second Appeal is dismissed. The judgment and decree dated 29.01.2009 passed in A.S.No.49 of 2006 on the file of the Sub Court, Sankarankoil, reversing the judgment and decree dated 25.01.2006 passed in O.S.No.239 of 2004 on the file of the Additional District Munsif Court, Sankarankoil, is confirmed. No costs.

28.07.2026

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

To

- 1.The Sub Court,
Sankarankoil.
- 2.The Additional District Munsif Court,
Sankarankoil.
- 3.The Record Keeper,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

**Pre-Delivery Judgment made in
S.A(MD)No.178 of 2012**

28.07.2026