

IN THE COURT OF ADDITIONAL DISTRICT MUNSIF, CUDDALORE

Present: Selvi.B.Phebe, B.A.,LLB.,
Additional District Munsif, Cuddalore

Saturday, the 4th day of July – 2026

O.S.No.232/2008

1. R.Thanikachalam (died)
2. Ambika Ammal*
3. Maheswaran*
4. Sumithra*
5. Subburathinam*
6. Sudermani*

...Plaintiffs

(Plaintiffs 2 to 6 as legal rep. of the deceased 1st plaintiff)

*(*Amended as per Order in IA.742/2011 dt.10.08.2011)*

-Vs-

1. A.Balasubramani
2. A.Balamurugan
3. A.Balasakthivel

....Defendants

This suit came up for final hearing before this court on 18.06.2026 in the presence of learned Advocate Mr.G.Ragavan for plaintiffs, learned Advocate Mr.R.Rajavelavan for the defendant, upon perusal of records and having stood over for consideration till this day, this court delivers the following:

JUDGMENT

The Suit for Declaration* and Permanent Injunction restraining the

defendants and their men agents and servants from disturbing plaintiffs peaceful possession and enjoyment of the suit property and for cost.

*(*Amended as per Order in IA.No.73/2014 in A.S.No.27/2012 dt. 08.08.2014 on the file of Principal Sub-Judge, Cuddalore after the Judgment of Additional District Munsif court, Cuddalore in O.S.No.232/2008 dt. 08.12.2022)*

2. The case of the plaintiffs in brief is as follows:

The suit property originally belonged to Janaki Ammal who executed a Registered WILL in favour of 1st plaintiff on 23.12.1989 and died on 23.07.1997. It was executed while in her sound disposing state of mind. Pursuant to the said registered WILL the possession was delivered to the 1st plaintiff from the date of WILL. The hut in the suit property was initially assessed for tax. The 1st plaintiff permitted one Babu to occupy the suit property in lieu of loan. Hence the plaintiff is in possession of the suit property. Defendants are disturbing the plaintiffs' peaceful possession. Hence the suit.

3. The Gist of the Written statement filed by the Defendants:

The defendants' father Annamalai has filed the suit in OS.181/1993 for partition with regard to the suit property and other properties and a Preliminary Decree was passed on 13.10.1993 and a Final Decree was passed on 23.06.2000. The suit property was allotted to defendants' father and delivery was taken on 11.09.2007 through court in EP.305/2000. Since then, the defendants' father is in

possession and enjoyment of suit property by fencing the vacant site. After his death, the defendants are in possession and enjoyment of suit property. WILL is a piece of rank forgery and Janaki Ammal have no right to execute a said WILL. The suit is barred by res judicata. Hence sought to dismiss the suit.

4. Records were perused and the following issues were framed on 04.08.2009:

1. Whether the WILL executed in favour of the plaintiff on 23.12.1989 is valid and enforceable?
2. Whether the plaintiff is in possession and enjoyment of the suit property?
3. Whether the plaintiff is entitled for a decree of Permanent injunction as prayed for in the plaint?
4. To what relief the parties are entitled to?

5. Additional Issues were framed on 29.07.2015:

1. Whether the suit for bare injunction without a relief for declaration of title is maintainable? **(As the suit was subsequently amended seeking relief of declaration this issue has become infructuous. Hence stuck-off)**
2. Whether the suit is hit by the doctrine of Res-judicata?

6. Additional Issues were framed on 14.07.2023:

1. Whether the suit WILL is proved as per Sec.68 of the IEA or not?
2. Whether the plaintiffs have right and title over the suit property or not?
3. Whether the plaintiffs are entitled for the relief of declaration of title in respect of suit property for or not?

7. On perusal of material documents and pleadings, this court has framed the following Additional Issue:

1. Whether the relief of declaration is barred by limitation?

8. Witness PW1 is examined and Ex.A1 to Ex.A15 were marked on the plaintiff's side and six more additional witnesses were examined as PW2 to PW7. Witness DW1 is examined, and ExB1 to ExB7 were marked on defendant's side. Court documents ExC1 & ExC2 were marked.

9. Arguments:

(i) a. The learned counsel for the plaintiff reiterated the plaintiff's averments and argued that the suit property is situated in T.S.No.1779/2A. It originally belonged to Janaki Ammal. As the 1st plaintiff looked after Janaki Ammal, due to love and affection she executed a registered WILL dated 23.12.1989 in favour of 1st plaintiff. The suit in O.S.No.181/1993 has the 2nd item therein as the suit property herein. However the subject matter of the suit in O.S.No.181/1993 is totally different from the property herein and hence this suit is not hit by resjudicata. In Ex.B3 the final decree, only T.S.No.97/9 was given to the defendants' father which is entirely different from property conveyed under the original WILL Ex.A15.

b. Sec.69 of Indian Evidence Act contemplates proof of documents when the attestors were not alive. Apart from Sec.68 & 69,

presumption under Sec.90 of Indian Evidence Act comes into play for proving the genuinity of WILL. When the document is more than 30 years old, the signature, hand writing, proper attestation and due execution has to be presumed. Further the defendants have failed to co-relate property in S.No.1779/2A with S.No.97/9. The limitation would not come into play in the present case, for the reason that the relief sought for in the present case is Permanent injunction and declaration both of which are inter dependent on each other and there is recurring cause of action. Further when an amendment is allowed without any rider or condition then the doctrine of relation back and doctrine of merger would come into play thereby the amendment would deemed to have been included from the date of presentation of suit.

(ii) a. The learned counsel for the defendant reiterated the averments in the written statement and argued that, the relief of declaration sought for is barred by limitation. The plaintiff should have amended the suit seeking the relief of declaration, at the earliest when the written statement is filed but he has amended the plaint only during the fag end of the appeal. The appeal court kept the question of limitation open to be decided by the trial court. The plaintiff has failed to state as to how Janaki Ammal accrued right over the suit property. No other documents except WILL was filed to prove title. Apart from the above the defendant' have filed the suit for partition, in which the suit property was declared in favour of the defendant. The

decree therein has become final. The plaintiff should stand on his own legs and not on the weakness of the defendant's case.

b. The learned counsel for the defendant relied on the Judgment of Hon'ble High Court of Madras in the case of *Chennai Kumara Kottam Sree Siva Subramaniaswami Selvarthigal Sangam v. Arulmigu Kumara Kotam Sri Siva Subramaniaswami Temple* reported in **2020(3) CTC 310** for the proposition that in a Suit for Declaration of Title, burden is on the Plaintiff to establish its case, irrespective of whether the Defendants prove their case or not.

10. Heard both sides. Perused the records.

11. Analysis:

11. (i) Additional Issue No.2 (Framed on 29.07.2015):

- *Whether the suit is hit by the doctrine of Res-judicata?*

(i). A. The suit has been filed seeking Permanent injunction initially and disposed on merits and later in appeal the matter was remanded back after allowing the amendment application seeking to include the relief of declaration. The defendants stoutly argued that the suit is barred by *res judicata*. The defendants claim that the suit property herein was the subject matter of suit in O.S.No.181/1993 and relied on the Judgment of Hon'ble High Court of Madras in the case of *U.M.Deivasigamani v. T.K.Kuppusamy Gounder & Ors.* reported in **2009(3) CTC 352** for the proposition that Plaintiff has to establish that

suit property involved in previous proceedings has nothing to do with present Suit proceedings. To prove the same the defendants have relied on Ex.B2 the Preliminary Decree in O.S.No.181/1993 and Ex.B3 the Final Decree in IA.906/1994 in OS.181/1993 and also the delivery receipt in Ex.B4.

(i). B. Sec.11 of the Civil Procedure Code, deals with res judicata. It is a settled principle of law that in order to attract the principles of res judicata, the following ingredients must be fulfilled:

- *The matter must have been directly and substantially in issue in the former suit;*
- *The matter must be heard and finally decided by the Court in the former suit;*
- *The former suit must be between the same parties or between parties under whom they or any of them claim, litigating under the same title; and*
- *The Court in which the former suit was instituted is competent to try the subsequent suit or the suit in which such issue has been subsequently raised.*

(i). C. On applying the above principles of law to the present suit, this court is of the view that the suit is not hit by the principles of res judicata for the following reasons:

(i). D. Firstly, the suit in O.S.No.181/1993 was filed between Annamalai, Thanikachalam, Gothandapani and Raja. The Judgment in O.S.No.181/1993 was not filed by the defendant to see what were all the issues

framed therein but only the decree is filed as Ex. B2. Even otherwise, the suit in O.S.No. 181/1993 as claimed by the defendants is a partition suit and only 1/4th shares have been allotted to the plaintiff. The properties mentioned in the description of property in Ex. B2 is as follows:

"தென்னாரற்காடு டிஸ்ட்ரிக்ட்டு கடலூர் 2வது ஜாயிண்ட் சப் ரிஜிஸ்ட்ரைச் சேர்ந்த கடலூர் தாலுக்கா பச்சியங்குப்பத்தில் கவர்மெண்ட்டு புது.ரி.சர்வே 97/3 நெ.0.15 பதினைஞ்சி செண்டுக்கு தீர்வை 0.5 பைசா. இதிலிருக்கிற தென்னை மரம் 4 புரம் வேலி உட்படவும் இதில் தென்புரம் சுமார் 3 அடி சுத்துள்ள பூவரசு மரம் 1, மேல்புரம் வேலியில் 3 அடி சுத்துள்ள பூவரசு மரம் 1, ஆக 2 மரம் நீங்க மற்ற மாவடை மரவடைகள் உட்படவும்.

2. கடலூர் 2-வது ஜாயிண்டு சப்ரிஜிஸ்ட்ரைச் சேர்ந்த கடலூர் தாலுக்கா கடலூர் டவுன் முனிசிபாலிட்டி கடலூரைச் சேர்ந்த மாலியாம்பேட்டை கிராமத்தில் தோட்டமானது வீர்ப்ப படையாச்சி பாகத்திற்கு கிழக்கும் சாமி பான்பான் கூரை வீட்டுக்கு தெற்கு இதற்குள் சக்குபந்தி தெ.வ.ஜாதியடி 68, கி.மே.ஜாதியடி 106 உள்ள மனையும் இதில் கட்டியிருக்கும் டோர் நம்பர் இல்லாத கூரை காலாணி குடிசையும், மாவடை மரவடை உட்படவும். வாட்டு 2, பிளாக்கு 26, டவுன் சர்வே 1779 நெ.2. ஏ0.4080. பச்சயங்குப்பம் கிராமத்தில் சர்வே 97 நெ 3-வது சப்டிவிஷன் எ 0. செண்டு 15-94 நெ பட்டா தெய்யநாயகி அம்மாள் பேரில் இருக்கிறது."

(i). E. It is no doubt true that the suit property herein is mentioned as 2nd item therein along with other property in S.No.97/3. However, Ex. B3 shows

that the defendant was allotted different property comprised in S.No.97/9 to an extent of 7 ½ cents of lands. It is pertinent to note that Ex. B3 does not find any mention of Suit property herein. Even the 1st item which was mentioned along with suit property as S.No.97/3 in Ward No.2 without mentioning the block number with different boundary and extent than the suit property. The description of property mentioned therein is as follows:

"மனுசொத்து விபரம் - தென்னார்காடு டிஸ்ட்ரிக்ட் கடலூர் 2வது ஜாயின்ட் சப் ரிஜிஸ்ட்ரைச் சேர்ந்த கடலூர் தாலுக்கா பச்சியங்குப்பத்தில் பு.ரி.சர்வே 97/3 நெ.0.15 பதினைந்து செண்டுக்கு தீர்வை ரூ.0.05 பைசா. இதிலிருக்கிற தென்னை மரம் 4 புறம் வெலி உட்படவும் இதில் தென்புரம் சுமார் 3 அடி சுத்துள்ள பூவரசு மரம் 1, மேல்புரம் வேலியில் 3 அடி சுத்துள்ள பூவரசு மரம் 1, ஆல் இரண்டுமரம் நீங்க மற்ற மாவடை மரவடைகள் உட்படவும்...

இரண்டாவது அயிட்டம்- கடலூர் 2வது ஜாயின்ட் சப்ரிஜிஸ்ட்ரைச் சேர்ந்த கடலூர் தாலுக்கா கடலூர் ரீ டவுன் முனிசிபாலிட்டி கடலூரைச் சேர்ந்த மாலுமியார்பேட்டையில் பழைய சர்வே எண் 97/9.

(i). F. Ex.B4 is the delivery receipt which shows that it is the property in S.No.97/9 comprising 7 ½ cents of land was handed over to the defendant. The relevant excerpt from Ex.B4 is as follows:

“இரண்டாவது அயிட்டம்: கடலூர் 2வது ஜாயின்ட் சப்ரி சேர்ந்த கடனார் தாலுக்கா கடலூர் டவுன் முனிசிபாலிட்டி கடனரை சேர்ந்த மாலுமியார்பேட்டையில் பழைய சர்வே எண். 97/9....குறிப்பு: தாவா கமிஷனர்

பிளானில் கண்ட பி ஜெட்யலில் அயிட்டம் 2 என்று காண்பிக்கப்பட்டுள்ள 0.15 செண்டில் மேல்புறம் 7-1/2 சென்ட் மட்டில் காலியாக இருந்த ஸ்தலத்தை மட்டும் ஒப்புக்கொண்டேன்.”

(i). G. The suit property herein is S.No.1779/2A comprising 4080 sq.ft of land. The defendant claim that the suit property herein is same as that of the property in the final decree petition. However, no documents were filed to substantiate the said claim. The plaintiffs relied on Ex.A14, the order in IA.1384/2009 in OS.232/2008 to show that both the properties are different. However, this court finds no merit on the same, for the reasons that the court has not conclusively stated it to be different properties but has stated that it could be decided that only at the time of trial.

(i). H. Apart from the above, the Ex.B1 Town Survey Field register, issued by the municipality dated 26.11.2009 mentions property as 1779/2A and not 97/9. If it is really true that a new survey number was given as 97/9 it would have been the mentioned in the Town Survey Field register. That being the case this court is of the view that both the properties are different.

(i). I. It is settled principle of law that boundaries prevail over survey number. Even if that principle is applied to the case on hand, the boundary of suit property is as follows.

“East of Gopal site, West of Municipal Road and Pattammal site,
South of Municipal road, North of Koothan site.”

(i). J. Whereas the boundary of property in S.No.97/9 delivered to defendant under ExB4 is as follows:

“கலியழர்த்தி மலைக்கு மேற்கு பெருமாள் மனைக்கு கிழக்கு
மாலுமியார்பேட்டை ரோட்டிற்கு தெற்கு தங்கம் மனைக்கு வடக்கு”

(i). K. Bare perusal of the above 2 boundaries would show that both the properties are entirely different. Lastly, even the extent of the properties is different. The village is also different. The property in S.No.1779/2A comprises 4080 sq.ft of land. Whereas the property in S.No.97/9 comprises 15 cents out of which 7 ½ cents of land is allotted to the share of defendants under ExB2 and ExB3.

(i). L. Even, DW1 in his evidence admits that the suit property is situated in Chinnapachangkuppam and the property in S.No. 97/9 is in Malumiyar Pettai which are two different places. The relevant excerpt is as follows:

“பி.த.சா.ஆ.3, 4 ஆவணங்கள் கீழ் நான் உரிமை மற்றும் சுவாதீனம் கோருகிறேன் என்றால் சரிதான். வழக்குச் சொத்து சின்ன பச்சையாங்குப்பம் கிராமத்தில் உள்ளது. பி.த.சா.ஆ.3, 4 ல் உள்ள சொத்து மாலு மியார்பேட்டை சர்வே எண்.97/9 ல் உள்ளதாக குறிப்பிடப்பட்டுள்ளது என்றால் சரிதான்.”

(i). M. For all the above reasons this court is of the view that this suit is not hit by the principles of res judicata as both the properties are different.

Additional Issue No.2 framed on 29.07.2015 is answered accordingly.

11. (ii) Additional Issue No.1 (Framed on the date of Judgment):

- *Whether the relief of declaration is barred by limitation?*

(ii). A. The learned counsel for the defendants argued that the relief of declaration is hit by limitation for reason that it was amended after appeal despite the cause of action having been accrued to the plaintiffs on the date of filing of written statement.

(ii). B. Firstly, the plaintiff argued that there is recurring cause of action in the present case. To substantiate the same, he relied on the Judgments of Hon'ble High Court of Madhya Pradesh in the case of ***Bharat Singh v. Kunwar Singh & Anr.*** reported in **AIR 1991 MP 368** and the Judgment of Hon'ble Supreme Court in the case of ***Mst.Rukhmabai v. Lala Laxminarayan & Ors*** reported in 1960 **AIR 1960 335**.

(ii). C. Secondly, the plaintiff counsel countered the said argument stating that unless there is a rider or condition in the order of amendment, the doctrine of relation back and doctrine of merger comes in to play and amendment in the plaint would relate back to the date of filing the suit. To substantiate his claim, he has relied on the judgment of Hon'ble High Court of Karnataka in the case of ***Sri.Syed Amanulla v. Sri.Khasim Khan*** in RFA.No.1464/2016 wherein the Hon'ble court observed that in the absence of any rider or condition it is reasonable to presume that the amendment in the plaint would relate back to the date of filing the suit.

(ii). D. In the present case, the amendment application was allowed without any rider. The Judgment in A.S. No. 27/2012 however after allowing the amendment observed that “the Trial court has to see that the relief sought in the amendment application in IA.23/2014 is within the period of limitation. This court cannot go into the limitation aspect on the application.” The appeal court has allowed the said amendment without any rider or condition in the interest of justice and to set the matter to rest. That being the case this court of the opinion that the doctrine of relation back and doctrine of merger come into play as reiterated by the Hon’ble Supreme Court in the case of *Siddalingamma & Anr vs Mamtha Shenoy* reported *in AIR 2001 SUPREME COURT 2896* and the relief of declaration has to be taken to have been sought for even from the date of plaint.

(ii). E. In light of all the above discussions this court is of the view that the relief of declaration is not barred by limitation. **Additional Issue No.1 (Framed on 04.07.2026) is answered in favour of the plaintiffs and as against the defendants.**

11. (iii) Issue No.1 & Additional Issue No.1 (Framed on 14.07.2023):

- *Whether the WILL executed in favour of the plaintiff on 23.12.1989 is valid and enforceable?*
- *Whether the suit WILL is proved as per Sec.68 of the IEA or not?*

(iii). A. The case of the plaintiff is that Janaki Ammal has executed a registered WILL in favour of the first plaintiff. The defendants claim it to be a

property allotted to the defendants share in O.S.No.181/1993. To prove the case of the plaintiffs they have relied on Ex.A15, the original WILL dated 23.12.1989. It mentions that the property was originally given to Janaki Ammal's mother by the government. It is a settled principle of law that a WILL has to be proved as mandated under Sec.68 of Indian Evidence Act r/w S. 63(c) of Indian Succession Act. In the present case ExA15 is nearly 35 years old and the attestors are no more. This is proved by Ex.C1 and ExC2. Ex. C1 and C2 are the witness summons taken to the attestors which were returned with the endorsement that the K.Selvaraj has died 15 years back and K.Paramasivam is absent, respectively. The witness summons was taken nearly thrice to the attestors. Eventually, the above summons was marked as exhibits. This proves that the plaintiff's were really not able to trace out the other attestor.

(iii). B. When both attestors are dead, the law mandates that there has to be first of all proof that the attestors are dead by production of death certificates or some tangible evidence before the procedure prescribed under s. 69 of the Evidence Act. Then, WILL could be proved by examining person who had seen testator signing WILL as well as attesting witnesses signing WILL and such witness should state that the signature of testator and attesting witness found in WILL is that of testator and attesting witness.

(iii). C. In the present case, the plaintiff has marked Ex. C1 and C2 to show that the attestors were dead and could not be found. The plaintiffs have then

examined PW5 and PW7 who states that they accompanied the testatrix and has seen the execution of WILL and attestation by attestors. The above evidence stands un rebutted. The relevant excerpt from the evidence of PW5 is as follows:

"எனது தாயார் ஁யில் எழுதி வைக்கும் ஁ோது நான் ஁டன் இருந்தேன். ஁஁஁ோது எனக்கு சுமார் 35 வயதிருக்கும். எனது தாயார் ஁யில் வாசகங்களைச் சொல்ல சொல்ல எழுத்துக்காரர் எழுதினார். ஁ின்னர் ஁வர் ஁டித்து காண்பித்த ஁ிறகு எனது தாயார் ரேகை வைத்தார். ஁ிறகு 1ம் சாட்சியாக கே.செல்வராஜ் கையெழுத்து ஁ோட்டார். 2ம் சாட்சியாக கே.஁ரமசிவம் கையெழுத்து ஁ோட்டார். ஁ிறகு எழுத்துக்காரர் ராமமுர்த்தி நெட்டெழுத்தை ஁ூர்த்தி செய்து கையெழுத்து ஁ோட்டார். எனது தாயார் ரேகை வைத்தது. சாட்சிகள் கையெழுத்து ஁ோட்டது மற்றும் எழுத்துக்காரர் கையெழுத்து ஁ோட்டதை நான் நேரிடையாக ஁ார்த்தேன்."

(iii). D. The relevant excerpt from the evidence of PW7 is as follows:

"வா.த.சா.஁. 15 ஁னது ஜானகி ஁ம்மாள் தணிகாச்சலத்திற்கு எழுதி வைத்த ஁யில் என்றால் சரிதான். ஁தில் ஜானகி ஁ம்மாள் தனது கைரேகையை வைத்துள்ளாரா என்றால் வைத்துள்ளார். வா.த.சா.஁.15-ல் செல்வராஜ் மற்றும் ஁ரமசிவம் சாட்சி கையொ஁஁ம் இட்டுள்ளனாரா என்றால் இட்டுள்ளனர். இந்த விவரங்கள் ஁னைத்தும் எனக்கு நேரடியாக தெரியுமா என்றால் தெரியும். இவை ஁னைத்தையும் நான் ஁க்கத்தில் இருந்து ஁ார்த்தேனா என்றால் ஁ார்த்தேன்."

(iii). E. It is a settled principle of law that the onus of proving a will is on the propounder. Proof of the signature of the testator, the testamentary capacity and at the time of execution the testator was in a sound and disposing state of mind

have to be proved¹. In the absence of suspicious circumstances like undue influence or fraud or coercion, surrounding the execution of the will, the proof of testamentary capacity and signature of the testator as required by law are sufficient to discharge the onus². If a will appears to have been duly executed and attested in accordance with the requirements of the Act, the maxim, '*omnia presumuntur rite esse acta*' applies.

(iii). F. General rule is that presumption regarding documents 30 years old does not apply to a will. A will has to be proved in terms of Section 63(c) of the Indian Succession Act, 1925 read with Section 68 of the Evidence Act, 1872. In the event where attesting witnesses may have died, or cannot be found, the propounder is not helpless, as Section 69 of the Evidence Act, 1872 is applicable³. However, where the will in question was a registered document of more than 30 years, with no suspicious circumstance regarding its execution and all the attesting witnesses and the scribe were dead, its genuineness was presumed⁴. A will purporting to be thirty years old and produced from proper custody may be presumed to have been duly attested and executed. If a will is registered, taken along with other circumstances, will be strong circumstance to support the genuineness of the will.

(iii). G. Applying the settled principles of law to the case on hand, this

¹ H.Venkatachala Iyengar v. B.N.Thimmajamma, AIR 1959 SC 443

² Ajit Kumar v. Mukunda Lal, AIR 1988 Cal 196; Manorama v. Saroj, AIR 1989 All 17

³ Ashutosh Samanta (D) By Lrs. vs Sm. Ranjan Bala Dasi, 2023 INSC 225

⁴ Kesarapu Manikyalu v. Venna Perumallayya, 2000 AIHC 590 (paras 4 and 8) (AP): AIR 2000 NOC 20 (AP). See also Subhash Nayyar v. Registrar, University of Delhi, 2013 AIR CC 992 (Del-DB).

court finds that the WILL is genuine for the reason that it is duly executed and registered document of more than 30 years. All the pages of WILL has the left thumb imprint of testatrix. The WILL herein is written in Tamil. Further the Janaki Ammal has executed a WILL in the year 1989 when she is said to have been 70 years old. Even after that, she has lived for 8 years as per ExA2 which is the Death certificate of Janaki Ammal W/o. Varatharajan which mentions the date of death as 23.07.1997. Ex.A2 read along with Ex. A15 gives rise to the inference that the testatrix was in a sound disposing state of mind. Further Ex. A15, the WILL was executed as the 1st plaintiff was taking care of the testatrix. The said recital is found in the WILL. Two witnesses have signed the document namely K.Selvaraj and K.Paramasivam for whom witness batta was paid and it was returned with endorsement that one of the witnesses is dead and other one is non traceable.

(iii). H. In view of all the above discussions this court of the view that the WILL is duly executed and validly attested document. Plaintiffs have thus proved their title over the suit property. **Issue No.1 & Additional Issue No.1 (Framed on 14.07.2023) answered in favour of the plaintiffs and as against the defendants.**

11. (iv) Issue No.2 & Additional Issue No.2 (Framed on 14.07.2023):

- *Whether the plaintiff is in possession and enjoyment of the suit property?*
- *Whether the plaintiffs have right and title over the suit property or not?*

(iv). A. The plaintiff claims the suit property to be vacant land with a hut. The defendants claim it to be a vacant land. The plaintiff claims it to be in possession of suit property from the date of WILL. Though there is no recital in the WILL with regard to handing over of possession, the plaintiffs have examined series of witnesses from PW1 to PW7 to prove that the plaintiff is in possession of the suit property based on the alleged WILL. PW5 in his evidence states that the plaintiff was given possession of suit property at the date of WILL. The relevant excerpt from the evidence of PW5 is as follows:

“என் தாயார் ஁யில் எழுதி வைத்த அன்றே வழக்கு சொத்தில் சுவாதீனத்தை வாதியிடம் ஒப்படைத்து வாதி தான் வழக்கு சொத்தை இன்று வரை அனுபவித்து வருகிறார். வழக்கு சொத்தில் வாதி வீடு கட்டி அதில் தற்போது ராஜேந்திரன் என்பவர் வாதியிடம் வட்டிக்கு ஈடாக அனுபவித்து வருகிறார்.”

(iv). B. The plaintiffs have also filed ExA3 to ExA8 & ExA11 to ExA13 which are the EB card, EB bills, EB deposit demand letter and photos & CDs for connection No. 182 in favor of Thanikachalam for April 2005 to March 2008, to prove their possession. It is their case, initially there was a hut and later it was built as house but it was not assessed for tax. Apart from the above, the plaintiffs claim that they have given the hut to be occupied by one Babu in lieu of loan and after discharge of said debt the property was given in the hands of one Rajendran for occupation by the plaintiff. Reading all the oral evidence along with the pleadings and material documents also prove the same, as all the witness

reiterate the connection number as 182 and also depose as to the possession by one Babu and later by Rajendran.

(iv). C. **Contrarily**, the defendants claim that the suit property as vacant land and states that they have fenced the property. However, Ex.B1 the Town Survey Field register mentions that the suit property has a terraced house. If the defendant's case is true, it should have been mentioned as vacant land. However, it mentions to have a house which further confirms the plaintiffs case. Even on perusal of Ex.B1 this court of the view the plaintiff's case is true. Though Ex.B1 mentions the name of defendant, it is not document of title. Further ExA9 and ExA10 which are Nil certificate of encumbrance EC.No.1982 for 18 years of period from 01.01.1987 to 29.06.2004 and in EC.No.1916 for 5 years of period from 01.08.2004 to 07.05.2008 respectively, proves that there's no encumbrance on the suit property after execution of WILL.

(iv). D. In light of all the above discussions, this court is of the view that the plaintiffs are in possession of the suit property. **Issue No.2 & Additional Issue No.2 (Framed on 14.07.2023) are answered in favour of the plaintiffs and as against the defendants.**

11. (v) Additional Issue No.3 (Framed on 14.07.2023) & Issue No.3 & 4:

- *Whether the plaintiffs are entitled for the relief of declaration of title in respect of suit property for or not?*
- *Whether the plaintiff is entitled for a decree of Permanent injunction as prayed for in the plaint?*

- *To what relief the parties are entitled to?*

(v). A. As all the other issues are answered in favor of the plaintiffs, **Additional Issue No.3 (Framed on 14.07.2023) & Issue No.3** which raise in consequence of above issues are also answered in favour of plaintiffs and as against the defendants. As for Issue No.4 is concerned, plaintiff is not entitled to any other relief.

In fine Suit is Decreed with Costs. Declaring the plaintiffs' title in respect of the suit property. Granting Permanent Injunction restraining the defendants and their men agents and servants from disturbing plaintiffs peaceful possession and enjoyment of the suit property.

Dictated by me and directly typed in the computer by Steno typist and printed out by her and corrected and pronounced by me in open court, on this day, the 04th day of July 2026.

Additional District Munsif,
Cuddalore.

List of Witnesses on Plaintiffs' side:

PW1	Thiru.Thanikasalam, S/o.Rathinasamy.
PW2	Thiru.Rajediran, S/o.Nagappan.
PW3	Thiru.Sanmugam, S/o.Pakkiri.

PW4	Thiru.Kathirvel, S/o.Jayaraman.
PW5	Thiru.Gajendiran, S/o.Varadharajan.
PW6	Thiru.Maheswaran, S/o.Thanikasalam.
PW7	Thiru.Babu, S/o.Sivalingam.

List of Documents on Plaintiffs' side:

ExA1	23.12.1989	WILL	Original
ExA2	23.07.1997	Death Certificate	Original
ExA3	-	Electricity Card	Original
ExA4	-	Electricity Bill	Original
ExA5	15.11.2007	Electricity Bill	Original
ExA6	17.09.2007	Electricity Bill	Original
ExA7	10.06.2007	Notice Demanding Additional Deposit	Original
ExA8	14.03.2008	Electricity Bill	Original
ExA9	30.06.2004	Encumbrance Certificate	Original
ExA10	-	Encumbrance Certificate	Original
ExA11	-	Photograph	Copy
ExA12	-	Photograph	Copy
ExA13	-	CD	Original
ExA14	-	Order in IA.1382/2009 in OS.232/2008	Certified Copy
ExA15	23.12.1989	WILL	Original

List of Witnesses on Defendant's side:

DW1	Thiru.Balasakthivel, S/o.Annamalai.
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List of Documents on Defendants side:

ExB1	24.11.2009	Town field register in S.No.1779/2A	Original
ExB2	15.10.1993	Preliminary decree in O.S.No.181/1993	Certified Copy
ExB3	23.06.2000	Final Decree in IA.906/1994 in OS.181/1993	Certified Copy
ExB4	-	Delivery Warrant in EP.305/2000 in OS.181/1993	Certified Copy
ExB5	09.06.2008	Letter by Balasakthivel to SI	Copy
ExB6	09.06.2008	CSR in 217/2008	Original
ExB7	-	Letter by Thanikasalam to SI	Copy

List of Court Documents:

ExC1	Witness Summon	Original
ExC2	Witness Summon	Original

Additional District Munsif,
Cuddalore.

ADM Court, Cuddalore.
Fair Judgment
