

IN THE SUBORDINATE COURT AT USILAMPATTI

Present: Tmt.L.Maheswari., M.L.,
Subordinate Judge, Usilampatti
Tuesday, the 21st day of July, 2026

APPEAL SUIT No. 08 OF 2025

(CNR No. TNMD24 – 000221 – 2025)

BETWEEN

1. Chinnathayee

...Appellants/Defendants

AND

1. K. Ayyankannu

2. K. Jeyaram

3. Senthamarai

4. Kaleeshwari

5. Gopalakrishnan

6. Jeyalakshmi

7. Jayakrishnan

8. Chellapandi

9. Thangamani

...Respondents / Plaintiffs

...Respondent/ Defendants 2 & 3

AGAINST THE JUDGMENT AND DECREE DATED 07.03.2022 IN O.S. NO. 76

OF 1997 ON THE FILE OF THE LEARNED

DISTRICT MUNSIF cum JUDICIAL MAGISTRATE NO.I, USILAMPATTI

BETWEEN

1. K. Ayyankannu

2. K. Jeyaram

3. K. Ponraj (Died)

4. Chinna Alagammal (Died)

5. Senthamarai

6. Kaleeshwari

7. Gopalakrishnan

8. Jeyalakshmi
9. Jayakrishnan

.....Plaintiff

AND

1. Chinnathayee
2. Chellapandi
3. C. Thangamani

.....Defendant

This Appeal and the petitions having come up on 03.07.2026 before me for final hearing in the presence of Mr.S. Ganapathy, learned counsel appearing for the Appellant/Defendant, Mr.P.G. Alagarsamy, learned counsel appearing for the Respondents/Plaintiffs, upon hearing the submissions of the learned counsels for the appellants and the respondent, and also on perusal of the records, having stood over for consideration till this day, this Court delivers the following:

JUDGMENT

1. This Appeal Suit has been filed to set aside the judgment and decree dated 07.03.2022 passed in O.S.No.51 of 2006 on the file of the District Munsif cum Judicial Magistrate No.I, Usilampatti, and consequently to dismiss the suit with costs.

2. **BRIEF AVERMENTS OF THE PLAINT:** The plaintiffs are the absolute owners of the suit property. It is their ancestral property. Kandasamy Naicker, Perumal Naicker, Alagiri Naicker were brothers. In the oral partition held between the three brothers the suit property and some other properties were allotted to the share of Kandasamy Naicker the grand father of the plaintiffs 1 to 3. The partition was held about 40 years age. In the old revenue records the patta stood in the name of Kandasamy Naicker and Perumal Naicker.

Kandasamy Naicker had 4 sons namely Alagar, Gurusamy, Palani and Krishnasamy. The first three sons had predeceased their father. Kandasamy Naicker died intestate leaving behind his only son Krishnasamy Naicker as his legal heirs entitled to succeed to the estate left by him. Hence Krishnasamy Naicker father of the plaintiffs 1 to 3 had become the absolute owner of the suit property. Krishnasamy Naicker had two wives namely PeriaAlagammal mother of the plaintiffs 1 and 2 and the 4th plaintiff is the mother of 3rd plaintiff. While Krishnasamy Naicker over in possession and enjoyment of the suit property and other properties he had transferred the patta in his name. He was also paying kist for the suit property. PeriaAlagammal had predeceased her husband in the year 2000. Krishnasamy Naicker died intestate during 2001 leaving behind his 3 sons and a wife namely the plaintiffs herein as his legal heirs entitled to succeed to the estate left behind him including the suit property. As such it is clean that the plaintiffs are the absolute owners of the suit properties. After the death of Krishnasamy Naicker the patta has been changed in the name of the plaintiffs 1, 2 and 4. Patta pass book is also issued to them. All these facts would clearly prove that the plaintiffs are the absolute owners of the suit property.

The 1st defendant is owning a house immediately to the north of the suit property. After the death of Krishnasamy Naicker the 1st defendant had high handedly encroached extent of about 3 cents in the north eastern corner of the suit property during the end of 2001 and had raised a cattleshed. The defendant 2 and 3 who are the close associated of the 1st defendant had also made similar encroachments. The 2nd defendant had encroached a small portion on the northwestern corner and the 3rd defendant made encroachments to the south of the 1st defendant. The defendants 2 and 3 made encroachments during 2002. It is significant to note that the 1st plaintiff is at Tiruppur and the plaintiffs 2 and 3 are near Kaviapatti far away from the village. Taking advantage of their absence and the

inability of the 4th plaintiff the defendants made encroachments. When the plaintiffs made objections for the encroachment, the son of the 1st defendant namely A. Ramasamy in order to divert the attention of the plaintiffs preferred an application to the Tahsildar, Usilampatti for the transfer of patta in his name for the suit property and another item.

After holding an elaborate enquiry the Tahsildar, Usilampatti passed an order on 20.09.2004 on his file in ROC.No.3349/2004 dismissing his application. At para 3 at page 3 of his order the Tahsildar had clearly found out that the plaintiffs are entitled to remove the encroachments. The plaintiffs submit that Ramasamy did not prefer any appeal against the order of the Tahsildar dated 20.05.2004. As such the order dated 20.05.2004 had become final.

Ramasamy and his father had filed a suit in OS.No.95/2004 before this Hon'ble Court in respect of another property covered under the order of the Tahsildar for declaration and for permanent injunction. It is also pending. As the plaintiffs 1 to 3 are living faraway from the suit village they are not able to remove the encroachments. Taking advantage of this situation the defendants had high handedly occupied the entire property. Several requests made by the plaintiffs to handover vacant possession of the suit property were of no use. As the plaintiffs are law abiding citizens they have no other go except to file this suit for declaration and for recovery of possession of the suit property.

2.2. BRIEF FACTS SET OUT IN THE WRITTEN STATEMENT OF THE 1st DEFENDANT:

The 1st defendant is the absolute owner of the under mentioned two items of properties in one block admeasuring 2-5/8 cents each totalling 5-1/4 cents, which forms part of the suit property that comprises 21 cents. The first item of the said properties admeasuring 2-5/8 cents was originally belonged to one Alagar Naicker

son of Alagar Naicker of Chakkarapanayakanur village ancestrally. The 1st defendants husband Rasu Naicker @ K. Alagarsamy Naicker son of Kitnasamy Naicker purchased the same from the said Alagar Naicker by Virtue of the registered sale deed dated 01.10.1980 under document No.3358/1980 on the file of the SRO, Usilampatti. Since then the 1st defendant's husband had been in possession and enjoyment of the said property till his death. The said Rasu Naicker @ K. Alagarsamy died intestate in the year 1998 leaving behind the 1st defendant and his son A. Marisamy as his legal heirs to succeed his estate. Accordingly, after the demise of Rasu Naicker @ K. Alagarsamy, intestated succession opened and thereby the 1st defendant and his son A. Marisamy become the absolute owner of that property and have been in possession and enjoyment of the 1st item of the under mentioned properties till now. The revenue records namely the chitta and Adangal pertaining to the 1st item of the properties stand in the name of the 1st defendants deceased husband namely Rasu Naicker @ K. Alagarsamy.

The 1st defendant submits that the 2nd item of the under mentioned properties admeasuring 2-5/8 was originally belonged to one Malaisamy son of Pambaiyan alias Alagar Naicker of Chakkarapanayakan Patti, who sold out the same in favour of the 1st defendant by virtue of a registered sale deed dated 09.04.1983 under document No.978/1983 on the file of the SRO, Usilampatti. Since then the 1st defendant has been in possession and enjoyment of the said property till date. The 1st defendant submit that she is the absolute owner of the said property as such and the 1st defendant and her predecessors in title and interest had been in peaceful possession and enjoyment of the said property till their alienation and since the date of purchase, the 1st defendant has been in possession and enjoyment of the said property. The revenue records namely the chitta and Adangal pertaining to the 2nd item of the properties stand in the name of the 1st defendant's vendor Malaisamy son of

pambaiyan alias Alagar Naicker.

In pursuant to that, the 1st defendant came to understand that the 1st plaintiff has clandestinely obtained a bogus joint UDR patta bearing No.116 dated 24.12.2003 issued by the Thashildar, Usilampatti and on the basis of that fraudulent patta he claims title over the suit property comprising the entire 21 cents. The so called patta though it stands in the name of the 1st defendant, it is invalid, illegal, baseless and void-ab-initio in the eyes of law. As a matter of fact, the predecessor in title and now the 1st defendant is the real owner of the under mentioned two items of 5-1/2 cents that forms part of and out of 21 cents of the suit property by virtue of the aforesaid two sale deeds. In fact, the defendants are none other than the strangers to the suit property and they have no right whatever much less than the title or interest over the suit property at any point of time. The patta in question does not confer any title to the plaintiffs in respect of the suit property, when there is no title over that property. It is a well settled legal proposition that mere patta is not a title. The acts of the plaintiffs are unlawful and illegal. The 1st defendant is also initiating necessary steps to prefer an appeal before the revenue deivisional Officer, Usilampatti to set aside the impugned patta issued in favour of the plaintiffs.

In fact, when the 1st defendant is absolute owner of the 5-1/2 cents inclusive of the aforesaid 3 cents by virtue of the aforesaid two sale deeds 01.10.1980 & 09.04.1983 respectively and since then she has been in possession and enjoyment of the same well before the year 2001, where is the question of encroachment by the 1st defendant as alleged and the alleged encroachment is misnomer in the eyes of law and the rest of the allegations in paragraph 6 & 7 of the plaint are all false and cock and bull story to set up a false case by the plaintiffs.

The plaintiffs have deliberately suppressed the material facts that one another title holder namely Smt. Kaliasammal, who is the owner of the northwestern 5-1/2 cents

out of 21 cents of the suit property, had filed a suit in OS.No.131/2006 on the file of this honourable court as against this plaintiffs 1 to 3 and now the said Kaliasammal has preferred an appeal in AS.164/2011 before the subordinate Judge, Usilampatti and the same is pending for disposal. Therefore said Smt. Kaliasammal and another title holder namely A. Marisamy, son of the 1st defendant are the proper and necessary parties to the proceedings for effective adjudication. Whereas in this case those necessary parties have not been added as parties to and therefore the suit is bad for non-Joinder and mis-Joinder of parties.

Under these circumstances, when the 1st defendant and her son A. Marisamy are absolute and real owners of the under mentioned two items of 5-1/2 cents that forms part of and out of 21 cents of the suit property by virtue of the aforesaid two sale deeds the plaintiffs have no locus – standi to file this suit and they are not entitled for the relief of as sought for.

There is no cause of action for the suit. The valuation of the suit is incorrect. The court fees paid is not sufficient. Therefore, it is prayed that this Hon'ble court may please to dismiss the suit with cost.

3. ISSUES FRAMED BY THE TRIAL COURT:

1. Whether the suit property belongs to the plaintiff?
2. Whether the plaintiff is entitled to get the decree of declaration and recovery of possession as prayed for?
3. To what other relief?

4. Before the Trial Court, the 2nd plaintiff was examined as PW1 and Ex.A1 to Ex.A11 documents were marked on the side of the plaintiff. On the side of the

defendants, the 3rd party examined himself as DW1 and 2nd defendant was examined as DW2, and Ex.B1 and Ex.B2 documents were marked through DW1.

5. GROUNDS OF APPEAL IN BRIEF:

The decree and judgment of the lower court: are contrary to law, the weight of evidence and the probabilities of the case and; is not a speaking one and is not in accordance with the evidence adduced on the side of the 1st defendant; failed to properly appreciate the documents marked on the side of the 1st defendant, i.e., ExB1 and B2 Sale Deeds of the Alagarsamy & Chinna Thayammal and; The Trial Court erred in overlooking material evidence on record. The Lower Court made observation that the Appellant has not produced any title document, however the plaintiff has also not produced any title document, the same has not been considered by the Trial Court. The alleged encroachment has not been proved by the plaintiffs. The Schedule of property has to be specific for the relief of recovery of possession of the encroached portion, but the same has not been described. Accordingly, prays for setting aside the judgment and decree dated 07.03.2022 in O.S.No.51 of 2006 on the file of the District Munsif cum Judicial Magistrate No.I, Usilampatti.

6. POINTS FOR CONSIDERTION:

- i) whether the plaintiff have established title over the suit property by satisfactory documentary evidence?
- ii) whether the trial court was justified in relying, mainly upon revenue records, such as Patta, Chitta, Adangal and UDR Patta to declare title.?
- iii) whether the judgment and degree of the trial court require interference?
- iv) Whether this appeal is liable to the allowed?

7. Heard the rival submissions of the learned counsels for the Appellant and the Respondents. Perused the records.

For the sake of convenience, the parties are referred to as per their respective ranks before the Trial Court. The appellant is the 1st defendant and the respondents are the plaintiffs before the Trial court.

(The defendant 2 & 3 were set exparte before the Trial Court).

8. POINT Nos. i to iv:

8.1 In so far as the suit for declaration of title is concerned, the burden of proof regarding the title of the property entirely lies on the plaintiff under section 101 and 102 of Indian Evidence Act. The plaintiff has to prove his title through proper title documents and the plaintiff must succeed on the strength of his own case and not on the weakness of the defendant case. In the present case, the plaintiffs in order to prove their title over the suit property they have relied on the revenue records and the plaintiffs have not filed any Sale Deed, Settlement, Partition Deed. The trial court mainly relied upon exhibit A2 to A6, A8, A11 patta, Chitta, Adangal and Thasildar order, stands in the name of the plaintiff and the Grandfather of the plaintiff. It is settled that these documents only indicate Revenue entries and possession, they do not create or confer title. The above documents are fiscal in nature and are not the document of title.

8.2 Our Hon'ble Supreme Court also in 1996(6) SCC 223 Sawarni vs InderKaur and 1997(7)SCC 137- Balwant Singh vs Daulat Singh case held that the Revenue entries are maintained for fiscal purposes and are not documents of Title.

8.3 Further more the order of the Revenue authorities are not in the 'Stricto Sensu' binding on the civil courts in the matter relating to title. However, Learned

Trial Judge held that the plaintiff have proved their title through these revenue documents, but the defendants failed to produce the parents documents mentioned in the sale deed relied by the defendants, therefore the defendants have failed to establish the title. However merely because the defendant failed to produce their parent documents, the plaintiff cannot automatically succeed. The finding of the trial court that the plaintiffs established title merely because the defendant failed to establish their title is legally unsustainable. Moreover, the plaintiff has not filed any title document.

8.4 Further, It is settled law that Patta, Chitta, Aadangal, and Kist receipt are not the title document and the same does not confer ownership. Such documents may corroborate possession but cannot substitute proof of title. Therefore, the trial court committed an error in treating the Revenue Records relied by the plaintiff as conclusive proof of title of the plaintiff in a suit for declaration of title.

8.5 On the other hand the defendant filed Ex.B1 and B2 title deeds, as such the defendants have proved better title than the plaintiffs. However, there is no counter claim filed by the defendant, therefore, this court do not enter into deciding the title of the defendant. Hence, as discussed above, the plaintiff has failed to prove his title through proper oral and documentary evidence.

8.6 In so far as the Recovery of Possession is concerned, the plaint contains the prayer to direct the defendant to handover the vacant possession, then the plaintiffs have in substance Sought Recovery of Possession. Hence, the contention of the Appellant that no Recovery Relief was sought for by the plaintiffs deserves Rejection, however, the plaintiff admitted that the defendant occupied only a portion in such a case, the plaintiff must establish that which portion has been encroached, when the encroachment occurred and what is the exact extent of encroachment, these things ought to have proved by the plaintiff in order to get the Recovery of

Possession from the defendant. However, the plaintiffs have not filed any document to prove the alleged encroachment and also the plaintiffs have failed to file an application to appoint an advocate commissioner in order to prove the alleged encroachment.

8.7 Further, though the plaintiff has stated during his cross-examination that the defendants have encroached the entire suit schedule property, But, the plaint para No.6 stands in contara to the evidence of PW1. The evidence of PW1 runs as follows:

தாவா சொத்து முழுவதையுமே பிரதிவாதிகள் மூவரும் ஆக்கிரமிப்பு செய்துள்ளார்கள் என்றும், அதனை விலக்கி வாதி வசம் ஒப்படைக்கக் கோரி வழக்கு தாக்கல் செய்துள்ளேன்.

8.8 However, as stated above in the plaint para number six, he has specifically stated that the first defendant encroached three cents in the north eastern corner of the suit property during the end of 2001 and had raised a cattle shed. The defendants 2 made encroachment of a small portion on the north western corner and the 3rd defendant made encroachment to the South of the first defendant. Therefore, even the plaintiff during the time of cross-examination has stated that that he had filed suit for recovery of entire suit property, but he failed to amend the plaint. In the absence of the same, the above evidence of the PW1 stands acceptable. Therefore Without proving this factors, Recovery of Possession cannot be granted.

8.9 Further more the plaintiff during his cross-examination has stated that the defendant has not purchased the property from the real owners. However, the plaintiffs have not sought for any relief of declaration to declare the Sale Deeds i.e., ExB1 & B2 are is Null and Void.

8.10 Apart from the above the plaintiff during his cross-examination has admitted that after the demise of their father in the year 2001, they are not in possession of the suit property and they have obtained the receipt by using the Patta

stands in their name. The relevant portion of PW1 evidence runs as follows:

"வாதிகள் ஆகிய நாங்கள் தாவாச் சொத்தை எந்த ஆண்டு வரை அனுபவம் செய்து வந்தோம் என்று பிராதித் குறிப்பிட்டு சொல்லவில்லை என்றால் சரிதான். தாவா ஊரில் எனது தகப்பனார் வாழ்நாள் முழுவதும் குடியிருந்து வந்தனர். எனது தகப்பனார் 2001ம் ஆண்டு காலமானார். எனது தாயார் அதற்கு முன்பே காலமாகிவிட்டார். என் தாய் தகப்பனார் காலத்திற்கு பின்பு நாங்கள் யாரும் தாவா ஊரில் குடியிருக்கவில்லை. வெளியூரில் வசித்து வருகிறோம். எங்களது பெயரில் பட்டா இருந்ததைப் பயன்படுத்தி வா.சா.ஆ.6 ஆவணம் 2006ம் ஆண்டு அனுபவம் செய்யாமலேயே பெற்றுள்ளோம் என்றால் சரிதான்."

Therefore the plaintiff has also failed to prove the continuous possession over the suit schedule property. Generally it is settled law that "Title follows possession" In the present case the plaintiff has failed to produce the title deed, in such a case he ought to have prove continuous possession, but from the above evidence it is clear as crystal that the plaintiff neither proved title nor proved continuous possession in order to substantiate his case.

9) Therefore as stated above the trial court proceeded on the following reason that the defendant has failed to prove title, therefore, the title of the plaintiffs has been proved. This approach is contrary to the settled principle that the plaintiff must succeed on the strength of his own title and not on the weakness of the defendant case. The plaintiff has miserably failed to prove his title through proper documents. The trial court also failed to examine whether the Revenue Records constituted document of title. Consequently, the findings regarding declaration of title based on

the Revenue Records is unsustainable, Therefore the trial court judgment requires interference. On the fact furnished above, the appeal deserves to be allowed, and the trial court judgment is liable to be set aside. Accordingly Issue No.1 to 4 decided in favour of the Appellant / 1st Defendant.

10. RESULT:

In the result, the Judgment and Decree passed in OS.51/2006 dated 07.03.2022 passed by the learned trial judge is set aside. Consequently, the Appeal allowed. No cost.

Dictated to the Steno-Typist, typed by her directly in the desktop, corrected and pronounced by me in open Court, on this the 21st day of July 2026.

Subordinate Judge,
Usilmpatti.

LIST OF WITNESS EXAMINED AND DOCUMENT EXHIBITED ON EITHER
SIDE: Nil.

Subordinate Judge,
Usilmpatti.

A.S. No.8/2025

Judgment

Date : 21.07.2026

Judgment Pronounced. In the result, the Judgment and Decree passed in OS.51/2006 dated 07.03.2022 passed by the learned trial judge is set aside. Consequently, the Appeal allowed. No cost.

Sub Judge,
Usilampatti.