

IN THE COURT OF DISTRICT MUNSIF, SHENCOTTAI.

Present : **Thiru.K.N.Guru, B.A.B.L.,**
District Munsif, Shencottai.

Wednesday, the 15th day of April 2026

ORIGINAL SUIT No.3/2020

(CNR.No.TNTS11-001497-2019)

Shanmugam

.. Plaintiff

/Vs/

1. Indhurani

2. Mariammal

3. Appakutti

.. Defendants

This suit came before me for final hearing on 06.04.2026 in the presence of Thiru.K.Sailapathy Sivanagnanam, Advocate for the Plaintiff and Thiru.R.Jegadeesan, Advocate for the 1st and 3rd Defendants and 2nd Defendant has remained exparte and after hearing both sides and on perusal of records and having stood over for consideration till this date and this court delivers the following:-

JUDGMENT

The Plaintiff has filed the present suit seeking a decree of declaration of title, recovery of possession, and mandatory injunction directing the defendants to remove the existing structures and hand over vacant possession of the plaint schedule property, and for costs.

2. Plaintiff Case in a Nutshell:-

It is the case of the Plaintiff that the Plaintiff Schedule Property originally belonged to one Ramuammal, the sister of his father Velayutham, to whom the property had been assigned as House Site No. 5 by the Special Tahsildar, Adi Dravidar Welfare Department, Tenkasi, vide proceedings in N.K. No. A13603/82 dated 03.10.1986, and that pursuant to such assignment, she was in absolute possession and enjoyment thereof, during which period the Government of Tamil Nadu constructed a single-room tiled house for her, and she continued to enjoy the same as absolute owner by paying taxes in her name, supported by the relevant assignment deed and records. It is further stated that the said Ramuammal, who remained unmarried throughout her lifetime, was under the care and maintenance of her brother Velayutham until her demise in the year 2001, and having died intestate, her brother succeeded to the property as her legal heir under the Hindu Succession Act, thereafter entering into possession, paying taxes, and renovating the house in the year 2005. The Plaintiff would further contend that while so in possession, his father executed a registered Sale Deed dated 07.12.2011 in his favour, vide Doc. No. 2269/2011 on the file of the Sub-Registrar Office, Shenkottai, and by virtue thereof, he became the absolute owner and continued in possession and enjoyment of the property. It is the further case of the Plaintiff that the Defendants have no manner of right or title over the property, that the 1st Defendant is the daughter of the 3rd Defendant, the 2nd Defendant is the second wife of the late Soundarapandian, husband of the 1st Defendant, and that the 3rd Defendant, a retired police official,

had been, from 01.02.2013 onwards, pressurizing the Plaintiff and his father to sell the property for a nominal consideration and, upon refusal, threatened to trespass. It is stated that apprehending such interference, the Plaintiff had filed O.S. No. 49 of 2013 for declaration and injunction, but during the pendency of the said suit, the Defendants, on 01.04.2013, allegedly trespassed into the property and have since been in illegal occupation. It is further submitted that as the Plaintiff had not amended the plaint in the earlier suit to include the relief of recovery of possession, this Court, by Judgment dated 09.11.2018, observed that in the absence of such relief, the issue of title could not be conclusively decided and consequently dismissed the suit, leaving the Plaintiff without recovery of possession. Hence, the present suit has been laid seeking declaration of title, mandatory injunction directing the Defendants to hand over vacant possession within a time frame to be fixed by this Court, and in default, recovery of possession through due process of Court.

3. 1st and 3rd Defendants Case in a Nutshell:

It is the case of the 1st and 3rd Defendants that the Plaintiff Schedule Property was originally assigned as a free house-site to one Ramuammal by the Adi Dravidar Welfare Department through the Special Tahsildar, Tirunelveli, pursuant to which a free house-site patta was issued in her favour and she constructed a tiled house and resided therein; that during her lifetime, she intended to alienate the property and executed a /Power of Attorney dated 31.01.1990 in favour of her brother S. Velayutha Pandian (the Plaintiff's father), and acting thereunder, he entered into an Agreement

for Sale dated 05.01.1998 with one L. Velayutha Pandian (son of Lakshmana Pandian) for a total consideration of ₹22,500/-, of which ₹5,000/- was paid as advance and the balance of ₹17,500/- was paid on 15.02.1998, whereupon, in the presence and as per the instructions of the owner Ramuammal, possession of the property was delivered to the said purchaser, who thereafter enjoyed the same as absolute owner; that since the property was an assigned land with restrictions on alienation without prior permission, execution of a registered sale deed was deferred, and in the meanwhile, Ramuammal shifted to the residence of S. Velayutha Pandian and died in the year 2001, thereby preventing completion of formal registration; that the said L. Velayutha Pandian died on 09.10.2011 leaving behind his legal heirs, and in an oral partition dated 10.10.2011, the suit property fell to the share of his son Soundarapandian, who enjoyed the same as absolute owner until his death on 08.08.2012, after which the Defendants and other heirs continued in possession, renovated the superstructure, and have been in continuous, open and uninterrupted enjoyment; that the Plaintiff and his father, being fully aware of these facts, have created a fraudulent and nominal Sale Deed dated 07.12.2011 without any subsisting right in the vendor, and on the strength of such void document, the Plaintiff earlier filed O.S. No. 49 of 2013 which came to be dismissed on 09.11.2018 and has attained finality; that the sale transaction stood completed as early as on 15.02.1998 upon payment of full consideration and delivery of possession, and therefore the subsequent sale deed relied upon by the Plaintiff is void ab initio and does not confer any title; that in any event, the Defendants and their predecessors have perfected title

by adverse possession by virtue of their continuous, open and hostile possession from 15.02.1998, and the Plaintiff's claim is barred by limitation with his rights, if any, extinguished under Section 27 of the Limitation Act; and that the present suit is further barred under Order II Rule 2 CPC, as well as by the principles of res judicata and estoppel, there being no valid or subsisting cause of action.

4. On the basis of the plaint, written statement and documents on record, the following issues were framed.

1. Whether the suit property belongs to the plaintiff?
2. Whether the defendant has a right over the suit property based on the unregistered sale agreement dated 05.01.1988 as alleged by the defendants?
3. Whether the plaintiff is entitled to the relief of declaration and recovery of possession as prayed for ?
4. What other reliefs, if any, are the parties entitled to?

Additional Issues

1. Whether the suit is barred under order II Rule 2 of CPC and by the Principle of Res Judicata?
5. In the present case, on the side of the plaintiff, PW1 was examined and Ex.A1 to Ex.A5 were marked. On the side of the defendants, DW1 was examined and Ex.B1 & Ex.B2 were marked.

6. Answer to Issues No.1 to 3 and Additional Issue No.1:-

All the issues being interconnected are taken up together for consideration.

i) It is an admitted position that the suit schedule property was originally allotted to Ramu Ammal, the paternal aunt of the plaintiff, and that she died intestate without any Class I heirs. The controversy, however, turns on crucial aspects, namely: whether Ramu Ammal, through her power agent, had sold the property to the defendants' predecessor and delivered possession in 1998; the effect of the earlier suit between the parties; and whether the present suit is maintainable in view of the plaintiff's omission to seek appropriate reliefs in the earlier proceedings.

ii) The defence of the defendants, though apparently simple, is of considerable legal significance. Their consistent case is that the suit property, being assigned land, was subject to restrictions on alienation without prior permission, and therefore execution of a registered sale deed was deferred, demonstrating their awareness of the legal impediment in effecting a valid conveyance. Significantly, they do not assert title on the basis of the unregistered sale agreement dated 05.01.1988, which in law does not create or transfer any right, title, or interest in immovable property. Their defence is thus primarily founded on limitation, Section 27 of the Limitation Act, the maxim *vigilantibus non dormientibus jura subveniunt*, and the bar under Order II Rule 2 CPC and under section 11 of CPC i.e. constructive resjudicata. In the absence of a valid conveyance, though title cannot be claimed, their case rests firmly on long, continuous possession.

iii) Though the unregistered sale agreement cannot be relied upon to claim any enforceable right or legal protection over the property, it is not entirely devoid of evidentiary value. It can be considered for limited and collateral purposes, such as to understand the nature and character of the defendants' possession or to indicate that some form of arrangement existed between the parties. However, such limited use does not confer any right, title, or interest in the suit property, nor does it validate the alleged transfer. In the facts of the present case, the document may at best explain the origin of the defendants' possession from 1998, but it cannot be relied upon to establish title or legally sustain their possession; the defendants' case must therefore rest on their plea of long, continuous possession and limitation.

iv) It is seen that the plaintiff had earlier instituted O.S. No.49 of 2013 seeking declaration and injunction, which came to be dismissed on the ground that the relief of recovery of possession was not sought. The present suit has thereafter been filed seeking declaration along with recovery of possession. However, even according to the plaint, the earlier suit was instituted on 13.03.2013, while the alleged dispossession is said to have occurred on 01.04.2013, i.e., during the pendency of the earlier suit. In such circumstances, it was incumbent upon the plaintiff to amend the plaint in the earlier suit and incorporate the relief of recovery of possession, which admittedly was not done. Further, despite the defendants' categorical assertion even in the earlier suit that they were in possession from 1998, the plaintiff failed to seek amendment, an omission that assumes considerable importance. On perusal of the

earlier records, it is evident that the plaintiff has nowhere deposed that he was dispossessed on 01.04.2013 during the pendency of the earlier suit.

v) On the contrary, the materials on record clearly indicate that the defendants have been in possession since 1998. The plaintiff has not produced any contemporaneous document, such as a police complaint, to substantiate the alleged dispossession. The evidence of PW2 in the earlier suit supports the defendants' possession, and the plaintiff's own admission that the first defendant altered the tiled roof into asbestos roofing contradicts his earlier pleading that he himself had carried out such renovation. These material contradictions between pleadings and evidence render the plaintiff's case doubtful and probalilise the defendants' version of continuous possession from 1998. Thus, it becomes evident that the plaintiff was not in possession even at the time of filing the earlier suit. Despite being aware of the defendants' possession, he failed to seek the consequential relief of recovery of possession and omitted to amend the plaint, thereby attracting the bar under Order II Rule 2 CPC. Further, this court is of the considered view that the suit is also barred by constructive resjudicata. The plaintiff would have very much sought the relief of recovery of possession in the earlier suit but he has failed to do so inspite of being aware that he has been dispossessed. He did not seek recovery of possession hence the plaintiff might and ought have taken this plea in earlier suit itself now he cannot resjudicate this lis.

vi) The burden lies squarely upon the plaintiff to establish that he was in

possession and was dispossessed on 01.04.2013. The plea of dispossession being a foundational fact, the onus to prove the same rests entirely upon him. However, no acceptable oral or documentary evidence has been adduced in this regard, and there is not even a single contemporaneous record to corroborate the alleged dispossession. Equally, the burden to establish that the suit is within limitation rests upon the plaintiff. In the face of the defendants' specific plea of continuous possession from 1998, it was incumbent upon the plaintiff to demonstrate that the suit has been filed within the prescribed period, which burden has not been discharged. In this context, Section 27 of the Limitation Act, 1963 assumes significance, as it provides that upon expiry of the limitation period for recovery of possession, the right to the property itself stands extinguished. If the defendants have been in continuous, open, and hostile possession since 1998, and the plaintiff has failed to prove dispossession within twelve years prior to the suit, the plaintiff's title itself becomes liable to be extinguished by operation of law.

Vii) Further, the plaintiff has failed to establish prior possession, which is a fundamental requirement for grant of recovery of possession. Mere production of a registered sale deed, without any supporting evidence of actual possession, is wholly insufficient to prove possessory title. In the present case, the plaintiff has not produced even a single revenue record, tax receipt, patta, or any other contemporaneous document to demonstrate that either he or his predecessor was ever in possession of the suit property. On the contrary, the property admittedly stood in the name of Ramu Ammal, and no material has been placed to show that his father

alone is the sole legal heir of Ramuammal and possession passed from her to the Velayutham and to the plaintiff. The plaintiff has failed to produce any documentary evidence to substantiate that his father alone is the sole legal heir of Ramuammal. The plaintiff could have produced the legal heir certificate of the Ramuammal but the plaintiff has failed to do so. Without any proof of legacy the plaintiff cannot claim title only based on sale deed. Hence, this court is of the considered view that the plaintiff is not entitled for the declaratory relief as prayed for. The absence of any documentary or oral evidence regarding actual possession creates a serious lacuna in the plaintiff's case. In a suit for recovery of possession, proof of title alone is not enough; the plaintiff must also prove that he was in settled possession prior to the alleged dispossession. The complete failure to establish prior possession renders the plaintiff's claim for recovery of possession unsustainable in law.

Viii) A decree for declaration of title does not, by itself, entitle a plaintiff to recovery of possession. The plaintiff must independently establish his entitlement by proving prior possession, dispossession by the defendant, and that the suit has been instituted within the prescribed period under Articles 64 or 65 of the Limitation Act, 1963. The burden lies entirely on the plaintiff to plead and prove the date or point of time when possession was lost and to demonstrate that the claim is within limitation. Where the defendant is in long, continuous possession asserting ownership, and the plaintiff fails to establish either prior possession or dispossession within the statutory period, the relief of recovery of possession cannot be granted, notwithstanding a declaration of title. Thus, mere declaration of title, in the absence of proof of

subsisting right to recover possession within limitation, is insufficient to grant the relief of possession.

ix) On an overall appreciation of the pleadings and evidence, the case of the defendants stands established on the touchstone of preponderance of probabilities. The defendants have consistently asserted long, continuous, and uninterrupted possession of the suit property since 1998, which is supported by the surrounding circumstances and probabilities of the case. In contrast, the plaintiff has failed to produce any reliable evidence of prior possession and has not substantiated the alleged dispossession with cogent proof. The inconsistencies between the plaintiff's pleadings and deposition further weaken his case and render his version doubtful. In civil cases, strict proof beyond reasonable doubt is not required; the Court must assess which version appears more probable. In the present case, the defendants' version appears far more natural, probable, and consistent with the available evidence, whereas the plaintiff's case suffers from material omissions and contradictions. Accordingly, the balance of probabilities tilts in favour of the defendants.

x) In this regard, reliance is placed on *Nazir Mohamed v. J. Kamala* (AIR 2020 SC 4321), wherein the honorable Supreme Court held that a decree for declaration of title does not automatically result in a decree for possession, and the plaintiff must independently prove prior possession, dispossession, and that the claim is within limitation. It was further held that failure to discharge this burden is fatal,

and where the defendant is in long, continuous possession, the relief of possession must be denied, with Section 27 of the Limitation Act operating to extinguish the plaintiff's title upon expiry of the prescribed period.

xi) Applying the standard of preponderance of probabilities, the evidence on record overwhelmingly supports the defendants' case. Their consistent plea of possession since 1998, the absence of credible evidence of dispossession on 01.04.2013, the admissions and contradictions in the plaintiff's evidence, and the lack of supporting documentary proof cumulatively render the plaintiff's case improbable. In such circumstances, the plaintiff has failed to prove dispossession as alleged and has also failed to establish that the suit is within limitation. These deficiencies strike at the very root of the plaintiff's claim. Accordingly, the plaintiff is not entitled to the relief of declaration or recovery of possession, and all the issues are answered against the plaintiff.

7. Answer to Issues No.4:-

The parties are not entitled to any other relief.

In the result, the suit is dismissed with costs.

Dictated to the Steno-typist directly and typed by him in computer, corrected and pronounced by me in open court, this the **15th day of April 2026.**

**District Munsif,
Shencottai.**

DM Court, Shencottai,
O.S.No.03/2020
Draft/Fair Judgment
Dated. 15.04.2026