



SA No. 806 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04-12-2025

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

**SA No. 806 of 2025
and CMP.No.30498 of 2025**

D.Rukmani

Appellant(s)

Vs

1. M.Muthukumar

2.P. Nataraj

3.S. Sivachalam

Respondent(s)

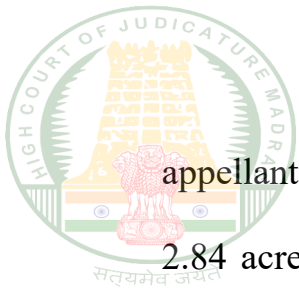
For Appellant(s): Mr.R. Bharath Kumar

For Respondent(s): Mr.N.S. Suganthan, For R1

ORDER

Challenging the reversal findings, the first defendant has preferred this appeal.

2. The learned counsel for the appellant/first defendant submitted that before the Trial Court, the respondent/plaintiff sought for partition without claiming any relief of declaration. The title of the property is on dispute and the

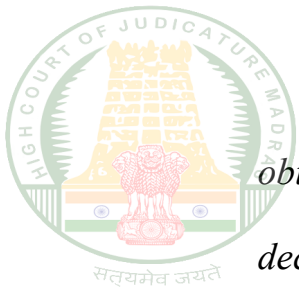


appellant has also established that she has acquired exclusive title over 2.84 acres by adverse possession, under a registered sale deed, which has not been properly appreciated by the Court below, despite the evidence adduced to that effect. The Court further erred in holding that the counter claim made by the appellant was time barred.

3. The learned counsel for the respondents raised objections stating that the appellant is not entitled to claim both adverse possession as well as the title simultaneously, in respect of the suit property.

4. This Court admits this Second Appeal on the following substantial question of law:

- a) *The impugned judgment and decree are contrary to law, weight of evidence, and the probabilities of the case. The Court below failed to appreciate the facts and failed to apply settled legal principles, resulting in grave injustice to the appellant.*
- b) *The learned First Appellate Court erred in law by dismissing the appellant's counter claim. In the suit, the plaintiff did not seek the prayer of declaration of title. It is settled law that partition is a merely consequential remedy and can follow on a finding of co-ownership. Where the defendant denies joint title and claims exclusive ownership vide a counter claim, the plaintiff cannot*

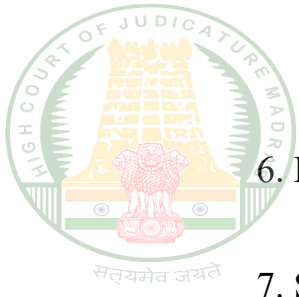


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*obtain a partition decree without first establishing his title by a declaratory decree. In **Anathula Sudhakar vs. P.Buchi Reddy** (2008) 4 SCC 594, the Hon'ble Apex Court observed that where a cloud is raised over the plaintiff's title and he does not have possession, a suit for declaration and possession is the remedy. Only if the plaintiff's title is admitted or clear can a mere consequential relief such as partition be granted. Likewise, in **S.Jaswant Singh vs. S.Darshan Singh** (AIR 1992 Del 80), the Hon'ble Delhi High Court held that when a defendant denies joint ownership and claims exclusive title, the case ceases to be one of simple partition and becomes a title dispute, requiring the plaintiff to prove his title and if he cannot, the suit fails.*

c) By dismissing the appellant's counter claim, the Court below has erroneously gave legal effect to Ex.A2, viz., the sale deed dated 15.03.2006, which in turn would grant title to the plaintiff in respect of the extent covered in the counter claim even in the absence of a prayer by the plaintiff/1st respondent for the relief of declaration.

5. Issue notice to the respondents, returnable by 27.01.2026.



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6. Post the appeal on 27.01.2026.

7. Status quo to be maintained till 27.01.2026.

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pvs

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



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