

S.A(MD)No.212 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 26.11.2025

Pronounced on : 19.02.2026

CORAM

THE HONOURABLE MR.JUSTICE P.VADAMALAI

S.A(MD)No.212 of 2024

and

C.M.P(MD)Nos.18393, 17661 of 2025

and

C.M.P(MD)No.4265 of 2024

The Commissioner
Paramakudi Municipality,
Ramanathapuram District.

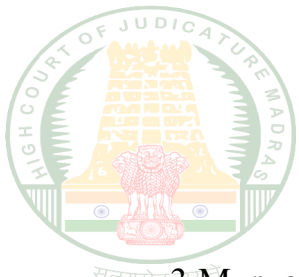
...Appellant/4th Respondent/
4th Defendant

Vs.

1.Kumaresan,
S/o.Late Raman,
Melaperukarai Village,
Parthipanoor Via,
Paramakudi Taluk,
Ramanathapuram District.

...1st Respondent/Appellant/
Plaintiff

2.Malaichamy,
S/o. Late Athimoolam,
Door No.174/3/843,
Bharathi Nagar West,
Maruthupandiar Nagar,
Paramakudi Town,
Ramanathapuram District.



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3.Murugesn,
S/o Late Athimoolam,
Door No.174/3/843,
Bharathi Nagar West,
Maruthupandiar Nagar,
Paramakudi Town,
Ramanathapuram District.

4.State Represented through
The District Collector,
Ramanathapuram District.

...Respondents 2 to 4/Respondents 1 to 3/
Defendants 1 to 3

PRAYER: Second Appeal is filed under Section 100 of Civil Procedure Code, to set aside the judgment and decree in A.S.No.17 of 2011 passed by the Subordinate Judge, Paramakudi, dated 19.02.2013, partly reversing the judgment and decree in O.S.No.59 of 2008 passed by the District Munsif, Paramakudi, dated 30.08.2010 by allowing this Second Appeal.

For Appellant	: Mr.A.Prasanna Rajadurai
For R1	: Mr.S.Srinivasaraghavan
For R2 & R3	: Mr.S.M.Mohan Gandhi
For R4	: Mr.C.Neducheliyan
	Government Advocate

JUDGMENT

This Second Appeal is filed against the judgment and decree, dated 19.02.2013 passed in A.S.No.17 of 2011 on the file of the learned Subordinate Judge, Paramakudi, partly reversing the judgment and decree, dated 30.08.2010 passed in O.S.No.59 of 2008 on the file of the District Munsif Court, Paramakudi.



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2. The appellant is the 4th defendant, the 1st respondent is the plaintiff and the respondents 2 to 4 are defendants 1 to 3 in O.S.No.59 of 2008 on the file of District Munsif Court, Paramakudi. The 1st respondent/plaintiff filed the suit for declaration, recovery of possession and permanent injunction in respect of the suit property.

3. For the sake of convenience, the parties are referred as plaintiff and the defendants as arrayed in O.S.No.59 of 2008 on the file of the District Munsif Court, Paramakudi.

4. Case of the plaintiff (1st respondent herein):

The property measuring 1897 ½ sq.ft in T.S.No.53/2 of Ward G. Block 23, West Bharathi Nagar, Marudhupandiar Nagar, Paramakudi Town is the suit property. The suit property and its western side property originally belonged to one Kamalam Ammal & Pushpam Ammal, who purchased the same from its predecessor in title through registered sale deed, dated 23.12.1963. They sold the said property to one Rethinam Asari by way of registered sale deed, dated 07.03.1974. The said Rethinam Asari sold out the western side of the entire



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property to one Srinivasan, then he sold the rest of the said property, i.e., the suit property to the plaintiff by virtue of registered sale deed, dated 29.04.1982.

The property originally bear S.No.183/4, then G.R.Survey No.87/1B, thereafter, T.S.No.53. The plaintiff is the absolute owner of the 4.3/8 cent in T.S.No.53. The plaintiff let the suit property to one Rakkammal, who is the mother of the defendants 1 and 2 for monthly rent at Rs.35/- on 21.11.1984.

The tenant Rakkammal put up a thatched shed, she was paying land tax in her name and thereafter, she got patta with the assistance of the revenue officials.

Coming to know these facts, the plaintiff filed a petition for cancellation of patta and patta in the name of Rakkammal was cancelled. Then the plaintiff filed the petition for issuance of patta before the Tahsildar, Paramakudi, who sent a report that there is poramboke measuring 105 sq.mt in T.S.No.53/2,3 as municipal park and so after obtaining permission from the 4th defendant, patta can be granted. The plaintiff learnt that the land measuring 7 ½ cents in T.S.No.53 was converted into three parts, for which no notice was issued to the plaintiff. It is the duty of the defendants 3 and 4 to send proper notice to the plaintiff. Prior to said division of 7 ½ cents, the defendants 3 and 4 issued patta to Srinivasan, who purchased the western part of T.S.No.53/1. While the facts are so, the defendants 1 and 2 filed a suit in O.S.No.54 of 2008 against



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the plaintiff and the defendants for permanent injunction alleging that the suit property was government poramboke, in which they have been in possession for more than 40 years. In fact, the defendants 1 and 2 are inducted as tenant and they are in possession of the suit property only as tenants. So, the 1st respondent/plaintiff filed the suit for declaration, recovery of possession and for permanent injunction.

5. Case of the Defendants 1 and 2 (Respondents 2 and 3 herein):

The defendants 1 and 2 filed a suit in O.S.No.54 of 2008 against the plaintiff for permanent injunction restraining them from interfering with their possession over the suit property. The defendants 1 and 2 denied the averments of the plaintiff. Their mother, Rakkammal, had been in possession of the suit property for more than 40 years and patta was also issued to their mother by the revenue officials. After her death, the defendants 1 and 2 have been in possession of the suit property. The plaintiff has no title or right over the suit property at any point of time. Without sending notice under Section 106 of the TP Act, the suit is not maintainable. Hence, the suit is liable to be dismissed.



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6. Case of the 3rd defendant (4th respondent herein).

The plaintiff has to prove his title from his predecessor in title, namely Kamalam Ammal, Pushpam Ammal and then Rethinam Asari from 23.12.1963. The suit property in old S.No.87/1B and T.S.No.53/2, 3 is government property. The property was shown as municipal park of Paramakudi Municipality. As there was wrong patta transfer, the Tahsildar Paramakudi passed proceedings in M.M.B4.8700/2001, dated 06.05.2002, thereby, the suit property was mentioned in the revenue records as municipal park. So, the plaintiff has no cause of action. The suit is liable to be dismissed.

7.The 4th defendant/Commissioner, Paramakudi Municipality (appellant herein) remained exparte in O.S.No.59 of 2008.

8. The trial Court framed the following issues in O.S.Nos.54 of 2008 and 59 of 2008.

Issues in O.S.No.54 of 2008

(1) Whether the plaintiffs (defendants 1 and 2 in O.S.No.59 of 2008) are entitled to the relief of permanent injunction as prayed for?



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

Issues in O.S.No.59 of 2008

(1) Whether the plaintiff is entitled to get declaration and recovery of possession as prayed for?

(2) Whether the plaintiff is entitled for permanent injunction against the defendants 3 and 4 as prayed for?

(3) To what other relief the plaintiff is entitled?

9. The suit in O.S.No.59 of 2008 was tried by the trial Court jointly along with O.S.No.54 of 2008 filed by the defendants 1 and 2. Evidences were taken in O.S.No.54 of 2008 as parties arrayed therein.

10. During trial, on the plaintiffs' side (in O.S.No.54/2008), P.W.1 to P.W.3 were examined and Ex.A.1 to Ex.A.8 were marked. On the defendant's side, the 1st defendant (plaintiff in O.S.No.59 of 2008) was examined as D.W.1 and Ex.B.1 to Ex.B.13 were marked. Advocate/Commissioner's report and sketch were marked as Ex.C.1 and Ex.C.2.



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11. After hearing both sides, the learned District Munsif, Paramakudi concluded that the plaintiff is the owner entitled to the suit property and granted declaration alone in O.S.No.59 of 2008 and declined to grant other reliefs, thereby partly decreed the suit in O.S.No.59 of 2008 and dismissed the suit in O.S.No.54 of 2008 by passing common judgment and decree, dated 30.08.2010.

12. Aggrieved by the judgment and decree in O.S.No.59 of 2008, the plaintiff filed the appeal A.S.No.17/2011 and the defendants 1 and 2 (Plaintiffs in O.S.No.54/2008) preferred the appeal in A.S.No.12 of 2011 before the Sub Court, Paramakudi.

13. The 4th defendant/Commissioner, Paramakudi Municipality, remained exparte in the appeal also.

14. The first Appellate Court after hearing both sides and after perusing the material records of the case, came to the conclusion that the plaintiff in O.S.No.59 of 2008 is entitled to the relief of recovery of possession and allowed the appeal in A.S.No.17 of 2011, thereby decreed the suit in



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O.S.No.59 of 2008 as sought. The first Appellate Court dismissed the appeal in A.S.No.12 of 2011 and confirmed the dismissal of the suit in O.S.No.54 of 2008.

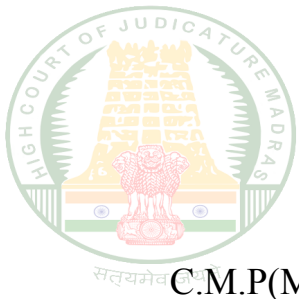
15. Challenging the judgment and decree of the First Appellate Court, the 4th defendant/Commissioner, Paramakudi Municipality has preferred this Second Appeal and the same has been admitted on 25.11.2025 on the following substantial questions of law:-

1. Whether the failure on the part of the officials in charge of the litigation or their collusive action should deprive Municipality of a valuable piece of land earmarked for the public purpose?

2. Whether the decree obtained by the 1st respondent by collusion, suppression and fraud is a nullity?

3. Whether the courts below were right in not insisting upon production of revenue and survey records when a relief is sought for relating to a public property?

16. Pending Second Appeal, the 1st respondent/plaintiff and the appellant/the Commissioner, Paramakudi Municipality filed

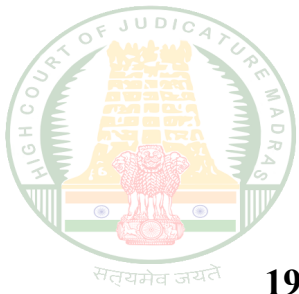


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C.M.P(MD)No.17661 of 2025 and C.M.P(MD)No.18393 of 2025 in S.A.(MD)No.212 of 2024 respectively under Order 41 Rule 27 of CPC, to receive the documents more fully described in the petition as additional evidence on their respective side in S.A.No.212 of 2024.

17. Heard both sides and perused the material records in this Second Appeal.

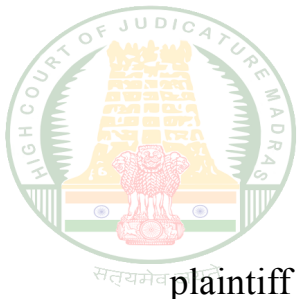
18. The learned counsel for the appellant/4th defendant has submitted that the suit property is the property of the 4th defendant Paramakudi Municipality and the same was allotted for municipal park for public use, as per resolution passed in the year 1978 itself. The learned counsel further argued that the erstwhile officials colluded with the parties and left the 4th respondent set exparte and hence, the 4th defendant was not able to conduct their case before the Courts below. Since the suit property is earmarked as municipal park for public use, there is questions of law arisen, the 4th defendant has filed a separate petition to receive the documents showing the resolution and allotment of the suit property for park, hence, the Second Appeal and petition to receive the additional documents may be allowed.



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19. The learned counsel for the 1st respondent/plaintiff vehemently contended that the appellant/4th respondent remained exparte before the trial Court as well as the first Appellate Court. The 3rd defendant/Government filed the written statement only denied the pleadings of the plaintiff. On the third defendant's side, no witness was got into the witness box and let in evidence how the suit property was earmarked as park and no document was filed to substantiate the same. The plaintiff has produced the documents to show his title from 1963, that the suit property with a larger extent in old S.No.53 originally belonged to Sheik Abdul Kadhar from whom Kamalam Ammal and Pushpam Ammal purchased the same, then they sold the same to Rethinam Asari, the said Rethinam Asari sold the western portion to one Srinivsan and the eastern portion i.e., the suit property to the plaintiff on 29.04.1982. The plaintiff marked titled deeds from 1940 till his purchase under Ex.B.3 to Ex.B.7 and also filed Kist Receipt – Ex.B.9. The trial Court has considered the evidences let in on both sides and concluded that the suit property is the absolute property of the plaintiff and he is absolutely entitled to the suit property on the basis of title deeds. The first Appellate Court has also confirmed the same and further decreed for recovery of possession. The Courts below held concurrent findings based on the facts and documents that the



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plaintiff is the owner of the suit property. When the property is not government property, then it cannot be taken as the 4th defendant/Municipality property.

The suit property is a private land, so, patta was granted to the plaintiff, even prior to the suit, the patta was issued to the western portion owner Srinivasan.

The defendants 1 and 2 were inducted only as tenant. When they denied the title of the plaintiff, there is no need to issue notice under Section 106 of the Transfer of Property Act to them. After obtaining decree, the possession of the suit property was delivered to the plaintiff and the 3rd defendant also granted patta after the suit, filed the report to that effect on 24.03.2024. Hence, there is no question of law arisen for discussion in this Second Appeal and the Second Appeal may be dismissed. In support of his argument, the learned counsel relied the following rulings:

(1) (2007) 6 MLJ 1762 of this Court in the case of Thirumeni /v/ Arulmighu Vinayakar and Dhrowpathi Amman Temples Statues.

(2) (1993) 4 Supreme Court Cases 6 in the case of “Lohia Properties (P) Ltd. /v/ Atmaram Kumar

(3) 1963 SCC Online SC 9 in the case of Badat and Co, Bombay /v/ East India Trading Co.,



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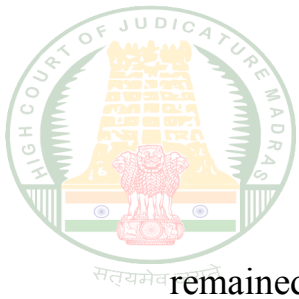


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***(4) (2024) 4 Supreme Court Cases 247 in
the case of Thangam and Another /v/ Navamani
Ammal.***

20. The learned counsels for the respondents 2, 3 and 4/defendants 1, 2 and 3 have made only a formal objection.

21. On perusal of records, the plaintiff has clearly established his title over the suit property by marking Ex.B.3 to Ex.B.7. Ex.B.3 to Ex.B.7 show that one Sheik Abdul Kadhar purchased the property in suit survey number from its original owner Pappathi Ammal on 16.12.1940. Thereafter, Kamalam Ammal and Pushpam Ammal purchased the same from the said Sheik Abdul Kadhar by virtue of Ex.B.4 sale deed dated 23.12.1963. Then Rethinam Asari purchased the property from Kamalam Ammal and Pushpam Ammal by virtue of Ex.B.5 - sale deed. Thereafter, the plaintiff purchased the eastern side portion from Rethinam Asari under Ex.B.6 sale deed, dated 29.04.1982. It is the case of the plaintiff that the said Rethinam Asari sold the western portion to one Srinivasan and patta was issued to him by the revenue authorities. The Courts below gave concurrent findings based on the evidences adduced on the plaintiff's and defendants' side except the 4th defendant, who



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remained exparte. The 4th defendant being the Municipality, has to touch with the 3rd defendant/Government, while it stated that the property is meant for public use. The third defendant has filed the written statement only denying the plaintiff's case and has not produced any oral or documentary evidence to show that the suit property is earmarked for public purpose.

22. Now, the appellant/4th defendant has put forth the case that the erstwhile officials colluded with the parties and allowed the court to pass decree in favour of the plaintiff. Except the averment in the appeal grounds, there is no material filed to show who was the officials committed collusion with the parties and what action was taken against them by the 4th defendant municipality. In the absence of such materials, mere averment in grounds of appeal is not sufficient to hold that there is question of law to be decided in this second appeal. It is a general rule that the High Court will not interfere with the concurrent findings of the Courts below. In the present case, both the trial Court as well as first Appellate Court after detailed analysis of the oral and documentary evidence let in by the parties, categorically held that the plaintiff is absolute owner of the suit property on the basis of title deeds and also he is entitled for recovery of possession from the tenants/defendants 1 and 2.

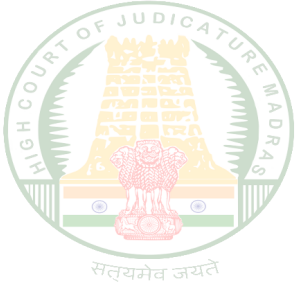


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During the course of the argument, the learned counsel for the plaintiff submitted that the plaintiff filed an execution petition for possession and the possession of the suit property was delivered by the Court, this was consented by the tenants/defendants 1 and 2 and that thereafter, patta for the suit property was issued by the revenue officials to the plaintiff.

23. On perusal of the records, it seems that this Court has directed the Government Advocate to submit a detailed report regarding the property which has been earmarked as a park, vide proceedings in C.M.P(MD)No.4265 of 2025 on 26.03.2024. A perusal of records, the 1st respondent/plaintiff filed a copy of report of the Tahsildar, Paramakudi along with petition to receive additional documents, which was received by the defendants' counsel, wherein it is clearly mentioned as follows:

“எனவே, மனுதாரர் குமரேசன் (வாதி) என்பவர் முறையான பதிவு ஆவணம் மூலம் கிரையம் பெற்று அனுபவம் செய்து வருவதாலும், நகர நில அளவையின் போது (Town Survey) தவறாக “பூங்கா” என பதிவு செய்யப்பட்டுள்ளதாலும், மேற்கண்ட நகரப் புல எண்.53ஆனது 53/1 மற்றும் 53/2 என உட்பிரிவு செய்யப்பட்டு, பின்னர் 53/1 ஆனது பல்வேறு உட்பிரிவுகளாக மாறுதல் செய்யப்பட்டுள்ளது என்றும், இறுதியாக நீதிமன்ற தீர்ப்புரை ஆவணங்கள்



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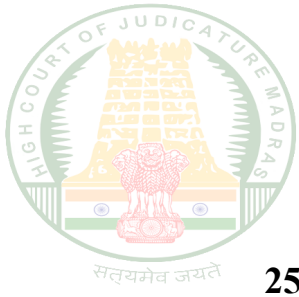


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மற்றும் அனுபவத்தின் அடிப்படையிலும் பரமக்குடி வட்டம் மற்றும் நகர், வார்டு ஜி பிளாக் 23 நகர புல எண்.53/2 விஸ்தீரணம் 0.0105.0 ச.மீ இடத்தினை “சர்க்கார் புறம்போக்கு பூங்கா” என பதிவாகியுள்ளதை வகைப்பறாடு மாற்றம் செய்து மனுதாரர் திரு. ராமன் மகன் குமரேசன் என்பவருக்கு பட்டா வழங்கலாம் எனப் பரிந்துரை செய்கிறேன் என்பதை பணிவுடன் தெரிவித்துக்கொள்கிறேன்...”.

From the above report, it is very clear that the suit property was wrongly mentioned as park while the Town Survey and the registration in the register as Government Poramboke Park has been changed and patta was issued to the plaintiff. Therefore, there is no question of law for deciding in this second appeal. The documents sought to be received are not necessary and the petitions filed by both parties for receiving additional documents have to be dismissed.

24. From the above facts it is clear that the Courts below found correct findings based on evidences adduced in the case. The said findings deserves no interference by this Court by way of Second Appeal. Hence, the questions of law framed in this appeal are answered against the appellant/4th defendant. Thus, this Second Appeal fails. The petitions to receive additional documents are also liable to be dismissed.



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25. In the result, the Second Appeal is dismissed. The the judgment and decree, dated 19.02.2013 passed in A.S.No.17 of 2011 on the file of the learned Subordinate Judge, Paramakudi, partly reversing the judgment and decree, dated 30.08.2010 passed in O.S.No.59 of 2008 on the file of District Munsif Court, Paramakudi, is confirmed. No costs. Consequently, connected C.M.P.(MD)No.17661 of 2025 and C.M.P.(MD)No.18393 of 2025 in S.A.(MD)No.212 of 2024 are dismissed and other connected C.M.P(MD)No.4265 of 2024 is closed.

19.02.2026

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

To

1.The Subordinate Judge,
Paramakudi.

2.The District Munsif,
Paramakudi.

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.212 of 2024
and
C.M.P(MD)Nos.18393, 17661 and 4265 of 2024**

19.02.2026