

SA(MD).No.196

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Judgment reserved on 02.06.2026

Judgment pronounced on
12.06.2026

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THE HON'BLE MR. JUSTICE P.B.BALAJI

SA(MD) No.196 of 2017 and
CMP(MD).No. 3741 of 2017

Dhanavel

.. Appellant / Defendant

Vs.

Thiruvaiyarusri Pancha Nathe,
Eswara Swamy Devasthanam and its
Hereditary Trustee, Sri-La-Sri
Masilamani Desiga Gnanasambantha Paramchariya
Swamigal.

(amended vide Court order dated 04.12.2023
made in SA(MD).No.196 of 2017 by SSYJ)

.. Respondent / Plaintiff

Prayer: Second Appeal filed under Section 100 CPC to call for records relating to the Judgment and Decree passed in A.S.No.71 of 2005 on the file of the Principal Sub Court, Thanjavur dated 13.04.2016 set aside the same and confirm the Judgment and Decree passed in O.S.No.146 of 2003 on the file of the learned District Munsif Court, Thiruvaiyaru, dated 17.03.2005.

For Appellant : Mr. M. Muthugeethayan

For respondent : Mr. V. Meenakshi Sundaram



JUDGMENT

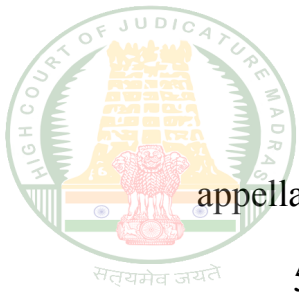
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The unsuccessful defendant suit for recovery of possession is the appellant, aggrieved by the reversal findings rendered by the First Appellate Court, which granted a decree in of the plaintiff, setting aside the dismissal the suit by the trial court.

2. I have heard Mr. M. Matha Geethayan, learned counsel appearing for the appellant, and Mr. V. Meenakshi Sundaram, learned counsel appearing for the respondent.

3. The second appeal, though of the year 2017, has not yet been admitted. and only notice was ordered at the time of admission. Today, I have heard the learned counsel for the appellant and the respondent finally.

4. The respondent / plaintiff filed a suit in O.S.No. 146 of 2003 before the District Munsif Court, Thiruvaiyaru, seeking recovery of possession of the property from the appellant/defendant. The suit was resisted by the appellant/defendant, contending that the defendant had acquired right by way of adverse possession and, further, that there was no lease or tenancy between the



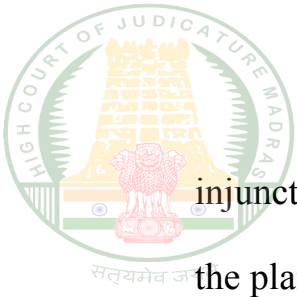
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appellant/defendant and the respondent/plaintiff, as alleged by the plaintiff.

5. At trial, the plaintiff examined Mr. Venkatraman, representing the plaintiff Devasthanam, as PWI and marked Exs. A1 to A7. On the side of the appellant/defendant, he examined himself as DWI and one Samuthiram as DW2. and marked Exs. B1 to B10 on his side.

6. The trial court proceeded to non-suit the plaintiff, Devasthanam, and dismissed the suit. Aggrieved by the dismissal of the suit, the respondent Devasthanam filed A.S.No. 71 of 2005 before the Principal Subordinate Court, Thanjavur. The First Appellate Court, on re-appreciation of the oral and documentary evidence along with the pleadings, set aside the dismissal of the suit by the trial court and granted a decree for recovery of possession as prayed for.

7. Mr. M. Muthu Geethayan, learned counsel appearing for the appellant, firstly contended that the respondent/plaintiff came to Court with a case that the vacant land had been leased out to the appellant defendant and that, contrary to the plaintiff's admitted case, the First Appellate Court had granted a relief beyond what was prayed for by the plaintiff Devasthanam themselves by directing the removal of the superstructure put up by the appellant/defendant. He would, therefore, submit that, in the absence of a prayer for mandatory



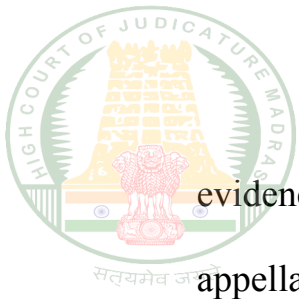
injunction with regard to the superstructure put up by the appellant/defendant,
the plaintiff is not entitled to any decree for recovery of possession.

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8. Mr. M. Muthu Geethayan, learned counsel appearing for the appellant/defendant, would also contend that, even in the year 1971, patta was issued by the Government in favour of the defendant's father and that the same was never objected to by the plaintiff / Devasthanam at any point of time. He would further submit that, when the appellant / defendant had paid property tax and obtained tax receipts in his name for a period of nearly over 12 years, the defendant had clearly perfected title by way of adverse possession and, therefore, the suit for recovery of possession is not maintainable.

9. Mr. M. Muthu Geethayan, learned counsel for the appellant, would further contend that the agreement relied upon by the plaintiff/Devasthanam, portraying the appellant/defendant as an alleged tenant, was a created and fabricated document, and that no rights can flow under such agreement in favour of the plaintiff/Devasthanam.

10. Per contra, Mr. V. Meenakshi Sundaram, learned counsel appearing for the respondent/plaintiff, would firstly contend that the First Appellate Court has rightly analysed the pleadings in line with the oral and documentary



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evidence adduced by the parties in order to arrive at the conclusion that the appellant / defendant was inducted into the suit property only as a tenant. It is the further contention of Mr. V. Meenakshi Sundaram that, after having obtained permission to carry out repairs pending the suit, the appellant/defendant put up a pucca construction and, therefore, the appellant cannot take advantage of the same, especially when the construction was raised by him during the pendency of the proceedings, and contend that the suit for recovery of possession, without a prayer for mandatory injunction, is not maintainable. Further, Mr. Meenakshi Sundaram also took me through the plaint and, in particular, the schedule to the plaint, wherein the suit property has not been described merely as vacant land, but referring also to the door number assigned to the property. He would submit that it is therefore, evident that what had been let out was not merely vacant land, but land together with a superstructure. Mr. Meenakshi Sundaram would, therefore, contend that no interference is warranted with the well-considered findings of the First Appellate Court in exercise of jurisdiction under Section 100 of the Code of Civil Procedure.

11. I have carefully considered the submissions advanced by the learned counsel appearing for either party.

12. The plaintiff, Devasthanam, sought recovery of possession and mesne



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profits by filing the suit in O.S. No. 146 of 2013. According to the plaintiff, the defendant's father, one Pitchai Moopnar, had entered into a lease agreement with the plaintiff/Devasthanam, and liberty was given to the defendant's father to put up a superstructure, with the condition that, at the end of the lease period, the defendant's father would surrender vacant possession of the property. A pre-suit notice was issued to the defendant claiming recovery of possession and mesne profits, and in view of the reply notice denying the plaintiff's right having been issued, the plaintiff/Devasthanam filed the suit. As already discussed, the case of the defendant, in defence, was that the defendant had been in enjoyment of the property for more than 12 years, and his father had, in fact, constructed the superstructure even in the year 1976. Patta was issued in favour of the defendant's father, and the defendant had been paying property taxes for the superstructure in his name. In fact, earlier the First Appellate Court had heard the appeal and allowed the same, which was challenged before this Court in SA(MD) No. 242 of 2008. This Court remitted the matter to the First Appellate Court, permitting the plaintiff to mark additional documents. Thereafter, Exs. A8 to A12 were marked on the side of the plaintiff through PW-2, who was examined on behalf of the plaintiff/Devasthanam. PW-2 was also cross-examined by the appellant/defendant. The additional documents were considered by the First Appellate Court, which came to the conclusion that the plaintiff's temple had proved title to the suit property and also that lease deeds



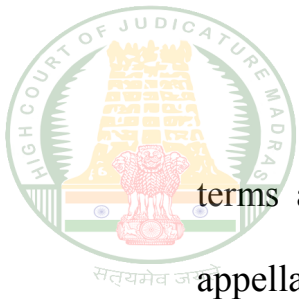
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had been executed in favour of the defendant's father, Pitchai Moopanar, as evidenced by Exhibit A-7.

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13. On going through the additional documents, as well as Ex. A-7, the lease deed, and the evidence adduced by the parties pertaining to these exhibits. I am unable to find any perversity or impropriety in the findings of the First Appellate Court in holding that the plaintiff/Devasthanam was entitled to the suit property and that the defendant's father was inducted only as a tenant. Interpreting the terms of Exhibit A-7, the First Appellate Court also found that the defendant's father had undertaken to remove the superstructure on the suit property before surrendering vacant possession to the respondent/plaintiff.

14. The First Appellate Court has also rightly found that, though the defendant categorically claimed that patta was issued by the government in his father's name, no such document was exhibited to establish the contention taken in the written statement. The construction of the superstructure, as rightly held by the First Appellate Court, would not confer any rights on the defendant or his father, especially in light of the specific recital in Ex. A-7 - the lease deed - permitting the defendant's father to put up the superstructure and pay property taxes, with a further clause that the defendant's father had to surrender vacant possession at the end of the lease period. It is only in furtherance of the said



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terms and conditions of Ex. A-7 that the First Appellate Court directed the appellant/defendant to remove the superstructure put up on the suit property and thereafter surrender vacant possession.

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15. I do not find that the said direction issued by the First Appellate Court suffers from any excess. Merely because the defendant has put up pucca construction on the suit property, pending the suit, under the guise of carrying out alterations and repairs, will not mulct the respondent/plaintiff with a requirement to seek relief by way of mandatory injunction regarding the superstructure put up by the appellant/defendant, pending the suit.

16. In any event, as pointed out by the learned counsel for the respondent/plaintiff, even though the original lease in favour of the appellant's father was only in relation to vacant land, in view of the agreement in Ex.A-7 and the terms agreed upon between the plaintiff/Devasthanam and the defendant's father, whereby the appellant's father was conferred the right to put up construction, pay property tax, and surrender possession at the end of the lease period, coupled with the fact that the respondent/plaintiff has specifically mentioned the door number of the property, namely the building, in the schedule while describing the suit property, I do not find the prayer for recovery of possession simpliciter to be fatal to the case of the plaintiff, notwithstanding



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the absence of a prayer for mandatory injunction for removal of the superstructure.

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17. The First Appellate Court has held that, in the absence of acceptable documentary evidence, more specifically the patta, which was claimed by the defendant to have been issued in favour of his father and which was not even produced on the side of the appellant/defendant, the defendant could not successfully set up a plea of adverse possession. The First Appellate Court has also applied Section 109 of the Tamil Nadu Hindu Religious and Charitable Endowments Act, 1959. The First Appellate Court has rightly held that the plaintiff/Devasthanam, being a religious institution, is not barred by any period of limitation in seeking recovery of possession. In the light of the above, I do not find any substantial question of law arising for consideration in the present second appeal warranting interference with the findings of the First Appellate Court, which are based on the pleadings as well as the oral and documentary evidence available on record. Thus, no interference is warranted under Section 100 of the Code of Civil Procedure, and there is no merit in the second appeal.

18. Before parting, it would also be appropriate to record that, before finally hearing the second appeal, the appellant's counsel had suggested that the matter could be resolved by mediation and conciliation, and that, even if one



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opportunity is given to the appellant to meet the officials of the respondent/plaintiff, then the appellant could attempt an arrangement whereby his possession could continue to be protected, especially considering the fact that the appellant has spent substantially, in putting up a pucca construction. In order to enable the parties to work out an amicable settlement, I had also adjourned the matter on 27-04-2026, giving liberty to the appellant to meet the hereditary trustee of the respondent. In furtherance of the said order, the learned counsel for the appellant had also diligently informed the appellant about the liberty granted by the Court. However, the appellant has not chosen to take advantage of the same and has abstained from meeting the hereditary trustee of the respondent/Devasthanam.

19. In fact, it was also brought to my notice by Mr. M. Muthu Geethayan, learned counsel for the appellant, that even the listing of the second appeal for hearing on 02.06.2026 had been informed to the appellant's daughter-in-law, and despite the same, the appellant has not shown any interest in availing of the opportunity granted to the appellant to try to reach a settlement with the respondent/Devasthanam.

20. In view of the above, after having considered the appeal on its own merits, I am unable to show any further indulgence to the appellant. As already



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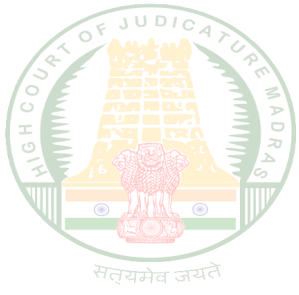
stated, there is no merit in the second appeal, and it does not involve any substantial question of law. Accordingly, the Second Appeal is dismissed. The appellant shall hand over vacant possession of the suit property on or before 31.08.2026. No costs. Consequently, the connected Miscellaneous Petition is closed.

12.06.2026

Neutral Citation Case : Yes / No
Speaking / Non-speaking order
Index : Yes/No
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To

1. The Principal Sub Court, Thanjavur.
2. The District Munsif Court, Thiruvaiyaru.



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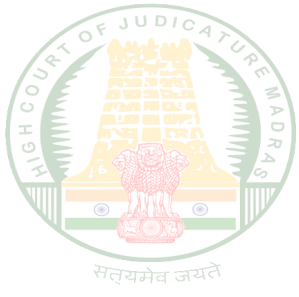


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P.B.BALAJI.J.

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Pre-delivery Judgment made in
SA(MD) No.196 of 2017 and
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