

Parthiban vs Velayutham

Parthiban vs Velayutham

SooperKanoon Citation : sooperkanoon.com/1787986

Court : Chennai

Decided On : May-22-2025

Judge : Honourable Mrs.Justice R. Kalaimathi

Appeal No. : SA/15/2011

Appellant : Parthiban

Respondent : Velayutham

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.05.2025

CORAM:

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI and M.P.No.1 of
2011 Parthiban ... Appellant/Defendant Vs.

1. Velayutham
2. The District Collector, Villupuram Distict.
3. The Tahsildar,

Thiruvennainallur Taluk, Villupuram District. (R2 & R3 suo motu impleaded vide order dated 22.05.2025 made in S.A.No.15 of 2011 by RKMJ) ... Respondents/Plaintiffs This Second Appeal is filed under Section 100 of C.P.C. to set aside the decree and Judgment dated 13.08.2010 passed in A.S.No.33 of 2002 on the file of the Principal District Court, Villupuram, reversing the decree and

Judgment dated 28.11.2001 passed in O.S.No.155 of 1999 by the II Additional

District Munsif Court, Tirukoilur. For Appellant : Mrs.V.Srimathi For Respondent : Mr.R.Rajarajan for Mr.R.Balakrishnan

JUDGMENT

This second appeal has been preferred by the sole defendant, Parthiban S/o.Thanappan against the Judgment and Decree dated 13.08.2010 passed in A.S.No.33 of 2002 by the Principal District Court, Villupuram.

2. The parties are indicated herein as per their litigative status and ranking made before the Trial Court.

3. According to the plaintiff, the suit property originally belonged to

Pitchaikara Gounder, S/o.Periya Gounder. The said Pitchai Gounder had been in possession and enjoyment of the suit property by putting up thatched house and residing in the same and keeping the cattles, hay bales and the existing lease in the suit property became vacant the thatched house put up

on the suit property worn out as moth eaten. The plaintiff purchased the suit property from 05.08.1996 for a consideration of Rs.3490/- under registered sale deed from Pitchaikara Gounder for himself and as a guardian for minor son Ganesan and he has been in possession and enjoyment of the suit property by residing in the thatched house. In the year 1990, he replaced the thatched house by constructing a tiled house

in the suit property and abutting the northern side of tiled house he constructed a house before year. He has been paying house tax for the house constructed upon the suit property. He has obtained loan depositing the original sale deed with Villupuram Kadhi and Village Handicrafts Centre and to prove the same has filed a letter dated 22.10.1994 of the Kadhi and Village Handicrafts Centre.

3.1. The plaintiff has also prescribed title by adverse possession by enjoying the property for more than 12 years. The defendant has no right or title over the suit property. The defendant tried to encroach into the suit property on 17.04.1999 and the plaintiff prevented him. Hence, the suit.

4. Contending contra, the defendant would state that the defendant has

encroached upon the suit property, constructed a small hut and he has been in possession and enjoyment of the same. Thereafter, the same was replaced by a tiled house and he is in possession and enjoyment of the said tiled house. He also is running a shop in the eastern side of the property. For the house and shop in respect of the new S.No.162/9, patta has been granted in his name under Natham land tax scheme in patta No.202. He has been paying house tax for the suit property and obtained license from the Thiruvannainallur Panchayat Union for the shop. He obtained electricity connection from the Tamil Nadu Electricity Board in service connection No.346 and paying the electricity consumption charges. He has also obtained loan by creating equitable mortgage with Thirukovilur Co-operative Housing Society, being a member of the Society (Member No.7966). On the northern side of the tiled house, he constructed RCC house on the Poromboke property and he has been residing thereon. The tiled house and RCC house put up in the suit property belongs to the defendant and the plaintiff does not have right or title over the same.

5. Based on the divergent pleadings, the Trial Court framed relevant

issues. At trial, to substantiate the plaint details, on the plaintiffs side, two witnesses have been examined and fourteen documents were marked. Ex.A1 is the copy of the Sale Deed dated 05.08.1986, executed by Pitchaikara Gounder and his minor son viz, Ganesan in favour of the plaintiff in respect of the suit property. On the defendant side, four witnesses were examined and 109 documents have been marked. Ex.B1 dated 08.07.1997 is the patta granted under Natham Land Tax Scheme in the name of defendant. Ex.B.105 is the patta granted after rectification made by the District Revenue Officer, Thirukovilur in Patta No.202. The relevant proceedings issued by the District Revenue Officer, Thirukovilur is Ex.B.106 dated 07.02.2000.

6. The trial Court upon consideration of oral and documentary evidence

and after hearing the arguments advanced by either side, has concluded that the plaintiff has not filed any document to prove his possession over the suit property and hence, the plaintiff was non-suited.

7. Aggrieved, the plaintiff preferred appeal before the Principal District

Court, Villupuram in A.S.No.33 of 2002. Upon consideration of case records and after hearing the arguments advanced by both sides counsels, based on Ex.A17 - Order of the District Revenue Officer in Na.Ka.No.3/2494/2003 dated 10.02.2005, the Judgment of the Trial Court was reversed by decreeing the suit allowed the appeal.

8. Against the said findings of the First Appellate Court, the defendant has preferred this Second Appeal.

9. The suit is laid by the plaintiff for the relief of declaration and for

permanent injunction of the suit property in Gramanatham R.S.No.45/2 to an extent of 0.02 cents of land inclusive of tiled and RCC House constructed at Thiruvannainallur Sub Division, Villupuram District.

10. The suit property is gramanatham. It is relevant to refer to the

observations made by the Apex Court in the case of State of Himachal Pradesh v. Milkhi Ram (dead) represented by LRs. and Others reported in 2007 (15) SCC 750, wherein the Hon'ble Supreme Court has observed that

the trial Court, having noticed that, prima facie, the suit property vested in the State Government and no effective decree could be passed without impleading the State, being a proper party, ought to have directed the plaintiffs to implead the State or the Court itself could have directed impleadment of the State. It was further observed that even in the first appeal, the District Judge though issued notice to the Collector to intervene in the matter, did not think it proper to direct impleadment of the State as respondent. It was the further observation of the Hon'ble Supreme Court that having regard to the fact that the property, prima facie, vested in the State Government, opportunity should have been given to the State to contest the claim of the plaintiffs and direction was given to implead the State as additional defendant in the suit and remand the suit to the trial Court.

11. As observed by the Hon'ble Supreme Court in the State of

Himachal Pradesh vs. Milkhi Ram (dead) represented by LRs. and Others reported in 2007 (15) SCC 750, when the suit property is vested in the State Government, then the State is the proper party to decide the case

effectively and to safeguard the interest of the State, the Tahsildar of Tiruvennainallur and the Collector of Villupuram have to be made as necessary parties so as to give an opportunity to the State to file its written statement to lead evidence if necessary. Therefore, this Court is of the considered view that to remand the suit to the Trial Court with the direction, would serve the purpose in entirety. The District Collector of Villupuram and the concerned Tahsildar are suo motu impleaded by this Court.

12. Based on the aforesaid discussions, this second appeal is

remanded back to the Trial Court with directions i) to issue notice to the newly impleaded defendants ii) to receive the written statements from them iii) to afford an opportunity to cross examine the plaintiffs' side witnesses and to adduce evidence on their side v) to hear arguments of both sides and thereafter to pass Judgment on merits, preferably within a period of six months from the date of receipt of copy of this Judgment.

13. The Second Appeal is disposed of accordingly. There is no order as to costs. Consequently, connected miscellaneous petition is closed. 22.05.2025
Internet:Yes Index:Yes/No

Speaking/Non speaking order

kkd To

1. The Principal District Court, Villupuram.
2. II Additional District Munsif Court, Tirukoilur.

R.KALAIMATHI,J.

kkd 22.05.2025

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com