

Pandiyan Vs Faritha Begum

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Court : Chennai

Decided On : Apr-30-2025

Judge : Honourable Mrs Justice T.V.Thamilselvi

Appeal No. : SA/338/2025

Appellant : Pandiyan

Respondent : Faritha Begum

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-04-2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI AND CMP NO. 10317 OF 2025 Pandiyan Appellant Vs Faritha Begum Respondent
PRAYER:-Second Appeal filed under Sec.100 of Civil Procedure Code, praying to set aside the Judgment and Decree order dated 10.02.2025 passed in AS No. 55/2023 on the file of Subordinate Judge, Thiruthuraipoondi, Thiruvavur District in reversing the Judgment and Decree dated 31.01.2020 in OS No. District and allow above Second Appeal. For Appellant: Mr. S.Arivazhagan For Respondent: Mr. S.Senthil

JUDGMENT

The appellant, who is the plaintiff filed the suit for the relief of permanent injunction before the trial court in O.S. No. 72 of 2018 on the file of District Munsif, Thiruthuraipoondi and the same was granted by the trial court. Against which, the defendant an appeal in A.S.No.55 of 2023 on the file of Subordinate Court, Thiruthuraipoondi and the same was allowed by setting aside the findings of the trial court. Now, challenging the reversal findings of first appellate court, the plaintiff preferred this Second Appeal.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, the plaintiff filed a suit seeking for the relief of

permanent injunction not to cause interference in enjoyment of the property. The trial court has granted the relief, against which, an appeal was preferred by the defendant in A.S.No.55 of 2023, wherein the first appellate judge has held that the defendant is the owner of property and the plaintiff has not established that he is cultivating the land as a cultivating tenant by relying Ex.B10 Adangal,

wherein there is no endorsement that the plaintiff is cultivating the land as a cultivating tenant. The plaintiff has not produced any document that he is a cultivating tenant. Therefore, the first appellate judge allowed the appeal by dismissing the suit. Challenging the said findings, the plaintiff preferred this Second Appeal by raising the following grounds for consideration :-

(a) The judgment and decree of the first appellate court is against law, weight of evidence and probabilities and equalities of the case.

(b) It is submitted that the suit in O.S.No. 72 of 2018 was filed by

the appellant praying for permanent injunction restraining the respondent herein from interfering with the peaceful possession and enjoyment of the schedule property therein. The said suit was allowed as prayed for. Aggrieved by the said

judgment and decree, the respondent herein had filed appeal

suit before the Subordinate Judge, Thiruthuraipoondi whereby the decree of the trial court has been set aside.

(c) The case of appellant is that the suit schedule property

belonged to respondent's husband whom the appellant was cultivating tenant from the year 2001. The lease was renewed from time to time. After demise of the respondent's husband, the problem had been started by the respondent herein. The

appellant had marked documents Ex.P1 to Ex.P4 would disclose that the plaintiff is cultivating tenant and is in possession of the property therein. However, the respondent/defendant herein had frequently disturbed the peaceful possession of the plaintiff cultivation, there was no other way, the plaintiff had filed suit for bare injunction and the same was allowed by the trial court. However, the decree of the trial court was reversed in appeal suit.

4. The learned counsel for appellant would also submit that the first appellate court has not properly appreciated the documents relied on by the plaintiff before the trial court.

5. On bare perusal of the findings of the first appellate court, it reveals

that the defendant is the owner of suit property. The plaintiff claimed himself as a cultivating tenant. Before the trial court, he has not produced any document to show that he is cultivating the land as a cultivating tenant. On the date of filing the suit, he relied only three documents, which were also not established that on the date of suit, he is cultivating

the land as a cultivating tenant. The suit was

filed in the year of 2018, but the plaintiff had produced a certificate issued by the Village Administrative Officer in the year 2011 except that he has not produced any document to prove that he is cultivating the land as a cultivating tenant. Therefore, the first appellate judge has rightly allowed the appeal, which needs no interference. Hence, there is no question of law involved for consideration of this Second Appeal and the same is liable to be dismissed. However, the plaintiff is cultivating the land as a cultivating tenant, but there is no proof to prove the same as such he is illegally occupying. Six months time is granted to the plaintiff to vacate and hand over possession to the defendant from the date of receipt of copy of this judgment. Accordingly, this Second Appeal is dismissed with a direction and the findings of the first appellate court in A.S.No.55 of 2023 are confirmed. Suit is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

30-04-2025 rpp Index:Yes/No

Speaking/Non-speaking order

Internet:Yes Neutral Citation:Yes/No To

1. Subordinate Court, Thiruthuripoondi.
2. District Munsif, Thiruthuraipoondi.
3. Section Officer, VR Section, Madras High Court. T.V.THAMILSELVI J. rpp AND CMP NO. 10317 OF 2025 30-04-2025

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