WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10-11-2026

Pronounced on : 18-11-2026

CORAM

THE HON'BLE MRS. JUSTICE THIRUMAGAL CHANDRASEKAR

SA No. 519 of 1993

CNR:{HCMD012827242017}

Case QR

1. Jebamalai(died)

2. Simian(died)
   S/o. Late Jebamalai, Thiruppakottai Village,
   Devakkottai Taluk, Sivagangai District.

3. Natchathiram,
   W/o. Arokiachamy, Thiruppakottai Village,
   Devakkottai Taluk, Sivagangai District.

4. Arokiamary(died)
   W/o. Arulandu, Thiruppakottai Village,
   Devakkottai Taluk, Sivagangai District.

5. Maria Rathinam(died)
   S/o. Late Jebamalai, Thiruppakottai Village,
   Devakkottai Taluk, Sivagangai District.

6. Amalraj,
   S/o. Late Jebamalai, Thiruppakottai Village,
   Devakkottai Taluk, Sivagangai District.

7. Pathianathan(died)
   S/o. Late Jebamalai, Thiruppakottai Village,
   Devakkottai Taluk, Sivagangai District.

8. Sebasthiammal(died)
   W/o. Michealchamy, Thiruppakottai Village,
   Devakkottai Taluk, Sivagangai District.
   Appellants 2 to 8 are brought on record as LRs of
   the deceased Sole

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

Appellant as per the order of this Court dated 15.11.2017 made in MP(MD)Nos. 1 to 4 of 2010 in SA.No.519 of 1993 by MKKSJ and also the consequential order dated 04.04.2025 by GIJ.

9. Arulsamy,
S/o. Late Simianraj, Thiruppakottai Village,
Devakkottai Taluk, Sivagangai District.

10. Anburaj,
ruppakottai Village, Devakkottai Taluk,
Sivagangai District.S/o.Late Simianraj, Thi

11. Selvi,
W/o.Chinnappan, Allikottai, Thiruvadanai,
Ramanathapuram District.

12. Vimalamary,
W/o.Devaraj, Krishnapuram, Manamelkudi Post,
Aranthangi Taluk, Pudukkottai District.

13. Pushpalatha,
W/o.Prakash, Thuthakudi, Thiruvadanai Taluk,
Ramanathapurm District.

14. Anitha,
W/o.Rajivgandhi, Pannavayal, Thiruvadanai
Taluk, Ramanathapuram District.

15. Arulmary,
W/o.Simianraj, Thiruppakottai Village,
Devakkottai Taluk, Sivagangai
District.Appellants 9 to 15 are brought on record as LRs of the deceased 2nd
Appellant vide court order dated 09.02.2024
made in CMP(MD)Nos. 10255 to 10257 of 2017
in SA.No.519 of 1993 by MSKJ.

16. Amalapuspham,
W/o.Pudhumairaj, Hanumanthakudi, Devakottai
Taluk, Sivagangai District.

17. Immanuel,
S/o.Arulandhu, Hanumanthakudi, Devakottai

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

Taluk, Sivagangai District.

18.Selvi,
W/o.Jebamalaidas, Thiruppunavasal,
Avudaiyarkovil Taluk, Pudukkottai District.

19.Jeyamary,
W/o.Jothi, Velimangalam, Aranthangi Taluk,
Pudukkottai District.

Appellants 16 to 19 are brought on record as LRs of the deceased 4th Appellant vide court order dated 09.02.2024 made in CMP(MD)Nos. 10255 to 10257 of 2017 in SA.No.519 of 1993 by MSKJ.

20.Annammal,
W/o.Late Maria Rathinam, Thiruppakottai
Village, Devakkottai Taluk, Sivagangai District.

21.Justin Thiraviyam,
S/o.Late Maria Rathinam, Thiruppakottai Village,
Devakkottai Taluk, Sivagangai District.

22.Vimala,
D/o.Late Maria Rathinam, Sithamangalam
Village, Antavoorani Post, Thiruvadanai Taluk,
Ramanathapuram District.

Appellants 20 to 22 are brought on record as LRs of the deceased 5th Appellant vide court order dated 09.02.2024 made in CMP(MD)Nos. 10255 to 10257 of 2017 in SA.No.519 of 1993 by MSKJ.

23.Sebasthiammal,
W/o.Late Pathianathan, Thiruppakottai Village,
Devakkottai Taluk, Sivagangai District.

24.Kumar(DIED)
S/o.Late Pathianathan, Thiruppakottai Village,
Devakkottai Taluk, Sivagangai District.

25.Baskar,
S/o.Late Pathianathan, Thiruppakottai Village,
Devakkottai Taluk, Sivagangai District.

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

26.Sathish,
S/o.Late Pathianathan, Thiruppakottai Village,
Devakkottai Taluk, Sivagangai District.

Appellants 23 to 26 are brought on record as LRs of the deceased 7th Appellant vide court order dated 09.02.2024 made in CMP(MD)Nos. 10255 to 10257 of 2017 in SA.No.519 of 1993 by MSKJ.

27.Michealsamy,
S/o. Arulandhu, 6/4Avarankudi, Perunthamarai,
Avudaiyarkovil Taluk, Pudukottai District.

28.Arokiajothi,
W/o. Arunkumar, Oriyur Thittai, Post
Thiruvadanai Taluk, Ramanathapuram District.

29.Arokiaprabu,
S/o. Michealsamy 6/4Avarankudi,
Perunthamarai, Avudaiyarkovil Taluk, Pudukottai District.

30.Stephen,
S/o. Michealsamy, 6/4Avarankudi, Perunthamarai,
Avudaiyarkovil Taluk, Pudukottai District.

Appellants 27 to 30 are brought on record as LRs of the deceased 8th Appellant vide court order dated 06.03.2026 made in CMP(MD) Nos.3035,3038 and 3039 of 2026 in SA.No.519 of 1993 by GRSJ.

31.Arokiyarosi,
W/o.Late.Kumar, Thiruppakottai Village,
Devakottai Taluk, Sivagangai District.

32.Minor.Alvin Roshan,
S/o.Late.Kumar, Thiruppakottai Village,
Devakottai Taluk, Sivagangai District.

33.Minor.Melvin Joyal,
S/o.Late Kumar, Thiruppakottai Village,
Devakottai Taluk, Sivagangai District. (32nd and

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

33rd Appellants are represented through her Mother and natural Guardian - 31st Appellant herein) Appellants 31 to 33 are brought on record as LRs of the deceased 24th Appellant vide court order dated 14.07.2026 made in CMP(MD) No.8895 of 2026 in SA.No.519 of 1993 by GRSJ.

.. Appellants / defendants

Vs

1. Sembaiah Udaiyar,(died)
   S/o.Muthaiah Udaiyar, Thiruppakottai Village,
   Devakottai Taluk, Sivagangai District.

2. Palaniammal,
   W/o.Sembiah Udaiyar, Thiruppakottai Village
   And Post, Devakottai Tk, Sivagangai Dist.

3. Gandhi,
   W/o.Kandasamy, Thiruppakottai Village And
   Post, Devakottai Tk, Sivagangai Dist.

4. Selvi,
   D/o.Swembiah Udaiyar, Village And Post,
   Devakottai Tk, Sivagangai Dist. D/o.Sembiah
   Udaiyar, Thiruppakottai

5. Suseela,
   W/o.Palanivelu, Thiruppakottai Village And
   Post, Devakottai Tk, Sivagangai Dist.

6. Kalaimani,
   D/o.Sembiah Udaiyar, Thiruppakottai Village
   And Post, Devakottai Tk, Sivagangai Dist.

   Respondents 2 to 6 are brought On Record As Lrs Of the Deceased Sole Respondent Vide Order Dated 31.03.2016 Made In Cmp(md)no. 2564 To 2566 Of 2016 In Sa.No.519 Of 1993 By Rmdj.

.. respondents / plaintiffs

PRAYER: Second Appeal filed under Section 100 CPC against the

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

judgment and decree dated 20.01.1992 and made in A.S.No.4/1990 on the file of Subordinate Court, Devakkottai, confirming the judgment and decree dated 23.12.1989 and made in O.S. No.188/1987 on the file of District Munsif Court, Devakottai.

For appellants :Mr. P.Muthusamy

For respondents : Mr.B.Muruganandam

JUDGMENT

This Second Appeal has been filed against the judgment and decree dated 20.01.1992 made in A.S.No.4 of 1990 on the file of the Subordinate Court, Devakkottai, confirming the judgment and decree dated 23.12.1989 made in O.S. No.188 of 1987 on the file of the District Munsif Court, Devakottai

2. The Brief Facts of the case are as follows:

(i). The plaintiff instituted the suit seeking a declaration that he is the absolute owner of the suit property, a permanent injunction restraining the defendant from interfering with his peaceful possession and enjoyment of the suit property, and costs.

(ii). The plaintiff's case is that the suit property is a nanjai land

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

situated in Thiruppakkottai Village, originally forming part of a larger extent of 1.18 acres classified as a common family property. According to the plaintiff, the said property was divided among himself, Kailasam Udayar and Ramu Udayar by way of an oral partition in the year 1970, and the suit property was allotted to his share. The plaintiff further contended that the property originally belonged to the Thiruvavaduthurai Adheenam as a Sarvamanyam inam land and that his predecessors-in-interest had been in possession and enjoyment of the same under the Adheenam. It was further averred that Muthappa Udayar was the original owner of the suit property and that, after his demise, his brother Ramu Udayar had been managing the property and had mortgaged the same to the defendant's father, Sivathiyan, for a sum of Rs.100/- for a period of 30 years under a usufructuary mortgage dated 25.03.1927. The said mortgage was subsequently redeemed on 20.08.1955 by Muthaiya Udayar, the son of Ramu Udayar, by paying the mortgage amount to the defendant and his brothers. Thereafter, the mortgaged property was divided, whereby an extent of 42 cents on the western side was allotted to the plaintiff's father, 38 cents adjoining thereto was allotted to Muthaiya Udayar, and the remaining 38 cents on the northern side was allotted to Chinnaiya Udayar. The plaintiff claimed that the suit property comprised in Survey No.371/8, Patta No.352, was in his possession and enjoyment and that he had been

https://www.mhc.tn.gov.in/judis
(Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

paying the kist regularly. He also relied upon the notice dated 12.12.1986 issued under Section 9(2) of the Tamil Nadu Land Reforms Act. According to the plaintiff, after the redemption of the mortgage, the defendant had no subsisting right over the suit property. However, on 10.06.1987, when the plaintiff attempted to cultivate the land, the defendant obstructed him, which necessitated in the filing of the suit.

(iii). The defendant resisted the suit by filing a written statement, denying the plaintiff's claim of title and possession. The defendant admitted the alleged partition of the larger extent of land in the year 1970, but denied that the suit property had been allotted to the plaintiff. According to the defendant, the suit property originally belonged to the Ramanathapuram Samasthanam, and his predecessors-in-interest had been in possession and enjoyment of the same. The defendant further contended that the Thiruvavaduthurai Adheenam had granted pattas in favour of his predecessors and that, during the settlement proceedings, patta had been granted in his favour in respect of the suit property under Patta No.1199. He denied the alleged mortgage dated 25.03.1927 and its redemption on 20.08.1955, as well as the plaintiff's claim of title and possession. It was therefore contended that the suit property belonged to the defendant and had been in his possession and enjoyment for several years, and that the

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

suit was liable to be dismissed.

(iv). Before the trial court, on the side of the plaintiff five witnesses were examined as PW.1 to PW.5 and thirteen documents were marked as Exs. A1 to A13, on the side of defendant four witnesses were examined as DW.1 to DW.4 and eight documents were marked as Exs B1 to B8.

(v). The Trial Court, upon consideration of the oral and documentary evidence, decreed the suit in favour of the plaintiff. Aggrieved by the same, the defendant preferred an appeal before the First Appellate Court, which dismissed the appeal.

3. Challenging the concurrent findings of the courts below, the appellant / defendant has preferred the present Second Appeal.

4. This second appeal was admitted on the following substantial questions of law:-

` *(a). Whether the findings of the courts below are sustainable after having held that Ex. A1 cannot be acted upon and inadmissible in evidence?*

(b). Whether the findings of the courts below are

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

sustainable in view of the fact that Ex. B6 to B8 would go to show that the appellant was in possession of the suit properties for a very long time and having found that the appellant was in actual possession of the suit properties?

5. Heard Mr. P. Muthusamy, learned counsel appearing for the appellants and Mr. B. Muruganandam, learned counsel appearing for the respondents and perused the materials available on record.

6. The suit property is an Alanchai land comprised in Survey No.371/8, measuring an extent of 42 cents. The case of the respondent / plaintiff is that the suit property originally belonged to his grandfather, Sembaiah Udayar. One of his sons, viz., Ramu Udayar, had mortgaged the suit property in favour of Sivathiyan, the grandfather of the appellant / defendant, under a mortgage deed dated 25.03.1927. The said mortgage was subsequently redeemed on 20.08.1955 by repaying the mortgage amount to the legal heirs of Sivathiyan. Anthony and Jebamalai are the sons of Sivathiyan, and Jebamalai is the appellant / defendant herein.

7. It is the further case of the respondent / plaintiff that the suit property, along with the adjoining properties situated on the northern side, originally belonged to his grandfather, Sembaiah Udayar, and was

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

subsequently partitioned among the family members. In the said partition, an extent of 42 cents, comprising the suit property, was allotted to the respondent / plaintiff's father, Muthaiya Udayar, while an adjoining extent of 38 cents situated to the north was allotted to Ramu Udayar and a further extent of 38 cents situated beyond the said property was allotted to Chinnaiya Udayar. Subsequently, a family partition took place between the respondent / plaintiff and his brothers on 03.11.1970, under which the suit property was allotted to the share of the respondent / plaintiff. Thereafter, the respondent / plaintiff continued to be in possession and enjoyment of the suit property and regularly paid kist. When he went to the suit property for cultivation on 10.06.1987, the appellant / defendant obstructed him, which necessitated in the filing of the suit seeking the relief of declaration of title and permanent injunction.

8. Per contra, the appellant / defendant contended that the suit property originally belonged to his ancestors and that they had been in possession and enjoyment of the same for a considerable period. In support of his claim, the appellant / defendant relied upon the patta, adangal and kist receipts standing in the name of his grandfather, Adithan, and contended that the respondent / plaintiff had no right or title over the suit property.

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

9. The Trial Court, upon appreciation of the oral and documentary evidence, found that the documents relied upon by the appellant / defendant, namely, the patta, adangal and kist receipts, related to the period during which the suit property had been given on othi (mortgage) to the appellant / defendant's grandfather under Ex.A2. The Courts below further found that the said documents could establish the possession and enjoyment of the appellant / defendant's grandfather during the subsistence of the mortgage, but would not establish any independent right or continued possession after the redemption of the mortgage in the year 1955. On the other hand, the respondent / plaintiff had established his possession and enjoyment of the suit property subsequent to the redemption of the mortgage through the oral and documentary evidence, including the kist receipts and the testimony of the revenue official. Accordingly, the Courts below held that the respondent / plaintiff was entitled to the reliefs of declaration and permanent injunction.

10. The admissibility of Ex.A1, the partition list written in a notebook, on the ground that it is an unregistered document. In this regard, it is necessary to examine the recitals contained in Ex.A1, dated 03.11.1970, which read as follows:

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

"1970 ம் வருடம் நவம்பர் மாதம் 3ம் தேதி திருப்பாக் கோட்டைக் கிராமத்தி லிருக்கும் ப.செ.மு.ப.முத்தையா உடையார் மக்கள் செம்பையா உடையார்-1, கைலாசு உடையார் 2, ராமுடையார் 3 மூன்று பேர்களும் எங்கள் தகப்பனார் முத்தையா உடையார் பொதுக் குடும்பத்தில் மூன்றில் ஒரு பாகம் சென்ற பின் அவருக்குக் கிடைத்த பாகத்தை அவர் காலம் சென்றப்பின் நாங்கள் உள்நாட்டுப் பஞ்சாயத்தார் முன்னிலையில் பாகம் செய்து கொண்டதில் மேல் கண்ட ப.செ.மு.ப. முத்தையா உடையார் மகன் செம்பையா உடையாருக்கு பாகப்பிரிவிசைாத்து விபரம்:

திருப்பாக்கோட்டைக் குரூப் திருப்பாக்கோடைகிராமம்		
சர்வே நம்பர்	***விபரம்***	***அளவு***
371/8	***நன்செய் ஆலஞ்செய்***	*0.42* ***சென்ட்***

11. A perusal of the above recitals in Ex.A1 reveals that the property comprised in Survey No.371/8, described as Nanjai Alanchai, measuring an extent of 42 cents, was specifically included in the list of properties allotted to Sembaiah Udayar. The survey number, classification and extent correspond to the suit property. Therefore, Ex.A1 assumes significance in

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

determining the respondent / plaintiff's claim regarding the allotment of the suit property in the family partition dated 03.11.1970.

12. The objection raised by the appellant / defendant is that Ex.A1 is an unregistered document and, therefore, cannot be relied upon to establish the partition. However, it is to be seen that Ex.A1 is a list of properties found in a notebook. The Courts below have considered the same along with the other documentary evidence, particularly Ex.A2, the mortgage deed and the endorsement relating to its redemption, and the oral evidence adduced on the side of the respondent / plaintiff. The document has been considered in the context of the other evidence available on record to ascertain the family arrangement and the subsequent possession and enjoyment of the respective sharers.

13. It is relevant to note that the respondent / plaintiff has also examined PW2 and PW3, who spoke about the family partition, and PW5, the Village Assistant, who corroborated the respondent / plaintiff's possession and payment of kist. Further, Exs.A3 to A10, being the kist receipts, support the respondent / plaintiff's case regarding his possession and cultivation of the suit property. Therefore, even assuming that Ex.A1 cannot be relied upon as an instrument creating or declaring rights in

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

immovable property for want of registration, the same could be looked into for a collateral purpose, subject to the requirements of law. Thus, the Courts below have not solely relied upon Ex.A1 to grant the relief in favour of the respondent / plaintiff, but have considered it along with the other oral and documentary evidence available on record.

14. With regard to the second substantial question of law, the appellant / defendant relied upon Exs.B6 to B8, which relate to Fasli years 1343, 1348 and 1356, corresponding to the years 1943, 1939 and 1947, respectively, as stated in the records. Though the said documents stand in the name of the appellant / defendant's grandfather, it is to be noted that the suit property had been mortgaged in his favour under Ex.A2 dated 25.03.1927, and he had been cultivating the property during the subsistence of the mortgage. Therefore, the entries in the patta, adangal and kist receipts relied upon by the appellant / defendant have to be considered in the light of the mortgage transaction and the nature of possession held by the mortgagee.

15. The Courts below, upon appreciation of the evidence, found that Exs.B6 to B8 related to the period during which the property was under othi with the appellant / defendant's grandfather. The possession and

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

cultivation of the property by the mortgagee during the subsistence of the mortgage would not, *per se*, establish any independent right or title in his favour. *Nemo dat quod non habet* which means no person can confer a better title than he himself possesses by which in this case the mortgagee's possession being referable to the mortgage transaction, his successors cannot claim a superior title merely on the basis of revenue entries. Further, the said documents would not establish the appellant / defendant's continued possession and enjoyment of the suit property after the mortgage was redeemed on 20.08.1955. On the other hand, the respondent / plaintiff had established his possession and enjoyment subsequent to the redemption through the kist receipts and the oral evidence of PW5, the Village Assistant, who had issued the receipts and spoken about the respondent / plaintiff's cultivation of the property.

16. Thus, the Courts below have rightly considered Exs.B6 to B8 in the context of the mortgage transaction under Ex.A2 and the subsequent redemption thereof. The mere fact that the revenue records stood in the name of the appellant / defendant's grandfather during the relevant period cannot confer title upon the appellant / defendant, particularly when the nature of his predecessor's possession was referable to the mortgage transaction. *Possessio sequitur titulum* (possession follows title), and

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

revenue records are at best evidentiary of possession and not instruments of title. Consequently, the documents relied upon by the appellant / defendant do not displace the respondent / plaintiff's claim of title and subsequent possession.

17. In the light of the above discussion, this Court finds that the Courts below have considered the oral and documentary evidence in its proper perspective and arrived at concurrent findings regarding the title and possession of the respondent / plaintiff. The appellant / defendant has not established any perversity or material illegality in the appreciation of evidence warranting interference by this Court under Section 100 of the Code of Civil Procedure. Hence, the substantial questions of law are answered against the appellant / defendants.

18. In the result, the Second Appeal is dismissed, confirming the judgments and decrees of the Courts below. There shall be no order as to costs.

18-11-2026

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

T. RAJAPRABA

https://www.mhc.tn.gov.in/judis (Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

Copy To :

1. The Subordinate Court, Devakkottai.
2. The District Munsif Court, Devakottai.
3. The Section Officer (VR Section)
   Madurai Bench of Madras High Court, Madurai.

THIRUMAGAL CHANDRASEKAR J.

T. RAJAPRABA

SA No. 519 of 1993

https://www.mhc.tn.gov.in/judis
(Uploaded on: 19/11/2026 11:51:20 am)

WEB COPY

18-11-2026

https://www.mhc.tn.gov.in/judis
(Uploaded on: 19/11/2026 11:51:20 am)