



Second Appeal No.109 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

Second Appeal No.109 of 2019
and C.M.P.No.2406 of 2019

1.Ramalingam
2.Lakshmanan

.... Appellants

-Vs-

1.Sundaravalli
2.Sambandan

.... Respondents

Prayer : Second Appeal under Section 100 of C.P.C., against the judgment and decree dated 11.08.2018 passed by the Subordinate Judge at Arakkonam in A.S.No.14 of 2015 confirming the judgment and decree dated 17.12.2014 passed by the District Munsif Court at Arakkonam in O.S.No.318 of 2007.

For Appellants	: Ms.Gopika Nambiar for Mr.Govind Chandrasekhar
For Respondents	: Ms.Thamilarasi - for R1 R2 and R3 - Served, no appearance

J U D G M E N T

The present Second Appeal arises out of the judgment and decree of the learned Subordinate Judge at Arakkonam in A.S.No.14 of 2015 dated 11.08.2018 in confirming the judgment and decree of the Court of the District Munsif at



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Arakkonam in O.S.No.318 of 2007 dated 17.12.2014. For the sake of convenience, the parties are referred to as per their ranking in the suit.

2. O.S.No.318 of 2007 was presented for the relief of declaration and for permanent injunction. The case of the plaintiff is that, the 'A' schedule mentioned property had been purchased by her husband Ramalingam from Lakshmanan, the second defendant on 27.08.1986. Ramalingam survived 13 years after the purchase of the property and passed away sometime in 1998. The plaintiff Sundaravalli is the second wife of Ramalingam. Therefore, on the death of Ramalingam, the legal heirs of Ramalingam entered into a registered partition deed on 11.08.2005. As per this document, the suit 'A' schedule mentioned property fell to the share of Sundaravalli and therefore she claimed that she became the owner of that portion of the suit property. Her plea insofar as the 'B' schedule property is that, by way of three registered sale deeds dated 27.08.1986 she purchased the property from Adimoolam, Muniammal and Gopal. As she had been in possession and enjoyment of the property on and from the date of purchase, she pleaded that she is not only entitled for declaration of title but also for the relief of permanent injunction. The cause of action for the suit was that a week before the presentation of the plaint ie., sometime in the first week of December 2007, the defendants, who are siblings, attempted to interfere with the possession of the plaintiff.



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3. The suit was taken on file and summons were issued to the defendants.

The defendants filed a written statement denying the registered documents executed in favour of Ramalingam, the husband of the plaintiff, and the plaintiff herself. They would plead that the defendants had borrowed a sum of Rs.30,000/- from the vendors of the plaintiff viz., Adimoolam, Muniyammal and Gopal and the said persons had taken three registered sale deeds from them as a security for the aforesaid amount. With respect to the alienation made by the second defendant in favour of Ramalingam, they would plead that the plaintiff's husband Ramalingam was conducting a chit business and in the course of transaction, the defendants owed a sum of Rs.1,90,000/- to Ramalingam. Therefore, the document had been executed as security for the aforesaid amount.

4. They would further plead that the third defendant who had also joined the defendants 1 and 2 to alienate the property in favour of Adimoolam, Muniyammal and Gopal had approached them again and discharged a debt of Rs.10,000/- and got the property that had been alienated in their favour, reconveyed in favour of his son Arul. The defendants also projected an agreement of reconveyance dated 17.09.1986 said to have been executed by the plaintiff and her husband Ramalingam in favour of the defendants 1 and 2. They



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would plead that the reconveyance deed shows that the entire transaction that had been entered into between Lakshmanan, Adimoolam, Muniyammal and Gopal in favour of Ramalingam and Sundaravalli respectively is only a transaction to create a security for the amount the defendants are liable to pay to the plaintiff and her husband and it was not intended to convey any title. To substantiate the plea of loan transaction, the defendants would state that for the sum of Rs.1,10,000/- which was outstanding, they paid Rs.4,500/- year after year to Ramalingam as long as he was alive and thereafter to the plaintiff.

5. To add to the story, they would plead that a week before the presentation of the suit, they approached the plaintiff to return a sum of Rs.55,000/-, being 50% of the Principal, and thereby took steps to redeem the property from the hands of the plaintiff. They would state that the plaintiff rebuffed them and refused to receive the amount. Finally they pleaded that the plaintiff and her husband were never in possession and enjoyment of the property and that they continued to cultivate the land and therefore the plaintiff is not entitled to the relief of declaration nor is she entitled to the relief of permanent injunction.

6. On the basis of these pleadings, the learned trial Judge framed the following issues:



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1. தாவா ஏ மற்றும் பி அட்டவணை சொத்துக்கள் குறித்து வாதிகோரும் விளம்புகை பரிகாரம் வாதிக்கு கிடைக்கக்கூடியதா?

2. தாவா சொத்துக்களில் வாதியின் அனுபவ ஸ்வாதீனத்திற்கு பிரதிவாதிகளோ அவர்களது ஆட்களோ எவ்வித இடையூறும் செய்யக்கூடாது என்ற நிரந்தர உறுத்துக்கட்டளைப் பரிகாரம் வாதிப்பெற முடியுமா?

3. வாதி மற்றும் வாதியின் கணவர் பெயரிலுள்ள தாவா சொத்துக்கள் குறித்த கிரைய ஆவணங்கள் அனைத்தும் பிரதிவாதிகளின் கடன்தொகைக்காக எழுதிக்கொடுக்கப்பட்டுள்ள பிணைய ஆவணங்கள் என்ற 1,2 பிரதிவாதிகள் தரப்பு எதிர்வாதம் சரியானதா ?

4. வாதிக்கு கிடைக்கக்கூடிய வேறு பரிகாரங்கள் யாவை?

7. On the side of the plaintiff, she examined herself as P.W.1. She marked the title deeds of the property dated 27.08.1986 viz., the sale deed executed by Lakshmanan in favour of her husband and those executed by Adimoolam, Muniyammal and Gopal in her favour as Exs.A1 to A4. She also produced the original partition deed as Ex.A5 and in order to show that revenue records have been mutated in the name of her husband and herself, she presented Exs.A6 and



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8. On the side of the defendants, the first defendant Ramalingam examined himself as D.W.1 and examined all the neighbours in and around the property and also the vendor of the plaintiff, Gopal. The other two vendors were not examined because by the time the matter went for trial, Adimoolam and Muniyammal were no more. In all, the defendants examined seven witnesses including the first defendant. On the side of the defendants Exs.B1 to B14 were marked.

9. On consideration of the evidence that had been recorded by him and on the basis of the documentary evidence presented for his consideration, the learned trial Judge came to the following conclusion.

- 1) The plaintiff had secured title by virtue of the sale deed dated 27.08.1986 from Adimoolam, Muniyammal and Gopal. This is with respect of the 'B' schedule property.
- 2) With respect to the 'A' schedule property, Ramalingam had become the absolute owner as he had purchased the same from Lakshmanan and by virtue of the partition deed entered into between the family members of Ramalingam on his demise, the



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plaintiff became the owner of the 'A' schedule also.

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3) He disbelieved the story that the sale was a security for the loan transaction that had been entered into between the defendants and the vendors of the plaintiff for 'B' schedule property and he was of the opinion that Lakshmanan had executed the sale deed in favour of Ramalingam, for 'A' schedule property for valid consideration and that too was a valid document.

10. On the strength of the revenue records produced by the plaintiff, the learned District Munsif concluded that the plaintiff had proved her possession. In the light of the above discussion, he concluded that the plaintiff is entitled to the decree and decreed the suit as prayed for.

11. Aggrieved by the same, the defendants 1 and 2 alone preferred a regular appeal in A.S.No.14 of 2015. The learned Subordinate Judge at Arakkonam concurred with the aforesaid findings of the learned trial Judge and in addition, in exercise of the powers conferred upon the Court under Section 73 of the Indian Evidence Act, compared the signature of the plaintiff's husband Ramalingam in Ex.B7, the alleged reconveyance deed executed by Ramalingam in favour of the defendants 1 and 2, along with the admitted signature in Ex.A1,



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the sale deed under which Ramalingam had purchased the property from Lakshmanan / the second defendant, and concluded that there was a mismatch in the signatures. On the basis of these findings, she came to the conclusion that the appeal was bereft of any merits and dismissed the same.

12. As against the concurrent findings of the courts below, the present Second Appeal arises. On 31.01.2019, this Second Appeal was admitted on the following substantial questions of law.

- a) Whether the first appellate Court has acted in excess of jurisdiction by resorting to Section 73 of the Indian Evidence Act, to discredit Ex.B7, when the plaintiff, in her cross examination (at page 18) had unequivocally stated that the admitted signatures of her husband had not been produced by her?
- b) Whether the first appellate Court has admitted a gross illegality in complaining Ex.B7 with Ex.A6 when the latter was admitted by the plaintiff (at page 17 of her cross examination) as having been manufactured for the purposes of this litigation?
- c) Whether Ex.B7 constitutes a valid deed of reconveyance and resultantly is the transaction under Ex.A1 a mortgage by conditional sale under Section 58 (c) of the Transfer of Property Act?
- d) Consequently, when the plaintiff was not in possession of the property whether a suit for declaration and injunction



was maintainable in the light of the judgment of the Supreme Court in Arulmighu Chokkanatha Swamy Koil Trust -vs- Chandran (2017) 3 SCC 702?

13. Notice was issued in the appeal and Ms.Thamilarasi entered appearance on behalf of the first respondent. I heard Ms.Gopika Nambiar for Mr.Govind Chandrasekhar for the appellants and Ms.Thamilarasi for the respondents.

14. Ms.Gopika Nambiar would open the appeal stating that the entire transaction under Exs.A1 to A4 is only a sale deed which had been executed as a security and it was never intended to pass on title. She would plead that there existed a relationship of creditor-debtor between the husband of the plaintiff Ramalingam and the defendants, and between the vendors of the plaintiff viz., Adimoolam, Muniyammal and Gopal and defendants 1 to 3. She would rely upon the sale deeds that had been executed by Adimoolam, Muniyammal and Gopal in favour of Arul to contend that the third defendant Sambandan had redeemed his property from the clutches of the creditor by repaying the loan. She would state that this evidence is sufficient to show that the documents of title alleged to have been executed by her clients in favour of the plaintiff's vendor and her husband are only security documents and should not be relied upon.



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15. Drawing my attention to Ex.B7 she would state that the plaintiffs's husband had agreed to reconvey the property on receipt of a sum of Rs.20,000/- the amount that was due and payable by them to the vendors of the plaintiff with respect to 'B' schedule property. Placing strong reliance on this document, she would urge that the Court should interpret the document contemporaneously and apply the position of law under Section 99 of the Indian Evidence Act to come to the conclusion that Exs.A1 to A4 are all borne out for the security for the loan granted and did not convey title to the plaintiff.

16. She would then draw my attention to the evidence that had been given by the vendor of the plaintiff Gopal and the evidence of the plaintiff herself. She would state that Gopal had categorically deposed before the Court that the sale executed in his favour by the defendants was only security transaction and if Gopal does not get title to the property, she would plead that, he could not have conveyed the title to the plaintiff. She would also draw my attention to the evidence of P.W.1 to state that the plaintiff herself had admitted that the Patta Passbook has been issued as a result of manipulation and therefore the Courts had miserably failed to appreciate this evidence while decreeing the suit. She would state that the plaintiff had not proved her possession of the property and on the contrary, as seen from the oral evidence of the owners of the



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neighbouring properties, the defendants are in possession of the property and are cultivating the same. She would therefore state, relying upon the judgment of the Supreme Court in **Arulmighu Chokkanatha Swamy Koil Trust -vs- Chandran (2017) 3 SCC 702**, the suit for injunction is not maintainable and the relief that should have been sought for is only for recovery of possession.

17. Per contra, Ms.Thamilarasi appearing for the plaintiff would submit that the documents that the defendants executed in favour of the plaintiff and her husband specifically show that they are all being done for valid consideration. The plaintiff having obtained the property under Exs.A1 to A4 read with Ex.A5, she would state that she is entitled to be protected by a decree of declaration of title and injunction. She would further point out that the defendants have not let in any evidence to show that the property which is the subject matter of alienation was only intended to be given as security and since no evidence had been given, the registered document deserves the respect that they do and the Court should not interfere in this matter.

18. She would also draw my attention to Ex.B7 and would argue that the lower appellate court had compared the documents and it came to the conclusion that Ex.B7 is a rank forgery and she would also invite this Court to look into the same so as to confirm the findings of the lower appellate Court.



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19. I have carefully considered the arguments on either side and have gone through the materials placed on record.

20. If a document is given as a security for a transaction, then it presupposes the existence of relationship of a debtor and creditor between the person executing the document and the beneficiary of the said document. If there is no evidence of debtor-creditor relationship, then by no stretch of imagination one can come to the conclusion that the document had been given as a security. With this as the basis, now let me analyse the facts of the present case.

21. According to the defendants, the execution of Exs.A1 to A4 is not in dispute. They would only dispute that it was not intended to be a sale deed and the same must be treated as a document of security. I would agree with Ms.Gopika that the defendants are entitled to let in evidence with respect to the nature of transaction and Sections 91 and 92 of the Indian Evidence Act would not bar her clients from letting in any evidence to prove that it was a document executed for the purpose of security. What Sections 91 and 92 bar is that, having accepted the document, the terms of the document cannot be varied by way of oral evidence. Section 92 is a corollary of Section 91 and in terms of



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Section 92, a party cannot let in any oral evidence varying the terms of the document, which comes within the teeth of Section 91. This view of mine is in line with the view taken by **Justice S.B.Sinha** of the Supreme Court in **R.Janakiraman (vs) State represented by Inspector of Police, CBI, Madas (2006) 1 SCC 697 (Para 24)**.

22. To reiterate, it is certainly open to a person who is party to the transaction to plead that though he had signed the document, the nature of the document is not what it purports to be. Therefore, I have to see in the present case whether the defendants have proved there existed a relationship of debtor and creditor between themselves and the deceased husband of the plaintiff, and between themselves and Adimoolam, Muniyammal and Gopal. Fortunately for the plaintiff, no evidence worth its name has been let in by the defendants in order to bring forth this point before the Court. If the fundamental requirement of security transaction viz., that of a debtor-creditor relationship has not been proved, then the entire castle that Ms.Gopika Nambiar sought to build collapses to the ground like a house of cards.

23. The execution of Exs.A1 to A4 is admitted. On the execution of a sale deed, title passes from the vendor to the purchaser. Being aware of the nature of the transaction, Ms.Gopika Nambiar would attempt to project Ex.B7. Though



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Ms.Thamilarasi would vehemently oppose the said document, I looked into the said document for the purpose of convincing myself as to whether it is only a document of mortgage under Section 58(c) of the Transfer of Property Act, which is the third question of law framed by the appellants or whether it is a simple sale transaction. Exs.A1 to A4 are standard format sale deeds. They have been executed by the vendors on receipt of the amounts specified in the documents and they have conveyed the property to the plaintiff and her husband. Admitting to the execution of the sale deed, Ex.B7 has been executed. This is clear from the tenor of Ex.B7 on which Ms.Gopika Nambiar places reliance. Ex.B7 reads as follows:

எதிரிடை லெட்டர்

1986ம் வருஷம் செப்டம்பர் மாதம் 17ம் பதினேழாமந் தேதி அரக்கோணம் தாலுக்கா நெ.54, நெடும்புலி கிராமத்தில் பெரியதெருவில் வசிக்கும் அர்ஜுன் முதலியார் குமாரர் A.லட்சுமண முதலியார் (1) ராமலிங்க முதலியார் (2) ஆகிய உங்கள் இருவருக்கும் அரக்கோணம் தாலுக்கா பனப்பாக்கம் கிராமம் அம்ம நாயனார் கோயில் தெருவில் வசிக்கும் வையாபுரி முதலி குமாரர் ராமலிங்கம் (1) ஜை யார் மனைவி சுந்தரவள்ளி (2) ஆகிய நாங்கள் இருவரும் ஏகோபித்து எழுதிக்கொடுத்த கிரைய எதிரிடை லெட்டர் என்னவென்றால், நாங்கள் ஆதிமூல முதலியார், கோபால், முனியம்மாள் ஆகியோர் இடம் இருந்து கிரையம் பெற்று இருக்கும் இதன் கீழ்க்காணும் ஜெட்யூலில் அடங்கிய சொத்தை நாங்கள்..... சீட்டு முடிந்த பின் அதில் ஏற்படும் பிரித்த பாக்கி, நாங்கள் ஆதிமூல அவர் (வகை) கொடுத்த ரூபாய் 20,000.00 இருபதாயிரம் ஆக இந்த பணத்தை



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நீங்கள் எங்களுக்கு திருப்பிக்கொடுத்துவிட்டால், இந்த சொத்தை உங்களுக்கு மறுவிக்கிரையம் செய்து கொடுத்து விடுகிறோம். தவறும் பட்சத்தில் சிவில் கிரிமனல் சட்டங்களுக்குக் கட்டுப்படுகிறோம். இந்தப்படிக்கு நாங்கள் சம்மதித்து எழுதிக்கொடுத்த கிரய மறுவிக்கிரய எதிரிடை லெட்டர்.

சொத்து விவரம்

அரக்கோணம், பனப்பாக்கம் சப்டி, நெடும்புலி கிராமத்தில் நஞ்சை சர்வே 119/2-0.46, 108/7-010,1/2, 117/2-0,52ல் 0,6 செண்ட் 118/1-0.31 செண்ட், 118/2-0.18, 109/1-0.37ல் 0,02 1/2 செண்ட் கணர் மேடுகால்வாய், கிணர், சர்வீஸ் நெ.156 மற்றும் 5 HP மின்சார மோட்டார் பம்புசெட் இவைகளில் 2/3 பாகம்.

கையெழுத்து

ஒம்./- வை.ராமலிங்கம்

சாட்சிகள் :-

1. ஒம்.கண்ணப்பன் உ.எ.

24. It is pertinent to note here that when Ex.B7 is taken at its face value (I give it a caveat as a face value, as I will deal with its genuineness later), which is the alleged reconveyance deed said to have been executed by the husband of the plaintiff in favour of the defendants 1 and 2, the said document itself agrees that there has been a transfer of title from Adimoolam, Muniyammal and Gopal in favour of Sundaravalli and Ramalingam. When the document itself states that there is a conveyance and it being a contract of reconveyance, it is



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not open to the defendants 1 and 2 to plead that the transaction by Adimoolam, Gopal and Muniyammal in favour of the plaintiff was only a security transaction. Even if I were to assume that the sale deed executed by the defendants in favour of Adimoolam, Gopal and Muniyammal was a security transaction, as pointed out above, there is no evidence to that effect. Secondly, Ex.B7 also does not state that, the sale deed was one for security.

25. Reconveyance will be entered into only when the title has passed on to the purchaser and the vendor desires to repurchase the property. Such an agreement cannot be termed as a registered transaction as it is an unregistered one. Furthermore, such a transaction continues to be in the realm of sale or reconveyance and does not convey any interest in the immovable property. It is an agreement which the defendants are entitled for enforcement by resorting to the appropriate remedy under the Specific Relief Act. Ms.Gopika Nambiar does not dispute that from 1986 till the presentation of the plaint in December 2007 and even as on today, the defendants 1 and 2 have not raised even a little finger to get the agreement enforced. The period of limitation for the purpose of getting the reconveyance agreement executed is three years under Article 54 of the Limitation Act. The limitation arises from the date of first denial. If I were to take the presentation of the suit as the first denial for a moment ignoring the fact that from 1986 to 2007 no steps have been taken by the defendants 1 and 2, still



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Ex.B7 is hopelessly barred by limitation.

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26. This brings me to the next point as to whether Ex.B7 is itself genuine. Ms.Gopika Nambiar, placing reliance upon Section 73 of the Indian Evidence Act, would state that the first appellate court had acted in excess of its jurisdiction by comparing Ex.A1 with Ex.B7. She would state that Ex.A1 is not an admitted document during the course of the proceedings and therefore the Court ought not to have relied upon the same for the purpose of comparison. Though this document is very tantalizing to her, I do not find any substance in it. Ex.A1 is a document executed by the second defendant in favour of Ramalingam, which is a registered document whereby Lakshmanan sold his interest in the 'A' schedule mentioned property to the husband of the plaintiff. Therefore, the beneficiary of documents cannot benefit from the same unless and until he resorts to due process of law. In fact, the argument of the second defendant before the Courts below was, that he admitted the execution of Ex.A1 but denied the nature of the transaction it bore. Therefore, I reject the argument of Ms.Gopika Nambiar that it is not an admitted document.

27. The second principle which applies with respect to comparison of documents is that the documents must be contemporaneous and must not be separated by years of time. The sale deed was executed on 27.08.1986 and the document on which the defendant relies upon ie., Ex.B7 was executed on



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17.09.1986 ie., hardly separated by a period of 20 days. A comparison of the signature in the registered document with that of the document projected in Ex.B7 would show there is absolutely no similarity between the two. The signature in Ex.A1 is strong and stylish, whereas the signature found in Ex.B7 is wavering and seems like one signed by a person who has been afflicted with age or disease. There is no evidence before the Court brought forth by the defendants to show that, within the period of 20 days the executant Ramalingam had been afflicted with some health issues, which resulted in changing of the pattern in which he used to sign. In fact, the signature in Ex.A1, as pointed out above, is strong and stylish and is written in English, whereas the signature in the Ex.B7 is written in Tamil and that too in a sickly manner.

28. In the light of the above discussion, I confirm the view taken by the first appellate Court that the husband of the plaintiff did not execute Ex.B7. The power of the Court to compare signatures is no longer *res integra*. The Supreme Court in **Thiruvengada Pillai vs Navaneethammal & Another (2008) 4 SCC 530** had held that the Courts should normally rely upon the assistance of an expert when it comes to comparison of signatures who would point out the distinct differences or similarities in the signatures of the disputed document and the admitted document. However, the Supreme Court said the power can be exercised under Section 73 without recourse to the power under Section 45 of



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the Indian Evidence Act in exceptional circumstances.

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29. The present case is one such circumstance. The difference in signature is visible to the naked eye and it does not require the services of an expert to come to the conclusion that the person who had signed Ex.A1 had not signed Ex.B7. If I were to keep Ex.B7 apart, in the light of the fact that there is no evidence to show the relationship of debtor and creditor for Exs.A1 to A4 or the sale deeds executed in favour of Ramalingam by Adimoolam, Muniyammal and Gopal to become documents of security, then there is nothing else remaining in the hot balloon that has been floated before this Court as a Second Appeal.

30. Ms.Gopika Nambiar would immediately refer to the evidence of P.W.1 with respect to Exs.A6 and A7 and would state that the plaintiff herself in the cross examination has admitted that it is a document which is a result of fabrication. The evidence, in order to be an admission within the scope of Section 58 of the Indian Evidence Act, must go the whole hog. A stray sentence during the course of cross examination which has gone into days cannot be treated as an admission. There must be a clear categorical statement by the witness after understanding the question, that she accepts the case as projected by the defendants. I cannot miss sight of the fact that the plaintiff is a widow who was a senior citizen by the time she entered the witness box. She is an



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unlettered lady having studied only till the 2nd standard. She had to undergo the ordeal of trial on days on end. In fact, the cross examination of the plaintiff runs to about 20 typed pages. She has withstood heavy cross examination that she was subjected to and apart from this one stray sentence, which is nothing but a straw to which Ms.Gopika Nambiar seems to rely upon to protect her client. While one can appreciate her efforts, I certainly would not agree that the stray sentence would help the case of the defendants. I called for the original records and I find both Ex.A6 and Ex.A7 are Patta Passbooks which are issued by the competent authority after due enquiry. The defendants had not taken any steps in order to displace the presumption that official acts have been done in a proper manner as understood under Section 114(e) of the Indian Evidence Act. Nothing prevented the defendants from summoning the Tahsildar or Village Administrative Officer who had issued the records in order to disprove the case of the plaintiff. For a moment, I am not adding here that it is the duty of the defendants to disprove the case of the plaintiff by producing the original Patta Passbooks but it was the duty of the defendants to rebut the same so the onus shifts back to the plaintiff to explain the situation. As the defendants have not taken any steps, the presumption Ex.A6 and Ex.A7 are properly executed continues.

31. Furthermore, from the oral evidence of P.W.1, I am able to perceive



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that the family of the plaintiff is running a small time eatery. The schedule mentioned properties are situated immediately to the rear of the said shop and the holdings are too minimal. The plaintiff has categorically stated that the husband as well as her son are taking care of the agricultural activities in the small holding and at the same time resorting to manage their eatery business. This does not sound artificial, but one which is in the nature course of things. The Courts below have rightly analyzed the evidence and have come to the conclusion. Though I am not supposed to re-appreciate the evidence as required under Section 100, since questions relating to registered documents has been framed, in order to satisfy myself I went through the evidence and I concur with the view that was taken by the Courts below.

32. In addition, though the defendants have pleaded they are in possession of the property, no evidence has been produced after 27.08.1986 viz., the date on which the title passed from the second defendant to the plaintiff's husband and from the purchasers of the property from the defendants 1 and 2 in favour of the plaintiff, in order to show that the defendants 1 and 2 are continuing their agricultural activities.

33. At this stage, Ms.Gopika Nambiar would turn to the evidence of P.W.2 in order to show that the defendants 1 and 2 are in possession and occupation of



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the same. Insofar as the vacant land is concerned, which is the situation in the present case, possession always follows title. The title deeds of the plaintiff dated 27.08.1986 which have been produced as Exs.A1 to A4 categorically state that on the date of execution of the documents, possession has been handed over to Ramalingam and to the plaintiff. Ex.A5 clearly shows that the family of the deceased Ramalingam decided the property must go to the plaintiff. Exs.A1 to A7 convincingly prove that the plaintiff is in possession of the property. Any amount of oral evidence would not help the defendants. Even if they had examined all the inhabitants of Panappakkam Taluk, still that does not make any difference because, where there are written documents, a Court has to go as per those documents and cannot rely upon oral evidence which can be easily procured.

34. The last point urged by Ms.Thamilarasi is also one worth taking note of. The husband of the plaintiff passed away sometime in 1998. For a period of 13 years from 17.09.1986 till he passed away, absolutely no steps have been taken by the defendants 1 and 2 in order to obtain specific performance of the reconveyance deed. This casts a doubt over the said document. This fact, in addition to the fact that no documents have been filed to substantiate the alleged loan, leads me to conclude that the case projected by the defendants was with an intention to grab the property of the plaintiff. This is because they



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have concocted a document under Ex.B7 and projected it before the Court.

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35. In the light of the above discussion, the questions of law that have been raised are answered against the appellants and in favour of the respondents. The judgment and decree dated 11.08.2018 passed by the Subordinate Judge at Arakkonam in A.S.No.14 of 2015 confirming the judgment and decree dated 17.12.2014 passed by the District Munsif Court at Arakkonam in O.S.No.318 of 2007 is confirmed. The Second Appeal No.109 of 2019 is dismissed. Costs throughout.

13.06.2024

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

KST

To

1.The Subordinate Judge
Arakkonam.

2.The District Munsif
Arakkonam.



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V.LAKSHMINARAYANAN, J.

KST

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