



S.A.No.396 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.06.2025

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Second Appeal. No.396 of 2013

and

M.P.No.1 of 2013

1. K.R.Raju
2. S.Saroja
3. John Leo

... Appellants

Versus

K.R.Hirian

... Respondent

Second Appeal filed under Section 100 of Civil Procedure Code to set aside the Judgment and Decree dated 30.07.2012 made in A.S.No.20 of 2012 on the file of the learned Sub Judge, Nilgiris confirming the Judgment and Decree dated 11.04.2012 made in O.S.No.39 of 2008 on the file of the learned District Munsif, Uthagamandalam.

For Appellants : Mrs.V.Srimathi

For Respondent : Mrs.A.L.Gandhimathi
Senior Counsel for
Mr.L.Palanimuthu

J U D G M E N T

This Second Appeal has been filed to set aside the Judgment and Decree dated 30.07.2012 in A.S.No.20 of 2012 on the file of the learned Sub Judge, Nilgiris confirming the Judgment and Decree dated 11.04.2012 in O.S.No.39



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of 2008 on the file of the learned District Munsif, Uthagamandalam.

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2. The brief averments in the Plaintiff are as follows:-

2.1. The Suit property is an agricultural land, measuring 42½ cents in S.No.390/A1, S.No.390/2, and New S.No.373/11 of Thummanatty Village with following boundaries.

East by : Stream
West by : Property in S.No.390/2
South by : 1st Defendant's property in S.No.390/2
North by : Land in S.No.380.

2.2. The Plaintiff submits that the first Defendant is his brother and they are sons of K.M. Range Gowder. The Plaintiff further submits that his father late K.M. Range Gowder had owned land measuring 85 cents in S.No.390/2 and 390/4 with other properties as ancestral properties. The Plaintiff's father K.M.Range Gowder, Plaintiff, and first Defendant succeeded to Suit property and other properties and they were in possession and enjoyment of those properties. In the meantime, the first Defendant obtained the gift deed on 17.11.1980 from Plaintiff's mother Mathiammal. The first Defendant herein, on the strength of that gift deed, dated 17.11.1980, filed the Suit in O.S.No.419/1982 before the Sub Court, Uthagamandalam, in respect of the land measuring 85 cents in S.No.390/2 and 390/4. The Plaintiff herein further submits that the Plaintiff as Defended in O.S.No.419/1982 had



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defended the said Suit in O.S.No.419/1982 and he had proved that he is in possession and enjoyment of the land measuring 42½ cents and therefore, the learned Sub Judge was pleased to dismiss the Suit in O.S.No.419 of 1982 on 16.11.1983. Aggrieved by the dismissal of the Suit in O.S.No.419 of 1982, the first Defendant herein had filed the Appeal before the learned District Judge, Coimbatore in A.S.No.337/1983. The learned District Judge, Coimbatore, was also pleased to hold that the Plaintiff was in possession and enjoyment of 42½ cents in S.No.390/2 and therefore, the learned District Judge, Coimbatore, was pleased to dismiss the said Appeal on 06.02.1984 and confirmed the Judgment and Decree in O.S.No.419/1982. The Plaintiff further submits that thereafter the first Defendant herein had not filed any Appeal before the Hon'ble High Court and therefore, the Judgment and Decree dated 06.02.1984 passed by the learned District Judge, Coimbatore in A.S.No.337/1983 reached finality. The Plaintiff further submits that in the meantime, the first Defendant herein has filed a Civil Suit in O.S.No.215/1990 for the declaration and possession in respect of land measuring 42½ cents in S.No.390/2 and 390/4 before the learned District Munsif, Uthagamandalam. The said Suit has been decreed for the relief of declaration and possession. The Plaintiff further submits that the Plaintiff as Defendant in O.S.No.215/1990 had filed an Appeal and the Appeal was allowed, and the Judgment and Decree of learned District Munsif, Uthagamandalam was set aside and the said Suit in O.S.No.215/1990 was



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dismissed. The Plaintiff further submits that the first Defendant herein as Appellant filed a Second Appeal before the Hon'ble High Court and this Court allowed the Second Appeal and remanded the Suit to District Munsif, Uthagamandalam for fresh disposal. The Plaintiff further submits that in the meantime, a Panchayat was held on 02.09.1998 and in the presence of the Panchayatdars and Village elders, the Plaintiff and the first Defendant herein came to a compromise by Panchayatdars and the terms of compromise were reduced into writing on 04.09.1998. The Plaintiff further submits that as per the compromise agreement dated 04.09.1998, the land measuring 85 cents in S.No.390/2 and 390/4 were divided and the Suit property has been allotted to the Plaintiff and the remaining land measuring 42½ cents was allotted to the first Defendant, and the parties have also reached compromise on disputes relating to some other properties. The Plaintiff further submits that in view of the said compromise dated 04.09.1998, the Plaintiff has been in exclusive possession and enjoyment of the Suit property. The Revenue records are mutated in his name and he has been paying the kist and other charges. The Plaintiff further submits that in view of the compromise dated 04.09.1998, the first Defendant has not pressed the said Suit in O.S.No.215/1990 on 04.09.1998 and the said Suit was dismissed as not pressed on 18.08.2000. The Plaintiff further submits that when facts are being so, in the meantime, in November 2007, the first Defendant had tried to trespass into the Suit property



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and therefore, the Plaintiff issued a legal notice on 17.11.2007. The first Defendant received the legal notice and gave a reply on 03.12.2007 with false allegations. Again on 25.02.2008, the first Defendant tried to trespass into the Suit property and therefore, the Plaintiff has filed the above Suit for permanent injunction.

3. The brief facts in the written statement filed by the first Defendant and adopted by Defendants 2 and 3 are as follows:-

3.1. The Suit is false, frivolous and not sustainable under the law and on facts. The Plaintiff has to prove the entire allegations in the plaint. It is false to allege that the Suit property originally belonged to Plaintiff's father K.M.Range Gowder as ancestral property. It is also false to allege that after the death of K.M.Range Gowder, the Plaintiff and the first Defendant had succeeded to the Suit property. It is also false to allege that the Plaintiff and first Defendant were in possession and enjoyment of the Suit property and other properties. This Defendant further submits that the Suit property originally belonged to his mother Mathiammal/wife of K.M.Range Gowder as per the sale deed dated 28.02.1943 registered as Document No.666/1943 on the file of the Sub Registrar of Uthagamandalam. The Defendants further submits that his mother Mathiammal had been in possession and enjoyment of the land measuring 85 cents in the Suit property as per the sale deed dated 28.02.1943



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and the Defendants' mother Mathiammal had executed a gift deed dated 17.11.1980 registered as Document No.1633/1980 in favour of the first Defendant herein. The first Defendant further submits that he has been in exclusive possession and enjoyment of an extent of 85 cents in S.No.390/2 and 390/4 of Thummanatty Village from 17.11.1980 as per the gift deed and he has been paying Kist and other charges and revenue records are in his name.

3.2. The first Defendant further submits that the Plaintiff had interfered with the first Defendant's peaceful possession and enjoyment of the Suit property measuring 85 cents. Therefore, he had filed the Civil Suit in O.S.No.419/1982 for permanent injunction before the Sub Court, Uthagamandalam and the Suit was dismissed after full trial on 17.11.1983. The first Defendant further submits that he as Plaintiff as Appellant had filed the Appeal before the learned District Judge, Coimbatore in A.S.No.337/1983 and it was also dismissed by the learned District Judge, Coimbatore, on 06.12.1984. The first Defendant further submits that the Courts referred above, found that the Plaintiff was in possession and enjoyment of land measuring 42½ cents out of 85 cents. But both the Courts referred above, had not determined the title of the parties as the Suit was only for bare injunction. The first Defendant further submits that in view of the findings by both the Courts referred to above, the first Defendant has filed a Civil Suit in O.S.No.215/1990



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before the learned District Munsif, Uthagamandalam for the relief of declaration and possession in respect of land measuring 42½ cents. The first Defendant further submits that the learned District Munsif, Uthagamanadalam was pleased to decree the Suit in O.S.No.215/1990 and granted decree for declaration and possession. The Plaintiff herein as Defendant in O.S.No.215 of 1990 had filed an Appeal before the learned District Judge, Uthagamandalam and that Appeal was allowed. Against the said Judgment and Decree, the first Defendant has filed the Second Appeal and the Second Appeal was allowed by this Hon'ble High Court and this Court was pleased to remand the Suit to the learned District Munsif, Uthagamandalam, for fresh disposal. The first Defendant further submits that in the meantime, the above Plaintiff had voluntarily handed over the possession of the property measuring 42 ½ cents to the first Defendant on 10.06.2000 and he has signed in the document acknowledging the handing over of possession. The first Defendant has further submitted that the above Plaintiff has voluntarily surrendered possession of 42½ cents and thereby this first Defendant had withdrawn the said Suit in O.S.No.215/1990. Thereafter, the first Defendant has been in exclusive possession and enjoyment of land measuring 85 cents in S.No.390/2 and 390/4 of Thummanatty Village, in which the Suit property is also part and parcel. The first Defendant further submits that when facts are being so, the Plaintiff with supporters approached this first Defendant and requested the first



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Defendant to put his signature on stamp paper alleging that he is getting a loan from the Bank. When this Defendant refused to sign on blank stamp paper, the Plaintiff threatened the Defendants that he would commit suicide. Therefore, the first Defendant had signed in the said blank stamp paper. The Plaintiff and his supporters had misused the stamp paper and forged the alleged agreement dated 04.09.1998. The alleged witnesses signed in the agreement dated 04.09.1998 are Plaintiff's supporters. The first Defendant further submits that the alleged agreement dated 04.09.1998 is fabricated, forged and cooked up by the Plaintiff and his supporters, it is not acted upon, and it has no evidentiary value. The said document cannot be admitted in evidence. The first Defendant further submits that he has executed the gift deed in respect of land measuring 50 cents out of 85 cents in favour of his wife and his wife is in possession of 50 cents. The first Defendant further submits that the other legal heirs of K.M.Range Gowder are also necessary parties and co-pattadars are also necessary parties. Therefore, the Suit is bad for non-joinder of necessary parties. The first Defendant further submits that the Suit is not properly framed and that the Plaintiff has framed this Suit for bare injunction without seeking declaration when the Defendants have disputed the title of the Plaintiff. Therefore, the above Suit without seeking the relief of declaration is not maintainable. The valuation of the plaint and Court fee paid are also incorrect. Therefore, this Defendant seeks dismissal of the suit with cost.



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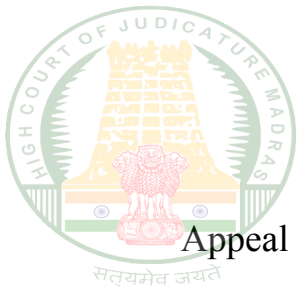
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4. Based on the pleadings of both parties, the learned District Munsif, Udhagamandalam, framed the following issues for adjudication of the suit:

- (i) Whether the Plaintiff is entitled for the relief of permanent injunction against the Defendant as prayed for?
- (ii) Whether the suit framed without the prayer for declaration is maintainable?
- (iii) To what other relief?

5. During trial, the Plaintiff had examined himself as P.W-1 and one Raman, attesting witness was examined as P.W-2. The scribe Mr.Paramasivan, Advocate had been examined as P.W-3. The documents relied by the Plaintiff were marked as Ex.A-1 to Ex.A-13. The first Defendant had examined himself as D.W-1. The documents relied by the first Defendant were marked as Ex.B-1 to Ex.B-10.

6. After perusing the records and hearing the arguments of both parties, the learned District Munsif, Udhagamandalam had decreed the Suit. Aggrieved, the Defendants had preferred the Appeal in A.S.No.20 of 2012 before the learned Sub Judge, Udhagamandalam. After hearing both parties, the learned Sub Judge dismissed the Appeal. Aggrieved by the dismissal of

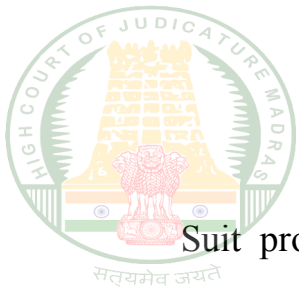


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Appeal in A.S.No.20 of 2012, the Defendants had preferred this Second Appeal.

7. The learned Counsel for the Appellants submitted that the first Defendant in O.S.No.39 of 2008 on the file of the learned District Munsif, Udagamandalam is the Appellant in this Second Appeal. The Plaintiff in O.S.No.39 of 2008 is none other than the brother of the first Defendant. He had instituted a Suit against the Defendants seeking permanent injunction on the strength of the alleged compromise deed claimed to be an oral partition between Plaintiff and the first Defendant.

8. The learned Counsel for the Appellants invited the attention of this Court to the dates and events filed by her. As per the claim of the Defendants, the Suit property was settled in the name of the Mother of the Plaintiff and Defendants/Mathiammal vide settlement deed dated 28.02.1943. The mother of the Plaintiff and Defendants had executed the Gift Deed in favour of the first Defendant dated 17.11.1980. The first Defendant in this Suit in O.S.No.39 of 2008 had filed the Suit in O.S.No.419 of 1982 seeking permanent injunction. The Suit was dismissed, against which he filed Appeal in A.S.No.337 of 1983 which was also dismissed. Subsequently, he filed a Suit in O.S.No.215 of 1990 seeking declaration and injunction with respect to the



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Suit property.

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9. The Plaintiff in the Suit in O.S.No.39 of 2008 had entered into a compromise with respect to the Suit properties on 04.09.1998. On 10.06.2000, he had issued notice surrendering his claim in the properties to the Defendant. On 18.08.2000, the Suit in O.S.No.215 of 1990 was dismissed as not pressed by the Plaintiff in O.S.No.215 of 1990. It was based on the surrender notice issued by the Plaintiff in O.S.No.39 of 2008. Subsequently, he made a representation that he needed help from the Appellants herein to obtain loan from the Bank and if the Appellants herein did not come forward to help him, he had no other option other than to commit suicide. Believing the representation of the Plaintiff in O.S.No.39 of 2008, the Appellants herein had signed blank sheets in order to help the Plaintiff in O.S.No.39 of 2008. Subsequently, the Plaintiff in O.S.No.39 of 2008 created a document as though the Appellants herein had released their shares in the properties and using it as a document, he had instituted a Suit in O.S.No.39 of 2008. Based on the Gift Deed executed by the mother of the Plaintiff and the Defendants, in favour of the first Defendant in O.S.No.39 of 2008, the first Defendant in O.S.No.39 of 2008 had executed Gift Deed in favour of his wife/second Defendant. Only after execution of such Gift Deed, the Plaintiff in O.S.No.39 of 2008 had created false document and filed the Suit based on such document. It is to be



noted that such document which the Plaintiff had relied on the Suit was not a registered document. Based on that, he had sought injunction. After institution of Suit and after entering appearance, the Defendant-1 and Defendant-2 had filed written statement disputing the claim of the Plaintiff in the Suit.

10. The learned Counsel for the Appellants in the Second Appeal invited the attention of this Court to the averments in the plaint, written statement and the Judgment of the learned District Munsif, Udagamandalam. The learned Counsel for the Appellants invited the attention of this Court to the contents of the written statement filed by the Defendants in O.S.No.39 of 2008, particularly, in Paragraph 8, which is held as follows:

"8. The allegations made in Paragraph 5 of the plaint (once again repeated as paragraph 5 in the plaint) are false and same are denied by this defendant. There was no Panchayat held at Kundhachappai Village and there was also no compromise/settlement arrived between the petitioner and the Respondent on 04-09-1998 and they did not enter into any agreement much less the alleged agreement dated 04-09-1998 at Kunthachappai Village in the presence of the Villagers. A month before the filing of the present suit the plaintiff with his supporters, who were said to be the witnesses in the alleged agreement dated 04-09-1998, approached this defendant and forced him to sign in a blank Non-Judicial Stamp paper to the value of Rs 10/- and in some blank green papers stating that the same are required by the Plaintiff for availing Bank Loan as he was in financial constraint and if this defendant did not come for the rescue of the plaintiff he had no other alternative but to commit suicide Believing the version of the Plaintiff and his supporters, who are the Co-villagers of this defendant, this defendant signed in those blank papers in the places as shown by the Plaintiff and his supporters.



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Making use of the said signatures the Plaintiff filled up the same as if this defendant has given up his right in respect of 0.42½ acres of land, which has been in possession and enjoyment of this defendant namely the suit property, so as to usurp and grab the land belonging to this defendant which is worth more than one lakh rupees. Had the Plaintiff known the deceit and fraudulent attitude of the Plaintiff he would not have signed in the blank stamp and green bond papers Therefore, the alleged agreement dated 04-09-1998 is inadmissible in evidence since the same was obtained by fraud and misrepresentation. Even otherwise, the said alleged agreement dated 04-09-1998 is inadmissible in evidence for want of stamp duty and registration as the same creates right in an immovable property worth more than Rs. 100/-."

11. Also, during trial, the Defendants had marked documents claiming title in their favour through Ex.B-3 which is the registered settlement deed dated 29.03.1943 in favour of Mathiammal, mother of the Plaintiff and Defendants in O.S.No.39 of 2008 and the registered gift deed dated 17.11.1980 by mother of the Plaintiff and Defendants in favour of the first Defendant which is marked as Ex.B-5.

12. The learned Counsel for the Appellants also invited the attention of this Court to the certified copy of the Suit in O.S.No.215 of 1990, which is dismissed as not pressed which is marked as Ex.B-7. It is the submission of the learned Counsel for the Appellants that the learned District Munsif had misdirected herself and granted a decree based on the unregistered partition deed styled as partition deed by the Plaintiff in the Suit and disbelieved the



documents on the side of the Defendants which were registered documents marked as Ex.B-2, Ex.B-3 and Ex.B-5, granted injunction based on unregistered documents.

13. Aggrieved by the same, the Defendants had preferred Appeal in A.S.No.20 of 2012 on the file of the learned Sub Judge, Udagamandalam. The learned Sub Judge by Judgment in A.S.No.20 of 2012, dated 30.07.2012, on re-appreciation of evidence, confirmed the Judgment of the learned trial Judge and failed to consider the documents on the side of the Defendants.

14. The learned Counsel for the Appellants also invited the attention of this Court to the appreciation of evidence by the learned Sub Judge, Udagamandalam, and dismissed the Appeal, which is held as follows:

"வாசா ஆ1 ல் உள்ள கையொப்பம் என்னுடையது (இதன் அசலில் 26ம் முடிவு) தானா என்று கேட்டால் அது 2008ல் போட்ட கையெழுத்து. அந்த ஆவணத்தில் அனைத்து பக்கங்களிலும் நான் கையொப்பம் செய்துள்ளேன்"

15. Aggrieved by the same, this Second Appeal had been preferred by the Defendants before the learned District Munsif against the concurrent Judgment, seeking to set aside the concurrent findings of the trial Court as well



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as the first Appellate Court.

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16. Mrs.A.L.Gandhimathi, learned Senior Counsel representing Mr.L.Palanimuthu, learned Counsel for the Respondent submitted that the Suit in O.S.No.39 of 2008 was filed by the Plaintiff against the Defendants 1 and 2. The first Defendant is none other than the brother of the Plaintiff. The Plaintiff had filed the Suit in O.S.No.39 of 2008 for permanent injunction against his brother/first Defendant. Prior to the filing of this Suit, the first Defendant had preferred O.S.No.215 of 1990 against the Plaintiff herein that was also filed for declaration and injunction. Pending Suit, there was a compromise between the Plaintiff in O.S.No.215 of 1990 and the Defendants therein dated 04.09.1998. Based on the compromise in the Suit in O.S.No.215 of 1990 filed by the first Defendant and the Suit in O.S.No.39 of 2008 as Suit was not pressed by the Plaintiff and dismissed as not pressed on 18.08.2000. Subsequently, the first Defendant in O.S.No.39 of 2008 was alleged to have executed a settlement deed in favour of his wife/the second Defendant dated 04.05.2005 which was marked as Ex.B-8 during trial in O.S.No.39 of 2008. On coming to know about the execution of such document, the Plaintiff in O.S.No.39 of 2008 had issued a notice dated 17.11.2007 against the Defendants 1 and 2. The Defendants 1 and 2 replied to the notice dated 17.11.2007. By reply dated 03.12.2007, they denied the claim of the Plaintiff in the notice dated



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17.11.2007. Therefore, the Plaintiff in O.S.No.39 of 2008 was forced to file a

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Suit to protect his interest. The first Defendant in O.S.No.39 of 2008 claims title to the property which is an extent of 85 cents in full. As per the compromise dated 04.09.2008, half of the property, out of the total extent of 85 cents, 47½ cents was handed over in possession to the Plaintiff by the Defendants through a compromise deed executed in the presence of the Village elders and relatives. After executing such document, the first Defendant had executed a settlement deed dated 04.05.2005 for 50 cents in favour of his wife/second Defendant. Therefore, only to protect the possession of the Plaintiff, the Plaintiff had filed the Suit in O.S.No.39 of 2008, seeking the relief of injunction against the Defendants from interfering with the peaceful possession and enjoyment of the property in possession of the Plaintiff in old Survey No.390/A-1 and resurvey No.390/2 and new Survey No.373/11, an extent of 42½ cents in Kundhachappai in Thummanatty Village in Oman Sub District, Nilgris District. The proper specific boundaries bounded on the North by Survey No.389, on the South by the first Defendant property in Survey No.390/2, on the East by stream, and on the West by property in Survey No.390/2.

17. The learned Senior Counsel for the Respondent invited the attention of this Court to the written statement filed by the first Defendant. The



relevant portion reads as follows:-

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“8. The allegations made in Paragraph 5 of the Plaint (once again repeated as Paragraph 5 in the Plaint) are false and same are denied by this Defendant. There was no Panchayat held at Kundhachappai Village and there was also no compromise/settlement arrived between the Petitioner and the Respondent on 04-09-1998 and they did not enter into any agreement much less the alleged agreement dated 04-09-1998 at Kunthachappai Village in the presence of the Villagers. A month before the filing of the present Suit, the Plaintiff with his supporters, who were said to be the witnesses in the alleged agreement dated 04-09-1998, approached this Defendant and forced him to sign in a blank Non-Judicial Stamp paper to the value of Rs.10/- and in some blank green papers stating that the same are required by the Plaintiff for availing Bank Loan as he was in financial constraint and if this Defendant does not come for the rescue of the Plaintiff, he had no other alternative but to commit suicide. Believing the version of the Plaintiff and his supporters, who are the Co-villagers of this Defendant, this Defendant signed in those blank papers in the places shown by the Plaintiff and his supporters. Making use of the said signatures the Plaintiff filled up the same as if this Defendant has given up his right in respect of 0.42 1/2 acres of land, which has been in possession and enjoyment of this Defendant namely the Suit property, so as to usurp and grab the land belonging to this Defendant which is worth more than one lakh rupees. Had the Defendant known the deceit and fraudulent attitude of the Plaintiff he would not have signed in the blank stamp and green bond papers. Therefore, the alleged agreement dated 04-09-1998 is inadmissible in evidence since the same was obtained by fraud and misrepresentation. Even otherwise, the said alleged agreement dated 04-09-1998 is inadmissible in evidence for want of stamp duty and registration as the same creates right in an immovable property worth more than Rs.100/-”.

18. It is the contention of the Defendants in the written statement that the compromise was not a fair compromise. It is to be noted that the first Defendant who was the Plaintiff in O.S.No.215 of 1990 had dismissed the Suit



in O.S.No.215 of 1990 as not pressed on 18.08.2000. Therefore, the conduct of the first Defendant in claiming the facts in Paragraph No.8 is contradictory to his conduct in dismissing the Suit as not pressed in O.S.No.215 of 1990.

19. The learned Senior Counsel for the Respondent also invited the attention of this Court to the Judgment of the learned District Munsif, Udagamandalam in O.S.No.39 of 2008. The relevant portion is extracted as follows:-

“23. மேற்படி ஆவண மற்றும் வாய்மொழி சாட்சியங்களின்படி இவ்வழக்கை ஆராய்ந்த வகையில், வா.சா.ஆ 1 ஒப்பந்தத்தின்படி வாதிக்கு தாவா சொத்து பாத்தியப்பட்டதாக நீரூபிக்கப்பட்டுள்ள நிலையில் வா.சா.ஆ 1 ஒப்பந்தத்தின் காரணமாக, முதல் பிரதிவாதி தாக்கல் செய்த அ.வ.எண் 215/90 ஆனது வலியுறுத்தப்படாமல் தள்ளுபடி செய்யப்பட்டுள்ளது வா.சா.ஆ 2ன்படி தெரிகிறது. மேலும் வா.சா.ஆ 1 ஒப்பந்தப்பத்திரமானது வாதி தரப்பில் நீரூபிக்கப்பட்டுள்ள நிலையில், வா.சா.ஆ 3 சிட்டாவை பார்வையிடுகையில், தூவா சர்வே எண்ணைப்பொருத்து முதல் பிரதிவாதியும் வாதியும் கூட்டா பட்டாதாரர்கள் என்பதும் தெளிவாகிறது. மேலும் வா.சா.ஆ 4 வா.சா.ஆ 12 கிஸ்த் ரசீதுகள் மற்றும் வா.சா.ஆ 5 தாவா சர்வே எண் 390/2க்கு இணையான புது சர்வே எண் 373/11 என கிராம நிர்வாக அலுவலர் வழங்கிய சான்றிதழ் ஆகிய யாவும் வாதிக்கு தாவா சொத்தில் உள்ள சுவாதீனத்தை நிலைநாட்டுகிறது. தாவா (இதன் அசலில் 22ம் பக்க முடிவு) சொத்திலுள்ள வாதியின் சுவாதீனத்திற்கு பிரதிவாதிகள் இடையூறு செய்யக்கூடாது என வாதி தரப்பில் அனுப்பிய வா.சா.ஆ 6 அறிவிப்பினைப் பெற்றுக் கொண்ட பிரதிவாதிகள் தரப்பில் அனுப்பப்பட்டுள்ள வா.சா.ஆ 7ன்படி முதல் பிரதிவாதி தாவா சர்வே எண்ணில் 0.85 ஏக்கர் பொருத்து உரிமை மற்றும் சுவாதீனம் கோரினாலும் ஏற்கனவே பி.சா.ஆ 5 தானப்பத்திரமானது பிரதிவாதிகள் தரப்பில் நீரூபிக்கப்படவில்லையென்றும் சட்டப்படி ஏற்கத்தக்கதல்ல என்றும், முடிவு காணப்பட்டுள்ளது. மேலும் தாவா சொத்திலுள்ள வாதியின் சுவாதீனத்தை காட்டும் வரைப்படம் வா.சா.ஆ 8 தாக்கல் செய்யப்பட்டுள்ளது. வாதி தரப்பில் தாக்கல் செய்யப்பட்டுள்ள 11.08.2002 தேதிய வா.சா.ஆ 10 தீர்மானத்தைப் பார்வையிடுகையில், வாதிக்கும் முதல் பிரதிவாதிக்கும் இடையே ஏற்பட்ட 04.09.1998 தேதிய ஒப்பந்தமானது மேற்படி தீர்மானத்தின்படி மீண்டும் வாதிக்கும் முதல் பிரதிவாதிக்குமிடையே அமுல்படுத்த இருவரும் ஒருமனதாக ஒப்புக்கொண்டு

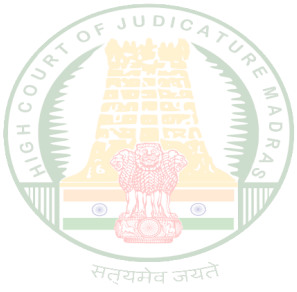


கையொப்பமிட்டுள்ளது தெரிகிற நிலையிலும், வாதி தரப்பு வா.சா.ஆ.1 முதல் 13 வரையிலான ஆவணங்கள் மற்றும் வாய்மொழி சாட்சியங்களின்படி தாவா சொத்திலுள்ள வாதியின் சுவாதீனம் நீரூபிக்கப்பட்டுள்ள நிலையில். பி.சா.ஆ. 5 ஆவணங்களின் அடிப்படையில் மட்டுமே முதல் பிரதிவாதி தாவா சர்வே எண்ணில் 0.85 ஏக்கர் கோருவது நீரூபிக்கப்படவில்லையென்ற நிலையில். ஒப்புக்கொண்டபடி வா.சா.ஆ.1 ஒப்பந்தப்படி முதல் பிரதிவாதிக்கு தாவா சர்வே எண்ணில் 0.42-1/2 ஏக்கர் மட்டுமே பாத்தியப்பட்டுள்ள நிலையில் பி.சா.ஆ. 8ன்படி முதல் பிரதிவாதி இரண்டாம் பிரதிவாதியான தனது மனைவிக்கு மேற்படி 0.85 ஏக்கர் 0.50 ஏக்கரை தானம் கொடுத்துள்ளதாக கூறி முதல் பிரதிவாதி 0.35 ஏக்கரிலும் இரண்டாம் பிரதிவாதி 0.50 ஏக்கரிலும் சுவாதீனத்தில் இருப்பதாகவும் கூறவது எவ்வகையிலும் நீரூபிக்கப்படவில்லையென்பதால் ஏற்கத்தக்கதல்ல.”

20. The learned Senior Counsel for the Respondent also invited the attention of this Court to the Judgment of the learned Sub Judge, Udagamandalam in A.S.No.20 of 2012. The relevant portion reads as follows:-

“23. On careful perusal of records, it is seen that the Defendant has been examined as D.W-1 before trial Court and Ex.B-1 to Ex.B-10 marked. As discussed above, in Para 8 of written statement, the Defendant has averred that the Plaintiff and witnesses in Ex.A-1 came to Defendant's house and forced him to sign in Ex.A-1 document and thereafter misused the said document. But during cross-examination, D.W-1 has deposed that the Plaintiff alone approached the Defendant and he requested to sign in Ex.A-1 stamp paper for obtaining loan and trusting the words of Plaintiff, the Defendant signed in Ex.A-1 document. From evidence of D.W-1, it is further seen that he has not deposed that witnesses have also approached him and forced him to sign. In cross-examination, D.W-1 further admitted that the properties described in above Suit and property described in O.S.No.215/1990 are same properties. In Page 4 of cross-examination, D.W-1 has deposed about his signature in Ex.A-1 and relevant portion of evidence of D.W-1 is extracted hereunder in his vernacular language for appreciation.

“வாசா ஆ.1 ல் உள்ள கையொப்பம் என்னுடையது (இதன் அசலில் 26ம் முடிவு) தானா என்று கேட்டால் அது 2008ல் போட்ட கையெழுத்து. அந்த ஆவணத்தில் அனைத்து



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பக்கங்களிலும் நான் கையொப்பம் செய்துள்ளேன்"

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Considering the evidence given by D.W-1 during cross-examination referred above, when records are perused, it is seen that in Para No.3 of written statement, the Defendant has taken one defence about his signature in Ex.A-1 document. But in Page 4 of cross-examination, he has taken another stand about signature in Ex.A-1 document. From records, it is further seen that the reason assigned by D.W-1 relating to his signature in Ex.A-1 document is entirely different from defence taken in Para No.8 of written statement. Therefore, when the evidence of D.W-1 relating to Ex.A-1 is carefully perused, under the evidence of P.W-2 and P.W-3, it is seen that the evidence of D.W-1 is not reliable and not supported by any other evidence. On careful perusal of evidence of D.W-1, it is further seen that in evidence, he deposed that under Ex.B-2, the Plaintiff has voluntarily delivered the possession of property on 10.06.2010. When said portion of evidence is carefully scrutinised under the evidence of P.W-1 to P.W-3, it is seen that the alleged defence taken by Defendant relating to Ex.B-2 is not reliable one and it is not supported by any other oral and documentary evidence. From records, it is further seen that the Defendant has not examined any witnesses found in Ex.B-2 document in support of his defence. From records, it is further seen that the Defendant has not examined any other witnesses to prove his possession in respect of Suit schedule property. As discussed above, on behalf of Defendants, Ex.B-1 to Ex.B-10 marked. Ex.B-1 is copy of caveat Petition. By producing Ex.B-1, the Defendants have taken defence that (end of the Page No.27 in original) the Plaintiff has claimed right relating to 30 Cents described in Caveat Petition. A caveat Petition is Miscellaneous proceedings, nothing can be inferred from Caveat Petition. As discussed above, Ex.P-2 is xerox copy of letter alleged to be given by Plaintiff to Defendant on 10.06.2000. The content of Ex.B-2 is not visible one. The Defendant has not assigned any reason as to custody of original. The Defendants have not examined alleged witness signed in Ex.B-2 document. There is no either oral or documentary evidence in support of Ex.B-2 document. Therefore, considering all above facts, it is decided that Ex.B-2 is not proved by the Defendant before trial Court. Ex.B-5 is registration copy of gift deed dated 17.11.1980 executed by Mathiammal in favour of Defendant No.1. As discussed above, the Defendants have not examined witnesses found in Ex.B-5 gift deed. Therefore, before trial Court, the alleged Ex.B-5



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gift deed is not proved in the manner known to law. Ex.B-4 is Judgment in A.S.No.358/1969. On careful perusal of Ex.B-4 Judgment in A.S.No.358/1969, it is seen that it was previous litigation between Mathiammal and others and there is no pleadings about said document in Plaintiff."

Therefore, it is the submission of the learned Counsel for the Respondent that the learned Sub Judge had in his judgment observed that Ex.A-1/compromise had been proved that the Plaintiff is in possession of the properties. Therefore, there cannot be any Substantial Questions of Law when the two Courts, trial Court as well as the first Appellate Court had on independent assessment of evidence, arrived at the same conclusion. Therefore, this Second Appeal has no merit and is to be dismissed.

21. The Second Appeal is admitted raising the following substantial questions of law.

- 1. Whether the Courts below are right in declaring the title of the plaintiff in a suit for injunction?***
- 2. Whether the suit for bare injunction is maintainable, when there is a serious dispute as regards title to the property?***
- 3. Whether the Courts below are justified in overlooking Ex.B-2 the deed of surrender, which proves that the Plaintiff was not in possession of the property?***



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4. Whether the Courts below are right in not appreciating the fact that under the provisions of the Benami Prohibition Act, 1988, the plaintiff is disentitled to impeach the title of his mother, when the registered instruments stands in her name?

22. Heard the learned Counsel for the Appellants Mrs.V.Srimathi and the learned Senior Counsel for the Respondent Tmt.A.L.Gandhimathi for Thiru.L.Palanimuthu.

23. Perused the documents under Ex.A-1 to Ex.A-13 and Ex.B-1 to Ex.B-10. Perused the judgment of the learned District Munsif, Udthagamandalam in O.S.No.39 of 2008, dated 11.04.2012 and the judgment of the learned Sub Judge, Hosur in A.S.No.20 of 2012, dated 30.07.2012.

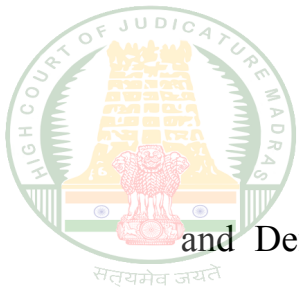
24. On perusal of the Complaint in O.S.No.39 of 2008, it is found that the Suit had been instituted by the Plaintiff based on the alleged compromise. The discussion of evidence by the learned District Munsif is based on the alleged compromise between the Plaintiff and the first Defendant before the Village elders and also the evidence of the scribe, who is a practicing Advocate in Udagamandalam. It is to be noted that the alleged compromise is not a registered document, whereas the first Defendant claims title to the property, an extent of 85 cents in Survey No.390/2 on the basis of a settlement deed



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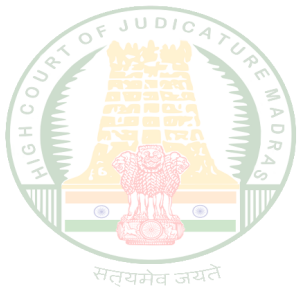
executed by the mother of the Plaintiff and Defendant in O.S.No.39 of 2008/Mathiyammal. The property was purchased by Mathiyammal through sale deed dated 28.02.1943 and registered as Document No.666/1943 on the file of the Sub Registrar. The claim made by the Plaintiff that the Suit property belonged to the father of the Plaintiff and Defendants/Range Gowder was denied by the Defendants. The claim made by the Plaintiff in O.S.No. 39 of 2008 that the Suit in O.S.No.215 of 1990 filed by the first Defendant in O.S.No.39 of 2008 seeking declaration of title was not pressed on the ground that the Plaintiff in O.S.No.39 of 2008 voluntarily surrendered 42½ cents in favour of the first Defendant in O.S.No.39 of 2008 during pendency of O.S.No.215 of 1990. Therefore, the Suit was not pressed. Subsequently, the first Defendant had executed gift deed in favour of his wife/second Defendant by settlement dated 04.05.2005 which was marked as Ex.B-8 registered as Document No.403/2005. Therefore, it is the contention of the Defendants in the written statement that there is no proper ground. As per the boundaries mentioned in the schedule of property in O.S.No.39 of 2008, it is an imaginary property and it is to be noted that the property was settled in the name of the mother of the Plaintiff and Defendant as per deed dated 28.02.1943. Ex.B-3 is the deed executed by the father of the Plaintiff and Defendants as sale deed registered as Document No.666/1943 in the name of the mother of the Plaintiff and Defendants and based on the title in favour of the mother of the Plaintiff



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and Defendants, the mother of the Plaintiff and Defendants had executed settlement deed dated 17.11.1980 in favour of the Defendants which was marked during trial under Ex.B-5.

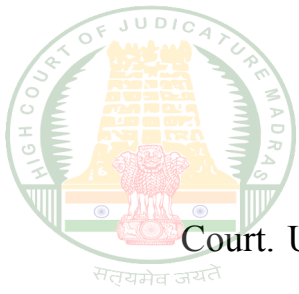
25. The claim made by the Plaintiff in O.S.No.39 of 2008 is based on an alleged compromise, dated 04.09.1998, which was marked as Ex.A-1 which is an unregistered document. The Plaintiff claimed possession of the property in O.S.No.39 of 2008 based on Ex.A-1 which is an unregistered document, whereas the Defendants' document was a registered document claiming title from 28.02.1943 continuously till 1980 and on 17.11.1980, the mother of the Plaintiff and Defendants had executed settlement deed under Ex.B-5 in favour of the first Defendant which is a registered deed. Therefore, the registered document has more weightage in the eyes of law. It is presumed to be true while unregistered document alleged to have been executed in the presence of the Village elders cannot prevail over a registered document. An unregistered document marked under Ex.A-1 was relied upon by the learned District Munsif to grant injunction in favour of the Plaintiff in O.S.No.39 of 2008 against the claim made by the Defendants based on oldest document viz., Ex.B-3 and Ex.B-5. The attempt of the Plaintiff in usurping a property which was already settled in favour of the younger son by the mother was ignored by the trial Court.



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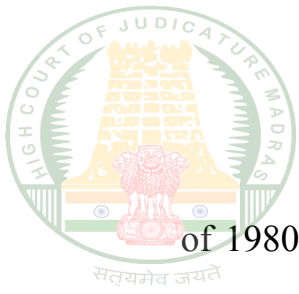
27. The conduct of the Plaintiff in filing the Suit based on Ex.A-1 which is an unregistered document. It is nothing but an attempt to grab the land. It is to be noted that the mother of the Plaintiff and Defendants had executed settlement deed registered as Document No.1633 of 1980 in favour of the younger son/first Defendant. If the document was executed in favour of the younger son and if it had caused loss to the Plaintiff, it is for the Plaintiff to challenge the said deed within a reasonable time before the competent Civil



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Court. Until and otherwise, the settlement deed under Ex.B-5 executed by the mother of the Plaintiff is challenged and set aside, the document that is pressed into service by the Plaintiff under Ex.A-1 cannot prevail over a registered document under Ex.B-5 pressed into service by the Defendant-1. The Plaintiff, claiming possession for half of the extent in 42½ cents based on an unregistered document and insufficiently stamped document/Ex.A-1 for which P.W-3 a practicing Advocate Mr.Paramasivan was the scribe was lost sight by the learned District Munsif as well as the learned Sub Judge while appreciating evidence independently. An unregistered document and insufficiently stamped document claimed to be “family arrangement” was pressed into service seeking injunction against the first Defendant whose claim is based on title claimed from 1943 till the date of filing of the Suit. It is to be noted that Ex.B-5, the settlement deed executed by the mother of the Plaintiff and Defendant in favour of the first Defendant registered as Document No.1633/1980 was not challenged till the date of filing of the Suit. Both the Courts failed to consider those facts while appreciating evidence and therefore, based on oral testimonies of the Villagers who were examined as P.W-1 to P.W-3, the learned District Munsif and the learned Sub Judge had ignored a valid title under registered document in favour of the mother of the Plaintiff and the Defendants executed by the father of the Plaintiff and Defendants as early as in 1943 and the document registered settlement deed bearing Document No.1633



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of 1980 executed by the mother of the Plaintiff and Defendants in favour of the first Defendant under Ex.B-5. Based on Ex.A-1 an unregistered document, the learned District Munsif granted a decree in favour of the Plaintiff against the claim made by the first Defendant under Ex.B-3 and Ex.B-5 is found unacceptable as per the Provisions of the Transfer of Property Act. When right transfers from one individual to another person, it requires a deed which is duly stamped as well as registered for the property valued more than Rs.100/-. However, this provision of law was ignored by both the Courts. Both the Courts failed to appreciate the evidence in the light of the provisions of law, particularly, under the provisions of Transfer of Property Act, Stamp Act and Registration Act. Therefore, the claim of the Plaintiff in itself cannot be accepted in the light of the provisions of Transfer of Property Act. In the light of Stamp Act, the Transfer of Property Act and the Registration Act, an unregistered and insufficiently stamped document under E.A-1 was pressed into service by the Plaintiff claiming injunction against the specific claim of the Defendants regarding title of the property through Ex.B-5 registered settlement deed executed by the mother of the Plaintiff and Defendant-1 and claiming possession right from 1943 till the date of filing of the Suit through the mother of the Plaintiff and Defendants in 1980. Both the Courts below failed to appreciate the fact that the Plaintiff herein had not challenged the settlement deed registered as Document No.1633 of 1980 till the date of filing



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of this Suit in O.S.No.39 of 2008. The suit filed by the Plaintiff against the Defendants for bare injunction when title is in favour of Defendant-1 under Ex.B-5. Therefore, the Judgment of the learned District Munsif and the Judgment of the learned Sub Judge are erroneous in the light of the provisions of the Transfer of Property Act. The learned trial Judge as well as the first Appellate Judge failed to consider the evidence in proper perspective in the light of the Indian Evidence Act. Therefore, the substantial question of law raised by the first Defendants as Appellants before this Court is found acceptable. Also the trial Court as well as the first Appellate Court failed to consider the fact that the Plaintiff is disentitled to impeach the title of his mother, when the registered instruments stands in her name against the Provisions of Benami Prohibition Act.

28. In the light of the above discussion from the paragraphs 23 to 27 the substantial questions of law are answered as follows:

Substantial Question of Law-1:

Both the Courts below erred in granting injunction in favour of the Plaintiff based on Ex.A-1 which is an unregistered deed claimed by the Plaintiff against the Registered deed under Ex.B-5 settlement deed executed by the mother of the Plaintiff and Defendants in favour of the first Defendant and



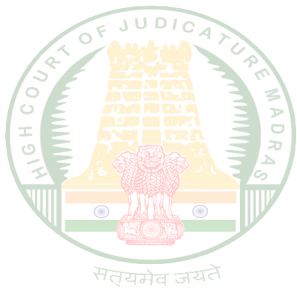
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through which 85 cents of land had been settled in favour of the first Defendant by the mother of the Plaintiff and Defendants. The mother of the Plaintiff and Defendants claimed title to the property as per Ex.B-3 sale deed executed by the father of the Plaintiff and Defendants in favour of the mother of the Plaintiff and through which possession of the property is vested in the first Defendant and prior to him, with the mother of the Plaintiff and Defendants continuously from the year 1943 onwards. The Courts below are not right in granting injunction against the Defendants. Therefore, **the substantial question of law-1 is answered in favour of the Defendants and against the Plaintiff in O.S.No.39 of 2008 on the file of the learned District Munsif, Nilgiris at Uthagamandalam.**

Substantial Question of Law-2:

The suit for bare injunction filed by the Plaintiff based on Ex.A-1 unregistered document against the claim of the first Defendant based on a registered settlement deed executed by the mother of the Plaintiff and Defendants. Therefore, the suit for bare injunction is not maintainable when there is serious dispute regarding title to the property. Therefore, **the substantial question of law-2 is answered against the Plaintiff and in favour of the Defendants in O.S.No.39 of 2008 on the file of the learned District Munsif, Nilgiris at Uthagamandalam.**



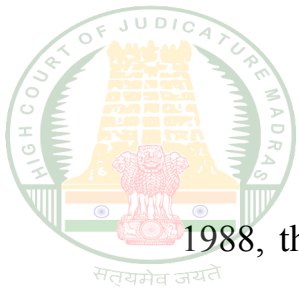
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Substantial Question of Law-3:

The learned District Munsif as well as the learned Principal Sub Judge, Uthagamandalam are not justified in overlooking Ex.B-2 deed of surrender which proves that the Plaintiff was not in possession of the property. The deed of surrender also need not be gone into as the claim of the Plaintiff is based on Ex.A-1 which is unregistered document whereas the claim of the first Defendant is based on the settlement deed executed by the mother of the Plaintiff and Defendants under Ex.B-5. Based on sale deed in the name of the mother of the Plaintiff and Defendants executed by the father of the Plaintiff and Defendants in the year 1943 which is also registered deed, both the Courts below, the trial Court as well as first Appellate Court, are not justified in overlooking the document Ex.B-2 in favour of the first Defendant in overlooking that the Plaintiff has not proved possession. Therefore, **the substantial question of law-3 is answered against the Plaintiff and in favour of the Defendants in O.S.No.39 of 2008 on the file of the learned District Munsif, Nilgiris at Uthagamandalam.**

Substantial Question of Law-4:

Both the trial Court as well as the first Appellate Court are not right in appreciating the fact that under the provisions of the Benami Prohibition Act,



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1988, the Plaintiff is disentitled to impeach the title of his mother, when the registered instruments stands in her name. Ex.B-3 is the sale deed in the name of the mother of the Plaintiff and the Defendants it was acquired in the year 1943 which is not attracted by the provisions of Benami Prohibition Act, 1988. The claim made by the Plaintiff that the properties settled by the mother in favour of the first Defendant and she is incompetent to execute such a deed. Therefore, he relies upon Ex.A-1 to seek injunction against the first Defendant when the first Defendant claims title based on settlement deed under Ex.B-5 by the mother of the Plaintiff who had been in possession and enjoyment of the property from 1943 till the date of execution of the settlement deed in the year 1980 under Ex.B-5. The sum and substance of the plaint attracts the claim under the provisions of Benami Prohibition Act, 1988 which cannot be pressed into service when the document is a registered document of the year 1943 long prior to the enactment of Benami Transaction Act, 1988. The trial Court as well as the first Appellate Court failed to appreciate those facts also. Therefore, **the substantial question of law-4 is answered against the Plaintiff and in favour of the Defendants in O.S.No.39 of 2008 on the file of the learned District Munsif, Nilgiris at Uthagamandalam.**

In the result, this **Second Appeal is allowed.** The Judgment and Decree dated 30.07.2012 in A.S.No.20 of 2012 on the file of the learned Sub Judge,



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Nilgiris confirming the Judgment and Decree dated 11.04.2012 in O.S.No.39

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of 2008 on the file of the learned District Munsif, Uthagamandalam is set aside. The suit in O.S.No.39 of 2008 is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

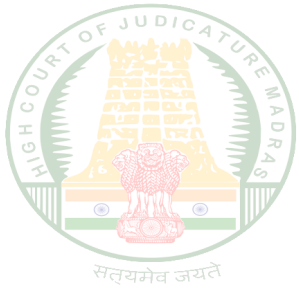
25.06.2025

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Internet : Yes/No

Index : Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.,

dh

To

1. The Sub Judge,
Nilgris.
2. The District Munsif,
Uthagamandalam.
3. The Section Officer,
V.R.Section,
High Court, Madras.

Judgment made in
S.A.No.396 of 2013

25.06.2025