

WEB COPY



SA.No.1569 of 2008&  
CMA.No.164 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED: 28-07-2026**

CORAM

**THE HON'BLE MR JUSTICE N.ANAND VENKATESH**

**Second Appeal No.1569 of 2008 &  
Civil Miscellaneous Appeal No.164 of 2016  
& CMP.No.1366 of 2016**

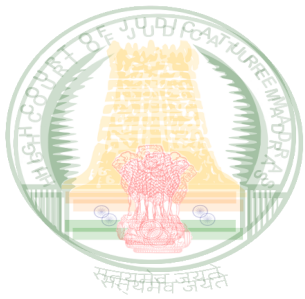
**S.A.No.1569 of 2008 :**

1. Kokilambal  
W/o. Soundarraja Nadar,  
Main Road, Peruncherry,  
Mayiladuthurai Taluk.
2. Rajendran  
S/o. Soundarraja Nadar,  
Main Road, Peruncherry,  
Mayiladuthurai Taluk.

...Appellants

Vs

1. Packiri Ammal @ Padmavathy  
**(died)** W/o. Bhaskaran,  
2/144, North Street,  
Main Road, Perambur,  
Tharangampadi Taluk,  
Nagapattinam District.
2. Rani, W/o. Pandiyan,  
2/144, North Street,  
Main Road, Perambur,  
Tharangampadi Taluk,  
Nagapattinam District.



SA.No.1569 of 2008&  
CMA.No.164 of 2016

WEB COPY

3. Jayapal  
S/o. Sanniyasi,  
4/118, Main Road,  
Peruncherry,  
Mayiladuthurai Taluk,  
Nagapattinam District.
4. Kumar  
S/o. Sanniyasi,  
4/118, Main Road,  
Peruncherry,  
Mayiladuthurai Taluk,  
Nagapattinam District.

...Respondents

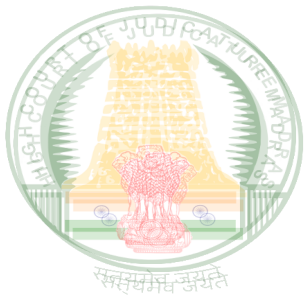
**CMA No. 164 of 2016 :**

1. Padmavathi @ Packiri ammal,  
W/o. Natesa Nadar, North Street,  
Perambur Village, Kuttalam Taluk,  
Nagapattinam District.
2. Rani, D/o. Natesa Nadar,  
Residing at North Street,  
Perambur Village, Kuttalam Taluk,  
Nagapattinam District.
3. Banu @ Banumathi,  
D/o. Natesa Nadar,  
W/o. Dhanabal, 12,  
Koil Metu New Street,  
Manalmedu,  
Mayiladuturai Taluk,  
Nagapattinam District.

...Appellants

Vs

1. Kokilambal **(died)**  
W/o. Sundararaja Nadar



SA.No.1569 of 2008&  
CMA.No.164 of 2016

WEB COPY

2. Rajendran,  
S/O Sundararaja Nadar
3. Kannan,  
S/o. Sundararaja Nadar
4. Chellappa,  
S/O. Sundararaja Nadar

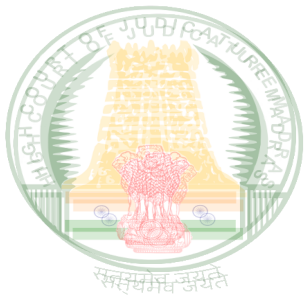
all are residing at Main Road,  
Peruncherry, Kuttalam Taluk,  
Nagapattinam District.

**(R3 & R4 were brought on record  
as legal representatives of the  
deceased – R1 Kokilambal vide  
order of Court dated 17.3.2021  
in CMP.No.15473 of 2019 in  
CMA.No.164 of 2016 by SMSJ)**

...Respondents

APPEAL under Section 100 of the Civil Procedure Code against the judgment and decree dated 03.1.2008 in A.S.No.128 of 2006 on the file of the Principal Sub-Court, Mayiladuthurai confirming the judgment and decree dated 30.9.2005 passed in O.S.No.254 of 2003 on the file of the Additional District Munsif Court, Mayiladuthurai.

APPEAL under Order XLIII Rule 1(u) of the Civil Procedure Code against the judgment and decree dated 05.8.2015 made in A.S.No.2 of 2014 on the file of the Additional Sub-Court, Mayiladuthurai reversing the judgment and decree dated



SA.No.1569 of 2008&  
CMA.No.164 of 2016

WEB COPY

28.10.2003 in O.S.No.122 of 2008 on the file of the Additional  
District Munsif, Mayiladuthurai.

For Appellants in  
SA & R2 to R4 in  
CMA :

Mr.A.Muthukumar

For Appellants in  
CMA & R2 to R4 in  
SA:

Mr.B.Jawahar

For Respondents :

R1 in SA.No.1569 of 2008 :  
died

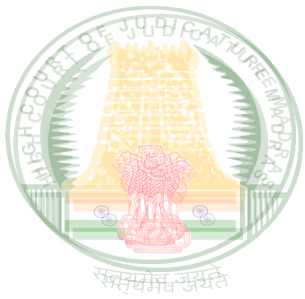
R1 in CMA.No.164 of 2016 :  
died

### **COMMON JUDGMENT**

Since the issue involved in these appeals is common, they  
are taken up together, heard and disposed of through this  
common judgment.

2. Heard the learned counsel appearing for the respective  
parties.

3. The second appeal has been filed by the plaintiffs in O.S.  
No.254 of 2003 on the file of the Additional District Munsif Court,



SA.No.1569 of 2008&  
CMA.No.164 of 2016

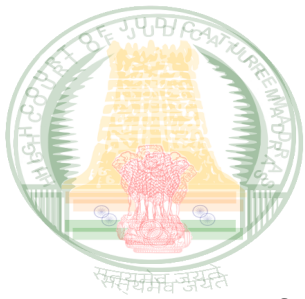
WEB COPY

Mayiladuthurai. They filed the said suit seeking for the relief of permanent injunction against the defendants therein from interfering with their peaceful possession and enjoyment of the suit schedule property.

4. The facts leading to filing of these cases are as follows:

(i) The suit property, which was a house site, belonged to one Vaheeswarar Swamy Temple at Perunchery Village. The said property was taken on lease by one Mr.Kandasamy Nadar from the temple. He constructed a house bearing door No.4/116. He had three sons namely Ganapathi Nadar, Sanniyasi Nadar and Natesa Nadar. On the demise of the said Mr.Kandasamy Nadar, his sons inherited the properties that were left behind.

(ii) Under a karavolai agreement dated 01.1.1974, the sons of the said Mr.Kandasamy Nadar divided the properties and the portion marked as ABCD was allotted to the share of the said Mr.Natesa Nadar. After the death of the said Mr.Natesa Nadar, his legal heirs entered into an agreement of sale in respect of the suit property on 15.3.1993 (Ex.A.1) with the plaintiffs. The possession of the suit property was handed over to the plaintiffs and a total sale consideration of Rs.18,375/- was fixed. Out of the said sum



SA.No.1569 of 2008&  
CMA.No.164 of 2016

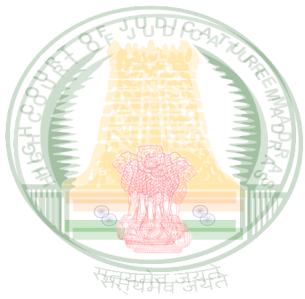
WEB COPY

of Rs.18,375/-, a sum of Rs.5,100/- was paid towards advance.

(iii) The plaintiffs were in possession and enjoyment of the suit property and the balance sale consideration was also paid. The plaintiffs also put up a new thatched building in the suit property. The cause of action for filing the said suit arose since defendants 1 and 2 therein colluded with defendants 3 and 4 therein and tried to disturb the possession and enjoyment of the plaintiffs in the suit property. This had resulted in filing the said suit seeking for the relief of permanent injunction.

(iv) Defendants 1 and 2 therein filed a written statement to the said suit and took a stand that the agreement in question was a fraudulent document, that the defendants never intended to sell the suit property, that the possession was never handed over to the plaintiffs and that the plaintiffs were using the suit property only as a cattle shed.

(v) The third defendant therein also filed a written statement and took a stand that the plaintiffs and defendants 1 and 2 therein were in collusion and that the plaintiffs, without even seeking for the relief of specific performance, could not maintain the said suit for bare injunction. Accordingly, the third defendant therein sought for dismissal of the said suit.



SA.No.1569 of 2008&  
CMA.No.164 of 2016

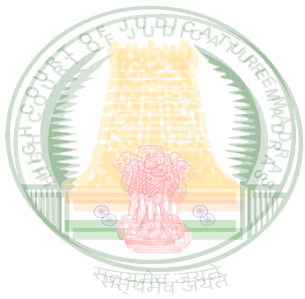
WEB COPY

(vi) The plaintiffs examined P.W.1 to P.W.4 and marked Ex.A.1 to Ex.A.13 whereas the defendants examined D.W.1 and D.W.2 and marked Ex.B.1 to Ex.B.3.

(vii) The Trial Court, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to the conclusion that the plaintiffs were not entitled to the relief of permanent injunction and accordingly dismissed the said suit by judgment and decree dated 30.9.2005.

(viii) Aggrieved by that, the plaintiffs filed A.S.No.128 of 2006 before the Principal Sub-Court, Mayiladuthurai. The First Appellate Court also, by judgment and decree dated 03.1.2008, dismissed the appeal and confirmed the judgment and decree of the Trial Court dated 30.9.2005. As against the same, the above second appeal has been filed before this Court by the plaintiffs.

(ix) Pursuant to the dismissal of A.S.No.128 of 2006, defendants 1 and 2 therein, along with one Ms.Banumathi, filed a suit in O.S.No.122 of 2008 on the file of the same Trial Court against the plaintiffs seeking for the relief of recovery of possession and for mesne profits. Further, O.S.No.122 of 2008 was decreed by judgment and decree dated 28.10.2013.



SA.No.1569 of 2008&  
CMA.No.164 of 2016

WEB COPY

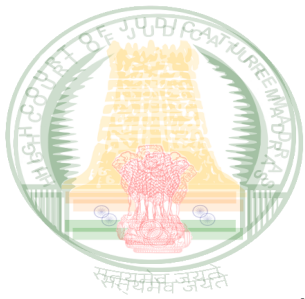
Aggrieved by that, the plaintiffs in O.S.No.254 of 2003 filed A.S. No.2 of 2014 before the Additional Sub-Court, Mayiladuthurai.

(x) The Additional Sub-Court, Mayiladuthurai took into consideration the fact that the above second appeal in S.A.No. 1569 of 2008 has been pending before this Court, set aside the judgment of decree passed by the Trial Court in O.S.No.122 of 2008 dated 28.10.2013 and remanded the matter back to the Trial Court. Further, the trial of the suit was stayed till the disposal of the above second appeal. Aggrieved by that, CMA.No. 164 of 2016 has been filed before this Court.

5. When the second appeal was admitted by this Court on 08.12.2008, the following substantial question of law was framed for consideration:

*"When one of the executants viz. P.W.4 admits the execution of Ex.A.1, whether the Lower Appellate Court erred in law in rejecting the same?"*

6. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record and more particularly the impugned



SA.No.1569 of 2008&  
CMA.No.164 of 2016

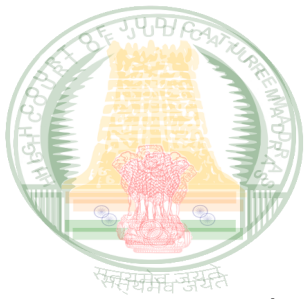
WEB COPY

judgments.

7. In this common judgment, the parties will be referred to based on the rank assigned to them in O.S.No.254 of 2003.

8. The main ground that was urged by the plaintiffs is that Ex.A.1 – sale agreement was admitted by one of the executors, who was examined as P.W.4, that the possession had also been established and that therefore, both the Courts below were not right in dismissing O.S.No.254 of 2003.

9. In the case in hand, the plaintiffs were relying upon the sale agreement dated 15.3.1993 – Ex.A.1. The Trial Court, after analysing the evidence and on carefully pointing out the discrepancies in Ex.A.1, rendered a categorical finding that Ex.A.1 was not a reliable document to act upon and it was shrouded with a lot of discrepancies, which would go to the very genuineness of the document. The Trial Court further rendered a finding that the sale agreement was of the year 1993, that the plaintiffs did not take any steps to get the sale deed executed in their favour and that therefore, a suit for permanent injunction would not lie in



SA.No.1569 of 2008&  
CMA.No.164 of 2016

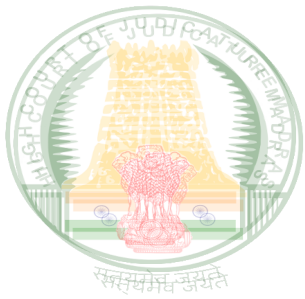
WEB COPY

this case.

10. The First Appellate Court concerned namely the Principal Sub-Court, Mayiladuthurai also rendered a similar finding and confirmed the judgment and decree passed by the Trial Court.

11. The finding rendered by both the Trial Court as well as the First Appellate Court concerned does not suffer from any perversity or illegality.

12. The admitted case of the plaintiffs was that they were the agreement holders in respect of the suit property. At the time when the sale agreement was entered into, the suit property was shown as a house site. However, while describing the suit property in the plaint in O.S.No.254 of 2003, it was shown as if there was a constructed structure over the land. The very genuineness of Ex.A.1 was doubted by both the Courts below and this Court has already held that such a finding rendered by both the Courts below does not suffer from any illegality or perversity.



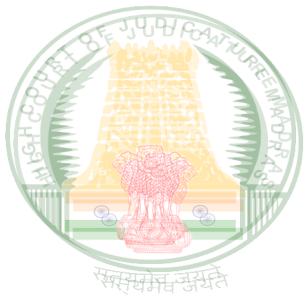
SA.No.1569 of 2008&  
CMA.No.164 of 2016

WEB COPY

13. On a demurrer, even if Ex.A.1 is taken to be genuine, the plaintiffs cannot lay a suit for permanent injunction without seeking for the relief of specific performance. Right through, the plaintiffs never sought for the relief of specific performance. Hence, both the Courts below were perfectly right in rejecting the claim made by the plaintiffs on the ground that the suit for bare injunction would not be maintainable. In the light of the above discussions, the substantial question of law is answered accordingly and against the plaintiffs. Consequently, the second appeal has to be dismissed by this Court.

**14. Accordingly, the second appeal is dismissed. No costs.**

15. In so far as C.M.A.No.164 of 2016 is concerned, the First Appellate Court concerned set aside the judgment and decree of the Trial Court only on the ground that this second appeal has been pending before this Court. Now that the above second appeal has been dismissed by this Court in this common judgment, the judgment and decree dated 05.8.2015 passed in A.S.No.2 of 2014 on the file of the Additional Sub-Court,



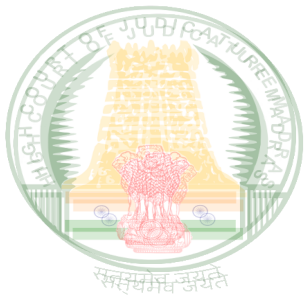
SA.No.1569 of 2008&  
CMA.No.164 of 2016

WEB COPY

Mayilduthurai is liable to be interfered and the matter has to be remanded back to the First Appellate Court concerned to deal with the first appeal on merits and pass a judgment within a time frame fixed by this Court.

16. For the foregoing reasons, **the above civil miscellaneous appeal is allowed, the judgment and decree dated 05.8.2015 passed in A.S.No.2 of 2014 by the Additional Sub-Court, Mayiladuthurai is hereby set aside and the matter is remanded back to the file of the Additional Sub-Court, Mayiladuthurai with a direction to dispose of A.S.No.2 of 2014 on its own merits and in accordance with, within three months from the date of receipt of a copy of this judgment after affording an opportunity to both sides.** No costs. Consequently, the connected CMP is closed.

**28-07-2026**



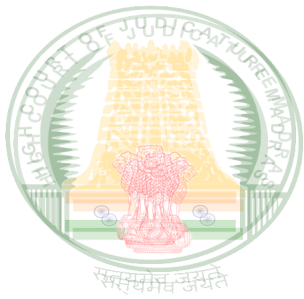
SA.No.1569 of 2008&  
CMA.No.164 of 2016

WEB COPY

To

1. The Principal Sub-Court, Mayiladuthurai.
2. The Additional Sub-Court, Mayiladuthurai.
3. The Additional District Munsif, Mayiladuthurai.

RS



WEB COPY



SA.No.1569 of 2008&  
CMA.No.164 of 2016

**N.ANAND VENKATESH,J**

RS

**S.A.No.1569 of 2008&  
CMA.No.164 of 2016 &  
CMP.No.1366 of 2016**

**28-07-2026**

Page14 of 14