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A.S.No.365 and 366



IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 29.04.2026

JUDGMENT PRONOUNCED ON: 08.07.2026

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

**A.S.Nos.365 and 366 of 2023
and CMP.Nos.12716 of 2023 and 26650 of 2025**

A.S.No.365 of 2023

1.D.Rajendiran [Died]
S/o.Duraisamy Nainar,
Keezhur Village,
Panruti Taluk.

2.R.Rajeswari, W/o.late D.Rajendiran

3.R.Ramadevi, W/o.Ramesh

4.R.Rajmohan, S/o.Late D.Rajendiran

...Appellants

****Appellants 2 to 4 are brought on record
as LR's of the deceased sole appellant vide
order of this Court dated 25.06.2026
made in CMP.No.15508/2026 in AS.Nos.365/2023**

Vs.

P.S.Vairakannu Achari
S/o.Shanmuga Achari,
No.8B, Kasthuribai Street,
Panruti Town.

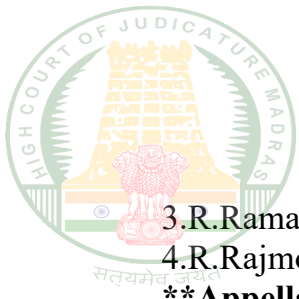
...Respondent

A.S.No.366 of 2023

1.D.Rajendiran [Died]
S/o.Duraisamy Nainar,
Keezhur Village,
Panruti Taluk.

2.R.Rajeswari, W/o.late D.Rajendiran

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3.R.Ramadevi, W/o.Ramesh

4.R.Rajmohan, S/o.Late D.Rajendiran

...Appellants

****Appellants 2 to 4 are brought on record**

as LRs of the deceased sole appellant vide

order of this Court dated 25.06.2026 made in CMP.No.15503/2026 in

AS.Nos.365/2023

Vs.

1.P.S.Vairakannu Achari,
S/o.V.S.Shanmuga Achari.

2.S.V.Arul,
S/o.P.S.Vairakannu Achari.
No's.1 & 2 are residing at:
No.8B, Kasthuribai Street,
Panruti Town, Cuddalore District.

3.V.Sundaramurthy,
S/o.Veerappa Achari,
No.28/C, Appalu Street,
Panruti, Cuddalore District.

...Respondents

Prayer in A.S.No.365 of 2023:

First Appeal is filed under Order XLI Rule 1 of A.S. Rules read with Section 96 of CPC, praying to set aside the Common Judgement and Decree dated 23.12.2022 passed in O.S.No.106 of 2020 by the I Additional District and Sessions Judge, Cuddalore.

Prayer in A.S.No.366 of 2023:

First Appeal is filed under Order XLI Rule 1 of A.S. Rules read with Section 96 of CPC, praying to set aside the Common Judgement and Decree dated 23.12.2022 passed in O.S.No.229 of 2020 by the I Additional District and Sessions Judge, Cuddalore.

For Appellant(s)

in both Appeals: Mrs.Chitra Sampath, Sr.Adv.

For Mr.T.S.Baskaran



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For Respondent(s): Mr.T.Murugamanickam, Sr.Adv.

for Mr.K.Moorthy for the respondent

in AS.No.365/2023 and for R1 in AS.No.366/2023

Mr.P.Mathivanan for R2 in AS.No.366/2023

Mr.M.Venkatakrishnan for R3 in AS.No.366/2023

COMMON JUDGMENT

The above appeals arise out of a common judgment passed in the suits, O.S.No.106 of 2020 and O.S.No.229 of 2020. As the appeals arise out of a common judgment, the parties and the issues involved are one and the same, the appeals are disposed of by this common judgment.

2.For the sake of convenience, the parties will be referred to as per their array in A.S.No.366 of 2023, arising out of O.S.No.229 of 2020.

Consolidated Pleadings in Both Suits:

3.The 1st respondent filed a suit in O.S.No.106 of 2020, on the file of the I Additional District & Sessions Court, Cuddalore, seeking declaration of his title to the suit property and for recovery of possession. The 1st respondent claimed



absolute ownership of the suit property on the basis of sale Deed dated 02.07.2013, executed by the 2nd respondent, his son (the power agent of the appellant) in his favour. According to the 1st respondent, pursuant to the sale in his favour, the possession of the suit properties were delivered to him, but on the request of the appellant to cultivate the suit lands on Waram basis, the property was entrusted to the appellant, with an understanding that a share of the crops will be given to him. The 1st respondent further contended that since, the appellant failed to share the Waram from January 2019 and lodged a false complaint against him before the Land Grabbing Special Cell, Cuddalore District, he was constrained to file the suit in O.S.No.106 of 2020, for the aforesaid reliefs.

4.The appellant filed written statement in the suit filed by the 1st respondent and also filed the suit O.S.No.229 of 2020, on the file of the I Additional District & Sessions Judge, Cuddalore for declaration of his title to the suit property, to declare sale Deeds dated 02.07.2013 of the 1st respondent as null and void and other reliefs. The appellant's case was that the suit property was his absolute property and that it was allotted to him under a family partition dated 29.06.2009. The appellant contended that the 1st respondent and his son were doing pawn broking and



jewellery business, and that due to financial difficulties, he borrowed a sum of Rs.5,00,000/- from them in the year 2011 for his business needs. The appellant contended that as demanded by the respondents 1 and 2, he executed general power of attorney on 12.12.2011, in respect of the suit property as a security for the loan borrowed by him. The appellant further contended that he was always in possession of the suit property and that the revenue records also stood in his name. According to the appellant, he was paying the interest regularly to the respondents, but around April 2019, the respondents illegally demanded interest at 48% per annum, which he declined to pay. Thereafter, the appellant came to know that the respondents were attempting to alienate the suit property and so he immediately applied for encumbrance certificate. On perusal of encumbrance certificate, the appellant came to know that the 2nd respondent entered into a sale agreement on the date of execution of the Power of attorney, with one V.Sundaramoorthy, for sale of the suit property, for a sum of Rs.10,00,000/-. Later, the 1st respondent obtained two registered sale Deeds on 02.07.2013, from the 2nd respondent in his favour. The sale Deeds were purportedly executed on the strength of the Power of attorney Deed executed by him in favour of the 2nd respondent at the time of borrowal of the loan. Since the respondents 1 and 2 had colluded, with an intention to deprive the appellant of his right over the suit property, he filed a complaint before the Anti



Land Grabbing Cell, Cuddalore. He thereafter issued legal notice on 18.07.2019, and the respondents replied to the same, raising untenable grounds. The appellant further submitted that when he lodged a police complaint against the respondents, he was advised to approach the Civil Court. Accordingly, he instituted the suit for declaration of his title, for a declaration that the sale Deeds obtained by the 1st respondent were null and void and other reliefs.

5.The appellant in his written statement filed in suit O.S.No.106 of 2020, raised identical pleadings. So also, 1st respondent as the defendant in O.S.No.229 of 2020, raised similar pleadings as in his suit, O.S.No.106 of 2020 and therefore they are not traversed to avoid replication. The respondents 2 and 3 filed separate written statements in the suit filed by the appellant in O.S.No.229 of 2020. The 2nd respondent replicated the pleadings of the 1st respondent in O.S.No.106 of 2020 and O.S.No.229 of 2020. Only the material averments made in the written statement of the 2nd respondent are referred to, to avoid prolixity.

6.The 2nd respondent contended that at the time of execution of the General power of attorney, on 12.12.2011, executed by the appellant in his favour, the sale



consideration was fixed at Rs.25,00,000/- and that the appellant received the said sum. The 2nd respondent further contended that on 12.12.2011 itself, the appellant executed a receipt confirming not only the execution of the General power of attorney, but also agreeing not to revoke it, acknowledging the receipt of the entire sale consideration and delivering the original documents and possession of the suit property. The 2nd respondent contended that in view of the receipt, the General power of attorney which was coupled with interest became irrevocable. The 2nd respondent further contended that pursuant to the General power of attorney, he executed a sale agreement in favour of the 3rd respondent and later, on withdrawal of the 3rd respondent from the proposed sale, he executed the registered sale Deeds in favour of the 1st respondent, his father. The 2nd respondent contended that he and his father were doing business separately. The 2nd respondent further contended that 1st respondent was a bona fide purchaser for value, without notice of any defect in title. In view of the aforesaid contentions, the 2nd respondent prayed for dismissal of the suit.

7.The 3rd respondent in his written statement denied all the averments made in the plaint. The 3rd respondent stated that the sale agreement of the 2nd



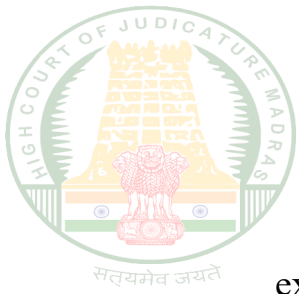
respondent on 12.12.2011, in his favour was well within the knowledge of the appellant. The 3rd respondent further stated that, because of family circumstances, he was not able to purchase the property and therefore he gave his no objection to the sale of the suit property to the 1st respondent. The 3rd respondent denied any connection with the other averments made in the appellants' plaint. The 3rd respondent therefore prayed for the dismissal of the suit.

8. Before the trial Court, the 1st respondent filed Ex.A1 to Ex.A15 and examined P.W1 to P.W5 in support of his case. The appellant filed Ex.B1 to Ex.B13 and examined two witnesses on his side. The Trial Court passed a common judgment and decree dated 23.12.2022 in the suits. Aggrieved by the common judgment and decree of the trial Court, the appellant preferred the above appeals.

9. On the basis of the pleadings of the parties, the trial Court framed the following issues in O.S.No.106/2020 and O.S.No.229/2020.

Issues framed by the Trial Court in O.S.No.106/2020:

1. Whether the General Power of Attorney dated 12.12.2011 was executed by the defendant as security for the loan borrowed?



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2. Is it correct to say that the sale deeds dated 02.07.2013 executed in favour of the plaintiff is a fraudulent one?

3. Whether the plaintiff is entitled for the relief of declaration and possession as prayed in the suit?

4. To what other reliefs the plaintiff is entitled to?

Issues framed by the Trial Court in O.S.No.229/2020:

1. Whether the Plaintiff is entitled for a Decree declaring that the Plaintiff has title over the Suit Properties?

2. Whether the Plaintiff was/is in possession of the Suit Properties on the date of filing of this Suit?

3. Whether the plaintiff is entitled for a Permanent Injunction as prayed for?

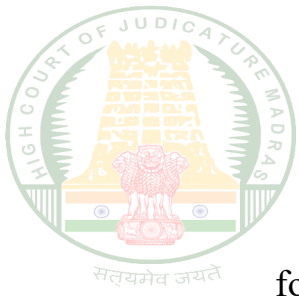
4. Whether the Plaintiff is entitled for a Decree directing the Sub-Registrar, Kurinjipadi, to cancel the Sale Deed, dt.02.07.2013, registered under Document No.1215/2013 as null and void?

5. Whether the Plaintiff is entitled for a Decree directing the Sub-Registrar, Kurincipadi, to cancel the Sale Deed, dt.02.07.2013, registered under Document No.1216/2013 as null and void?

6. Whether the Plaintiff has executed the General Power of Attorney Deed dt.12.12.2011 in favour of 2nd Defendant as Security or it is irrevocable, as it was coupled with interest?

7. Whether the Suit is bad for want of cause of action?

8. Whether the Suit is barred by Limitation?



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9. Whether the Plaintiff is entitled for Decree as prayed for?
10. To what reliefs the Parties entitled

Findings of the Trial Court:

10. On Issue No.1 in O.S.No.106/2020 and Issue No.6 in O.S.No.229/2020, the trial Court on the basis of the admission of execution of Ex.A4 and A5 by the appellant as D.W1 and the oral evidence of the respondent's witnesses, held that the Power of attorney executed by the appellant, was valid, that it was executed only with an intention to authorise the 2nd respondent to deal with the appellants suit property, and that it was not executed as a security for the loan. The trial Court found that Ex.A4, the General power of attorney, executed by the appellant in favour of the 2nd respondent, in view of Ex.A5 (Receipt) was coupled with interest, and therefore it was irrevocable. The trial Court on such findings answered the aforesaid issues in favour of the 1st respondent.

11. On Issue No.2 in O.S.No.106/2020 and Issue Nos.4 and 5 in O.S.No.229/2020, the trial court on appreciation of the evidence found that the appellant had admitted the execution of Ex.A4, in favour of the 2nd respondent and therefore the 2nd respondent was authorised as the agent of the appellant to deal

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with the suit property, either as a whole or in pieces. The trial Court further found that since Ex.A4, was not revoked on the date of execution of the sale Deeds, Ex.A6 and Ex.A7, the said sale Deeds executed by the 2nd respondent in favour of the 1st respondent were legally valid and thus answered issue No.2 in O.S.No.106/2020 in favour of the respondents. Since the trial Court found that the sale Deeds under Ex.A6 and Ex.A7, in favour of the 1st respondent were valid, it held that the appellant was not entitled to the relief of cancellation of sale Deeds and accordingly, answered issue No.4 and 5 against the appellant.

12.The issues 1 to 3 in O.S.No.229 of 2020, relating to the declaration of the appellant's title, possession and permanent injunction were concerned, the trial Court held that the appellant was liable to hand over the possession of the suit property to the 1st respondent, since the title was found in his favour. The trial Court found that the appellant was in permissive possession of the property and not as a lawful owner. The trial Court on the basis of its finding that the title to the suit property vested with the 1st respondent under Ex.A6 & Ex.A7, held that the appellant was not entitled to permanent injunction, since no injunction could be granted against the true owner.



13.The issues 7 and 8 in O.S.No.229/2020, relating to absence of cause of action for the suit and limitation were concerned the trial Court found that Ex.A6 and Ex.A7 were challenged as fraudulent documents and therefore the suit for their cancellation, whether on the ground of being void or voidable, was governed only by Article 59 of the Limitation Act. The trial Court in the absence of the encumbrance certificate, rejected the appellants contention that the suit was within time from the date of the knowledge of the sale Deeds and therefore held that since the appellant failed to seek cancellation of the sale Deeds under Ex.A6 and Ex.A7, within the period of 3 years, from the date of execution of the Deeds the suit was barred by limitation. Accordingly, the trial Court answered issues 7 and 8 in O.S.No.229/2020 against the appellant.

14.Issue No. 3 in O.S.No.106/2020 and issue No.9 in O.S.No.229/2020:

The trial Court on a cumulative analysis of the entire evidence, held that the 1st respondent had proved his title to the suit property, and that since the permissive possession of the appellant was revoked by filing the suit for recovery of possession, the 1st respondent was entitled to the relief of declaration of title and also for recovery of possession of the suit property. The trial Court held that the appellant was not entitled to any relief, since he had failed to prove his case. The



trial Court accordingly decreed the suit in O.S.No.106/2020 as prayed for and dismissed the suit in O.S.No.229/2020. Aggrieved by the common judgment and decree of the trial court, the appellant has filed the above appeals.

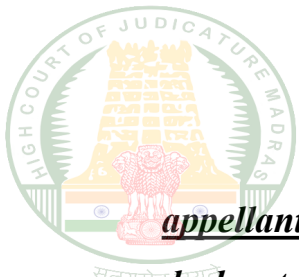
15.On a consideration of the pleadings and evidence on record, the following issues are framed in these appeals.

- i) Whether the respondent is entitled to the relief of declaration of his title to the suit property and recovery of possession?
- ii) Whether the Power of attorney Deed, ExA4 was executed only as a security for the loan availed by the appellant from the 2nd respondent?
- iii) Whether the appellant is entitled to the declaratory reliefs prayed for?
- iv) Whether the suit is barred by limitation?
- v) Whether the appellant is in possession of the properties in his own right if so, is he entitled to relief of injunction?
- vi) To what reliefs the parties are entitled to?

16.As issues 1, 2 and 3 are interlinked they are taken together.

Issue Nos.1, 2 & 3:Whether the respondent is entitled to the relief of declaration of his title to the suit property and recovery of possession, whether the Power of attorney Deed, ExA4 was executed only as a security for the loan availed by the

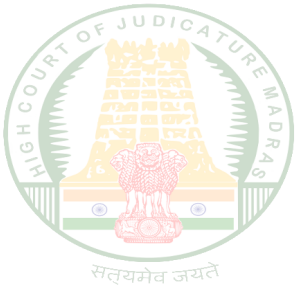
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appellant from the 2nd respondent and whether the appellant is entitled to the declaratory reliefs prayed for?

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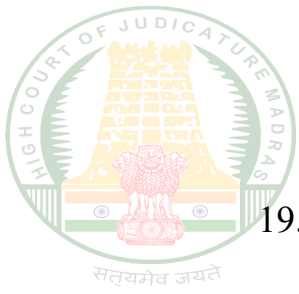
The facts of the case narrated above are not traversed, to avoid verbosity. Admittedly, the suit properties belong to the appellant, he having obtained the same under a family partition dated 29.06.2009. The basic documents on which basis the 1st respondent seeks declaration of his title to the suit properties and recovery of possession are Ex.A4 to Ex.A7. Ex.A4, is the Power of attorney executed by the appellant in favour of the 2nd respondent. Ex.A5 is the receipt executed by the appellant in favour of the 2nd respondent, evidencing the payment /receipt of Rs.25 lakhs as sale consideration, including an undertaking not to revoke Ex.A4, handing over title document and delivering possession of the suit properties. Exs.A6 and A7 are the sale Deeds executed by the 2nd respondent, in favour of the 1st respondent. In the present case the appellant has not disputed the execution of Ex.A4 and Ex.A5. However, the appellant contended that Ex.A4, was executed only as a security for the loan amount of Rs.5 lakhs borrowed by him from the 2nd respondent. In so far as Ex.A5 is concerned, though the appellant did not deny its execution, he contended that he did not receive any consideration under it.



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17. Before embarking on an analysis of the facts and the evidence on record, I deem it appropriate to mention here that in suits of the present nature when, the entire evidence is before the Court the question of burden of proof loses significance. I am of the view that since the entire evidence is before the Court, the Court will have to decide the matter on a holistic evaluation of the evidence on record adduced by both sides to find out, which party's case stands probalised.

18. Let me, first examine the 1st respondent's case for declaration of his title and recovery of possession of the suit properties. The foundational documents based on which the 1st respondent seeks for declaration of title are Exs.A4 and A5. Before proceeding further, I am of the view that it is very crucial to note here that the 1st respondent is none-else than the father of the 2nd respondent and the 3rd respondent is their long standing employee of 15 years. Upon a reading of Ex.A4, Power of attorney, it is clear that it is general in nature and does not secure agent's right in the subject-matter of the agency. The Agent's right in the subject matter of agency is claimed under Ex.A5, the receipt.



19. According to the 2nd respondent, at the time of execution of Power of the attorney Deed, Ex.A4, the sale consideration for the suit property was fixed at Rs.25 lakhs, and the same was paid by him to the appellant. The 2nd respondent, contended that the appellant in acknowledgment of the receipt of the sale consideration executed Ex.A5, apart from undertaking, not to revoke the Power of attorney, Ex.A4. The appellant under Ex.A5 is also said to have delivered the original partition deed (title document) and possession of the suit properties to the 2nd respondent. The appellant, even though, did not deny the execution of Ex.A5, contended that it was a fraudulent document created by the respondents by using signed blank papers obtained from him by coercion. The trial Court rejected the said contention, on the simple ground that there was no plea to such effect in the appellant's pleadings. The trial Court in the absence of a denial of execution of Ex.A5, relying on the recitals therein and the oral evidence of P.W3 (2nd respondent) and P.W5 (3rd respondent) held that the appellant's contention that Ex.A4 was executed only as a security for the loan borrowed by him, was untenable. In my view, the trial Court miserably failed to note that the appellant even though did not deny the execution of Ex.A4 and Ex.A5, specifically pleaded that Ex.A4 was executed only as a security for the loan and that no sale consideration, much less Rs.25 lakhs was paid to him under Ex.A5. Even though



the appellant did not deny the execution of Ex.A5, he denied the receipt of the sale consideration and therefore, the respondents are bound to prove that Ex.A5 is supported by consideration.

20. Admittedly, Ex.A4 (Power of Attorney) is a simple Power of attorney, authorising the 2nd respondent, to deal with the appellant's property and does not create any right in the agent to the subject matter of the agency. The 2nd respondent claims a right and interest in the subject matter of the agency under Ex.A5. The respondent's contention that by virtue of Ex.A5, the power of attorney [Ex.A4] was irrevocable since it was coupled with interest. Ex.A5 recites that the sale consideration of Rs.25 lakhs, was received by the appellant. In Ex.A5, the appellant undertook not to revoke the Power of attorney, delivered possession and handed over the original document. The 2nd respondent's specific stand is that under Ex.A5, sale consideration of Rs.25 lakhs was paid to the appellant and that a combined reading of Ex.A4 and A5 which are contemporaneous documents established that he had an interest in the subject matter of Power of attorney and hence, it was irrevocable. Here, it would be pertinent to point out that the practise of transferring property by GPA sales was deprecated by the Hon'ble Supreme



Court in the case of ***Suraj Lamp and Industries Private Limited vs. State of Haryana and another***, reported in (2012) 1 SCC 656. The Hon'ble Supreme

Court held as follows:

“24. We therefore reiterate that immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of “GPA sales” or “SA/GPA/will transfers” do not convey title and do not amount to transfer, nor can they be recognised or valid mode of transfer of immovable property. The courts will not treat such transactions as completed or concluded transfers or as conveyances as they neither convey title nor create any interest in an immovable property...”

The respondents to overcome this legal hurdle, rely on Ex.A5, to contend that Ex.A4 is coupled with interest and hence, irrevocable. To prove the passing of the sale consideration of Rs.25 lakhs, under Ex.A5, heavy reliance is placed on the oral testimony of P.W3 and P.W5. As already mentioned, P.W3 (2nd respondent) is the son of the 1st respondent and P.W5 (3rd respondent) is their long standing employee of 15 years. Further the evidence on record discloses that, P.W5 entered into a sale agreement with P.W3, on the date of execution of Ex.A4, for sale of the suit property for a sale consideration of Rs.10 lakhs, much below the consideration fixed under Ex.A5. However, the sale did not materialise, since PW3 withdrew



from the sale allegedly due to financial constraints and later gave no objection for the sale in favour of the 1st respondent, his employer. The said transaction is relied upon by the appellant as indicative of the respondents' alleged design to illegally grab the appellant's property and to demonstrate that PW3 and PW5 are interested witnesses.

21.Pertinently, in the present case, there is absolutely no documentary evidence to prove the payment of the alleged sale consideration of Rs.25 lakhs, to the appellant. The alleged cash transfer of such huge amount was made by executing the receipt on a non-judicial stamp paper. It will be apposite to note here that the respondents have not filed the bank statement, ledger entries, income tax returns or account books to prove the payment of the alleged sale consideration of Rs.25 lakhs. Therefore, in the absence of any legally tenable document, a genuine doubt arises if such a huge amount of Rs.25 Lakhs was actually paid under Ex.A5. In the absence of any legally acceptable documentary evidence, the entire case now hinges on the oral testimony of P.W3 and P.W5.



22.The evidence of P.W3 regarding the payment of the sale consideration is neither supported nor corroborated by P.W5, the other alleged witness to the payment. Interestingly, P.W3, in his written statement merely stated that the sale consideration was paid, but did not mention the mode of payment. The payment of the sale consideration in cash was mentioned for the first time only in his evidence.

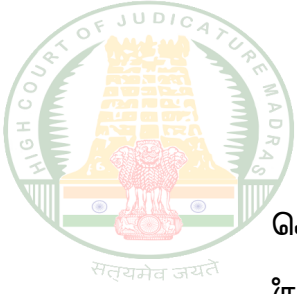
P.W.3 stated as follows:

"சார்பதிவாளர் அலுவலகத்தில் வைத்து தான் இருபத்தைந்து லட்சம் ரூபாய் ரொக்கமாக ராஜேந்திரனிடம் கொடுத்தேன்."

From the aforesaid statement of P.W3, it is clear that the amount was paid in cash in the sub-registrar's office.

23.P.W5, examined as a witness to Ex.A5, receipt, merely stated that the appellant received the sale consideration and signed the receipt. The evidence of P.W5 is as follows:

"வழக்கு சொத்திற்கான முழு கிரைய தொகை ரூ.25,00,000/- (ரூபாய் இருபத்தைந்து லட்சம் மட்டில்) 12-12-2011 தேதியிலேயே, அருளிடமிருந்து பிரதிவாதி ராஜேந்திரன் பெற்றுக்கொண்டதற்கு, அத்தாட்சியாக, அருள் பெயருக்கு ஒரு கிரைய தொகை வரவுபத்திரத்தை பிரதிவாதி ராஜேந்திரன் எழுதி கையொப்பம் செய்து



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கொடுத்துள்ளார். பிரதிவாதி ராஜேந்திரன் கிரைய தொகை ரூ.25,00,000/-த்தை பெற்றுக்கொண்டு, கிரையத்தொகை வரல் பத்திரத்தில் பிரதிவாதி ராஜேந்திரன் கையொப்பம் செய்ததை நானும், மற்றொரு சாட்சியான பழனி, பிரதிவாதியின் முகவரான அருள் மற்றும் ஆவண எழுத்தர் பொன்னப்பன் ஆகியோர் பார்த்தோம்."

24.The evidence of P.W5 does not corroborate the evidence of P.W3, on the mode of payment, namely cash payment. P.W3 merely states that the entire sale consideration was paid and received by the appellant and that, Ex.A5 was executed by the appellant in his presence. Therefore, except the self serving testimony of P.W3, that he paid the sale consideration of Rs.25 lakhs in cash, there is no other evidence available, to support his statement. It would be pertinent to note here that P.W5, who is the 3rd respondent in the appellant's suit did not even make a passing reference to Ex.A5 in his pleadings. Contrarily, in his written statement, he specifically averred that, apart from the matters expressly referred to therein, all other averments in the appellant's plaint did not relate to him, which raises a suspicion regarding his linkage to Ex.A5. Having taken a specific stand as above on Ex.A5, it is not clear how P.W5 could speak about Ex.A5. In the absence of any documentary evidence in support of the payment of the huge sale



consideration of Rs.25 lakhs under Ex.A5 and in the light of the uncorroborated, self serving and interested evidence of P.W3, I am of the view that the respondents have failed to prove the passing of sale consideration under Ex.A5. The Trial Court, in my view, erroneously inferred that the sale consideration had passed solely because the appellant admitted the execution of Ex.A5 and was, in its view, a worldly wise person. Ex.A5 is unbelievable for other reasons also, which are discussed hereunder.

25.Admittedly, even possession remained with the appellant. The trial Court on the basis of its finding that the respondent established his title over the suit property, held that the appellant was not entitled to possession. The trial court without any evidence merely assumed that the appellant was in permissive possession of the suit property on Waram basis. There is absolutely no iota of evidence to support of the respondents contention that the appellant was put in possession of the suit properties only on Waram basis. In the absence of any evidence to prove that the appellant was put in possession on Waram basis, the recitals in Ex.A5 regarding possession also becomes doubtful. Regarding delivery of the original documents under Ex.A5, I find that the Partition Deed includes the



other properties of the appellant. The respondents as P.W1 & P.W3 also admitted that the original partition deed includes other properties also. Since the appellant was admittedly allotted some other properties apart from the suit properties under the Partition Deed, the contention of the appellant that it was handed over only as a security for the loan is probablised. In view of the aforesaid discussions, I find that Ex.A5 is not a valid document since, the respondents failed to prove both the passing of consideration and delivery of possession under it. The Trial Court relied on several judgments, for the proposition that a Power of Attorney coupled with interest is irrevocable. In my view, the judgments are inapplicable to the facts of the present case in view of my finding on Ex.A5. I do not propose to discuss those judgments, since they are inapplicable to the facts of the case and their discussion would merely add paper without purpose.

26.Let me now consider the contention of the appellant that Ex.A4 was executed only as a security for the loan borrowed by him from the 2nd respondent. The evidence on record discloses that P.W1 and P.W3, father and son are professional money lenders and involved in pawn broking and jewellery business. The evidence of P.W1, supports the appellants case that he was a professional



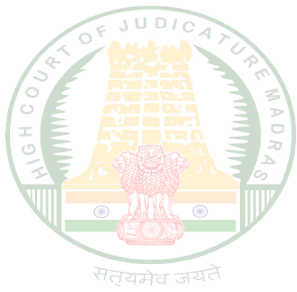
money lender. P.W1 stated as follows: "நான் இதுவரை ஐந்தாயிரம் பேருக்கு பணம்

கொடுக்கல் வாங்கல் செய்துள்ளேன், ஆனால் ஒருவரிடம் கூட எனக்கு பிரச்சினை ஏற்பட்டதில்லை." Even P.W5, the employee of the respondents, in his evidence admitted that the duo of P.W1 and P.W3, were doing business jointly. The evidence on record reveals that the respondents 1 and 2 are professional money lenders and therefore, the contention of the appellant that the 2nd respondent while advancing the loan of Rs.5 lakhs to him obtained the Power of attorney, as security for the loan cannot be brushed aside. Even though there is no independent evidence on the side of the appellant to support his case that Ex.A4 was executed only as a loan, the evidence of P.W1 (1st respondent) amply fortifies his case that the relationship between him and the respondents 1 and 2, was only that of a creditor and debtor. It is trite that an unequivocal and unconditional admission of a party is the best evidence. P.W1 in his cross examination initially stated that he had no monetary dealings with the appellant, but in the course of further cross examination, he candidly admitted his money dealings with the appellant and payment of Rs.25 lakhs, only as a loan. The admission of the 1st respondent as P.W1 is as follows:



@நான் என பணத்திற்கு பாதுகாப்பாக இருக்கத்தான் கிரயம் வாங்கினேன். பொது அதிகார பத்திரம் கொடுத்து, ஒருவருடம் கழித்து என் மகன், நான் வியாபாரத்திற்கு பணம் இல்லாமல் பணத்தை எல்லாம் புரட்டி, ராஜேந்திரனிடம் கொடுத்துவிட்டதாகவும், தான் கட்டப்படுவதாகவும் என்னிடம் சொன்னார் அதனால் நான் என் மகனிடம் இருபத்தைந்து லட்சம் ரூபாய் கொடுத்து என் பெயரில் சொத்தை எழுதிவைக்கும்படியும், நான் அதை பார்த்துக்கொள்வதாகவும் சொன்னேன். என்னிடம் வாங்கிய இருபத்தைந்து லட்சத்திற்கு அரசாங்க வட்டி போட்டு அப்போது கொடுத்திருந்தால் நான் அதை பெற்றுக்கொண்டிருப்பேன். ஆனால் என்னுடைய பணம் இப்போது தொண்ணூறு லட்சத்திற்கு மேல் வட்டியோடு வரும். தற்போது சொத்து இரண்டு கோடி ரூபாய்க்கு மேல் போகும். எனக்கான பணத்தை கொடுத்துவிட்டு சொத்தை பிரதிவாதி வைத்துக்கொள்வதில் எனக்கு ஆட்சேபணை இல்லை. தாவா கிரயத்தை நான் பிரதிவாதியிடம் வாங்கிய பிறகு, எனக்கும் பிரதிவாதிக்கும் கொடுக்கல் வாங்கல் ஏதுவும் இல்லை. பிரதிவாதி என்னிடம் ஐந்து லட்சம் ரூபாய் தான் கடன் பெற்றார் என்றாலும், நான் இருபத்தைந்து லட்சம் ரூபாய் கடனாக கொடுத்ததாக சொல்வது தவறு என்றால் சரியல்ல. நான் இருபத்தைந்து லட்சம் ரூபாய் தான் கடனாக கொடுத்தேன்."

From the aforesaid admission of P.W1, it is clear that he is a professional money lender and that he advanced the amount only as a loan. In the absence of any cogent and convincing explanation for withdrawing from the said admission, I am of the view, that there can be no better evidence to prove the appellant's case.



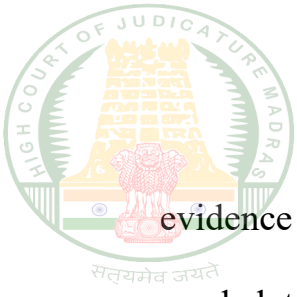
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27.I find the trial Court erroneously rejected the above crucial and vital admissions as being mere stray statements and insufficient to set aside Ex.A5. In my view, the trial Court failed to appreciate the evidence in a proper manner. The trial court miserably failed to note that the appellant's case that the father and son, duo of P.W1 & P.W3 along with P.W5, their employee, colluded to create documents in their favour so as to deprive the appellant of his lawful right to the suit property was probablised by their own evidence. The 2nd respondent as P.W3 obtained the Power of attorney under Ex.A4, from the appellant and thereafter executed a farcical sale agreement in favour of P.W5 who in turn withdrew from the sale to facilitate the sale Deeds viz Ex.A6 and Ex.A7, in favour of P.W1, his employer. The trial Court failed to note the said dubious design of the respondents to grab the property of the appellant.

28.At this juncture, the additional evidence filed by the appellant is taken for consideration. The appellant has filed the petition for receipt of additional evidence under Order 41 Rule 27 CPC. The documents sought to be filed are GST registration certificate of the appellant's firm and the bank statement of the firm



evidencing the credit of Rs.8,10,000/- to the 1st respondent's account. The appellant has explained the delay by stating that he was under the impression that the amount was transferred to the 1st respondent's account from his individual account, but on thorough examination, it came to light that the amount was actually transferred from his firms account to the 1st respondent's account. The appellant therefore prayed to receive the documents. The respondents opposed the application. The respondents in para 6 of the counter admitted "that the appellant was aware of the alleged payment at the trial proceedings, he had specifically referred to such payment in his pleadings and cross examination but no documentary evidence was produced". From the aforesaid statement in the counter, it is clear that the foundational facts for receipt of additional evidence were very much available in the appellant's pleadings and therefore no prejudice would be caused to the respondents by receiving the documents. Further, I find that the additional documents sought to be produced are the GST registration certificate and bank statements, which in my considered view need no formal or further proof and hence, the same are received as additional evidence. The GST registration certificate shows that the appellant is one of the partners of the firm and the bank statement shows that from the firm's account, a sum of Rs.8,10,000/- was credited to the 1st respondent's account on 12.12.2014. Even P.W1, in his



evidence did not deny the receipt of the said amount, but merely stated that he needed to consult his auditor in this regard. The bank statement also clearly establishes the relationship of creditor and debtor between the appellant and respondents 1 and 2. Therefore, on a cumulative analysis of the evidence on record, I am of the view that Ex.A4 was executed only as a security for the loan availed by the appellant and that the sales in favour of the 1st respondent executed by the 2nd respondent are sham and void documents. The learned counsel for the respondent submitted that the appellant ought to have prayed for setting aside Ex.A4, as that is the foundational document for the subsequent transactions. In my view, the respondents submission does not hold good, since the absence of a declaration or even a specific prayer to set it aside, does not alter the legal position of either party in the facts of this case. In view of the common claim made to the suit property by both parties, I am of the view that legal position of the parties being very clear, it is not necessary to pray for setting aside the Power of attorney.

29. One more important aspect which I find disentitles the respondents to the discretionary relief of declaration of title is the patently false case set up by them regarding the possession of the suit properties. The evidence on record clearly



shows that the respondents plea that the appellant was in permissive possession on Waram basis was absolutely false. Therefore, the respondents having approached the Court with unclean hands, I am of the view that they are not entitled to the discretionary relief of declaration of title. ***Hence, I answer issue No.1 against the respondents and issues 2 and 3 in favour of the appellant.***

Issue No.4: Whether the suit is barred by limitation?

30. Section 58 of the Limitation Act reads as follows:

<i>“Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period beings to run</i>
<i>58. To obtain any other declaration.</i>	<i>Three years</i>	<i>When the right to sue first accrues.”</i>

30.1. The Hon’ble Supreme Court in the case of ***State of Punjab and others vs. Gurdev Singh***, reported in (1991) 4 SCC 1, while construing Section 58, held as follows:

“6.....The words “right to sue” ordinarily mean the right to seek relief by means of legal proceedings. Generally, the right to sue accrues only when the cause of action arises, that is, the right to prosecute to obtain relief by legal means. The suit must be



instituted when the right asserted in the suit is infringed or when there is a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted.”

30.2. Similarly in the case of ***Daya Singh and another vs. Gurdev Singh (DEAD) BY LRS. and others***, reported in ***(2010) 2 SCC 194*** held as follows:

“13. Let us, therefore, consider whether the suit was barred by limitation in view of Article 58 of the Act in the background of the facts stated in the plaint itself. Part III of the Schedule which has prescribed the period of limitation relates to suits concerning declarations. Article 58 of the Act clearly says that to obtain any other declaration, the limitation would be three years from the date when the right to sue first accrues.

*14. In support of the contention that the suit was filed within the period of limitation, the learned Senior Counsel appearing for the appellant-plaintiffs before us submitted that there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right by the defendant against whom the suit is instituted. In support of this contention the learned Senior Counsel strongly relied on a decision of the Privy Council in *Bolo v. Koklan*. Their Lordships of the Privy Council observed as*



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follows: (IA p. 331)

“... There can be no ‘right to sue’ until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted.”

15. A similar view was reiterated in C. Mohammad Yunus v. Syed Unnissa in which this Court observed: (AIR p. 810, para 7)

“7. ... The period of six years prescribed by Article 120 has to be computed from the date when the right to sue accrues and there could be no right to sue until there is an accrual of the right asserted in the suit and its infringement or at least a clear and unequivocal threat to infringe that right.”

In C. Mohammad Yunus, this Court held that the cause of action for the purposes of Article 58 of the Act accrues only when the right asserted in the suit is infringed or there is at least a clear and unequivocal threat to infringe that right. Therefore, the mere existence of an adverse entry in the revenue records cannot give rise to cause of action.

16..... Accordingly, we are of the view that the right to sue accrued when a clear and unequivocal threat to infringe that right by the defendants.....”



31. Applying the aforesaid legal principles, let me examine the facts of this case. The evidence on record discloses that it is only when the respondents tried to mutate the revenue records in their favour, the appellant came to know of the illegal design of the respondents. The sale in favour of the 1st respondent was executed in 2013. The 1st respondent had admittedly not taken any steps to mutate the revenue records in his favour. P.W1 in his cross examination stated as follows:

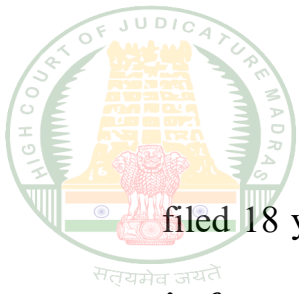
"கிராம நிர்வாக அதிகாரியிடம் வருவாய் பதிவுகளில் பெயர் மாற்றம் செய்யவேண்டுமென்று சொன்னேன். அதன்பிறகு பிரதிவாதி வேகமாகிவிட்டார்."

32. From the evidence of the 1st respondent, it is clear that soon after he initiated steps to mutate the revenue records, the appellant swung into action. The appellant stated that he came to know of the sales in 1st respondent's favour, from the EC taken out by him. The trial Court in the absence of a copy of the EC, refused to accept the appellant's case that he came to know of the sales in favour of the 1st respondent only from the EC's. Merely because the appellant failed to file the EC's it cannot be said that he had knowledge of the sales in favour of the 1st respondent. The respondents having taken the plea of bar of limitation, ought to have placed some records to prove the same. There is no evidence to impute



knowledge of Ex.A6 & Ex.A7, to the appellant, prior to the filing of the suit. On the contrary, the above evidence of P.W1 shows that immediately after the appellant came to know that the 1st respondent was attempting to mutate the patta in his favour, he swung into action. It will be relevant to note here that the bank statement of the appellant clearly establishes that even after the sale in favour of the 1st respondent, the appellant paid Rs.8,10,000/- to him. If the appellant had knowledge of the sale in favour of the 1st respondent, he would not have paid the amount into the 1st respondents account after the sale in his favour. The Trial Court in my view, failed to appreciate properly the evidence in this regard.

33.In the absence of clear cut evidence on the side of the respondents, that the appellant had knowledge of the sales in favour of the 1st respondent, immediately after the sales in 1st respondent's favour, I am of the view that the suit is is not barred by limitation. The judgment relied on by the learned counsel for the respondents in the case of ***Board of Trustees of Port of Kandla vs. Hargovind Jasraj and another***, reported in (2013) 3 SCC 182 is clearly inapplicable to the facts of this case, since in the said case, the Hon'ble Supreme Court, on the basis of the letter of the respondent therein, held that the respondent had knowledge of the termination of the lease, as per his own letter dated 22.02.1979, and so the suit



filed 18 years later was clearly barred by limitation. ***Hence, I answer issue No.4 in favour of the appellant.***

Issue No.5: Whether the appellant is in possession of the properties in his own right, if so, is he is entitled to relief of injunction.

34. The appellant's categorical contention is that the suit properties were in his possession and never delivered to the 1st respondent. The trial Court on the basis of its finding that the 1st respondent was the owner of the suit property, found that the appellant was not entitled to injunction against the true owner and directed recovery of possession. The appellant categorically denied that he was in possession of the properties on Waram basis. At the outset, it would be relevant to note here that there is absolutely no evidence on the side of the respondents to prove their plea that the appellant was in possession of the suit properties on Waram basis. No document is filed to prove the payment of the alleged Waram. I have already found above that possession was not delivered to the respondents. The possession of the appellant is admitted by the respondent but absolutely no iota of evidence is produced to show that the appellant is in permissive possession of the suit property on Waram basis. On the other hand, the appellant has produced



Ex.B10 to Ex.B13 to show that the revenue records namely, A-register, patta and Adangal stand in his name. I therefore find that the appellant is in possession of the suit properties and as such, is also entitled to the relief of permanent injunction.

35. When this Court was about to pronounce the judgment during June 2026, the learned counsel for the appellant made a mention before this Court that the sole appellant died and he sought time to bring the legal heirs of the deceased appellant on record. Accordingly, permission was granted. The legal heirs were brought on record in the aforesaid Appeal Suits vide order of this Court dated 25.06.2026 made in CMP.Nos.15508 and 15503/2026.

36. In view of the above discussions, the common judgment and decree of the Court below, made in OS.Nos.106 and 229 of 2020, are set aside and **the First Appeals in AS.Nos.365 and 366 of 2023 are allowed.** No costs. Consequently, the connected miscellaneous petitions are closed.

08.07.2026

Internet: Yes

Index: Yes/No

Speaking Order: Yes/No

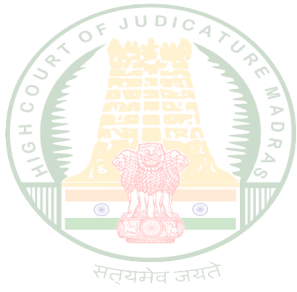
Neutral Citation: Yes/No

dsn/AP

To

The Additional District and Sessions Judge, Cuddalore.

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A.S.No.365 and 366

N.MALA,J.

Dsn / AP

Common Judgment in
AS.Nos.365 and 366 of 2023

Delivered on: 08.07.2026

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