



S.A. No. 1085 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 30.01.2026
PRONOUNCED ON : 28.07.2026

CORAM:

THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

S.A. No. 1085 of 2014

R.Saraswathi
W/o.Rajendran,
No.E-85, Anna Colony,
Besant Nagar,
Chennai – 90.

..Appellant

Vs

1. R.Rajendran(died)
No.3/231, D.S.G.Nagar,
III Street, Palavakkam,
Chennai – 600 041.
2. Rajakumari, W/o.Late R.Rajendran
3. Indhumathi, D/o.Late R.Rajendran
R2 & R3 are residing at No.3/231, DSG Nagar,
3rd Street, Palavakkam,
Chennai – 600 041.

[R1 Died. R2 and 3 are brought on record as
LRs of the deceased R1 vide Court Order dated
20.09.2023 made in C.M.P.No.9159 of 2023 in
S.A.No.1085 of 2024 (TVTSJ)]

..Respondent(s)

PRAYER:- Second Appeal is filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 03.09.2014 in A.S.No.460 of



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2013 on the file of VII Additional City Civil Court, Chennai reversing the judgment and decree dated 07.10.2013 in O.S.No.10501 of 2010 on the file of VI Assistant City Civil Judge, Chennai.

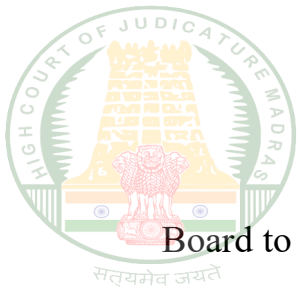
For Appellant(s): Mr.R.Subramanian for M/s.R.Meenal.
For Respondent(s): Mr.A.S.Narasimhan.

J U D G M E N T

This Second Appeal is filed by the appellant/defendant against the judgment and decree dated 03.09.2014, passed in A.S.No.460 of 2013 on the file of the VII Additional City Civil Court, Chennai, which reversed the judgment and decree dated 07.10.2013, passed in O.S.No.10501 of 2010 on the file of the VI Assistant City Civil Court, Chennai. During the pendency of the Second Appeal, the sole respondent/plaintiff died, and his legal representatives were brought on record.

2. For convenience, the parties are referred to as they were before the trial court.

3. The plaintiff's case is that the property in Schedule 'A' of the plaint, bearing Plot No.12, Door No.49, Anna Colony, Besant Nagar, Chennai, measuring 95 sq.m., was originally allotted by the Tamil Nadu Slum Clearance



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Board to his father, K. Ranganathan. After his death, his wife, Kanthammal, and their three sons, namely Padmanaban, Rajendran, and Namasivayam, succeeded to the possessory rights in the property. After the death of Kanthammal, the three brothers were enjoying separate portions under a mutual arrangement. However, the Slum Clearance Board had executed no registered sale deed in favour of the legal heirs, nor was there any registered partition among them.

4. The plaintiff states that he constructed a building on the portion allotted to him and let out the property described in the plaint 'B' Schedule to the defendant. At the time of letting, he received Rs.1,00,000/- under a letter dated 16.09.1999. Thereafter, under an agreement dated 19.09.1999, the defendant paid a further sum of Rs.1,00,000/-. The defendant agreed to pay and paid the balance sum of Rs.1,20,000/- on 10.11.1999, when a document styled as a "sale power deed" was obtained from the plaintiff on plain paper. Thus, the plaintiff admittedly received a total sum of Rs.3,20,000/-.

5. According to the plaintiff, the said amounts were received only to tide him over his financial difficulties. He further contends that the property, then worth about Rs.12,00,000/-, could not have been sold by him, since neither a



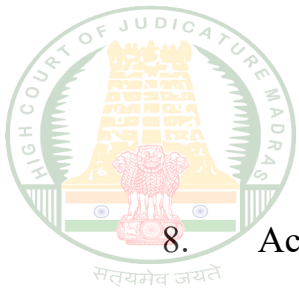
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sale deed had been issued by the Slum Clearance Board nor had any specific

portion been partitioned among the legal heirs.

6. In June 2010, the plaintiff offered to repay Rs.3,20,000/- and sought delivery of possession from the defendant. As the defendant refused, the plaintiff issued a notice dated 05.07.2010, calling upon the defendant to vacate upon receipt of the said amount. By reply dated 13.07.2010, the defendant denied the plaintiff's claim and demanded execution of a sale deed under the agreement dated 19.09.1999. Accordingly, the plaintiff filed the suit for recovery of possession of the 'B' Schedule property upon repayment of Rs.3,20,000/-.

7. The defendant denied the plaint averments and contended that the suit was not maintainable for non-joinder of the other legal heirs of K. Ranganathan, particularly as the plaintiff himself admitted there was no registered partition among them. It was further contended that, without seeking a declaration of his title, the plaintiff could not maintain a suit for recovery of possession.



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8. According to the defendant, the plaint 'B' Schedule property was never

let to her, and she was never a tenant of the plaintiff. The amounts of Rs.1,00,000/- paid on 16.09.1999, Rs.1,00,000/- paid on 19.09.1999, and Rs.1,20,000/- paid on 10.11.1999 constituted the entire sale consideration of Rs.3,20,000/-. The plaintiff represented that the property had fallen to his share under an oral family arrangement and that he alone was entitled to sell it. On 19.09.1999, he executed a sale agreement, attested by K. Murali and Jaya, agreeing to execute the sale deed on or before 10.11.1999. Upon payment of the balance consideration on 10.11.1999, the plaintiff executed a document styled as a "sale power deed" and delivered possession of the property to the defendant.

9. The defendant claimed that she had remained in open and continuous possession from 1999, had paid electricity charges and property tax in her own name, obtained a ration card at the suit address, and made substantial improvements to the property. She asserted that her possession was lawful and protected under Section 53-A of the Transfer of Property Act, and further pleaded that she had perfected title by long possession. She denied that the property was worth Rs. 12,00,000/- in 1999, stating that the agreed price of Rs. 3,20,000/- was reasonable, given the small extent and dilapidated condition of the building. According to her, the suit was filed only after the property's value



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had increased and after she had made valuable improvements. She therefore

prayed for dismissal of the suit with exemplary costs.

10. The trial Court framed the following issues:

1. Whether the plaintiff is entitled to recovery of the plaint 'B' schedule property?
2. To what other relief?
3. Whether the Ex.B4 document is an admissible and reliable one?

11. The plaintiff examined himself as P.W.1 and marked Exs.A1 to A7. Ex.A1 is the allotment notice; Ex.A5 is the legal notice; and Ex.A6 is the reply notice. The defendant examined D.W.1 to D.W.3 and marked Exs.B1 to B11. Ex.B1 is the signature for Rs.1,00,000/- dated 16.09.1999; Ex.B2 is the receipt for advance dated 16.09.1999 for Rs.1,00,000/-; Ex.B3 is the agreement executed by the plaintiff on 19.09.1999; and Ex.B4 is the Sale Power Deed dated 10.11.1999. Ex.B5 is the Electricity Board card for the period from 2002 to 2011; Ex.B6 is the family card for the period from 2005 to 2011; and Ex.B7 is a series of Corporation property-tax receipts for the period from 1998 to 2011. Ex.B8 is the bill issued by the Chennai Corporation, dated 05.07.2010; Ex.B9 is the defendant's bank passbook dated 29.03.2010; and Ex.B10 is a copy of the



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Special Power of Attorney dated 07.12.2011, executed by the defendant in

WEB favour of her mother-in-law. Ex.B11 is a copy of Ex.B4.

12. The trial Court held that Ex.B3 and Ex.B4 demonstrated the parties' intention to enter a sale transaction, that the plaintiff had received the entire Rs.3,20,000/-, and that the defendant was in possession as part performance of the agreement. On that basis, the trial Court dismissed the suit.

13. The lower appellate Court reversed the trial Court's judgment. It held that the property in Schedule 'A' of the plaint belonged to the Slum Clearance Board and that no sale deed had been executed in favour of the plaintiff or his family members. It therefore held that the plaintiff was not the owner of the property and had no right or title to transfer it.

14. The lower appellate Court held that Ex.B4 was written on plain paper, unstamped, and could not be treated as either a sale agreement or a sale deed. It further held that Ex.B4 could be treated only as an acknowledgement of receipt of money, not as a document creating title or conferring protection under Section 53-A.



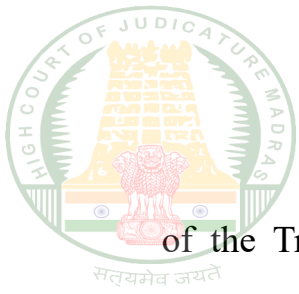
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15. The lower appellate court then held that the defendant's possession could

be treated only as possession in lieu of the amount advanced to the plaintiff. It decreed the suit, directing the plaintiff to deposit Rs.3,20,000/- and the defendant to deliver possession on receipt of that amount.

16. Aggrieved by the reversal decree, the defendant has filed the present Second Appeal. In the memorandum of grounds, it is contended that the First Appellate Court erred in decreeing the suit after finding that the property belonged to the Tamil Nadu Slum Clearance Board and that the plaintiff was not its absolute owner. The appellant contends that the admitted execution of Exs. B1 to B4 established an agreement of sale, receipt of the entire consideration, and delivery of possession to the defendant in part-performance, thereby entitling her to protection under Section 53-A of the Transfer of Property Act.

17. It is further contended that the plaintiff took inconsistent positions, pleading that the property was let out and that the amounts were received as advances, while in Ex.A5 and during arguments stating that the transaction was a loan. The finding that the plaintiff had possessory rights is challenged on the ground that no such pleading was made. The appellant also relies on Section 43



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of the Transfer of Property Act and contends that, even if the plaintiff had imperfect title at the time of the agreement, he would be bound to execute the sale deed upon subsequently obtaining title from the Slum Clearance Board. Lastly, it is contended that the suit was bad for non-joinder of the other legal heirs of the plaintiff's father.

18. This Second Appeal was admitted on 11.11.2014 on the following substantial questions of law:

- 1.The decree and judgment of the lower appellate Court are substantially erroneous in law and unsustainable?
- 2.The lower appellate Court ought to have seen that the suit filed by the plaintiff itself is not maintainable?
- 3.The lower appellate Court, after finding that the property belongs to the Slum Clearance Board and that the plaintiff is not the owner, erred in allowing the appeal and thereby decreeing the suit?

19. Learned counsel for the appellant/defendant submitted that the First Appellate Court erred in granting a decree for recovery of possession, having found that the Tamil Nadu Slum Clearance Board was the owner of the property

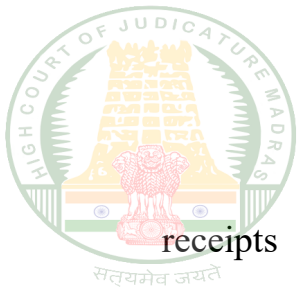


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and that no sale deed had been executed in favour of the plaintiff. It was

contended that the plaintiff's title had been specifically denied in the written statement and that, therefore, he could not seek recovery of possession without obtaining a declaration of his title. Reliance was placed on **Anathula Sudhakar v. P. Buchi Reddy (Dead) by LRs. and others, (2008) 4 SCC 594**, particularly the principle that, where the plaintiff's title is under a cloud and he is out of possession, the proper remedy is to seek a declaration of title and possession. The appellant had also pleaded that she had remained in possession and enjoyment of the property from 1999 onwards.

20. It was further submitted that the First Appellate Court's findings were contradictory, as it held that the plaintiff was not the owner and had no right or title to deal with the property, yet that he possessed a possessory right and was entitled to recover possession. However, he was admittedly not in possession. According to the appellant, Exs.B1 to B4 established that the transaction was a sale and that the entire consideration of Rs.3,20,000/- had been paid. It was contended that Ex. B4 recorded that the plaintiff had given up his rights over the property and that the appellant was entitled to seek enforcement of the agreement after the Tamil Nadu Slum Clearance Board executed a sale deed in favour of the plaintiff. The Electricity Board card, family card and property-tax



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receipts from 2002 onwards were relied upon to establish the appellant's continuous possession and enjoyment in her own right and to the knowledge of the plaintiff.

21. Learned counsel further submitted that the appellant had entered into possession under the agreement of sale and was entitled to protect that possession. Reliance was placed on **Ramesh Chand Ardawatiya v. Anil Panjwani, (2003) 7 SCC 350**, to contend that a person in possession under a contract of sale is entitled to protect that possession against everyone except the person having title. It was therefore submitted that the appellant's possession could be challenged only by the true owner, namely, the Tamil Nadu Slum Clearance Board, and that the judgment and decree of the First Appellate Court were liable to be set aside.

22. Learned Counsel for the Respondents/Plaintiff submits that the property was allotted to the plaintiff's father, and the family continued in possession. Under the family arrangement, the plaintiff was in possession of the portion in question. Although the plaintiff did not have a registered sale deed from the Slum Clearance Board, he had a possessory right derived from the allotment



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made to his father and from the family arrangement.

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23. Since the plaintiff did not have absolute and registered title, he could not convey the property by a regular sale deed. The parties therefore understood that only possession was being transferred. The defendant was put in possession on payment of Rs.3,20,000/-, which was an advance or security for such possession. The plaintiff is ready to repay the entire amount and seeks restoration of possession.

24. It was submitted that the documents do not constitute a legally enforceable conveyance. The subsequent documents styled as a sale-power are neither registered conveyances nor capable of transferring title. At best, they evidence receipt of money and delivery of possession. Both parties were lay persons, and the expressions used in the documents cannot be treated as if they had been drafted with precise legal advice. The real substance of the transaction must be considered.

25. It was submitted that the plaintiff had been in possession of the property pursuant to the allotment made to his father. The defendant entered possession



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only through the plaintiff, upon payment of Rs.3,20,000/-. Therefore, on repayment of that amount, the plaintiff is entitled to recover possession. The lower appellate Court correctly interpreted the documents and granted relief on the strength of the plaintiff's prior possessory right.

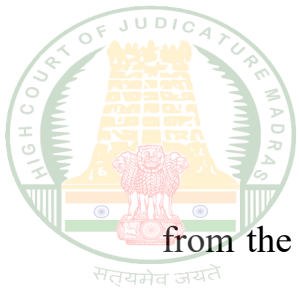
Substantial Questions of Law Nos.1 to 3

26. Since all three substantial questions of law are interconnected, they are considered together.

27. Protection under Section 53-A of the Transfer of Property Act is only a defensive equity and not a source of title. To invoke the said provision, the defendant must establish a definite and enforceable contract, delivery or continuation of possession in part performance thereof, and performance or a continuing willingness to perform her obligations.

28. The defendant has pleaded protection under Section 53A of the Transfer of Property Act, 1882, based on the doctrine of part performance, relying on Exs. B1 to B4.

29. Exs.B1 and B3 are agreements of sale under which the plaintiff agreed to sell the suit property and acknowledged receipt of advance sale consideration



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from the defendant. However, under these documents, the plaintiff did not part with possession of the suit property.

30. Ex.B4 is styled as a "Sale Power Deed". However, a document's nomenclature is not conclusive. The true nature of the document must be determined from its recitals and the parties' intention. A careful reading of Ex.B4 reveals that the plaintiff transferred all his rights in the suit property to the defendant and expressly declared that he had relinquished all his rights over the property. Therefore, notwithstanding its title, Ex.B4 is, in substance, a sale deed and not merely an agreement of sale.

31. The First Appellate Court rejected the defendant's claim for protection under Section 53A of the Transfer of Property Act on the ground that the plaintiff was not the absolute owner of the property, the original owner being the Tamil Nadu Slum Clearance Board. However, on a careful examination of Exs B1 to B4, this Court finds that the essential ingredients required to invoke Section 53A are absent.

32. One of the indispensable requirements for claiming the benefit of Section 53A is that the transferee must have been put in possession of the immovable



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property, or must continue in possession, in part performance of a written agreement to sell, and must have performed or be willing to perform his part of the contract. In the present case, Exs.B1 to B3 establish that possession of the suit property was never delivered to the defendant. Although possession is stated to have been delivered under Ex.B4, that document, as already held, is not an agreement of sale but, in substance, an unregistered sale deed executed on insufficiently stamped paper.

33. Consequently, Ex.B4 is chargeable with proper stamp duty and penalty under Section 35 of the Indian Stamp Act, 1899, and, being an unregistered sale deed affecting immovable property, is also subject to Section 49 of the Registration Act, 1908. The proviso to Section 49 saves only an unregistered agreement to sell when relied upon for the limited purpose contemplated therein, including a claim under Section 53A of the Transfer of Property Act. The said proviso does not extend such protection to an unregistered sale deed.

34. Therefore, Ex.B4, being both insufficiently stamped and unregistered, is inadmissible in evidence. The mere fact that it has been marked as an exhibit does not render it admissible. The opening words of Section 35 of the Indian Stamp Act contain a statutory bar that an instrument chargeable with duty shall



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not be admitted in evidence for any purpose unless the requisite stamp duty, together with the prescribed penalty, has been paid.

35. In light of the above legal position, the defendant cannot rely on Ex.B4. Consequently, the defendant is not entitled to claim the protection of Section 53A of the Transfer of Property Act, 1882.

36. The doctrine of feeding the grant by estoppel under Section 43 of the Transfer of Property Act also does not advance the defendant's case. That provision applies only if the plaintiff subsequently acquires an interest in the property. Admittedly, no sale deed was subsequently executed by the Slum Clearance Board in favour of the plaintiff. In the absence of any subsequently acquired title, Section 43 cannot presently operate in favour of the defendant.

37. The material facts remain that the defendant entered into possession of the suit property with the permission of the plaintiff. Since the defendant is not entitled to the protection under Section 53A of the Transfer of Property Act, 1882, her possession can only be treated as that of a permissive occupier under the plaintiff. No valid conveyance of the suit property was executed in her favour. Upon revocation of the permission, she was bound to surrender



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possession but failed to do so. The transaction did not create any transferable interest in the suit property. At the highest, the defendant is entitled to restitution of the amount paid by her, but she cannot claim any right, title, or interest in the suit property. Accordingly, the substantial questions of law Nos.1 to 3 are answered against the appellant.

38. The lower appellate Court was, therefore, fully justified in reversing the trial Court's judgment and decree and in granting the relief of recovery of possession. The judgment and decree of the lower appellate Court do not suffer from any legal infirmity warranting interference. The decree directing delivery of possession passed by the first appellate Court is found to be legal, valid, and sustainable.

39. Accordingly, the Second Appeal is dismissed. The judgment and decree dated 03.09.2014, passed in A.S. No.460 of 2013 on the file of the VII Additional City Civil Court, Chennai, reversing the judgment and decree dated 07.10.2013, passed in O.S. No.10501 of 2010 on the file of the VI Assistant City Civil Court, Chennai, are hereby confirmed.

40. If the respondent/plaintiff has already deposited the sum of Rs.3,20,000/-



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pursuant to the decree of the lower appellate Court, the appellant/defendant

shall deliver vacant possession of the plaint 'B' Schedule property to the respondents/legal representatives of the plaintiff within two months from the date of receipt of a copy of this judgment. Upon such delivery of vacant possession, the appellant/defendant shall be entitled to withdraw the said amount, subject to due identification and compliance with the procedure prescribed by the Court below.

41. If the said amount has not already been deposited, the respondents/legal representatives of the plaintiff are granted two months from the date of receipt of a copy of this judgment to deposit Rs.3,20,000/- before the trial Court. Upon such deposit, the appellant/defendant shall forthwith deliver vacant possession of the plaint 'B' Schedule property to the respondents/legal representatives of the plaintiff, and thereafter the appellant/defendant shall be entitled to withdraw the deposited amount in accordance with law. No order as to costs. Consequently, the connected miscellaneous petitions, if any, are closed.

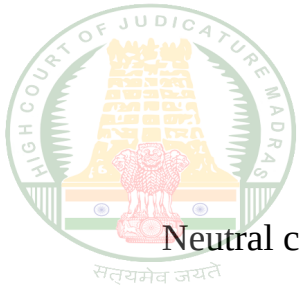
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Index: Yes/No

Speaking Order /Non-speaking order

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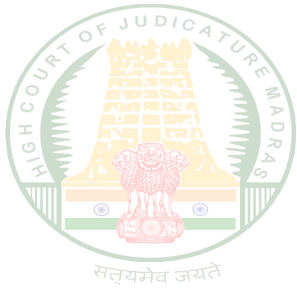


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Neutral citation: Yes/No

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To

1. The VII Additional City Civil Court, Chennai
2. The VI Assistant City Civil Judge, Chennai.
3. The Section Officer,
V.R.Records,
Madras High Court.



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DR. A.D. MARIA CLETE, J

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