



SA No. 199 of 2014

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-07-2026

CORAM

THE HON'BLE MR.JUSTICE P. DHANABAL

SA No. 199 of 2014

1. Murugammal,
W/o. Arumugham
2. Jegadambal,
W/o.Dharmalingam
New Colony, Perani Village,
Tindivanam Taluk.

..Appellant(s)

Vs

Annadurai,
S/o.Chinnamuthu,
New Colony, Perani Village,
Tindivanam Taluk.

..Respondent(s)

Prayer: Second Appeal filed under Section 100 of Civil Procedure Code, as against the Judgment and Decree of the learned Principal Subordinate Judge, Tindivanam in A.S.No.16 of 2012 dated 04.01.2013 confirming the Judgment and Decree of the learned Principal District Munsif, Tindivanam in O.S.No.309 of 2009 dated 25.11.2011.

For Appellant(s):

Mr.R.P.Ruban Chakravarthy for
Mr.S.Kaithamalai Kumaran

For Respondent(s):

No appearance



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JUDGMENT

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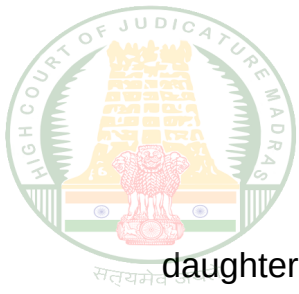
This Second Appeal has been preferred as against the findings rendered in A.S.No.16 of 2012 on the file of the learned Principal Subordinate Judge, Tindivanam dated 04.01.2013.

2. The respondent herein, who is the plaintiff has filed a suit for relief of declaration in respect of the suit property as against the appellants / defendants herein. In that suit, since the appellants have claimed the title of the property, the trial court has framed the issues in respect of the claim of the appellants and rendered findings as against the appellants. However, the main suit was dismissed. Aggrieved by the said findings rendered in the Judgment, the appellants preferred Appeal Suit No.16 of 2012 before the First Appellate Court, Principal Sub Judge, Tindivanam and the same was also dismissed on the ground that the issue in respect of the property of the appellants is also necessary to decide the suit and dismissed the Appeal. Challenging the said Decree and Judgment, the present Second Appeal has been preferred. For the sake of convenience and brevity, the parties herein are referred as plaintiff and defendants, as referred before the trial court.



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3. The case of the plaintiff is that the suit property situated in Survey No.519/4B to an extent of 1.25 acres belonged to one Susai and his wife Mariammal. Already the said Mariammal sold half of the property to an extent of 0.62 ½ acres to one Chinamuthu, who is father of the plaintiff. Thereafter, the said Mariammal and Susai, left the properties to the father of the plaintiff, Chinamuthu, remaining portion of 0.62 ½ acres. The western side portion was enjoyed by Chinamuthu and the eastern side portion was enjoyed by Susai and Mariammal. After the demise of the said Susai and Mariammal, the said land was enjoyed by one Chellammal, who is the mother of the plaintiff, as legal heirs of Mariammal and Susai. The said Chellammal died ten years ago leaving behind her husband, Chinamuthu, plaintiff and one son, Marimuthu and another daughter Ponnammal. Thereafter, the said Marimuthu and Ponnammal, sold the property to the plaintiff in respect of the eastern side 0.62 ½ acres, thereby the eastern side portion has been enjoyed by the plaintiff. The 2nd defendant, purchased the property on the western side through sale deed dated 24.11.1978 along with other properties, totally to an extent of 1.83 ½ acres. At the time of executing sale deeds, there are certain errors in the four boundaries. The defendants, have created settlement deed in respect of the western side of the property, which is in enjoyment by the plaintiff. The 1st defendant executed settlement deed in favour of her

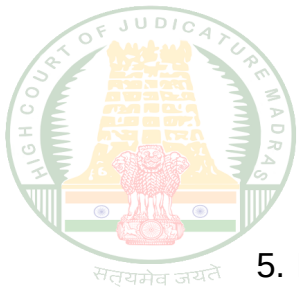


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daughter, 2nd defendant in respect of the property belongs to the plaintiff.

Therefore, the plaintiff filed the suit.

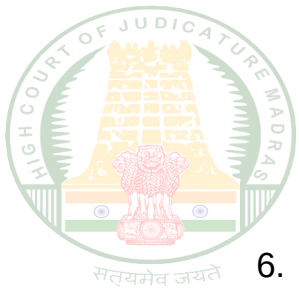
4. The case of the defendants is that the suit property and the four boundaries are not correct and the suit property not belonged to the plaintiff. The alleged sale deed dated 08.04.2009 is a created one. The father of the plaintiff, viz., Chinamuthu sold the property to the 2nd defendant to an extent of 1.83 acres. It is false to state that eastern side portion of 0.62 ½ cents was lying vacant and the same was enjoyed by Chinamuthu, either the plaintiff or his predecessors have no right, title or interest over the property. The said Chinamuthu executed sale deed dated 24.11.1978 to the 2nd defendant to an extent of 1.83 ½ acres and thereafter, the said Chinamuthu has no any right over the property. While so, the 2nd defendant settled as if she had ancestral property of 62 ½ cents along with the property purchased by her through sale deed dated 24.11.1978 to an extent of 1.83 ½ acres, through settlement deed in favour of the 1st defendant on 06.08.2008, thereby the total extent of 2.46 cents belongs to the 1st defendant and the entire properties were under the enjoyment of the 1st defendant. The plaintiff has no right over the suit property and the suit is liable to be dismissed.



5. Based on the above said pleadings and after hearing both sides, the trial court has framed the following issues for trial:-

- 1. Whether the sale deed dated 08.04.2009 is valid?*
- 2. Whether the sale deed dated 24.11.1978 is valid?*
- 3. Whether the settlement deed dated 06.08.2009 is valid?*
- 4. Whether the plaintiff is entitled for declaration in respect of the title of the property?*
- 5. Whether the plaintiff is entitled to permanent injunction in respect of the suit property?*
- 6. To what reliefs, the plaintiff is entitled to?"*

Before the trial court, on the side of the plaintiff, witnesses P.Ws.1 and 2 were examined and marked exhibits, Exs.A.1 to A.5. On the side of the defendants, witnesses D.W.1 and D.W.2 were examined and marked exhibits, Exs.B.1 to B.6. The trial court after considering the evidences adduced on both sides and perusing the records, dismissed the suit. Even though the suit was dismissed, the defendants, who were aggrieved by the findings in respect of the third issue, preferred appeal before the First Appellate Court in A.S.No.16 of 2012 on various grounds and the First Appellate Court dismissed the appeal, without framing any points for determination and decided that the third issue is essential to decide the case and thereby the trial court has framed the third issue.



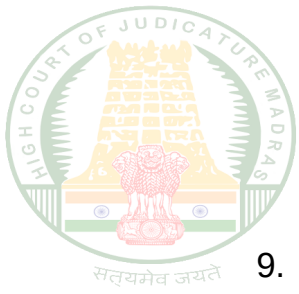
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6. Aggrieved by the said Decree and Judgment passed by the First Appellate Court, the present Second Appeal has been filed by the appellants. At the time of admitting the Second Appeal, this Court formulated the following Substantial Question of Law:-

“Whether the Courts below are right in going into the validity or otherwise of Ex.B2 Settlement, when no relief has been sought for to set aside the said document”?

7. The learned counsel appearing for the appellants would submit that the respondent / plaintiff has filed the suit for declaration in respect of the suit property alleging that the plaintiff has purchased the property. In fact, the said property was settled in favour of the 1st appellant. The 2nd appellant purchased the property from Chinamuthu through sale deed dated 24.11.1978 to an extent of 1.83½ acres. Thereafter, settled the above said property along with ancestral property, but according to the plaintiff, he purchased the property through sale deed and claimed the property, while so, the trial court unnecessarily framed the third issue and answered as against the appellants / defendants, therefore, the above said findings in respect of the third issue have to be set aside.

8. Though notice was served as early as on 22.10.2025 to the respondent none appeared and name has been printed in the cause list, there is no representation for the respondent.



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9. Heard the learned counsel appearing for the appellants and perused the entire documents placed on record.

10. This Court has raised a question about the maintainability of the appeal as against the findings. It is well settled law that the appeal will not lie as against the findings and the appeal will only lie as against the decree. It is an admitted fact that both the parties are claiming title over the properties. The plaintiff is claiming the title through the sale deed dated 08.04.2009, the defendants are claiming title over the property through settlement deed dated 06.08.2009 in favour of the 1st defendant. Therefore, the trial court has framed the third issue, viz., 'Whether the Settlement deed dated 06.08.2009 is valid?' and thereafter, answered the issue, however, dismissed the suit, thereafter, the plaintiff has not preferred the appeal, per contra, the defendants filed the appeal as against the findings in respect of the third issue. Before the trial court, the question of maintainability has not been raised by the parties and court also not raised any question with respect to maintainability of appeal as against the findings. However, the First Appellate Court, dismissed the appeal by holding that the Issue No.3 is essential to decide the case and thereby dismissed the appeal. Aggrieved by the said Decree and Judgment, the present Second Appeal has been preferred. This Court also admitted the Second Appeal and framed the Substantial Question of Law that 'Whether the courts below are right in going into validity or otherwise of Ex.B2 settlement,



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when no relief has been sought for to set aside the said document'. In fact, both the plaintiff and the defendants have claimed title of the properties, the plaintiff claimed property through sale deed and the 1st defendant claimed property through settlement deed, thereby the trial court framed the issue that, 'Whether the settlement deed dated 06.08.2009 is valid?', for that, the trial court answered that the settlement deed in respect of the suit property alone is not valid, however, the court has not declared the said sale deed as null and void, since the defendants have claimed the title of the property, the court has framed that issue, therefore, even on merits, the courts below have correctly decided the matter.

11. At this juncture, the learned counsel appearing for the appellants has relied upon the Judgment of the **Hon'ble Supreme Court reported in (1974) 2 Supreme Court Cases 393 [Smt.Ganga Bai Vs. Vijay Kumar and Others]** and Judgment of this Court reported in 1998(II) CTC 218 [R.Maria Siluvai Vs. B.Sreekumari Amma and three others].

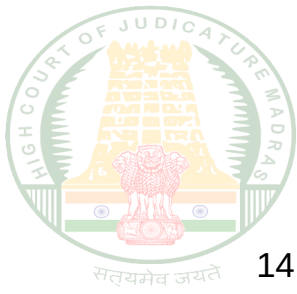
12. On a careful perusal of the above said judgment of **Hon'ble Supreme Court reported in (1974) 2 Supreme Court Cases 393 [Smt.Ganga Bai Vs. Vijay Kumar and Others]**, it is clear that under Code of



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Civil Procedure, an appeal lies only as against the Decree or as against an order passed under Rules, from which an appeal is expressly allowed by Order 43 Rule 1. No appeal can lie against a mere finding for the simple reason that the Code does not provide for any such appeal. An appeal filed as against the mere findings given by the trial court is not maintainable. However, the High Court of Calcutta held that though under the Code, there could be no appeal against a finding, yet, 'on grounds of justice', an appeal may lie against a finding provided that it would operate as res-judicata so as to preclude a party aggrieved by the finding from agitating the question covered by the finding in any other proceeding. However, the said position has not been determined by the Hon'ble Supreme Court, whether the view of the High Court, Calcutta is correct, or not.

13. As far as the Judgment of this Court **reported in 1998(II) CTC 218 [R.Maria Siluvai Vs. B.Sreekumari Amma and three others]** is concerned, the same will not be applicable to the facts and circumstances of the present case, as above case arising out of the order of remand under Order 41 Rule 23 of the CPC.



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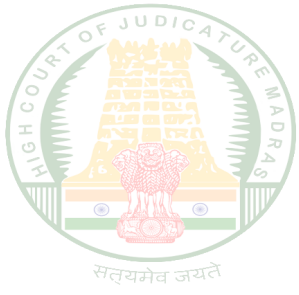
14. In the present case, the appeal has been filed by the appellants on the findings rendered by the trial court, therefore, in view of the above said judgments, the appeal is not maintainable. Even on merits, the trial court has framed the issue based on the pleadings pleaded by both the parties. The plaintiff claimed the property through sale deed dated 08.04.2009 similarly, the defendants also claimed the property through settlement deed dated 06.08.2008, therefore, the trial court has framed the third issue. The First Appellate Court also came to a conclusion that the trial court has framed the proper issue based on the pleadings, therefore, even though, no relief has been sought for in respect of the settlement deed, through the settlement deed, disputed property has been settled and the said property has been claimed by the defendants, therefore, necessity arisen by the trial court to frame the third issue and answered the issue based on the records. Therefore, in view of the same, even on merits, the Second Appeal has no merits and deserves to be dismissed.

Accordingly, the present Second Appeal is dismissed. No costs.

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

ssd



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To

1. The Principal Subordinate Judge,
Tindivanam
2. The Principal District Munsif,
Tindivanam



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P.DHANABAL, J.

ssd

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