

SA(MD). No.505 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 16.06.2026

Delivered On : 10.07.2026

CORAM

THE HONOURABLE MR. JUSTICE P.B. BALAJI

SA(MD). No.505 of 2021

and

CMP(MD)No.5850 of 2026

A.V.K.Arulkrushnan,

... Appellant/ Appellant / Plaintiff

Vs.

1. Renuka Murugiah,

2. Bhavani Saravanabhavan,

3. R.Muralidharan,

4. Parameshwar,

5. B.K.Chellappan,

6. The State of Tamil Nadu,

Rep. by the District Collector,

Office of Collectorate,

Trichy.

7. The Tahsildar,

Manachanallur Taluk and Post,

Trichy District.

... Respondents / Respondents/Defendants



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PRAYER in SA:- Second Appeal is filed under Section 100 CPC, against the decree and judgment passed in A.S.No.168 of 2018, on the file of the Sub Court, Lalgudi, dated 15.10.2019 confirming the decree and judgment passed in O.S.No.312 of 2007 on the file of the District Munsif, Lalgudi, dated 16.08.2017.

Prayer in CMP: To permit the petitioner / appellant to produce additional evidence, viz., (i) order dated 08.11.2019 in Crl.R.C.(MD)No.437 of 2015 passed by this Court and (ii) order dated 20.10.2022 in Special Leave to Appeal (Crl.)No.1041 of 2021 passed by the Hon'ble Supreme Court of India and pass such further or other orders.

For Appellant : Mr.Arun Anbumani
for Mrs.J.Nandhini

For Respondents : Mr.R.Baskaran, Senior Counsel
for Mr.P.Parthiban For R5
: No appearance for R4

JUDGMENT

The plaintiff, who suffered concurrently before the trial Court in O.S.No.312 of 2017 (District Munsif, Lalgudi) and the first appellate Court, in A.S.No.168 of 2018, (Sub Court, Lalgudi), is the appellant herein.



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2. The second appeal has been admitted by this Court on 15.07.2024, on the following substantial questions of law:

1. Whether the Courts below have erred in not granting decree to the appellant for southern half of suit property as per Ex.A9 dated 24.06.2002, when sale deed was executed by its lawful owners?

2. Whether the finding of appellate Court that Ex.A9 was not legally valid tenable, when Ex.A9 was not challenged and set aside in accordance with law?

3. Whether the decision rendered by the Courts below on the basis criminal Court judgement suffers due to legal infirmity?

4. Whether the finding of appellate Court that the will was not proved suffers due to legal infirmity, when its truth was admitted by both parties?

5. In view of Sec.16(A) of Act 10 of 1969 and Sec. 2(aa) of Tamil Nadu Cultivating Tenants Protection Act is the declaration given by the appellate Court that the 5th defendant was a cultivating tenant sustainable especially when he was a Government Servant?



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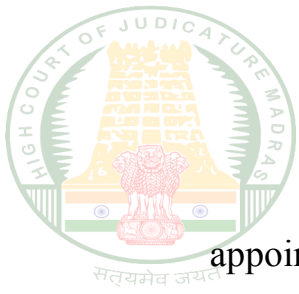
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3. I have heard Mr.Arun Anbumani, learned counsel for Mrs.J.Nandhini, learned counsel for the appellant / plaintiff and Mr.R.Baskaran, Senior Counsel, for Mr.P.Parthiban, learned counsel for the fifth respondent / fifth defendant.

4. For the sake of convenience, the parties are referred to as per their rank before the trial Court.

5. Brief facts, that may be necessary to adjudicate the above substantial questions of law, are as follows:

5.1. The case of the plaintiff is that the plaintiff is the sole and absolute owner of the suit property, which has been in exclusive possession and cultivation of the plaintiff. The patta and revenue records also stand mutated in the name of the plaintiff. Originally, the suit property belonged to Chellaiah Pillai and he executed a settlement deed in favour of his three minor grand children, viz., defendants 1 to 3,



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appointing his first wife Velu Ammal as the guardian for the minor children. The suit property was under cultivation of one Maniammal, the maternal grand mother of the plaintiff, who executed a registered Will on 03.06.1994, bequeathing her tenancy rights to her elder daughter/Saroja and her son/the plaintiff. The said Maniammal died on 12.08.1994 and the Will came into effect. The defendants 1 to 3 sold the southern portion of the suit property through the power agent, the fourth defendant and the plaintiff's mother Saroja under sale deed dated 24.06.2002. It is specifically averred and alleged by the plaintiff that the defendants 1 to 3 also gifted the northern half to the plaintiff and the plaintiff's mother, free of any consideration and thus, the plaintiff came into possession along with his mother, of the entire extent of land. The plaintiff's mother, viz., Saroja relinquished her half share in the suit property and plaintiff is the absolute owner of the suit property and patta was also mutated in the name of the plaintiff. Subsequently, the plaintiff also mortgaged the suit property, exercising absolute right over the same and also later redeemed it.



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5.2. At this juncture, the plaintiff came to know that the fifth defendant was claiming right over the northern half, having purchased the same from the fourth defendant who had no right to execute the alleged assignment of right of land to the cultivating tenant, since the entire property belonged to the plaintiff and father, the fifth defendant was never a cultivating tenant at any point of time. Taking advantage of the document created in favour of the fifth defendant, the plaintiff alleged that the fifth defendant is attempting to transfer the patta in his name. Hence, the plaintiff filed the suit for declaration and for consequential permanent injunction to restrain the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property.

6. The fourth defendant filed a written statement denying that Maniammal was a cultivating tenant and contending that Maniammal's husband, viz., Krishnamallavarayar, was the cultivating tenant originally and after his demise alone, Maniammal and her son, viz., Chellappan were cultivating the suit property. The fourth defendant denied the execution of the Will by Maniammal and tracing of title by the plaintiff



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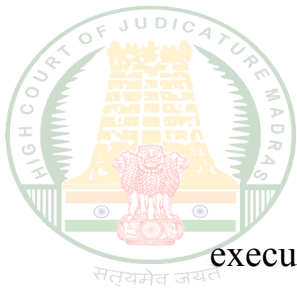
to the suit property. According to the fourth defendant, the southern portion alone had been in possession and enjoyment of the plaintiff and his mother and there was no gift of the northern portion as alleged by the plaintiff. Believing the plaintiff's representation alone, Maniammal executed a Will and the defendants executed a sale deed and since the sale deed was executed based on the mis-representation by the plaintiff, the sale is null and void. The fourth defendant would further contend that it is only the fifth defendant, who is the cultivating tenant and after coming to know about the fraudulent intention of the plaintiff, the fourth defendant conveyed the northern half portion of the suit property to the fifth defendant for valuable sale consideration.

7. An independent written statement was filed by the fifth defendant, admitting the settlement deed dated 26.03.1960, who also reiterated the stand of the fourth defendant that only Maniammal's husband Krishnamallavarayar was the cultivating tenant originally and that, after the death of Krishnamallavarayar, his wife / Maniammal and his son/Chellappan/fifth defendant were the cultivating tenants. The fifth defendant admits the execution of Will by Maniammal and also her



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death, thereby the Will coming into effect on 12.08.1994. But, the defendants denied the claim of the plaintiff that the plaintiff and his mother Saroja became cultivating tenants. According to the fifth defendant, the plaintiff and his mother were never cultivating tenants, in respect of the suit property. The plaintiff has fraudulently made corrections and interpolations in the Will of Maniammal by inserting SF.No.112/3 to defraud and grab the suit property. The fifth defendant came to know about the fraud played by the plaintiff only after Will dated 03.06.1994, was sent by the plaintiff along with lawyer's notice, pursuant to order in I.A.No.738 of 2007, that also in compliance with Order 39 Rule 3(a) of the Code of Civil Procedure. The fifth defendant claims that the plaintiff is admitting to peaceful possession and enjoyment of the suit property being in the hands of the fifth defendant, who is the actual cultivating tenant along with his mother/Maniammal and after her life time, the fifth defendant and his wife and children were contributing their physical labour and cultivating the lands. The fifth defendant also claimed that he also lodged a complaint against the plaintiff before the Judicial Magistrate, Lalgudi, under Sections 417, 420 and 424 I.P.C. The fifth defendant also contended that the release deed

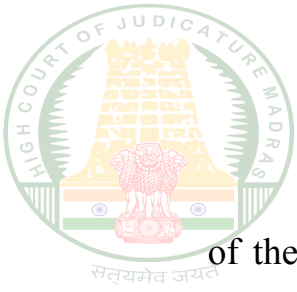


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executed by Saroja, will not benefit the plaintiff, since Saroja also did not have any right in the suit property. The claim of oral gift deed by the defendants 1 to 3 was also denied by the fifth defendant. The fifth defendant claimed that he is a *bonafide* purchaser for value, from defendants 1 to 3, under document No.4347/2007, as owner and has been in lawful possession and enjoyment of the northern portion of the suit property. The southern portion is also claimed by the 5th defendant to be in his presence as cultivating tenant and therefore according to the fifth defendant, the plaintiff has no right over the suit property.

8. Before the trial Court, the plaintiff examined himself as P.W.1 and 29 documents were marked as Ex.A1 to Ex.A29. On the side of the defendants, the fifth defendant examined himself as D.W.1 and 22 documents were marked as Ex.B1 to Ex.B22.

9. The trial Court, upon considering the pleadings and framing relevant issues, came to the conclusion that the survey number in the Will has been corrected by way of interpolation and the registered copy



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of the Will produced from the Sub Registrar office contains a different survey number, viz., S.No.154/8c and not S.No.112/3 and hence, the trial Court finding that there is a material alteration in the survey number and arriving at a finding that it was done by the plaintiff, while the Will was in his custody and also noticing that the plaintiff was convicted in criminal case, held that the Will has not been proved and proceeded to non-suit the plaintiff to any relief.

10. Aggrieved by the dismissal of the suit by the trial Court, the plaintiff filed A.S.No.168 of 2018 before the first appellate Court. The first appellate Court affirmed the findings of the trial Court, holding that the Will had been interpolated to incorporate the survey No.112/3 therefore, the plaintiff was not entitled to any relief.

11. Challenging the concurrent findings of the Courts below, the present second appeal has been filed by the plaintiff.



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12. Pending the second appeal, CMP(MD)No.5850 of 2026 has been taken out by the appellant / plaintiff for adducing additional evidence under Order 41 Rule 27 CPC, seeking permission to produce additional evidence, viz., order dated 08.11.2019 in Crl.R.C.(MD)No. 437 of 2015, the said order having been passed by this Court and the order dated 20.10.2022 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.)No.1041 of 2021, confirming the order of this Court in Crl.R.C.(MD)No.437 of 2015. The said application was directed to be taken up along with the final hearing of the second appeal.

13. Mr.Arun Anbumani, learned counsel for the appellant / plaintiff would primarily contend that there is a registered sale deed executed by the fourth defendant as power agent of defendants 1 to 3. Though the fourth defendant filed a written statement taking sides with the fifth defendant, the fourth defendant did not choose to examine himself at trial and admittedly till date, there has been no challenge to the sale deed executed by the defendants 1 to 3, represented by the fourth defendant, in favour of the plaintiff. He would therefore state that the question of doubting the said sale deed did not arise at all and

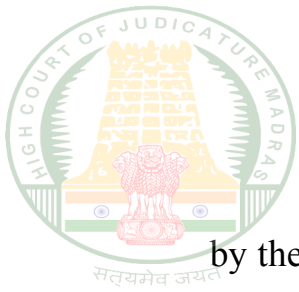


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unfortunately the Courts below, without examining the legal position had disbelieved the purchase by the plaintiff purely on the strength of the written statement filed by the fourth defendant, which was never tested at trial.

14. Mr.Arun Anbumani, learned counsel for the appellant/ plaintiff would also state that the primary reason for the Courts declining relief in favour of the plaintiff was that the survey number in the Will had been fabricated to survey No.112/3 to refer to the suit property, whereas the original Will only contained Survey No.154/8C. He would further state that Maniammal, the executrix never owned land in survey No.154/8C and therefore, the Will could have only referred to the suit property in survey No.112/3. He would also state that the Courts have presumed that the correction or fabrication would have been done by the plaintiff, since the Will was in his custody without any evidence whatsoever adduced in this regard. It is at this juncture that he refers to the application in CMP(MD)No.5850 of 2026, where as against the conviction in the criminal Court in the complaint filed by the fifth defendant, this Court had acquitted the plaintiff and the order of acquittal was also confirmed

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by the Hon'ble Supreme Court. The subsequent events are now sought to be brought to the notice of this Court.

15. There is no serious objection by Mr.R.Baskaran, learned Senior Counsel, however, his only objection is that the orders passed on the criminal side would not be relevant for deciding the civil suit. He would however leave it to this Court to take note of the subsequent events, since admittedly the plaintiff was acquitted by this Court and the order of acquittal was uphold by the Hon'ble Supreme Court.

16. Mr.Arun Anubumani, learned counsel for the appellant/ plaintiff would further state that when the sale deed had not been challenged by the defendants 1 to 3 or even the power agent, the fourth defendant, by filing an appropriate suit, seeking declaration or cancellation of such sale deed, the registered instrument would bind the defendants and certainly the fifth defendant cannot claim to have validly purchased the property, which has already been gifted to the plaintiff. In this regard, Mr.Arun Anbumani took me through the covenants in the



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sale deed in favour of the plaintiff, which contains a specific statement to the effect that one half of the property has been gifted to the plaintiff by the defendants 1 to 3. He further contended that the defendants 1 to 3 have not controverted the sale deed and the fourth defendant also did not enter the witness box to dispute the covenants in the sale deed and it is not open to the fifth defendant to contend that the plaintiff has not established valid purchase or gift of the other half in his favour.

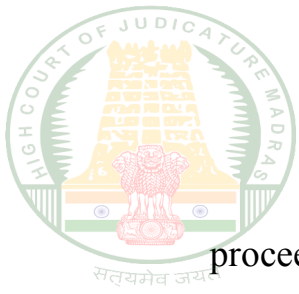
17. Mr.Arun Anbumani, learned counsel for the appellant/ plaintiff would submit that the fifth defendant is a permanent resident of Chennai and serving as an Additional Director and therefore he could have never be a cultivating tenant.

18. Mr.Arun Anbumani, learned counsel for the appellant / plaintiff would further contend that the plaintiff had therefore not only established title, but also produce patta and other revenue records mutated in his name and thereby established the factum of being in possession. In this regard, he would refer to Ex.A10, release deed



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executed by the plaintiff's mother releasing her half share in the suit property for consideration, EX.A14-patta, Ex.A15-revenue records mutated in the plaintiff's name and also Ex.A11 and Ex.A12, mortgage and redemption, in and whereby the plaintiff exercised right and entitlement over the suit property, including in the gifted portion of 75 cents. He would also refer to Ex.A19, proceedings of the Tahsildar, Manachanalur from the records of the seventh defendant of the suit, who had directed removal of the entry pertaining to the suit property from the record of tenancy, in view of the plaintiff becoming the absolute owner of the suit property. Referring to said document, it is the contention of Mr.Arun Anbumani that the issue whether the plaintiff or the fifth defendant is a cultivating tenant was not in any manner relevant any more, pursuant to the purchase made by the plaintiff. Mr.Arun Anbumani, would further state that the fourth defendant clearly colluded with the fifth defendant to bring about the sale deed on 16.10.2007, to grab the property of the plaintiff, taking advantage of the fact that the transfer of the northern half was only by an oral gift. Referring to the said sale deed, which had been exhibited as Ex.B6 and also Ex.A7, Mr.Arun Anbumani, learned counsel would contend that the sale deed was



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proceeding on the footing as if the fifth defendant purchased the said property, without any consideration, contrary to the stand taken by the fifth defendant under the written statement that he has purchased the property for valuable consideration. He would also point out to the fact that there is a reference in the sale deed as if the fifth defendant's father was the cultivating tenant in the record of tenancy which again could not had been a true statement in view of the proceedings of the Tahsildar, Manachanallur, dated 14.03.2007, viz., Ex.A19, directing removal of the entry pertaining to the suit property itself, from the record of tenancy.

19. It is also the submission of Mr.Arun Anbumani, that the criminal complaint filed by the fifth defendant was only a counter blast for the suit filed by the plaintiff and the fifth defendant, using his influence, being an Additional Director of Technical Education, included his name in the joint patta relating to the suit property, in March 2010. The Deputy Tahsildar's memo, dated 31.07.2002, in Ex.B13 that in view of the civil suit being pending, the request of the fifth defendant to cancel the patta in the name of plaintiff and issued in the name of the fifth defendant cannot be entertained. Referring to Ex.B20, dated

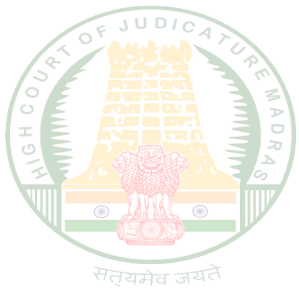


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13.08.2014, the judgment in C.C.No.44 of 2018, on the file of the District Munsif cum Judicial Magistrate, Lalgudi, Mr.Arun Anbumani, would state that though the plaintiff was found guilty and convicted of the offences, especially, the charges of forging and interpolating the Will, admittedly, this Court set aside the conviction and acquitted the plaintiff and the Hon'ble Supreme Court had also upheld the order of acquittal of the plaintiff. Taking me through the judgment of the first appellate Court, Mr.Arun Anbumani, would contend that it is mainly based on the conviction of the criminal case, the appellate Court has proceeded to confirm the judgment of the trial Court and when the plaintiff has been acquitted subsequently, it should be taken note of and only in view of the same, CMP(MD)No.5850 of 2020 has been taken out.

20. In support of his submissions, Mr.Arun Anbumani, has relied on the following judgments:

(i) Judgment of the Hon'ble Supreme Court in ***Iswar Bhai C. Patel @ Bachu Bhai Patel v. Harihar Behera, reported in 1999-3-SCC-457;***



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(ii) Judgment of the Hon'ble Supreme Court in ***Yogendra Prasad Singh (Dead) v. Ram Bachan Devi, reported in 2023-SCC OnLine-SC-894;***

(iii) Judgment of this Court in ***Krishnapillai (Deceased) v. Marimuthupillai, reported in 2015-SCC OnLine-Mad-1490;***

(iv) Judgment of this Court in ***S.G.Ramalakshmi v. Nellai Murasu Private Ltd, reported in 1999-III-CTC-630;***

(v) Judgment of this Court in ***Angu @ Angammal v.The Record Officer and Additional Tahsildar, reported in 1988-TNLJ-35;*** and

(vi) Judgment of the Hon'ble Supreme Court in ***The General Secretary, Vivekananda Kendra v. Pradeep Kumar Agarwalia, reported in 2026-INSC-199.***

21. Per contra, Mr.R.Baskaran, learned Senior Counsel, appearing for the fifth defendant, the only contesting respondent, having purchased 75 cents from the fourth defendant, power agent of defendants 1 to 3 would contend that Courts have concurrently found the plaintiff to be disentitled to the reliefs of declaration and injunction. Further, he would



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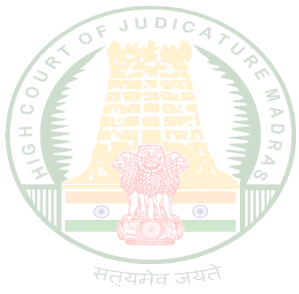
point out to the fact that the Will was admittedly in the custody of the plaintiff and when the registered copy of the Will had been produced from the Sub Registrar's office and clearly demonstrated that the original Will executed by Maniammal was only in respect of survey No.154/8c and not 112/3, the suit property, the natural presumption that could be drawn is that the survey number has been fabricated and interpolated only by the plaintiff. He would further state that the plaintiff has not established the oral gift deed, which in any event according to the learned Senior Counsel cannot be of any evidenciary value, since under the provisions of the Transfer of Property Act, as well as the Registration Act, gift of any immovable property of a value of more than Rs.100/- is to be compulsorily registered. The learned Senior Counsel would further state that the plaintiff therefore never approached the Court in clean hands and in any event, the plaintiff is bound to stand or fall on his case and rightly the Courts below have non suited the plaintiff to any relief. As regards the issue of the fifth defendant not being a cultivating tenant, Mr.R.Baskaran, learned Senior Counsel would contend that such a plea, was not taken before the trial Court or the first appellate Court and cannot be raised for the first time before this Court in the second appeal,



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especially, when no issue was framed in that regard and no evidence was adduced by the parties. The learned Senior Counsel would state that despite a categorical stand of the fourth defendant, denying the right of the plaintiff and also stating that the sale deed was executed under misrepresentation, the plaintiff having not filed a reply statement to the said written statement would only further render the plaintiff's case fatal.

22. The learned Senior Counsel would further state that it is only the fifth defendant, who is in possession of entire survey No.112/3, one half as a cultivating tenant and other half by virtue of sale deed executed in the year 2007. He would further state that sale in favour of the plaintiff without possession being delivered is hit by Section 54 of the Transfer of Property Act and the sale itself is not valid. The learned Senior Counsel would therefore state that no substantial question of law arise for consideration and the concurrent findings rendered by the Courts below being in order do not warrant any interference.



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23. I have carefully considered the submissions advanced by Mr.Arun Anbumani, learned counsel for the appellant/ plaintiff and Mr.R.Baskaran, learned Senior Counsel for the contesting fifth respondent / fifth defendant.

24. With regard to the application for adducing additional evidence in CMP(MD)No.5850 of 2026, there is no serious objection on the side of the contesting fifth respondent / fifth defendant, taking into account the subsequent events, viz., the acquittal of the appellant / plaintiff by this Court in CrI.R.C.(MD)No.437 of 2015 and the same also being confirmed by the Hon'ble Supreme Court subsequently. As rightly pointed out by the learned Senior Counsel, the findings rendered by the Criminal Court may not have a direct bearing on the civil proceedings and it is for the plaintiff to independently establish that he has right title and interest in the suit property. However, in view of the fact that the Courts below have given much weightage to the conviction suffered by the plaintiff and it being one of the primary reason for the Courts below

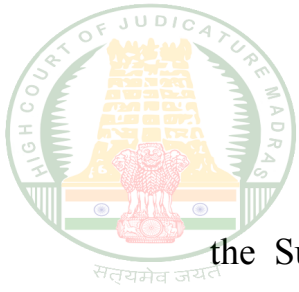


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to non suit the plaintiff, I am inclined to allow the application in CMP(MD)No.5850 of 2026 and permit production of additional evidence.

25. Hence, CMP(MD)No.5850 of 2026 is allowed and the order of this Court in revision in CrI.R.C(MD)No.437 of 2015 (Ex.A30), which was confirmed by the Hon'ble Supreme Court in Special Leave to Appeal (CrI.)No.1041 of 2021, (Ex.31), are marked as Ex.A30 and Ex.A31 respectively.

26. Admittedly, there is a sale deed in favour of the plaintiff in respect of one half of the suit property, viz., 75 cents. The total extent available in survey No.112/3, Koothoor village, Manachanallur Taluk, is 1.50 Acres. The factum of the defendants 1 to 3 having executed a power of attorney in favour of the fourth defendant is not in dispute. It is also an admitted fact that the plaintiff and his mother Saroja purchased the southern portion of 75 cents for a sale consideration of Rs.1,12,500/- under registered sale deed bearing document No.1343/02 on the file of



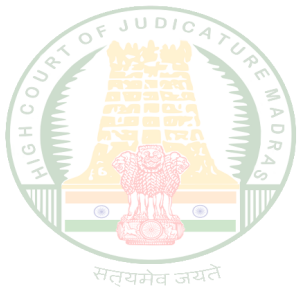
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the Sub Registrar Office, Manachanallur. Significantly, the sale deed talks about the gifting of the northern portion measuring 75 cents, free of consideration to the plaintiff's grand mother, Maniammal, recognizing her as the cultivating tenant. It is also relevant to note that the maternal grand mother of the defendants 1 to 3 witnessed the said sale deed. The defendants 1 to 3 did not choose to contest the suit, despite being arrayed as parties. It was only the power agent, the fourth defendant, who executed the sale deed in favour of the plaintiff in respect of the southern portion first and thereafter, another sale deed in respect of the northern portion in favour of the fifth defendant, who appeared and filed written statement. Though the fourth defendant sided with the fifth defendant and espoused his cause as well, the fourth defendant did not choose to enter the witness box, to substantiate or prove the averments made in his written statement. More importantly, there has never been a challenge to the registered sale deed executed by the defendants 1 to 3, represented by duly power agent, the fourth defendant, for valuable sale consideration, in favour of the plaintiff and the plaintiff's mother Saroja. The said sale deed, as already discussed, clearly speaks about the gift of the northern portion of 75 cents and also handing over the possession of the said



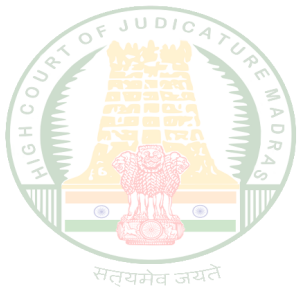
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extent to the plaintiff and the plaintiff's mother. In the absence of any such challenge to the sale deed and merely based on the averments, allegations in the written statement, the Courts below ought not to have given any importance to the unsubstantiated allegations that the said deed was brought about by misrepresentation. If really, the fourth defendant or the defendants 1 to 3 were aggrieved by any such misrepresentation, the sale would have been challenged in a manner known to law and the defendants 1 to 4 ought to have raised and established the plea of misrepresentation. The same has not been done. In such circumstances, when the sale deed clearly referred to the gift of the northern portion as well and subsequently, the sale has been acted upon, by mutation of revenue records including obtaining patta and the mother of the plaintiff also executing a release deed in respect of entire 1.5 Acres, thereby, the plaintiff becoming the absolute owner of the property and through mutating revenue records in his name and also exercising rights as full owner by mortgaging the property under Ex.A11 and thereafter, redeeming it four years later, vide Ex.A12, I do not see how the fifth defendant can set up a case defeating the uncontested claims of the plaintiff under Ex.A9- sale deed.



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27. Curiously, the fifth defendant has purchased northern portion, which has been gifted already to the plaintiff and also put on record even in the registered sale deed, viz., Ex.A9, dated 24.06.2002, from the very same power of attorney, the fourth defendant as if the fifth defendant's father Krishnamallavarayar was the cultivating tenant. The assignment deed in favour of the fifth defendant marked as Ex.A7-Ex.B6 was on 16.10.2007. At least seven months earlier to the said deed, by proceedings in Ex.A19, the Tahsildar, Manachanallur, the seventh defendant in the suit had passed an order directing the removal of the entry pertaining to survey No.112/3, in view of the fact that the plaintiff had become the absolute owner of entire survey No.112/3, by virtue of Ex.A9- sale deed, Ex.A10 – release deed executed by his mother Saroja, is one another strong circumstance, which goes against the fifth defendant and the recitals in his sale deed are clearly falsified that his father was the cultivating tenant. This circumstance again militates against the fifth defendant, as the sale deed dated 16.10.2007 itself recites that the property had been gifted to him. In other words, though styled as a sale deed, it is an assignment deed executed by the fourth defendant in favour of the fifth defendant, free of any consideration.



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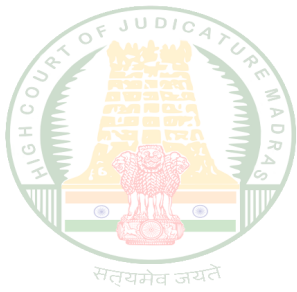
28. Curiously and strangely, the fifth defendant in his written statement pleads that he has purchased 75 cents, being the northern portion, for valuable sale consideration. As long as the sale in favour of the plaintiff is not even under challenge and the plaintiff has been able to demonstrate the factum of possession and enjoyment of entire 1.5 Acres, the fourth defendant did not have any right to execute Ex.A7 - Ex.B6 document in favour of the fifth defendant. The inconsistency with regard to the consideration also looms large and create serious doubt with regard to the genuineness of the document in favour of the fifth defendant. The request for cancellation of patta standing in the name of the fifth defendant was only pending the suit before the trial Court and though the Tahsildar in and by Ex.B13 had clearly observed that since the civil suit was pending the request of the fifth defendant could not be entertained, it is not known as to how despite Ex.B13 memo on the file of the Tahsildar, Manachanallur, the revenue authorities proceeded to include the name of the fifth defendant, vide Ex.B19 dated 18.03.2010. The argument of Mr.Arun Anbumani that this has happened only because of the undue influence exercised by the fifth defendant, who was then



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serving a Additional Director, Technical Education cannot be lightly brushed aside.

29. Now, the question with regard to the interpolation of the survey number in the Will has to be necessarily dealt with. There is no evidence available on record in the present suit as to who carried out the correction of survey No. 154/8c as and to survey No.112/3. In the criminal case, admittedly, as already discussed above, though the plaintiff was accused of fabrication, ultimately he has been acquitted, which order has also been upheld by the Hon'ble Supreme Court as well. It is also argued by Mr.Arun Anbumani that the testatrix never owned lands in Survey No. 154/8C in the first place and whatever remained was only in survey No. 112/3 and therefore, the Will could have only referred to survey No. 112/3 and not 154/8C. There is force in the said submissions of Mr.Arun Anbumani. It is however the contention of Mr.R.Baskaran, learned Senior Counsel that the Will having been in the custody of the plaintiff alone, the Court can clearly presume that the fabrication was done only at the behest of the plaintiff or plaintiff himself, to grab the lands in survey No.112/3 which has already been assigned / sold in favour of the fifth defendant.



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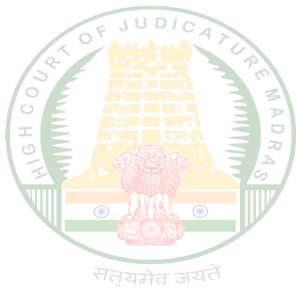
30. Mr.R.Baskaran, learned Senior Counsel, also referred to the schedule portion of the sale deed in Ex.A7 and Ex.A9 and contended that if really the northern portion had been gifted to the plaintiff as claimed by the plaintiff, then the description of the northern boundary in the schedule would have been reflecting the property gifted to the plaintiff, but the sale deed did not mention any such gift. However, I do not see anything serious turning on with regard to the description of the boundaries in the schedule when the preamble/body portion of the sale deed itself carried a specific reference to the gift of these northern portion measuring 75 cents in favour of the plaintiff. Admittedly, this reference could only be in respect of survey No.112/3 and not to any other survey number. In such circumstances, I do not see anything really turning on the discrepancy in survey number in the Will of Maniammal. By producing oral and documentary evidence, the plaintiff has been able to demonstrate that the patta in respect of southern portion as well as the northern portion, totally in 1.5 Acres have been mutated in the plaintiff's name and the plaintiff has also exercised rights as absolute owner, by mortgaging the property even as early as in 2002 and subsequently also



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redeemed it in 2006 as well. These encumbrances were much prior to the cause of action which arose only on 16.10.2007 when the fifth defendant got the deed executed from the power of attorney of the defendants 1 to 3, the fourth defendant. Therefore, it can be easily presumed that it was only the plaintiff, who was in possession as owner of the entire 1.5 Acres. The fifth defendant has not brought on record anything to show that he has been put in possession of the suit property, be it the southern portion or the northern portion as cultivating tenant / purchaser. The documents that had been relied on, including his name in the patta, are pending lis and as already discussed, there is a cloud on the genuineness of the inclusion of the fifth defendant's name in the joint patta as well. The Courts below have been carried away by the fact that the plaintiff was convicted in the criminal case for the alleged interpolation of survey number in Maniammal's Will and only on that basis, the plaintiff has been non suited by both the Courts. Now, the conviction has also been set aside and as already discussed, the plaintiff has been acquitted and it has been upheld by the Hon'ble Supreme Court and the criminal proceedings has attained finality too.



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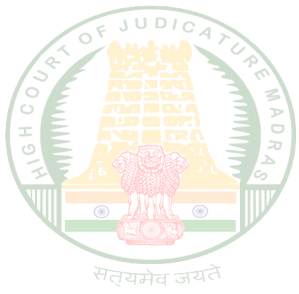
31. Further, with regard to the arguments of Mr.R.Baskaran, that possession is 9 points out of 10 pointed out and when the plaintiff was not put in possession, the sale deed is hit by Section 54 of the Transfer of Property Act, I am unable to countenance the said argument. Section 54 of the Transfer of Property Act reads as follows:

“54. “Sale” defined.—“Sale” is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

Sale how made.—Such transfer, in the case of tangible immovable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.

In the case of tangible immovable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property. Delivery of tangible immovable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.

Contract for sale.—A contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties.



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*It does not, of itself, create any interest in or charge
on such property.”*

32. There is nothing in the statutory provision to indicate or imply that if there is no delivery of possession, then the sale is invalid. Therefore, even for the sake of argument, if it is assumed that plaintiff did not take possession under Ex.A9, I do not see how the sale can be held invalid. It is only the proviso to Section 54 of the Transfer of Property Act, which talks about the manner delivery of possession in cases of sale. I therefore do not see the argument of the learned Senior Counsel meriting any acceptance.

33. Coming to the decision on which, the reliance has been placed by the learned counsel for the appellant, in ***Yogendra Prasad Singh's*** case, the Hon'ble Supreme Court held that when recitals in the sale deed clearly confirm that possession has been transferred to the purchaser and no amount was payable by the purchaser to the seller, such recitals regarding transfer of title and possession are crucial and cannot be brushed aside. As already discussed, the sale deed under Ex.A9 has not

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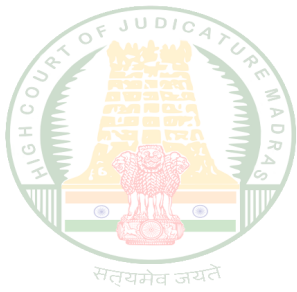


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been challenged by the vendors the defendants 1 to 3 or even their power agent, the fourth defendant. In such circumstances, the sale deed and the recitals therein are relevant and assume significance.

34. In **Krishnapillai's** case, this Court held that even when there was no documentary evidence to prove that the suit property was orally gifted, when the suit property has been shown to be in possession and enjoyment of the donor, even after the alleged oral gift deed, it would be relevant, this Court also held that the factum of possession and enjoyment of the suit property by the donee, pursuant to the oral gift deed was not even questioned at any point of time and thus, the Court can presume that the suit property was orally gifted in pursuance of which the donee was in possession and enjoyment of the same.

35. In **S.G.Ramalakshimi's** case, this Court held that Court can draw a presumption, invoking Section 114 of the Evidence Act that official acts had been followed properly, unless challenged by way of an appropriate suit and mere ipsi dixit of a party will not be sufficient to challenge the registration procedure.



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36. In *Angu @ Angammal*'s case, this Court held that a teacher in a Government Institution cannot style as a cultivating tenant. However, as rightly pointed out by Mr.R.Baskaran, learned Senior Counsel, no such plea was taken by the appellant and no issue was also framed in this regard, leave alone any evidence being let in and only in the present second appeal, a substantial question of law has been projected. Hence, I do not find any necessity to go into this question.

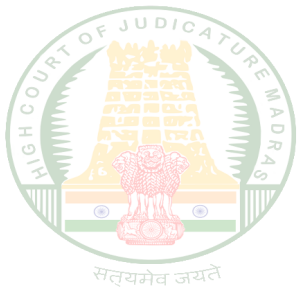
37. In The General Secretary's case, the Hon'ble Supreme Court held that when the terms in a contract are clear, then there is very little, the Courts can do with regard to the construction of the contract and intention of the parties. Applying the said ratio to Ex.A9 sale deed and specifically taking into the account, the inaction on the part of the defendants 1 to 4 to challenge Ex.A9 – sale deed, the Court is fully empowered to go by the recitals in the registered sale deed which clearly indicate the intention and also action of the defendants 1 to 3 in gifting the northern portion of the gift deed 75 cents to the plaintiff. Following



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the ratio laid down in the above case to the present facts, it is clear that the Courts below have ignored a literal construction of Ex.A9 -sale deed, giving rise to a substantial question of law calling for interference in second appeal.

38. Lastly, in *Iswar Bhai C.Patel*'s case, the Hon'ble Supreme Court held that when a defendant neither presents himself for cross-examination nor enters the witness box to substantiate the averments made in his written statement or to refute the allegations levelled against him, the Court is justified in drawing an adverse inference against such defendant. This decision is again squarely applicable to the conduct of the fourth defendant, who merely filed a written statement and thereafter, did not participate before the trial Court. Unfortunately, the Courts below, instead of drawing an adverse inference against the fourth defendant for failure to enter the witness box, erroneously proceeded to accept and vouch for the unsubstantiated allegations, by finding that the sale deed executed by the fourth defendant in favour of the plaintiff was as a result of misrepresentation.



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39. In view of the above, the appellant / plaintiff is entitled to succeed. The concurrent findings of the trial Court and the first appellate Court are set aside. The substantial question of laws 1 to 4 are answered in favour of the appellant/ plaintiff and fifth substantial question of law is answered against the appellant / plaintiff. However, in view of the affirmation answer in respect of substantial questions of law 1 to 4, the plaintiff is entitled to succeed.

40. In fine, the second appeal is allowed with costs and the judgment and decree passed in A.S.No.168 of 2018, on the file of the Sub Court, Lalgudi, dated 15.10.2019, confirming the judgment and decree passed in O.S.No.312 of 2007 on the file of the District Munsif, Lalgudi, dated 16.08.2017, is hereby set aside. CMP(MD)No.5850 of 2026 is allowed.

10.07.2026

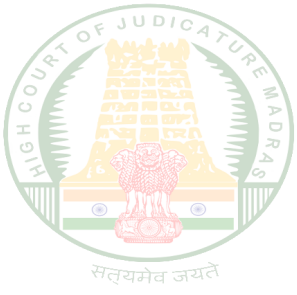
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Internet: Yes/No

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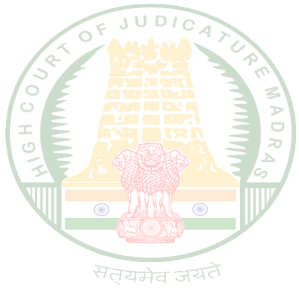
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Note: The Registry is directed to mark the order dated 08.11.2019 in CrI.R.C.(MD)No.437 of 2015 passed by this Court as Ex.A30 and also mark the order dated 2010.2022 in Special Leave to Appeal (CrI.)No. 1041 of 2021 passed by the Hon'ble Supreme Court.

TO

1. The Sub Court, Lalgudi.
2. The District Munsif, Lalgudi,
3. The District Collector,
Office of Collectorate,
Trichy.
4. The Tahsildar,
Manachanallur Taluk and Post,
Trichy District.
5. The Section Officer, VR Section,
Madurai Bench of Madras High Court,
Madurai.



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P.B. BALAJI,J.

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Pre-delivery Judgment made in
SA(MD) No.505 of 2021

10.07.2026