

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 01.12.2016****Coram:****THE HONOURABLE MR.JUSTICE S.S.SUNDAR****S.A(MD)No.797 of 2011**

Sumathi ... Appellant/Appellant/ Plaintiff

-Vs-.

Thangarajan ...Respondent/Respondent/Defendant

Second Appeal filed under Section 100 C.P.C., to set aside the Judgment and Decree passed in A.S.No.74 of 2005 on the file of the subordinate Judge, Kuzhithurai dated 06.01.2010, confirming the Judgment and Decree passed in in O.S.No.560 of 2001 on the file of the First Additional District Munsif Court, Kuzhithurai dated 07.04.2005.

For Appellant	: Mr.M.P.Senthil
For Respondent	: Mr.L.Shaji Chellan

JUDGMENT

The plaintiff in O.S.No.560 of 2001 on the file of the First Additional District Munsif Court, Kuzhithurai, is the appellant in this Second Appeal.

2. The suit in O.S.No.560 of 2001 is filed for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the suit property. The suit property is an extent of 18.500 cents on the eastern most portion of the land in R.S No.418/19. The suit property has been described with reference to four boundaries.

3. The case of the plaintiff is that the suit property originally belonged to the defendant and that he had executed a sale deed in favour of the plaintiff's son, one Jegadeesan. According to the plaintiff, the plaintiff's son has executed the sale deed in favour of the plaintiff after receiving the entire sale consideration by a document dated 30.10.2001 and that the plaintiff is in enjoyment of the suit property. Since the defendant made an attempt to interfere with her possession, it was stated in the plaint that she was constrained to file the suit.



4. The suit was resisted by the defendant on the ground that the suit property belonged to the defendant and that he is in absolute enjoyment of the suit property. He also contended that he never sold the property to the plaintiff's son as contended by the plaintiff in the plaint. It is the specific case of the defendant that the plaintiff in order to grab the suit property, purchased the property from his son, who has no title over the suit property and that the property acquired by them was entirely different. The trial Court dismissed the suit and the lower appellate Court confirmed the judgment of the trial Court.

5. Both the Courts have concurrently found that the property purchased under Ex.B1 is not the suit property and that the document Ex.A1 came into existence only to lay a claim in respect of the suit property. Though the defendant is the owner of the suit property, it was contended that the defendant sold not the suit property under Ex.B1 dated 30.05.2001.

6. It is not in dispute that the defendant is the owner of the suit property as well as the property conveyed under Ex.B1. Since the defendant has not conveyed the suit property in favour of the plaintiff's son under Ex.B1, the plaintiff's son cannot execute the sale deed in favour of the plaintiff in respect of for the suit property. Since the whole claim of title is based on the document Ex.A1, the findings of the Courts below with regard to the title and possession are perfectly valid. Hence, there is no merit in this Second Appeal.

7. The learned Counsel for the appellant submits that he may be permitted to seek rectification of the document under Ex.B1 by filing a separate suit. Such a request cannot be entertained having regard to the dispute that has arisen between the parties. It is to be noted that the defendant has not admitted the case of the plaintiff, that he had earlier sold the suit property to the plaintiff.

8. In such circumstances, the appellant cannot compel the defendant, unless the plaintiff establishes that there was a consensus in respect of the suit property at the time when the document Ex.B1 was executed by the plaintiff. However, the plaintiff is entitled in law to pursue any remedy to establish her right unless the same is prohibited under law. It is made clear that this Court does not reserve any right to the appellant in this proceeding.

9. Since the Courts below have come to the conclusion based on the documents and both oral and documentary and the conclusions are supported by the reasons I find no reason, to interfere with the judgement of the Courts below. No question of law much less a



substantial question of law arises for consideration in this Second Appeal.

10. In the result the Second Appeal is dismissed. No costs.

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Sd/-

Assistant Registrar (CS-II)

Sub Assistant Registrar

To

1.The Subordinate Judge,
Kuzhithurai.

2. The First Additional District Munsif Court,
Kuzhithurai

+1 CC to Mr.M.P.SENTHIL, Advocate, SR No.78370

+1 CC to Mr.L.SHAJI CHELLAN, Advocate, SR No.78722

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