

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	DELIVERED ON
14~03~2019	22~03~2019

CORAM :

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

S.A.Nos.598 and 604 of 2012
and M.P.Nos.1 and 1 of 2014

S.A.No.598 of 2012

1. Muthanna Nancy
2. Minor S. Arul Anandh
3. N.Pushpavalli
4. S.Madhavi
5. Muthana Narendran
6. K.Duraichi
7. J.Sathiyamoorthy

... Plaintiffs/Appellants/Appellants

Versus

1. Rama Devi
2. Indira Gandhi
3. T.Kamaraj
4. R.Jagadeesan
5. R.Chander

... Defendants/Respondents/
Respondents

S.A.No.604 of 2012
Sathiyamoorthy

... Plaintiff/Appellant/Appellant

Versus

1. Rama Devi
2. Indira Gandhi

... Defendants/Respondents/
Respondents

Second Appeal No.598 of 2012 filed under Section 100 C.P.C. to set aside the decree and judgment passed in A.S.No.49 of 2010 on the file of the Sub Court, Mannarkudi dated 06.04.2011 confirming the decree and judgment passed in O.S.No.66 of 2009 dated 26.03.2010 on the file of the Additional District Munsif Court, Valangaiman.

Second Appeal No.604 of 2012 filed under Section 100 C.P.C. to set aside the decree and judgment passed in A.S.No.50 of 2010 on the file of the Sub Court, Mannarkudi dated 06.04.2011 confirming the decree and judgment passed in O.S.No.160 of 2008

dated 26.03.2010 on the file of the Additional District Munsif Court, Valangaiman

For Appellants .. Mr.S.V.Jayaraman
(in both SAs) Senior Counsel for
Mr.J.Dhanasekaran and
M.Selvam

For Respondents .. Mr.M.L.Ramesh
(in both SAs)

COMMON JUDGMENT

Aggrieved over the concurrent finding of the courts below in the suit filed for Permanent Injunction in O.S.160 of 2008 and Declaration and consequential injunction in O.S.No.66 of 2009, these Second Appeals are filed. Since the Courts below disposed of both the suits in a common judgment and the evidence was recorded in common in both the suits, this Court is inclined to dispose of both the appeals in a common judgment.

2. The brief facts leading to file of these Second Appeals are as follows:

O.S.No.66 of 2009

2.(a) The Plaintiffs are owners of the suit property by virtue of purchase in various sale deeds. They are enjoying the possession in the suit property and cultivating the property. Originally 7th Plaintiff has filed the suit in O.S.No.160 of 2008 against the Defendant No.2 for Permanent Injunction in respect of an extent of 1.19 Acres. In the above suit it is contended by the defendants that 1st defendant entered into a sale agreement with 4th defendant father in law of the first Plaintiff in the capacity of power agent. Therefore, the present suit is filed contending that there is no sale agreement dated 21.11.2004 in favour of the defendant. It is stated by the plaintiffs that the 5th defendant is sister's son of 4th defendant and the 4th defendant's son was studying in Thanjavur. In order to engage the 5th Defendant as local guardian of the 4th Defendant's son Karthik, the 4th Defendant delivered blank papers and handed over to the 5th Defendant. Thereafter, it appears that there is a document created as sale agreement by the Defendants dated 21.11.2004. The original documents also stolen from the 7th Plaintiff by the 5th Defendant in collusion with the Defendants 1 to 3. When the 5th Defendant demanded Rs.50,000/- to return the said document, the 1st Plaintiff lodged a complaint against him on 13.3.2008. According to the Plaintiff they are the owners of the suit property and in possession of the suit property. Hence, filed suit to declare the alleged sale deed dated 21.11.2004 between

the 1st and 4th Defendants is null and void and directing to return the original sale deed and also permanent injunction restraining the defendants in any way interfering from the peaceful possession and enjoyment of the suit properties.

2.(b) The Defendants 1 to 3 filed Written statement stating that the suit properties never in possession of the Plaintiff from the year 2000. The suit properties were managed by one Jagadeesan. He has handed over the possession of the property to the 1st Defendant in the year 2000 and handed over the original document and receive the advance of Rs.2,00,000/-. Thereafter, he executed the agreement for sale on 21.11.2004, besides he has also gave a receipt on 24.10.2005 acknowledging the receipt of Rs.7,50,000/-. Ever since the defendants are in possession of the property one Lakshmi was in the suit property. 7th Plaintiff obtained exparte injunction in the suit filed by him in O.S.No.160 of 2008 and tried to evict her. Therefore, a police complaint was lodged against 7th Plaintiff by Lakshmi. It is the further contention of the Defendants that from the year 2002 to 2006 the Plaintiff has never objected the possession of the Defendants. When the matter stood thus the 1st Plaintiff has obtained exparte order from the Revenue Divisional Officer against the Defendants. It is the contention of the Defendants that the relief as prayed in the suit is not maintainable. The allegation that the agreement has been created in collusion with the 5th Defendant by using the blank papers is also denied. According to the Defendants since there is agreement for sale, the suit is not maintainable.

2.(c) The 5th Defendant has filed written statement supporting the case of the defendants stating that Jagadeesan has executed the sale agreement dated 21.11.2004. He was managing all the lands and he has given land to the 1st Defendant in the year 2000 after receiving advance of Rs.2,00,000/-. Further he has also received Rs.2,75,000/- through the 5th Defendant. According to the 5th Defendant, the agreement dated 21.11.2004 is true and valid besides Jagadeesan also executed letter dated 24.10.2005. On 14.03.2002 he has executed a receipt to the 3rd Defendant for a sum of Rs.2,00,000/- as advance. Further contention that Jagadeesan, the 4th Defendant has never given any blank papers with signature as alleged in the plaint. He has never handed over sale deed as alleged by the Plaintiff. He has also dened the allegation that he has demanded Rs.50,000/- for return of document. Hence prayed for dismissal of the suit. The trial court has framed the following issues in O.S.No.160 of 2008.

1. Whether this court has jurisdiction to try this suit?

2. Whether the suit is properly valued and the court fee paid is correct?

3. Whether the plaintiffs are entitled to the relief of declaration as prayed for?

4. Whether the Plaintiff is entitled to the relief of mandatory injunction as prayed for?

5. Whether the plaintiff is entitled to the relief of mandatory injunction as prayed for?

6. To what other relief is the plaintiff entitled?

O.S.No.160 of 2008

2.(d) In O.S.No.160 of 2008 7th Plaintiff has filed suit for permanent injunction in respect of the share 1.19 cents in R.S.No.484/3. According to him suit has been filed. He is in possession of the suit property. Defendants made an attempt to interfere his possession. In the above suit the Defendants have taken a similar defence to the effect that the property was handed over to them by one Jagadeesan, 4th Defendant herein after receipt of Rs.2,00,000/- advance and the 4th defendant is the father in law of the 1st Plaintiff. He has received the above amount as agent of the Plaintiff. Thereafter, the defendant has paid a sum of Rs.2,75,000/- to one Chander and paid Rs.50,000/- to his agent one Sathyamurthy. Thereafter, on 21.11.2004 written sale agreement was executed by the Power Agent of the Plaintiff. It is the further contention that the Plaintiff has suppressed above contract of sale. Hence, prayed for dismissal of the suit. However it is their contention only the defendants are in possession of the suit property.

3. Both the suits were tried jointly on the basis of the memo filed by the parties. For both the suits common evidence was recorded. On the side of the Plaintiffs P.W.1 to P.W.5 were examined and Ex.A.1 to Ex.A.30 marked. On the side of the Defendants D.W.1 to D.W.4 were examined and Ex.B.1 to Ex.B.14 marked Ex.X.1 to Ex.X.2 marked through D.W.2. The trial Court has framed the following issues in O.S.No.66 of 2009:

1. whether the Plaintiff is entitled to the relief of permanent injunction as prayed for?

2. To what other relief is the Plaintiff entitled?

4. The trial Court has held that Ex.B.6 sale agreement was validly executed by the 4th Defendant and also held that the

Defendants were in possession of the property on the basis of Ex.X.1 to Ex.X.8. Hence dismissed the suit. The First Appellate court dismissed both the appeals in a common judgment. The first Appellate Court held that Ex.B.6 sale agreement is executed by the 4th Defendant as a Kartha of the Plaintiffs and dismissed the suit, as against which these second appeals have been filed.

5 (a). The learned Senior Counsel appearing for the Appellants vehemently contended that it is not in dispute that the Plaintiffs are owners of the property. They are absolute owners of the property and the Plaintiffs are not from the same family. They purchased the suit properties in various documents. This fact is not in dispute. It is the main contention of the learned Senior Counsel that the 4th Defendant is the father of the 7th Defendant. The 5th Defendant is the sistor's son. The Plaintiffs are all along enjoying the suit property and cultivating the same after their purchase. 4th Defendant is not the power agent of the Plaintiffs at any point of time. It is the contention that the 5th Defendant taking advantage of the some signatures of the 4th Defendant in blank papers, which was given at the time of engaging 5th defendant as a local guardian for his son, 5th Defendant in collusion with the 1st and 2nd Defendant, have created the alleged sale agreement Ex.B6 on 21.11.2004 as if the sale agreement was executed by the Power of Attorney of the Plaintiffs. But no such power of attorney was filed. It is the further contention that even assuming to be true that Ex.B.6 said to have been executed by the 4th Defendant, the same would not convey any right to the defendants. The Defendants have not enquired the title of the Plaintiffs at the relevant point of time. Therefore handing over the alleged possession by the 4th Defendant is also not established here.

5.(b) The defendants have created all the documents subsequent to the suit to show as if they received the flood relief from the Government. The Trial Court has given undue importance to such receipt which was issued by the bank and held that the defendants are in possession of the suit property. Whereas the Plaintiffs on the date of the suit have produced all the revenue records and Adangal and chitta are also in their name. The learend trial court has given undue importance to the receipts said to have been issued by the bank towards damages. According to learned counsel the defendants also owning adjacent land. Therefore, merely on the basis of the evidence of D.W.2 the possession of the Defendants cannot be inferred. The Plaintiffs are the absolute owners of the suit property. It is not the case of the defendants that the 4th Defendant as ostensible owner acted on behalf of the Plaintiffs. There is no pleadings to the effect that the 4th Defendant was actually managing the suit properties and he had entered a contract on

behalf of the Plaintiff. It is the further contention of the learned Senior Counsel that earlier, the Defendants have taken a stand as if possession was handed over in the year 2000 itself, after paying the advance of Rs.2,00,000/- and submit that such contention is highly improbable and any person intend to purchase the property normally enter an agreement. But it has not done so. Whereas suddenly the agreement dated 21.11.2004 was pressed into service by the Defendants as if 4th Defendant has executed the agreement. That is also create a serious doubt about the agreement. At any event, it is the contention of the learned Senior Counsel as long as the Plaintiff has not given any Power of Attorney any third party has no right whatsoever to execute such alleged agreement. The findings of the Courts below that agreement was executed and binding on the Plaintiff is without any basis and the First Appellate court's finding that the 4th Defendant has executed an agreement as a Kartha of the Plaintiffs is against the settled principle of law. The 4th Defendant was never the Kartha of the Plaintiffs. Plaintiffs are different family and community. Therefore, the findings of the courts below is not according to law. The facts have not been properly appreciated by the courts below.

5.(c) The Defendants having pleaded that they are in possession of the property, no documents filed to show that they are in possession of the property except certain alleged receipt for having received some relief towards damages caused due to flood. It is the submission of the learned Senior Counsel that whenever there is damage due to flood, the Government will normally issue relief to all the villagers who are able to get some certificate from the V.A.O. Admittedly the Defendants having neighbouring land. Therefore, merely some damages has been paid to the Defendants due to the flood, it cannot be construed that the suit properties were all along in the possession of the Defendants. It is the further contention of the learned Senior Counsel that the Defendants were relying Ex.B.6 agreement to prove their possession. Such agreement cannot be admitted to prove the possession and hit by Section 17 of the Registration Act. Further, the Defendants pleading clearly indicate that there was an oral agreement with the 4th Defendant in the year 2000. that being the possession, claiming the right under Section 53(A) of Transfer of Property Act also does not arise at all in this case. At any event, it is the contention of the learned Senior Counsel for the Appellants that the receipts filed by the Defendants to prove the alleged sale consideration is also highly improbable. There was no need whatsoever for the 5th Defendant who is no way connected with the Plaintiffs to execute the receipt acknowledging the sale consideration. Whereas the revenue records, Chitta and Adangal on the date of the filing of the suit are in the name of the Plaintiffs. The courts below has simply brush aside those

records. Admittedly the Plaintiffs are the title owners of the property. When they have not executed any power of attorney nor allowed the 4th Defendant to manage the property the so called agreement said to have been executed by the 4th Defendant will not give any right to the Defendants. The Defendants have not even all these years filed any suit to enforce such contract. That itself clearly indicate that possession as pleaded by the Defendants is not true. The court below have erroneously dismissed the suit without proper appreciation. It is the further contention of the learned Senior counsel that the Plaintiffs are the owners of the property and when the Defendants' possession has also not been established, they are certainly entitled to seek for declaration and to set aside the alleged agreement for sale said to have been executed by the third party who have no way connected to the suit properties and also mandatory injunction for return of documents and also permanent injunction.

5.(d) It is his further contention that P.W.1 to P.W.4 evidence clearly indicate that the appellants are in possession and actual control over the property. If really the Defendants are in possession of the suit property, which is more than 17 acres nothing prevented them from filing any document to show that they have sold the agricultural products produced from the suit property. The Trial Court and the First Appellate Court simply dismissed the suits and appeals in a casual manner. Hence submitted that the appeals have to be allowed.

6. Learned counsel appearing for the Respondents submitted that the 4th Defendant in O.S.No.66 of 2009 is none other than the father of the 7th Plaintiff. He has received Rs.2,00,000/- as advance in the year 2000 from the 1st Defendant and handed over the possession of the property besides title deeds. Thereafter, he has also executed Ex.B.6 dated 21.11.2004 agreement for sale as the power agent of the Plaintiffs and received further some amount and also authorised 5th Defendant to receive further sale consideration. The receipts filed by the Defendants clearly show that they have paid sale consideration. After entering into the contract the Defendants are continuously in possession of the suit property. Evidence of D.W.2 and Ex.X.1 to Ex.X.8 and kist receipts clearly show that only the defendants are in possession of the suit property. The evidence of P.W.1 itself clearly show that he has accompanied the 5th Defendant at the time of borrowal of amount. The above facts clearly show that there is valid agreement to sell the property in favour of the 1st Defendant and 1st Defendant was put in possession of the property. It is the further contention that the evidence of D.Ws.1 to 4 clearly show that only the defendants are in possession of the property and evidence of D.W.4 clearly show that the agreement was true and valid. Sale consideration was

also paid by the 1st defendant. Only after the sale agreement has finalised the plaintiffs colluded with 4th Defendant have filed a suit to defeat the sale agreement. The defendants are all along in possession of the suit property. Hence submitted that the trial court and First Appellate Court actually found that the Defendants are in possession of the suit property. When the possession of the defendants is clearly established, suit for declaration and mandate injunction is not maintainable without seeking relief of possession. Hence submitted that second appeals are liable to be dismissed. In support of his contention he relied upon the judgment reported in Anathula Sudhakar v. P.Buchi Reddy and others [(2008) 4 Supreme Court Cases 594]

7. The Appellants have raised the following substantial questions of law:

a. When Ex.B6 was not executed by this plaintiffs when suit properties admittedly belonged to the plaintiffs, even assuming Ex.B6 were to be true would B6 affect plaintiffs rights and possession of suit lands?

b. Whether the dismissal of suit by courts below was tenable in law when 1st defendant did not prove that the defendant No.4 was competent and empowered to execute Ex.B6?

c. When the plaintiffs are owners of suit property and when the 1st Defendant did not prove any enforceable agreement between himself and plaintiffs. Whether rejection of relief by courts below to return the original title deeds to the plaintiffs tenable?

d. When the plaintiff proved possession of suit properties was the dismissal of the suit filed by them sustainable?

8. Both the counsels have argued only on the basis of the substantial questions raised by the Appellants. In view of the same the above substantial questions of law raised by the Appellants are necessary to decide in these appeals.

9. The suit in O.S.No.160 of 2008 was originally filed by the 7th Plaintiff. O.S.No.66 of 2009 filed for permanent injunction restraining the defendants in respect of 1.19 acre, his share in the suit property. In the above suit the Defendants took a stand that one Jagadeesan has handed over the suit property after receipt of Rs.2,00,000/- thereafter he has executed agreement for sale on 21.11.2004 as Power Agent of the

Plaintiffs in favour of the 1st Defendant. In view of such stand taken by the defendants the Plaintiffs who are real owners of the suit property have come up with a comprehensive suit for declaration and mandatory injunction for directing the defendants to return the original documents said to be in the custody of the defendants. In the above suit it is the specific case of the Plaintiffs that ever since from the date of their purchase of suit properties in various sale deeds, the plaintiffs are cultivating the suit properties. 4th Defendant has handed over certain blank papers to the 5th Defendant for the purpose of appointing him as guardian for the son of the 4th Defendant who was in the college at that time. The 5th Defendant has also stolen the documents from the 7th Plaintiff thereafter the sale agreement created. Hence all the Plaintiffs sought declaration to declare the sale agreement as null and void. Consequential mandate injunction and permanent injunction restraining the defendants from interfering their possession. The defendants admitting the title of the Plaintiffs contended in their statement that the suit property were managed by one Jagadeesan and he has handed over the suit property to the 1st defendant in the year 2000 after receipt of Rs.2,00,000/- advance and also handed over the documents. Further he has also executed a sale agreement dated 21.11.2004 and authorised 5th defendant to receive the sale consideration and agreed to execute the sale agreement.

10. It is the contention of the defendants that sale agreement was executed by the said Jagadeesan as power agent of the Plaintiffs. Ever since the date oral sale agreement in the year 2000, the defendants are in possession of suit property. Admittedly, suit properties are the absolute properties of the plaintiffs. The Plaintiffs are not from the same family. They have purchased all the suit properties in various documents. The extent of suit properties is 17.60 acres. These facts are not in dispute. The 7th Plaintiff one Sathyamurthy is the son of the 4th Defendant Jagadeesan. This fact is also not in dispute. It is the contention of the Defendants that they have entered into an agreement for sale from the Power Agent of the Plaintiff namely Jagadeesan. However, it is to be noted that no such power of attorney or any other document appointing the said Jagadeesan as Power Agent by the plaintiffs has seen the light of the day. It is further to be noted that the Defendants claim right on the basis of the agreement executed by the 4th Defendant. Except connection to the 7th Plaintiff and 1st Plaintiff the 4th Defendant has no way connected to other Plaintiffs. Therefore, when the Defendants want to rely upon the so called agreement executed by the said Jagadeesan, they should show that the alleged agreement was executed on behalf of the plaintiffs as a power agent.

11. It is not the case of the Defendants in their written statement that the 4th Defendant was exercising control over the property with the express or implied consent of the owners of the property, therefore they have entered into the contract. The specific defence that as the power agent of the plaintiff they entered into contract with the 4th defendant. It is to be noted that even assuming that the said Jagadeesan was managing the suit property the defendants without establishing the fact that they took reasonable care to ascertain that the transferor had a power to make the transfer and they acted in good faith, they cannot rely upon the document which was executed by the third party who has no title to the suit properties. Even the said Jagadeesan was construed as ostensible owner, to rely upon any such transaction entered by such person the transferee should prove that they have taken a reasonable care to ascertain that the transferor had power to transfer and they acted in good faith. The entire written statement there is no pleadings on the side of the defendants to show that they have taken reasonable care to ascertain that the said Jagadeesan had power to enter a contract on behalf of the Plaintiff. Whereas it is the specific case of the Defendants that the said Jagadeesan has entered such oral contract in the year 2000 followed by the written contract on 21.11.2004 viz., Ex.B.6 as the power agent of the plaintiffs. It is to be noted that no such power produced by the Defendants. When the defendants entered into contract with the third parties, the doctrine of caveat emptor would certainly come into operation. They should make a reasonable enquiry about the power of the person who has no title to receive such amount or to enter such a oral agreement. Without making any reasonable enquiry in this regard now they cannot canvas their case without any pleading that the 4th Defendant has entered into a contract on behalf of the plaintiff.

12. It is also curious to note that the suits are of the year 2008 and 2009 till now no other materials have placed to show that they took action to enforce the said contract. However, they rely upon the Ex.B.6 contract to prove their possession. It is to be noted that Ex.B.6 agreement dated 21.11.2004 said to have been executed by Jagadeesan. The recital show as if he has agreed to sell the entire suit property for Rs.801,000/- and received advance of Rs.2,00,000/- in the month of January. Thereafter he said to have received another sum of Rs.2,75,000/- through 5th defendant one Chander, besides he authorised 5th defendant to receive the remaining sale consideration. It is curious to note that this document relied upon to prove the possession and also consideration. It is the contention of the defendants that fourth defendant has agreed to sell the property for Rs.8,01,000/- to show the alleged payments Ex.B.5 the receipt said to have been signed by the fourth

defendant filed. The same clearly show that as if the 5th defendant has received a sum of Rs.2,30,000/- from the 3rd Defendant kamaraj on 14.03.2002. Ex.B.7 receipt filed to show that the 5th Defendant has said to have received a sum of Rs.5,25,000/- on various dates. It is curious to note that Ex.B.5 receipt filed as if the 5th Defendant has received Rs.2,30,000/- on 14.3.2002 and Ex.B.7 he has received Rs.5,25,000/- totalling amount come around Rs.7,55,000/- whereas the agreement Ex.B.6 show as if in oral agreement in the month of Jan 2000, 4th Defendant has already received Rs.2,00,000/- . According to the receipts produced by the defendants from Exs.B5, B6 and B7 which show as if the defendants said to have paid Rs.9,80,000/- even before the alleged sale agreement dated 21.11.2004. The sale agreement itself indicate that the agreement is Rs.8,01,000/- therefore when the defendants have already allegedly paid Rs.9,80,000/-, it is highly improbable to contend that still there is a balance to pay the agreement amount as per Ex.B.6. These facts create serious doubts about the existence of the sale agreement.

13. Be that as it may. D.W.4 was examined who is the 5th Defendant herein. In his evidence he has supported the version of the defendants 1 to 3. Ex.B.7 dated 24.10.2005. the Evidence of D.W.4 when carefully seen 4th defendant retired from the Government service in the year 2003 itself. Ex.B.7 said to have been written in the Government letterpad. He has already retired from the service. It is also to be noted that D.W.4 has signed as witness. The manner in which he has signed in the document clearly indicate that he has put his signature subsequently as witness. Not at the time of alleged writing of Ex.B.7. In fact his address his name has been accommodated in very narrow line in between the two lines at the bottom of the Ex.B.7. If really D.W.4 was a witness he should have signed and written his address normally. There was no necessity to accommodate his address in crumbling manner in the bottom above two lines. This fact cannot be ignored altogether because it creates some doubt about the document. Further the stamp pad ink is also available in the document. Therefore, merely because one of the witnesses has testified when the document itself creates some doubt, the court cannot ignore the doubt. Ex.B.5 written in green ink. The signature of 4th defendant was signed in different ink. When he himself issued a receipt the question of using different ink, one for writing and another for putting his signature also created a doubt. It is further to be noted that even assuming to be true that all the huge amounts have been paid, it is against normal human conduct to advance such huge amount to the third party who has no title over the suit property. Particularly, when the defendants not even verified the authority of the 4th Defendant to sell the property. Therefore the payment alleged by the Defendants through 5th

defendant is against normal human conduct. This aspect has not even considered by the trial court.

14. It is also to be noted that in Ex.B.6, D.W.4 is also one of the witnesses. The agreement was said to have been executed on 21.11.2004. D.W.4 evidence indicates that at the relevant time after retirement in the year 2003 the said Jagadeesan was residing in Thanjavur for two years. Further, he has also admitted that in the year 2004, the said Jagadeesan was residing in Papanasam, Thanjavur District. If the person residing in Thanjavur District at the relevant point of time in the year 2004 he purchasing the stamp paper of Rs.10/- from Villupuram is also highly doubtful. It is curious to note that any agreement for sale for properties ought to have been prepared in Rs.20/- stamp papers as per Article 5, Schedule I of the Stamp Act. Rs.20/- Stamp Paper for agreement was substituted for old Rs.10/- by Tamil Nadu Act 9 of 2001 with effect from 11.07.2001 and the persons who relied upon such agreement who said to have paid such huge consideration, certainly would have prepared agreement in Rs.20/- Stamp Paper. Whereas Rs.10/- Stamp Paper, old stamp paper said to have purchased from Villupuram by the said Jagadeesan was used. Admittedly as per the evidence of D.W.4 the said Jagadeesan was residing in Thanjavur at the relevant point of time. This fact also create serious doubt about the very transaction. These documents coupled with receipts as discussed above, created serious doubt about the execution of those documents by Jagadeesan. Be that as it may. Even assuming that the 4th Defendant has executed agreement as power agent, the power of attorney has seen the light of the day. Whereas it is the specific contention of the Plaintiff that the agreement has been created with the connivance of the 5th defendant with the signatures in the blank papers. Therefore, merely because the 4th defendant remained exparte, the court cannot take this agreement as genuine and executed. It is for the person rely upon the document to prove the execution and remove doubt which is inherent in the document with regard to genuineness entertained by the court, it is for the party relies upon the document to take an advantage to prove the genuineness of the document also. The receipt Ex.B.7 signature of the D.W.4 was inserted later that is one of the circumstances coupled with the variance of the amount said to have paid to the 4th defendant at the various dates more than the sale consideration, coupled with the fact that the sale agreement is written in Rs.10/- Stamp Paper by one scribe Mr.S.Kannan entire transaction not free from doubt. Be that as it may.

15. It is the contention of the defendants that the sale agreement was executed by the power agent of the plaintiffs. As discussed above no reasonable enquiry whatsoever made by the defendants to find out the authority of the so called Jagadeesan

to deal with the property. Now, the defendants rely upon the document Ex.B.6 to show that they are in possession of the property besides they have also relied upon other receipts viz., Ex.B.13. It is curious to note that after registration and other related laws amendment Act 48 of 2001 dated 24.9.2001 any document containing contracts to transfer for consideration any immovable property for the purpose of Section 53 A of Transfer of Property Act shall be registered if they have been executed on or after the commencement of the registration and other related laws Amendment Act 2001. If such documents are not registered on or after such commencement, such document shall have no effect for the purpose of proving possession under Section 53(A) of T.P. Act and clearly hit by Section 17 of Indian Registration Act.

16. It is further to be noted that Ex.B.6 was written to show as if possession was already handed over in the year 2000 orally to get over the registration under Section 17(1-A) of the Registration Act. Such recital still worse for the Defendants to prove their possession. To take shelter under Section 53(A) of T.P.Act. The written contract is sine qua non to protect their possession. In 2000 as per the alleged oral agreement there was no written contract. Therefore, the possession pleaded by the plaintiff will not fall within the ambit of section 53(A) of T.P. Act claiming for part performance. Similarly, Ex.B.6 agreement has not been registered and cannot be looked into for possession as if clearly hit by on section 17(1-A) of the Registration Act. The contention of the Plaintiff that they are in possession of the suit property and revenue records also stand in their name. Revenue Records Ex.P.29 and Ex.P.30 Chitta and Adangal filed by the Plaintiffs. P.W.4 was examined to prove the above documents and he has also admitted that he has issued Ex.B.29 and Ex.B.30 in respect of survey No.484/3 as per the documents in favour of the plaintiff. Similarly he has also admitted that he issued revenue records in favour of the Plaintiffs.

17. It is the only contention of the Defendants that they received flood relief from the Government in respect of suit property. In this regard it is useful to see the evidence of D.W.2. The trial Court has mainly relied upon D.W.2 evidence. The defendants filed kist receipts as Ex.B.12. It is to be noted that in these receipts name of the owners also found place. In Ex.B.13 receipts from the bank obtained after the filing of the suit from D.W.2 Secretary of Primary Agricultural Co operative Society. D.W.2 has produced the pass book of the 2nd Defendnat to show that the defendants have received some flood relief. There are entries in those receipts. Those entries were marked as Exs.X1 to X8. He has also admitted that they have paid relief only on the basis of

the V.A.O. Certificate. It is to be noted that these receipts were of the year 2008 much after the suit. Ex.X2 to Ex.X8 when carefully seen, Ex.X2 is only savings accounts ledger of the 1st Defendant. It does not contain anything about the possession. In Ex.X2 though there is a certificate issued by the Revenue authorities, it does not show the name of the 1st Defendant. Whereas in the ledger in one of the entries related to assured irrigation areas the certificate issued by the Revenue officer on 20.5.2008 he paid Rs.3000/- to the 1st Defendant in respect of S.No.475 and 486, 476/4,472/2 for 2 hectares. Similarly, in December 2008 the 1st Defendant's name has mentioned besides plaintiff name also mentioned as beneficiaries who received the damages. Both Plaintiffs and Defendants names found place in respect of certain survey numbers. It is further to be noted that merely on the basis of these documents we cannot assume that the defendants are in possession of the property.

18. It is also to be noted that whenever there is mass damage to the crops in the village due to flood it is normal practice that Government announce certain relief materials and whoever able to get certificate from the V.A.O. and the Revenue authorities, they easily get such relief from the Government. These documents discussed above is of the year 2008, subsequent to the filing of the suit. Therefore, the defendant getting such a relief on the basis of the certificate issued by V.A.O. is quiet possible. The Possibility of the defendants including of suit survey numbers in their name and obtaining the relief also cannot be ruled out. Merely on the basis of the above receipts the possession of the entire 17.63 acres by the defendants cannot be presumed. This Court also can take judicial notice about the manner in which flood relief are paid to parties merely on the basis of some certificate obtained from V.A.O.

19. It is curious to note that suit properties is not a small land, it consist of 17.63 acres, in which coconut grove are there and apart from paddy also been cultivated. If really the defendants are continuously in possession from the year 2000 they could have very well produced the documents evidencing the sale of agricultural produce. But nothing has been produced except relying upon Exs.X1 to X8 to show that they are in possession. Similarly some kist receipts obtained from the V.A.O. It is to be noted that the defendants are also neighbouring land owners, Possibility of obtaining kist receipts is not so difficult by anyone in this present scenario. Anyone can easily manipulate and get the kist receipts in their names from V.A.O. whereas when the Adangal which conclusive nature of possession proved by the Plaintiff clearly indicate that they are in possession of the suit property. It is further to be noted that P.W.2 to P.W.4 independent witnesses. They have also spoken about the nature of possession and dispute between the

parties. when the defendants tried to enter the property there was a huge problem.

20. It is also to be noted that on the basis of the interim order already obtained by the 7th Plaintiff in O.S.No.160 of 2008. Thereafter there arose some dispute and in fact the R.D.O.has passed an order under 145 Cr.P.C. restraining both of them not to enter the properties. The above order was also challenged by the Defendants on the ground that exparte order has been passed. This court by order in Revision dated 07.12.2009 filed in Ex.A.12 has set aside the order of the R.D.O.on the ground that since the matter is pending before the Civil Court. The order has been set aside only on the sole ground. Above factum of passing oder under Section 145 Cr.P.C.by R.D.O. when seen by the evidence of P.W.2 independent witness makes it clear that on 9.11.2008 the defendants made an attempt to enter the properties and the villagers were interfered and their attempt was thwarted and the parties are advised to go before the Courts. P.W.2 to P.W.4 evidence also clearly show that the plaintiffs are in possession of the property. Though D.W.3 and D.W.4 also supported defendants about the possession, as already stated D.W.4 actively participated in entire document which is doubted by this Court. Further, D.W.3 evidence goes to show that he has come to the court as per the request of panchayatdars and supported the defendants. Only at the instance of panchayat conveyed by the Defendants he has agreed to give evidence. His evidence also clearly indicate that he is driver by profession. Therefore, his oral evidence cannot be give much importance for the simple reason he has been brought to the court at the instance of the defendants men to give evidence in favour of the defendants.

21. It is also to be noted that even defendants to rely upon the agreement from the person who have no title or had an imperfect title they ought to have filed the suit against 4th Defendant to compel him to procure the concurrence of the plaintiffs which is necessary for validating the title or agreement as contemplated under Section 13 of Specific Relief Act which has also not done by them. Therefore, they cannot rely upon Ex.B.6 to prove their possession which is hit by 17(1-A) of the Registration Act,1908. Though it appears that they have paid stamp duty of Rs.110/-, for deficit stamp as per the endorsement of the trial court, Ex.B.6 cannot be admitted in evidence in view of specific bar contained under Section 17(1-A) of the Indian Registration Act. Further this also cannot be used for any collateral purpose proving of possession since proving possession in this case is not a collateral one in fact it is the main issue between the parties. Proviso to Section 49 of the Registration Act permit unregistered document to be received as evidence for contract in a suit for specific

purpose. But when such document filed to prove its possession the same is certainly hit by Section 17(1-A) of Registration Act. The plaintiffs are title owners and also produced Adangal and Chitta before the court. Merely because they obtained Chitta and Adangal before the suit it cannot be concluded that they are not in possession of the suit property. But the defendant claimed right based on the unregistered documents and receipts. These documents also create much doubt and against the normal human conduct of person. Whereas the Plaintiffs have better title besides they filed the revenue records and also proved their possession by oralevidence. They are certainly entitled to protect such possession. The judgement cited by the respondent counsel in Anathula Sudhakar's case (supra) the Honourable Apex court has held as follows:

"15. In a suit for permanent injunction to restrain the defendant from interfering with plaintiff's possession, the plaintiff will have to establish that as on the date of the suit he was in lawful possession of the suit property and defendant tried to interfere or disturb such lawful possession. Where the property is a building or building with appurtenant land, there may not be much difficulty in establishing possession. The plaintiff may prove physical or lawful possession, either of himself or by him through his family members or agents or lessees/licensees. Even in respect of a land without structures, as for example an agricultural land, possession may be established with reference to the actual use and cultivation. The question of title is not in issue in such a suit, though it may arise incidentally or collaterally."

22. Applying the above judgment if the defendants were in actual possession as contended by them, they would have produced any documents to prove the sale of agriculture produce and shown actual use and cultivation. But it has not done so. D.W.1 husband of 1st Defendant has stated that he was in foreign country for 25 years. First Defendant who said to be put in possession and enjoyment of the suit property was not examined herself. Therefore, merely on the basis of the receipts as discussed above, one cannot presume their possession.

23. Now, the question of declaration. Every document filed by defendants doubted by the court. Further even assuming to be true that the documents are valid and executed by the 4th Defendant, the Defendants rely upon the Ex.B.6 mainly on the basis that the document is valid since it was executed by the power agent of the plaintiffs. As long as the Defendants have

not been able to prove that he is the power of attorney of the plaintiff, any such contract by the person who have no title to the suit property will not bind the true owners. Even in the entire written statement it is not the case of the defendant that the 4th Defendant is ostensible owner or he had authority express or implied. Without any such pleadings of the agency cannot be inferred merely on the basis of the evidence of the D.W.1 and also Ex.B.6. Whereas on the other hand, it is the specific contention of defendants that 4th Defendant executed sale agreement only as power agent of the plaintiff. As long as there was no power or authority was existence at the relevant point of time any such contract entered by the 4th Defendant in favour of the 1st Defendant, such contract is not at all binding the plaintiffs. The plaintiffs certainly can annul such contract. The trial court has not even gone into the genuineness of the documents of the defendants but simply carried away by the documents and presumes possession of defendants.

24. There is no proper appreciation to assess the validity of the contract. Whereas the First Appellate Court has come to the conclusion that the 4th Defendant as Kartha of family executed the contract. Therefore it is binding on the plaintiffs. Such finding of the First Appellate Court is perverse without any basis. It is not even the case of the defendant that 4th Defendant who was either manager of the family or who was acting as a Kartha of the family. Therefore, the finding of the First Appellate Court upholding the contract is also not according to law. Admittedly, the Plaintiffs are not from the same family in fact only 1st and 7th Plaintiffs are husband wife. 1st, 2nd and 7th Plaintiffs are belong to the same family. The second plaintiff is residing at Coonoor is no way connected with the family with the first plaintiff. Similarly other plaintiffs also not connected with the family of 1st and 7th Plaintiffs. Therefore, the First Appellate court finding that the 4th Defendant as kartha of the family executed agreement is also not correct. In fact the First Appellate Court has not even gone into the facts to find out who is in possession of the property.

25. Whereas the First Appellate Court has simply believed Ex.B.6 and held that possession was handed over and dismissed the appeal. When the courts below have not properly appreciated the evidence and arrived finding contrary to the facts without proper appreciation. There is no bar for this court going into the facts of the case also. When the court below has failed to finding on proper appreciation of evidence and this Court can very well go to the facts for deciding the appeal. Accordingly, this court has discussed every aspect of the illegality committed by the court below in deciding the suit in favour of the defendants. Since the defendants have not established their

possession, they have no right to retain the documents of the plaintiffs. Accordingly, the substantial question of law raised and admitted by this Court are answered in favour of the Appellants. The judgment and decree of the trial court as well as First Appellate Court are set aside. Suits are decreed. The agreement dated 21.11.2004 is declared as null and void. Since the Plaintiffs being true owners they also proved their possession on the date of suit, Consequential Injunction restraining the Defendants or their men from interfering with possession of the Plaintiffs also decreed. Similarly the Defendants are directed to handover the title deeds mentioned in the plaint to the plaintiffs as prayed for within a period of one month from this day.

26. In the result, both the second appeals are allowed. consequently connected M.Ps. are closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ggs.

To

1. The Sub Judge, Mannarkudi
2. The Additional District Munsif, Valangaiman.
3. The Section Officer,
VR Section, High Court,
Madras-104

+2ccs to Mr.J.Dhanasekaran, Advocate, S.R.No.27766 & 27767
+1cc to Mr.M.Selvam, Advocate, S.R.No.27450
+2ccs to Mr.M.L.Ramesh, Advocate, S.R.No.27384 & 27385

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NA(CO)
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