



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: **02.09.2021**

Pronounced on: **15.09.2021**

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**THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA**

**S.A(MD)No.481 of 2021**

Sangili ... Appellant/Appellant/Plaintiff

**Vs.**

1.Papathi  
2.Tamizharasi ... Respondents/Respondents/Defendants

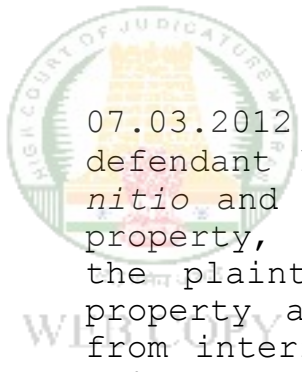
**PRAYER:-** Second Appeal is filed under Section 100 of C.P.C against the judgment and decree dated 08.01.2021 made in A.S.No.36 of 2019 on the file of the Sub Court, Manaparai, Trichy District, thereby confirming the decree and judgment dated 28.06.2017 passed in O.S.No.184 of 2012 on the file of the Additional District Munsif Court, Manaparai.

For Appellant : Mr.B.Prahalad Ravi

**J U D G M E N T**

The plaintiff in O.S.No.184 of 2012 on the file of the Additional District Munsif Court, Manaparai, who was unable to convince the trial court to allow the suit for declaration and permanent injunction filed by him upon its confirmation by the lower appellate court has come up with this Second Appeal against the defendants.

2. The suit was laid by the plaintiff claiming that the first defendant is the first wife of the plaintiff and therefore the property was purchased in the name of the first defendant out of the savings of the plaintiff and from the loan availed from the Tamilnadu Transport Employees Welfare Co-operative Union. According to the plaintiff, the second marriage was arranged by the first defendant and for some 10 years, the plaintiff lived happily with the first defendant and the second wife. Due to misunderstanding, the first defendant left her matrimonial home. It is stated that by taking advantage of the situation, the plaintiff's brother instigated the first defendant to sell the property in favour of the second defendant, who is the wife of his brother, namely, Natarajan. The first defendant has executed a registered sale deed dated



07.03.2012 in favour of the second defendant. Since the first defendant has no right to sell the property, the sale is void *ab initio* and the second defendant has no right or ownership over the property, the suit is filed seeking a decree for declaration that the plaintiff is the absolute and exclusive owner of the suit property and for permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property.

3. The suit was resisted by the first defendant contending that the first defendant was the absolute owner of the suit property and she purchased the suit property on her own through the amount obtained from partition in her family and through separate funds raised by her. The first defendant would further contend that even on the date of purchase, possession was given to the second defendant. The first defendant also raised another contention that the suit ought to have been filed for cancellation of sale deed dated 07.03.2012.

4. The second defendant has also filed separate written statement contending that the first defendant earlier purchased the suit property from one Palaniyandi by a registered sale deed dated 25.04.1994 itself and from the date of purchase from the first defendant, the second defendant was in possession and enjoyment of the suit property. The second defendant also raised a contention with regard to jurisdiction.

5. At trial, the the plaintiff was examined as P.W.1 and Exts.A1 to A8 were marked, while the first defendant was examined as D.W.1 and the second defendant was examined as D.W.2. Exts.B1 to B9 were marked on the side of the defendants. The loan particulars were marked as Exts.X1 to X.3.

6. The learned trial Judge took into consideration the loan particulars Ex.X1 to X.3. As per Ex.X1, loan was taken in the year 2009 but the farm house was constructed in the year 1997. By mortgaging the suit property the plaintiff has availed a loan of Rs.70,00/- under Ex.X.2. The plaintiff has also produced Ex.A.7 mortgage deed and the said deed was in the name of the first defendant. Apart from that, the plaintiff has not proved Ex.X.3 loan was taken for the purpose of constructing the house in the suit property. Therefore, the trial Judge came to the conclusion that the plaintiff has not proved his title and right over the property through oral and documentary evidence. Through the deposition of D.W.3, who is the third party to this case and on perusing the document produced by the second defendant, the trial Judge concluded that the plaintiff has not substantially proved his possession and enjoyment of the suit property and therefore, he is not entitled to the relief of permanent injunction. Upon the said conclusion, the



learned trial judge dismissed the suit.

7. Aggrieved, the plaintiff preferred A.S.No.36 of 2019 on the file of the Sub Court, Manaparai, Trichy District. The learned Subordinate Judge, upon re-consideration of the evidence on record, concluded that the suit property was purchased by the first defendant on her own money and the first appellate court clearly concluded that the plaintiff has not purchased the property in the name of the first defendant since she is his wife. The appellate Judge also found that it is not proved by the plaintiff that he was in possession and enjoyment of the suit property and therefore, the appellate Judge was not inclined to interfere with the specific finding of the trial court with regard to possession. On the above finding, the appellate court dismissed the appeal. Aggrieved, the plaintiff is on this Second Appeal.

8. I have heard Mr.B.Prahalad Ravi, learned counsel appearing for the appellant and perused the materials on record.

9.The learned counsel appearing for the appellant would vehemently contend that the courts below failed to see that the suit property was purchased by the appellant herein out of his own money by virtue of the document dated 25.04.1994 in the name of the first respondent as she being his wife. The courts below have also erred in holding that the first respondent had independent income or substantive amount to purchase the suit property as claimed by her and she has not proved her financial capacity to purchase the suit property. The courts below failed to see that the original document relating to the suit property was in the hands of the appellant ever since from the date of his purchase and if the first respondent had really purchased the property, she would have taken original document along with her while moving away from the appellant.

10. The case of the appellant/plaintiff is that the suit schedule property was purchased by him out of his income in the name of his wife/the first defendant. It is further case of the plaintiff that he constructed a farm house in the suit property by obtaining loan from various sources. The trial court, finding that the farm house in the suit property was constructed in the year 1997 and the loan was taken only during the year 2009, disbelieved the appellant/plaintiff. In respect of possession, the trial court, considering the evidence of D.W.2 and the documents produced by her, held that the second defendant was in possession of the property. The appellate court, after carefully considering the evidence on record, has concurred with the view of the trial court.

11. Despite his best efforts, Mr.B.Prahalad Ravi, learned counsel appearing for the appellant is unable to point out any perversity in appreciation of evidence by the appellate court. Both the courts have categorically come to the conclusion that the



plaintiff has not established his case and he is not entitled to the relief as prayed after considering the entire evidence as a whole and had arrived at certain factual findings. Therefore, I am unable to agree with the learned counsel appearing for the appellant.

12. The Hon'ble Apex Court in **2015 (16) SCC (Ashok Rangnath Nagar Vs. Shrikant Govindrao Sangvikar)** has held that if the High Court is satisfied that no substantial question of law is involved, it shall dismiss the Second Appeal even without formulating substantial question of law. The above view has been affirmed in the case of **Kirpa Ram (Deceased) through legal representatives and others Vs. Surendra Deo Gaur and Others** reported in **(2020 SCC Online SC 935)**.

13. Further, this Court does not find any infirmity or perversity in the factual findings of the courts below. There is no substantial question of law involved in this appeal to enable this Court to interfere with the conclusion of the appellate court.

14. In the result, this Second Appeal is dismissed without being admitted. No costs.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To:

- 1.The Sub Court, Manaparai, Trichy District,
- 2.The Additional District Munsif Court, Manaparai.
3. The Section Officer,  
VR Section, Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.B.PRAHALAD RAVI, Advocate ( SR-29380[F] dated 16/09/2021 )

**S.A(MD)No.481 of 2021**

**15.09.2021**

RD(8.10.2021) 4P 6C