



S.A. No. 1270 of 2014

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2022

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

S.A. No. 1270 of 2014

and

M.P. No.1 of 2014

1. Jayamani,
W/o. Late Paranthaman
2. Indumathi,
D/o. Late Paranthaman
3. Vijayalakshmi,
D/o. Late Paranthaman
4. Janaki,
D/o. Late Paranthaman
5. Priyadarshini,
D/o. Late Paranthaman

... Appellants

Vs.

- G.Ranganathan (deceased)
2. R.Kalavathi,
W/o. Late G.Ranganathan



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3. R.Ashok Kumar,
S/o. Late G.Ranganathan

4. R.Uma Maheswari,
W/o. Kulothungan

5. R.Mahalakshmi,
W/o. Gurubala

(R2 to R5 are brought on record as
LRs of deceased sole respondent
viz., G.Ranganathan vide Court order
dated 15.07.2021 made in C.M.P.
No.7537 of 2018 in S.A.No.1270/2014)

... Respondents

PRAYER: Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 25.02.2014 in A.S.No.10 of 2013 on the file of Subordinate Judge at Gingee reversing the judgment and decree dated 26.09.2012 in O.S.No.449 of 1994 on the file of Principal District Munsif Court, Gingee.

For Appellants : Mrs.R.Mubarak Basha

For Respondents : R1 – died

Mr.V.Raghavachari for
Mr.S.Arivazhagan for R2 to R5



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JUDGMENT

The appellants herein are the legal heirs of deceased Paranthaman and his brother Ranganathan, the plaintiff therein filed a suit in O.S.No.449 of 1994 on the file of District Munsif Court, Gingee against deceased Paranthaman/1st defendant and his wife and daughters/defendants 2 to 6 for the relief of recovery of possession contending that the suit property in Survey No.115/35, a house along with vacant site absolutely belong to him and the same was trespassed by deceased Paranthaman. Hence, the Suit. But, the defendants contended that the suit property, a house along with vacant site belong to 1st defendant absolutely and he has put up a construction and paying house tax from the year of 1979 onwards, thereby denied the plaintiff's claim. During the pendency of the suit proceedings, the 1st defendant/deceased Paranthaman died and his wife and daughters were impleaded as defendants 2 to 6 in the suit.

2. For the sake of convenience, the parties are referred as per the ranking in the suit.

3. The Trial Court framed four issues and on considering the



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evidence of both sides, the trial court held that the plaintiff is not entitled for the relief of recovery of possession without claiming declaratory relief over the suit property, thereby the suit was dismissed. Aggrieved over that, the plaintiff preferred an appeal in A.S.No. 10 of 2013 before the Sub-Court, Gingee, wherein the learned first appellate judge framed separate issues and analysed the evidence and documents and finally held that the suit property belong to the plaintiff and his right was already confirmed in the decree passed in O.S.No.277 of 1981, which was ended in a compromise between himself and his father, thereby, the plaintiff is the absolute owner of the property, but it was forcibly occupied and put up further construction by the deceased Paranthaman. Hence, the plaintiff is entitled for recovery of possession. Accordingly, the appeal was allowed and the suit was dismissed. Challenging the said findings, this Second Appeal has been filed.

4. Heard and considered the rival submissions made by Mr.R.Mubarak Basha, learned counsel for appellants and Mr.V.Raghavachari, learned counsel for respondents and perused the



5. Brief facts of the case is as follows :-

The suit property along with other properties originally belong to one Govindaraja Boopathi. The plaintiff and the 1st defendant deceased Paranthaman and one Rajaraman were the three sons of Govindaraja Boopathi. The case of plaintiff is that the suit property was allotted to plaintiff's father share during the partition and thereafter, in the year of 1979, in order to perform marriage to the said Paranthaman, his father Govindaraja Boopathi requires a sum of Rs.10,000/- and he offered to purchase the property on a oral sale. Accordingly, the plaintiff purchased the suit property by paying a sum of Rs.10,000/- towards sale consideration to his father. Considering the relationship, no document was executed and based upon a oral sale, the suit property was handed over to his possession by his father and he conferred title over the suit property as per the oral sale made on 07.10.1979. As a owner, the plaintiff was remained in possession and one Radhakrishnan filed a suit for specific performance in O.S.No. 905 of 1981 against his father and



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the same was dismissed in the Second Appeal. In that suit, this plaintiff was subsequently impleaded as 2nd defendant on the death of his father. Apart from that, his father acted against him. Hence, the plaintiff filed a suit in O.S.No.277 of 1981 for declaration of title and injunction against his father. In that suit, his father entered into a compromise with the plaintiff. Accordingly, the said suit in O.S.No.277 of 1981 was decreed in his favour, thereby his title was declared on 23.06.1983. Thereafter, the 1st defendant along with his wife/2nd defendant herein making all sorts of attempts to dispossess the plaintiff from the suit property. Hence, the present suit was filed for recovery of possession.

6. The 1st defendant contested the suit submitting that in an earlier suit in O.S.No.277 of 1981, he was not a party to the suit, thereby the suit decree passed in the suit is not binding on him. He has further submitted that in the suit property, house was constructed by the 1st defendant out of his own income and obtained electricity connection and he enjoyed the property ever since from the year of 1979. Hence, the plaintiff has no right over the property. The Trial Court framed four issues and on



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considering the evidence adduced on the side of both parties, held that the alleged compromise decree was not properly registered as per the manner known to law. Apart from that, the plaintiff has not taken any steps to declare his title over the suit property, since the defendants claimed right over the property from the year of 1979 onwards, thereby the suit was dismissed.

7. Challenging the said findings, an appeal was filed in A.S.No.10 of 2013 before the Sub-Judge, Gingee, wherein the first appellate judge considering the evidence on record, held that in the earlier suit in O.S.No.277 of 1981, this plaintiff claimed the relief of declaration and injunction in respect of the suit property against his father and in that suit, his father has submitted a decree by making a joint endorsement. Accordingly, the suit was decreed in favour of this plaintiff declaring his title over the property, thereby the plaintiff is the absolute owner of the property and he was forcibly dispossessed by the defendants' family. Hence, the relief of declaration was granted as prayed for by allowing the appeal.

8. Aggrieved over the findings of the first appellate court, the



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defendants preferred this appeal and the Second Appeal is admitted on the following question of law :-

“1. Whether the 1st appellate court while allowing the appeal passed a decree in favour of respondent for recovery of possession of suit property from appellants in derogation of the law laid down in the case James vs. Y.Davidson reported in 1988 (1) LW 590(DB) as the respondent has pleaded a case of oral sale, which found to be indefiance of Sec.9 and 54 of the Transfer of Property Act?

2. Whether the 1st appellate court decreed the suit indefiance of Sec.17 of Indian Registration Act as the respondent pleaded a case of oral sale?”

9. The learned counsel appearing for defendants submitted that the plaintiff owes his title based upon a decree in O.S.No.277 of 1981, but the relief of declaration claimed by him in the suit is based upon a oral sale, which is invalid under law, but mere endorsement by his father, the suit was decreed in favour of plaintiff, which is not maintainable in law



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for the reason that the oral sale pleaded by the plaintiff in that suit is invalid under law as per Sec.9 and 54 of Transfer of Property Act. To support his contentions, he relied upon the following authority reported in **1988 (1) L.W. 590 (DB)**, in the case of **James vs. Y. Davidson**, the relevant portion of the judgment is extracted hereunder :-

“Transfer of Property Act. Ss.9 and 54 – Suit for declaration that plaintiff is in possession of the suit property on the basis of an oral sale in his favour and for injunction – Oral sale not legal – Plaintiff not entitled to any relief – Decree of lower court set aside.

This is where unfortunately the court below has completely misled itself. What it should have done is to look at S.9 of the Transfer of Property Act. We extract that section below :-

“9. A transfer of property may be made without writing in every case in such a writing is not expressly required by law.”

This is a case of sale. Therefore, S.54 of the Transfer of Property Act will be attracted. That section reads as follows:-

“54. 'sale' is a transfer of ownership in exchange for a price paid or promised or part-paid



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and part-promised.

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.

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.

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

Madam Pillai v. Badrakali Ammal and another
reported in 15 L.W. 464 (F.B.) = 1922 I.L.R. 45 Mad. 612,
and the weighty observations of Chief Justice Sir Walter Salis Schwabe at page 616, where the learned Chief Justice remarks as follows :-



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“By the Transfer of Property Act, S.9 a transfer of property may be made without writing in every case in which a writing is not expressly required by law” and, therefore, one has to see whether writing has been expressly required by law for such a transaction as this. Apart from the question of gift, the only sections which it is claimed could apply are Sec.54 and 118. S.54 relates to sales, a sale being defined 'as a transfer of ownership in exchange for price paid or promised.’”

*The again, in **Ananda Behera and another vs. State of Orissa and another** reported in **59 L.W.1 873 (S.C.)=A.I.R. 1956 S.C.17** at page 19 in paragraph 11 it was held thus :*

“The 'sales' in this case were oral : there was neither writing nor registration. That being the case, the transaction passed, no title or interest and accordingly, the petitioners have no fundamental right that they can enforce.”

It will follow, therefore, that a oral sale of a tangible immovable property of the value of more than rupees one hundred is invalid in law. In this case, it is a tangible immovable property, the value being Rs.1,04,000/- and therefore, no title could pass under the oral sale set up by the plaintiff. The contrary finding of the learned Sub-Judge



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exhibits his ignorance of the law.

10. By way of reply, the learned counsel appearing for respondent argued that in the earlier suit in O.S.No.277 of 1981, the relief of declaration in respect of suit property was claimed by the plaintiff against his father Govindaraja Boopathi and during the pendency of the proceedings, his father made a joint endorsement. Accordingly, the suit was decreed in favour of plaintiff, thereby his title was declared and to that effect, he relied on the decree passed in the suit, which is marked as Ex.A4. As his title was already declared and proved by the plaintiff, and the same was rightly appreciated by the lower appellate judge, it does not require any further registration under Sec.17 of Registration Act. To that effect, he has relied on the authority reported in **2009 (6) SCC 194** in the case of ***Sneh Gupta vs. Devi Sarup and others***, relevant portion of judgment reads as follows:-

“B. Civil Procedure Code, 1908 – Ss.33, 2(2) and Or.23, R.3 and S.9 and Or.9 R.13 – Void/Voidable decree – Setting aside of – Bar of limitation against – Applicability of – Held, if an order/decreed is void or voidable, the same must be set aside –



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There is no law that where the decree is void, no period of limitation for setting aside thereof shall be attracted at all – Thus, the compromise decree in the present case, even if void, was required to be set aside by seeking remedy therefor within the limitation contained under the Limitation Act, 1963 – In view of the facts and circumstances of the case, first part of Art.123, Limitation Act, 1963 prescribing reckoning of period of limitation (30 days) from the date of the decree was sought for after four years of passing of the same – Hence, the same was barred by limitation under Art.123 – Limitation Act, 1963 – Art.123 – Practice and Procedure – Judgment/Decree – void decree – Setting aside of – Limitation.

Further, he relied on the authority reported in **2020 (10) SCC 264** in the case of **Mohammade Yusuf and others vs. Rajkumar and others**, the relevant portion of judgment reads as follows:-

“B. Registration Act, 1908 – S. 17(2)(vi) – Scheme of, explained – All decrees and orders of court, held are exempt from registration with the sole exception of compromise decree or order which comprises immovable property other than that which is the subject matter of suit or proceeding in question – Civil Procedure Code, 1908, Or. 23 R. 3”



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11. Considering the submissions of either side, the point is to be decided as to whether the plaintiff's title in respect of the suit property declared in the earlier suit in O.S.No.277 of 1981 is valid under law. As per the contention of the plaintiff that during the life time of his father, in the year of 1979, he offered to sell the property for a sum of Rs.10,000/- in the presence of witnesses and considering the relationship, no document was executed. Based upon a oral sale, he became absolute owner of the property from the year of 1979. The 1st defendant/deceased Paranthaman, brother of plaintiff totally denied the alleged oral sale as well as plaintiff's claim over the suit property. Hence, the initial burden on the plaintiff is to prove his title over the suit property. In the earlier suit, based upon a oral sale alone, the plaintiff claimed himself as absolute owner of the suit property. Admittedly, the alleged purchase of the suit property is for the value of Rs.10,000/-. At this juncture, the learned counsel for defendants pointed out that if the value of the property is more than Rs.100/-, it needs a written document and hence, the alleged oral sale pleaded by the plaintiff is invalid under law. By

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relying Sec.9 and 54 of Transfer of Property Act, it defines the same as follows :-

“Transfer of Property Act. Ss.9 and 54 – Suit for declaration that plaintiff is in possession of the suit property on the basis of an oral sale in his favour and for injunction – Oral sale not legal – Plaintiff not entitled to any relief – Decree of lower court set aside.

This is where unfortunately the court below has completely misled itself. What it should have done is to look at S.9 of the Transfer of Property Act. We extract that section below :-

“9. A transfer of property may be made without writing in every case in such a writing is not expressly required by law.”

This is a case of sale. Therefore, S.54 of the Transfer of Property Act will be attracted. That section reads as follows:-

“54. 'sale' is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.

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



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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.

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.

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

Therefore, under law, the transfer of immovable property for the value of Rs.100/- and upwards can be made only by a registered instrument. Admittedly, the case in hand, the value of the property as per the contention of plaintiff is Rs.10,000/-, but no written document was executed in favour of this plaintiff. Hence, the alleged oral sale lead by the plaintiff is invalid under law. The authority reported in **1988 (1) L.W. 590** in the case of **James vs. Y. Davidson** is relied on by the appellants



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in support of their contentions and the relevant portion of judgment is extracted hereunder :-

“It will follow, therefore, that a oral sale of tangible immovable property of the value of more than rupees one hundred is invalid in law. In this case, it is a tangible immovable property, the value being Rs.1,04,000/- and therefore, no title could pass under the oral sale set up by the plaintiff. The contrary finding of the learned Sub-Judge exhibits his ignorance of the law.”

12. But, the learned counsel for the respondent insisted the court that based upon a joint endorsement made by his father, a decree was granted in favour of this plaintiff in the earlier suit in O.S.No.277 of 1981 and accordingly, when the oral sale was confirmed and his title also declared by a competent court, the same cannot be questioned by these defendants in the present case. But, it is settled law that admission alone will not confer title. It is well settled that title to the land cannot pass by admission when the statute requires a deed. To that effect, the ratio laid

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down in the case of ***Palaniswamy Konar vs. Gopala Konar and 8 others*** reported in ***1997 (3) L.W. 888*** relied on by him, wherein this Court held as follows :-

“19. It is settled law that admission alone will not confer title. In Sarkar on Evidence, 14th Edition (1993), commenting on Section 18 at page 321, it is said thus :-

“...It is well-settled that title to land cannot pass by admission when the statute requires a deed. An admission could not confer title, but it would only shift the burden to prove want of title in persons in whose favour the admission is made.”

13. Furthermore, on perusal of Ex.A4, it is a decree passed in the earlier suit in O.S.No.277 of 1981 and it would reveals that a suit for declaration of plaintiff's title over the suit property was filed by this plaintiff against his father and in that suit, he pleaded oral sale made by his father by receiving a sum of Rs.10,000/- in order to perform marriage for his brother Paranthaman. On 23.06.1983 the suit was decreed as

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follows :-

“Joint endorsement made by plaintiff and defendants.

இந்த தாவா சிலவு இல்லாமல் தள்ளுபடி செய்துவிடலாம்.”

So, it is not a compromise decree for the reason that if it is a compromise decree, the parties to the proceedings has to file a separate application and it must be signed by both the parties on filing a separate application to refer the said compromise along with permission to record the same. But, in this case, no such compromise petition was filed before the court and only based upon the alleged oral joint endorsement, the suit was decreed. So, it is not a compromise decree, but it can be deemed as submitted decree. By relying this decree, the counsel for respondent submitted that his father alone is the right person to dispute the decree, but he has not raised objection in any suit, on the other hand, he gave consent to the decree. Accordingly, the suit was decreed in favour of plaintiff by upholding the oral sale pleaded by the plaintiff in that suit.

14. As discussed above, mere admission alone will not confer title when the statute requires a written deed. Therefore, even assuming that

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plaintiff's father admits that he made a joint endorsement in favour of plaintiff or admits the oral sale, it will not confer any title in favour of plaintiff, because the law is very clear that if the value of immovable property is more than Rs.100/-, it requires a written document, which is required under the statute, but it was not complied by the plaintiff in respect of the suit property. Therefore, the joint endorsement made in the earlier suit (Ex.A4) will not confer a valid title in favour of plaintiff.

15. It is pertinent to note that during the life time of plaintiff's father, one Radhakrishnan filed a suit against him in respect of same suit property for the relief of specific performance in O.S.No.905 of 1981. In that suit, the plaintiff's father filed a written statement denying the alleged sale agreement with the said Radhakrishnan and the said statement filed in the year of 1981. If really, he had entered into a oral sale with this plaintiff in the year of 1979, he would have mentioned the same in the written statement filed by him in the year 1981 and nowhere he pleaded the same in his written statement. This plaintiff also subsequently impleaded himself in that suit and also not pleaded that the



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suit property belonged to him by way of oral sale. Apart from that, during the life time of plaintiff's father, he has filed a suit in O.S.No.229 of 1981, it is a earlier suit filed against his three sons including this plaintiff and defendants. In that suit, he specifically pleaded against this plaintiff as follows :-

“.....If the 2nd defendant trespasses upon the suit property, the plaintiff is unable to live in the house. The 2nd defendant is a hale and healthy man and powerful man in the village with large packings. If he takes forcible possession of the suit property,.....”

But, the said suit was dismissed as not pressed subsequently. Hence, the fact reveals that even during the life time of plaintiff's father, there was no cordial relationship with this plaintiff and his father. Moreover, during the evidence, this plaintiff himself admits that the said Paranthaman/1st defendant has lived separately from the family as he was a Teacher by profession and he was not aware of the marriage performed to his brother Paranthaman and the marriage was arranged by Paranthaman himself, without the consent of his father. Hence, his own evidence falsifies his



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case. Therefore, the alleged oral sale pleaded by the plaintiff in respect of suit property as such invalid in law. Consequently, the decree passed on the alleged joint endorsement also non-est in law. Even assuming that his father made a joint endorsement to grant a decree in favour of this plaintiff will not confer any right or title in respect of the suit property, which requires a written document under the statute. Therefore, the alleged oral sale as well as based upon the submitted decree passed in O.S.No.277 of 1981 is invalid under law and it will not confer any title in respect of the suit property. But, the findings of the first appellate judge, without appreciating all these legal aspects, decreeing the suit in favour of plaintiff is totally perverse and liable to be set aside and it also denotes the learned judge was clearly on ignorance of law. Hence, the findings of the first appellate judge is set aside with regard to the findings of title in respect of the suit property.

16. With regard to the possession of the property, from the year of

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1979 onwards, the deceased Paranthaman contended that he was in enjoyment of the property and after his retirement, by using his retirement benefits, he put up a new house and he along with other defendants were residing in the suit property. During the evidence of P.W.1 and 2 also, they admit that in the suit property, there was a old house and the same was demolished and a new house was constructed by these defendants. Furthermore, there is no proof in favour of plaintiff that he is in possession of the property from the year of 1979 onwards. Therefore, the plaintiff failed to prove that he is enjoying the suit property. Hence, the relief of recovery of possession claimed by the plaintiff as such it has not been proved, but the learned first appellate judge without appreciating the evidence as well as facts and circumstances erroneously decreed the suit, which is totally unjust and unfair and the same is liable to be set aside. As the plaintiff is not the absolute owner of the suit property, he is not entitled for recovery of possession also. Thus, in all aspects, the plaintiff fails to establish the case. Hence, the findings rendered by the first appellate judge is set aside. Accordingly, this Second Appeal is allowed and consequently, the



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suit is dismissed as no merits. No costs. Consequently, the connected
Miscellaneous Petition is closed.

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Speaking/Non-speaking order
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To

Sub-Judge,
Gingee.

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Pre-delivery judgment in
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