



AS.Nos.968 to 972 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **13.12.2023**

CORAM

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**
and
THE HONOURABLE MR.JUSTICE **N.SENTHILKUMAR**

A.S.Nos.968 to 972 of 2012
and the Connected Miscellaneous Petitions

AS No.968 of 2012

M. Rajammal (Deceased)

1. M.Krishnamurthi

2. M. Shanmugam

... Appellants

vs.

1. M.Nachimuthu

2. N.Senthilnath

3. N.Sridhar

... Respondents

Appeal suit has been filed under Section 96 read with Order XLI Rule 1 of the Civil Procedure Code, to set aside the judgment and decree dated 18.07.2012 of the learned II Additional District Judge, Salem dismissing the suit in OS No.129 of 2006.



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AS No.969 of 2012

1. M.Krishnamurthi

2. M. Shanmugam

... Appellants

vs.

1. M.Nachimuthu

2. N.Senthilnath

3. N.Sridhar

... Respondents

Appeal suit has been filed under Section 96 read with Order XLI Rule 1 of the Civil Procedure Code, to set aside the judgment and decree dated 18.07.2012 of the learned II Additional District Judge, Salem dismissing the suit in OS No.76 of 2011.

AS No.970 of 2012

M. Rajammal (Deceased)

1. M.Krishnamurthi

2. M. Shanmugam

... Appellants

vs.

M.Nachimuthu

... Respondent

Appeal suit has been filed under Section 96 read with Order XLI Rule 1 of the Civil Procedure Code, to set aside the judgment and decree



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dated 18.07.2012 of the learned II Additional District Judge, Salem
dismissing the suit in OS No.89 of 2009.

AS No.971 of 2012

1. M.Krishnamurthi

2. M. Shanmugam

... Appellants

vs.

1. M.Nachimuthu

2. The District Collector
Collector's Office Compound,
Salem 1.

3. The Tahsildar,
Taluk Office Compound,
Salem 1.

4. The Village Administrative Officer,
Kandhampatti Village,
Salem – 5,
Salem Taluk and District.

5. The Sub-Registrar,
Sooramangalam, Salem 5,
Salem Taluk.

... Respondents

Appeal suit has been filed under Section 96 read with Order XLI
Rule 1 of the Civil Procedure Code, to set aside the judgment and decree
dated 18.07.2012 of the learned II Additional District Judge, Salem
dismissing the suit in OS No.187 of 2010.



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WEB COURT AS No.972 of 2012

1. M.Krishnamurthi

2. M. Shanmugam

... Appellants

vs.

1. N.Senthilnath

2. N.Sridhar

... Respondents

Appeal suit has been filed under Section 96 read with Order XLI Rule 1 of the Civil Procedure Code, to set aside the judgment and decree dated 18.07.2012 of the learned II Additional District Judge, Salem dismissing the suit in OS No.231 of 2010.

For Appellants : Mr. V.Raghavachari, Senior Counsel
(in all the Appeals) Assisted by Mr.Ma.P.Thangavel

For Respondents : Mr.A.K.Kumarasamy, Senior Counsel
Assisted by Mr.S.Kaithamalai Kumaran
for R1 in AS Nos.968 to 971/12

: Mr.S.Parthasarathy, Senior Counsel
Assisted by Mr.S.Kaithamalai Kumaran
for RR 2 & 3 in AS Nos.968 & 969/12
for Respondents in AS No.972/12

: RR2 to 5 -served – No appearance



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COMMON JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

All these appeals arise out of five suits between the same parties with reference to the same properties. They have been disposed of by a common judgment by the Trial Court and hence these Appeals are also disposed of by a common judgment.

2. OS No.76 of 2011 which is the earliest suit has been filed by the plaintiffs therein seeking a permanent injunction restraining the defendants from interfering with their possession of the suit properties and from altering the physical features of the properties. The suit properties were owned by one Muthu Gounder, who died on 08.09.2006 leaving behind a daughter and a son by name Rajammal and Nachimuthu respectively. The said Rajammal had two sons by name Krishnamurthi and Shanmugam and Nachimuthu had two sons by name Senthilnathan and Sridhar.



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3. The plaintiffs in OS No. 76 of 2011 would claim that Muthu

Gounder has executed a power of attorney in favour of their mother Rajammal on 07.01.2002 and as a power agent of Muthu Gounder, Rajammal had sold the property to the plaintiffs on 24.07.2006. Therefore, according to them, they are the absolute owners of the property and as such they are entitled to a permanent injunction as prayed for.

4. This suit was resisted by the defendants, who are the son and grandsons of Muthu Gounder, viz Nachimuthu and his two sons, contending that the sale by Rajammal is invalid since Muthu Gounder, even when he was alive, had executed a Deed of settlement in favour of his grandsons through his son Nachimuthu on 20.12.2005.

5. The following issues were framed in the said suit:

1. Whether the plaintiffs are entitled to permanent injunction against the defendants restraining them from tress passing into the suit property;



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2. *Whether the plaintiffs are entitled to*

*permanent injunction against the defendants
restraining them from altering the physical features of
the suit properties; and*

3. *To what other reliefs?*

6. The second suit viz. OS No.89 of 2009 which came to be instituted on 14.11.2006 by Nachimuthu son of Muthu Gounder against his sister Rajammal and her two sons seeking a permanent injunction restraining them from interfering with his peaceful possession. Nachimuthu claimed that he is in possession of the property as the settlee under the registered Settlement Deed dated 20.12.2005 executed by Muthu Gounder and that the defendants are attempting to interfere with his possession with the aid of the alleged sale deed said to have been executed by Rajammal, the daughter on 24.07.2006 in her capacity as power agent of Muthu Gounder.

7. This suit was resisted by the defendants therein viz. the daughter



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and her children contending that the Settlement Deed dated 20.12.2005 is invalid and the sons of Rajammal are in possession of the property as per the Sale Deed executed by Rajammal in their favour on 24.07.2006.

8. On the above pleadings, the learned Trial Judge framed the following issues in the said suit:

- 1. Whether the plaintiff is entitled to permanent injunction as prayed for;*
- 2. To what other reliefs are the plaintiffs entitled to?*

9. The third suit in OS No.129 of 2006 was filed by Rajammal seeking partition and separate possession of her half share in the suit properties. She claimed that the Settlement Deed executed by Muthu Gounder in favour of his grandsons on 20.12.2005 is invalid. Upon the death of Rajammal on 14.11.2007, her sons were impleaded as plaintiffs 2 and 3 in the said suit. Nachimuthu and his two sons were the defendants in the said suit.



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10. The defendants resisted the suit contending that since Muthu Gounder had parted with the property even during his lifetime in favour of his grandsons through Nachimuthu, a suit for partition will not lie.

11. The following issues were framed in the said suit:

1. Whether the plaintiffs have any right, title in the suit properties;

2. Whether Muthu Gounder executed a power of attorney deed in favour of the 1st plaintiff;

3. Whether the gift settlement deed dated 20.12.2005 in favour of the defendants is valid;

4. Whether the plaintiffs are entitled for the partition as prayed for;

5. To what relief if any, the plaintiffs are entitled?

12. Yet another suit in OS No.187 of 2010 was filed by Nachimuthu seeking a declaration that the Sale Deed dated 24.07.2006 executed by Rajammal in favour of her sons, who were the defendants 1



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and 2, is invalid and also for a declaration that the mutation of the Revenue records pursuant to the said Sale Deed is invalid and for permanent injunction restraining the sixth defendant Registrar from registering any document.

13. This suit was resisted by the defendants 1 and 2 therein contending that the Sale Deed is perfectly valid and the Settlement Deed executed by Muthu Gounder in favour of his grandsons through his son Nachimuthu is invalid.

14. The following issues were framed in the said suit.

1. Whether the plaintiffs is entitled to the relief of declaration declaring sale deed dated 24.07.2006 under document No.3851/2006 in null and void?

2. Whether the plaintiff is entitled to the relief of declaration that the mutation of revenue records in respect of the suit property is null and void:

3. Whether the plaintiff is entitled the relief of



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*permanent injunction restraining the defendants 1
and 2 from alienating suit properties;*

*4. Whether the plaintiff is entitled to the relief of
permanent injunction against the 6th defendant from
registering document relating to the suit property
executed by D1 and D2;*

5. To what other relief?

15. The last suit in OS No.231 of 2010 was filed by the two sons of Nachimuthu for a declaration of their title based on the settlement deed dated 20.12.2005 executed by Muthu Gounder.

16. The said suit was resisted by the defendants therein contending that the settlement deed was not executed by Muthu Gounder, the thumb impression found therein was not that of Muthu Gounder and Muthu Gounder was capable of signing. No explanation has been given, as to why, he had affixed his thumb impression. It was also contended that Muthu Gounder had executed a power of attorney in favour of Rajammal,



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who in turn had sold the property to them as the power agent on 24.07.2006 and therefore, the plaintiffs are not entitled to a declaration.

17. The following issues were framed in the said suit:

- 1. Whether the plaintiffs are entitled for the declaratory relief as prayed for;*
- 2. Whether the plaintiffs are entitled for recovery of possession as prayed for;*
- 3. To what other relief, if any are the parties entitled to?*

18. All the suits were tried together and the evidence was recorded in OS No.129 of 2006, which is the suit for partition filed by Rajammal. P.W.1 to P.W.6 were examined on the side of the plaintiffs. Exhibits A1 to A30 were marked and Exs.X1 to X4 were marked on the side of the plaintiffs. D.W.1 to D.W.5 were examined and Exhibits B1 to B133 were marked on the side of the defendants.

19. The learned Trial Judge upon consideration of the evidence on



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record concluded that the Settlement Deed dated 20.12.2005 is valid and

it has been proved in accordance with law. The learned Trial Judge also found that the power of attorney Ex.A1 dated 07.01.2002 said to have been executed by Muthu Gounder in favour of Rajammal is a created document and therefore, Rajammal did not have any right to execute the sale deed as the power agent of Muthu Gounder on 24.07.2006 in favour of her sons.

20. On the said findings, the learned Trial Judge dismissed the suit for partition filed by Rajammal and the suit for injunction filed by the sons of Rajammal in OS No.129 of 2006 and OS No.76 of 2011. The other three suits which were filed by Nachimuthu and his two sons were decreed. The Sale Deed dated 24.07.2006 was declared as invalid in OS No.187 of 2010 and the title of the sons of Nachimuthu, plaintiffs in OS No.231 of 2010 was declared by a decree for declaration of title made in that suit and the decree for injunction sought for in OS No.89 of 2009 was also granted.



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21. Aggrieved the plaintiffs 2 and 3 in OS No.129 of 2006, the plaintiffs in OS No.76 of 2011 and the defendants, who were the defendants in other three suits, are on Appeal.

22. We have heard Mr.V.Raghavachari, learned Senior Counsel assisted by Mr.Ma.P.Thangavel, appearing for the appellants in all the appeals, Mr.A.K.Kumarasamy, learned Senior Counsel assisted by Mr.S.Kaithamalai Kumaran appearing for the first respondent in AS Nos.968 to 971 of 2012 and Mr.S.Parthasarathy, learned Senior Counsel assisted by Mr.S.Kaithamalai Kumaran, appearing for respondents 2 and 3 in AS Nos.968 and 969 of 2012 and for the respondents in AS No.972 of 2012.

23. Mr.V.Raghavachari, learned Senior Counsel appearing for the appellants would vehemently contend that the Trial Court was not justified in upholding the Settlement Deed. He would point out that a specific plea has been taken by the defendants in OS No.231 of 2010



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which is a suit for declaration based on the settlement deed that Muthu Gounder was capable of signing and no explanation has been offered, as to why, he had chosen to affix his thumb impression in Ex.B46 Settlement Deed dated 20.12.2005. No doubt one of the attestors to that instrument has been examined as D.W.3 and we find that his evidence has not been shaken in cross-examination so as to disbelieve him.

24. However, in view of the categorical stand that was taken to the effect that Muthu Gounder did not affix his thumb impression in Ex. B46, upon an application taken out by the appellants herein, we had referred the said document for expert opinion for comparison of the thumb impressions of Muthu Gounder found in the said documents along with the admitted documents viz. Ex.B1 a power of attorney dated 20.06.2002 executed by Muthu Gounder in favour of his son Nachimuthu. The Fingerprint Expert returned the documents observing that the thumb impression found in the power of attorney dated 20.06.2002 marked as Ex.B1 is smudged and therefore, it is not capable of comparison. Thereafter, the appellants were required to produce the original of Ex.B25 the Sale Deed dated 18.03.1985, we had also summoned the original



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thumb impression register maintained by the Sub Registrar, Suramangalam, while registering Ex.B25. These documents were again sent to the expert for comparison.

25. The Fingerprint Expert had returned an opinion stating that the thumb impressions of Muthu Gounder found in Ex.B46 Settlement Deed are identical with that of the admitted thumb impressions of Muthu Gounder found in the original of Ex.B25 and the original thumb impression register maintained by the Sub Registrar. After the receipt of the opinion, an objection has been filed by the appellants. It is sought to be contended that the comparison was not made with the original thumb impression register, but upon a reading of the opinion of the expert we find that such objection cannot be sustained.

26. On the facts narrated above, the following position emerges, Muthu Gounder was the original owner of the property. He had executed a settlement on 20.12.2005 in favour of his grandsons through his son. Therefore, he has divested himself of all rights over the property on that date. Upon knowledge of that settlement, the daughter of Muthu



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Gounder viz. Rajammal had created Ex.A1, power of attorney dated 07-01-2002 on a stamp paper which was sold to one Uma on 05.07.2006 by manipulating the date of sale of the said stamp paper. This was borne out by Ex.B13, a reply by the District Registrar, Salem West, to a query by Nachimuthu under Ex.B12 under the Right to Information Act.

27. After creating a power of attorney with a stamp paper purchased in the year 2006 antedating it as if it was executed on 07.01.2002, Rajammal goes ahead and executes the sale deed in favour of her sons on 24.07.2006. Even assuming that this power of attorney and the sale deed are true, the sale by her cannot be upheld since her principal Muthu Gounder had lost title even on 20.12.2005, viz. the date of execution of the Settlement Deed in Ex.B46. Therefore, the only question that remains to be answered in these appeals is on the validity of the Settlement Deed dated 20.12.2005.

28. We have already observed that D.W.3 Mohankumar has spoken about execution of the Settlement Deed by Muthu Gounder. It is a registered instrument and upon proof of execution of it, the



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presumptions under Section 60(2) of the Registration Act would apply and the endorsements made by the Registrar in terms of Section 55 to 58 of the Registration Act should be taken to be true and the things mentioned in the endorsements should be presumed to have happened at the time of registration of the instrument.

29. The contention of the learned counsel for the appellants that the fact that Muthu Gounder had affixed his thumb impression in the document though he was capable of signing stands dispelled by the opinion of the expert which clearly shows that the document was in fact executed by Muthu Gounder and the thumb impressions found therein are that of Muthu Gounder. It is not the case of the appellants that Muthu Gounder was coerced or influenced by Natchimuthu or his sons into executing the settlement deed. There is also no evidence to that effect.

30. We have perused the settlement deed. The original document contains at least eleven thumb impressions of Muthu Gounder. As per the opinion of the fingerprint expert all the thumb impressions tallied with the admitted thumb impressions found in Ex.B25 and the original



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thumb impression register summoned from the office of the Sub Registrar, Suramangalam. Therefore, we cannot, but, uphold the validity and genuineness of Ex.B46 Settlement Deed. Once the finding of the trial court regarding the validity and the genuineness of Ex.B46 Settlement Deed is upheld, the plaintiffs in OS No.231 of 2010 would be entitled to a declaration of their title based on the said instrument and all the other suits viz., the suits in OS Nos.89 of 2009 and 187 of 2010 will have to be decreed. It naturally follows that the suits in OS Nos.129 of 2006 and 76 of 2011 filed by Rajammal and her two sons will have to be dismissed.

31. In view of the above findings, the Appeals fail and they are dismissed with costs throughout. Consequently, the connected miscellaneous petitions are closed.



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32. The Registry is directed to return the original of Ex.B25, that

has been produced for the purposes of comparison, to the learned counsel for the appellants and the Registry is also directed to return original Thumb Impression Register which was summoned from the Sub Registrar, Suramangalam to the officer concerned.

(R.SUBRAMANIAN, J .) (N.SENTHILKUMAR, J.)
13.12.2023

Index : No
Internet : Yes
Neutral Citation : No
Speaking order
jv



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To

1. The II Additional District Judge,
Salem.
2. The Section Officer,
V.R.Section,
Madras High Court.



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R.SUBRAMANIAN, J.

and

N.SENTHILKUMAR, J.

jv

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