



SA.Nos.274 & 275 of 2001

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 13.12.2023

PRONOUNCED ON : 22.12.2023

CORAM

THE HON'BLE Mr.JUSTICE C.KUMARAPPAN

S.A.Nos.274 & 275 of 2001

S.A.No.274 of 2001

1. Devaraj
2. Muthammal
3. Tamilarasi
4. Minor Selvi
(declared as Major and 3rd appellant discharged
from her Guardianship vide order dated 22.08.2012
made in CMP.Nos.640 & 641/2012)

... Appellants

- Vs -

1. Alamelu (deceased)
2. Sadayapadayachi (deceased)
3. Periyasamy
S/o.Sadaya Padayachi
(The Appeal is dismissed as against R3 vide order dated 19.03.2018)
4. Navu
5. Periyasamy
(R4 & R5 impleaded as LR's of deceased R1
vide Order dated 03.09.2012 made in
CMP.Nos.707 to 709/2012)
6. Kamalam
(R6 impleaded as LR's of the deceased R2 vide order dated
19.03.2018 made in CMP.No.743/2012)

... Respondents



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Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Subordinate Judge of Attur, dated 20.06.2000 made in A.S.No.72 of 1997 setting aside the order of the District Munsif of Attur, dated 26.08.1996 made in O.S.No.130/1985.

For Appellants : Mr.P.Jagadeesan

For Respondents : R1 & R2-Died (Steps taken)
R3-Died (Disd.as abated vide
order dated 19.03.2018
R4-Served. No Appearance
Mrs.R.Abirami
for M/s.V.Srimathi for R5
R6-No Appearance

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Muthammal

... Appellant

- Vs -

1. Alamelu Ammal
2. Navu
3. Periyasamy

... Respondents

Second Appeal is filed under Section 100 of the Civil Procedure Code against the judgment and decree of the Subordinate Judge, Attur dated 20.06.2000 made in A.S.No.73/97 setting aside the order of the District Munsif of Attur dated 26.08.1996 made in O.S.No.386/1982.

For Appellant : Mr.P.Jagadeesan

For Respondents : Mr.R1 & R2 - Served. No Appearance
Mrs.R.Abirami
for M/s.V.Srimathi for R3



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COMMON JUDGMENT

Since the parties to the suit and the issues involved in the suit are common, this Court deems it appropriate to dispose of both the Second Appeals by way of a common judgment.

2. SA.No.274 of 2001 arising out of the suit in O.S.No.130 of 1985. Similarly, S.A.No.275 of 2001 arising out of O.S.No.386 of 1982.

3. For the sake of convenience, “O.S.No.386 of 1982” shall be referred to as “Muthammal suit”, and “O.S.No.130 of 1985” shall hereinafter be referred to as “Alamelu suit”. In Muthammal suit, Alamelu was arrayed as a defendant. In Alamelu suit, Muthammal, her husband and children were arrayed as the defendants. The suit properties in both the suits are one and the same.

The brief facts, which give rise to the instant Second Appeals are as follows:-

4. In Muthammal suit, she contend that she derived title by virtue of a sale deed executed by one Mr.Irusa Gounder on 17.02.1982. In respect of



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Alamelu suit, she projected a title through a settlement deed dated 07.09.1978 executed by her husband Dasa Gounder. Therefore, their pleadings and defence is based on the sale deed stands in the name of Muthammal and settlement deed stands in the name of Alamelu.

Evidence and Documents:-

5. Before the Trial Court, the plaintiff examined 3 witnesses as PW1 to PW3 and marked as many as 37 documents as Exs.A1 to A37. On behalf of the defendants, 3 documents have been marked as Exs.B1 to B3 and 5 witnesses have been examined as DW1 to DW5.

Findings of the Court below:-

6. The Trial Court, after having considered either side submissions and also after having gone into the oral and documentary evidence, has ultimately decreed the Muthammal suit and dismissed the Alamelu suit. When Alamelu preferred an appeal, the First Appellate Court reversed the finding and decreed the Alamelu suit, but dismissed the Muthammal suit. Against the said finding, Muthammal has preferred S.A.No.275 of 2001 against her suit in O.S.No.386 of 1982. Similarly, Muthammal, her husband and children have filed S.A.No.274 of 2001 against the decree granted by the



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First Appellate Court in Alamelu suit in O.S.No.130 of 1985.

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Substantial Question of Law:-

7. At the time of admission on 27.02.2001, this Court has formulated a common substantial question of law, which is as under:-

“Are not the conclusions arrived at by the First Appellate Court in both the appeals opposed to the pleadings and materials (both oral and documentary) placed by the parties before it?”

Submission of either side counsel:-

8. The learned counsel for the appellant/Muthammal suit, would vehemently contend that the Trial Court has given a well considered finding, after thoroughly appreciating the oral and documentary evidence. It was also contended by the learned counsel of Muthammal suit that the Trial Court, after gone into various aspects, based reliance upon the Sale Deed stands in the name of Muthammal and the Adangal and Patta [Ex.A2], has rightly arrived at a conclusion in favour of Muthammal. It is the contention of the learned counsel for the appellant/Muthammal that except the settlement deed, which was allegedly executed by Alamelu's husband in favour of Alamelu, no other anterior document has been submitted by Alamelu.



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Therefore, the finding of fact recorded by the First Appellate Court in favour of Alamelu is without any evidence. Hence, prayed to interfere with the order of the First Appellate Court and thereby, prayed to decree the suit in O.S.No.386 of 1982 [Muthammal's suit] and dismiss the suit in O.S.No.130 of 1985 [Alamelu's suit].

9. Per contra, the learned counsel of the respondents/Alamelu would vehemently contend that the documents, which Muthammal relies is a sale deed, where admittedly neither a signature nor thumb impression of Irusa Gounder would find a place, therefore, the same is unenforcible, which has been rightly relied by the First Appellate Court to disbelieve the case of Muthammal. Apart from that, there are no anterior title to Muthammal to substantiate her claim. Hence, contended that there are no grounds to interfere with the well considered finding of the First Appellate Court.

10. I have given my anxious consideration to either side submission.

Analysis of the submissions:-

11. On perusal of the description of property, the suit property is in two S.F. numbers viz., 100/2 and 109/5 of Koodamalai village. As rightly contended by the learned counsel for the respondents/Alamelu, the Sale Deed (Ex.A1), which relied by Muthammal did not contain the thumb impression



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or signature in any of the places, except on the reverse of the document, where Irusa Gounder has put his left thumb impression at the time of registration of Ex.A1-Sale Deed. In all other places, it was only referred as கீரல் இருசு கவுண்டர் [Mark-Irusa Gounder]. Neither Irusa Gounder's signature find a place nor his thumb impression is there in the bottom of each page of the sale deed. In this regard, the learned counsel for the respondents/Alamelu would contend that the First Appellate Court has rightly observed in this aspect, and found that through Ex.A1-Sale Deed, Muthammal could not derive any title.

12. At this juncture, the learned counsel for the appellant/Muthammal relies upon the interpretation clause of Transfer of Property Act, and invited the attention of this Court about Section 3 of The Transfer of Property Act. He would also invite the attention of this Court in respect of Section 3 sub-clause (56) of General Clause Act. Apart from that, the learned counsel for the appellant also relied upon the following judgments:-

1. ***J. and D. Ezeikeil, carrying business under the Name and Style of Ezeikeil and Co Vs. Annada Charan Sen*** reported in ***MANU/WB/0161/1922***;
2. ***Rajani Mandal Vs. Digindra Mohan Biswas*** reported in ***1931 LawSuit(Cal) 246***;



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3. ***Birbal Vs. Thamansingh and others*** reported in 1955 ***Rajasthan 91***;
4. ***Karri Nookaraju Vs. Putra Venkatarao and Ors.*** reported in ***AIR 1974 AP 13***;
5. ***Smt.Har Kaur (deceased by LR's) Vs. Gura Singh and another*** reported in ***AIR 1988 Punjab and Haryana 41***.

13. In ***J. and D. Eziekeil's*** case (cited supra), the Hon'ble Calcutta High Court held that the signature generally means the writing or otherwise affixing a person's name or a mark to represent his name, by himself or by his authority, with the intention of authenticating a document as being that of or as binding on the person whose name or mark is so written or affixed.

14. In ***Rajani Mandal's*** case [cited supra], the Hon'ble Calcutta High Court, by referring General Clause Act, has stated that a mark of an illiterate person would also amount to due execution and even further held that if the executant touching the pen and authorised the endorser to sign on his behalf, it amounts to execution if this was a customary method of signing for an illiterate person.

15. In ***Birbal's*** case [cited supra], the Hon'ble Rajasthan High Court held that if there is a practice prevailing in the area, not obtaining the signature in all pages will not make the document become unenforcible.



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16. In **Karri Nookaraju's** case [cited supra], the Hon'ble Andhra Pradesh High Court has held that if the executant admits the execution by putting his thumb impression before the Sub Registrar, it is sufficient to hold due execution, in respect of an illiterate person.

17. In **Gura Singh's** case [cited supra], it has stated that since because the signature is not find in one page, the same will not make the document become unenforcible.

18. From relying the above precedent and the provisions, the learned counsel for the appellant would vehemently contend that when a person is an illiterate person, the mere reference “கீரல் (mark)” would be sufficient to treat as signature or acceptance of due execution of the document. It was also brought to the knowledge of this Court that in Ex.A1, at the time of registration, the said Irusa Gounder has put his thumb impression. Therefore, this Court is of the firm view that notwithstanding the absence of signature in Ex.A1, by virtue of provision under Section 3 of the Transfer of Property Act and Section 3 (56) of General Clauses Act, in respect of the signature of an illiterate person, it can be made through a mark, which was rightly found in Ex.A1-sale deed.

19. For ready reference, this Court would like to extract Section 3 of



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TP Act and Section 3(56) of General Clauses Act:-

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“Transfer of Property Act

3. Interpretation-clause.—In this Act, unless there is something repugnant in the subject or context,—

“immoveable property” does not include standing timber, growing crops or grass:

“instrument”, means a non-testamentary instrument:

[“attested”, in relation to an instrument, means and shall be deemed always to have meant attested by two or more witnesses each of whom has seen the executant sign or affix his mark to the instrument, or has seen some other person sign the instrument in the

presence and by the direction of the executant, or has received from the executant a personal acknowledgement of his signature or mark, or of the signature of such other person, and each of whom has signed the instrument in the presence of the executant; but it shall not be necessary that more than one of such witnesses shall have been present at the same time, and no particular form of attestation shall be necessary:]

“registered” means registered in 6[7[any part of the territories] to which this Act extends] under the law for the time being in force regulating the registration of documents:

“attached to the earth” means—

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) imbedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so imbedded for the permanent



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beneficial enjoyment of that to which it is attached:

[“actionable claim” means a claim to any debt, other than a debt secured by mortgage of immoveable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in the possession, either actual or constructive, of the claimant, which the Civil Courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent:]

[“a person is said to have notice”] of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.”

General Clauses Act

3. Definitions.—*In this Act, and in all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context,—*

56) “sign”, with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include “mark”, with its grammatical variations and cognate expressions”

20. It is useful to refer the judgment of the Calcutta High Court in ***Shailendranath Mitra Vs. Girijabhushan Mukherji*** reported in ***AIR 1931 CAL 596***. The relevant portion of the said judgment is extracted hereunder:-



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*“Our attention has been drawn by the learned advocate for the appellants to the interpretation given by the General Clauses Act to the word “sign.” It appears, however, that this interpretation is not of much assistance to the appellants, in the circumstances of the case before us. **According to the general policy of the law, signature includes a mark [See Pran Krishna Tewary v. Jadu Nath Trivedy)]**: **a mark being a sort of symbolic writing.** In the case before us the question is whether the mark “” (Shree sahi) can be taken to be the signature of the person whose name appears in the document, Exhibit A, as the executant of the same. In our judgment, the presumption of execution of the document being in favour of the respondents, that presumption extends to this also that the mark put on the same, indicated that the document was signed by the executant, by a sort of symbolic writing, which is to be taken to be the signature, in the absence of proof to the contrary. In this view of case, the document, Exhibit A, must be taken to have been signed by the executant and was valid and operative as such; and its genuineness having been established the document was a valuable piece of evidence before the court, in support of the case for the respondents in this appeal.”*

21. It is also useful to refer the another judgment of the Calcutta High Court in ***Pran Krishna Tewary and others vs Jadu Nath Trivedy*** reported in



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1898 SCC Online Cal 92. The relevant portion of the said judgment is as follows:-

“We are of opinion that this contention is not correct, and that there is no good reason for holding that a marksman cannot be an attesting witness within the meaning of sec. 59 of the Transfer of Property Act and sec. 68 of the Evidence Act. According to the general policy of our law, a signature includes a mark—See the General Clauses Acts of 1887 and 1897 (Act I of 1887, sec. 3, clause 12, and Act X of 1897, sec. 3, clause 52), Act XIV of 1882, sec. 2 and Act III of 1877, sec. 3, and there is no reason why the case of a mortgage deed should form an exception. It was argued that marks-men in this country often only touch the pen, and even the mark, generally a cross, is not made by them, but is made by the writer of the deed. In this case, however, no question arises as to whether a mark made by a person other than the witness can be sufficient, the mark being shown to have been made by the witness himself.”

22. However, the said Irusa Gounder has signed before the Sub Registrar, which factum was admitted by PW2. On behalf of the defendant, the another attestor was examined as DW3. Even in his evidence, he did not dispute the thumb impression of Irusa Gounder. It was his contention that he



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did not read the document before he attest the Ex.A1-Sale Deed. Therefore, this Court is of the indubitable view that Ex.A1 was duly executed and that through Ex.A1, the plaintiff can have a right, title and ownership over the property, provided she must establish anterior title. Similarly, if we look at the title of Alamelu, where she has also sought for a declaration, she relies upon the settlement deed, which is said to have been executed by her husband. But admittedly, both Muthammal and Alamelu did not submit any documents to show their anterior title.

23. It is pertinent to mention here that prior to filing of suit by Alamelu, she has filed a suit in O.S.No.76 of 1982 for the relief of permanent injunction against Muthammal, her husband and her children. In the said suit, Smt.Alamelu contended that, she is in possession of the suit property. It appears that the said suit was allowed to be dismissed for default on 02.08.1983, and in evidence thereof, the decree of the said suit has been filed as Ex.A13. It was also the further contention of Alamelu that during 1985, Muthammal forcibly took possession of the property, when Alamelu was not in station. But to prove such act of forcible possession taken by Muthammal, there are no evidence attached with spontaneity, such as police complaint or any other complaint to any authority are submitted before this Court.



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24. The Trial Court has relied upon the Adangal extract, which stands in the name of Muthu Padayachi under Ex.A37 and kist receipts, which has been consistently paid by Muthammal and by relying patta stands in her name under Ex.A2, has decreed the suit in favour of Muthammal.

25. On analysis of both oral and documentary evidence, admittedly the plaintiffs of both the suits viz., Muthammal and Alamelu did not file any document to substantiate their anterior title. However, admittedly Muthammal is in possession of the suit property. Though forceful possession pleaded by Alamelu, no document is available to prove the same. Apart from that there is also patta stands in the name of Muthammal. However, the First Appellate Court, only on the ground that there is no Irusa Gounder's signature found place in Ex.A1 reversed the finding. The First Appellate Court did not traverse into the findings recorded by the Trial Court in other aspects. Therefore, this Court is of the firm view that the First Appellate Court has not considered the pleadings and materials placed by the parties in its right perspective.

26. However, this Court is of the firm opinion that by virtue of Ex.A1-Sale Deed and Ex.A2-Patta, coupled with the possession with Muthammal, the case put forth by Muthammal is probable under preponderance of



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probability. Therefore, this Court is of the firm view that the findings recorded by the First Appellate Court is liable to be interfered with in view of the above detailed discussion. Thus, the substantial question of law is answered in favour of the appellants.

27. In the result, both the Second Appeals are allowed and thereby, the judgment of the First Appellate Court in both the appeals are set aside by restoring the judgment and decree of the Trial Court in both the suit. There shall be no order as to costs.

22.12.2023

kmi

Index : Yes

Speaking Order : Yes

NCC : Yes/ No

To

1. The Subordinate Court,
Attur.
2. The District Munsif Court,
Attur.



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