



S.A.No.1241 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2023

CORAM

THE HONOURABLE JUSTICE Mr.V.LAKSHMINARAYANAN

**S.A.No.1241 of 2008**

1.P.Dhanalakshmi  
2.B.V.Palanivel

...Appellants.

Vs.

1.H.Narayanasamy  
2.E.Dharmaraja

...Respondents.

**PRAYER:**Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree dated 11.03.2008 made in A.S.No.39/2006 on the file of the Sub-Ordinate Judge at Krishnagiri, confirming the judgment and decree dated 28.02.2006 in O.S.No.10 of 2001 on the file of the District Munsif Court, Pochampally.

For Appellants : Mr. M.A.Gouthaman

For Respondents : No Appearance



## **JUDGMENT**

The plaintiff in O.S.No.10 of 2001 on the file of the District Munsif court at Pochampalli is the appellant before this court. He filed a suit for declaration of his title with respect to the B schedule property.

2. The case of the plaintiff is that, there are several properties belonging to him at Barur, Village No.88 in Dharmapuri District. Since they were scattered, the plaintiff and defendants entered into a Muchalika dated 18.12.1999. Through this Muchalika, the lands of the plaintiff were exchanged with the lands of the defendants and the scattered lands of the plaintiffs were brought in a contiguous manner. In December of 1997 at the time of purchase, the plaintiff came to know that the defendant had encroached 0.09 cents of land in Survey No.290/1 and Survey No.290/11A. He convened several panchayats, the last of them being 31.05.2000. Plaintiff's demand remained unanswered. Hence he issued a notice through a lawyer on 25.01.2001. To this, a reply was sent to 06.02.2001. As the demands were not satisfied, he presented the suit.



3. A written statement was filed by the defendants stating that there are no encroachments made by them and the properties that have been enjoyed by the defendants are theirs and therefore, the question of encroachment by them does not arise at all.

4. The Trial Court dismissed the suit on the ground that the plaintiff cannot claim title on the basis of the Muchalika dated 18.12.1999 as the same is unregistered. This view has been concurred by the Lower Appellate Court.

5. Mr.M.A.Gouthaman, learned Counsel appearing for the appellant would seek interference by this court by raising various substantial questions of law which read as follows:-

*“(a) In the absence of breach of obligations on the part of the respondents whether conclusion of the courts below are sustainable in law?*

*(b) Whether the court below are right without considering any of the oral and documentary evidence and citations submitted by the appellants and by dismissing the suit for declaration of title and for a permanent injunction is maintainable in law?*

*(c) Whether the courts below are right without believing the evidence of PW's and conclusion made are sustainable in law?*

*(d) Whether the courts below are right in dismissing the suit on the grounds that the appellants have not filed any*



*registered exchange-deed?*

*(e) Whether the courts below are right in passing order without the verification of the commissioners report and plain is valid?”*

6. This court did not admit the appeal but has ordered notice of motion to the respondents on 29.10.2018. I have gone through the pleadings and have perused the judgment of the Trial as well as the Lower Appellate Court.

7. The crux of the case is that the plaintiff is claiming title to to the B schedule property namely 0.09 cents on the basis of the exchange-deed dated 18.12.1989. A document of exchange requires registration as per Section 17 and therefore, is inadmissible evidence is unregistered as per Section 49 of the of the Registration Act, 1908 . There is absolutely no doubt that the court can look into the said documents for a collateral purpose as per the proviso appended to Section 49. In this case, it is not a collateral purpose but the plaintiff is basing his title on the said document dated 18.12.1989 and on that basis, he is seeking for a declaration and for recovery of possession. As there is a statutory embargo against this court from looking into the



documents, I am constrained to confirm the judgment of the Lower Appellate Court which in turn had confirmed the decree of dismissal of the Trial Court. I am not inclined to admit the appeal as none of the substantial questions of law framed by the learned Counsel arise for consideration.

8. In fine, the judgment and decree in A.S.No.39 of 2006 dated 11.06.2006 on the file of the Principal Sub-Ordinate Judge, Krishnagiri which had confirmed the judgment and decree in O.S.No.10 of 2001 on the file of the District Munsif Court, Pochampalli and the second appeal is confirmed and the second appeal is dismissed. No Costs.

**16.03.2023**

***nst***

Index : Yes/No

Speaking : Yes/No

Neutral Citation Case : Yes/No

To:

1.The District Munsif  
Pochampalli

2. The Subordinate Judge,  
Krishnagiri.



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**V.LAKSHMINARAYANAN. J,**

***nst***

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