



S.A.Nos.512 and 516 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 10.10.2023

CORAM

**THE HONOURABLE Ms. JUSTICE P.T. ASHA**

S.A.Nos.512 and 516 of 2023

and

C.M.P.Nos.15856 and 15996 of 2023

**S.A.No.512 of 2023**

Chandira Ammal

... Appellant

**Vs.**

Kanniyappan

... Respondent

**Prayer:** Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 06.02.2023 passed by the Learned Subordinate Judge, Cheyyar, Tiruvannamalai in A.S.No.16 of 2017 confirming the judgement and decree dated 20.01.2017 passed in O.S.No.372 of 2007 by the Learned Additional District Munsif, Cheyyar, Tiruvannamalai.



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**S.A.No.516 of 2023**

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Chandira Ammal

... Appellant

**Vs.**

Kanniyappan

... Respondent

**Prayer:** Second Appeal is filed under Section 100 of C.P.C against the Judgement and Decree dated 06.02.2023 passed by the Learned Subordinate Judge, Cheyyar, Tiruvannamalai in A.S.No.10 of 2017 confirming the judgement and decree dated 20.01.2017 passed in O.S.No.340 of 1998 by the Learned Additional District Munsif, Cheyyar, Tiruvannamalai.

For Appellant : M/s.Nagarajan

For Respondent : M/s. A.Praveen

### **COMMON JUDGMENT**

Since the facts in both the Second Appeals overlap, a common judgement is being pronounced in the above Second Appeals. The plaintiff is the appellant in both the appeals.



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2.1. S.A.No.516 of 2023 is filed challenging the Judgment and Decree in A.S.No.10 of 2017 on the file of the Subordinate Judge Cheyyar, Thiruvannamalai District in and by which the learned Judge had confirmed the judgement and decree passed by the learned Additional District Munsif, Cheyyar in O.S.No.340 of 1998. This suit is filed for a declaration and for an injunction.

2.2. S.A.No.512 of 2023 is filed challenging the judgment and decree in A.S.No.16 of 2017 on the file of the Subordinate Judge Cheyyar, Thiruvannamalai District in and by which the learned Judge has confirmed the judgement and decree passed by the Additional District Munsif, Cheyyar in O.S.No.372 of 2007. This suit is filed for the grant of a permanent injunction.

3. The facts which have given rise to the above Second Appeals are herein below set out and the parties are referred to in the same ranking as in the suit O.S.No.372 of 2017.



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3.1. The suit property belongs to one Kanniyappan who is the husband of the plaintiff, he having purchased the same under a registered sale deed dated 07.01.1986. It is the case of the plaintiff that 9 years prior to the institution of the suit, the said Kanniyappan had passed away and the property devolved upon the plaintiff, his daughters and his son Natarajan. The said Natarajan had thereafter passed away.

3.2. It is the case of the plaintiff that it is the plaintiff who is in possession of the suit property, paying taxes and electricity charges etc. The plaintiff would submit that on 15.04.1986, the said Kanniyapan had mortgaged the suit property to the defendant under a registered mortgage deed. The defendant had attempted to trespass into the suit property on 31.07.1998, constraining the plaintiff to file the suits in question.



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4. The defendant had filed a written statement inter alia admitting the fact that the Kanniyapan had purchased the property on 07.01.1986 and had mortgaged the property in his favour under a mortgage deed dated 15.04.1986. However, the defendant would submit that on the very same day, taking into consideration the fact that the interest for repaying the loan would work out to a large extent, the said Kanniyapan had decided to sell the property to the defendant and accordingly, an agreement of sale was executed on the very same day. The total sale consideration was fixed at a sum of Rs.8,500/- and the sum of Rs.7,975/- which was given as a hand loan was adjusted towards the sale consideration and the balance sum of Rs.525/- was paid on the very same day. The said Kanniyapan therefore put the defendant in possession of the suit property.

4.1. It is also the contention of the defendant that he had filed a suit for injunction against the plaintiff in OS.No.241 of 1997 which was decreed in his favour. The defendant in his written statement had



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also sought a counter claim for a direction to the plaintiff to execute the sale deed in his favour on the basis of the agreement of sale dated 15.04.1986. The suit O.S.No.372 of 2007 came to be filed by the plaintiff for a bare injunction on the ground that on 26.11.2006 and 02.07.2007, the defendant had attempted to trespass into the suit property. The defendant had denied this allegation and stated that even as early as on 15.04.1986, he had been put in possession and enjoyment of the suit property. The defendant had also pleaded that the suit O.S.No.372 of 2007 is hit by the provisions of Order 2 Rule 2 CPC since already the suit O.S.No.340 of 1998 was filed for the very same issue.

5. Though separate issues were framed initially in the above two suits, ultimately, consolidated issues were framed in keeping with the provisions of Order 14 Rule 5 of the CPC and nearly 12 issues were framed.



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6. The 1st plaintiff had examined herself as P.W.1 and one Masilamni as P.W.2. Ex.A.1 to A.9 were marked on the side of the plaintiff. On the side of the defendant, the defendant had examined himself as D.W.1 and one Venugopal as D.W.2. Ex.B.1 to B.20 were marked on the side of the defendant. The Report of the hand writing expert, his opinion etc., has been marked as Court documents, Ex.C.1 to C.3.

7. The learned District Munsif had held that the agreement of sale dated 15.04.1986 though denied by the plaintiff has been proved to be executed by the said Kanniyapan in the light of the Ex.C.1 to C.3 which is the opinion of the hand writing expert. That apart, the Trial Court had found that Kanniyapan had put the defendant in possession of the property and the defendant is in possession of the same since the date of the agreement of sale. However, the tax in respect of the property is being paid in the name of Kanniyapan. Ultimately, the two



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suits were dismissed by the Trial Court and the counter claim filed by the defendant seeking specific performance of the agreement of sale dated 15.04.1986 was allowed.

8. Aggrieved by the said judgement and decree, the plaintiff had filed appeals only against the judgement and decree passed in the suits and not against the judgement and decree passed in the counter claim. A.S.No.10 of 2017 was filed challenging the judgement and decree in O.S.No.340 of 1998 and A.S.No.16 of 2017 was filed challenging the judgement and decree in O.S.No.372 of 2007. The Lower Appellate Court also confirmed the judgement and decree passed by the Trial Court and observed that the plaintiff has not chosen to challenge the judgement and decree in the counter claim and therefore, the appeals have to necessarily be confirmed. It is challenging these judgements and decree that the plaintiff is before this Court.

9. Heard the counsels on either side.



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10. The Courts below have extensively considered the documents available on record as well as the evidence of parties and based upon the same have proceeded to dismiss the suits filed by the plaintiff.

11. It is seen that though the plaintiff had denied the signature of Kanniyapan in the agreement of sale, however, the signatures when referred to and examined by the hand writing expert has been held to be the signatures of Kanniyapan. Therefore, it is very clear that the agreement of sale has been executed by Kanniyapan in favour of the defendant.

12. Further, the defendant has also got a decree for specific performance by filing a counter claim in the suit O.S.No.340 of 1998. This judgement and decree has not been challenged by the appellant and the same has attained finality. Therefore, the right of the defendant to the suit property as an agreement holder has been confirmed and the Courts below have directed the plaintiff to execute the sale deed.



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13. In the light of the above, the plaintiff has no legs to challenge the judgement and decree in A.S.Nos.10 and 16 of 2017. Further, no substantial question of law has been made out by the appellant. Accordingly, both the Second Appeals are dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

**10.10.2023**

Index: Yes/No  
Speaking order/non-speaking order  
Neutral Citation: Yes/No  
shr

To

1. The Subordinate Judge, Cheyyar, Tiruvannamalai.
2. The Additional District Munsif, Cheyyar, Tiruvannamalai.
3. The Section Officer,  
V.R.Section,  
High Court, Madras.

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**P.T.ASHA, J.,**

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