



S.A.No.764 of 2023

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

DATED: 30.10.2023

CORAM

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

**S.A.No.764 of 2023**  
**and**  
**C.M.P.No.24076 of 2023**

1. Baskaran  
2. Radha ... Appellants

Vs.

1. Thiruvengadam  
2. Pushpagandhi ... Respondents

**PRAYER:** Second Appeal filed under Section 100 of C.P.C. to set aside the judgment and decree dated 07.10.2020 made in A.S.No.2 of 2017 on the file of the I Additional District Court, Tindivanam, confirming the judgment and decree dated 09.02.2016 made in O.S.No.66 of 2009 on the file of the Principal Subordinate Court, Tindivanam.

For appellants : Mr.M.Venkadeshnan

For respondents : No appearance



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## **JUDGMENT**

The plaintiffs who have concurrently lost before the Courts below, have filed the above second appeal, challenging the judgment and decree dated 07.10.2020 in A.S.No.02 of 2017, in and by which, the learned Additional District Judge dismissed the appeal filed by the plaintiffs, against the judgment and decree dated 09.02.2016 in O.S.No.66 of 2009 on the file of the Sub Court, Tindivanam.

2. The facts which have given rise to this second appeal are set out hereinbelow and the parties are referred to in the same litigative status as before the Trial Court.

### **FACTS OF THE CASE:**

3. The plaintiffs have filed the suit in question for declaration that the suit properties belong to them by virtue of a settlement deed dated 06.03.2009 and for injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit



schedule properties.

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3.1. It is the case of the plaintiffs that the suit properties originally belonged to the maternal grandparents of the second plaintiff viz., Chinnakannu Gounder and Ramayee Ammal. After the demise of the aforesaid persons, their only daughter viz., Anandhai Ammal, who is the maternal grandmother of the second plaintiff, had succeeded the suit schedule properties and then, she had been in peaceful possession and enjoyment of the same. The said Anandhai Ammal's husband Panduranga Gounder also died a long ago and after that, the second plaintiff's mother, Mangainayaki Ammal and the first defendant, who are the daughter and the son of the Anandhai Ammal, had enjoyed the same. They were in joint possession and enjoyment of the properties. 40 years prior to the filing of this suit, three of them, orally partitioned the suit schedule properties and in that partition, the suit schedule properties were allotted to the share of the second plaintiff's mother, Mangainayaki Ammal.

3.2. On 06.03.2009, Mangainayaki Ammal had executed the



settlement deed in favour of the plaintiffs and they had taken possession of the same. Thereafter, the first defendant and his wife started disturbing the plaintiffs' peaceful possession and enjoyment of the properties. It appears that on 25.09.2006, the said Anandhai Ammal, who was then, in the custody of the defendants, had executed a sale deed in their favour. The plaintiffs would further submit that this sale deed came to be executed one by reason of undue influence and coercion, and no reliance can be placed on the same.

**TRIAL COURT:**

4. Besides examining Baskaran and Radha as P.W.1 and P.W.2 respectively, the plaintiffs had also examined four other witnesses and marked Exs.A1 to A11. On the side of the defendants, the first and second defendants had examined themselves as D.W.1 and D.W.2 respectively, and Anandhai Ammal as D.W.3 and marked Exs.B1 and B8. The learned Principal Subordinate Judge, Tindivanam, on considering the evidence, by his judgment and decree dated 09.02.2016, had dismissed the suit.



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**LOWER APPELLATE COURT:**

5. Aggrieved by the judgment and decree of the Trial Court, the plaintiffs have filed A.S.No.02 of 2017 on the file of the I Additional District Court, Tindivanam. The learned I Additional District Judge, being the final Court of fact after considering the facts and evidence on record had dismissed the appeal with costs, as against which, the present second appeal has been filed.

6. Heard the learned counsel for the appellants.

**DISCUSSION:**

7. The suit has been filed for declaration and injunction, based on the alleged partition, in which, the said properties are said to be allotted to the second plaintiff's mother, Mangainayaki Ammal and she, in turn, has executed the settlement deed dated 06.03.2009 in favour of the plaintiffs. The suit has been filed on 10.07.2009, just four months thereafter.



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8. Admittedly, the properties initially belonged to Anandhai Ammal. The said Anandhai Ammal, under Ex.B1 dated 25.09.2006, has sold the properties in favour of the defendants. The defendants have also examined Anandhai Ammal, who has deposed to the fact that she had alienated the properties to them. The plaintiffs are attempting to make up a case from the few inconsistencies in the oral evidence of the said Anandhai Ammal, who was examined as D.W.3. Ex.B1 is a registered document.

9. The plaintiffs who have sought the relief of declaration that the suit properties belong to them by virtue of the settlement deed dated 06.03.2009 and for permanent injunction, have not sought the relief of declaration to cancel Ex.B1 – Sale deed. The settlement deed dated 06.03.2009 has been executed just four months prior to the filing of the instant suit and taking into account the fact that Anandhai Ammal had executed the sale deed in favour of the first defendant on 25.09.2006, it is clear that on the date of execution of settlement deed, the property



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stood in the name of the first defendant and Anandhai Ammal had no right over the property.

10. Therefore, both the Courts below have rightly dismissed the suit and dismissed the appeal filed by the plaintiffs. I see no reason to interfere with the same.

Accordingly, this second appeal, which does not give rise to any substantial question of law, stands dismissed. Consequently, the connected C.M.P. stands closed. No costs.

**30.10.2023**

Index : Yes/No  
Speaking order/non-speaking order  
ssa

To

1. The I Additional District Judge,  
Tindivanam,
2. The Principal Subordinate Judge,  
Tindivanam,
3. The Section Officer, V.R. Section, High Court, Madras.

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

ssa

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