



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.11.2023**

CORAM:

**THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN**

**S.A(MD)NO.280 OF 2021**  
**and**  
**C.M.P(MD)No.3843 of 2021**

Yasothai Ammal :Appellant/Appellant/First Defendant

.VS.

1.Vai. Nagarajan :Ist Respondent/Ist Respondent/  
Plaintiff

2.Sahul Hameed

3.The Sub-Registrar,  
Sub-Registrar's Office,  
Tiruverumbur,  
Tiruchirappalli. :Respondents 2 and 3/Respondents  
2 and 3/Defendants 2 and 3

**PRAYER:** Second Appeal filed under Section 100 of Civil Procedure Code against the judgment and decretal order made in A.S.No.173 of 2015, dated 28.2.2018, on the file of the II Additional Subordinate Judge, Trichirappalli confirming the judgment and decretal order made in O.S.No.1413 of 2009, dated 28.08.2014, on the file of the Principal District Munsif Court, Trichirappalli.

For Appellant :Mr.S.Deenadhayalan

For Respondent-1 :Mr.M.Saravanan

For Respondent-2 :No appearance



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For Respondent-3

:Mr.N.Muthuvijayan  
Special Govt.Pleader

**JUDGMENT**

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This Second Appeal is filed challenging the concurrent findings of the Courts below in A.S.No.173 of 2015, dated 28.2.2018, on the file of the II Additional Subordinate Judge, Trichirappalli and in O.S.No.1413 of 2009, dated 28.08.2014, on the file of the Principal District Munsif Court, Trichirappalli.

2.The appellant, as plaintiff, filed a suit in O.S.No.1413 of 2009 seeking for the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the suit property and for mandatory injunction asking the third defendant to cancel the sale deed, dated 12.11.2008 in Document No.11266/2008 in the Sub-Registrar Office, Thiruverumbur.

3.The case of the appellant is that the suit property is a cultivable land. The first defendant is the owner of the suit property and she had executed a sale deed in favour of the plaintiff in respect of the suit property on 12.06.2008. In pursuance of the sale, the plaintiff was put in possession and he was in possession and



enjoyment of the suit property. The pattas were changed in the name of the plaintiff and he has been paying the kist for the suit property. He had executed a simple mortgage in respect of the suit property in favour of one T.Raman on 13.06.2008 and that be the position, the plaintiff came to know that the first defendant sold the same property to the second defendant on 12.11.2008. Since the property was under-valued, proceedings under Section 47(1)(b) of the Indian Stamp Act was initiated. In the said circumstances, the suit is filed for the aforesaid relief.

4. In the written statement filed by the first defendant, it is stated that the sale deed executed in favour of the plaintiff, dated 12.6.2008, is not true. The defendant denies the truth, validity, execution and attestation of the sale deed, dated 12.06.2008. The thumb impression in the sale deed is not that of the first defendant and it is a rank forgery document. The plaintiff was not given the possession and he is not in possession and enjoyment of the suit property. The mortgage deed, dated 13.06.2008 in favour of one T.Raman is a created document. All the other documents are also created by the plaintiff. The first defendant, being the owner of the suit property, sold the property to the second defendant through her power of attorney agent on 12.11.2008. "A" Register of the suit



property stood in the name of the first defendant for the year 1996 and 1997 and the first defendant prays for the dismissal of the suit.

5. On the basis of the aforesaid pleadings, the trial Court framed the following issues and additional issues:

**Issues:-**

1. Whether the plaintiff is in possession of the suit property?
2. Whether the plaintiff is entitled to permanent injunction relief as prayed for?
3. To what other relief, the plaintiff is entitled?

**Additional Issues:**

1. Whether the plaintiff is entitled for the relief of mandatory injunction as prayed for by the plaintiff?

6. At trial, P.W.1 was examined and Ex.A1 to Ex.A10 were marked and on the side of the defendants, no oral or documentary evidence was produced. On going through the oral and documentary evidence, the learned trial Judge found that the first defendant had already sold the property to the plaintiff through Ex.A1 sale deed and when that was established, she cannot again sell the property to the second defendant. In this view of the matter, the suit was decreed as prayed for. Challenging the judgment, the first defendant



filed an appeal in A.S.No.173 of 2015 and the learned appellate Judge concurred with the findings of the trial Court and dismissed the appeal. Thus the first defendant is before this Court by filing the present Second Appeal.

7.The learned counsel for the appellant submitted that when the first defendant had specifically denied that the sale deed executed in Ex.A1 is a rank forgery document and that the thumb impression in the sale deed is not that of the first defendant, it is for the plaintiff/first respondent to prove that the first defendant had executed the sale deed. However, the first respondent/Plaintiff had not taken any steps to prove Ex.A1-sale deed. The first respondent has not taken Ex.A1-sale deed to the Finger Print Expert opinion. Attestors to the sale deed was not examined. Therefore, when Ex.A1-sale deed is not proved in the manner known to law and the Court below is not right in placing reliance on Ex.A1-sale deed.

8.It is his further submission that when the title of the plaintiff/first respondent is seriously disputed, the plaintiff should have sought for the relief of declaration of his title. But no such prayer was asked. The suit was filed only for the relief of injunction alone. In the facts and circumstances, especially, the defense put



up by the first defendant, that suit filed without the prayer of declaration of title, is not maintainable. In this regard, the learned counsel for the appellant pressed into service the judgment of the Honourable Apex Court in the case of ***T.V.Ramakrishna Reddy .vs. M.Mallappa reported in AIR 2021 Supreme Court 4293***.He prayed for reversing the judgment of the Courts below and prayed for dismissal of the suit.

9.In reply to the submission, the learned counsel for the first respondent submitted that the averments made in the written statement are not supported by any evidence. The alleged purchaser namely, the second defendant was set ex-parte before the trial Court. He is the best person interested in defending the plaintiff's suit, but, he did not contest the suit before the trial Court or agitated the trial Court's judgment before the first appellate Court by filing an appeal. The first defendant's husband is one of the attestors of Ex.A1-sale deed. Both the attestors were dead and therefore, they could not be examined. The sale deed in Ex.A1 is a registered document and it is not open to the appellant to challenge the contents of the sale deed. There is a prohibition under Section 92 of the Indian Evidence Act. Thus he prayed for the dismissal of the Second Appeal.



10.This Court considered the rival submissions made on either side and perused the records.

11.From the case projected in the pleadings, documents and the evidence of the parties, it is not in dispute that the first defendant was the owner of the suit property. It is also not in dispute that the first defendant had executed a sale deed in favour of the second defendant on 12.11.2008. The case of the plaintiff is that the first defendant had already sold the suit property to the plaintiff through Ex.A1-sale deed on 12.06.2008. In that case, sale of suit property again to the second defendant on 12.11.2008, is illegal. As already narrated, the case of the first defendant is that she has not executed the sale deed, dated 12.06.2008 and the thumb impression found in the sale deed is not that of her.

12.From the oral and documentary evidence, it is seen that the plaintiff has produced Ex.A1 to Ex.A10. Ex.A1 is the disputed sale deed, Ex.A2 is the patta in respect of the suit property in favour of the plaintiff. Ex.A4 is the order of the Food Supply Tahsildar, Tiruchirappalli to the Village Administrative Officer, Poolangudi. Ex.A5 is the kist receipts standing in the name of the plaintiff. After sale in favour of the second defendant, the plaintiff



had given a complaint to the Police and the copy of the complaint is produced as Ex.A7. Ex.A9 shows that prior to the execution of sale deed, dated 12.06.2008, there was a sale agreement between the first defendant and the plaintiff on 23.01.1981. The copy of the First Information Report registered in pursuance of the complaint of the plaintiff is Ex.A10. It is also seen that the plaintiff had mortgaged the suit property in favour of one T.Raman on 13.6.2008. However, the copy of this document is not produced before the Courts below. Perusal of Ex.A2, Ex.A3, Ex.A4, Ex.A5, Ex.A7 and Ex.A10 show that in pursuance of sale deed, dated 12.06.2008, revenue records have been mutated in the name of the plaintiff and the plaintiff has been in possession and enjoyment of the suit property.

13.In Ex.A1-sale deed, first defendant's husband Periyasamy had attested in support of execution of this document along with Mallappan, son of Sangili Muthu. The trial Court has recorded that both the attestors are dead and no more and therefore, they could not be examined. Ex.A1-sale deed is a registered sale deed and it is preceded by a sale agreement. The first defendant's husband stood as one of the attestor to Ex.A1-sale deed. Both the attestors are no more. By production of Ex.A1,Ex.A9, revenue records, Police



complaint and FIR referred to above, the plaintiff has clearly established that the first defendant had executed the sale deed in favour of the plaintiff and mutation of revenue records was also done and that the plaintiff is in possession and enjoyment of the suit property.

14. When this Ex.A1-sale deed is disputed by the first defendant claiming that it is a rank forgery document and that the thumb impression found in Ex.A1-sale deed is not that of him, then, in the facts and circumstances of the case and evidence available, it is the primary duty of the appellant/first defendant to prove this claim. She should have taken the sale deed to the Finger Print Expert's opinion. Strangely, she has not chosen to do that. The best person interested to challenge the plaintiff's suit is the second defendant, who is the purchaser through sale deed, dated 12.11.2008. Curiously, he remained ex-parte throughout the proceedings before the Courts below.

15. When considering the scope of Section 92 of the Indian Evidence Act, 1872, in ***Mangala Waman Karandikar(dead) through legal representatives v. Prakash Damodar Ranade*** reported in **(2021) 6 SCC 139**, the Hon'ble Supreme Court has



held as follows:

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**"14.....92.Exclusion of evidence of oral agreement.**—When the terms of any such contract, grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms:

*Proviso (6).—Any fact may be proved which shows in what manner the language of a document is related to existing facts."*

**15.** *It is manifest from these two sections that it is only in cases where the terms of the document leave the question in doubt, then resort could be had to the proviso. But when a document is a straightforward one and presents no difficulty in construing it, the proviso does not apply. In this regard, we may state that Section 95 only builds on Proviso (6) of Section 92.*

**16.** *If the contrary view is adopted as correct it would render Section 92 of the Evidence Act, otiose and also enlarge the ambit*



*of Proviso (6) beyond the main section itself. Such interpretation, provided by the High Court violates basic tenets of legal interpretation. [Rohitash Kumar v. Om Prakash Sharma, (2013) 11 SCC 451 at p. 459 : (2013) 3 SCC (L&S) 368] Section 92 specifically prohibits evidence of any oral agreement or statement which would contradict, vary, add to or subtract from its terms. If, as stated by the learned Judge, oral evidence could be received to show that the terms of the document were really different from those expressed therein, it would amount to according permission to give evidence to contradict or vary those terms and as such it comes within the inhibitions of Section 92. It could not be postulated that the legislature intended to nullify the object of Section 92 by enacting exceptions to that section.*

16. With regard to the submission of the learned counsel for the appellant that the suit filed without the prayer for declaration of title, the suit for injunction cannot be maintained on the basis of the judgment referred to supra, this Court finds that the facts in both the cases are totally different. In the case cited by the appellant, the plaintiff claimed title only on the basis of revenue entry, whereas, in the case before hand, the plaintiff claimed title to the suit property through Ex.A1-sale deed executed by the first



defendant. As already discussed, there is a clear evidence to show that the first defendant had sold the suit property to the plaintiff and thereafter, necessary mutation of revenue records took place. The first defendant cannot give evidence against Ex.A1-sale deed. Plaintiff is in possession and enjoyment of the suit property. In the said circumstances, the suit for permanent injunction, in the considered view of this Court, is maintainable. This Court is of the view that the Courts below have properly appreciated the evidence and decreed the suit.

17. In ***Sir Chunilal V. Mehta and Sons .vs. The Century Spinning Co. Limited*** reported in ***AIR 1962 SC 1314***, the Honourable Supreme Court formulated what amounts to a substantial question of law, as follows:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties **and if so;**
3. Whether it is **either** an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) **(or);**
4. The question is not free from difficulty and calls for



discussion of alternative views;

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18. In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this Second Appeal. Thus this Court finds that there is no cause for interference in the judgments of the Courts below and hence, the Second Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

**27.11.2023**

Index:Yes/No  
Internet:Yes/No  
NCC:Yes/No  
vsn

To

1. The Ist Additional Subordinate Judge,  
Tiruchirappalli.
2. The Principal District Munsif,  
Tiruchirappalli.
3. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**G.CHANDRASEKHARAN,J.**

vsn

**JUDGMENT MADE IN  
S.A(MD)NO.280 OF 2021  
and  
C.M.P(MD)No.3843 of 2021**

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