



S.A.No.1330 of 1998

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 20.01.2023**

**CORAM**

**THE HONOURABLE MR. JUSTICE S.SOUNTHAR**

S.A.No.1330 of 1998  
and  
C.M.P.Nos.11898 of 2002  
and 12821 of 1998

- |                           |                                       |
|---------------------------|---------------------------------------|
| 1.M.Krishnamoorthy (Died) | ... Appellant/Appellant/<br>Plaintiff |
| 2.K.Managiri              |                                       |
| 3.K.Rajagopal             |                                       |
| 4.K.Gopalsamy             |                                       |
| 5.S.Bhagalakshmi          |                                       |
| 6.G.Saraswathy            |                                       |
| 7.V.Kamatchi              |                                       |
| 8.N.Vishalakshi           |                                       |
| 9.S.Renukadevi            |                                       |
| 10.Jayalakshmi            | ... Appellants 2 to 10                |

***[Appellants 2 to 10 were brought on record as LRs of the deceased sole appellant vide order dated 07.06.2011 made in M.P.(MD) No.1 of 2010 in S.A.No.1330 of 1998]***

**Vs**



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1.Tmt.Angammal

... Respondent/Respondent/  
Defendant

2.R.Venugopal @ Kannan

3.N.Devaki

4.R.Venkatesan (Died)

5.R.Kesavan (Died)

6.G.Mulumathi

7.G.Thendral

8.G.Mukkani

... Respondents 2 to 8

***[RR2 to 8 were brought on record as LRs of the deceased sole respondent vide order dated 16.06.2017 made in M.P.(MD) Nos.3 to 5 of 2015 in S.A.No.1330 of 1998]***

9.V.Vijayaranga Vikram

10.Nitya Gayathiri

11.Shanthi

... Respondents 9 to 11

***[RR9 to 11 were brought on record as LRs of the deceased 4<sup>th</sup> respondent vide order dated 18.03.2022 made in C.M.P.(MD) Nos.1413 and 1414 of 2022 in S.A.No.1330 of 1998]***

12.Vimala Devi

13.Ram Praveen

14.Priya

... Respondents 12 to 14

***[RR12 to 14 were brought on record as LRs of the deceased 5<sup>th</sup> respondent vide order dated 18.03.2022 made in C.M.P.(MD) Nos.1413 and 1414 of 2022 in S.A.No.1330 of 1998]***



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Prayer:- Appeal filed under Section 100 of Civil Procedure Code to set aside the judgment and decree dated 27.02.1998 made in A.S.No.91 of 1996 on the file of the Principal District Court, Madurai confirming the decree and judgment dated 27.07.1995 in O.S.No.504 of 1985 on the file of the Principal Sub Court, Madurai.

For Appellants : Mr.G.Ramadurai

For RR6 to 8 : Ms.Jessi Jeeva Priya  
for Mr.G.Aravindan

### J U D G M E N T

The plaintiff is the 1<sup>st</sup> appellant. His suit for declaration and recovery of possession was dismissed by the trial Court and the findings of the trial Court were confirmed in first appeal. Challenging the concurrent findings against him, the plaintiff has filed this second appeal. Pending second appeal, the 1<sup>st</sup> appellant died and his legal representatives were brought on record as appellants 2 to 10. Likewise, the legal representatives of the deceased 1<sup>st</sup> respondent/defendant were brought on record as respondents 2 to 8, the legal representatives of the deceased 4<sup>th</sup> respondent were brought



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on record as respondents 9 to 11 and the legal representatives of the deceased 5<sup>th</sup> respondent were brought on record as respondents 12 to 14.

2. According to the 1<sup>st</sup> appellant/plaintiff, the suit property originally belonged to one Govindasamy Naidu. After his death, his daughter Lakshmi Thayammal inherited the property as his only legal heir. The plaintiff purchased the suit property under two sale deeds dated 07.12.1984 and 09.12.1984 marked as Ex.A.4 and Ex.A.5. It was further averred in the plaint that the 1<sup>st</sup> respondent/defendant has no manner of right over the suit property. At the time of purchase, the 1<sup>st</sup> respondent/defendant was residing in the first floor of the suit property and the second floor of the property was under the occupation of a tenant called Periyakaruppan. When the 1<sup>st</sup> appellant issued a pre-suit notice to the 1<sup>st</sup> respondent, she issued a reply claiming right over the suit property under a gift allegedly executed by Lakshmi Thayammal in her favour. Therefore, the 1<sup>st</sup> appellant was constrained to file a suit for declaration of title and recovery of possession.



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3. The 1<sup>st</sup> respondent/defendant filed a written statement and denied the right of the 1<sup>st</sup> appellant over the suit property. It was claimed by the 1<sup>st</sup> respondent that the suit property was given to her by the said Lakshmi Thayammal under a gift settlement dated 21.05.1951. It was also averred by the 1<sup>st</sup> respondent that from the date of gift, she had been in possession and enjoyment of the suit property treating it as her own property by paying property tax. It was also averred by the 1<sup>st</sup> respondent that the ground floor was let out to a tenant by her and the said tenant vacated the premises and hence, she is in possession of the entire suit property including the ground floor. The 1<sup>st</sup> respondent also denied the sale deeds executed by Lakshmi Thayammal in favour of the 1<sup>st</sup> appellant and prayed for dismissal of the suit.

4. On these pleadings, the parties went to the trial. The 1<sup>st</sup> appellant/plaintiff was examined as P.W.1 and three other witnesses were examined on his behalf as P.W.2 to P.W.4. The 1<sup>st</sup> appellant marked as many as 27 documents as Ex.A.1 to Ex.A.27. On behalf of the 1<sup>st</sup> respondent/defendant, she was examined as D.W.1, and yet another



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witness was examined as D.W.2. The 1<sup>st</sup> respondent marked 114 documents as Ex.B.1 to Ex.B.114.

5. The trial Court, on appreciation of oral and documentary evidences available on record, came to the conclusion that the suit property was gifted to the 1<sup>st</sup> respondent by original owner Lakshmi Thayammal under Ex.B.3 dated 21.05.1951. The trial Court also came to the conclusion that Exs.A.4 and A.5 sale deeds in favour of the 1<sup>st</sup> appellant will not confer any title to the 1<sup>st</sup> appellant, as he cannot be regarded as a bona fide purchaser of the property. The trial Court also had rendered a finding that the 1<sup>st</sup> respondent acquired adverse possession over the suit property by virtue of her long enjoyment from the date of Ex.B.3. Aggrieved by the same. The 1<sup>st</sup> appellant has filed an appeal in A.S.No.91 of 1996 on the file of the Principal District Court, Madurai and the first appellate Court concurred with the findings of the trial Court and dismissed the appeal. Challenging the said judgment and decree, the 1<sup>st</sup> appellant has filed this appeal.



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6. At the time of admission, the following substantial questions of law were formulated by this Court:

*“(a) Whether in law have not the Courts below failed to see that Plaintiff has proved his title under exhibits A4 and A5?*

*(b) Whether in law are the Courts below right in holding that Ex.B3 is a settlement deed overlooking that rights in praesenti have not been transferred, that the document is neither stamped nor registered that under Sec. 49 of the Registration Act, it is not admissible in evidence? and*

*(c) Whether in law have not the Courts below misconstrued the theory of adverse possession and that the respondent has neither established animus for proved continuous, hostile possession?”*

7. The learned counsel for appellants 2 to 10 submitted that the 1<sup>st</sup> appellant proved his right by producing the registered sale deeds in his favour dated 07.12.1984 and 09.12.1984 executed by Lakshmi Thayammal, which was marked as Ex.A.4 and Ex.A.5. There is no dispute with regard to the original ownership of Lakshmi Thayammal. The respondents claim right over the suit property under Ex.B.3 unregistered settlement deed



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allegedly executed by Lakshmi Thayammal. It is the specific contention of the learned counsel for the appellants that Ex.B.3 unregistered settlement deed is inadmissible in evidence and hence, both the Courts below ought not to have taken into consideration Ex.B.3.

8. The learned counsel for the appellants further submitted that the 1<sup>st</sup> respondent raised two mutually destructive pleas viz., title under Ex.B.3 and prescriptive title by adverse possession. It is the submission of the learned counsel that both the pleas cannot go together. A person who claims adverse possession must admit the title of another person and prove that he enjoyed the property with hostile intention. According to the learned counsel for the appellants, in the case on hand, the respondents miserably failed to prove the plea of adverse possession by any legally acceptable evidence.

9. Per contra, the learned counsel for respondents 6 to 8 submitted that the 1<sup>st</sup> respondent proved her plea of adverse possession by producing documentary evidence to show that she had been in possession and



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enjoyment of the suit property from 1951 to till the date of filing of the suit by producing tax receipts in her name. The learned counsel submitted that though the original tax assessment stood in the name of her mother Lakshmi Thayammal, subsequently, it was changed to her name and therefore, based on the exhibits marked on behalf of the 1<sup>st</sup> respondent, the hostile possession of the 1<sup>st</sup> respondent over the suit property for more than the statutory period had been established.

10. Heard the arguments of the learned counsel for the appellants and that of the learned counsel for respondents 6 to 8. Perused the typed set of papers and other relevant records.

11. The 1<sup>st</sup> appellant filed a suit for declaration and recovery of possession. A perusal of the pleadings and the evidence available on record would suggest that there is no dispute with regard to the original ownership of the suit property. It is not in dispute that the property was originally owned by Lakshmi Thayammal, the mother of the 1<sup>st</sup> respondent. The 1<sup>st</sup> appellant by producing registered sale deed executed by the said Lakshmi



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Thayammal dated 07.12.1984 and 09.12.1984 marked as Ex.A.4 and Ex.A.5, tried to establish his title over the suit property. Though the 1<sup>st</sup> respondent tried to impeach those two registered sale deeds relied on by the 1<sup>st</sup> appellant by raising a plea that the said documents were concocted, the 1<sup>st</sup> appellant proved his title by producing registered sale deeds in his favour as against the unregistered settlement deed relied on by the 1<sup>st</sup> respondent. The due execution of Ex.A.4 and Ex.A.5 was proved by the 1<sup>st</sup> appellant by examining one of the attestors to the said registered sale deeds. As far as the registered sale deeds are concerned, the production of registered sale deeds by the 1<sup>st</sup> appellant *prima facie* proved his title over the suit property. It is not necessary for him to prove due execution of registered sale deeds by calling one of the attestors as in the case of Will. As far as the registered sale deeds are concerned, there is a presumption available to its due execution by virtue of registration certificate issued under Section 60 of the Registration Act, 1908. It has been held by this Court in ***Karuppiyah Mooppanar Vs Muthukaruppan Servai reported in AIR 1975 Madras 221*** that it is not necessary to examine the attestor of a registered document to prove the same. It would be appropriate to refer to



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the relevant observation of this Court in the decision referred above in this regard:

“There is nothing in the Transfer of Property Act which requires a sale deed to be attested. Section 59 of the Transfer of Property Act says :

*"Where the principal money secured is one hundred rupees or upwards a mortgage other than a mortgage by deposit of title deeds can be effected only by a registered instrument signed by the mortgagor and attested by at least two witnesses."*

*Contrast the language of Section 59 of the Transfer of Property Act with that of Section 54 of the same Act, which says that a transfer of ownership in exchange for a price, in the case of tangible immovable property of the value of one hundred rupees and upwards can be made only by a registered instrument, There is nothing whatsoever in this section requiring a sale deed to be attested. It would, therefore, follow that a sale, though attested, does not depend upon attestation for its validity. It would therefore be unnecessary to 'prove it by calling an attesting witness. As observed in Sarkar's Law of Evidence, Ninth Edition, Page 566.*



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*"Sale deeds, bonds, etc., do not come within the rule and they may be proved by the evidence of any other witness who saw execution, though he is not an attesting witness."*  
*In fact, Section 72 of the Evidence Act says :*

*"An attested document not required by law to be attested may be proved as if it was unattested."*

*It is true that Ex. B-4 though not required by law to be attested, has been attested by two witnesses But then, under Section 72, it is not obligatory on the part of the person propounding the document to examine the attesting witness. The testimony of the attesting witness is not the only evidence by which a sale deed can be established. It can be done by other kinds of evidence.*

However, in the case on hand, the 1<sup>st</sup> appellant examined the attestors to the registered sale deeds in his favour and proved the due execution.

12. The 1<sup>st</sup> respondent herein raised two points in her written statement. Firstly, she claimed right over the suit property under an



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unregistered settlement deed allegedly executed by her mother Lakshmi Thayammal under Ex.B.3. Secondly, she also raised the plea of adverse possession by long enjoyment from the year 1951. Both the Courts below relied on the unregistered settlement deed allegedly executed by Lakshmi Thayammal in favour of the 1<sup>st</sup> respondent and held that the 1<sup>st</sup> respondent acquired right over the suit property. As rightly contended by the learned counsel for the appellants, the Courts below failed to take into consideration the bar created under Section 17 of the Registration Act read with Section 49 of the said Act.

13. A gift shall be made only by way of registered document and a gift by unregistered document will not convey any title to the donee. The trial Court in its judgment observed that marking of Ex.B.3 was objected to when it was tended in evidence and in spite of the objection, the trial Court proceeded to mark the said unregistered document and the 1<sup>st</sup> appellant/plaintiff has not challenged the order marking the said document in evidence in the manner known to law. By virtue of Section 17 and Section 49 of the Registration Act, the unregistered document is *per se*



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inadmissible and even if it is marked erroneously by the Court below, it is always open to the appellate Court to take into consideration the effect of non-registration of the document. Therefore, the Courts below ought not to have proceeded to hold that the 1<sup>st</sup> respondent proved her right over the suit property under the registered settlement deed allegedly executed by the said Lakshmi Thayammal. Therefore, Ex.B.3 an unregistered settlement deed allegedly executed by Lakshmi Thayammal, will not convey any right to the 1<sup>st</sup> respondent to the suit property.

14. The 1<sup>st</sup> respondent also raised the plea of adverse possession in her written statement. It is settled law that adverse possession has to be specifically pleaded and meticulously proved by leading cogent evidence. In the case on hand, the 1<sup>st</sup> respondent produced tax receipts for the suit property from the year 1954 to down to the date of filing of the suit. A close scrutiny of the tax receipts produced by the 1<sup>st</sup> respondent would suggest that the tax assessment continued in the name of Lakshmi Thayammal even after the alleged settlement under Ex.B.3. The mutation had not taken place in favour of the 1<sup>st</sup> respondent. Merely because the 1<sup>st</sup> respondent paid



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house tax in the name of Lakshmi Thayammal, it cannot be presumed that she enjoyed it as its owner. Here, the close relationship between the 1<sup>st</sup> respondent and Lakshmi Thayammal assumes significance. The 1<sup>st</sup> respondent is none other than the daughter of Lakshmi Thayammal. Therefore, by virtue of her close relationship, she might have lived in the suit property along with Lakshmi Thayammal and paid tax in the name of Lakshmi Thayammal as per her instructions. It would not amount to any hostile possession either against Lakshmi Thayammal or against the purchaser from Lakshmi Thayammal viz., the 1<sup>st</sup> appellant. The tax receipts produced by the 1<sup>st</sup> respondent are not sufficient to establish the hostile intention on her part to claim adverse possession as against the appellants. Therefore, the findings rendered by the Courts below that the 1<sup>st</sup> respondent established adverse possession over the suit property are liable to be set aside, in the absence of acceptable evidence to prove the hostile intention of the 1<sup>st</sup> respondent.

15. As discussed earlier, the 1<sup>st</sup> appellant proved his lawful title to the suit property by producing registered sale deeds in his favour. The



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registered sale deeds are *prima facie* proof of title of the appellants. If the respondents want to impeach the registered sale deeds, it is for them to lead necessary evidence to invalidate the said documents. Till date, the respondents have not filed any suit to set aside the registered sale deeds in favour of the 1<sup>st</sup> appellant on any one of the grounds recognised by law. It is also seen that subsequent to the sale in his favour, the 1<sup>st</sup> appellant got his name mutated under Ex.A.6 dated 24.10.1985 and paid house tax in his name under Ex.A.10 to Ex.A.15. It is also seen from Ex.A.17 dated 20.01.1965 that the 1<sup>st</sup> appellant's vendor Lakshmi Thayammal executed a mortgage deed in favour of Subramanian Asari. Had she executed a gift deed in favour of the 1<sup>st</sup> respondent, absolutely there was no chance for Lakshmi Thayammal to execute the registered mortgage deed in respect of the suit property under Ex.A.17. Therefore, this Court has no hesitation in holding that the 1<sup>st</sup> appellant established his title over the suit property by producing registered sale deeds in his favour under Ex.A.4 and Ex.A.5. The 1<sup>st</sup> respondent by relying on the unregistered settlement deed in her favour under Ex.B.3 cannot claim any right over the suit property. Both the Courts below committed a serious error of law in relying on an inadmissible



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document viz., Ex.B.3 while coming to the conclusion that the 1<sup>st</sup> respondent had proved her right over the suit property.

16. In view of the discussions made earlier, all the substantial questions of law framed at the time of admission, are answered in favour of the appellants and the second appeal is allowed by setting aside the concurrent findings of the Courts below.

17. In fine,

(i) this Second Appeal is allowed by setting aside the judgments and decrees passed by the Courts below;

(ii) the suit in O.S.No.504 of 1985 is decreed as prayed for in favour of the appellants;

(iii) the respondents are granted two months time to vacate and handover vacant possession of the suit property to the appellants;



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WEB COPY (iv) in the facts and circumstances of the case, there is no order as to costs; and

(v) connected miscellaneous petitions are closed.

NCC:Yes/No  
Index:Yes/No  
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To

- 1.The Principal District Judge,  
Madurai.
- 2.The Principal Sub Judge,  
Madurai.
- 3.The Section Officer, VR Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**S.SOUNTHAR, J.**

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