



S.A.Nos.193 and 499 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.Nos.193 and 499 of 2022

and

C.M.P.Nos.3860 and 9951 of 2022

S.Rajan

Vs

... Appellants/Plaintiff

1. N.Gopi
2. N.Ranganathan
3. N.Kalaiarasi
4. N.Jothi
5. Dakshinamurthy
6. D.Krishnan
7. D.Manimekalai
8. The Sub Registrar,
O/o. Sub Registrar Office,
Walajapet, Vellore District.
9. Narayana Pillai

... Respondents / Defendants

Prayer in S.A.No.193 of 2022 : Second Appeal is filed under Section 100 of C.P.C against the judgment and decree passed in A.S.No.5 of



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2019 on the file of the Subordinate Judge at Ranipet, Vellore District dated 23.11.2021 by reversing the judgment and decree in part passed in O.S.No.85 of 2015 dated 15.03.2019 on the file of District Munsif Court-cum-Judicial Magistrate, Walajapet, Vellore District and set aside the same.

Prayer in S.A.No.499 of 2022 : Second Appeal is filed under Section 100 of C.P.C against the judgment and decree passed in A.S.No.14 of 2021 on the file of the Subordinate Judge at Ranipet, Vellore District dated 23.11.2021 confirming the judgment and decree passed in O.S.No.85 of 2015 dated 15.03.2019 on the file of District Munsif Court-cum-Judicial Magistrate No.I, Walajapet, Vellore District and set aside the same.

For Appellant : Mr.A.Sundaravadanan
for Mr.D.Balachandran

For Respondents
1 to 7 and 9 : Mr.Adithya Varadarajan

For Respondent-8 : Mr.C.Selvaraj
Additional Government Pleader



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COMMON JUDGMENT

These second appeals arise out of a single suit O.S.No.85 of 2015 which has been filed by the appellant for the following reliefs:

- a) To declare that the plaintiff is Power Agent as per the Power of Attorney dated 1.3.2000 registered as document No.51 of 2000 on the file of S.R.O. Walaja in respect of the suit schedule properties;*
- b) To declare that the cancellation of the Power deed executed by Amirthammal, and the Defendants 1 to 7 and 9 dated 16.4.2003 under Document No.98 IV of 2003 on the file of S.R.O. Walaja and subsequent sale deed executed by the Narayana Pillai and Defendants 1 to 5 and 7 and 9 in favour of the 6th defendant registered as*



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document No. 5002 of 2010 dated 13.7.2010 on the file of S.R.O. are null and void and not binding on the plaintiff;

c) For permanent injunction restraining the defendants 1 to 7 and 9 or their men or their agents or anybody claiming under them from interfering with the peaceful possession and enjoyment of the plaintiff in the suit schedule properties more fully described in the schedule hereunder;

2. Since the scope of these second appeals lies in a very narrow campus, the pleadings are not extracted in detail. Suffice it to state that the claim of the plaintiff / Appellant was refuted by the first Respondent herein. During trial, it was only the plaintiff who entered the box and marked Exs.A1 to A3. He had also examined three



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witnesses on his side. On the side of the defendants, two witnesses were examined, namely, the 6th defendant and the 2nd defendant. However, the defendants had not filed any documents. The registered Will dated 01.03.2000 was marked as Ex.C1.

3. The suit was decreed for the declaratory relief but was dismissed with reference to the decree for possession. Challenging the said judgment and decree, the appellant herein/plaintiff had filed A.S.No.14 of 2019 and the defendants had preferred A.S.No.5 of 2019. In the appellate Court, the defendants had filed I.A.No.13 of 2020 for receiving the additional documents before the trial Court. The only reason given for receiving the additional documents was that they had inadvertently not filed the documents before the trial court. The said application was resisted by the appellant herein. However, it appears that on the very same day when common judgment was pronounced in the Appeal, the learned Judge had allowed the interlocutory



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application. The learned Subordinate Judge, Ranipet had not only ordered the application filed for permission to file additional documents but has also proceeded to mark the documents as Exs.B1 to B11 without even examining witnesses to mark the documents and permitting the appellant /plaintiff to cross examine the witnesses. Such a procedure adopted by the learned Judge runs contrary to the established procedures. Challenging the said judgment and decree, the appellant is before this Court.

4. The only substantial question of law that arises for consideration in these second appeals is “*whether the lower appellate Court was correct in law in allowing I.A.No.13 of 2020 on the very same day as the judgment and decree and marking the document without oral evidence being adduced for the same*”.



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5. The learned counsel for the defendants fairly conceded that the procedures contemplated under Order XLI Rule 27, 28 and 29 had not been followed.

6. Heard the learned counsels on either side and perused the materials available on record.

7. By passing an order on the very same on which the judgment has been pronounced, the appellate Court had deprived the appellant /plaintiff of an opportunity to object to the marking of the documents. The marking has been done without notice to the plaintiff and without examining the witnesses. Order XLI Rule 27(i) of the Code of Civil Procedure provides the grounds on which such additional evidence can be received in evidence. Rule (2) enjoins the court to record reasons for the same. After the appellate Court has allowed the production of additional evidence, Rule 28 provides the mode of taking such

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evidence. The Rule provides that additional evidence can be taken either by the Appellate Court itself or it may direct the Trial Court to take such evidence and send it to the Appellate Court. Rule 29 further mandates the Appellate Court to specify the points to which evidence is to be confined and records the points to specified in its proceedings/order.

8. In the Judgment reported as ***Corporation of Madras and another Vs M.Parthasarathy and others - 2018 (9) SCC 445***, the Hon'ble Supreme Court, observed that where additional evidence is permitted to be filed, an opportunity should be given to the other side to file rebuttal evidence to counter such additional evidence and if such opportunity is not afforded, it amounts to a jurisdictional error. In the case on hand none of these procedures have been complied with.



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9. Therefore, the second appeals are allowed. The Judgment and decree of the Subordinate Judge, Ranipet in A.S.Nos.14 and 15 of 2019 is set aside and the matter is remitted back to the lower Appellate Court,viz.,Subordinate Court, Ranipet. The marking of the additional documents by the Sub Judge is Set aside. The defendants shall examine the witnesses and mark the documents through the witnesses after affording an opportunity to the appellants/plaintiff to rebut the evidence. The appellate Court shall thereafter proceed to pass the judgment. The said exercise shall be completed within a period of four (4) months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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

1. The Subordinate Judge at Ranipet, Vellore District
2. The District Munsif Court-cum-Judicial Magistrate, Walajapet, Vellore District
3. The Section Officer, V.R.Section, High Court, Madras.



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P.T.ASHA, J.,

srn

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