

S.A. No.921 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED :21.12.2024

CORAM

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVI

S.A.No.921 of 2024
and
CMP.No.29477 of 2024

1.N.Palanivel

2.Santhi

... Appellants

Vs

1.Lakshmiammal (Died)

2.Govindaraj

3.Ambika

4.Sivakumar

5.Kalaiselvam

6.Pariyamalai

7.Malliga

8.Shanthi

9.M.Venkatachalam

... Respondents

*R1 Died, RR6 to 9 are brought on record as LR's of the deceased R1 vide Court order dated 26.11.2024 made in CMP.Nos.6836/2020, 18829, 18620 and 18828 of 2023 in SA.SR.No.16834 of 2023(TVTSJ).

PRAYER : Second Appeal is filed under Section 100 of the Code of Civil Procedure, praying to set aside the Judgment and Decree passed in A.S.No.19 of 2019 dated 06.11.2019 by II Additional Subordinate Judge,



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Salem, reversing the judgment and decree dated 14.11.2018 made in O.S.No.20 of 2018, on the file of the District Munsif Cum Judicial Magistrate, Vazhappadi.

For Appellants : Mr.R.Balaguruswamy

For R2 & R3 : Mr.N.Umapathi

JUDGEMENT

The appellants have preferred this Second Appeal against the Judgment and decree passed in A.S.No.19 of 2019 dated 06.11.2019 by II Additional Subordinate Judge, Salem, reversing the judgment and decree dated 14.11.2018 made in O.S.No.20 of 2018, on the file of the District Munsif Cum Judicial Magistrate, Vazhappadi.

2. Heard, Mr.R.Balaguruswamy, learned counsel for the appellants and Mr.N.Umapathi, learned counsel appearing for the respondents 2 and 3 and perused the material available on records.



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3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

4. Challenging the reversal of findings by the first appellate court in A.S. No. 19 of 2019, the Defendants 1 and 2 have preferred this Second Appeal. Before the trial court, the respondents 1 to 3 (plaintiffs) filed a suit in O.S. No. 20 of 2018 seeking a declaration that the sale deed standing in the name of the first defendant, dated 31.03.2013, is null and void. They also sought to declare that the alleged possession handed over and related documents are illegal, not valid under law, and further prayed for an injunction restraining the defendants from interfering with their possession of the suit property, along with other consequential reliefs.

5. Before the trial court, Defendants 1 and 2 contested the case. Defendants 3 and 4 remained ex parte. Issues were framed. Ultimately, the learned trial judge held that the plaintiffs failed to prove their claim and further found that the two suit properties belonged to the defendants, who



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were in lawful possession. Accordingly, the reliefs were declined, and the suit was dismissed.

6. Challenging the said findings, the plaintiffs preferred an appeal in A.S. No. 19 of 2019 before the II Additional Subordinate Judge, Salem, along with I.A. No. 63 of 2019, to receive additional documents. In the appeal proceedings also, Defendants 3 and 4 remained ex parte, and only Defendants 1 and 2 contested the appeal.

7. Upon considering the oral and documentary evidence on record, the learned first appellate judge framed separate points for consideration and finally held that the sale deed standing in the name of the first defendant was created only as a security for a loan transaction. This was proved by the plaintiffs. Further, based on Exhibit A5 (receipt), the plaintiffs were able to establish that possession was forcibly taken by the defendants with the help of the police. Therefore, the alleged deposition and possession by the defendants were found to be illegal. As a result, the findings of the trial court were set aside, and the suit was decreed, with a



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direction to the defendants to hand over possession to the plaintiffs within three months. Aggrieved by the reversal of findings, Defendants 1 and 2 have filed the present appeal.

8. The learned counsel for the appellants/Defendants 1 and 2 submitted that the first appellate court failed to appreciate the existence of a registered sale deed executed by the first plaintiff and her husband Marimuthu on 08.07.2004. There is no recital in the sale deed indicating that it was executed merely as security for a loan. The appellate judge erroneously relied on the oral evidence of PW1, who is not even a party to the transaction, to declare the sale deed as one executed merely for securing a loan, which is illegal and liable to be set aside. He further argued that the learned first appellate judge erred in relying on Exhibit A5, allegedly issued by the defendants, without any substantial proof or corroborative evidence. The plaintiffs failed to prove that the receipt was issued by the defendants on receipt of loan repayment. Yet, the burden was shifted onto the defendants to disprove the same, which is contrary to law. He also submitted that the first appellate court erroneously concluded that

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possession was never handed over to the defendants post-sale and wrongly held that the plaintiffs remained in possession. In doing so, the court ignored the fact that the plaintiffs retained portions of land in the same survey number, and the documents relied on by the plaintiffs were not sufficient to establish exclusive possession. Therefore, the judgment of the appellate court is illegal and liable to be set aside.

9. This Court admits the Second Appeal on the following substantial questions of law.

" A. Whether the First Appellate Court is right in decreeing the suit in accepting Ex.A5 the alleged receipt as it was issued by the defendants for the loan transaction without any substantive evidence adduced by the plaintiffs, and the appellants / defendants having denied issuance of any such receipt by shifting the burden on the appellants / defendants stating that they have not proved that the writings in the receipt are not that of the 1st defendant's handwriting?"



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B. Whether the First appellate Court is right in decreeing the suit declaring the sale deed Ex.A4 as null and void stating that the transactions between defendants with late Marimuthu and the 1st plaintiff was only a loan transaction and the loan amount was totally discharged, while P.W.1 in his evidence has stated that he does not know that in which month and which year he had repaid the alleged loan amount?

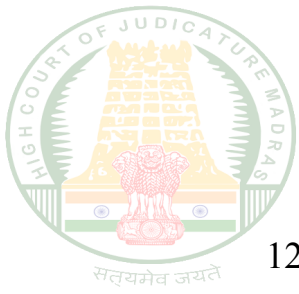
10. The learned counsel for the respondents/plaintiffs submitted that the suit property originally belonged to one Marimuthu, who is the husband of the first plaintiff, father of the second plaintiff, and father-in-law of the third plaintiff. Defendants 1 and 2 are husband and wife. Marimuthu and the first plaintiff borrowed a sum of Rs. 50,000/- from the first defendant on 08.11.2000 and, at his request, executed a sale agreement regarding the suit property (ancestral property of Marimuthu) on 14.11.2002. A power of attorney was also executed in favor of Defendant 2, the wife of Defendant 1. Subsequently, on 08.07.2004, the first defendant cancelled the earlier



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agreement and orally agreed to reconvey the property if the loan was repaid within eight years. As security for the loan, the first plaintiff and Marimuthu executed a sale deed in favour of the first defendant. However, possession of the property remained with the plaintiffs. This was supported by a house tax receipt from 2012. Upon repayment of the loan, the plaintiffs requested reconveyance, but the first defendant evaded and attempted to grab the property by demanding an additional amount.

11. As a result, the plaintiffs approached the Valapadi Police Station, alleging land grabbing against Defendants 1 and 2. However, Defendants 3 and 4, being the Inspector and Sub-Inspector of Police, respectively, colluded with the other defendants and illegally forced the second and third plaintiffs to hand over possession. Under compulsion, the plaintiffs handed over possession and received a receipt dated 31.03.2013 (Exhibit A5). The plaintiffs immediately objected and issued a legal notice to the defendants. In retaliation, Defendants 3 and 4 allegedly filed a false complaint against the second and third plaintiffs in Crime No. 200 of 2013.



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12. Hence, the plaintiffs approached the civil court, establishing both the repayment of the loan and the forced handing over of possession through Exhibit A5, which was admitted by the defendants during trial. Furthermore, Exhibit A12, which relates to the document typed at the Valapadi Police Station, was also admitted by the defendants in cross-examination. Therefore, it was rightly held by the first appellate court that the sale deed was executed only as security for the loan, and after repayment, the defendants failed to reconvey the property and forcibly obtained possession. Though the trial court failed to appreciate the evidence in proper perspective, the first appellate court correctly reversed the decision and decreed the suit based on strong documentary and oral evidence, which does not warrant any interference. Accordingly, the learned counsel for the respondents prayed for dismissal of the Second Appeal, as it lacks merit.

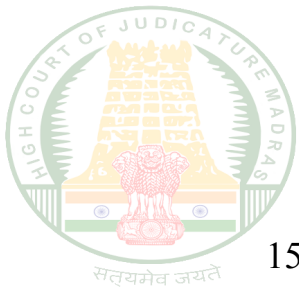
13. The brief facts of the case are as follows: The suit property, as described in the plaint schedule, comprises an extent of 1 acre with a pump set, situated in Survey No. 5/2A. The property originally belonged to



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Marimuthu and his wife, Lakshmiammal, by way of purchase made in the years 1982 and 1984. For family necessities, they borrowed a loan of Rs. 50,000/- from the first defendant on 08.11.2000. As security for the said loan, they executed a sale agreement in favor of the first defendant.

14. However, the first defendant insisted that a sale deed be executed in his name, taking advantage of the illiteracy of the plaintiffs who belong to a tribal community. Accordingly, a sale deed was executed with an oral understanding that the plaintiffs would be given 8 years' time to repay the loan, upon which the first defendant agreed to reconvey the property. Thus, the earlier sale agreement was cancelled, and a sale deed was executed on 08.07.2004. Prior to that, on 14.11.2002, at the insistence of the first defendant, Marimuthu and the first plaintiff also executed a power of attorney in favour of the first defendant's wife, the second defendant. Afterward, the entire loan amount was repaid in November 2012. However, the first defendant refused to reconvey the property. All these years, the plaintiffs, legal heirs of Marimuthu, continued to remain in possession of the suit property.



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15. Later, when a complaint was given to the Vadapalani Police Station against defendants 1 and 2, Defendants 3 and 4, who were the Inspector and Sub-Inspector of Police respectively, colluded with defendants 1 and 2 and coerced the plaintiffs into executing documents purporting to hand over possession in favour of the first defendant. These documents were fabricated. Hence, the plaintiffs immediately approached the court seeking cancellation of the sale deed and restoration of possession.

16. The first defendant, in his defense, claimed that he is the absolute owner of the property as per the registered sale deed executed by the first plaintiff and her husband, Marimuthu, for valid consideration. He denied the receipt (Exhibit A5) relied on by the plaintiffs and further contended that possession had been handed over to him, thereby disputing the plaintiffs' claim over the suit property.

17. Since the sale deed stands in the name of the first defendant, the initial burden lies upon the plaintiffs to prove that the said document was executed only as a security for a loan transaction. The second plaintiff, who



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is the son of Marimuthu, was examined as PW1. He produced tax receipts and other documents to prove that the plaintiffs were in possession of the property until they were forcibly dispossessed by defendants 1 and 2 with the help of the police.

18. The house tax receipt, in the name of the plaintiffs, dated from 08.07.2004 to 31.07.2013, and the Kist receipt in the name of Marimuthu (Exhibit A6) dated 05.01.2007, as well as another house tax receipt in the name of the second plaintiff (Exhibit A7) for the year 2012–2013, were filed. These documents establish that, as of the date of filing the suit in 2013, the plaintiffs were in possession of the property. Therefore, the claim of the first defendant that possession had been handed over to him was prima facie disproved.

19. Although the first defendant contended that he had merely permitted the plaintiffs to reside in the property after the sale, this claim was neither pleaded properly nor supported by any evidence before the trial court.



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20. Admittedly, the sale deed dated 08.07.2004 (Exhibit A4) stands in the name of the first defendant. However, it is important to note that there was an earlier sale agreement dated 08.11.2000, which was subsequently cancelled, followed by the execution of the sale deed by the first plaintiff and Marimuthu in favor of the first defendant. Prior to that, a power of attorney dated 14.11.2002 (Exhibit A2) was executed in favor of the second defendant concerning the suit property. The plaintiffs claim that this was also done at the insistence of the first defendant.

21. The cancellation of the sale agreement, marked as Exhibit A3, is admitted by the defendants and proves that there was indeed a prior sale agreement between the parties before the execution of the sale deed. Notably, the power of attorney dated 14.11.2002 remained in force at the time of the alleged sale on 08.07.2004, and there is no evidence that it was cancelled. Therefore, it raises serious questions about the legitimacy and intention of the sale deed dated 08.07.2004. The burden of proving that the sale deed was executed merely as security for the loan heavily lies on the



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plaintiffs. To establish their case, the plaintiffs relied on Exhibit A5, a receipt, contending that the loan was repaid on 14.06.2002 and on various other dates.

22. On perusal of the said receipt (Exhibit A5), it is found that it was admitted by DW1 during cross-examination. In the said receipt, it is mentioned that, in the name of Marimuthu, the principal and interest amounted to approximately Rs. 90,000 as of 08.11.2002. This document, Exhibit A5, clearly proves that there was a loan transaction between the parties and that the same was discharged by 08.11.2002.

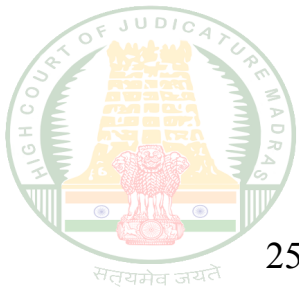
23. The learned counsel for the appellants pointed out that the alleged Exhibit A5 receipt is dated 2002, whereas the sale deed was executed in 2004. According to the appellants, these are two distinct transactions. However, the first appellate court failed to properly appreciate this distinction. If, in fact, the sale deed dated 08.07.2004 had been executed with the intention of effecting an actual transfer of property by the first plaintiff and her husband, then the possession of the property ought to have



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been handed over to the first defendant on that very date. But it has already been established that the possession remained with the plaintiffs, as discussed earlier. This indicates that the sale deed was executed not with the intent of conveying absolute ownership, but rather as security for the loan transaction. The continuing possession with the plaintiffs shows that some agreement or terms remained in force between the parties. It is for this reason that a possession handover document, referred to as a "Consent Deed", was executed much later, on 31.03.2013, and marked as Exhibit A12.

24. As per the terms of the said Consent Deed, plaintiffs 2 and 3 (son and daughter-in-law of Marimuthu) agreed to hand over possession to Defendants 1 and 2 and also agreed to vacate the house situated on the suit property within one month. This document, too, was admitted by DW1 during cross-examination. It clearly indicates that possession was not with the first defendant even after the execution of the sale deed, thus supporting the plaintiffs' claim.

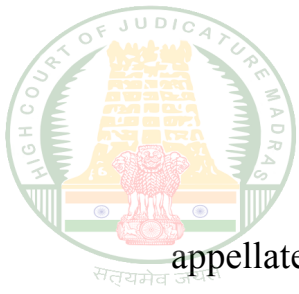


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25. Furthermore, the plaintiffs contended that the said Consent Deed was obtained by DW1 and DW2 with the help of the police. During cross-examination, DW1 admitted that Exhibit A5, the receipt evidencing repayment of the loan, was typed at the police station. This supports the plaintiffs' allegation that possession of the suit property was forcibly taken by Defendants 1 and 2 with the assistance of the police.

26. The learned trial judge failed to properly appreciate these facts and circumstances. Additionally, Defendants 3 and 4, who are police officials, filed an FIR against the plaintiffs on 07.04.2013, alleging that they had trespassed into the suit property. The copy of the FIR was marked as Exhibit A16. Notably, this FIR was lodged just four days after the date of the Consent Deed (31.03.2013), further suggesting collusion between Defendants 1 and 2 and the police.

27. The plaintiffs have established that the Consent Deed was created at the police station and that it was part of a scheme to forcibly dispossess them from the property. These facts were rightly appreciated by the first

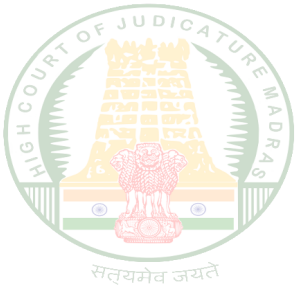


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appellate court. Despite the availability of these crucial documents and admissions, the learned trial judge failed to consider them and erroneously dismissed the suit.

28. In contrast, the first appellate court correctly held that the alleged sale deed was not executed with an intention to transfer the property to the first defendant. Rather, it was executed purely as security for the loan transaction. The loan amount was repaid, as evidenced by Exhibit A5. The so-called Consent Deed was a fabricated document, created at the police station for the purpose of forcibly taking possession of the property from the plaintiffs.

29. Until 2013, the plaintiffs were in possession of the suit property. Hence, Questions of Law A and B are answered accordingly. The findings rendered by the first appellate judge are well-founded and require no interference. Accordingly, **the appeal is dismissed as devoid of merit.** The suit is decreed as prayed for. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.



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30. The appellants / defendants 1 and 2 are directed to hand over possession of the suit property to the appellants / plaintiffs within three months from the date of receipt of a copy of this order. Respondents 3 & 4 / defendants 3 and 4 are also restrained from interfering with the peaceful possession and enjoyment of the property by the plaintiffs.

21.12.2024

Index : Yes/No

Neutral Citation : Yes/No

Speaking/Non Speaking order

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To

1. The II Additional Subordinate Judge, Salem
2. The District Munsif cum Judicial Magistrate, Vazhappadi.
3. The Section Officer, VR Section, High Court of Madras.

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T.V.THAMILSELVI, J.

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