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OSA NOS.61 AND 95 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2024

CORAM:

**THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

OSA NOS.61 AND 95 OF 2022

AND

CMP NOS.4715 OF 2022, 4699, 4704 AND 26248 OF 2023

IN OSA NO.61 OF 2022

AND

CMP NO.26254 OF 2023 IN OSA NO.95 OF 2022

OSA NO.61 OF 2022

L.Chandrakumar

... Appellant

Vs.

1.S.Prema

2.L.Logammal

... Respondents

PRAYER: Appeal filed under Order XXXVI Rule 1 of Madras High Court Original Side Rules read with Clause 15 of the Letters Patent 1865, praying to set aside the judgment and decree dated 31.01.2022 passed by this Court in C.S.No.677 of 2010.



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For Appellant : Mr.V.C.Janardhanan
For Respondent-1 : Mr.PL.Narayanan
for Mr.V.Praveen Kumar
For Respondent-2 : No appearance

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1.Ramachandran
2.Mageswari
3.Kalidass
4.Murugan
5.Yasugy
6.Amuthavalli
7.Jayalatchumy
8.Kalaivani
9.Thanam

... Appellants

Vs.

1.Beeman
2.Chandrasekaran
3.Dr.Jawahar Nesan
4.S.Prema

... Respondents

PRAYER: Appeal filed under Order XXXVI Rule 1 of Madras High Court Original Side Rules read with Clause 15 of the Letters Patent 1865, praying to set aside the judgment and decree dated 31.01.2022 passed by this Court in C.S.No.852 of 2009.

For Appellants : Mr.V.C.Janardhanan
For Respondents : Mr.PL.Narayanan
3 and 4 Senior Counsel
for Mr.Praveen Kumar

COMMON JUDGMENT



(Judgment of the Court was made by R.SUBRAMANIAN, J.)

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It is reported that the second respondent in OSA No.95 of 2002 is no more. It is seen from the records that the second respondent in OSA No.95 of 2022 who figured as the second defendant in C.S.No.852 of 2009 remained *exparte* before the Trial Court. Hence, exercising power under Order XXII Rule 4 Sub-rule 4 of Code of Civil Procedure, the appellant is exempt from the necessity of substituting the legal representatives of the second respondent in OSA No.95 of 2022.

2.Challenge in these appeals is to the common judgment of the Hon'ble Single Judge dated 31.01.2022 rendered in C.S.No.677 of 2010 and C.S.No.852 of 2009.

3.The facts that are necessary for disposal of these appeals are as follows:

3.1.The first suit namely C.S.No.852 of 2009 is a suit for declaration of the plaintiffs title to the suit schedule property; declaration



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that the power of attorney dated 24.05.2006 executed by the first defendant (father of the plaintiffs) in favour of the second and third defendants as null and void; for a declaration that the sale deed dated 05.01.2007 executed by the defendants 2 and 3 as Power Agents of the first defendant as null and void and not binding on the plaintiffs; and for a consequential permanent injunction restraining the defendants from interfering with the possession of the plaintiffs.

3.2.The case of the plaintiffs in the said suit viz., C.S.No.852 of 2009 was that the suit property was purchased by the first defendant in the said suit in his name from and out of the moneys that were contributed by the first plaintiff in the said suit and therefore, the property belongs to the plaintiffs and the first defendant held it only for the benefit of the plaintiffs.

3.3.Even during the pendency of the first suit in C.S.No.852 of 2009, the fourth defendant in C.S.No.852 of 2009 who had purchased the property from the Power Agent of the first defendant in the said suit had filed a suit for recovery of possession in C.S.No.677 of 2010 based on the Sale Deed which was impugned in C.S.No.852 of 2009.



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3.4.Both the suits were tried together. As many as six issues were framed in C.S.No.852 of 2009, while five issues were framed in C.S.No.677 of 2010 and they are as follows:

	<i>C.S.No.852 of 2009</i>	<i>C.S.No.677 of 2010</i>
1	Whether the plaintiffs are entitled for a declaration that the plaintiffs are the real owners of the suit schedule property?	Whether the plaintiff is entitled to get recovery of possession of the suit schedule property from the defendants?
2	Whether the suit schedule property in C.S.No.852 of 2009 is the self-acquired property of the 1 st defendant?	Whether the suit is hit by Order II Rule 2 of CPC?
3	Whether the plaintiffs are entitled for declaration declaring the power of attorney dated 24.05.2006 executed by the first defendant to and in favour of second and third defendants as null and void?	Whether there is jural relationship of landlord and tenant between the plaintiff and defendants?
4	Whether the plaintiffs are entitled for a declaration declaring the sale deed dated 05.01.2007 executed by the second and third defendants in favour of the fourth defendant registered as Document No.30 of 2007 as null and void?	As to what relief the plaintiff is entitled to?
5	Whether the plaintiffs are entitled for a permanent injunction restraining the defendants from in any way encumbering or alienating the suit schedule property?	
6	Whether the suit is hit by Order III Rule 2 CPC in view of the Power of Attorney dated 03.3.2009 is admissible in evidence?	

3.5.At trial, evidence was taken in C.S.No.852 of 2009. While two witnesses were examined on the side of the plaintiffs as P.W.1 and P.W.2, two witnesses were examined on the side of the defendants as D.W.1 and D.W.2. Ex-P.1 to Ex-P.9 were marked on the side of the



plaintiffs and Ex-D.1 to Ex-D.24 were marked on the side of the defendants.

3.6.The Hon'ble Single Judge after extracting the pleadings, issues and the arguments of the learned counsel for the parties, disposed of the suits on 31.01.2022 in the following manner:

“Discussion and Decision

All the Issues in C.S.852 of 2009:

10.1 There is considerable merit in the argument of the counsel for the fourth defendant in C.S.No.852 of 2009 (the plaintiff in the connected C.S.677 of 2010). When the first plaintiff in C.S.No.852 of 2009 contends that the first defendant had not contributed the funds for the purchase of the suit property under Ext.P8, and that he had advanced the sum, the said fact has to be proved only by the first plaintiff in C.S.No.852 of 2009. Secondly, here P.W.1 admits in her evidence that she was barely 13 or 14 years and she had conceded to her ignorance about the facts on the basis of which the suit is laid. This apart there is utter silence as to what happened to the sale consideration which the fourth defendant had paid the power of attorney of the first defendant. The plaintiffs who challenge the Power of Attorney executed by the first defendant and the sale did not whisper anything about it. When the core fact are not proved, the suit travels towards its



dismissal.

All the issues in C.S.677 of 2010

11.1 Turning to the second part, inasmuch as the defendants case was that the fourth defendant had succeeded in C.S.No.852 of 2009, it necessarily should follow that the second suit in C.S.No.677 of 2010 that she has laid has to be decided in her favour. After all, the defendants in that suit have claimed right to occupy only as a permissive owner. In other words, they are mere licencees and they occupy the property only at the wish of the licencor.

11.2 As to the plea of the defendants that the present suit is hit by Order II Rule 2 CPC is concerned, the said plea is misconceived since the plaintiff has withdrawn the earlier suit to file a comprehensive suit for recovery of possession. It is appropriate more so in the context of the fact that the first defendant in C.S.No.677 of 2010 had successfully filed O.S.No.2104 of 2007 earlier for bare injunction that her possession shall not be disturbed except by due process of law vide Ext.D18.

12. Conclusion :

- A) C.S.No.852 of 2009 is dismissed with costs.*
- B) C.S.No.677 of 2010 is decreed and the defendants are directed to delivery vacant possession of the 'B' schedule property to the plaintiff within 30 days from today."*

4.Mr.V.C.Janardhanan, learned counsel appearing for the appellants would contend that the judgment does not meet the requirements of Order XX Rule 5 of Code of Civil Procedure inasmuch as



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it does not answer all the issues framed in the suits.

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5.Mr.PL.Narayanan, learned Senior Counsel appearing for the respondents is in an unenviable situation inasmuch as he is unable to sustain the judgment of the Trial Court and is forced to concede that the learned counsel for the appellant is right in his contention based on Order XX Rule 5 of Code of Civil Procedure.

6.Mr.PL.Narayanan, learned Senior Counsel would however submit that if a judgment is set aside on the ground that it does not comply with the provisions of Order XX Rule 5 of Code of Civil Procedure, the parties would not be entitled to lead further evidence and a decision has to be arrived at on the basis of the evidence that is already available on record.

7.This contention is taken by the learned counsel that the issue relating to bar under Order II Rule 2 in mind, since the said issue has been disposed of by the Hon'ble Judge on the ground that the pleadings in earlier suit were not made part of the records in the subsequent suit.



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Mr.PL.Narayanan, would also rely on the judgment of the Hon'ble

Supreme Court in **JAYANTILAL CHIMANLAL PATEL VS. VADILAL**

PURUSHOTTAMDAS PATEL [2017 (13) SCC 409] to contend that while

remanding the matter for a decision on the issue relating to Order II Rule 2

of Code of Civil Procedure, the Hon'ble Supreme Court has held that the

High Court will dispose of the matter within the parameters of the

revisional jurisdiction and it has specifically prohibited any additional

evidence under Order 41 Rule 27 of the Code of Civil Procedure.

8.Mr.V.C.Janardhanan, learned counsel for the appellants

would submit that the remand in **Jayantilal's case** (cited supra) was to the

High Court exercising its revisional jurisdiction and therefore, the Hon'ble

Supreme Court held that additional evidence cannot be permitted. He

would draw our attention to the more recent judgment of the Hon'ble

Supreme Court in **VURIMI PULLARAO VS. VEMARI VYANKATA**

RADHARANI [2020 (14) SCC 110] where the Hon'ble Supreme Court

held that if the parties were aware of the pleadings in the earlier

proceedings, the non-production of the pleadings would not be fatal for a

decision for the issue under Order II Rule 2 of Code of Civil Procedure.

9.Be that as it may, we find that the appellants had in fact



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filed applications under Order 41 Rule 27 seeking leave to produce the plaint in the earlier suit. Now that we are disposing of these appeals on the ground that the impugned judgment is not in compliance with Order II Rule 2 of Code of Civil Procedure and we are not considering those applications.

10. In this factual backdrop, we find that it would not be in the interest of justice to prohibit the appellants from producing the plaint before the Trial Court. We therefore, allow these appeals, set aside the judgment and decree of the Hon'ble Single Judge and remit the matter to the Hon'ble Single Judge for disposal in accordance with law. We make it clear that the parties shall not be entitled to produce any further evidence except the evidence that is sought to be placed before us by way of Application No.4699 of 2024 in OSA No.61 of 2022. Since we are setting aside the judgment and decree and remitted the matter for fresh disposal within a period of four months from the date of receipt of a copy of this order, we direct the court fee paid on the appeals to be refunded to the appellants in terms of Section 67 of The Tamil Nadu Court Fees and Suits Valuation Act, 1965. The parties are directed to bear their own costs in



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these appeals. It will be open to the appellants to file an application in respect of the documents and the Hon'ble Single Judge will decide it in accordance with law without being influenced by any of the observations made above. Consequently, connected civil miscellaneous petitions are closed.

[R.S.M., J.] [R.S.V., J.]

14.03.2024

Index : No
Internet : Yes
Neutral Citation : No
Speaking Order
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R.SUBRAMANIAN, J.

AND

R.SAKTHIVEL, J.

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