



S.A. Nos.911 & 913 of 2024

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2024

CORAM:

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

S.A. Nos.911 & 913 of 2024

and

C.M.P.No. 29073 of 2024

1. V.Vendhan

2. V.Bhuvaneswari @ Selvi

... Appellants
in both S.A.s

Vs.

R.Venkatesan

.. Respondent
in both S.A.s

PRAYER in S.A.No.911 of 2024 : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 26.09.2023 made in A.S.No.50 of 2022 on the file of XIX Addl. City Civil Court, Chennai confirming the judgment and decree dated 05.01.2022 passed in O.S.No.4757 of 2010 on the file of II Asst. City Civil Court, Chennai.



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PRAYER in S.A.No.913 of 2024 : Second Appeal filed under Section 100 of Code of Civil Procedure, to set aside the judgment and decree dated 26.09.2023 made in A.S.No.49 of 2022 on the file of XIX Addl. City Civil Court, Chennai confirming the judgment and decree dated 05.01.2022 passed in O.S.No.12942 of 2010 on the file of II Asst. City Civil Court, Chennai.

For Appellants in
both S.A.s : Mr.R.Prakash for
M/s.P.B.Ramanujam Associates

For Respondents in
both S.A.s : Mr.H.Adaikala Arockiaraj

JUDGMENT

Challenging the concurrent findings of the courts below rendered in common judgment and decree passed in A.S.Nos. 49 and 50 of 2022 by the XIX Addl. Judge, City Civil Court, Chennai arising out of findings rendered in common judgment and decree passed in O.S.Nos.4757, 6299



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and 12942 of 2010 on the file of Addl. District Judge, Hosur, these Second Appeals were preferred by the defendants 1 and 2 viz., Vendhan and his wife Bhuvaneswari @ Selvi and they are denoted as defendants in a comprehensive suit in O.S.No. 4757 of 2010.

2. Before the trial court, the respondent herein viz., Venkatesan, as plaintiff filed two suits in O.S.Nos. 4757 and 6299 of 2010 praying for the relief of declaration to declare the settlement deed executed by 1st defendant Vendhan/1st appellant herein in favour of his wife, 2nd defendant/2nd appellant herein dated 06.02.2009 as sham and nominal and null and void and directing the defendants to quit and deliver vacant possession of suit property to him and for a permanent injunction not to make any encumbrance over the suit property as described in the plaint schedule in old No.84, New No.12, Ramalingeswarar Koil Street, Vanniya Teynampet, Chennai, an extent of 790 sq.ft. with building along with four boundaries as described in the plaint schedule. He had filed another suit in O.S.No. 6299 of 2010 praying for a permanent injunction against same defendants not to put up any further construction or alter the suit property.



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So also, the 1st defendant Vendhan filed a suit in O.S.No. 12942 of 2010 praying for the relief of declaration to declare the 2nd plaintiff as the absolute owner of suit property by way of settlement deed executed by him, who has perfected title to the property by way of adverse possession and also prayed to declare the partition deed dated 22.07.2009 as null and void and not binding on them pertaining to the family of present plaintiff and for consequential relief. All the three suits, both are one and same and so also, the suit property also same situated at Old No.84, New No.12, Ramalingeswarar Koil Street, Vanniya Teynampet, Chennai. Therefore, all the three suits were tried jointly and a common judgment was pronounced by the trial judge on hearing both oral and documentary evidence adduced on their side and finally two suits filed by the plaintiff Venkatesan was decreed along with cost and the suit was filed by the defendants viz., Vendhan and Bhuvaneswari @ Selvi, appellants herein was dismissed and also directed both the defendants to vacate the property and hand over possession of property to the plaintiff Venkatesan within a month.

3. Challenging the said findings, the defendants have preferred



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Appeal Suits in A.S.Nos.49 and 50 of 2022 in respect of suit filed by the plaintiff in O.S.No.4757 of 2010 and another suit filed by the defendants in O.S.No.12942 of 2010. The first appellate court also independently analysed entire evidence and the records and framed issues and finally held that 1st defendant not perfected title by way of adverse possession as he claimed and the documents relied by him also would reveal that he is not in uninterrupted possession of 30 years nor he is having valid title to convey the same to his wife, on the other hand, the plaintiff Venkatesan is the absolute owner of suit property. He has proved his right and title over the same and accordingly, both appeal suits are dismissed by confirming the findings of trial court. Challenging the said findings, now the present Second Appeals were preferred by defendants Vendhan and his wife Bhuvaneswari @ Selvi.

4. For the sake of convenience, the parties are denoted as before the trial court. Accordingly, the appellants herein are denoted as defendants and respondent is denoted as plaintiff.



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5. Brief facts of the case is as follows:-

According to plaintiff, the suit property and other properties originally belongs to one Devaraja Pillai, great grandfather of plaintiff and he executed a Will on 16.06.1959 in favour of his grandsons viz., T.Radhakrishnan, T.Jagannathan and T.Ramachandran, who are all sons of Thondaradi Podi. After the demise of Thondaradi Podi, all the three sons entered into partition on 07.10.2008. In respect of suit property allotted in favour of plaintiff's father T.Radhakrishnan, after his demise, his legal heirs divided the property among themselves on 22.07.2009, in which the suit property was allotted in favour of plaintiff. During the month of November 2009, the plaintiff came to know that the property tax was transferred in the name of 2nd defendant, on enquiry, he learnt that her husband/1st defendant executed a settlement deed in her favour as if he acquired title by virtue of judgment and decre passed in O.S.No.8547 of 1993. In fact, he has never been in long uninterrupted possession to perfect his title, on the other hand, he was inducted as tenant long before. Thereafter, he trespassed and made a



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false claim by filing a suit in O.S.No.8547 of 1993 for a permanent injunction and the same was also dismissed on 05.02.1998, but without right and title, he executed a settlement deed in favour of his wife by misrepresenting judgment in O.S.No.8547 of 1993. Therefore, he approached the court to declare the alleged settlement deed as null and void on 06.02.2009 and also to deliver vacant possession of property with consequential relief of permanent injunction and also filed another suit in O.S.No. 6299 of 2010 not to put up any further construction or alteration in the suit property bearing Door No.84 as described in the plaint schedule as old No.84, New No. 12, Ramalingeshwarar Koil Street, Vanniya Teynampet, Chennai.

6. Consequently, the defendants have filed a suit in O.S.No.12942 of 2010 stating that the 2nd defendant is the absolute owner of suit property as per the settlement deed executed by the 1st defendant praying to declare the partition deed held in the family of plaintiff as null and void. The suit property and both parties are one and the same. Therefore, all the three suits were tried jointly. The trial judge had framed separate issues in all the three suits. The plaintiff, who approached the court for the relief of declaration



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stating that he is absolute owner of suit property is bound to prove his right and title. Accordingly, to prove the same, he produced the Patta, Will, Legal heir certificate, Partition deeds, Settlement deed marked as Ex.A1, Ex.A2 and Ex.A4 to Ex.A7. The defendants relied only tax receipt marked as Ex.B1, E.B.Card, xerox copy of receipt, communication of letters and other documents relating to their claim marked as Ex.B2 to Ex.B114 including judgment and decree rendered in O.S.No. 8547 of 1993 marked as Ex.B113 and Ex.B114. In the earlier suit filed by the defendants in O.S.No.8547 of 1993, he stated that he was inducted as a tenant for monthly rent of Rs.100/- in suit survey Old No.84 in Ramalingeshwarar Koil Street, Vanniya Teynampet, Chennai and before him, one Raja was inducted as a tenant in the property. Subsequently, he claimed that he entered into sale agreement with the plaintiff's father Radhakrishnan on 01.06.1981. Therefore, the title belongs to the plaintiff family not disputed by the defendants. According to the plaintiff, originally the suit property belongs to one Devaraja pillai, great grandfather of plaintiff and the said Devaraja Pillai had executed a Will in favour of three grandsons, who are sons of one Thondaradi Podi. Among the family members, partition was held and suit



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property along with other properties were allotted to father of plaintiff family Radhakrishnan as per the partition held in the family on 07.10.2008. Thereafter, among Radhakrishnan and his wife and children, there was a partition held on 22.07.2009, in that partition, the suit schedule property was allotted to present plaintiff's share, thereby plaintiff claimed that he is absolute owner of the property. To prove the same, plaintiff produced the original Will dated 16.07.1957 executed by Devaraja Pillai marked as Ex.A2. The legal heir certificate, partition deeds held in their family marked as Ex.A4 to Ex.A6. Through all these documents, the plaintiff proved his right and title over the suit property as well as his predecessors in title. Even during the cross-examination of D.W.1, he also admits that the suit property originally belong to one Devaraja Pillai and thereafter, it devolves upon three sons of Thondaradi Podi and also admits that there was partition held in the family as per Ex.A5 and Ex.A6. He had also admits that as per Ex.A6 partition deed, the suit property was allotted to plaintiff Venkatesan. The evidence of D.W.1 was also extracted by the trial judge in paragraph 9 of the said judgment. Therefore, it is an admitted fact that now the suit property is belong to plaintiff absolutely as per the

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partition deed marked as Ex.A6.

7. Be that as it may, the case of 1st defendant is that there was oral agreement of sale between himself and his brothers viz.,Radhakrishnan, Jagannathan and Ramakrishnan, including father of plaintiff. Absolutely, no document was produced to show the alleged oral sale agreement nor he suddenly mentioned the date of alleged oral sale agreement. In the earlier suit filed by him in O.S.No.8547 of 1993 marked as Ex.B113, in the plaint averment, the 1st defendant Vendhan stated that he entered into sale agreement with Radhakrishnan and others in the year 1983 and in one place, he stated that he entered into agreement in the year 1991. Therefore, the trial court in that suit held that he has not approached the court with clean hands with correct particulars of alleged agreement. In that suit, he claimed that he is in possession of suit property originally as tenant and subsequently, based on the alleged sale agreement, but the tenancy also not been proved nor produced any document to establish the alleged tenancy as well as alleged agreement. He relied only exchange of notices and also relied voter I.D. and other I.D. proof, which are all after the suit. He has



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relied one receipt dated 01.06.1991, which had also contained some alteration. In that suit, father of plaintiff viz., Radhakrishnan contested the same stating that while doing some mosaic business, some articles were handed over to him. For that, he paid some amount, who in turn issued a receipt and the same was manipulated as if he received the advance amount for the alleged sale agreement. He had also contended that no such sale agreement was entered with him and so also, denied the tenancy.

8. On considering submissions of both sides, finally, the trial judge in that suit held that the plaintiff not proved his lawful possession over the property nor proved the tenancy. Therefore, he is not entitled for the relief of permanent injunction and accordingly, the said suit was dismissed on 05.02.1998. But, after disposal of the said suit, the fact reveals that the 1st defendant Vendhan executed a settlement deed in favour of his wife/2nd defendant on 06.02.2009 and as per the recitals of settlement deed, the entire extent of 832 sq.ft. including Door No.84 and New No.12/54 with an extent of 712 sq.ft. with house along with other amenities belongs to him. As per settlement entered on 08.05.1993, wherein, he claimed right and



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title over the property and the same was decreed in his favour on 05.02.1998. Accordingly, he became absolute owner of the property and ever since, he enjoyed without any interruption and out of love and affection, he conveyed the property to his wife/2nd defendant. But as per Ex.B113, which is a judgment of trial court rendered in O.S.No.8597 of 1993 clearly reveals that it is a bare injunction suit filed by the 1st defendant as plaintiff was dismissed by the trial judge holding that he is neither tenant nor proved his lawful possession of property. Accordingly, the said suit was dismissed. But, suppressing the real findings given in the said suit, he executed a settlement deed in favour of his wife as he perfected his title based on the decree in the said suit, as such is fraudulent one. Accordingly, the settlement deed stands in the name of 2nd defendant is invalid one and nonest under law. To that effect, the trial judge has rightly granted the relief of declaration by relying all the documents and evidence, which needs no interference by this court. Furthermore, even in the earlier suit in O.S.No.8597 of 1993, they have made some manipulation in the receipt and claimed that it is a receipt issued by the plaintiff's father by receiving the advance amount based upon the alleged agreement of sale.



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The trial judge held that those receipts were manipulated by the 1st defendant Vendhan for unlawful gain. Therefore, the conduct of this defendant clearly reveals that he intends to create a fabricated document and to create encumbrance over the suit property, which is absolutely belong to the plaintiff. If really, the defendants entered into alleged sale agreement with the plaintiff's father, he ought to have taken steps for the relief of specific performance, but no such steps were taken, which itself proves that he has not entered into any agreement of sale with plaintiff's father Radhakrishnan and his brothers at any point of time. He trespassed into the property and caused all sort of annoyance by creating the document with false claim. Therefore, the courts below rightly dismissed the suit filed by this defendant in O.S.No. 12942 of 2010 and decreed two suits filed by the respondent/plaintiff. Even the defendants attempted to put up new construction or alteration in the suit property, for which he is not entitled at any point of time. Moreover, the 1st defendant also claimed right and title by way of uninterrupted possession and he perfected title by adverse possession from the year of 1993 onwards. From that year onwards, there is no exchange of notices and a civil suit was filed by the parties and in that



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suit, the plaintiff established that he is absolute owner of property.

Therefore, the defendants not perfected title by way of adverse possession also. Hence, the trial judge rightly dismissed the suit in O.S.No.12942 of 2010 filed by the defendants. Since the plaintiff proved his right and title over the property, the trial judge rightly decreed the suit in O.S.No.4757 of 2010. The first appellate judge also rightly dismissed the appeal confirming the findings of trial judge.

9. The arguments advanced on the side of defendants, the learned counsel would submit that the court below failed to consider the oral and documentary evidence and also failed to take note of the fact that there was no lawful possession of the property and submitting the following question of law arose for consideration, he prayed to set aside the findings of courts below :-

(a) Whether not a tenant, who, pursuant to a sale agreement, pays the sale consideration in toto is entitled to transfer the property in appellants' names?



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- (b) *Whether not the possession of appellants, who paid the sale consideration in full, became adverse to that of the interest of respondents?*
- (c) *Whether mere filing of a suit for protecting lawful possession or attempts to dispossess the appellants amounts to interruption of their lawful possession of the suit property, thereby depriving the appellants from perfecting their title by way of adverse possession?*
- (d) *Whether not an interruption in lawful possession of the appellant occasions only when the appellant was dispossessed of the suit schedule property?*

10. As discussed above, the defendants have not approached the court with clean hands. From the year 1993 onwards, the 1st defendant fabricated the records and made false claim over the suit property and harassed the plaintiff Venkatesan by filing the vexatious suit. Based on the decree passed in O.S.No.8597 of 1993, the 1st defendant claimed that he perfected right and title over the suit property. In fact, the said suit was



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dismissed and no relief was granted in his favour, but by way of false representation before the authorities, he executed a settlement deed in favour of his wife as if 1st defendant perfected title by falsely interpreting the decree passed by the trial judge as if his title was declared in his favour. This itself shows that he had played fraud not only upon the court, but before the Registering Authority also. Furthermore, the judgment and decree said to be obtained by the defendants in earlier suit in O.S.No.8597/1993 marked as Ex.B113 and Ex.B114 were found without any court seal and signature and the same was rightly observed by the court below that the defendants approached the court for unlawful gain with fabricated records. The earlier suit filed by defendants is clear abuse of process of law and the 1st defendant played fraud upon the court and as pointed out by the plaintiff, neither he is a tenant nor he is an agreement holder and the same was rightly concluded by the courts below, which needs no interference. Hence, there is no substantial question of law involved for consideration. It is settled proposition that if any person played fraud upon the court, he shall be thrown out at any stage of proceedings. Moreover, all these years from 1993, the



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defendants/appellants fabricated the records and abused the process of court. Therefore, both Second Appeals are liable to be dismissed. Accordingly, on seeing the conduct of defendants/appellants, both Second Appeals are dismissed as no merit with exemplary cost of Rs.50,000/- in each Second Appeal and the findings rendered in common judgment and decree passed in A.S.Nos.49 and 50 of 2022 is confirmed. The suit filed by the plaintiff in O.S.No. 4757 of 2010 is decreed and the suit filed in O.S.No.12492 of 2010 is dismissed. The appellants are directed to deposit the said cost to the Tamil Nadu Legal Services Authority, Chennai within a period of four weeks from the date of receipt of copy of this judgment. Consequently, the connected Civil Miscellaneous Petition is closed.

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Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
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To

1.XIX Addl. Judge, City Civil Court, Chennai.

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2. II Asst. City Civil Court, Chennai.

3. Section Officer, VR Section, Madras High Court.

T.V.THAMILSELVI, J.

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