



S.A.No.1723 of 2002

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2024

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

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1.Swornaretnam (Died)

2.Sundararose

3.Lilly (died)

4.Gnanadas

5.Suneeram

6.Suganthi

(1st appellant died and the appellants 2 & 4 to 6,
who are already on record, are recorded as
legal heirs of the deceased first appellant)

(3rd appellant died and the appellants 1,2 & 4 to 6,
who are already on record are recorded as
LRs of the deceased 3rd appellant)

... Appellants

.VS.

1.Murukesan (Died)

2.Subbamma

3.Manoharan

4.Kanakabai (Died)

5.Stella

(4th respondent died and the respondent No.2,



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who is already on record, is recorded as
LRs of the deceased 4th respondent)

6.Saraswathi

7.Muthulekshmi

(Respondents 6 & 7 are brought on record
as LR's of the deceased first respondent)

.....Respondents

1.Ponmani

2.Christopher,

Village Administrative Officer at Thailapuram,
Pitannery Village,
Sattankulam.

... Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, against the judgment and decree, dated 21.03.2002 made in A.S.No. 61 of 1998, on the file of the Sub-Court, Kuzhithurai confirming the judgment and decree, dated 22.12.1997 made in O.S.No.192 of 1984, on the file of the II Additional District Munsif, Kuzhithurai.

For Appellants : Mr.K.N.Thambi

For R6 & R7 : Mr.M.E.Ilango

For R5 : Mr.V.Shabthakiri Raja
for Mr.T.R.Rajaraman

For R3 : Mrs.S.Ananthi
for Mr.F.X.Eugene



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J U D G M E N T

The plaintiffs are the appellants and the defendants are the respondents in the second appeal. The plaintiffs filed a suit in O.S.No.192 of 1984, on the file of the II Additional District Munsif Court, Kuzhithurai for declaration of title and possession, injunction and for setting aside a decree and judgment passed in O.S.No.612 of 1973.

2, For the sake of convenience, the appellants and the respondents shall be referred to as per their ranks in the plaint, as the defendants and plaintiffs respectively.

3. The case of the plaintiffs is that:-

(i)The properties comprised in survey number 4417 of Valvachagoshtam Village in Kalkulam Taluk and 2089 of Nattalam Village of Vilavancode Taluk belonged to the tarawad of defendants 1 to 5 and others comprising the Thaivazhi of Deivana Lekshmi, who was the mother



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of the first defendant. There was a suit for partition of the above survey numbers and some other properties in O.S.No.490 of 1961, on the file of the District Munsif Court, Padmanabhapuram as between the descendants of Deivana Lekshmi. As per the final decree made in that suit, jointly allotted 33 cents in plot No.4 and 2 cents in Plot No.9 in survey number 4417 and 1 acre 69.375 cents in plot no.3 in survey number 2089. The present defendants 1 to 5 are defendants 16 to 20 respectively in the said suit in O.S.No.490 of 1961. As per that decree, the present defendants 1 to 5 got 5/13 share in the above said plots. The said 5/13 share in plots 4 and 9 in survey No.4417 and plot No.3 in survey number 2089 alone are scheduled as the suit property in this suit. The remaining portion in the suit plots which are not subject matter in this suit.

(ii) While so, in the year 1964, the first defendant for her behalf and on behalf of defendants 2 to 5, who were minors, along with other sharers entered into a contract for sale in favour of one Jesammal, daughter of Thankammal Nadachi to sell 12/13 share in plots 4 and 9 in survey



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number 4417 and plot No.3 in survey number 2089 and received Rs.1,000/- as advance. Since Jesammal was not able to take the sale deed before the date specified in the contract of sale, the first defendant and others executed another agreement for sale to the present plaintiffs on 08.05.1965 and received another amount of Rs.1,000/- towards advance. The said agreement further provides to pay Rs.1,000/- to Jesammal, who got the first agreement of sale. Accordingly, the present plaintiffs paid Rs.1,000/- to Jesammal on 11.04.1972. For the remaining 1/13 share, the present plaintiffs have taken a sale deed from the 7th defendant in O.S.No.490 of 1961 as per sale deed, dated 04.09.1965.

(iii) In pursuance of the agreement of sale, dated 08.05.1965, the first defendant being the natural guardian of defendants 2 to 5 on their behalf and on her own behalf executed a sale deed in respect of the suit property (viz 5/13 share in the suit plots) in favour of the plaintiff for a total consideration of Rs.2,600/-. Out of this amount, an amount of Rs.833.37 paise was given credit towards the proportionate amount received under the



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agreement for sale and the balance amount of Rs.1766.63 paise was recited to be paid on a future date. Out of that amount, the plaintiff paid Rs.1500/- and obtained a receipt at the time of marriage of the third defendant. After the payment of Rs.1500/- to the defendants on 20.08.1148 M.E., the present plaintiff had to pay only Rs.266.63 paise to defendants towards balance of sale consideration. The sale deed, dated 19.10.1966 executed by the first defendant is valid and competent. Further, the husband of the first defendant and first defendant and the father of defendants 2 to 5 viz., Arumugam Kumaraswamy as an attestor to that sale deed. In pursuance of the sale deed, dated 19.10.1966 the present plaintiffs got possession of suit property and he is paying land tax to the Government. While so, the present defendants 2 to 5 as plaintiffs filed a suit in O.S.No.612 of 1973 for partition as well as for cancellation of the sale deed dated 19.10.1966. The plaintiff was impleaded as second defendant in that suit and he contested that suit till May 1980. One of the important contentions raised by the plaintiff as second plaintiff in O.S.No.612 of 1973 was that the jointers of the Thaivazhi of defendants 1 to 5 was disrupted after the partition decree in



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O.S.No.490 of 1961 and thereafter the members of the Tarawad would only be tenants in common. It is also contended by the plaintiff that the claim for setting aside the sale deed is barred by limitation.

(iv) This Court accepted the contention raised by the plaintiff and held that the claim of the defendants 2 to 4 for setting aside the sale deed is barred. This Court decreed the suit for setting aside the sale deed in respect of 1/13 share of the present 5th defendant alone. Against the decree and judgment passed by this Court on 21.09.1976, the present defendants 2 to 5 have preferred an appeal before the District Court, Nagercoil in A.S.No.635 of 1976. On 16.08.1978 the learned District Judge allowed the appeal and decreed the suit in toto. Against the decree and judgment passed by the first appellate Court in A.S.No.635 of 1976, the present plaintiff preferred a second appeal before this Court in S.A.No.2079 of 1978.

(v) While the matter was pending before this Court, the plaintiffs and defendants 1 to 5 have entered into compromise in respect of the suit



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property. In pursuance of that compromise, the present second defendant as Karanavan as well as the Senior member of the sub-Tarawad accepted the sale deed, dated 19.10.1966 executed by his mother, the present first defendant, in favour of the plaintiff and executed a registered consent deed styled as receipt in favour of the present plaintiff under document No.951 dated 5.5.1980 from the present plaintiff as recited in the sale deed. As per the document dated 05.05.1980, the present defendants have accepted the validity of the sale deed, dated 19.10.1966 in favour of the plaintiff. Further, the document dated 05.05.1980 executed by the present second defendant styled as receipt is binding as on all the defendants since he being the present Karanavan and senior member of the tarawad. Hence, the present defendants 1 to 5 cannot and could not resist the claim of the plaintiff over the entire suit property.

(vi) After the execution of the document dated 5.5.1980, the present defendants 1 to 5 have promised the present plaintiff that they will file a petition before this Court to withdraw the suit in O.S.No.612 of 1973.



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In pursuance of that promise and settlement they have sent a registered letter to their then Advocate Mr.Ananthakrishnan Nair to withdraw the suit. Beleving the representation made by the present defendants 1 to 5 the present plaintiff has not taken any further active steps in S.A.No.2079 of 1978. The present plaintiff bonafidly believed that defendants 2 to 5 herein, who are the plaintiffs in O.S.No.612 of 1973 will withdraw that suit as promised. The plaintiff avers that he had no knowledge about the conduct of the second appeal after 5.5.1980. The present plaintiff came to know about the dismissal of the second appeal only on 15.12.1985. The decree and judgments passed in O.S.No.612 of 1973 are not valid and binding on the present plaintiff. Further, the decree and judgment passed by this Court in S.A.No.2079 of 1978 is vitiated by fraud, collusion and misrepresentation. This Court has lost right of the document dated 5.5.1980 and mistakenly passed a decree on 21.06.1983. Hence, the decrees and judgments passed in O.S.No.612 of 1973 are liable to be set aside in this suit. Now on the basis of the impugned decree passed by this Court, defendants 1 to 5 are attempting to disturb the peaceful possession of the



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plaintiff over the plaint schedule property. They are also attempting to execute the impugned decree passed in O.S.No.612 of 1973. They made one of such unsuccessful attempt on 15.12.1983. As stated supra, the defendants 1 to 5 have no right what so ever in the suit property. As per the sale deed, dated 19.10.1966 and also as per the consent deed which is styled as receipt dated 5.5.1980, they have parted with their entire rights in the suit property in favour of the present plaintiff. The present defendants are bound by the recitals contained in the documents, dated 19.10.1966 and 5.5.1980. In these circumstances, the plaintiff's title and possession in respect of the plaint schedule property has to be declared in this suit. The plaintiff is also entitled to get an injunction restraining the defendants from executing the impugned decree passed in O.S.No.612 of 1973.

(vii) As stated above, the decrees and judgments passed in O.S.No.612 of 1973 are obtained by fraudulent means and misrepresentation of facts. Hence, the decrees and judgments passed in O.S.No.612 of 1973 are liable to be set aside in this suit. The plaintiff has



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demanded the defendants to settle the matter amicably out of Court on several occasions and last of such demand was made on 20.12.1983. The defendants did not comply with that demand. Hence, the plaintiffs have filed the present suit.

4. (i) The defendants filed a written statement and stated that the suit is not maintainable and is liable to be dismissed. The sale deed dated 19.10.1966 is invalid and incompetent. The present defendants 2 to 5 filed O.S.No.612/1973 before this Court for setting aside the sale deed and for partition. To that suit, the present plaintiff is a party. The suit has been decreed with respect of 1/13 share in favour of 5th defendant. Against that decree defendants 2 to 5 filed an appeal in A.S.No.635/1976 before the District Court, Nagercoil and the District Court allowed the appeal in toto and the sale deed was set aside. Against the decree of the first appellate Court, the present plaintiff filed second appeal before this Court in S.A.No. 2074 of 1978. While the second appeal was pending before this Court, the present plaintiff made an attempt to admit in evidence a false and fabricated



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document in 13366 of 1982. The present defendants 2 to 5, who were respondents in second appeal filed counter to the C.M.P. The defendants 1 to 5 did not enter into compromise of plaintiff. These defendants 2 to 5 did not execute any receipt under document 951, dated 05.05.1980. It is a false and concocted document. The recitals of those documents are false. These defendants 2 to 5 never accepted the validity of the sale deed dated 19.10.1966. The receipt dated 5.5.1980 is a false one and it would not bind the suit property and the defendants 2 to 5. It is a simply creation of plaintiff. It has no legal effect over the plaint schedule property. The defendants 2 to 5 never agreed or promised to withdraw the appeal of the suit in O.S.No.612 of 1973. These defendants did not send any letter to their lawyer to withdraw the suit as alleged. These are manipulation done by plaintiff.

(ii) There is no scope for the plaintiff to remain quite since the defendants did not make any representation to plaintiff as alleged. Actually the appellant argued the case before the appellate Court. After hearing both



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sides this Court was pleased to dismiss the second appeal as well as the C.M.P.No.13366/82. The second appeal and the C.M.P., were rightly dismissed by this Court. The plaintiff was represented by his lawyer in the second appeal and in the same, plaintiff got knowledge of the dismissal of the second appeal as soon as they were dismissed by this Court. The decree in O.S.No.612/1973 and the appellate Court decree are valid and competent. There is no fraud or collusion in dismissing the appeal in S.A.No.2079 of 1978. This Court considered the entire case and the C.M.P., coreectly dismissed both the second appeal and C.M.P., The decree in O.S.No. 612/1973 and the appellate Court decree in that are not liable to be set aside. These defendants are fully competent to execute the decree in O.S.No. 612/1973 and the appellate decree connected therewith. The suit of the plaintiff is barred by resjudicata by reason of the decrees and judgments in O.S.No.612/1973, A.S.No.635/1976, S.A.No.2079 of 1978 and the C.M.P.No.13366/1982. The suit property belongs to defendants 1 to 5. The defendants 2 to 4 have sold them to a stranger. The plaintiff has no right or title over the suit property. The suit is vexatious and it is simply an abuse of



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process of law. The plaintiff is not entitled to any of the reliefs prayed for in the suit. The plaintiff has no cause of action to file this suit.

5. After completing the pleadings and framing of issues, on the side of the plaintiffs, three witnesses were examined as P.W.1 to P.W.3 and marked 12 documents as Ex.P1 to Ex.P12. On the side of the defendants, one witness was examined as D.W.1 and marked 7 documents as Ex.D1 to Ex.D7.

6. On considering the above said oral and documentary evidence, the trial Court dismissed the suit. Aggrieved over the said judgment and decree, the plaintiffs preferred an appeal in A.S.No.61 of 1998, on the file of the Sub-Court, Kuzhithurai. On hearing the arguments, considering the entire materials and re-appreciated the oral and documentary evidence, the appellate Court dismissed the appeal by confirming the judgment and decree of the trial Court.



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7. Aggreived by the said concurrent judgments and decrees, the plaintiffs filed the present appeal.

8. At the time of admitting the present second appeal, this Court framed the following substantial questions of law for consideration:

"a) Whether the Courts below are correct in holding that the case of the respondents is not barred by estoppel?

b) Whether the Courts below are correct in dismissing the suit of the appellants, since Exs.A9 and A10 had already been accepted and marked as exhibits in the case, hence were and are binding on the respondents?

9. The learned counsel for the appellants would submit that the judgments and decrees of the Courts below are against law and unsustainable. The Courts below have failed to appreciate all the materials in this case in a proper perspective manner. The Courts below have failed to see that Ex.A9 in the case unequivocally shows that the defendants have no



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right in the suit property and hence, the plaintiffs are entitled to a decree as prayed for in the suit. The Courts below ought to have held that Ex.A9 is not liable to be set aside, for reason of fraud and collusion. The Courts below ought to have seen that the plaintiffs could not examine the second defendant in the suit, who is an executant of Ex.A9 to prove the same, since he cannot reasonably be expected to speak in support of the case of the plaintiffs and hence, the non-examination of the second defendant on the side of the plaintiffs cannot be held against the plaintiff. The Courts below ought to have held that S.A.No.2079 of 1978 was dismissed by this Court since the defendants did not act as per the promise. Since the plaintiffs' case is not barred by res-judicata on account of Ex.A11 or any other proceedings, the Court below ought to have decreed the suit of the plaintiffs. The Courts below ought to have held that Ex.B1 to B7 are bad for reason of fraud and collusion. The Courts below ought to have proved that Ex.A9 has been properly proved. The trial Court is wrong in holding that the appellants ought to have examined on their side Mr.Ananthakrishnan Nair, Advocate and holding his non-examination as against them. The courts below ought



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to have held that the appellants are absolutely entitled to and are in absolute possession and enjoyment of the suit property. The Courts below ought to have held that the appellants have produced sufficient materials in the case to prove their possession and enjoyment of the suit property. The Courts below ought to have held that Ex.B1 to B7 are legally unsustainable, for their registration in Kerala State. The Courts below ought to have held that since Ex.A9 and A10 had already been received and marked as exhibits in evidence, the same were full-fledged evidence and binding on the defendants. The Courts below ought to have held that the case of the defendants is barred by the principle of estoppel and prayed for allowing this appeal.

10. The learned counsel for the respondents would submit that the sale deed, dated 19.10.1966 is invalid and incompetent. The present defendants 2 to 5 filed O.S.No.612/1973 before this Court for setting aside the sale deed and for partition. To that suit, the present plaintiff is a party. The suit has been decreed with respect of 1/13 share in favour of 5th



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defendant. Against that decree defendants 2 to 5 filed an appeal in A.S.No. 635/1976 before the District Court, Nagercoil and the District Court allowed the appeal in toto and the sale deed was set aside. Against the decree of the first appellate Court, the present plaintiff filed second appeal before this Court in S.A.No.2074 of 1978. These defendants 2 to 5 never accepted the validity of the sale deed dated 19.10.1966. It has no legal effect over the plaint schedule property. The defendants 2 to 5 never agreed or promised to withdraw the appeal of the suit in O.S.No.612 of 1973. These defendants did not send any letter to their lawyer to withdraw the suit as alleged. These are manipulation done by plaintiff. The second appeal and the C.M.P., were rightly dismissed by this Court. The decree in O.S.No.612/1973 and the appellate Court decree are valid and competent. There is no fraud or collusion in dismissing the appeal in S.A.No.2079 of 1978. This Court considered the entire case and the C.M.P., coreectly dismissed both the second appeal and C.M.P. These defendants are fully competent to execute the decree in O.S.No.612/1973 and the appellate decree connected therewith. The suit of the plaintiff is barred by res-



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judicata. The plaintiff has no right or title over the suit property. The suit is vexatious and it is simply an abuse of process of law. The plaintiff is not entitled to any of the reliefs prayed for in the suit. The plaintiff has no cause of action to file this suit.

11. It is seen from the records that the respondents appear to have executed a sale deed in favour of the plaintiffs on 19.10.1966. Thereafter, questioning the sale deed, the respondent have filed O.S.No.612 of 1973 for declaration that the sale deed is not valid. That suit was decreed concurrently and reached the finality also. Thereafter, the defendants therein, who are the petitioners herein, have filed the suit in O.S.No.192 of 1984 for declaration of the title and for possession. After setting aside the decree passed in O.S.No.612 of 1973, both the Courts below have not accepted the case of the plaintiffs. Despite the previous proceedings, the plaintiffs alone are in possession and enjoyment of the suit property and according to him, they had the benefit of injunction only before the trial Court. After the trial, the suit was dismissed. After filing the second appeal



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also, no interim order has been passed. Therefore, after disposal of the case by the trial Court, it is the evidence that the so called possession of the plaintiffs is not protected.

12. While admitting the second appeal, this Court is of the view that this is a prolonged litigation between the parties over the same property, it is very difficult to dislodge the findings of the Courts below and grant injunction in favour of the plaintiffs, who are found to be not in possession of the property, and that is why the suit was dismissed, which was confirmed by the appellate Court. Therefore, this Court dismissed the interim injunction application as the plaintiffs are not in possession of the suit schedule property.

13. With regard to the first substantial question of law, this Court is of the view that a dispute arose between the same two parties regarding the same suit schedule property which was appealed and decided upto the High Court on 21.09.1976 in O.S.No.612 of 1973 and the said judgment



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and decree were marked as Ex.P5 and Ex.P6. and the first appellate Court judgement and decree in A.S.No.635 of 1976 were marked as Ex.P7 and Ex.P8. Against the said judgment and decree, the plaintiffs have filed the second appeal in S.A.No.2079 of 1978 and the said judgment and decree were marked as Ex.P11 and Ex.P12. The said second appeal was dismissed for non-prosecution and the lower Court decree and judgment are sustained accordingly, this amounts to resjudicata. The plaintiff has been estopped based on the sale deed, which is held as not valid. Hence, the first question of law is answered in favour of the respondents and as against the appellants.

14. With regard to the second question of law, this Court is of the view that the claim made by the plaintiff that the second appeal in S.A.No. 2708 was disposed uncontested is false and only after hearing the parties it was decided and not as stated by the plaintiff that the respondents have manipulated and behind their back obtained an order. The said contention is not accepted by this Court. It was alleged that there was an agreement made



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between the plaintiff's father and the respondents prior to the second appeal are found to be untrue and the same is unreliable as it is found that they have not proved the claim as genuine. When the said documents are considered earlier the claim made now in this suit is not accepted and rejected. Ex.A9 is the receipt and the Ex.A10 is the translated copy of the Ex.A9. Hence, the second question of law is answered in favour of the respondents and as against the appellants.

15. In view of the answer given to the two substantial questions of law in favour of the respondents, the second appeal deserves to be dismissed and accordingly, the second appeal stands dismissed. No costs.

Index : Yes / No

Speaking Order : Yes / No

16.10.2024

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To

- 1.The Sub-Court,
Kuzhithurai.
- 2.The II Additional District Munsif,
Kuzhithurai.
3. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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