



A.S.Nos.538 and 539 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.09.2025

PRONOUNCED ON : 10.09.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

A.S.Nos.538 and 539 of 2016

A.S.No.538/2016:

R.Muthamilselvan

... Appellant

vs.

1.Govindarajulu

2.D.Rajappan

3.The Assistant Engineer,
Tamil Nadu Electricity Board,
Subramaniapuram,
Cuddalore Taluk,
Cuddalore District.

... Respondents

PRAYER: First Appeal is filed under Section 96 of the Civil Procedure Code, to set aside the judgment and decree dated 28.04.2015 passed in O.S.No.152 of 2011 on the file of the Principal District Judge, Cuddalore.

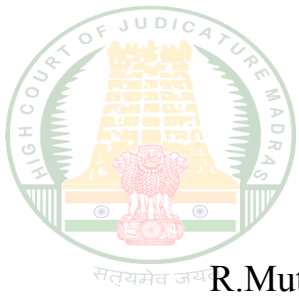
For Appellant : Mr.R.Gururaj

For R1 : Mr.C.Jagadish

For R3 : M/s.J.Hemalatha Gajapathy
Standing Counsel for TNEB

For R2 : No Appearance

A.S.No.539/2016:



A.S.Nos.538 and 539 of 2016

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R.Muthamilselvan

... Appellant

vs.

Govindarajulu

... Respondent

PRAYER: First Appeal is filed under Section 96 of the Civil Procedure Code, to allow this First Appeal and set aside the judgment and decree dated 28.04.2015 passed in O.S.No.172 of 2012 on the file of the Principal District Judge, Cuddalore.

For Appellant : Mr.R.Gururaj

For Respondent : Mr.C.Jagadish

COMMON JUDGMENT

A.S.No.539 of 2016 is filed challenging the dismissal of the suit for declaration and injunction filed by the appellant.

2. A.S.No.538 of 2016 is filed challenging the judgment and decree passed in favour of 1st respondent/plaintiff seeking declaration of title, declaration that the Settlement Deed executed by the 1st defendant in the suit in favour of 2nd defendant was null and void, recovery of possession, permanent injunction restraining the defendants 1 and 2 from alienating the suit property and for mandatory injunction directing the 3rd defendant to disconnect the power service connection effected in favour of the 1st defendant in the suit.

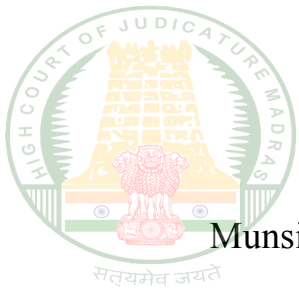


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3. Since the issues in these suits are inextricably mixed up with each other, both the suits were tried together and Common Judgment was rendered by the Trial Court. Since the appeals are connected with each other, they are taken up together for hearing.

4. In this judgment, the expression 'appellant' refers to 'appellant' in both the appeals, plaintiff in O.S.No.172 of 2012 and 2nd defendant in O.S.No.152 of 2011. The expression '1st respondent' refers to 1st respondent in A.S.No.538 of 2016, sole respondent in A.S.No.539 of 2016, plaintiff in O.S.No.152 of 2011 and defendant in O.S.No.172 of 2012. The expression '2nd respondent' refers to 2nd respondent in A.S.No.538 of 2016 and 1st defendant in O.S.No.152 of 2011. The expression '3rd respondent' refers to 3rd respondent in A.S.No.538 of 2016 and 3rd defendant in O.S.No.152 of 2011.

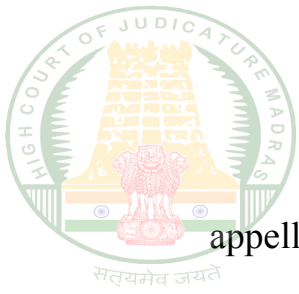
5. The plaintiff in O.S.No.172 of 2012 (appellant in both the appeals) filed a suit for declaration of his title and for permanent injunction restraining the defendants from interfering with his peaceful possession and enjoyment of the property in O.S.No.307 of 2011 on the file of the District



Munsif Court, Cuddalore. The said suit was later transferred and renumbered as O.S.No.172 of 2012 on the file of the Principal District Court, Cuddalore.

6.(i) It is the case of the appellant/plaintiff that the suit property originally belonged to his Junior Paternal Uncle-Natarajan under a registered Sale Deed dated 28.04.1994. He purchased the same from one Devarajulu Naidu. Though on the date of purchase, there was a thatched house in the suit property, the same was not mentioned in the Sale Deed. However, Devarajulu Naidu had executed a Vardhamanam Letter in favour of Natarajan confirming that he conveyed the thatched house and other trees in the suit property in favour of Natarajan. It is further stated by the appellant/plaintiff that Natarajan borrowed money from the father of 1st defendant and deposited original Sale Deed with him in the year 2000. Though the debt was discharged, he failed to get back the original Sale Deed. The above mentioned Natarajan wanted to sell the property in favour of plaintiff's father and hence, he had executed an Agreement of Sale in favour of plaintiff's father on 25.07.1995 which was marked as Ex.B4.

6.(ii) The possession of the subject property was delivered to the



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appellant on the date of Sale Agreement and taking advantage of close relationship, no Sale Deed was executed pursuant to agreement. Since the date of agreement, the plaintiff's father enjoyed the property by residing in the building that situated in the front portion of the suit property with an extent of 0.07 cents and enjoying 0.50 cents of land on the back side of the suit property by raising trees. Subsequently, about 10 years before filing of the suit, the thatched building that stood in the suit property was converted into a tiled house and later, electric service connection was obtained in the name of the 2nd respondent in the year 2005. Thus, the appellant and his predecessor-in-title have been in continuous possession and enjoyment of the suit property for more than the statutory period and prescribed title by adverse possession.

6.(iii) It was further stated that the 1st respondent and his father concocted a Sale Deed in his name as if, the above mentioned Natarajan had executed a Sale Deed in his favour. The 1st respondent based on the said Sale Deed gave a complaint before the Inspector of Police, Land Grabbing Cell, Cuddalore and then only the appellant had acquired knowledge about the said Sale Deed. In these circumstances, the suit was laid seeking declaration



of title and injunction by the appellant against the respondents.

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7. The contesting 1st respondent filed a written statement and resisted the suit by denying various allegations contained in the plaint. It was the specific case of the 1st respondent that he purchased the suit property from Natarajan under a registered Sale Deed dated 14.05.2001 marked as Ex.A1 and he had taken possession of the suit property on the date of sale and has been enjoying the same as *bonafide* purchaser of the property for a value without having notice of any defect in title. It was stated by the 1st respondent that the suit property was vacant site, when he had purchased the same. Taking advantage of the fact that the 1st respondent was residing away from the suit property, the appellant's father-the 2nd respondent herein committed trespass into the suit property during January-2006 and had put up a tiled house. The 1st respondent made sincere efforts to claim back the possession of the suit property amicably but his efforts met with a failure. After enactment of Land Grabbing Act, the 1st respondent preferred a complaint before the Superintendent of Police and during the course of enquiry, the 2nd respondent produced a registered Settlement Deed executed by him in favour of the appellant dated 22.03.2006. Then only the 1st



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respondent acquired knowledge about the same and hence, he was constrained to file a suit for declaration of title, recovery of possession, declaration that Settlement Deed executed by 2nd respondent in favour of the appellant was null and void, injunction restraining the appellant and 2nd respondent from encumbering the property and for mandatory injunction directing the 3rd respondent to disconnect the service connection effected in the name of the 2nd respondent herein/1st defendant in O.S.No.152 of 2011 on the file of the Principal District Court, Cuddalore. Thus, the 1st respondent sought for dismissal of the suit.

8. In O.S.No.152 of 2011 filed by the 1st respondent herein, both the appellant and 1st respondent reiterated their respective pleas as mentioned above.

9. The Trial Court framed the following issues in O.S.No.152 of 2011:-

- (1) Whether the plaintiff is entitled to get the decree for declaration of title over the suit property?
- (2) Whether the plaintiff is entitled to get the decree for relief of declaration that the settlement deed executed by the 1st defendant on



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A.S.Nos.538 and 539 of 2016

22.03.2006 in favour of the 2nd defendant in respect of the suit property is null and void and not binding on the plaintiff?

- (3) Whether the plaintiff is entitled to get the decree for the relief of recovery of possession as prayed for?
- (4) Whether the 1st defendant is in possession of the suit property from 25.07.1995? Is it true to say that re-conveyance of sale agreement dated 25.07.1995 would confer title and right to the 1st defendant?
- (5) Whether the plaintiff is entitled to get the decree for permanent injunction as prayed for?
- (6) Whether the plaintiff is entitled to get the decree for mandatory injunction as prayed for?
- (7) Whether the defendants are claiming the suit property by way of adverse possession?
- (8) To what other reliefs, the plaintiff is entitled to?

10. The Trial Court framed the following issues in O.S.No.172 of 2012:-

- (1) Whether the plaintiff is entitled to get the decree for declaration of title over the suit property?
- (2) Whether the plaintiff is in possession of the suit property as pleaded in the plaint?
- (3) Whether the plaintiff is entitled to get the decree for relief of permanent injunction as prayed for?
- (4) To what other reliefs, the plaintiff is entitled to?



WEB COPY 11. Since the issues involved in both the suits are connected with each other, as per the request made by both the parties, the Trial Court conducted joint trial and recorded evidence in O.S.No.152 of 2011 filed by the 1st respondent.

12. Before the Trial Court, the 1st respondent was examined as PW.1 and Scribe of Ex.A1-Sale Deed in his favour was examined as PW.2. One of the Attestor to Ex.A1-Sale Deed was examined as PW.3. The Junior Engineer of Tamil Nadu Electricity Board was examined as PW.4. On behalf of the 1st respondent/plaintiff in O.S.No.152 of 2011, 9 documents were marked as Exs.A1 to A9.

13. The 2nd respondent in A.S.No.538 of 2016 and 1st defendant in O.S.No.152 of 2011 was examined as DW.1. One of his neighbour was examined as DW.2. Attestor to Ex.B4-Sale Agreement in favour of the 2nd respondent was examined as DW.3 and 4 other witnesses were examined on behalf of the 1st defendant in O.S.No.152 of 2011 as DW.4 to DW.7. On behalf of the defendants in O.S.No.152 of 2011, 44 documents were marked



as Exs.B1 to B44.

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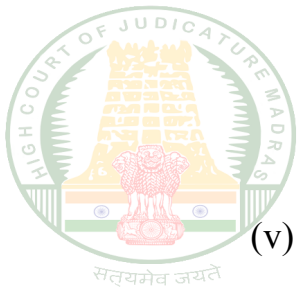
14. On appreciation of evidence available on record, the Trial Court came to the conclusion that the appellant failed to establish adverse possession pleaded by him and the 1st respondent established his title over the suit property. As a necessary consequence, the suit for declaration and injunction filed by the appellant was dismissed and suit for declaration and recovery of possession filed by the 1st respondent was decreed. The Trial Court also held that the Settlement Deed executed by the 2nd respondent in favour of the appellant was null and void. The appellant and 2nd respondent were restrained from encumbering the suit property and the 3rd respondent was directed to disconnect power connection effected in the name of the 2nd respondent. Aggrieved by the above said judgment and decree, the appellant has preferred these two appeals.

15. The learned counsel appearing for the appellant vehemently contended that the appellant proved his continuous possession and enjoyment of the suit property right from the date of Sale Agreement in favour of his father 2nd respondent herein and hence, the Trial Court



committed an error in negating the plea of adverse possession. He further submitted that the Sale Deed in favour of the 1st respondent was a concocted document and the same was obtained by employing impersonation and the said vital plea of the appellant was not taken into consideration by the Trial Court in proper perspective. He further submitted that the Settlement Deed in favour of the appellant will cure any defects in the title of the appellant due to the non-execution of Sale Deed in favour of the appellant's father pursuant to the Sale Agreement dated 25.07.1995. In support of his contention, the learned counsel appearing for the appellant relied on the following judgments:-

- (i) ***Rajpal Singh vs. Saroj (Deceased) Thourgh LRs and another*** reported in ***(2022) 15 SCC 260***.
- (ii) ***Collector of Bombay vs. Municipal Corporation of the city of Bombay and others*** reported in ***AIR 1951 (SC) 469***.
- (iii) ***State of W.B., vs. The Dalhousie Institute Society*** reported in ***AIR 1970 (SC) 1778***.
- (iv) ***Kshitish Chandra Bose vs. Commissioner of Ranchi*** reported in ***AIR 1981 (SC) 707***.



(v) *V.Muthiah Pillai and others vs. Vedambal and others* reported in
WEB COPY 1985-98 LW 606.

(vi) *Yeshwant Deorao vs. Walchand Ramchand* reported in *AIR 1951*
SC 16.

(vii) *Kalianna Gounder (died) S/o.Komaraswami Gounder and others*
vs. Kalianna Gounder S/o.Appavu Gounder and others reported in
1986 (2) MLJ 470.

16. Per contra, the learned counsel appearing for the 1st respondent would submit that the title of 1st respondent was proved by producing Ex.A1-registered Sale Deed in his favour. He further submitted that the Sale Agreement in favour of appellant's father even assuming true, would not create any interest in his favour in the absence of registered document and therefore, the subsequent Settlement Deed executed by the appellant's father in favour of appellant was not valid. The learned counsel for the 1st respondent further submitted that the appellant has not proved his open and continuous possession for more than the statutory period and therefore, the Trial Court was justified in negating the adverse title pleaded by the appellant. In support of his contention, the learned counsel appearing for the



1st respondent relied on the following judgments:-

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- (i) ***Ram Nagina Rai and another vs. Deo Kumar Rai (deceased) by Legal Representatives and another*** reported in ***(2019) 13 SCC 324***.
- (ii) ***Narasamma and others vs. A.Krishnappa (Dead) Through Legal Representatives*** reported in ***(2020) 15 SCC 218***.

17. On perusal of the records and based on the arguments of the learned counsel appearing for the appellant and the respondents, the following points are arising for consideration in this First Appeal:-

- (i) Whether the adverse title pleaded by the appellant was proved by him?
- (ii) Whether the 1st respondent established his title over suit property?
- (iii) Whether the Trial Court was justified in granting consequential relief of recovery of possession, permanent injunction and mandatory injunction as prayed for by the 1st respondent?

Discussion on Point No.1:-

18. A close scrutiny of the pleadings as well as the records would



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establish that the suit property was originally owned by one Natarajan. The appellant claims that his father, the 2nd respondent herein entered into Sale Agreement with the original owner Natarajan under Ex.B4, dated 25.07.1995. It is settled law that the Sale Agreement will not create any interest in immovable property. It is admitted case that no registered Sale Deed was executed by original owner in favour of appellant's father pursuant to the Sale Agreement. It is also admitted that no suit for specific performance was filed by the Agreement Holder namely the father of the appellant. Hence, it is clear that the appellant has no document to establish his title over the subject property. A close scrutiny of the pleadings of the appellant would establish that he is only claiming adverse possession.

19. The appellant claims that his father-2nd respondent herein was inducted into possession of the suit property on 25.07.1995 under Sale Agreement. Possession under Sale Agreement is permissive one and the same will never become adverse as against the owner of the property. In this regard, reference may be had to the decision of this Court in *Annamalai Chettiar and others vs. Muthiah Chettiar and others* reported in *MANU/TN/0237/1964 : (1965) ILR 1Mad 254* and relevant observation



reads as follows:-

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“13. In the instant case the possession of the Respondent was in pursuance of and under the agreement of sale, right from the inception, and, therefore, clearly permissive in character besides being in recognition and acknowledgement of the title of the owner.

... ..

... ..

14. The instant case is governed by a well settled rule of law that if a person is in actual possession and has a right to possession under a title involving a due recognition of the owner's title his possession will not be regarded as adverse in law, even though he claims under another title, having regard to the well recognised policy of law that possession is never considered adverse if it is referable to a lawful title. The purchaser who got into possession under an executory contract of sale in a permissible character cannot be heard to contend that his possession was adverse. (Emphasis supplied by this Court)

... ..

... ..

15. In Ramachandra v. Vasant ILR (1956) Nag. 5 it was observed as follows:

The possession of a person who has admitted the title of the true owners must be regarded as on behalf of the true owners and not independent or adverse to them. It follows



that his continued possession of the property must also be deemed to be in the same capacity unless it is established that he, to the knowledge of the true owners, ceased to hold possession on their behalf and assumed possession in his own right and on his own behalf.

*16. The principle is clear and there is no need to refer to other cases on the point. In our opinion, the possession of the purchaser which was derivative and permissive to start with, not only never became adverse, but on the other hand the permissive character was reaffirmed in the suit for specific performance, with the result that there is no question of the purchaser having acquired title by adverse possession.
... ”*

20. In the pleadings of the appellant absolutely there is no reference about the change of character of his possession from that of Agreement Holder (permissive possession) to hostile possession. A person, who pleads adverse possession must specifically plead and prove the date from which his possession turned hostile as against the real owner of the property and his successor-in-interest.

21. In the case on hand, there is no plea by the appellant from which date his father's possession under agreement turned hostile as against the real



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owner. The possession of the property under Sale Agreement for any length of time will not confer adverse title to the Agreement Holder unless there are definite overt act to establish that his permissive possession under the agreement turned into hostile possession against the real owner. In the pleadings, it was stated by the appellant that at the time of agreement, there was thatched shed in the subject property and the same was converted into a tiled house by his father 10 years prior to the filing of the suit. Even assuming the conversion of the superstructure in the suit property or construction of a tiled house is treated as overt act, even as per the admission in the pleadings, it was done just 10 years prior to the filing of the suit which is less than the statutory period of 12 years. In these circumstances, this Court feels that there is no sufficient plea on the part of the appellant/plaintiff in O.S.No.172 of 2012 to claim adverse possession.

22. Turning evidence available on record, the appellant has not produced any documentary evidence to prove his adverse possession for more than the statutory period. Exs.B5, B8 to B19 are all subsequent to the year 2004 well within eight years prior to the date of filing of the suit. The learned counsel for the appellant vehemently relied on Exs.B21 to B26 to



establish the possession of the appellant over the subject property even prior to the year 2000. However, the appellant is unable to connect the said documents with the suit property in any way. As per the plaint description, the suit property is situated in Vazhuthalampattu Village, Kullanchavady Sub Registry. However, Exs.B21 to B26 are communications addressed to appellant mentioning different village name. From Exs.B21 to B26, we cannot come to a conclusion that the appellant resided in suit property during the relevant period. Because, the Village name differs in those documents. Even assuming the suit village name is mentioned in those documents, we cannot presume the appellant's possession over the subject property when there is no reference about the street name, door number, survey number etc.

23. Adverse possession is a plea which has to be specifically pleaded and meticulously established by cogent evidence. In the case on hand, as discussed earlier, the appellant failed to plead from which date or time his possession turned hostile against the 1st respondent. As mentioned earlier, the evidence available on record are not sufficient to establish any hostile possession. Hence, this Court comes to a conclusion that the appellant failed



to establish adverse title to the subject property and Point for consideration

No.1 is answered against the appellant.

Discussion on Point No.2:-

24. It is admitted case of both the parties, the property originally belonged to one Natarajan. Ex.A1, is the Sale Deed executed by said Natarajan in favour of 1st respondent. It is a registered document and hence, the general presumption available to the registered document weighs in favour of the 1st respondent and Sale Deed is not a document which requires compulsory attestation and therefore, it is not necessary for the 1st respondent to prove the same by calling any one of the Attestor. In the case on hand, the Scribe of Ex.A1 was examined as PW.2 and one of the Attestor to Ex.A1 was examined as PW.3. The learned counsel appearing for the appellant vehemently contended that PW.3 is father of the 1st respondent and therefore, his evidence cannot be given any weightage. It is a common practice to get attestation from persons well acquainted with the purchaser and therefore, merely because the father of the purchaser attested the document, we cannot ignore the evidence of PW.3.

25. A perusal of his evidence would indicate, he clearly stated that he attested the document as Second Attestor. He denied the suggestion that he



concocted the document with the help of Scribe, who was examined as PW.2. A perusal of PW.2's evidence would indicate that he also deposed in favour of 1st respondent's case and suggestion made to him by appellant regarding alleged creation of document was denied by him specifically. Therefore, PW.2 and PW.3, withstood the cross examination by the appellant.

26. Further when a registered document is questioned by appellant, it is for him to establish that said document was concocted by impersonation. It is settled law, registration creates presumption that document is a genuine one and the onus is on the party, who challenges the same. In this regard, I would like to refer to the judgment of the Apex Court in ***Prem Singh and others vs. Birbal and others*** reported in (2006) 5 SCC 353. The relevant portion of the Apex Court reads as follows:-

“13. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent No.1 has not been able to rebut the said presumption.”



WEB COPY 27. In view of the above mentioned settled position of law that persons challenging the registered document shall lead evidence to substantiate the plea raised by him against the registered document, in the absence of any positive evidence on the part of the appellant to prove impersonation pleaded by him, this Court has no hesitation in coming to the conclusion that the 1st respondent established his title under Ex.A1. Accordingly, the Point No.2 is answered in favour of the 1st respondent and against the appellant.

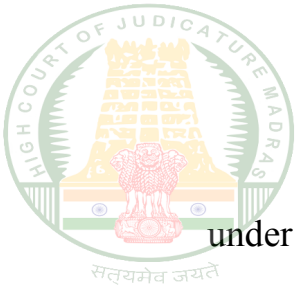
Discussion on Point No.3:-

28. In the Points For Consideration Nos.1 and 2, this Court came to the conclusion that the 1st respondent established title over the subject property and the plea of adverse possession raised by the appellant was not established. In such circumstances, the appellant is not entitled to remain in possession of the suit property. Therefore, the 1st respondent is entitled to decree for recovery of possession. The Trial Court rightly granted the said relief and the same is confirmed.



WEB COPY 29. The learned counsel appearing for the appellant also submitted that the prayer of the 1st respondent to annul the document is barred by limitation. In support of the said contention, he relied on the decision of the Apex Court in *Rajpal Singh vs. Saroj (Deceased) Thourgh LRs and another* reported in (2022) 15 SCC 260.

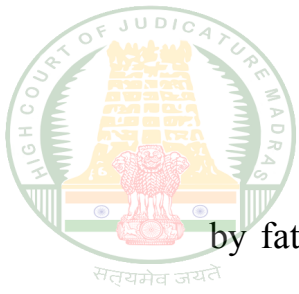
30. A perusal of the pleadings would establish that the 1st respondent specifically pleaded that he acquired knowledge about the Settlement Deed executed in favour of the appellant only in the year 2011, after it was produced by the appellant in an enquiry before the Land Grabbing Cell. The 1st respondent entered the box as PW.1 and deposed to that effect. There is no contra evidence by the appellant to show that the Settlement Deed was within the knowledge of the 1st respondent even prior to that. Therefore, the submission made by the learned counsel for the appellant that prayer for annulment of Settlement Deed is barred by limitation is negatived and the judgment relied on by him is not applicable to the facts of the present case. Further, this Court already came to the conclusion that the Settlor under the Settlement Deed namely the father of the appellant had no title to convey



under the Settlement Deed. In such circumstances, the Settlement Deed will not convey any title to the appellant. Hence, the Trial Court is justified in declaring the same as null and void.

31. The appellant claims that the subject property was settled by his father under registered Settlement Deed. As discussed earlier, the appellant's father is only a mere Agreement Holder and hence, he has no title over the property to convey the same to the appellant. In such circumstances, the Trial Court was justified in declaring the Settlement Deed executed by him in favour of appellant as null and void. The appellant and the 2nd respondent having failed to establish the semblance of right over the subject property are not entitled to encumber the same. Hence, the Trial Court was justified in granting a decree for injunction restraining them from encumbering the subject property.

32. When the title of the 1st respondent is established and it is held that he is entitled to decree for recovery of possession, the 3rd respondent is not justified in extending power service connection to the superstructure raised



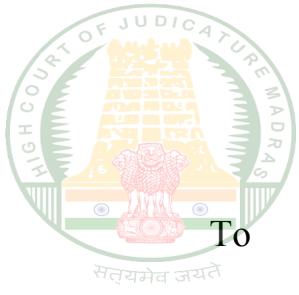
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by father of the appellant namely the 2nd respondent herein. Therefore, the Trial Court rightly granted mandatory injunction directing the 3rd respondent to disconnect the same. The appellant has not made out any case to interfere with any of the findings reached by the Trial Court and accordingly, the Point No.3 is also answered against the appellant and in favour of the 1st respondent.

33. In view of the conclusion reached by this Court in Point Nos.1 to 3, the present Appeals stand dismissed by confirming the judgment and decree passed by the Trial Court in O.S.No.152 of 2011 and O.S.No.172 of 2012, dated 28.04.2015. No costs.

10.09.2025

Index :Yes
Speaking order :Yes
Neutral Citation :Yes
dm



A.S.Nos.538 and 539 of 2016

To

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1. The Principal District Judge,
Cuddalore.
2. The Assistant Engineer,
Tamil Nadu Electricity Board,
Subramaniapuram,
Cuddalore Taluk,
Cuddalore District.



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A.S.Nos.538 and 539 of 2016

S.SOUNTHAR, J.

dm

Pre-delivery Common Judgment made in
A.S.Nos.538 and 539 of 2016

10.09.2025