



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-04-2025

CORAM

THE HONOURABLE MRS JUSTICE T.V.THAMILSELVI

SA Nos. 237 of 2023 & 40 of 2025

AND

CMP Nos. 6756 OF 2023 & 888 OF 2025

SA No. 237 of 2023

Bernath Mary @ Pappathi

Appellant

Vs

Kulanthai Therasa (died)

Jabamalai Raj (Died),

1.S.Arumugham

2.Arokiyaraj

3.Gabriel

4.Thomas

5.Maria Joseph

6.Malorbava Mary

7.Lourdh Mary

8.Peter Arokia Dass

9.Martin Theresa



10.Jaya Mart

11.Mary Jagulin

Respondents

PRAYER in S.A.No. 237 of 2023 :-Second Appeal filed under Sec.100 of Civil Procedure Code, praying to set aside the Judgment and Decree dt. 25-08-2022 made in A.S.No.10/2017 on the file of the Court of the II Additional Subordinate Judge, Coimbatore reversing the Judgment and Decree dated 04.10.2016 made in O.S.No.4584/2004 on the file of III Additional District Munsif, Coimbatore.

S.A.No. 40 of 2025

1. Lourdh Mary

2.Peter Arokia Dass

3.Martin Theresa

4.Jaya Mart

5.Mary Jagulin

Appellants

Vs

Kulandai Theresa (Died)

Jabamalai Raj (Died)

1. S.Arumugham

2.Arokiyaraj

3.Gabriel



4.Thomas

5.Maria Joseph

6.Malorbava Mary

7.Bernath Mary @ Pappathi

Respondents

PRAYER in SA No. 237 of 2023:- Second Appeal filed under Sec.100 of Civil Procedure Code, praying to set aside the judgment and decree dated 25.08.2022 made in AS No.10/2017 on the file of II Additional Subordinate Judge, Coimbatore reversing the Judgment and decree dated 04.10.2016 made in OS No.4584/2004 on the file of III Additional District Munsif, Coimbatore

SA No. 237 of 2023

For Appellant(s): Mr. R.Nandhakumar

For Respondent(s): Mr M.Guruprasad

For R7 to R11

R1 – No appearance

R2 to R6 – Given up

SA No. 40 of 2025

For Appellant(s): Mr. M.Guruprasad

For Respondent(s): Mr R.Nandhakumar

For R7

R1 – No appearance

R2 to R6 – Given up



COMMON JUDGMENT

The appellant in S.A.No.237 of 2023, who is the 13th defendant and the appellants in S.A.No.40 of 2025, who are the defendants 8 to 12 in the suit filed by the 1st respondent/plaintiff seeking for the relief of specific performance before the trial court in O.S. No. 4584 of 2004 on the file of III Addl. District Munsif, Coimbatore and the same was dismissed by the trial court. Against which, they preferred an appeal in A.S.No.10 of 2017 on the file of II Addl. Subordinate Court, Coimbatore and the same was allowed by setting aside the findings of the trial court. Now, challenging the reversal findings of first appellate court, the 13th defendant and defendants 8 to 12 have preferred these Second Appeals respectively.

2. For the sake of convenience, the parties are denoted as per the ranking in the suit.

3. Before the trial court, one Arumugam filed a suit in O.S.No.4584 of 2004 before the III Addl. District Munsif, Coimbatore seeking for the relief of specific performance of sale agreement dated 13.04.1995 directing the defendant to execute the sale deed after receiving balance consideration on or



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before a date to be fixed by this court and put the plaintiff in possession of suit property. According to him, one Irudaya Mariammal, original owner of the suit property entered into sale agreement on 13.04.1995 and she agreed to convey the property for Rs.15,000/-. Time was not treated as essence of the contract, however, three months time was fixed to repay the amount. The plaintiff is always ready and willing to perform his part of agreement, however he occupied the suit property as a tenant and thereafter on 10.07.1995 she received another sum of Rs.25,000/-, for which she made an endorsement on the backside of agreement, but he failed to comply the terms. Therefore, notice was issued on 18.12.1995 calling upon her to execute the sale deed. Notice was returned. Thereafter, he came to know that she died. Again on 23.01.1996 he issued another notice to her daughter Kulandai Theresa, but no reply, but she received monthly rent paid by the plaintiff. Irudaiya Mariammal original owner, had one more son, who predeceased her leaving behind the defendants 2 to 7. Hence, he filed a suit against the legal heirs of Irudaiya Mariammal.

4. The said suit was contested by the 1st defendant, daughter of Irudaiya Mariammal denying the sale agreement said to be executed by her mother. She



stated that her mother died on 25.01.1996 leaving behind herself and other legal heirs of predeceased son Siluvai Muthu, but all the legal heirs have not been added as parties in the suit. Thus, it is clearly revealed that the suit is bad for non-joinder of necessary parties. According to her, her mother was lived with her till her death and she never executed any agreement. She was died at the age of 90 years. In fact, the plaintiff was a tenant while her mother was unwell, he fabricated the alleged sale agreement with the intention to grab the property. Hence, she disputed the sale agreement.

5. The defendants 4 to 6 and 13 have filed a separate written statement, who are the legal heirs born through predeceased son of Irudaiya Mariammal. They have also contended that the suit property belong to Irudaiya Mariammal, which is her absolute property. Further, they have stated that due to her old age, she lost her eye sight as well as hearing capacity. For the job avocation, the 2nd defendant settled in Mumbai. Therefore, Irudaiya Mariammal lived with the 1st defendant. They have also contended that the plaintiff was not a tenant of portion of property, except that he had no other entitlement, but he fabricated the sale agreement, through which he is not entitled for any relief. Hence, they



prayed to dismiss the suit. The 13th defendant contended that Irudaiya

Mariammal executed a Will on 30.11.1988 bequeathing half share of the suit

property in favour of her daughter Kulandai Theresa.

6. Considering both side submissions, the trial judge had framed two issues. The plaintiff had examined himself as P.W.1 and the documents Ex.A1 to A7 were marked on his side. On the side of defendants, D.W.1 and 2 were examined and documents Ex.B1 and B2 were marked. 13th defendant was examined as D.W.1. The sale agreement was marked as Ex.A1, through which the plaintiff claimed that he entered into valid sale agreement with the original owner Irudaiya Mariammal and paid a sum of Rs.15,000/- as advance and another defence made on the back side of sale agreement, through which he able to convince the court that he paid another amount of Rs.25,000/- to Irudaiya Mariammal. But, during the life time of Irudaiya Mariammal, the plaintiff has not taken any steps to perform his part of agreement. However, Irudaiya Mariammal died in the year of 1996 and at the end of January 1996, the plaintiff issued notice to her daughter/1st defendant. Thereafter, the cause of action arose according to plaintiff. But, the sale agreement was disputed by legal heirs of



Irudaiya Mariammal contending that she was aged about 90 years old and she was under the care of 1st defendant and there is no occasion to execute Ex.A1,

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since she had lost her eye sight and hearing capacity. As a tenant, the plaintiff fabricated the said sale agreement. Considering the said objection, the burden is casted upon the plaintiff to prove the genuineness of the sale agreement, but before the trial court, except the plaintiff, he has not adduced any independent witness to prove the execution of sale agreement when it was specifically denied. But, the learned trial judge has extracted the evidence of P.W.1 while observing the findings in para 12 and 13 of judgment, it would clearly reveals that in the year of 1995, Irudaiya Mariammal is aged about 90 years and she has no eye sight and hearing capacity and also she was under the care of her children, but she needs some amount for her medical expenses. Furthermore, he admits that neither her son nor her daughter was the witness to the alleged sale agreement, besides he also admits that agreement was prepared only at his instance. Therefore, trial judge drawn conclusion that Ex.A1 sale agreement is not true and valid one and it was fabricated by the plaintiff taking advantage of old age of original owner, Irudaiya Mariammal and also held that the plaintiff



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not satisfied the court that Ex.A1 was voluntarily executed by the original owner Irudaiya Mariammal. Accordingly, the suit was dismissed holding that agreement is not true and valid one. Against which, Arumugam had preferred an appeal in A.S.No..10 of 2017 before the II Addl. Subordinate Judge, Coimbatore, wherein the first appellate judge held that when the thumb impression in the Ex.A1 is admitted by the 1st defendant, the burden is casted upon her to prove the same. By relying the ratio laid down in the authority reported in **2009(7) MLJ 640** in the case of **Andal and another vs. Chinnasamy**, the first appellate judge held that the plaintiff is also bound to prove that Irudaiya Mariammal borrowed money for medical expenses, but he has not established that Irudaiya Mariammal borrowed money for her medical expenses. Accordingly, the findings rendered by the trial court was set aside and the suit was decreed in favour of plaintiff. Challenging the said findings, son and daughter of deceased Irudaiya Mariammal preferred these Second Appeals. The other legal heirs, who remained exparte are added as respondents in these Second Appeals.



7. The learned counsel for appellants in both appeals would argue that the first appellate court failed to appreciate the oral and documentary evidence adduced on their side, however the trial court rightly appreciated the evidence on record and rightly dismissed the suit. Therefore, they prayed to set aside the findings of first appellate court. The learned counsel also pointed out that lower appellate court failed to appreciate the deposition of P.W.1, who himself admits that Irudaiya Mariammal was not in sound state of mind at the age of 90 and also not established that she voluntarily executed the sale agreement without which granting the relief in favour of plaintiff as such is illegal and liable to be set aside.

8. Considering the facts and circumstances as well as considering both side submissions, this court framed the following the question of law :-

(a) Whether the lower appellate court was just, right and proper in arriving conclusion that the respondent/plaintiff is entitle for a decree of specific performance of Ex.A1 sale agreement by eschewing the facts, circumstances and materials on record, which could show that the Ex.A1 sale agreement is fabricated/created one based on the



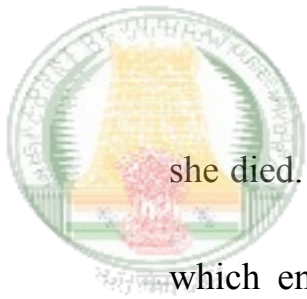
thumb impressions affixed in blank papers by Irudaiya Mariammal for loan purposes?

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(b) Was not the first appellate court in error in ignoring the fact that the plaintiff has withheld the best evidence viz., the attestors to Ex.A1 and also in ignoring the facts and circumstances surrounding the execution of Ex.A1?

9. Notice served, but none appeared on behalf the 1st respondent/plaintiff.

The other respondents given up. Considering submissions of appellanta and on perusal of Ex.A1, sale agreement was produced before this court by way of additional document. Based on that sale agreement Ex.A1, the respondent/plaintiff Arumugam approached the civil court and prayed for the relief of specific performance stating that original owner Irudaiya Mariammal agreed to sell the suit property to him and received a sum of Rs.15,000/- as advance and executed a sale agreement on 13.04.1995. Admittedly, Irudaiya Mariammal was died in the month of January 1996. During the life time, the plaintiff has not taken any steps to get the sale deed executed from her. When he issued first notice on 18.12.1995, it was returned unserved with an endorsement



she died. But, as per the alleged agreement terms, three months time was fixed, which ends in the month of August 1995. Therefore, within that period the

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plaintiff has not expressed his readiness and willingness, however, he pleads that he is a bonafide purchaser. Furthermore, the plaintiff claimed that Irudaiya Mariammal by receiving another amount of Rs.25,000/- extended the time. The said endorsement was marked as Ex.A2 and on a bare perusal of Ex.A2, it reveals that no such time was extended. Furthermore, on bare perusal of agreement, only one witness said to be signed without any proper address and there is one more witness, but it was left as blank. In respect of other endorsement, it does not contain signature of plaintiff. As per the defence of defendants, they categorically denied the execution of sale agreement stating that their grandmother was aged about 90 years and having no eye sight nor having sound state of mind. So, to avail the equitable remedy, the plaintiff bound to prove the execution of sale agreement beyond reasonable doubt. But, except himself no other independent witness to prove the execution of agreement. The evidence of P.W.1 also reveals that he himself admits that he was a tenant of suit property under the original owner Irudaiya Mariammal and



also she is an illiterate lady, however, she was survived with son and daughter viz., Irudaiya Mariammal and Siluvai Muthu, but they were not witnesses to the

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alleged agreement. He would further submit that he has not paid rent nearly about 3 years and also admits in the cross-examination that in the year 1995, she was aged about 90 years, she has lost her eye sight and hearing capacity. The admission made by P.W.1 himself reveals that Irudaiya Mariammal was aged about 90 years at the time of agreement and she was not in sound state of mind and she lost her eye sight and hearing capacity. Furthermore, daughter was alive, but she was not called upon. The trial court rightly observed that Ex.A1 the alleged sale agreement is tainted with suspicion and as a tenant, he fabricated the said document. Though there is a defence taken by the defendant that Irudaiya Mariammal might have received some amount for medical expenses, which would not amount to the fact that they have admitted the sale agreement as erroneously observed by the first appellate judge. On perusal of findings of first appellate judge, it reveals that he has not assigned any reason to set aside the findings of trial judge. Without proper appreciation of evidence of P.W.1, who himself admits that the original owner Irudaiya Mariammal was not



in sound state of mind. Therefore, the findings given by the first appellate judge is liable to be set aside as it is illegal and unreasonable one. Accordingly, question of law (a) is answered.

10. As he approached the court for availing discretionary relief, he is bound to prove the execution of sale agreement to avail the remedy, but he failed. Moreover, he withheld his evidence by not taking examination of witnesses and the same was not appreciated by the first appellate judge. Hence, the findings rendered by the first appellate court is erroneous one. Accordingly, the question of law (b) is answered.

11. Furthermore, the plaintiff relied Ex.A2 stating that by receiving balance amount of Rs.25,000/- Irudaiya Mariammal has extended the time. As rightly pointed out by appellants' counsel, there is no extension of time mentioned in the alleged endorsement nor it contains the signature of plaintiff. So also, the plaintiff has not taken any steps to prove Ex.A2 endorsement, thereby the agreement has not been proved beyond reasonable doubt. But the first appellate court failed to appreciate all these facts and erroneously granted the relief as such is perverse and liable to be set aside. Moreover, from the



evidence of P.W.1, he admits that he has not paid any rent for nearly 3 years, which itself shows that he is in illegal occupier of the suit property, however,

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eviction was ordered. If at all, any application is filed to take possession of the property, the trial court is directed to dispose the said application within a period of three months from the date of this judgment for the reason that from the year of 1995 onwards, the original legal heirs of Irudaiya Mariammal suffered due to the conduct of alleged tenant Arumugam and he is abusing the process of law by creating fabricated records. Therefore, he is liable to be vacated from the premises as early as possible. Accordingly, both Second Appeals are allowed and the findings rendered by the first appellate court in A.S.No. 10 of 2017 is set aside. Suit is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

29-04-2025

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No



SA No. 40 of 2025



1. II Addl. Sub-Judge, Coimbatore.

2. III Addl. District Munsif, Coimbatore.

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



SA No. 40 of 2025



T.V.THAMILSELVI J.

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