



S.A. No.179 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 19.03.2025

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

S.A.No.179 of 2025
and
CMP.No.5161 of 2025

Devaraj

... Appellant

Vs

1.Selvaraj
2.Jayarani
3.Rajarathinam
4.Ramasamy

... Respondents

For Appellant : Mr.N.Manoharan
For Respondents : Mr.A.Arun

PRAYER: Second Appeal filed Under Section 100 of the Civil Procedure Code, against the Judgment and decree dated 24.10.2024 made in A.S.No.40 of 2023 on the file of the Principal District Court, Dharmapuri, reversal of the Judgment and decree dated 10.10.2022 made in O.S.No.115 of 2014 on the file of the Principal Subordinate Court, Dharmapuri.



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JUDGMENT

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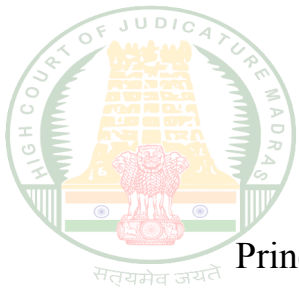
The appellant has filed this Second Appeal against the judgment and decree of the learned Principal District Judge, Dharmapuri in A.S.No.40 of 2023 dated 24.10.2024 reversing the judgment and decree of the learned Principal Subordinate Judge, Dharmapuri, in O.S.No.115 of 2014, dated 10.10.2022.

2. Heard Mr.N.Manoharan, learned counsel for the appellant, and Mr.A.Arun, learned counsel appearing for the respondents, and perused the material available on record.

3. For the sake of convenience, the parties herein are referred to as they were ranked in the suit.

4. Challenging the reversal findings of the first appellate court, the plaintiff has preferred this appeal. The Appellant herein is the Plaintiff in Suit O.S. No. 115 of 2014 on the file of the Principal Subordinate Court, Dharmapuri, and 1st Respondent in A.S. No. 40 of 2023 on the file of the

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Principal District Court, Dharmapuri. Challenging the reversal findings of the learned First Appellate Judge, he has preferred this Second Appeal on the following grounds.

i. The judgment and decree passed by the Ld. First Appellate Court is against law, weight of evidence and all probabilities of the case.

ii. It is submitted that the Ld. first appellate court has gone into the validity of the sale agreement (Ex.B3) which was the subject matter in the previous suit for specific performance in O.S. No. 60 of 1997, which was decreed and a sale deed was executed through court on 18.08.2010.

iii. It is submitted the Ld. First Appellate Court sat over the judgment and decree dated 30.06.2003 made in O.S. No. 60 of 1997 (Ex.A3) instead of deciding the judgment and decree made in O.S. No. 115 of 2014. The procedure adopted by the Ld. 1st Appellate Court is not only erroneous and also impermissible in law.

iv. It is submitted that even though an exparte decree and Judgment was made in O.S. No. 60 of 1997, in law, it is a valid decree and judgment unless and until it is set aside or reversed in the manner known to law.

v. It is submitted that the readiness and willingness on the part of the



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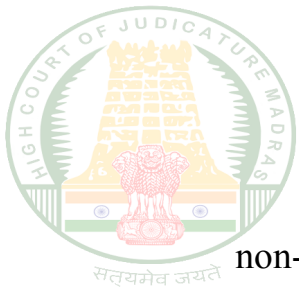
plaintiff in O.S. No. 60 of 1997 has been discussed in the present appeal suit filed against O.S. No. 115 of 2014. The entire reasonings given in Para Nos. 12 and 13 are totally perverse and against law.

vi. It is submitted that the possession is an incidental in a suit for specific performance. The suit in O.S. No. 60 of 1997 was not filed for the relief of permanent injunction simplicitor to invoke the bar under Sec. 53-A of the Transfer of Property Act, whereas, it was filed for the relief of specific performance.

vii. It is submitted that the sale deed dated 18.08.2010 is not in dispute. It was executed by the court in O.S. No. 60 of 1997 and it is presumed to be true and genuine under Sec. 114 (e) of the Evidence Act. In fact, it has not been challenged by the defendants till this date.

viii. It is submitted that the sale deed dated 18.08.2010 executed in EP No. 410 of 2004 in O.S. No. 60 of 1997 was duly registered and it is presumed to be valid as per Sections 56, 58 to 60 of the Registration Act, 1908.

ix. It is submitted that the 1st defendant was set exparte. He was not examined on the side of the defendants 2 to 4. No explanation given for his



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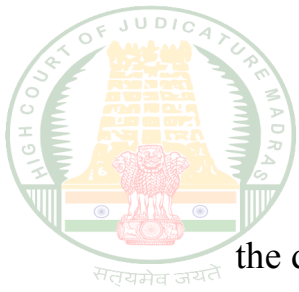
non-examination. Therefore, the Ld. First Appellate court ought to have drawn adverse Inference under Sec. 114(9) of the Evidence Act.

x. It is submitted that not only the 1st defendant and also the defendants 2 and 3 were exparte in O.S. No. 60 of 1997 and equally in EP No. 410 of 2004. If the defendants 2 and 3 had bonafidely purchased the property from the 1st defendant, they could have contested the said suit diligently.

xi. It is submitted that the judgment and decree in O.S. No. 60 of 1997 and the orders made in EP No. 410 of 2004 had attained finality. Its validity is not under challenge. Therefore, the Ld. First Appellate Court ought to have refrained from deciding its validity in the present appeal.

xii. It is submitted that there is no reference about Ex.B6 to Ex.B8 in the written statement filed by the defendants 2 and 3. No amount of evidence could be looked into in the absence of pleadings. Therefore, Ex.B6 to Ex.B8 are liable to be eschewed.

xiii. It is submitted that Ex.B9 and Ex.B10 are not related to the suit property. The 4th defendant is not a bonafide purchaser for value. He had acted in aid of the defendants 1 to 3. There is no bonafideness on the part of



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the defendants.

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xiv. It is submitted that the Ld. First Appellate Court has not adverted to the reasons given by the Ld. trial Court as per the mandate of Order 41 Rule 31 CPC.

xv. The other reasons given by the Ld. First Appellate court are not correct and unsustainable in law.

5. By submitting the above grounds, the learned counsel for the Appellant contends that the following substantial question of law is involved in this matter.

"a) Has not the Ld. First Appellate Court erred in testing the validity of the judgment and decree dated 30.07.2003 made in O.S. No. 60 of 1997 (Ex.A3 and Ex.A4), in the appeal suit in A.S. No. 40 of 2023 filed against another suit in O.S. No. 115 of 2014, in the absence of any challenge made against Ex.A3 and Ex.A4 in the manner known to law?

b) Whether the Ld. First Appellate court is right in holding that the unregistered sale agreement dated 06.10.1994 (Ex.B3) is hit by Sec. 53-A of the Transfer of



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Property Act, 1882, especially when the suit for specific performance on the basis of Ex.B3 was decreed and a sale deed dated 18.08.2010 executed in E.P. No. 410 of 2004 in O.S. No. 60 of 1997?

c) Has not the Ld. First Appellate Court went wrong in sitting over the judgment and decree in O.S. No. 60 of 1997 (Ex.A3 and Ex.A4), when there was no application to set aside the exparte decree or appeal suit filed by the defendants therein?

d) Whether the judgment of the Ld. First Appellate Court is perverse for ignoring the principles of constructive res judicata and issue estoppel besides the bar under Order 41 Rule 31 CPC?"

6. To substantiate his arguments, the learned counsel has relied on the following authorities.

i. 2007 (8) SCC 329, Saroja Vs. Chinnusamy (dead) and ors.

ii. 2019 (3) SCC 520, Vijay A Mittal and ors. Vs. Kulwant Rai (dead)

and anr.



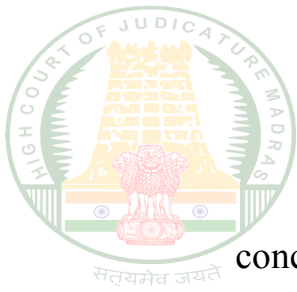
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iii. 2015 (5) SCC 223, Rathnavathi and anr. Vs. Kavita Ganashamdas.

iv. 2017 (9) SCC 622, Nadiminti Suryanarayan Murthy (dead) Vs. Kothurthu Krishna Bhaskara Rao and ors.

7. In reply, the learned counsel appearing for the Respondents argues that the trial court, based on mere assumptions and presumptions, erroneously decreed the suit in favour of the Plaintiff. This was rightly set aside by the learned First Appellate Judge, who independently analyzed the oral and documentary evidence on record and rightly held that the suit is not maintainable. He submits that the findings of the learned First Appellate Judge require no interference by this Court.

8. Furthermore, the Respondents' counsel pointed out that the Plaintiff was not in possession of the suit property, nor did he produce any document to prove possession, which is a mandatory requirement to obtain relief of declaration and permanent injunction. He failed to establish possession or any valid title over the suit property, which was rightly



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concluded by the learned First Appellate Judge.

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9. Additionally, the decree obtained by the Plaintiff in the earlier suit, O.S. No. 60 of 1997, is also tainted with illegality, which was duly considered by the learned First Appellate Judge while dismissing the present suit. Therefore, no substantial question of law arises in this case. Hence, he prays for the dismissal of the Second Appeal, relying on the following authorities:

- (i) *Ayyavoo Vs. Dharmalingam*, 2019 SCC Online Mad 19527
- (ii) *R. Stella Vs. V. Antony Francis*, 2019 (3) MWN (Civil) 647

10. Brief Facts of the Case:

The Appellant, as Plaintiff, filed Suit O.S. No. 115 of 2014 against four Defendants before the trial court, seeking a declaration of his right and title over the suit property and a permanent injunction restraining the defendants from interfering with his possession and enjoyment of the suit property as described in the plaint schedule. According to the Plaintiff, he entered into a sale agreement with the first Defendant on 06.10.1994. However, the first Defendant subsequently evaded execution of the sale



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deed by colluding with Defendants 2 and 3. Consequently, the Plaintiff filed a suit for specific performance in O.S. No. 60 of 1997 against all the Defendants. Upon receiving notice, in that suit defendants 1 to 3 did not contest the case and remained ex-parte. An ex-parte decree was granted in favour of the Plaintiff on 30.07.2003. After obtaining the decree, the Plaintiff deposited the balance sale consideration in court to enable execution of the sale deed. Thereafter, he filed Execution Petition E.P. No. 410 of 2004, pursuant to which, on 18.10.2010, the court executed the sale deed in his favour. The Plaintiff claims that possession of the suit property was handed over to him on the date of the agreement. Therefore, as of date, he contends that he is in possession of the suit property.

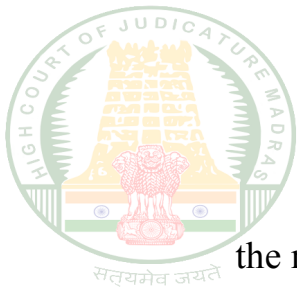
11. Subsequently, the second and third defendants claimed that they have rights in the property and sold a portion of the property, to an extent of 1,266 square feet, in favour of the fourth defendant (D4) on 21.04.1997. However, the said sale deed is not binding on the plaintiff and caused interference. Therefore, the suit was filed for a declaration and to restrain such interference.



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12. The second and third defendants contested the case stating that they purchased the property from the first defendant in the year 1992 for valid consideration and have been in possession of the property ever since. They claim to be enjoying the property as absolute owners and assert that a portion of the property was sold to D4 on 25.02.1997. In the remaining extent of the property, a school and polytechnic were being run under a lease. They denied that the plaintiff is in possession of the property.

13. Further, they submitted that they purchased the property from the first defendant much earlier than the suit filed by the plaintiff in O.S. No. 60 of 1997. As of today, they claim to have valid right, title, and possession of the property. They also alleged that the plaintiffs were aware of these facts but suppressed those facts while approaching the court. They obtained an ex parte decree by falsely stating that they were in possession of the property, based on a purported sale agreement, and also failed to properly describe the property. Therefore, the said decree is not binding on the defendants, nor is it valid, it is a void decree. Based on that, the plaintiff is not entitled to claim any right or title over the property, nor is he entitled to



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the relief of permanent injunction, as he is not in possession of the property.

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14. The fourth defendant also raised objections similar to those of the second and third defendants. He claimed to have purchased the property for valid consideration on 21.04.1997 and stated that the remaining properties were leased to the Vivekananda Trust. At no point was the plaintiff in possession of the property. He alleged that, in order to extort money, the plaintiff obtained an ex- parte decree by giving false information and without paying the correct court fee. As of today, the properties have been converted into house plots, and hence the plaintiff is not entitled to any relief.

15. Considering submissions from both parties, the trial court framed four issues,

"a. Whether the plaintiff is in possession and enjoyment of the schedule property?

b. Whether the plaintiff is entitled for declaration of title to the suit property?



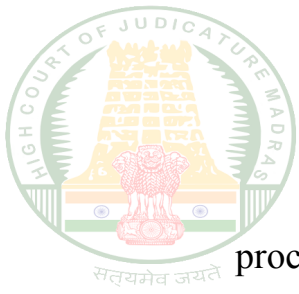
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c. Whether the plaintiff is entitled for separate injunction restraining the defendants from trespassing in the suit property?

d. Whether the sale deed executed by Sub Judge, Dharmapuri in REP 410/2004 is a void document?"

16. Both parties adduced oral and documentary evidence, on the side of the plaintiff P.W.1 was examined and Ex.A1 to Ex.A4 were marked. On the side of the defendants D.W.1 to D.W.5 were examined and Ex.B1 to Ex.B17 were marked and on the side of Court Ex.C1 to Ex.C10 were marked.

17. With regard to issues number 'b' and 'd', the learned trial judge, upon considering the evidence on record, held that the plaintiff did not produce the sale deed said to have been executed by the Court in E.P. No. 410 of 2024, nor did he produce any certified copy. However, he had obtained an ex-parte decree against defendants 1 to 3 in an earlier suit, O.S. No. 60 of 1997, wherein he sought the relief of specific performance. Based on that decree, a sale deed was executed by the Court in execution



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proceedings.

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18. Therefore, the plaintiff is held to have valid title to the property, as the sale deed was executed in his favour in respect of the suit property. However, due to the non-production of the alleged sale agreement submitted in the earlier suit, the court was unable to determine whether it was valid. Nevertheless, the notice issued by the plaintiff to the first defendant (marked as Ex. B1) demanded execution of the sale deed, to which the defendants replied (Ex. B4). Thereafter, earlier suit was filed, and an ex parte decree was granted in favour of the plaintiff since the defendants remained absent. Thus, the sale deed executed by the court was conclude as valid.

19. Accordingly, the trial court declared that the plaintiff is the owner of the suit property. In regard to the relief of permanent injunction, the learned trial judge considered oral and documentary evidence, including Exhibits B6 to B8, which are lease agreements executed in favour of Vijayananda Educational Institution. After the cancellation of an earlier



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lease agreement, a new lease was executed (Ex.B6). However, the defendants did not provide a proper explanation for these transactions. The Encumbrance Certificate (Ex. B4), relied on by D4, does not reflect the plaintiff's sale deed. Nonetheless, the defendants did not appear before the court or raise objections in the earlier suit proceedings. Therefore, the objections raised by them in the present suit are not acceptable. Moreover, they did not take any steps to set aside the ex parte decree.

20. Furthermore, in the earlier suit, the plaintiff had pleaded that he was in possession of the property, based on which the ex parte decree was granted. Therefore, he is presumed to be in possession of the property. Accordingly, the suit was decreed in his favour.

21. Challenging the said findings, the appeal was preferred by defendants 2 to 4 in A.S. No. 40 of 2023 before the Principal District Court, Dharmapuri. The learned First Appellate Judge, after considering the evidence on record, framed the points for consideration as (i) Whether the trial court is justified in coming to the conclusion that the



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respondent/plaintiff is having title to the suit property? (ii) Whether the trial court is justified in coming to the conclusion that the respondent/plaintiff is in possession of the suit property ? (iii) Whether the judgment and decree of the trial court is in accordance with law or is liable to be set aside ?".

22. The learned First Appellate Judge observed that in the plaint averments, the plaintiff did not mention anything about the earlier agreement of sale through which he traces his title. However, the sale agreement was produced as Ex.B4 by the contesting defendants. Upon perusal, it was found that the sale agreement was executed on plain paper and not on judicial stamp paper. The signatures of the parties are not found on the first page but are allegedly present on the second page, after the description of the property, bearing the signatures of D1 and the first plaintiff.

23. Based on this document, the plaintiff filed a suit for specific performance in O.S. No. 60 of 1997, and an ex-parte decree was granted in his favor, which was marked as Ex.A3. A perusal of the said judgment



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findings reflect as follows "that the plaintiff was examined as P.W.1, and Exs.A1 to A4 were marked, and the claim was proved. Accordingly, the suit was decreed as prayed for. However, there was no discussion by the Trial Court about the genuineness of the sale agreement, nor any finding with regard to the plaintiff's readiness and willingness to perform his part of the contract.

24. Further, the plaintiff failed to explain why a two-year time period was stipulated for the remaining sale consideration. Notably, within the six-month period from the date of the alleged agreement, the plaintiff did not take any steps. It was only on 04.04.1997, after the expiry of the six-month period, that the plaintiff issued a notice. Meanwhile, the first defendant had already sold the property to defendants 2 and 3 on 25.02.1997. Although these facts were mentioned in the earlier plaint, they were not considered by the learned Subordinate Judge, Dharmapuri, in O.S. No. 60 of 1997.

25. Despite this, the present defendants did not take steps to set aside



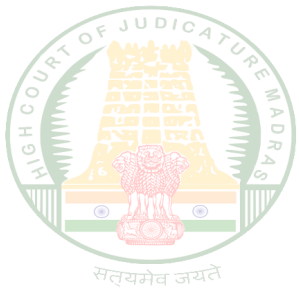
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the ex-parte decree nor did they participate in the execution proceedings.

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Even so, the burden remained on the plaintiff to prove his case to avail the remedy of specific performance as required under Section 16(2) of Specific Relief Act. Indeed, the plaintiff did not even produce the sale deed executed by the court in his favour in the present case. Defendants 2 to 4 did not admit the execution of the sale deed. On the contrary, they contended that the said sale deed was obtained by suppressing the real facts and categorically denied its execution. They also argued that the decree obtained by the plaintiff in O.S. No. 60 of 1997 is a void decree. Under such circumstances, the plaintiff was bound to prove his case but failed to prove his right and title. Accordingly, issue no.1 was answered.

26. In respect of Issue No. 2, the learned Trial Judge held that the plaintiff had not filed any document to show that he was in possession of the suit property from the date of the sale agreement until the filing of the suit.



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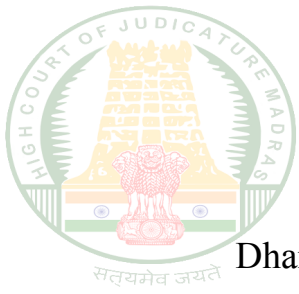
27. By relying on the ratio laid down in the case *Ameer Minhaj vs*

Dierdre Elizabeth (Wright) Issar on 4 July, 2018, in which stated as follows:

"10. On a plain reading of this provision, it is amply clear that the document containing contract to transfer the right, title or interest in an immovable property for consideration is required to be registered, if the party wants to rely on the same for the purposes of Section 53A of the 1882 Act to protect its possession over the stated property. If it is not a registered document, the only consequence provided in this provision is to declare that such document shall have no effect for the purposes of the said Section 53 of the 1882 Act. The issue, in our opinion, is no more res integra."

28. The learned Judge held that, assuming that the plaintiff was in possession of the property, if so the said agreement would require registration in order to protect such possession under Section 53A of the Transfer of Property Act. However, the agreement in question was not a registered one.

29. Furthermore, while executing the sale deed, the court had observed that the plaintiff was entitled to approach the Subordinate Court,



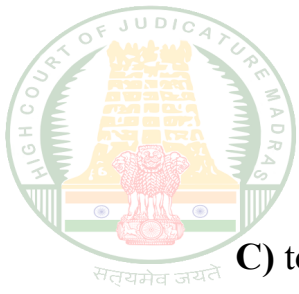
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Dharmapuri, to obtain possession of the suit property. This observation itself indicates that the plaintiff was not in possession of the property.

Without considering these factual and legal aspects, the Trial Court decreed the suit, which the First Appellate Court held to be erroneous, accordingly, the appeal was allowed and the findings of the Trial Court were set aside.

30. Now, the learned counsel for the plaintiff, challenging the said findings, has filed the present appeal. He argues that the observations made by the First Appellate Court regarding the earlier ex-parte decree obtained by him in O.S. No. 60 of 1997 are unwarranted for the reason that Defendants 2 and 3, who were also parties in the suit, did not take any steps to set aside the said ex-parte decree, as such, the decree is valid. Consequently, the court executed the sale deed in his favor, making him the absolute owner of the property relying the said decree the Trial Court rightly granted the relief. However, the First Appellate Court erroneously concluded that the said ex parte decree was void and not binding on the defendants. Such a finding is perverse and liable to be set aside. The learned counsel relied on the authority reported in **2007 (8) SCC 329 (Type**

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C) to substantiate that even an ex parte decree is a valid decree.

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"Civil Procedure Code, 1908 - Ss.2(2), 11 and Or.9 R.6 - Ex.parte decree - Binding effect of - When amounts to res judicata - Effect of fraud or collusion in obtaining of ex-parte decree - An ex-parte decree is as good and effective as a decree passed after contest and would operate as res judicata on the same principles as a decree passed after contest, unless the party challenging the ex-parte decree satisfies the Court that such an ex-parte decree was obtained by fraud or collusion."

31. In response, the learned counsel for the contesting respondents submitted that the ex-parte decree obtained by the plaintiff in the earlier suit, O.S. No. 60 of 1997, was granted without compliance with Order XX Rule 4 CPC. Therefore, the decree is illegal and would not bind the defendants, even if they remained ex-parte. For that contention, they relied on the authority reported in 2019 (3) MWN (Civil) 647.

"CODE OF CIVIL PROCEDURE, 1908 (5 of 1908), Order 20, Rule 4 -CONSTITUTION OF INDIA, Article 227 - Court should state concise statement of case, points for determination, decision thereon together with reasons for such decision Cryptic Judgment, which does not satisfy above, is ex facie illegal - Ex parte Decree and Judgment should also satisfy such test - Ex parte Decree passed without compliance of above factors not sustainable Court exercising powers under Supervisory jurisdiction cannot ignore illegality of ex



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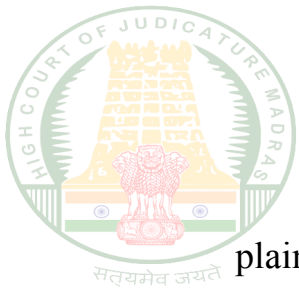


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parte Decree Revision Petition filed against Order dismissing Petition to condone delay in filing Application to set aside ex parte Decree, liable to be allowed for ex parte Decree is illegal as violating Order 20, Rule 4 -Delay condoned and directions issued to Subordinate Court to set aside ex parte Decree on Defendant depositing specified sum. (Paras 19 - 23)"

32. Considering both the submissions, it is true that the plaintiff obtained an ex parte decree in O.S. No. 60 of 1997 against respondents 2 and 3. The said decree has not been set aside as of now. Based on the ex parte decree obtained in O.S. No. 60 of 1997, the plaintiff executed the decree and obtained a sale deed through execution proceedings. Based on the said sale deed, he is now claiming right and title over the suit property. Therefore, it clearly implies that the plaintiff is tracing his right and title based on the alleged sale agreement executed by the first defendant in his favour, dated 06.10.1994. After issuance of notice to defendants 1 to 3, the said suit was filed and the ex parte decree was obtained.

33. As rightly pointed out by the counsel for respondents 1 to 3 / defendants 2 to 4, the said ex parte decree is a cryptic order. The plaintiff herein was examined as P.W.1 and Exhibits A1 to A4 were marked. The



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plaint was accepted, and a decree was granted. However, the law requires that even an ex parte judgment must contain, in the event of the defendants failing to appear in the suit, certain essential elements. The ex parte judgment and decree shall include the statement of the case, points for determination, and reasons for such decisions as required under Order XX Rule 4(2) of the CPC. This implies that all the ingredients required under Order XX Rule 4(2) must be present in the judgment. It casts a duty upon the court to state its reasons on each issue. To that effect, he relied the authority reported in 2019 (3) MWN (Civil) 647, in which stated as follows:

"15. This Judgment suffers from two patent illegalities. The first illegality is that the Judgment is not in conformity with Order 20, Rules 4 & 5 of the Civil Procedure Code, and it is apparently, on the face of it illegal. The second illegality is that the Judgment does not even say what is the balance amount that has to be deposited by the Plaintiff. There is no indication to show that the Court had taken into consideration the so called payment of a sum of 24,50,000 claimed to be paid by the Plaintiff to Ashok Kumar Chordia. There is absolutely no proof for the said payment and the Court has also not given any findings regarding the same. The minimum requirement for a Suit for Specific Performance, namely, the readiness and willingness that requires to be proved, has not even been dealt with in the Judgment.

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17. The above said facts, which pertains to mandatory legal requirements, ought to have been considered by the Court below, while deciding the Application filed for condoning the delay in filing the Petition to set aside the ex parte Decree."

34. Considering the said legal proposition and upon perusal of the ex parte decree marked as Ex.B3, it is only a cryptic order. There is no framing of issues with regard to the readiness and willingness of the plaintiff, nor there is any issue regarding the plaintiff's possession. Also, no issues were framed regarding the alleged purchase made by the second and third defendants in that suit. Without any discussion or adjudication, the learned trial judge simply passed a cryptic order. Therefore, the said ex parte decree is not legally valid, as it does not comply with the requirements of Order XX. The said decree is therefore illegal under Order XX Rule 4, and the same was rightly observed by the learned first appellate judge. However, the learned trial judge failed to appreciate these legal principles, especially when there was an apparent error on the face of the record.

35. Hence, the decree suffers from illegality, and when there is an



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error apparent on the face of the record, the first appellate court is right in testing the validity of the judgment and decree passed in O.S. No. 60 of 1997. Accordingly, question of law A and C are answered.

36. The learned counsel for the appellant also contended that based on the ex parte decree, the sale deed was executed. Therefore, the first appellate judge has no right to hold that the unregistered document relied upon by the plaintiff (Ex.B3) attracts Section 53A of the Transfer of Property Act, as such, that observation is unwarranted and beyond the scope of the relief claimed in the plaint. Hence, prayed to set aside the findings of the 1st appellate court.

37. Upon perusal of the records, it is seen that the plaintiff filed a suit, O.S. No. 60 of 1997 (originally O.S. No. 33 of 1997) in the vacation court. This was later renumbered as O.S. No. 60 of 1997. The plaintiff claimed that he was in possession of the property based on a sale agreement. In that suit, he prayed for two reliefs: one for specific

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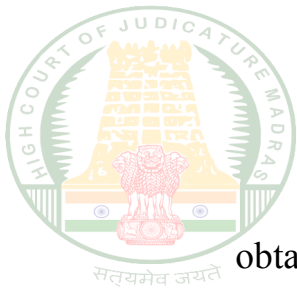
performance, and another seeking an injunction restraining interference.

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38. However, as rightly pointed out by the counsel for the respondents, no document was produced before the trial court in the earlier suit to prove that the plaintiff was in possession and enjoyment of the suit property from the date of the agreement. Despite the absence of documentary evidence, the learned trial judge granted an ex parte decree as prayed for.

39. While executing the sale deed, the Subordinate Court, Dharmapuri, directed the plaintiff to approach the court of law to obtain possession of the property. This itself clearly proves that the plaintiff was not in possession of the property, contrary to his statement in the plaint. Thereafter, the plaintiff filed the present suit for declaration and permanent injunction, again claiming that he is in possession of the property.

40. In the earlier suit as well, he suppressed the real facts of the case and falsely stated that he was in possession of the property, thereby



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obtaining an ex parte decree without producing any document. The court

also erred in granting such a decree without proper application of mind.

However, it is a settled proposition that a litigant should not be suffer due to the mistakes committed by the court. The present case falls also within that category, since, although the defendants remained ex parte, the learned trial judge ought to have verified the records.

41. Further, the duty casted upon the plaintiff to approach the court with clean hands, especially in suits seeking relief of specific performance where such honesty is mandatory. As discussed above, the plaintiff was never in possession of the property. Yet, in all courts, he falsely claimed possession with an ulterior motive and misrepresented the facts. Therefore, he did not approach the court with clean hands, instead abused the process of law in an attempt to grab the property based on an unregistered sale agreement, which, as observed by the learned first appellate judge, did not even bear a signature on the front page.

42. Based on the said unregistered agreement, the plaintiff is



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claiming possession of the property. However, the law mandates that such an agreement must be registered under Section 53A of the Transfer of Property Act. Hence, while deciding the issue of permanent injunction based on alleged possession, the learned first appellate judge rightly analyzed that the plaintiff did not possess a valid agreement, and that the ex-parte decree obtained was also illegal. Therefore, the findings rendered by the learned first appellate judge on the issue of permanent injunction are sustainable and requires no interference. Accordingly, Question of Law B is answered.

43. The learned counsel for the appellant further submitted that the plaintiff was the first agreement holder, and that the second and third defendants colluded with the first defendant to create another sale agreement. He argued that the sale deed executed in favour of the second and third defendants would not bind the plaintiff. For this, he relied upon the authority reported in **(2024) 8 Supreme Court Cases 83**, in which stated as follows:

A. Contract and Specific Relief - Specific Relief Act,



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1963 - S. 19(b) Specific performance of agreement to sell - Plea of bona fide purchase by subsequent purchasers i.e. after execution of agreement to sell Impermissibility of, when agreement to sell registered as required by law Deemed constructive notice under S. 3 Expln. I TPA when registration of agreement to sell is made compulsory by law - Principles clarified

- Proper relief in such case that buyer under the prior agreement to sell may claim i.e. grant of decree of specific performance against such subsequent purchasers, rather than Cancellation of the subsequent sale deeds - Reiterated."

44. Though the legal principle laid down in that case is acceptable, in the present case, the facts differ. The plaintiff allegedly entered into a sale agreement with the first defendant dated 06.10.1994. As per the agreement, the sale deed was to be executed within six months, but the first defendant failed to do so. The plaintiff issued notice on 04.04.1997 to defendants 1, 2, and 3. However, defendants 2 and 3 replied that they had purchased the property from the first defendant for valid consideration on 25.02.1997. They also stated that the plaintiff was misusing the agreement dated 06.10.1994 by fabricating records, as they knew each other through prior business dealings. Subsequently, the plaintiff filed the present suit, O.S. No. 33 of 1997, in May 1997, after the property had already been sold to



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defendants 2 and 3 in the month of February. The plaintiff was aware of this sale at the time of filing the earlier suit, yet he failed to seek any relief for cancellation of the said sale deed, either in the earlier suit or in the present one.

45. The plaintiff merely approached the court for specific performance while suppressing all these material facts. He falsely claimed possession, although the sale deed in favour of defendants 2 and 3 had already been executed. Therefore, the argument advanced by the plaintiff that the sale deed in favour of D2 and D3 is not binding on him is not acceptable. As on date, the sale deed stands in the name of defendants 2 and 3 and is still valid.

46. As rightly observed by the learned first appellate judge, the plaintiff claimed right and title based on the sale deed executed by the court in pursuance of an ex-parte decree obtained in O.S. No. 60 of 1997. This decree was not even produced before this court, which further supports the conclusion that the plaintiff did not approach the court with clean hands.



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47. In his earlier plaint, the plaintiff claimed to be in possession of the property, but he did not produce any documentary evidence to prove the same. In the present suit too, he claims both right and possession without producing any document. The learned first appellate judge rightly held that the plaintiff failed to prove his case.

48. However, the learned trial judge had presumed possession of the property without considering the legal lacunas on the side of the plaintiff. Thus, the learned first appellate judge rightly set aside those findings. The appellate findings are not perverse and therefore need no interference. Accordingly, Question of law D is answered.

49. Normally, this court does not interfere with factual findings of the courts below. However, when such findings are perverse, interference is justified. In this case, the trial court's findings are indeed perverse and call for correction.

50. Furthermore, the ex parte decree obtained in O.S. No. 60 of 1997



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was secured by suppressing real facts. Even in an ex-parte matter, the learned trial judge ought to have applied judicial mind but failed to do so.

No litigant should benefit by suppression upon the court. It is a settled proposition of law that abuse of process can be addressed at any stage.

51. In the present case, the plaintiff was never in possession of the property. Yet, he continues to seek relief from the year 1997, while suppressing material facts. Therefore, the observations made by the learned first appellate court are justified and require no interference.

52. Accordingly, the appeal is dismissed as devoid of merit with exemplary cost of Rs.50,000/- pay to the Tamil Nadu legal Service Authority, Chennai, within 12 weeks. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

19.03.2025

Index : Yes/No
Neutral Citation : Yes/No
Speaking/Non Speaking order

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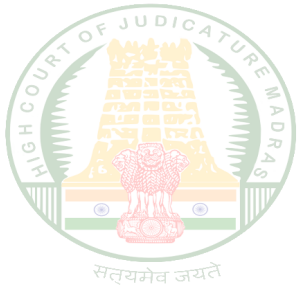
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- 1.The Principal Subordinate Judge, Dharmapuri.
- 2.The Principal District Judge, Dharmapuri,
- 3.The Section Officer, VR Section, High Court of Madras.

T.V.THAMILSELVI, J.

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S.A.No.179 of 2025
and
CMP.No.5161 of 2025



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19.03.2025