



S.A.No.344 of 2007

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2025

CORAM

THE HONOURABLE Mr.JUSTICE S.S.SUNDAR

S.A.No.344 of 2007

S.Uma Rani

... Appellant / Appellant/ 2nd Defendant

Vs

1.R.Govindammal (Died)

2.K.Rani

3.Saravanan

4.Jawahar

5.Meiyyappan

6.Senthilkumar

... Respondents / Respondents/

Plaintiff, 1st Defendant

[R2 Given up as unnecessary party]

[R1 died, RR3 to 6 brought on record as LRs

of the deceased R.Govindammal vide court order

dated 23.06.2021 made in CMP.Nos.2869, 2871

& 2874/2021 in S.A.No.344/2007]

**Prayer** : Second Appeal filed under Section 100 of CPC, against the judgment and decree dated 21.02.2006 made in A.S.No.170 of 2005 on the file of the Additional Sub Court, Salem confirming the judgment and decree dated 09.08.2005 made in O.S.No.91 of 2004 on the file of the Principal District Munsif Court, Salem.



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For Appellants : Mr.T.Muruga Manickam  
Senior Advocate for Ms.Zeenath Begum

For Respondents : Mr.P.Vetrivel for R4  
R2 - Given up  
R1 - Died ( steps taken)  
R3 to R6 - Served (No appearance)

### **JUDGMENT**

This second appeal is directed against the judgment and decree of the learned Additional Sub Judge, Salem in A.S.No.170 of 2005, confirming the judgment and decree of the learned Principal District Munsif, Salem in O.S.No.91 of 2004. The second defendant in the suit is the appellant herein. Parties would be referred to by their rank before the trial Court.

2. The facts necessary for the disposal of this appeal are as follows :

- a) The first respondent as plaintiff filed the suit in O.S.No.91 of 2004 for declaration of title and for recovery of possession in respect of a house property constructed in an extent of 682 <sup>1/2</sup>



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sq.ft. of land situate in S.No.22/2E in Periyeri Village, Salem Taluk.

- b) The case of the plaintiff is that the suit property originally belonged to her mother Alagammal, who had settled the property in favour of the plaintiff vide gift deed dated 12.09.1980 and that she took possession of the property. It is contended that the plaintiff has been paying the property tax regularly.
- c) The plaintiff has a brother by name Krishnan, whose wife is the first defendant. The second defendant is the purchaser of suit property from the first defendant.
- d) It is contended that based on the ill-advice of Krishnan, plaintiff's mother Alagammal had cancelled the gift deed executed by her in favour of the plaintiff vide cancellation deed dated 18.06.1992, and had executed a fresh gift deed as regards the suit property in favour of plaintiff's brother Krishnan, on 24.07.1992.



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- e) After acquiring the suit property, the said Krishnan laid a suit for declaration and permanent injunction against the plaintiff herein in O.S.No.157/2003 before the Principal Sub Court, Salem and that came to be dismissed as abated on 12.01.1998. However, no steps were taken by his wife, the first defendant herein.
- f) Be that as it may, when the plaintiff faced hindrance over enjoyment of her property by certain individuals namely Seenivasan, Puthur Perumal and Sottai Krishan including the first defendant herein, she filed a suit in O.S.No.2161/1996 before the Principal District Munsif Court, Salem for permanent injunction restraining them from interfering with her peaceful enjoyment of the suit property. The first defendant in O.S.No.2161/1996 is the wife of plaintiff's brother Krishnan. The second defendant is the younger brother of the plaintiff and defendants 3 and 4 were described as the henchmen of first defendant. It is contended by the plaintiff that pending the suit for injunction, the first defendant along with her henchmen had



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trespassed into the property, owing to which, the plaintiff filed an application in I.A.No.1590/1998 to amend the suit to one for declaration and recovery of possession. This application was allowed on condition directing the plaintiff to pay a cost of Rs.500/- within specified time. Since the same was not complied, the said application was dismissed by order dated 11.04.2000. Challenging the said dismissal order in I.A., the plaintiff had preferred a revision in CRP.No.3147/2000 before this Court. The revision petition was also dismissed on 19.09.2003. However, it is admitted that the suit in O.S.No.2161/1996 was decreed exparte on 02.12.2003 for the relief of injunction.

- g) It is further alleged in the plaint that the plaintiff was forcibly dispossessed from the suit property and thereafter, the first defendant had sold the property to one Umarani, the second defendant is the appellant herein, by way of registered sale deed dated 08.06.1998, which according to the plaintiff, is void as the same was purchased during the pendency of suit in O.S.No.



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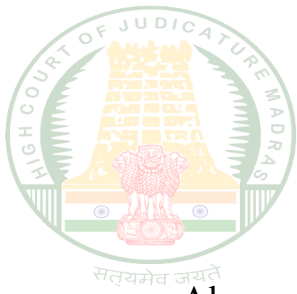


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2161/1996 . Hence, the present suit in O.S.No.91 of 2004 for declaration of title and for recovery of possession is filed.

2.2 The suit was contested by the first defendant mainly on the ground that the said gift deed executed by Alagammal, the mother of the plaintiff in favour of the plaintiff is vitiated by fraud, misrepresentation and coercion. It is contended that the plaintiff's mother Alagammal did not execute the gift deed out of her own volition and that possession was never handed over to the plaintiff.

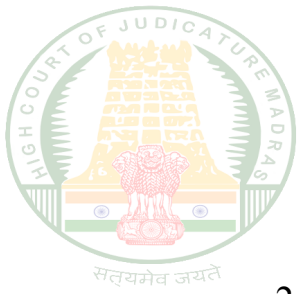
2.3 The second defendant/appellant who purchased the property from the first defendant also filed a written statement stating that the said Krishnan and his wife, the first defendant have every right and title to sell the property to her and therefore the sale that had taken place in her favour on 08.06.1998 vide registered sale deed is valid. It is contended that she is in actual possession and enjoyment of the suit property, pursuant to the said sale, and that the possession was never handed over to the plaintiff by



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Alagammal. Her plea is that the gift executed by Alagammal in favour of the plaintiff was never acted upon, as the same was cancelled vide registered cancellation deed. It is also contended that the appellant is not a party to the suit in O.S.No.2161/1996 and therefore, the decree in the said suit would not bind her.

2.4 On the basis of pleading, the trial Court framed necessary issues. On the issue whether the settlement dated 12.09.1980 is true and acted upon, the trial Court after considering the evidence held that the settlement deed in favour of the plaintiff is valid and acted upon. One of the specific issue before the trial Court was '*whether the suit is barred by law of res judicata?*'. The trial Court held that the earlier suit in O.S.No.2161/1996 was on a different cause of action and therefore, the present suit is neither barred by *res judicata* nor hit under Order II Rule 2 CPC. The trial Court also discussed the facts based on the pleadings and the old documents which were exhibited on the side of the plaintiff. Question of title was also decided in favour of the plaintiff and the suit was decreed by judgment and decree dated 09.08.2005.



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2.5 Aggrieved by the judgment and decree of the trial Court, the second defendant/appellant preferred an appeal before the Additional Sub Court, Salem in A.S.No.170/2005. On going through the recitals of the documents exhibited under Ext.B2 and other subsequent documents, the appellate Court confirmed the judgment of the trial Court holding that the plaintiff has proved her ownership and title, and dismissed the first appeal vide judgment and decree dated 21.02.2006.

2.6 Aggrieved by the concurrent findings of the Courts below, the second defendant has filed the present second appeal. Pending the suit, the plaintiff/first respondent died and her legal heirs are brought on record as respondents 3 to 6.

3. Though the appellants had addressed 5 substantial questions of law, the second appeal is admitted only on the following substantial questions of law :

*"1. Whether the judgments of the Courts below are vitiated in*



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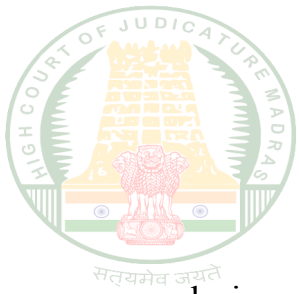
*that, they have held that pursuant to the settlement deed, the presumption is that possession was handed over to the settlee?*

*2. Whether the plaintiff's title based on the settlement deed can be said to be proved, particularly when she has not proved that the settlement deed was acted upon?"*

4. Having regard to the specific findings of the Courts below, the learned Senior Counsel appearing for the appellant, at the time of his argument, focussed only on the following substantial question of law raised in the grounds of the appeal memorandum:

*"Whether the present suit is barred by res judicata, particularly when the same relief for declaration of title and possession had been prayed for in the earlier suit O.S.No.2161 of 1996 had been prayed for and dismissed?"*

5. The learned Senior Counsel for the appellant/second defendant would submit that since a decree for injunction was granted in favour of the first respondent/plaintiff, the subsequent suit in O.S.No.91 of 2004 filed by the plaintiff is barred by *res judicata*. It is the specific case of plaintiff that

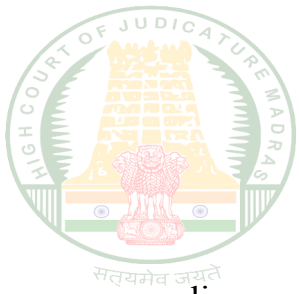


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during the pendency of suit for injunction, she was dispossessed and therefore, she was forced to file the present suit for recovery of possession and declaration of title. This has been accepted by Courts below. Absolutely, there is no scope for invoking Section 11 of CPC., The learned counsel also brought to the notice of this Court about the nature of order dated 19.09.2003 passed in CRP.No.3147 of 2000. This revision petition was filed by the plaintiff challenging the order of the trial Court dated 11.04.2000 passed in I.A.No.1590 of 1998 in O.S.No.2161 of 1996 dismissing the application for amendment of plaint after the alleged dispossession. This I.A was filed by the plaintiff, pending the suit in O.S.No.2161 of 1996, which came to be decreed exparte only on 02.12.2003.

6. From the reading of the said order in CRP. No.3147 of 2000, it is seen that during the pendency of the suit in O.S.No.2161/1996 on the file of Principal District Munsif Court, Salem, the plaintiff filed an application in I.A.No.1590/21998 in O.S.No.2161/1996 for amending the prayer in the suit seeking declaration of title and recovery of possession. Even in the said application, the plaintiff/first respondent had pleaded that she was forcibly



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dispossessed by the defendant and therefore, she wanted the prayer in the suit to be amended to seeking declaration of title and for recovery of possession based on subsequent event. The said application was allowed on merits subject to payment of Rs.500/-. Since the plaintiff had defaulted in paying a sum of Rs.500/- towards the cost on or before 11.04.2000 as directed by the trial Court and thereby, failed to comply with the condition, the trial Court dismissed the application by an order dated 11.04.2000. Thereafter, challenging the said order in I.A., the plaintiff preferred a revision petition before this Court, and this Court vide order dated 19.09.2003, dismissed the revision petition on the ground that this Court is not inclined to interfere with the well considered and meritorious order passed by the trial Court . Even the order passed in the civil revision petition would reveal that the present suit is based on a cause of action which is entirely different from the cause of action in the suit in O.S.No.2161/1996 which was originally instituted by the plaintiff. Further the first suit was decreed exparte. Therefore, the plea of *res judicata* cannot be sustained. The unilateral cancellation of gift deed executed in favour of plaintiff on the admitted facts and recitals of the documents is void and hence, cannot be given any credence.



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7.The learned Senior Counsel did not argue on any other substantial questions of law other than the issue of *res judicata* and therefore, this Court finds no substance in the question of law argued by the learned counsel for appellant. This Court finds no merit in the second appeal as the findings of the Courts below are perfectly in order, supported by sound reasoning.

8. To conclude, the second appeal is dismissed and judgment and decree dated 21.02.2006 made in A.S.No.170 of 2005 on the file of the Additional Sub Court, Salem confirming the judgment and decree dated 09.08.2005 made in O.S.No.91 of 2004 on the file of the Principal District Munsif Court, Salem, is hereby confirmed. No costs.

25.02.2025

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

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To:

- 1.The Additional Subordinate Judge  
Salem.
- 2.The Principal District Munsif  
Salem.
- 3.The Section Officer  
VR Section, High Court, Madras.



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S.S.SUNDAR. J.,

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