



S.A.No. 848 of 2006

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No. 848 of 2006

1.S. Bakthavatchalam(died) ... Appellant

2. B. Vasanthi
(A1 died. A2 bring on record as legal
heir of the deceased A1 vide Court order
dated 06.04.2022 made in C.M.P.No.20625 of
2021 in S.A.No.848 of 2006 by RHJ)

Vs.

1. Devika(deceased)

2. Sivaprakasam(died)

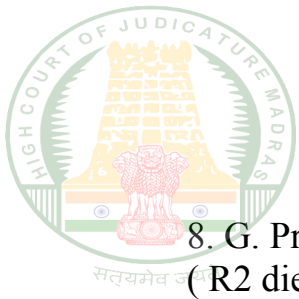
3. Ganesan

4. The Sub-Registrar
Sembium, Madras 600 001

5. S. Devendran

6. S. Anand Kumar

7. S. Murali



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8. G. Prema

(R2 died. R5 to R8 already on record as legal heir of the deceased R2 memo recorded vide Court order dated 03.04.2023 in S.A.No.848 of 2006 by RHJ)

.. Respondents

Prayer: This petition is filed Under Section 100 of the CPC to set aside the Judgment and Decree dated 07.04.2006 in A.S.No.211 of 2004 passed by V Additional Judge, City Civil Court, Chennai which is revised by the Judgment and Decree dated 24.04.2003 in O.S.No.7359 of 1994 passed by XVI Assistant Judge, City Civil Court Chennai and allow the appeal

For Appellant : No Appearance
For Respondents-4 : Mr.R.Siddharth
For Respondent 3,5 and 8 : Mrs.R.Srividhya

JUDGMENT

This petition has been filed by the appellant to set aside the Judgment and Decree dated 07.04.2006 in A.S.No.211 of 2004 passed by V Additional Judge, City Civil Court, Chennai which is revised by the Judgment and Decree dated 24.04.2003 in O.S.No.7359 of 1994 passed by XVI Assistant Judge, City Civil Court Chennai.

2.For the sake of convenience the parties herein are arrayed as per the



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ranking before the Trial Court:

WEB COPY The suit property bearing door No.7 Peravallur Vetri Nagar, Plot No.56

measuring to an extent of 2400 sq ft originally belonged to one Shanmugam, who is the father of the plaintiff. The subject property was purchased under a registered sale deed dated 03.07.1972 from one Subbulakshmi and her sons. From the date of purchase the plaintiff and his father are in absolute possession and enjoyment of the same without any interference or disturbance from any body. The father of the plaintiff died on 30.03.1991. The first defendant/ Devika is the sister of the plaintiff/ S.Bakthavatchalam and the 2nd and 3rd defendants are claiming to be the absolute owners of the suit property and as if the said property was settled by their father Shanmugam by a settlement deed dated 16.02.1983. Therefore, the plaintiff/ S. Bakthavatchalam has filed a suit for a declaration that the suit property is in the absolute possession and enjoyment of the plaintiff, for a permanent injunction restraining the defendants their men, agents servants or any body authorised by them from in any way interfering with the peaceful possession and enjoyment of the suit property, for a declaration, declaring that the settlement deed No.540 of 1983 on the file of the Sub Registrar Sembium dated 16.02.1983 is null and void in O.S.No.7359 of 1994 and the learned XVI



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Assistant Judge, City Civil Court Chennai vide order dated 24.04.2003

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confirmed that the settlement deed dated 16.02.1983 is not valid and dismissed the suit. Challenging the same A.S.No.211 of 2004 was filed by the 1st defendant before the V Additional Judge, City Civil Court, Chennai and the learned Judge has allowed the appeal vide order dated 07.04.2006. Aggrieved over the same the appellant is before this Court by way of this second appeal.

3.After filing of this second appeal the first appellant/S.Bakthavatchalam passed away. Hence, the second appellant who is the wife of the first appellant has been impleaded. However, tThere is no appearance on the side of the appellant.

4.It is the contention of the contesting respondents herein that the suit property belongs to them by virtue of the deed of irrevocable settlement deed dated 16.02.1983 executed by her father late Shanmugam in her favour and registered as document no. 540/1983 and possession of the same was delivered to her in pursuance therefore. She has been in possession of the property from 16.02.1983 by putting up a hut for her purpose. The defendant approached plaintiff seeking her permission to occupy the hut. Being her



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brother of this defendant who had also no immediate plan of putting the property for better and profitable use permitted him to use the hut on condition that he should vacate and deliver to her vacant possession of the said property when she required the same, but in the recent years he turned hostile refused to vacate the same. It is denied that the plaintiff is in absolute possession and enjoyment of the suit property and the said Shanmugam was under the care and protection of the plaintiff. The entire allegations are all absurd and are not admitted. The settlement in favour of this defendant is out of natural love and affection which the father had for his daughter till his last breath. The plaintiff gives thoroughly wrong picture for the purpose of this suit. The plaintiff is not in absolute possession and enjoyment of the suit property from the date of purchase. He has nothing to do with his father's purchase, possession and enjoyment till he delivered the same on date of settlement in favour of this defendant. Hence, the plaintiff is not entitled to claim any relief as prayed for. Hence, this second appeal is liable to be dismissed.

5. Heard the learned counsel for the respondent and perused the materials available on record



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WEB COPY 6. Before advertng further it would be relevant to go through the Judgment passed by the first Appellate Court. The learned Judge has made an observation that there is no dispute with regard to the relationship of the parties namely Devika, Bhaktavatsalam, Sivaprakasam and Ganesan. One late Shanmugam is the father of Devika, Bhaktavatsalam, Ganesan. That goes to show that Bhaktavatsalam and Ganesan are the sons and Devika is the daughter of the Late Shanmugamm. So also Sivaprakasam is none other than the husband of Devika and Ganesan is also the son in law of Devika and Sivaprakasam.

7. There is no dispute that the suit property was purchased by the said late Shanmugam under a registered Sale deed dated 03.07.1972 from one Subbulakshmi and her sons. The said Devika claims the suit property under Ex.A1. Original Settlement deed marked in O.S.No.9044 of 1995. Mr.Bhaktavatsalam, her brother denies the settlement deed and even if there is any such settlement deed it was never acted upon in accordance with law.

8. It is pertinent to note that the prayer in O.S.No.7359 of 1994 is for a



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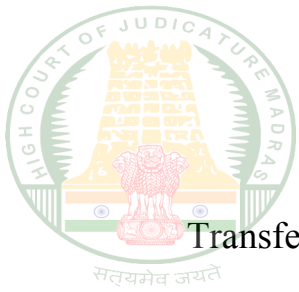
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declaration that the suit property is in his absolute possession and enjoyment of the plaintiff therein which goes without saying that the plaintiff therein is the owner of the suit property and also for an injunction restraining the defendants therein from interfering with his possession. When the title is disputed by the defendant therein such a prayer ought to have been valued under Section.25(b) of the Court fees Act and Court fees ought to have been paid on the half of the market values of the property about the plaintiff, therein has value the prayer under Section.27(c) of the Court fees Act and paid only Rs.30-50 as Court fees which is patently wrong and therefore the plaintiff therein is liable to pay Court fee under Section 25(b) of the Court Fees Act with regard to the prayer concerned.

9. This Court while admitting the second appeal has raised the following Substantial questions of law:

1. *Whether the Courts below has properly construed the provisions of Sections 122 and 123 of Transfer of Property Act 1881?*
2. *Whether the Court below property appreciated the scope of the provision found in Order 20 Rule 12 of C.P.C regarding mean profits and future damages?*

10. It is just and necessary to go through the Sections 122 and 123 of



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Transfer of Property Act 1881 and Order 20 Rule 12 of C.P.C regarding mean profits and future damages and the same is extracted hereunder:

Sections 122 and 123 of Transfer of Property Act 1881

122. "Gift" defined - "Gift" is the transfer of certain existing movable or immovable property made voluntarily and without consideration by one person called the donor to another, called the donee and accepted by or on behalf of the donee

123. Transfer how effected- For the purpose of making a gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses.

For the purpose of making a gift of movable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery.

Such delivery may be made in the same way as goods sole may be delivered.

Order 20 Rule 12 of C.P.C regarding mean profits and future damages

Decree for possession and mesne profits:

(1) Where a suit is for the recovery of possession of immovable property and for rent or mesne profits, the Court may pass a decree-

(a) for the possession of the property;

(b) for the rents which have accrued on the



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property during the period prior to the institution of the suit or directing an inquiry as to such rent;

(ba) for the mesne profits or directing an inquiry as to such mesne profits ;

(c) directing an inquiry as to rent or mesne profits from the institution of the suit until-

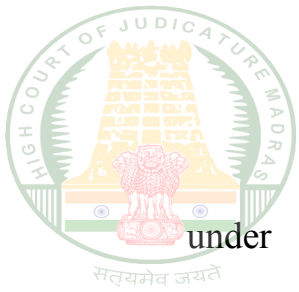
*(I) the delivery of possession to the decree-holder
(ii) the relinquishment of possession by the Judgment-debtor with notice to the decree-holder through the Court, or*

(iii) the expiration of three years from the date of the decree, whichever event first occurs.

(2) Where an inquiry is directed under clause(b) or clause(c) a final decree in respect of the rent or mesne profits shall be passed in accordance with the result of such inquiry.

11.To arrive at a conclusion it is necessary to find whether the provisions laid down under Sections 122 and 123 of Transfer of Property Act 1881 and the provision found in Order 20 Rule 12 of C.P.C regarding mesne profits and future damages are being property appreciated by the Court below or not.

12. With regard to the question No.1 whether the provisions laid down



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under Sections 122 and 123 of Transfer of Property Act 1881 are being
property appreciated or not it would be relevant to go through the paragraph

Nos.16 and 17 of the said Judgment and the same is as follows:

“16. In AIR 1927 Privy Council Page 42 in the case of Kalyanasundaram Pillai .. Vs.. Karuppa Moopanar and others, a full Bench has held that when a donor of immovable property has handed over to the donee an instrument of gift duly executed and attested and the Gift had been accepted by the donee the donor has no power to revoke the gift prior to the registration of the instrument.

“17. This has been followed by another Judgment in AIR Patna Page 140 in the case of Mst. Samrathi Devi Vs. Parasuram Pandey, stating that the fact of the deed being handed over by the Donor to the Donee was sufficient evidence of his having accepted the Gift and the acceptance of the said document was a relevant fact that prove the acceptance of the gift by him.....”

13. With regard to whether the provision found in Order 20 Rule 12 of C.P.C regarding mean profits and future damages are being properly appreciated by the Court below or not it would be relevant to go through the paragraph No.23 and the same is extracted hereunder:

23. The appellant, who is the plaintiff in O.S.No.9044-95, apart from claiming declaration that she is the owner of the suit property, she has claimed recovery of possession and she has also claimed mesne profits from 09.09.1994 till the date of filing of



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the suit and for future damages at the same rate and an issue has been framed but the trial Court has not in the least discussed the same and given a finding on the same. However, as the respondent Bhaktavatsalam is in the possession and enjoyment of the suit property, he is liable to pay the mesne profits as claimed by the appellant.

14.Hence, it is made clear that the Courts below has properly construed the provisions of Sections 122 and 123 of Transfer of Property Act 1881 and the provision found in Order 20 Rule 12 of C.P.C regarding mesne profits and future damages.

15. This second appeal revolves around two aspects. First one whether the settlement deed dated 16.02.1983 is valid or not and the second one is whether it was acted upon or not. Deceased Bhaktavatsalam denied the execution of the settlement deed but he has not proved it before the Court below. Further the said Shanmugam had not challenged the said settlement till his death and the said aspect was not taken note by the Trial Court. It is a established fact as per law that once a settlement deed is properly executed voluntarily and duly registered it comes into effect immediately and the property vests on the settlee and unless it is set aside by the Court for valid ground and for vitiating circumstances it is valid for all times and cannot be



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questioned at all. Hence whether the settlement deed dated 16.02.1983 is valid or not and the second one is whether it was acted upon or not is answered accordingly.

16. In view of the above facts it is made clear that there is no merits in the contentions of the appellant and this second appeal deserves to be dismissed and the Judgment and Decree dated 07.04.2006 in A.S.No.211 of 2004 passed by V Additional Judge, City Civil Court, Chennai is confirmed. No order as to costs. The appellant is directed to handover the possession within a period of three months from the date of receipt of a copy of this order.

19.03.2025

Index : Yes / No
Internet : Yes/ No
smn

To

1. The Additional Judge, City Civil Court, Chennai

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2. The XVI Assistant Judge, City Civil Court Chennai

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T.V.THAMILSELVI, J.,

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